

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2018-39 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-BOX-2018-39. This file number should be included on the subject line if email 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 that are filed with the Commission, and all written communications relating to the proposed rule change 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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-BOX-2018-39 and should be submitted on or before January 18, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018-28199 Filed 12-27-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84889; File No. SR-ICC-2018-011]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's New Initiatives Approval Policy and Procedural Framework

December 20, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 18, 2018, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission the proposed rule change 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 from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC New Initiatives Approval Policy and Procedural Framework ("NIA Policy"). These revisions do not require any changes to the ICC Clearing Rules ("Rules").

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be 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

##### (a) Purpose

ICC proposes to formalize its NIA Policy. ICC believes that such a change will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed rule change is described in detail as follows.

The NIA Policy sets forth ICC's policies and procedures for the review and approval of certain new initiatives to be offered or implemented by ICC. The NIA Policy clarifies and harmonizes the policies, procedures, and documentation for the review and approval of new initiatives that involve potentially significant changes. The intention of the NIA Policy is to notify all relevant departments of the introduction of the new initiative, provide for information sharing between departments and ensure a thorough understanding of the new initiative, and establish requirements for the pre-launch verification and testing of the new initiative.

The NIA Policy includes a list of definitions that serves to clarify and recognize the projects, key participants, and documents that are subject to the NIA Policy. New projects that are approved by the Steering Committee, a management committee responsible for prioritizing the implementation of initiatives and monitoring and guiding delivery, and meet the following criteria are defined as New Initiatives that are subject to the NIA Policy: (1) Involve new and material modifications to the risk or pricing methodology; (2) involve potential significant changes to the processing system, ICC Clearing Rules, or clearing operating procedures; (3) involve new and material modifications to existing and significant capabilities provided by ICC; or (4) involve Model Changes<sup>3</sup> classified as Materiality A under ICC's Model Validation Framework. The New Initiative Approval Committee (the "NIAC") identifies, reviews, and approves New Initiatives and is composed of ICC management, including department heads, and representatives from

<sup>3</sup> Model Changes include new and enhanced risk modeling components of ICC's risk management system. Depending on how substantially the Model Change affects the system's assessment of risk for the related risk driver(s), it is classified as Materiality A (*i.e.*, substantial impact) or Materiality B (*i.e.*, no substantial impact).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

Enterprise Risk, Quality Systems, and Systems Operations. The NIAC also determines any conditions, limitations, restrictions or pre-conditions (“Stipulations”) with respect to a New Initiative. The NIAC utilizes several templates in carrying out its responsibilities, such as a matrix evidencing that all necessary approvals have been obtained (“Approvals Matrix”); an assessment describing key risks, mitigation plans, and residual impact ratings and comments (“Risk Assessment”); a verification form evidencing that Stipulations have been met and testing has been completed (“New Initiative Pre-Launch Verification Form”); and a log tracking the NIAC’s identification and review of New Initiatives (“New Initiative Log”).

The NIA Policy describes the roles of key participants involved in the identification, review, and approval of New Initiatives. Key participants include various departments and their department heads, who are responsible for completing certain templates, reviewing proposals for and providing sign-off of New Initiatives, and/or evaluating New Initiatives for compliance with applicable regulations. The NIA Policy provides the NIAC with the responsibility and the authority to identify projects approved by the Steering Committee as New Initiatives; review New Initiatives with consideration of the risks, financial impact, legal and regulatory concerns, and strategic direction of ICC; approve, with Stipulations if appropriate, New Initiatives; and review New Initiatives post-implementation to determine compliance with Stipulations. The Chair of the NIAC ensures compliance with the NIA Policy and is responsible for, among other things, ensuring appropriate communication and coordination between the NIAC and the Steering Committee.

The NIAC’s identification, review, and approval of New Initiatives is divided into five steps: Submission, identification, review, pre-launch verification, and log. The NIA Policy sets out the procedures for each step and notes the template and standard for review to be used by the NIAC. The five steps include: (1) Submission of a project proposal approved by the Steering Committee to the NIAC; (2) identification of a project as a New Initiative by the NIAC; (3) review of the New Initiative by the NIAC, (4) pre-launch verification with evidence of completed testing and implemented Stipulations, along with a statement of any outstanding post-launch Stipulations; and (5) documentation of

the New Initiative in the New Initiative Log.

The NIA Policy is owned and maintained by the Chair of the NIAC. Material changes to the NIA Policy, as determined by the Chair of the NIAC, must be reviewed and approved by the ICC Board. Relevant templates utilized in the identification, review, and approval of New Initiatives are attached to the end of the NIA Policy, such as the Approvals Matrix, Risk Assessment, New Initiative Identification Form evidencing the identification of a project as a New Initiative by the NIAC, Charter of the NIAC, New Initiative Log, and New Initiative Pre-Launch Verification Form.

#### (b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>4</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),<sup>5</sup> because ICC believes that the proposed rule change establishes sound policies, practices, and procedures with respect to the offering or implementation of New Initiatives. Such sound policies, practices, and procedures are an important component of ICC’s ability to comply with these requirements because disruptions to operations resulting from a new offering or implementation can impair the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and protection of investors and the public interest. Moreover, the NIA Policy improves ICC’s ability to assess and manage risk, including by notifying all relevant departments of the introduction of the New Initiative, providing for information sharing between departments and ensuring a thorough

understanding of the New Initiative, and establishing procedures related to pre-launch verification and testing, thereby enhancing ICC’s ability to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC’s custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.<sup>6</sup>

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.<sup>7</sup> Rule 17Ad–22(d)(4)<sup>8</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in relevant part, identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures. The proposed rule change to formalize the NIA Policy sets forth ICC’s procedures for the identification, review, and approval of New Initiatives to be offered or implemented by ICC. By establishing procedures that provide for notification to all relevant departments, information sharing between departments to ensure a thorough understanding, establishment of Stipulations, and establishment of requirements for pre-launch verification and testing with respect to a New Initiative, ICC believes that it will reduce the likelihood of a disruption in operations from a New Initiative. Moreover, the establishment of Stipulations and the review of a New Initiative by the NIAC, including review of the Risk Assessment and Approvals Matrix and with consideration of, among other things, the risks, financial impact, legal and regulatory concerns, and the strategic direction of ICC, will reduce the risk that a new offering or implementation disrupting system operations is launched, thereby improving ICC’s ability to identify sources of operational risk and minimize them through the

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 240.17Ad–22.

<sup>8</sup> 17 CFR 240.17Ad–22(d)(4).

<sup>4</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>5</sup> *Id.*

development of appropriate systems, controls, and procedures, consistent with the requirements of Rule 17Ad-22(d)(4).<sup>9</sup>

Rule 17Ad-22(d)(8)<sup>10</sup> 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 Act.<sup>11</sup> The NIA Policy clearly assigns and documents responsibility and accountability for the identification, review, and approval of New Initiatives by the NIAC, the maintenance of the NIA Policy by the Chair of the NIAC, and the approval of material changes to the NIA Policy by the Board. These governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of department heads, the NIAC, and the Board is clearly documented, consistent with the requirements of Rule 17Ad-22(d)(8).<sup>12</sup>

#### *(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 change to formalize ICC's NIA Policy will apply uniformly across all market participants. Therefore, ICC does not believe the proposed 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 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 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2018-011 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-2018-011. This file number should be included on the subject line if email 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 that are filed with the Commission, and all written communications relating to the proposed rule change 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 a.m. and 3:00 p.m. 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-2018-011 and

should be submitted on or before January 18, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 33341; File No. 812-14910]**

### **Hercules Capital, Inc.**

December 21, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 23(a), 23(b) and 63 of the Act; under sections 57(a)(4) and 57(i) of the Act and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and under section 23(c)(3) of the Act for an exemption from section 23(c) of the Act.

**SUMMARY OF THE APPLICATION:** Hercules Capital, Inc. ("Company" or "Applicant") requests an order that would permit Applicant to (i) issue restricted shares of its common stock ("Restricted Stock") as part of the compensation package for its non-employee directors (the "Non-Employee Directors")<sup>1</sup> through its 2018 Non-Employee Director Plan (the "Non-Employee Director Plan") for Non-Employee Director Participants, (ii) issue Restricted Stock and Restricted Stock Units<sup>2</sup> (*i.e.*, the right to receive, on the date of settlement, one share of common stock or an amount equal to the fair market value of one share of common stock) as part of the compensation package for certain of its employees, officers and directors, excluding the Non-Employee Directors, through its Amended and Restated 2018 Equity Incentive Plan (the "Equity Incentive Plan"), (iii) withhold shares of the Applicant's common stock or purchase shares of Applicant's common stock from Participants to satisfy tax

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> Employees, officers and employee directors, together the "Employee Participants" and each an "Employee Participant." The Employee Participants and the Non-Employee Directors, together the "Participants" and each, a "Participant."

<sup>2</sup> Restricted Stock and Restricted Stock Units are collectively referred to herein as Restricted Stock.

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>11</sup> 15 U.S.C. 78q-1.

<sup>12</sup> 17 CFR 240.17Ad-22(d)(8).