

Act Release No. 91264 (March 5, 2021), 86 FR 13939 (March 11, 2021), is set aside and, pursuant to Section 19(b)(2) of the Act, the proposed rule change (SR-CboeBZX-2020-070), as modified by Amendment Nos. 1 and 3, hereby is approved.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-21877 Filed 10-6-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93235; File No. SR-ICC-2021-020]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Stress Testing Framework and the Indirect Participant Risk Monitoring and Review Policy

October 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 27, 2021, 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 primarily 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 amend the Stress Testing Framework and to adopt and formalize the Indirect Participant Risk Monitoring and Review Policy (“Indirect Participant Risk Policy”). These revisions do not require any changes to the ICC Clearing Rules (the “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, 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 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 amend the Stress Testing Framework and to adopt and formalize the Indirect Participant Risk Policy. The proposed amendments to the Stress Testing Framework include clarifications on the stress testing practices of ICC and reference the Indirect Participant Risk Policy. The proposed Indirect Participant Risk Policy describes the monitoring and review of risk arising from and relating to indirect participants, which are the underlying clients of ICC’s Clearing Participants (“CPs”). ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to move forward with implementation of such changes following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

I. Stress Testing Framework

The revisions to the Stress Testing Framework are intended to clarify ICC’s stress testing practices and include minor clean-up changes. The proposed changes abbreviate various terms throughout the document, starting in Section 2. Regarding the stress test methodology in Section 3, ICC would define financial resources as available funds from the Initial Margin requirements and Guaranty Fund contributions related to the selected portfolios in a footnote, and make minor conforming terminology changes in the text regarding the analyzed Initial Margin requirements. A proposed appendix with details on ICC’s stress test methodology would be referenced throughout the amended document, specifically in Sections 3, 5, and 13. Proposed footnotes in Subsection 5.1 contain formulas that provide further definition regarding certain historically observed extreme but plausible market scenarios. The proposed amendments to Section 12 specify that client stress testing is executed daily (rather than “at least monthly”) and reference the Indirect Participant Risk Policy for further details. In Section 14, ICC proposes a grammatical update to make “meeting” plural and to memorialize

that the Stress Testing Framework is subject to review by the Risk Committee and review and approval by the Board at least annually. ICC proposes to include the Indirect Participant Risk Policy as a reference in Section 15.

ICC proposes new Section 16 as an appendix, which is intended to provide more detail and clarity on ICC’s stress test methodology and would not change the methodology. The proposed appendix defines key terms and sets out underlying formulas and equations used for stress testing. Key terms include Stress Testing Profit/Losses, which represent the CP portfolio hypothetical response to the considered stress testing scenarios. Moreover, the appendix explains the determination of the order of defaulting CP Affiliate Groups (“AGs”) in order to establish if the available financial resources are sufficient to cover hypothetical losses associated with the two greatest CP AG uncollateralized stress losses and discusses the consideration given to wrong way risk exposure. Finally, the appendix details how ICC determines if the available financial resources are sufficient to cover the hypothetical losses associated with the two greatest CP AG uncollateralized losses under the extreme but plausible scenarios.

II. Indirect Participant Risk Policy

The risk management program at ICC includes various elements designed to ensure the adequate identification, monitoring and management of risks arising from and relating to indirect participants. The proposed Indirect Participant Risk Policy memorializes such practices and analyses and sets forth the associated governance arrangements. The document is divided into seven sections, which are detailed below.

Section 1 introduces the purpose of the document and defines key terms. Indirect participants are defined as the underlying clients of ICC’s CPs. ICC’s CPs with clients are referred to as Futures Commission Merchants/Broker Dealers (“FCMs/BDs”) throughout the document. Indirect Participants can pose risk to CPs and indirectly to ICC due to the presence of Large Traders. A Large Trader includes a client of a CP that exhibits large risk exposure in its portfolio that transpires through concentrated position(s), significant level of collateralization and large uncollateralized losses under extreme but plausible market stress scenarios.

Sections 2 through 4 describe and memorialize the identification, monitoring, and risk management practices related to indirect participants and the presence of Large Traders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Section 2 introduces a report that enables ICC to determine the presence of potential Large Traders and assess the level of risk that they may pose to the CP and/or ICC. Client risk exposure across all FCMs/BDs and corresponding indirect participants are summarized in this report, which allows the ICC Risk Department to monitor and identify the FCMs/BDs with the largest indirect participants. Section 3 details a report summarizing ICC's indirect participants with risk profiles prone to adverse risk distribution, due to their size, across all FCMs/BDs. The criteria for the selection of indirect participants in this report is set out in the Indirect Participant Risk Policy. Further, Section 3 describes a complementary report, which would indicate the probability of an indirect participant adversely distributing its risk across multiple FCMs/BDs and provide guidance on additional indirect participants to be included for reporting. Individual client portfolio level stress testing is executed and presented through another report discussed in Section 4. The selection of indirect participants and FCMs/BDs for this analysis as well as relevant assumptions are also explained in Section 4. Moreover, each section details the frequency of execution or review of the report by the ICC Risk Department and the frequency of review by the ICC Risk Committee.

Section 5 memorializes governance procedures associated with the performance and review of the aforementioned analyses. The Indirect Participant Risk Policy specifies the group or individual involved in the execution, interpretation, review, and reporting of the analyses as well as the frequency. Section 5 also sets out the actions to be taken if the ICC Risk Department and the ICC Risk Committee deem the risk arising from indirect participants to be significant. In Sections 6 and 7, ICC includes references and a revision history.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁴ In particular, Section 17A(b)(3)(F) of the Act⁵ requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by

ICC, 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. The proposed changes strengthen the Stress Testing Framework by providing more detail on the methodology through defined terms and references to relevant documentation and formulas or equations, memorializing the review and approval process, and making other clarification and clean-up changes to ensure that it remains up-to-date and transparent. The proposed Indirect Participant Policy describes and memorializes the practices and analyses governing the identification, monitoring, and review of risk arising from and relating to indirect participants and sets forth the associated governance arrangements. ICC believes that the proposed rule change will ensure that responsible parties carry out their assigned duties effectively with respect to stress testing and managing risk from indirect participants, thereby promoting the prompt and accurate clearing and settlement of the contracts cleared by ICC, 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.⁶

The amendments would also satisfy relevant requirements of Rule 17Ad-22.⁷ Rule 17Ad-22(e)(2)(i) and (v)⁸ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed changes strengthen the governance procedures in the Stress Testing Framework by memorializing the review and approval process by relevant groups at least annually. The proposed Indirect Participant Risk Policy details governance procedures associated with the performance and review of analyses related to indirect participants. Specifically, this document specifies the group or individual involved in the execution, interpretation, review, and reporting of the analyses as well as the frequency. As such, in ICC's view, the proposed rule change continues to ensure that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance

arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad-22(e)(2)(i) and (v).⁹

Rule 17Ad-22(e)(3)(i)¹⁰ requires each covered clearing agency 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 the covered clearing agency, which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the Board annually. ICC maintains a sound risk management framework that identifies, measures, monitors, and manages the range of risks that it faces. The Stress Testing Framework is a key aspect of ICC's risk management approach, and the proposed amendments would memorialize that the document is reviewed by the ICC Risk Committee and reviewed and approved by the ICC Board at least annually. As such, the amendments would satisfy the requirements of Rule 17Ad-22(e)(3)(i).¹¹

Rule 17Ad-22(e)(4)(ii)¹² requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed amendments enhance ICC's ability to manage its financial resources by providing further clarity and transparency on the stress test methodology and on the procedures and analyses related to managing risk from indirect participants. The proposed rule change would thus enhance the implementation of such policies and procedures by ensuring that responsible parties effectively carry out their associated duties, thereby

⁹ *Id.*

¹⁰ 17 CFR 240.17Ad-22(e)(3)(i).

¹¹ *Id.*

¹² 17 CFR 240.17Ad-22(e)(4)(ii).

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 240.17Ad-22.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ *Id.*

⁷ 17 CFR 240.17Ad-22.

⁸ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

supporting ICC's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad-22(e)(4)(ii).¹³

Rule 17Ad-22(e)(4)(vi)¹⁴ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements, including by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions; conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions; and reporting the results of its analyses to appropriate decision makers at ICC. The proposed rule change continues to ensure that ICC's policies and procedures, including the Stress Testing Framework and Indirect Participant Risk Policy, provide a clear framework for ICC to conduct stress testing and analysis and report the results to appropriate decision makers at ICC, in compliance with this requirement. The Indirect Participant Risk Policy would memorialize governance procedures associated with the performance and review of analyses related to indirect participants, including the frequency of execution or review and reporting to the ICC Risk Committee. As such, ICC believes the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(4)(vi).

Rule 17Ad-22(e)(19)¹⁵ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. As described above, the proposed Indirect Participant Risk Policy documents ICC's processes and procedures related to indirect participants, including how ICC

identifies, analyzes, escalates, and reports on indirect participants. The document ensures responsibility and accountability by detailing the group or individual involved in the execution, interpretation, and review of reports, the frequency of execution and review, and the actions to be taken if the risk arising from indirect participants is deemed significant. Accordingly, ICC believes that the proposed rule change promotes its ability to identify, monitor, and manage the material risks to it related to indirect participants and is thus consistent with the requirements of Rule 17Ad-22(e)(19).¹⁶

(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 amend the Stress Testing Framework and to adopt and formalize the Indirect Participant Risk 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. Please include File Number SR-ICC-2021-020 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-2021-020. 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-2021-020 and should be submitted on or before October 28, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

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¹³ *Id.*

¹⁴ 17 CFR 240.17Ad-22(e)(4)(vi).

¹⁵ 17 CFR 240.17Ad-22(e)(19).

¹⁶ *Id.*

¹⁷ 17 CFR 200.30-3(a)(12).