

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>140</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88944; File No. SR-ICC-2020-005]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

May 26, 2020.

#### I. Introduction

On April 3, 2020, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to revise the ICC Clearing Participant (“CP”) Default Management Procedures (“Default Management Procedures”). The proposed rule change was published for comment in the *Federal Register* on April 15, 2020.<sup>3</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.

#### II. Description of the Proposed Rule Change

The proposed rule change would make amendments to the Default Management Procedures related to (i) the personnel involved in the default management process, including personnel at ICC and representatives of CPs; (ii) actions taken as part of the default management process; (iii) the development and execution of default management tests; and (iv) the correction of typographical and drafting errors.<sup>4</sup>

#### A. Personnel Involved in the Default Management Process

As mentioned above, the proposed rule change would make changes related to the personnel involved in the default management process, including personnel at ICC and representatives of CPs.

First, the proposed rule change would amend the list of defined terms in Section 2 to update the definition of the term “ICC Management”. Under the proposed rule change, ICC Management would consist of the General Counsel, Chief Risk Officer, Chief Operating Officer, Chief Compliance Officer, Head of Corporate Development, and Head of Technology. The Default Management Procedures assign certain responsibilities to, and require certain notifications to, the individuals comprising ICC Management.

Second, the proposed rule change would revise the personnel at each CP for which ICC maintains contact information related to the default management process. Currently, ICC is required to maintain contact information for the Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), and General Counsel of each CP, as well as other role-based contacts that are specific to the default management process. The proposed rule change would remove this and instead require ICC to maintain contact information for the most senior person in charge of the CDS business and the most senior person responsible for providing compliance oversight for the CDS business. The Default Management Procedures would refer to these personnel as the CP’s “CP Default Contacts.” Accordingly, the proposed rule change would replace, throughout the Default Management Procedures, references to a CP’s CEO, CFO, and General Counsel, with the term CP Default Contacts.

#### B. Actions Taken as Part of the Default Management Process

In addition to changes related to the personnel involved in the default management process, the proposed rule change would make changes related to certain actions taken as part of the default management process. First, the proposed rule change would amend Subsection 6.1.1, which describes certain actions that ICC’s President must take before a CP is declared in default. Currently, ICC’s President must notify ICE’s Head of Enterprise Risk Management and ICE’s CFO of a CP’s possible default. The proposed rule change would instead require that ICC’s

president notify ICE’s Global Head of Clearing, rather than the ICE CFO.

Next, the proposed rule change would amend Subsection 6.1.5, which describes certain actions that ICC’s CCO must take before a CP is declared in default. Currently, Subsection 6.1.5 requires that ICC’s CCO draft certain notifications and email those notifications to ICC Management for review and approval prior to sending the notifications. The proposed rule change would instead require that ICC’s CCO email the notifications to the Close-Out Team, rather than ICC Management, for review and approval. The Close-Out Team is responsible for overseeing the default management process and includes ICC Management, the most senior member of the ICC Treasury Department, and the ICC Risk Oversight Officer. Thus, under this proposed change, ICC’s CCO would still send the notifications to ICC Management for review and approval, because ICC Management is part of the Close-Out Team, but would also send the notifications to the most senior member of the ICC Treasury Department and the ICC Risk Oversight Officer, who are the other members of the Close-Out Team.

Next, the proposed rule change would amend Subsection 6.4, which describes certain actions that ICC’s President must take after a CP is declared in default. Currently, Subsection 6.4 requires that ICC’s President call or email the Chairman of the Risk Committee to inform the Chairman of the declaration of default and that ICC’s President confirm with ICC’s CCO that the Chairman has been notified. The proposed rule change would expand this to require that the President inform the Risk Committee (not just the Chairman) and ICC’s Board, and furthermore, that the President confirm with ICC’s CCO that the Risk Committee and Board have been notified.

The proposed rule change would also amend Subsection 8.6 to clarify that ICC could only take certain actions relating to direct liquidation if ICC obtains Board approval. Currently, Subsection 8.6 describes the actions that ICC would take to liquidate a defaulting CP’s portfolio by direct transactions, rather than a default auction. Subsection 8.6 currently provides that if the Close-Out Team does not receive Board approval, ICC may not execute direct liquidation trades that would consume the Guaranty Fund resources of non-Defaulting CPs and provides a list of certain actions that ICC would take otherwise. The proposed rule change would clarify this point by specifying that the list of actions ICC would take are actions that

<sup>140</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.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures; Exchange Act Release No. 88614 (April 9, 2020); 85 FR 21052 (April 15, 2020) (SR-ICC-2020-005) (“Notice”).

<sup>4</sup> Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICC Rules and Default Management Procedures, as applicable.

ICC would only take if Board approval is obtained. In other words, the proposed rule change would make explicit a point assumed in the current drafting of Subsection 8.6, that ICC would only undertake the listed actions upon approval of ICC's Board to execute direct liquidation trades that would consume the Guaranty Fund resources of non-Defaulting CPs.

Finally, the proposed rule change would amend Subsection 9.1, regarding calling for assessments. ICC's Rules and the Default Management Procedures allow ICC to call for assessment contributions to the Guaranty Fund in the event that the Guaranty Fund has been depleted or ICC anticipates the need for additional funds related to a default, and CPs are obligated to meet these assessments by providing additional amounts to the Guaranty Fund.<sup>5</sup> Currently, ICC distributes notices calling for assessment contributions to each CP's Execution Coordinator. Under ICC's Default Management Procedures, such role is responsible for coordinating internally and with ICC for hedging and liquidation related activities. The proposed rule change would replace the term Execution Coordinator with the existing defined term Central Point of Contact. Under the Default Management Procedures, the Central Point of Contract is the position at each CP that has overall responsibility for coordinating internally and with ICC during the default management process.

### *C. Development and Execution of Default Management Test*

The proposed rule change would also revise the Default Management Procedures regarding the development and execution of default management tests, which ICC uses to simulate a Clearing Participant default and its actions to manage such a default. Currently, Subsection 4.5 requires that ICC, in coordination with its CPs and Direct Participant Customers, conduct a default management test at least once per calendar year. The proposed rule change would amend the Default Management Procedures to require that ICC coordinate with its Risk Committee and Board, in addition to CPs and Direct Participant Customers, regarding its default management test and that ICC conduct its default management test every twelve months instead of once per calendar year.

Moreover, Subsection 4.5 currently requires that ICC's Risk Oversight Officer work with ICC Management (which is a defined term as discussed

above) in planning and coordinating the execution of default management tests. The proposed rule change would require that ICC's Risk Oversight Officer work with the Close-Out Team instead of ICC Management. As discussed above, as defined, the Close-Out Team includes the personnel comprising ICC Management as well as certain additional personnel, and thus ICC Management would still be involved in planning and coordinating the execution of default management tests. Moreover, the proposed rule change would require that the proposed scope of a default management test be presented to ICC's Board for review prior to execution of the test.

Finally, the proposed rule change would add Appendix 1 to the Default Management Procedures. Appendix 1 would include language on the development of the scope of a default management test. Specifically, proposed Appendix 1 would set forth key scenario components that ICC may consider when developing a default management test, including (1) scenarios resulting in CP defaults, such as a CP's failure to meet payment obligations to ICC, insolvency or bankruptcy; (2) default management tools available to ICC in case of default, including consulting with the CDS Default Committee or performing Secondary Default Management Actions (e.g., calling for assessment contributions); (3) timing considerations, such as the time and length of a default event; (4) planning strategy (e.g., whether there is advance notice of a test); and (5) event specific elements that may occur in a default scenario, such as the occurrence of multiple CP defaults or stressed market conditions.

### *D. Typographical and Drafting Errors*

Finally, as mentioned above, the proposed rule change would make other non-material changes to fix typographical and drafting errors.<sup>6</sup>

## **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>7</sup> For the reasons given below, the Commission finds that the proposed rule change is

consistent with Section 17A(b)(3)(F) of the Act<sup>8</sup> and Rule 17Ad-22(d)(8) and (d)(11).<sup>9</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>10</sup>

As discussed above, the proposed rule change would update, throughout the Default Management Procedures, the defined list of individuals that comprise ICC Management. The proposed rule change would also update the personnel at CPs for which ICC maintains contact information, and that ICC contacts, regarding a default. The Commission believes that this aspect of the proposed rule change should help ICC better manage a default by helping to ensure that ICC has accurate contact information for CPs and contacts the personnel at CPs who should be best positioned to respond to a default, and that the appropriate personnel at ICC (as part of the defined term ICC Management) are involved in responding to a default.

The proposed rule change would also, as discussed above, make changes related to the actions available to ICC in response to a default, by clarifying in Section 8.6 that ICC may take certain actions to directly liquidate a defaulting CP's portfolio via bilateral trades (rather than an auction) if ICC's Board approves. Similarly, the proposed rule change would require that ICC's president notify ICE's Global Head of Clearing of the possible default or risk of default before a default is declared and notify the Risk Committee and Board once a CP has been declared in default. The proposed rule change would also require that ICC's CCO email notifications to the Close-Out Team, rather than ICC Management, for review and approval, and that ICC distribute notices calling for assessment contributions to each CP's Central Point of Contact rather than Execution Coordinator. The Commission believes that these aspects of the proposed rule change should help to ensure that appropriate personnel are informed of, and able to participate in, ICC's

<sup>6</sup> For further information about these specific changes, please see Notice, 85 FR at 21054.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 17 CFR 240.17Ad-22(d)(8), (d)(11).

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> See ICC Rule 803.

response to a default. The Commission therefore believes that these aspects of the proposed rule change should improve ICC's ability to manage a default.

As discussed above, the proposed rule change would also enhance ICC's development and conduct of default tests by specifying, in new Appendix 1, the processes, tools, and conditions that ICC would test and requiring that ICC's Risk Oversight Officer work with other members of the Close-Out Team (which term would include ICC Management) to determine the scope of each default management test. Similarly, the proposed rule change would require that ICC coordinate default management tests with its Risk Committee and Board and that the Board review the scope of the Default Test prior to executing the test. Finally, the proposed rule change would also specify that ICC conducts a default management test at least every twelve months, rather than once per calendar year. The Commission believes these changes should improve the planning and conduct of default tests by setting out specific factors to test in Appendix 1 and requiring additional input, including Board review, on the scope and conduct of default tests. Because the Commission believes that default tests should help ICC to plan and prepare for responding to an actual default, the Commission believes that these aspects of the proposed rule change should improve ICC's ability to manage a default.

Finally, the proposed rule change would correct typographical and drafting errors. Again, the Commission believes these proposed changes should help ICC better manage a default by reducing the possibility for confusion when applying the Default Management Procedures by removing unintentional drafting errors.

By improving ICC's ability to manage a CP default, the Commission believes that the proposed rule change should also improve ICC's ability to avoid losses that could result from a CP default. The Commission further believes that such losses, if not properly managed, could hinder ICC's ability to continue operations and therefore clear and settle securities transactions and safeguard securities and funds in its custody or control. Therefore, for these reasons, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control,

consistent with the Section 17A(b)(3)(F) of the Act.<sup>11</sup>

#### *B. Consistency With Rule 17Ad-22(d)(8)*

Rule 17Ad-22(d)(8) requires that ICC 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>12</sup> applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures.<sup>13</sup> As discussed above, the proposed rule change would make explicit in Section 8.6 that ICC may take certain actions to directly liquidate a defaulting CP's portfolio via bilateral trades (rather than an auction) if ICC's Board approves, require that ICC coordinate default management tests with its Risk Committee and Board, and require that the Board review the scope of the Default Test prior to executing the test. The Commission believes that this aspect of the proposed rule change should establish clear governance arrangements regarding the Board's involvement in responding to a default and planning and conducting a Default Test. Similarly, the proposed rule change would require that ICC's President notify certain other ICE and ICC personnel prior to and after declaration of a default. Again, the Commission believes that this should establish clear governance arrangements regarding the President's actions in response to a default. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(d)(8).<sup>14</sup>

#### *C. Consistency With Rule 17Ad-22(d)(11)*

Rule 17Ad-22(d)(11) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of ICC's default procedures publicly available and establish default procedures that ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.<sup>15</sup> As discussed above, the proposed rule change would enhance ICC's development and conduct of default management tests, require that ICC coordinate default management tests with its Risk

Committee and Board, and require that the Board review the scope of the default management test prior to executing the test. The proposed rule change would also specify that ICC conducts a default management test at least every twelve months, rather than once per calendar year, and correct typographical and drafting errors. The Commission believes that these changes, in improving ICC's conduct of its default tests and specifying how often ICC would conduct such tests, should help to improve ICC's default testing. The Commission further believes that such testing should help to ensure the effectiveness of ICC's Default Management Procedures by revealing potential deficiencies in, and facilitating the improvement of, ICC's Default Management Procedures. The Commission therefore believes that the proposed rule change should help ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(d)(11).<sup>16</sup>

#### **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>17</sup> and Rules 17Ad-22(d)(8) and (d)(11).<sup>18</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>19</sup> that the proposed rule change (SR-ICC-2020-005), be, and hereby is, approved.<sup>20</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 15 U.S.C. 78q-1.

<sup>13</sup> 15 U.S.C. 17Ad-22(d)(8).

<sup>14</sup> 15 U.S.C. 17Ad-22(d)(8).

<sup>15</sup> 15 U.S.C. 17Ad-22(d)(11).

<sup>16</sup> 15 U.S.C. 17Ad-22(d)(11).

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> 17 CFR 240.17Ad-22(d)(8), (d)(11).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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>21</sup> 17 CFR 200.30-3(a)(12).