



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98055; File No. SR-ICC-2023-007]

### **Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan**

August 4, 2023.

#### I. Introduction

On June 5, 2023, 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. The proposed rule change was published for comment in the Federal Register on June 22, 2023.<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

##### A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.<sup>4</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

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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> Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan; Exchange Act Release No. 97734 (June 15, 2023), 88 FR 40874 (June 22, 2023) (File No. SR-ICC-2023-007) (“Notice”).

<sup>4</sup> Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC’s Clearing Rules.

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 Recover 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, 2021. The proposed rule change would update that date to December 31, 2022. The proposed amendments to the Recovery Plan also would include changes to the coverage amount under the ICC clearing participant ("CP") default insurance policy ("CP Default Insurance Policy"), and the addition of ICC-specific procedures for financial resource calculations.

Section IV covers key recovery elements. Within this section, the proposed rule change would amend clearing participation (IV.B), management and governance (IV.C), and key performance metrics (IV.D). In Section IV.B, ICC would create a reference to a membership category, Associate Clearing Participant. In Section IV.C, ICC would make a correction to the Management/Governance chart to indicate that the business continuity plan ("BCP") and disaster recovery ("DR") Oversight Committee is not a sub-committee of the ICC Audit Committee. In Section IV.C, ICC would update the description of ICE Holding Board Chairman Vincent Tese, who is currently listed as an independent director of both ICE Holding and ICE Inc. The proposed rule change would amend the description to remove his listing as an independent director of Ice Inc. In Section IV.D, ICC would update its revenues, volumes, and expenses for years 2021 and 2022.

The proposed rule change also would amend Section VI of the Recovery Plan, which covers interconnections and interdependencies. Specifically, ICC proposes to amend Sections VI.A (Operational), VI.B (Financial), and VI.C (Contractual Agreements). 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. Section VI.B currently includes a "Counterparty Chart" that lists all of ICC's various counterparties and indicates which function(s) each counterparty performs (*i.e.*, Clearing Participant, Custodian, Depository, etc.). The proposed changes to Section VI.B would update the roles in its counterparty chart. The proposed changes to Section VI.C would update that chart to reflect changes to the functions performed by certain counterparties. The only proposed update to Section VI.C would be to the chart of counterparty contractual agreements in that section. Specifically, ICC would remove the reference to a service no longer received from a specific external service provider (*i.e.*, receipt of market data to value FX positions and collateral).

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. First, the proposed rule change would update the name of the carrier for ICC's CP Default Insurance Policy, which is maintained at the ICE Group level and may be used as a recovery tool in a CP default scenario pursuant to ICC's Rules, provided certain conditions are met. Second, it would amend the amount of coverage to reflect that the Policy coverage amount has increased to \$75 million (from \$50 million, as reflected in the current Recovery Plan); third, it would update the points of contact for ICC's Default Insurance Policy; and fourth, it would update the coverage amount under the Professional Liability/Cyber (E&O) Insurance Policy from \$110 million to \$120 million to reflect that coverage amount under that policy has increased since the last update to the Recovery Plan. Fifth, in Section VIII.B.1.iii (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. Finally, the proposed rule change would add a footnote in Section VIII.B that references and describes ICC's Risk Appetite Statements and Metrics, which define the thresholds ICC has established with respect to regulatory capital requirements and provide for alerts in the event that ICC is nearing a breach of these amounts (*i.e.*, the current alert is triggered if ICC maintains 110% or less of its required regulatory capital). The reference to and description of ICC's Risk Appetite Statements and Metrics is intended to provide further details on how decreases in ICC's regulatory capital will trigger escalation within ICC, which in turn may lead to potential remedial actions, including whether ICC should initiate its plan to raise additional equity.

Section X of the Recovery Plan identifies ICC's Financial Resources for Recovery. The proposed rule change would add details regarding the calculation of ICC's financial resources available for recovery to reflect new ICC-specific Financial Resource Calculation Procedures that ICC has added since the last update to the Recovery Plan. Specifically, the Recovery Plan would specify that ICC completes a voluntary annual calculation of regulatory requirements under European Market Infrastructure Regulation ("EMIR") guidelines. It would note that ICC's calculation approximates the EMIR requirements and is calculated by ICE Treasury on an annual basis upon the finalization of ICC's statutory audit and financial statements, as well as a discussion of future expectations with the ICC Treasury Director, and specify that the EMIR Estimate includes four elements relating to: winding down/restructuring; operational and legal risks; credit and counterparty risk/market risk; and business risks. The proposed update would also include a reference to the Financial Resource Calculation Procedures and note that the procedures include additional details regarding the calculation of regulatory capital requirements under EMIR guidelines. The proposed rule change also would amend Section X to updated the expected costs of recovery and wind-down, including expenses related to legal services, consulting, operations, regulatory capital requirements, and other wind down costs.

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.

The proposed rule change would make minor edits to Section XIII, Appendix G, which covers form default insurance proof of loss, by updating the carrier and policy number for ICC's CP Default Insurance Policy. In Section XIV, which contains the index of exhibits, the proposed rule change would update the index of exhibits with the current versions of policies and procedures, consistent with updated footnote references. Finally, the proposed rule change would make non-substantive typographical fixes in the ICC Recovery Plan, as well as conforming changes in the ICC Wind-Down Plan, including updates to entity names, and grammatical and formatting changes.

### C. Wind-Down Plan

ICC proposes updates and edits to promote clarity and to ensure that the information provided in the Wind-Down Plan is current. The proposed rule change reflects and relates to changes that have impacted ICC in the past year, including the addition of ICC-specific procedures for financial resource calculations. 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, 2021. The proposed rule change would update that date to December 31, 2022.

Section II of the Wind-Down Plan is an overview of the structure of ICC. Section II.A addresses ownership of ICC. The proposed rule change would add additional language for the headquarter location for ICC. Section IV addresses membership and ICC governance. The proposed rule change would amend the Management and Governance chart in Section IV.B because the previous chart incorrectly indicated that the BCP and DR Oversight Committee are sub-committees of the ICC Audit Committee. Additionally, the proposed rule change would update the description of Vincent Tese in Section IV.B, so that he is listed as just an independent director of ICC, but is no longer listed as an independent director of ICE Inc.

In the beginning of Section VII, which addresses interconnections and interdependencies, the proposed rule change would update ICC revenue. Later in VII.C.2, the proposed rule change would update the number of personnel and facilities. In Section VII.C, which addresses operational services, the proposed rule change would update a list of in-house systems. Section VII.D addresses financial services and the proposed rule change would update the roles on its counterparty chart.

Section IX addresses financial resources to support wind-down. In this section, the proposed rule change would include additional details regarding the calculation of ICC's financial resources available for wind-down to reflect the new ICC-specific Financial Resource Calculation Procedures. The proposed rule change would add details regarding the calculation of regulatory capital requirements under EMIR guidelines. Similar to the proposed changes in the Recovery Plan, the proposed rule change would specify that calculations are performed by ICE Treasury on an annual basis upon the finalization of ICC's statutory audit and financial statements and include a discussion of future expectations with the ICC Treasury Director. Similar to the proposed changes in the Recovery Plan, the proposed rule change would note that ICC's calculation approximates the EMIR requirements and is calculated by ICE Treasury on an annual basis upon the finalization of ICC's statutory audit and financial statements, as well as a discussion of future expectations with the ICC Treasury Director, and specify that the EMIR Estimate includes four elements relating to: winding down/restructuring; operational and legal risks; credit and counterparty risk/market risk; and business risks. The proposed update would also include a reference to the Financial Resource Calculation Procedures and note that the procedures include additional details regarding the calculation of regulatory capital requirements under EMIR guidelines.

The proposed rule change would update and edit to promote clarity and consistency in the ICC Wind-Down Plan. In the counterparty contractual agreements chart in Section VIII, the proposed rule change would remove the reference to a service no longer received from a specific

external service provider (*i.e.*, receipt of market data to value FX positions and collateral). In Section XII, the proposed rule change would update the index of exhibits with the current versions of policies and procedures, consistent with updated footnote references.

### 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>5</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>6</sup> and Rule 17Ad-22(e)(3)(ii).<sup>7</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>8</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, operations, and Board. The Commission believes that 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 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.

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<sup>5</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

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

Further, the Commission believes that updating the Counterparty Chart to reflect current roles and changes to the functions performed by certain counterparties will generally support those utilizing the Plans by providing users of the Plans a correct overview of ICC's counterparties. Similarly, the Commission believes that updating the description of ICC's Default Insurance Policy and Professional Liability/Cyber (E&O) Insurance Policy to reflect increase coverage amounts and current points of contact will generally support those utilizing the Plans by providing users of the Plans a correct overview of these insurance policies. The Commission believes that these proposed changes would strengthen both plans by ensuring those utilizing them have information necessary to carryout 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 also proposed to include a reference to the thresholds for regulatory capital requirements that would trigger alerts for ICC nearing a capital requirement breach. This may lead to potential remedial actions, including whether ICC should initiate its plan to raise additional equity. The Commission believes that these proposed changes would strengthen the plans by ensuring those utilizing them have all of the information necessary to carry out recovery or an orderly wind-down, which in turn will help ensure ICC can promptly and accurately clear and settle trades and safeguard of securities and funds which are in its custody or control at these times.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>9</sup>

**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

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

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>10</sup>

The Commission believes the proposed changes described above that would add current financial, personnel, and board information support ICC's maintenance of plans for the recovery and orderly wind-down of ICC with updated accurate information. The proposed rule change also would add details regarding the calculation of ICC's financial resources available for wind-down to reflect the new ICC Financial Resource Calculation Procedures. Additionally, ICC adds a reference to its thresholds for regulatory capital requirements that would trigger alerts for when ICC is nearing a capital requirement breach. The Commission believes that current financial information provides relevant information to those using the Plans to understand the resources available for recovery or an orderly wind-down.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(3)(ii).<sup>11</sup>

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<sup>10</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>11</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>12</sup> and Rule 17Ad-22(e)(3)(ii).<sup>13</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>14</sup> that the proposed rule change (SR-ICC-2023-007), be, and hereby is, approved.<sup>15</sup>

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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>16</sup> 17 CFR 200.30-3(a)(12).