

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100620; File No. SR-ICC-2024-004)

July 31, 2024

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

I. Introduction

On June 4, 2024, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Recovery Plan and Wind-Down Plan. On June 6, 2024, ICC filed Amendment No. 1 to the proposed rule change to make certain changes to Form 19b-4 and Exhibit 1A.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on June 21, 2024.<sup>4</sup> The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 inserts a bullet point to the “ICC Recovery Plan” paragraph of the Form 19b-4 and the Exhibit 1A with the following text, “description of Guaranty Fund Replenishment in Section VIII.B;”. Amendment No. 1 also removes the same bullet point from the “ICC Wind-Down Plan” paragraph of the Form 19b-4 and Exhibit 1A.

<sup>4</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the ICC Recovery Plan and the ICC Wind-Down Plan; Exchange Act Release No. 100335 (June 14, 2024), 89 FR 52138 (June 21, 2024) (File No. SR-ICC-2024-004) (“Notice”).

## II. Description of the Proposed Rule Change

### A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing Credit Default Swap (“CDS”) contracts.<sup>5</sup> The proposed rule change would amend both the Recovery Plan and the Wind-Down Plan, which serve as plans for the recovery and orderly wind-down of ICC, respectively, if such recovery or wind-down is necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses incurred by ICC. The Recovery Plan is designed to establish ICC’s actions to maintain its viability as a going concern by addressing any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC’s viability as a going concern. The Wind-Down Plan is designed to establish how ICC could be wound down in an orderly manner in the event that it cannot continue as a going concern.

### B. Recovery Plan

ICC proposes general updates and edits to its Recovery Plan to promote clarity and to ensure that the information in it is current. The proposed amendments to the Recovery Plan reflect and relate to changes that impacted ICC in the past year. To that end, the current Recovery Plan includes in the introduction a disclaimer that, unless otherwise specified, all information provided in the plan is current as of December 31, 2022. The proposed rule change would update that date to December 31, 2023.

The proposed amendments reflect and relate to changes that impacted ICC in the past year, including the addition of new ICC clearing participants (“CP”) (Intesa Sanpaolo S.P.A. and

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<sup>5</sup> Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC’s Recovery Plan, Wind-Down Plan, or Clearing Rules, as applicable.

Royal Bank of Canada), the addition of British Pounds Sterling cash (“GBP”) as acceptable client-related initial margin, the removal of references to ICE Clear Europe Limited (“ICEEU”) CDS clearing as that service has closed, and a change to the Managers of the ICC Board of Managers (the “Board”).

Section IV covers key recovery elements. Within this section, the proposed rule change would update clearing participation (IV.B), management and governance (IV.C), key performance metrics (IV.D), and collateral management (IV.E). In Section IV.B, ICC proposes to add new CP Intesa Sanpaolo S.p.A and CP Royal Bank of Canada. In Section IV.C, ICC would update the description of the non-independent managers appointed by ICE US Holding Company L.P. The proposed rule change would amend the description to remove Christopher Edmonds as an independent director of ICE Inc. He is replaced by Elizabeth King, Head of Global Clearing and Chief Regulatory Officer at Intercontinental Exchange, Inc. Currently, Sumit Roy, an independent manager nominated by the ICC risk committee and appointed by ICE Holding, is listed as a Senior Portfolio Manager at Magnetar Capital. He is now listed as former Senior Portfolio Manager at Magnetar Capital. In Section IV.D, ICC would update its revenues, volumes, and expenses for years 2022 and 2023.

In Sections IV.B and IV.E, ICC would make changes to collateral valuation<sup>6</sup> and to reflect the addition of GBP as acceptable margin,<sup>7</sup> which reflects recent ICC rule changes. In Section IV.B, ICC added language stating that acceptable forms of collateral for initial margin

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<sup>6</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to to ICC’s Treasury Operations Policies and Procedures, Exchange Act Release No. 98572 (Sep. 27, 2023); 88 FR 68211 (Oct. 3, 2023) (SR-ICC-2023-013).

<sup>7</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to British Pounds Sterling as Client-Related Margin, Exchange Act Release No. 97489 (May 11, 2023); 88 FR 31571 (May 17, 2023) (SR-ICC-2023-003).

now include GBP. In response to the addition of GBP, ICC proposes to revise Section IV.E to clarify the description of ICC's collateral valuation process to cover all collateral types accepted by ICC. ICC previously made changes to its collateral valuation policy under its treasury policy. First, ICC changed the the way it values the collateral that Clearing Participants provide to ICC to cover their margin and guaranty fund requirements. Second, ICC made changes to address circumstances under which it would use a foreign exchange facility to convert one currency to another. ICC made changes to Section IV.E to amend its collateral valuation to reflect those changes.

The proposed rule change also would amend Section VI of the Recovery Plan, which covers interconnections and interdependencies. Specifically, ICC proposes to amend the sections covering operational (VI.A) and financial (VI.B) interdependencies. The proposed rule change would update the Material Legal Entity ("MLE") Interrconnections Chart in the introduction to Section VI. The proposed updates to Section VI.A would reflect changes in the last year and would update the descriptions of ICC's personnel and facilities, as well as its in-house systems and third-party system. Section VI.B currently includes a "Counterparty Chart" that lists all of ICC's CPs and indicates which function(s) each CP performs (*i.e.*, Clearing Participant, Custodian, Depository, etc.). The proposed rule change would update this chart to reflect the addition of new CPs as discussed above.

The proposed rule change would update the description of monitoring mechanisms for CP default in Section VII.A of the Recovery Plan, which addresses ICC's stress scenarios. In Section VII.A, ICC also proposes the addition of a citation to Exchange Act Rule 17Ad-22(e)(4) (17 CFR 240.17Ad-22(e)(4)) to reflect and reference the applicable regulations more accurately.

The proposed rule change would make several updates to Section VIII of the Recovery Plan, which addresses ICC's recovery tools, primarily in Section VIII.B. In Section VIII.B, the proposed rule change first would add a reference to ICC's initial auction procedures. In various subsections of Section VIII.B, the proposed rule change would update financial information to reflect the current information available. Within Section VIII, in relation to direct infusion of cash to ICC from Parent/ICE Group, ICC would update the current description of ICC's, ICE Inc.'s, and ICE Group's respective year-end cash balances to reflect their most current consolidated balance sheets and update the management contact. ICC also adds "and SEC" in referencing initial margin requirements and financial resource requirements of the CFTC, so that it now also includes SEC regulations. Section X of the Recovery Plan identifies ICC's Financial Resources for Recovery. The proposed rule change would update the expected costs of recovery and wind-down, including expenses related to legal services, consulting, operations, regulatory capital requirements, and other wind-down costs to reflect current estimates and expenses.

Section XI of the Recovery Plan (financial information) provides the balance sheet and income statement for ICC and the consolidated balance sheet and income statement for ICE Inc. and its subsidiaries. The proposed rule change would update the financial information in this section to reflect the most current financial statements for both entities.

In Section XIII, which covers management information systems, the proposed rule change would update the key ICC reports and descriptions to remove references to reports that ICC no longer uses and add references to new reports. The proposed rule change would update Section XI, Appendix C, which covers banking institutions and the percentage of the guaranty fund, customer margin, and house margin held at each institution as of December 31, 2021. ICC proposes to change the date to December 31, 2023 and update the percentage of holdings for the

guaranty fund, customer margin, and house margin at each banking institution. Finally, the proposed rule change would make non-substantive typographical fixes in the ICC Recovery Plan, including grammatical and formatting changes.

### C. Wind-Down Plan

ICC proposes updates and edits to the Wind-Down Plan that reflect and relate to changes that have impacted ICC in the past year, as well as general updates and edits to promote clarity and to ensure that the information provided is current. The changes that impacted ICC in the past year include the addition of new CPs (Intesa Sanpaolo S.p.A. and Royal Bank of Canada), the removal of references to ICEEU as that service has closed, and a change to the Managers of the Board.

The current Wind-Down Plan includes in the introduction a disclaimer that, unless otherwise specified, all information provided in the plan is current as of December 31, 2022. The proposed rule change would update that date to December 31, 2023.

Section II of the Wind-Down Plan is an overview of the structure of ICC. Section II.A addresses ownership of ICC. ICC states that, within the ICE Group's activities, there are eight derivatives exchanges and a total of six clearing houses including ICC. ICC proposes to remove the word "to." Section IV addresses membership and ICC governance. The proposed rule change would amend Section IV.B to reflect that Christopher Edmonds was not reappointed and Elizabeth King, as discussed above, was appointed as an independent director instead. Additionally, the proposed rule change would update Section IV.A to reflect the addition of two new CPs, as discussed above.

Section VII of the Wind-Down Plan discusses ICC's interconnections and interdependencies, and the impact of each on the Wind-Down Plan. For example, as explained

in the introduction to this section, ICC relies on affiliated entities for certain operational and financial services. The Wind-Down Plan considers certain of these affiliated entities to be “Material Legal Entities.” As defined in the Wind-Down Plan, a Material Legal Entity is a legal entity that is significant to ICC’s activities and the delivery of clearing services.

The Wind-Down Plan identifies ICE Inc. as ICC’s sole Material Legal Entity. Currently, the Wind-Down Plan explains that ICC relies on ICE Inc. for certain shared services, such as accounting, HR, facilities, and intellectual property. The proposed rule change would expand this list of examples to include corporate finance, internal audit, enterprise risk management, and systems operations. These additions would help ensure that the Wind-Down Plan describes the current scope of services provided to ICC by ICE Inc.

Section VII.C describes ICC’s operational services, including the facilities where it operates. The proposed rule change would add to the description of facilities a description of ICC’s office in Jacksonville, Florida. This description would include a list of the activities performed out of the Jacksonville facility, such as legal and compliance functions. Also in VII.C, the proposed rule change would update the number of ICC employees to reflect the current headcount, including breakdowns by various functions. Finally, the proposed rule change would update the table of ICC’s third-party systems and the table of ICC’s in-house systems to remove certain systems no longer in use.

Section VII.D describes financial services provided to ICC. Section VII.D contains a chart of ICC’s counterparties and categorizes these counterparties by type (such as CP, custodian, investment manager). The proposed rule change would update this chart to reflect the new CPs noted above.

Section IX of the Wind-Down Plan addresses financial resources to support wind-down. ICC would update this section to reflect current financial information, including revenues and operating costs.

Finally, the proposed rule change would update Section XI, Appendix C, which covers banking institutions and the percentage of the guaranty fund, customer margin, and house margin held at each institution as of December 31, 2021. ICC proposes to change the date to December 31, 2023 and update the percentage of holdings for the guaranty fund, customer margin, and house margin at each banking institution.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>8</sup> Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”<sup>9</sup>

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>10</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the

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<sup>8</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>9</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>10</sup> *Id.*



applicable rules and regulations.<sup>11</sup> Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.<sup>12</sup>

After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to ICC. For the reasons given below, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 17A(b)(3)(F) of the Act<sup>13</sup> and Rule 17Ad-22(e)(3)(ii).<sup>14</sup>

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed, to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.<sup>15</sup>

As noted above, the proposed rule change primarily would update the Recovery Plan and Wind-Down Plan with current information about ICC’s facilities, finances, and Board. By providing the most current information for ICC’s revenues, volumes, and expenses, the proposed rule change will support ICC’s ability to monitor its finances and compare its regulatory capital

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<sup>11</sup> *Id.*

<sup>12</sup> *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) (“Susquehanna”).

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(F).

to its estimated recovery and wind-down costs. This in turn will help ensure ICC has the financial resources to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

Further, updating the Counterparty Chart to reflect both new CPs and the addition of GBP as acceptable margin will generally support those utilizing the Plans by providing users of the Plans with a correct overview of ICC's CPs and currencies accepted. These proposed changes would strengthen both plans by ensuring those utilizing them have information necessary to carry out recovery or an orderly wind-down, which in turn should help ICC to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

ICC's CPs provide cash and securities to ICC to satisfy their various guaranty fund and margin requirements. ICC in turn allocates these funds and securities among different financial institutions, including its accounts at the Federal Reserve Bank of Chicago and at certain depository institutions. ICC proposes to update the description of the allocation of funds among these accounts to reflect current allocations. Like the other changes discussed above, these proposed changes would strengthen the plans by providing a correct overview of ICC's usage of its financial accounts. Users of the plans could utilize this information to carry out recovery or an orderly wind-down. Thus, these changes would help ICC to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

For the reasons stated above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 17A(b)(3)(F) of the Act.<sup>16</sup>

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<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

B. Consistency with Rule 17Ad-22(e)(3)(ii)

Rule 17Ad-22(e)(3)(ii) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.<sup>17</sup>

The proposed changes described above would support ICC's maintenance of plans for the recovery and orderly wind-down of ICC by helping ensure that the plans are updated with current, accurate financial, personnel, and Board information. The proposed rule change also updates details regarding the allocation of guaranty fund and margin among ICC's financial institutions, which helps ensure that those using the plans have current financial information and an accurate understanding of the potential resources available for recovery or an orderly wind-down.

Therefore, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Rule 17Ad-22(e)(3)(ii).<sup>18</sup>

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<sup>17</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>18</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act<sup>19</sup> and Rule 17Ad-22(e)(3)(ii).<sup>20</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>21</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-ICC-2024-004), be, and hereby is, approved.<sup>22</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>20</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>23</sup> 17 CFR 200.30-3(a)(12).