

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86729; File No. SR-ICC-2019-010)

August 22, 2019

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 8, 2019, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to make changes to the ICC Clearing Rules (the “ICC Rules”) to address the treatment of certain investment losses, custodial losses and other non-default losses.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC is proposing amendments to its Rules to address the treatment of certain investment losses, custodial losses and other non-default losses (in each case, losses that do not arise from the default of a clearing participant (a "Participant")).

I. Summary of Proposed Amendments.

The amendments would, among other matters:

- define three exclusive categories of relevant losses: (1) investment losses, (2) custodial losses and (3) non-default losses,
- specify the ICC resources that will be applied to cover each such category of losses,
- specify the responsibility of Participants, in appropriate circumstances, to make contributions with respect to investment losses and custodial losses, and
- address the treatment of recoveries by ICC with respect to such losses.

ICC proposes to make such changes effective after Commission approval of the proposed rule change and after ICC is permitted to do so under Commodity Futures

Trading Commission (“CFTC”) regulation.³ The proposed amendments are described in more detail below.

II. Definitions of Loss Categories.

In Rule 102, new definitions of “Investment Losses” and “Non-Default Losses” would be added, and the definition of “Custodial Losses” would be revised.

Investment Losses

Investment Losses would be defined as losses incurred or suffered by ICC in connection with the default of the issuer of any investment of Margin or General Guaranty Fund assets by ICC or the default of the counterparty to any repurchase or reverse repurchase contract or similar transaction used to invest or reinvest such Margin or General Guaranty Fund assets. Investment Losses would also include other losses with respect to such investments, including from a change in value due to market movements. However, Investment Losses would not include Custodial Losses (as discussed below) or losses resulting directly from a failure by ICC to comply with its own investment policies.

Certain other circumstances would not constitute Investment Losses. For example, a negative yield or interest rate on an ICC investment will not be an Investment Loss. If a Participant posts securities or non-cash assets as Margin or General Guaranty Fund contributions, any gain or loss in such assets will not be an Investment Loss for purposes of the Rules.

³ As a derivatives clearing organization designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, ICC submitted to the CFTC, pursuant to CFTC Rule 40.10, as an advance notice of a proposed rule change the amendments to the Rules discussed herein.

Custodial Losses

Under the revised Rules, Custodial Losses would be defined as losses of Margin or General Guaranty Fund assets (including declines in the value thereof) as a result of (1) the insolvency or failure of a Custodian or (2) the embezzlement or theft of such assets by any person (other than ICC or its employees or representatives). A Custodian for this purpose would include a bank or trust company, central bank, central securities depository or other third party settlement system used by ICC for the deposit, holding, custody or transfer of cash or securities. Custodial Losses would not include Investment Losses.

Non-Default Losses

Non-Default Losses would be defined to cover losses incurred or suffered by ICC that are neither Investment Losses nor Custodial Losses and arise in connection with an event other than a Participant default. The definition thus captures losses from general business or operational risk that do not constitute custodial or investment losses.

III. Treatment of Losses.

The amendments set out in new Rule 811 (and related additional definitions in Rule 102) describe the clearing house's approach to the treatment of Non-Default Losses, Investment Losses and Custodial Losses.

Non-Default Losses

Under new Rule 811(b), Non-Default Losses would be met from available ICC capital and other ICC assets (including available retained earnings). Non-Default Losses would not be covered from ICC contributions to default resources (the ICE Clear Credit

Initial Contribution, ICE Clear Credit Continuing Contribution or Additional ICC Collateral Deposits). Non-Default Losses would not be allocated to Participants, or otherwise covered using Margin, General Guaranty Fund contributions or Assessment Contributions of Participants.

Investment Losses

New Rules 811(c)-(e) would set out the treatment of Investment Losses. Under Rule 811(c), in the case of an Investment Loss, ICC would first apply to the loss any available Investment Loss Resources held by ICC. Investment Loss Resources would be defined in Rule 102 to be \$20 million of ICC's own assets designated by ICC as available to be applied to Investment Losses. The ICC Board may modify the amount of Investment Loss Resources from time to time, and that determination would be risk-based in light of ICC's potential exposure to Investment Losses.

In the event the Investment Loss Resources were insufficient to cover the Investment Loss (an "Investment Loss Shortfall"), ICC would have the right, under Rule 811(d), to allocate the Investment Loss Shortfall to all Participants (including any Defaulting Participants). In that case, each Participant would be obligated to make a contribution (an "Investment Loss Contribution"), based on its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its aggregate Initial Margin (both house and customer) and General Guaranty Fund contributions (its "Participant IM/GF Contribution") as compared to the aggregate Participant IM/GF Contributions for all Participants. Under Rule 811(e), the maximum contribution of a Participant for an Investment Loss Contribution in respect of any event giving rise to an Investment Loss may not exceed its Participant IM/GF Contribution. Investment Loss

Contributions could only be applied to Investment Loss Shortfalls (and not Custodial Loss Shortfalls).

Custodial Losses

New Rules 811(f)-(h) would set out the treatment of Custodial Losses. Similarly to the treatment of Investment Losses, under Rule 811(f), in the case of a Custodial Loss, ICC would first apply to the loss any available Custodial Loss Resources held by ICC. Custodial Loss Resources would be defined to be \$32 million of ICC's own assets designated by ICC as available to be applied to Custodial Losses. As with Investment Loss Resources, the ICC Board may modify the amount of Custodial Loss Resources from time to time, and such determination would be risk-based in light of ICC's potential exposure to Custodial Losses.

In the event the Custodial Loss Resources were insufficient to cover the Custodial Loss (a "Custodial Loss Shortfall"), ICC would have the right, under Rule 811(g), to allocate the Custodial Loss Shortfall to all Participants (including any Defaulting Participants). In that case, each Participant would be liable to make a contribution (a "Custodial Loss Contribution"), based on its pro rata share of the Custodial Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the aggregate Participant IM/GF Contributions for all Participants. Under Rule 811(h), the maximum contribution of a Participant for a Custodial Loss Contribution in respect of any event giving rise to an Investment Loss may not exceed its Participant IM/GF Contribution. Custodial Loss Contributions could only be applied to Custodial Loss Shortfalls (and not Investment Loss Shortfalls).

Notwithstanding the foregoing, in the event of a Custodial Loss where the Custodian is a central bank, ICC is not obligated to apply Custodial Loss Resources, and the entire Custodial Loss would constitute a Custodial Loss Shortfall subject to allocation to Participants as described above.

IV. Allocation of Recoveries.

The amendments would address any recoveries that ICC is able to obtain in respect of an Investment Loss or Custodial Loss after Investment Loss Contributions or Custodial Loss Contributions (collectively, “Loss Contributions”) have been made. Rule 811(l) would provide a “reverse waterfall” for allocation of such recoveries, after deduction of expenses of ICC, to the parties that bore the loss (whether ICC, Participants or both) in the reverse order from which they were initially applied. The amendments would also set out ICC’s obligations to seek recoveries in respect of Investment Losses and Custodial Losses, generally using the same degree of care as it exercises with respect to its own assets that are not subject to allocation under Rule 811.

V. Additional Provisions.

Rule 811(u) would contain a general disclaimer by ICC of losses resulting from the holding, deposit, custody, transfer or investment of Margin, General Guaranty Fund contributions and Assessment Contributions, except as otherwise provided in Rule 811, and provided that Rule 811(u) will not limit any liability of ICC for its own gross negligence or willful misconduct. Rule 406 would also be amended to remove an existing disclaimer for custodial losses, which would be superseded by the new provisions.

New Rule 402(k) would address investment of cash Initial Margin provided by a Participant in respect of its client origin account. The Participant would be required to instruct ICC whether or not ICC should invest such Initial Margin. If instructed to invest, ICC would invest the cash in accordance with its Rules and investment policies procedures and applicable law. If instructed not to invest, ICC would hold the cash in a deposit account with a Custodian in accordance with ICC's policies and procedures. If a Participant does not provide an instruction, (1) for US dollar cash, the Participant would be deemed to have instructed ICC not to invest such cash, and (2) for cash in other currencies, the Participant would be deemed to have instructed ICC to invest such cash.

Rule 811 would also address certain procedures for notices to Participants of the use of Investment Loss Resources and Custodial Loss Resources and of required Loss Contributions in respect of Investment Losses and Custodial Losses. The Rule would also provide for timing and manner of collection of Loss Contributions (including through offset against obligations of ICC to return margin or other assets), and for currency conversions as necessary. The Rule would clarify that the requirement to make Loss Contributions does not reduce or otherwise affect other obligations of a Participant to make payments or deliveries to ICC under the Rules, or otherwise limit ICC's netting, setoff and other rights under the Rules. In particular, obligations to make Loss Contributions would be separate from any obligation to make an Assessment Contribution, and the limitations on Assessments under the Rules would not apply to liabilities for Loss Contributions. Use of the Loss Contribution procedures under Rule 811 would also not be deemed to constitute an ICE Clear Credit Default under the Rules.

ICC would be required to disclose to Participants the amount of Custodial Loss Resources and Investment Loss Resources, and to notify Participants in advance of any changes in such amounts. If such loss resources are applied as a result of a loss event, any replenishment of such resources by ICC would not reduce the amount of any Custodian Loss Shortfall or Investment Loss Shortfall (or resulting Loss Contributions) for that loss event. ICC's liability for Custodial Losses or Investment Losses would not exceed the amount of designated Custodial Loss Resources or Investment Loss Resources, as applicable, from time to time.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁵ In particular, Section 17A(b)(3)(F) of the Act⁶ requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest.

As discussed herein, the proposed rule change is principally designed to address the risks posed to ICC by a significant loss event not resulting from a default by one or more Participants. These events may include investment losses and custodial losses with

⁴ 15 U.S.C. 78q-1.

⁵ 17 CFR 240.17Ad-22.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

respect to margin and General Guaranty Fund contributions, as well as other losses resulting from general business risk, operational risk or other non-default scenarios. ICC, like all clearing organizations, faces the risk that such a loss event could affect its ability to continue orderly clearing operations or otherwise affect its viability as a going concern. The amendments are thus intended to enhance the ability of ICC to manage the risk of certain losses that do not arise from Participant default or defaults. The amendments provide a mechanism for fully allocating Investment Losses and Custodial Losses, first to resources provided by ICC in the first instance and thereafter to Participants. The amendments also clarify the responsibility of ICC for Non-Default Losses (and clarify that Participants are not responsible for such losses). The amendments thus enhance ICC's ability to address general business risk, operational risk and other risks that may otherwise threaten the viability of the clearing house as a going concern. The amendments also enhance the ability of ICC to manage custody and investment risk and settlement bank risk in the remote circumstances where its ordinary course procedures are insufficient and a Custodian, investment counterparty or settlement bank fails. Overall, the amendments will strengthen the ability of the clearing house to manage the risks of, and withstand and/or recover from, significant non-default loss events.

The amendments also more clearly allocate certain losses as among ICC and Participants. ICE Clear Credit believes that the amendments also reflect the legitimate interests of clearing participants, customers and other stakeholders. The amendments are designed to plan for remote and unprecedented, but potentially extreme, types of loss event, including Investment Losses, Custodial Losses and Non-Default Losses. In particular, Investment Losses and Custodial Losses, to the extent they exceed clearing

house resources dedicated for such purposes, will necessarily and adversely affect some or all Participants, customers or other stakeholders. ICE Clear Credit believes that the amendments take a balanced approach that distributes potential losses to both ICC and Participants. ICE Clear Credit also believes that the amendments further the interests of Participants in having greater certainty as to the consequences of such losses, their potential liability for them and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

In light of discussions with Participants and others, ICE Clear Credit believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme non-default loss scenario. ICE Clear Credit further believes that the approach taken will facilitate the ability of the clearing house to allocate such losses so that it can continue clearing operations. The amendments therefore further the prompt and accurate clearance and settlement of cleared transactions. In so doing, in light of the importance of clearing houses to the financial markets they serve, the policy in favor of clearing of financial transactions as set out in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the potential consequences of a clearing house failure, the amendments will support the stability of the broader financial system and the public interest. Accordingly, in ICC's view, the amendments are consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.⁷

⁷ Id.

In addition to the Act, the amendments are intended to satisfy the requirements of CFTC Rule 39.39,⁸ applicable to ICC as a derivatives clearing organization designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, that ICC have rules to facilitate recovery or orderly wind-down necessitated by general business risk, operational risk or any other risk that threatens its viability as a going concern. The amendments are also intended to be consistent with relevant international standards, including the Principles of Financial Market Infrastructure developed by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO).

The amendments will also satisfy the specific relevant requirements of Rule 17Ad-22,⁹ as set forth in the following discussion.

Rule 17Ad-22(b)(3)¹⁰ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. ICC does not propose in these amendments to change the amount or composition of financial resources required of Participants as Initial Margin or contributions to the General Guaranty Fund. ICC is also not proposing to change its own resources that it contributes to default resources. Under the amendments, ICC would designate clearly that ICC's own capital and other assets

⁸ 17 CFR 39.39.

⁹ 17 CFR 240.17Ad-22.

¹⁰ 17 CFR 240.17Ad-22(b)(3).

(other than its contributions to default resources) are available to cover Non-Default Losses (and that Participants are not responsible for such losses). In addition, ICC would designate specific amounts of its own assets to serve as Investment Loss Resources and Custodial Loss Resources, to provide risk-based, “first loss” coverage of Investment Losses and Custodial Losses incurred by ICC.

Specifically, ICC has selected the level of Investment Loss Resources based on its assessment of its potential exposure to investment losses under its investment policies and procedures, and the ICC Board would periodically conduct a risk-based assessment of the appropriate level of Investment Loss Resources. As an initial measure of its potential exposure to investment losses, ICC has taken into account components of the European Union capital requirements applicable to central counterparties¹¹ (even though such requirements are not directly applicable to ICC), in particular the capital requirements for credit, counterparty and market risks and operational and legal risks. ICC would not be obligated under the amended Rules to use this methodology, and could in the future determine to adopt a different risk-based methodology based on its experience with investment losses or other market or regulatory developments.

Under the amendments, with respect to Custodial Losses involving Custodians other than a central bank, ICC would be responsible for losses up to the amount of Custodial Loss Resources, which is established under the proposed Rule amendments and will be subject to risk-based adjustment by the ICC Board from time to time. As with the

¹¹ Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and the Council with regard to regulatory technical standards on the capital requirements for central counterparties.

Investment Loss Resources, ICC has determined the initial level of Custodial Loss Resources taking into account components of the European Union capital requirements applicable to central counterparties, in particular the capital requirements for credit, counterparty and market risks and operational and legal risks. ICC would not be obligated under the amended Rules to use this methodology, and could in the future determine to adopt a different risk-based methodology based on its experience with custodial losses or other market or regulatory developments.

The amendments would also provide for allocation of Investment Losses and Custodial Losses in excess of such resources to Participants, who would be obligated to pay Loss Contributions to the extent of such excess. With respect to Investment Losses, ICC has designed its existing investment policies and procedures such that investments are limited to instruments with minimal credit, market and liquidity risks. An Investment Loss resulting from an investment made in accordance with its policies and procedures is ultimately outside the control of the clearing house. Furthermore, as a regulatory matter ICC is not obligated to, and is not commercially in a position to, guarantee investments against defaults by an investment issuer or counterparty. As a result, in ICC's view, it is appropriate for remote losses in excess of the Investment Loss Resources to be borne by its Participants. Absent an ability to allocate such losses to Participants, an extreme Investment Loss event, beyond the resources of the clearing house, could result in clearing house failure or interference with the clearing house's ability to continue operations. Additionally, for Custodial Losses, ICC's existing policies are intended to mitigate the risk of custodial failure through appropriate selection and ongoing monitoring of Custodians and use of central bank custody where practical. These

procedures are designed to permit the clearing house to hold assets in a manner that minimizes the risk of loss or delay in the access of ICC to such assets. A Custodial Loss from a custodial failure is ultimately outside the control of ICC. ICC is not itself a depository but is rather an intermediary. ICC is ultimately not in a position to backstop or guarantee performance by third-party Custodians. If ICC were responsible for all Custodial Losses in excess of the defined resources, a custodial failure could lead to a clearing house failure or other interference with clearing operations. As a result, ICC believes it is appropriate for the Participants to share in Custodial Losses that exceed ICC's Custodial Loss Resources as set out in the proposed Rules. With respect to Custodial Losses arising from a central bank custodial failure, ICC believes that such a scenario is extremely remote, and entirely outside of its control. ICC also notes the preference among regulators and Participants for the use of central bank custody. As a result, ICC believes it is appropriate in that case that Participants fully bear any such Custodial Losses.

For Non-Default Losses, ICC would be solely responsible for covering such losses through ICC capital and other ICC resources. In light of the remote and unpredictable nature of such Non-Default Losses, ICC does not believe allocation of such Non-Default Losses to Participants is appropriate. ICC believes that its capital and other resources at the clearing house are sufficient to permit it to cover its expected operating expenses, consistent with regulatory requirements.

Under the amendments, losses in excess of the amount of Investment Loss Resources or Custodial Loss Resources would be shared among Participants, proportionally based on their respective aggregate initial margin and guaranty fund

contributions. ICC has determined that the allocation of Investment Losses or Custodial Losses, as the case may be, to Participants should be made proportionately based on the relative Participant IM/GF Contributions. The approach mutualizes both Investment Losses and Custodial Losses across all Participants, in these remote loss scenarios where such losses exceed applicable ICC resources allocated to such losses. Participants may be required to make Loss Contributions that are independent of the particular mix of cash and securities provided by the Participant as margin or guaranty fund assets, or any investment elections made by the Participant with respect to its customer origin account. Nonetheless, ICC believes that the approach is appropriate in light of the remote nature of the potential losses, the fact that Participant margin and guaranty fund assets are invested and custodied collectively, and the practical and operational considerations that would be required for an approach that attempted to allocate losses based on a Participant's particular assets and elections. In this regard, in ICC's view, individual elections by a Participant with respect to its customer origin account are unlikely to affect the overall risk of Investment Loss and Custodial Loss (and indeed, investment elections by Participants will generally only shift the balances between investment assets (subject to Investment Losses) and custodial assets (subject to Custodial Losses)). Regardless of any elections, the balance of investments, and the particular investments made, may change on a daily (or more frequent) basis, as may the balance of assets (and types of assets) held with any individual Custodian, meaning that any attempt to allocate based on specific Participant positions would have to be done on a real-time basis. Furthermore, all Participant assets are held and invested on an aggregate basis (such that investments cannot be allocated to particular Participants), and all Participants receive a blended rate

of return from aggregate clearing house investment activity. As a result, ICC does not believe it would be operationally feasible, or beneficial to Participants, to attempt to allocate Investment or Custodial Losses based on particular investment elections made or assets maintained by individual Participants with the clearing house on a real time basis. Instead, ICC believes it is more appropriate, in light of these operational and other considerations, to allocate Investment Losses and Custodial Losses, if any, to Participants based on their respective aggregate amount of Margin and General Guaranty Fund assets at the clearing house.

As a result, the amendments clarify the resources available to address Investment Losses, Custodial Losses and other losses not resulting from Participant default. The provisions relating to Investment and Custodial Losses also, in effect, provide protection against the loss of the financial resources provided by Participants to support the default waterfall. The amendments thus enhance the ability of ICC to manage the risk of certain losses that do not arise from Participant default or defaults, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad-22(b)(3).¹²

Rule 17Ad-22(d)(3)¹³ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them and invest assets in instruments with minimal credit, market, and liquidity risks. ICC's existing investment policies and

¹² 17 CFR 240.17Ad-22(b)(3).

¹³ 17 CFR 240.17Ad-22(d)(3).

procedures provide for the investment of cash provided by Participants as Margin or General Guaranty Fund contributions in investments with minimal credit, market and liquidity risks. Similarly, the policies provide for the use by ICC of custodians to hold cash and securities in a manner designed to minimize the risk of loss or delay in access to such assets. ICC does not propose to change such policies and procedures. The amendments address the remote scenario where, despite the protections under such procedures, there is a failure by an investment issuer or counterparty or custodian. Such a circumstance would be remote in ICC's view, and in any event, outside the control of ICC. In such circumstances, the amendments would allocate the loss as between ICC and Participants, with ICC being responsible for a first loss position up to the amount of defined resources (except in certain cases of a central bank failure) and with Participants being responsible for the remaining loss, in proportion to their margin and guaranty fund contributions. The amendments would thus enhance the protection of funds and assets provided to ICC as margin or guaranty fund contributions and are therefore reasonably designed to meet the requirements of Rule 17Ad-22(d)(3).¹⁴

Rule 17Ad-22(d)(8)¹⁵ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act¹⁶ applicable to clearing agencies, to support the objectives of owners and

¹⁴ Id.

¹⁵ 17 CFR 240.17Ad-22(d)(8).

¹⁶ 15 U.S.C. 78q-1.

participants, and to promote the effectiveness of the clearing agency's risk management procedures. ICE Clear Credit believes the amendments discussed herein satisfy these requirements. The amendments are designed to address extreme loss scenarios other than those resulting from Participant default, and provide an orderly means for recovery from such scenarios if necessary. The amendments set out the responsibilities of the ICE Clear Credit Board in connection with establishing the appropriate level of Investment Loss Resources and Custodial Loss Resources provided by ICC. In taking such decisions, the Rules, the ICC mission statement, and the relevant governance committee charters will require the Board to take into consideration both the interests of Participants, customers and other stakeholders and the broader goal of providing safe and sound central counterparty services to reduce systemic risk in an efficient and compliant manner, consistent with the requirements of Rule 17Ad-22(d)(8).¹⁷

For the foregoing reasons, ICE Clear Credit believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹⁸ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.¹⁹

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the ICC Rules will apply uniformly across all market participants. Therefore, ICC does not believe the proposed

¹⁷ 17 CFR 240.17Ad-22(d)(8).

¹⁸ 15 U.S.C. 78q-1.

¹⁹ 17 CFR 240.17Ad-22.

rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICC-2019-010 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2019-010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2019-010 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Jill M. Peterson
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).