



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101871; File No. SR-ICC-2024-005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC’s Treasury Operations Policies and Procedures

December 10, 2024

I. Introduction

On August 22, 2024, 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 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to revise the ICC Treasury Operations Policies and Procedures (“Treasury Policy”) (“Proposed Rule Change”). The Proposed Rule Change was published for comment in the *Federal Register* on September 11, 2024.³

On October 25, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change, until

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 100935 (Sept. 5, 2024), 89 FR 73734 (Sept. 11, 2024) (File No. SR-ICC-2024-005) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

December 10, 2024.⁵ The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.⁶ Its Treasury Policy contains policies and procedures used to support the ICC Treasury Department (“Treasury Department”). The Treasury Department manages ICC’s margin and guaranty fund assets posted by Clearing Participants as collateral.⁷

The Proposed Rule Change would make a number of changes to the Treasury Policy that fit into seven categories: (i) additions to the minimum criteria for ICC’s settlement banks; (ii) alterations to the investment guidelines contained in the Treasury Policy; (iii) clarifications that add detail to the Treasury Policy; (iv) increases to the breadth of certain Treasury Policy provisions; (v) various corrections to the Treasury Policy; (vi) deletion of unnecessary language from the Treasury Policy; and (vii) certain changes to make the Treasury Policy more consistent with federal and ICC rules.⁸

1. Minimum Criteria for Settlement Banks

ICC maintains relationships with various settlement banks to facilitate the holding and movement of Margin and Clearing Fund cash and collateral between ICC and its

⁵ Securities Exchange Act Release No. 101440 (Oct. 25, 2024), 89 FR 86867 (Oct. 31, 2024) (File No. SR-ICC-2024-005).

⁶ Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC’s Clearing Rules or the Treasury Policy, as applicable.

⁷ Notice, 89 FR at 73734.

⁸ ICC also proposes several non-substantive changes to the Treasury Policy. For example, the current Treasury Policy notes that “Treasury reconciles daily and previous day cash and collateral balances.” This language would be modified to read “Treasury reconciles daily: current and previous day cash and non-cash collateral balances.”

Clearing Participants.⁹ The current Treasury Policy includes standards and criteria that settlement banks must meet in order to be considered for such a relationship with ICC, including capitalization, operational capability, and regulatory supervision.¹⁰ To aid in ICC's management of liquidity risk arising from settlement arrangements with these banks, the Proposed Rule Change would add a requirement that a settlement bank provide ICC with specific liquidity information.¹¹ An example of liquidity information that ICC requires from settlement banks is the banks' Liquidity Coverage Ratio. In the event that a bank does not report LCR, the Proposed Rule Change would specify that ICC will consider other criteria to assess the liquidity of the bank. These other criteria may include a description of the bank's liquidity risk management policy or the liquidity coverage ratio of the settlement bank's affiliated reporting entity within the bank's group.

2. Investment Guidelines

The Treasury Policy governs ICC's investment strategy for its own operating capital and for the Margin and Guaranty Fund cash collateral that it holds. That strategy is designed to provide yield with reduced credit and market risk while preserving liquidity and principal.¹²

With respect to ICC's operating capital, currently, the Treasury Policy requires ICC to invest operating capital in either bank deposits or in U.S. Treasury/Agency reverse repurchase agreements ("repos"). However, in the event that bank deposits or reverse repos are unavailable or not feasible, ICC may make direct investments in U.S. Treasury securities

⁹ Notice, 89 FR at 73736.

¹⁰ *Id.*

¹¹ *Id.*

¹² ICE Clear Credit LLC Treasury Operations Policies and Procedures.

with a maturity of no greater than 98 days.¹³

With respect to reverse repos, the current Treasury Policy requires that the value of treasury collateral received by ICC must be between 100.5 percent and 102 percent of the invested U.S. Dollar amount. The Proposed Rule Change would eliminate this range and instead require that the value of the treasury collateral received by ICC be 102 percent of the invested U.S. Dollar amount. ICC believes this change would reflect current market practice and provide greater protection to ICC.¹⁴

In addition, to provide ICC with greater flexibility to implement its investment strategy while still maintaining the quality of its investments,¹⁵ the Proposed Rule Change would eliminate the current limitation on the Treasury Department's ability to invest operating capital in U.S. Treasury securities only if bank deposits or reverse repos are unavailable or infeasible and instead allow ICC's Treasury Department the discretion to invest operating capital in bank deposits, reverse repos, or U.S. Treasury securities with a final maturity of no greater than 98 days. The Proposed Rule Change also would specify that ICC would primarily directly invest in U.S. Treasury securities with respect to stable balances, for example, restricted cash held for regulatory capital purposes.¹⁶

3. Additions of Clarifying Details

The Proposed Rule Change would add clarifying details to the Treasury Policy. In a discussion of the Treasury Department's responsibilities, the Proposed Rule Change would add a sentence explaining that ICC's capacity to facilitate the prompt and accurate clearance

¹³ Notice, 89 FR at 73737.

¹⁴ *Id.* These changes also would apply where ICC invests Guaranty Fund and Margin cash in reverse repos. As explained below, in certain circumstances, ICC may invest in reverse repos USD cash posted by Clearing Participants to satisfy Guaranty Fund and Margin requirements. See *infra* Section II.3.

¹⁵ Notice, 89 FR at 73737.

¹⁶ *Id.*

and settlement of securities transactions and derivative agreements, contracts, and transactions for which ICC is responsible, and to safeguard securities and funds in ICC's custody or control for which it is responsible, is aided by the Treasury Department. ICC also proposes clarifying that references to the Guaranty Fund in the Treasury Policy are to the General Guaranty Fund as defined in ICC Rule 102.¹⁷ The Proposed Rule Change would modify certain current references to "cash and collateral" and "cash or collateral" to "cash and non-cash collateral" and "cash and/or non-cash collateral," respectively.¹⁸ It also would modify the current description of the Treasury Department as being responsible for managing postings by ICC Clearing Participants to a statement that the Treasury Department is responsible for managing Guaranty Fund *collateral* postings by ICC Clearing Participants.¹⁹ In the Treasury Department Organizational Structure and Governance subsection of the Treasury Policy, ICC also proposes adding text to clarify that the Treasury Director oversees the Treasury Department and reports to the ICC Chief Operating Officer.²⁰

Where ICC describes the types of funds it manages, ICC proposes specifying that the definition for Margin is in Rule 102 of ICC's Clearing Rules and that the Treasury Policy would refer to Initial Margin and Mark-to-Market Margin collectively as Margin.²¹ Similarly, the Proposed Rule Change would highlight the location of definitions for House Margin, Client-Related Positions, and Client-Related Margin; clarify that the Treasury Policy

¹⁷ Notice, 89 FR at 73734.

¹⁸ *Id.* For example, ICC proposes that a description of one of the Treasury Department's responsibilities should indicate that it works with Clearing Participants to assist with other cash and non-cash collateral related requests rather than cash and collateral related requests. Similar changes are also made in the introduction to the Treasury Department section and the Funds Management, Types of Funds section of the Treasury Policy.

¹⁹ Notice, 89 FR at 73734.

²⁰ *Id.* at 73735.

²¹ *Id.* ICC's proposal would incorporate Margin and other related defined terms throughout the Treasury Policy.

would use the term Client Positions in place of Client-Related Positions;²² and give a definition of House Margin and Client-Related Margin.²³

ICC also proposes adding clarifying language to a subsection of the Treasury Policy discussing ICC's investment of US Dollar cash.²⁴ This language would identify the Federal Reserve Bank ("FRB") of Chicago as a central bank. The amendments would also clarify that if ICC is unable to deposit all or a portion of its Guaranty Fund and Margin that was posted as USD cash at its FRB accounts, ICC's Treasury Department may invest such cash in US Treasury/Agency reverse repurchase agreements rather than Treasury/Agency reverse repurchase agreements. Similarly, in a subsection of the Treasury Policy addressing liquidity protection, ICC proposes specifying that it would call additional Initial Margin, rather than additional margin, if a Clearing Participant does not meet certain liquidity requirements.²⁵

The Proposed Rule Change would also add detail to the Cash Settlement section of the Treasury Policy. ICC proposes adding options premia and interest on Mark-to-Market Margin to a list of Transaction Payments in order to reflect current ICC practice.²⁶ In a discussion of ICC's direct settlement model, ICC also proposes adding detail to clarify its settlement operations.²⁷ Specifically, ICC would add text indicating that in the direct settlement model, Clearing Participants must establish settlement bank arrangements and

²² Unlike the term Client Positions, Client-Related Positions is a term defined in ICC Rule 102.

²³ *Id.* at 73735. The Proposed Rule Change would indicate that Initial Margin collateral is maintained and managed separately for Clearing Participant House Positions ("House Margin") and clearing activities associated with indirect participant or client positions (i.e., Client-Related Margin referred to in the Treasury Policy as "Client Margin"). The definitions for House Position, Client-Related Positions, and Client Related Margin (Client-Related Initial Margin) are in Rule 102 of the ICC Rule Book.

²⁴ Notice, 89 FR at 73735.

²⁵ *Id.*

²⁶ *Id.* ICC also proposes replacing Trade Payments with transaction payments in this provision.

²⁷ *Id.* at 73736.

make all requested payments to ICC within the required timeframe. The Treasury Policy would be further updated to note that, under the direct settlement model, ICC does not maintain accounts at each of the Clearing Participant settlement banks. Instead, ICC maintains direct debit authority over the Clearing Participant settlement bank accounts as such authority is granted by each Clearing Participant.

ICC's proposal would also add detail to the discussion of Clearing Participant requirements for direct settlement. Specifically, ICC proposes clarifying that, under the direct settlement model, Clearing Participants are responsible for ensuring that ICC has timely received all requested payments. If timely payment is not received, the Clearing Participant may be declared to be in default of its obligations to ICC. This proposed addition is meant to clarify ICC's existing practices.²⁸

In relation to the description of ICC's daily settlement process in the Treasury Policy, ICC proposes additions that would describe current practice.²⁹ To that end, the Treasury Policy would be updated to explain that ICC's daily settlement process occurs with each Clearing Participant every business day as applicable, and that settlement is final and irrevocable at the earlier of the time when (i) ICC receives the relevant payment or (ii) a financial institution used by ICC sends a confirmation message to ICC confirming that the relevant payment has been made.

ICC's amendments would also add detail to the Custodial Assets section of the Treasury Policy. ICC proposes clarifying that its policies regarding acceptable forms of cash and non-cash collateral for Initial Margin and Guaranty Fund and their associated "haircuts" are designed to provide protection for market risk management in addition to liquidity risk

²⁸ *Id.*

²⁹ *Id.*

management. Additionally, ICC's proposed changes to the excess collateral sub-section would require that Clearing Participant requests to transfer excess collateral be completed prior to 9 am ET for GBP denominated collateral in addition to EUR denominated collateral in order to receive the assets on the same day. ICC proposes this change because currently the sub-section does not contain the applicable GBP deadline for the transfer of excess GBP denominated collateral.³⁰

In the treasury reconciliations section, the Proposed Rule Change would clarify that ICC's Treasury Department conducts a daily reconciliation process with respect to its cash and non-cash collateral accounts in accordance with its internal procedures.³¹ ICC also proposes clarifying that "cite checks" involve the manual review of transaction activity rather than the manual review of the ISG requests. In ICC's view, this would be a clarifying change because the term "ISG requests" is vague and undefined.³²

4. Proposed Changes that Broaden Certain Provisions

The Proposed Rule Change also increases certain provisions' breadth. In the section of the Treasury Policy covering the Treasury Department's responsibilities, the current term "settlement issues" would be replaced with the term "treasury management related issues." As a result of this proposed change, the Treasury Policy would specify that the Treasury Department is responsible for maintaining relationships and contacts with Clearing Participants to efficiently and effectively identify, validate, escalate and correct "treasury management related issues" rather than "settlement issues." ICC also proposes replacing the phrase "substitute collateral for cash" with the phrase "perform collateral substitutions" in

³⁰ *Id.* at 73737.

³¹ *Id.* These procedures include cite checks for validating the status of margin payments; a check of prior-day cash balances, withdrawals, and/or deposits; and a comparison of current and expected balances.

³² *Id.* at 73737.

another provision in the same section. As a result of this change, the Treasury Policy would describe the Treasury Department as being responsible for managing the process whereby Clearing Participants “perform collateral substitutions” instead of the process whereby Clearing Participants “substitute collateral for cash.” ICC proposes these changes to provide a more complete picture of its current payment practices.³³ Additionally, the Proposed Rule Change would replace the word cash with the word collateral in a separate provision. As a result of this proposed change, the Treasury Department would be required to work to develop “investment and collateral” management strategies rather than “investment and cash” management strategies. In ICC’s view, this change would more fully describe the scope of ICC’s current practice and be consistent with the rest of the Treasury Policy.³⁴

The Proposed Rule Change would also broaden the Funds Management section of the Treasury Policy. In this section’s discussion of investment of Guaranty Fund and Margin requirements posted in US Dollar cash, ICC proposes adding that bilateral reverse repo transactions may be settled through alternative counterparties that may be added to the Treasury Policy in the future. The policy already notes that these repos are settled through a specific bank or additional counterparties that may be added in the future. This proposed addition aims to encompass potential future changes in ICC’s financial service provider relationships.³⁵

In the Treasury Policy’s Cash Settlement section, ICC proposes changing how it describes its settlement banking relationships. Currently, ICC provides the names of its backup settlement banks in a subsection of the Treasury Policy addressing its banking

³³ *Id.* at 73735.

³⁴ *Id.*

³⁵ *Id.*

relationships. Instead of naming specific backup settlement banks in one provision, ICC proposes that the provision indicate that ICC maintains appropriate backup settlement banking relationships. In the same subsection, ICC also proposes conforming changes related to this proposed change. Similarly, when addressing bank to bank and credit SWIFT messages, ICC's proposal would remove a reference to ICC's specific settlement banks and instead refer to "applicable ICC settlement banks." These changes would help ICC avoid amending the Treasury Policy if its specific settlement banks it uses change.³⁶ ICC's amendments would also add text to a subsection discussing when settlement banks fail to perform. This text currently lists specific banks that ICC's Treasury Department would instruct Clearing Participants to wire funds to directly if they do not pay because a settlement bank failed to perform. The Proposed Rule Change would add a new bank to the current list. It would also provide that if a settlement bank does not perform, ICC's Treasury Department would instruct the Clearing Participant to wire funds directly to ICC's accounts at alternative or additional settlement banks. These changes would broaden the list of settlement banks that ICC may designate.³⁷

ICC also proposes replacing references to specific types of SWIFT messages with more general descriptions. Making this change would account for potential changes to specific types of SWIFT messages.³⁸

ICC proposes broadening provisions in the Custodial Assets section of the Treasury Policy as well. Currently, the Treasury Policy provides that ICC accounts for the risk associated with changes in the value of US Treasuries and non-USD currencies by applying

³⁶ *Id.* at 73736.

³⁷ *Id.*

³⁸ *Id.* at 73736. Similar changes are made throughout the Treasury Policy.

“haircuts.”³⁹ The amendments would instead provide that ICC accounts for the risk associated with fluctuations in the value of cash and non-cash collateral by applying “haircuts.” ICC proposes this change because ICC accepts more than just U.S. Treasuries and non-USD currencies as collateral.⁴⁰

5. Proposed Corrections to the Treasury Policy

ICC also proposes to make various corrections to the Treasury Policy. In the Treasury Department Responsibilities section of the Treasury Policy, ICC proposes replacing a reference to margin requirements with a more general reference to requirements, a reference to margin deficit payments with a reference to payments, a reference to margin accounts with a reference to accounts, and a reference to the daily margin process with a reference to the daily clearing process. These proposed changes would improve the accuracy of the Treasury Policy because, in practice, the references to requirements, payments, accounts, and processes are not limited solely to margin.⁴¹ The Proposed Rule Change would also indicate that ICC, rather than ICC’s Risk Department, generates daily requirements for all Clearing Participants (including requirements for indirect participants, *i.e.*, Client-Related requirements). ICC’s entity-wide clearing systems automatically create these requirements, not the ICC Risk Department.⁴² The Proposed Rule Change would also modify the description of these requirements to indicate that they would be based on “cleared positions” rather than “cleared trades.” In ICC’s view, the word “positions” better describes Clearing Participants’ cleared activity at ICC.⁴³ ICC also proposes correcting text related to receipt of

³⁹ ICE Clear Credit LLC Treasury Operations Policies and Procedures.

⁴⁰ Notice, 89 FR at 73737.

⁴¹ *Id.* at 73734.

⁴² *Id.*

⁴³ *Id.*

payments under the Treasury Policy.⁴⁴ Currently, the Treasury Policy notes that Treasury ensures that payments are received and honored by Clearing Participant’s CDS related banking relationships. Because ICC does not base its settlement of transactions on whether a Clearing Participant’s bank honors a payment direction, ICC proposes correcting this text to note that Treasury ensures that payments are received from Clearing Participants.⁴⁵ ICC also proposes removing text reading, “within the Risk Management framework of the clearing house” from a provision that currently reads “working within the Risk Management framework of the clearing house to develop investment and cash management strategies.” The proposed rule change would require the Treasury Department to work to develop investment and collateral management strategies.⁴⁶ ICC proposes removing the Risk Management Framework language from this provision because the relevant investment and collateral management policies are now housed in the Treasury Policy instead of the Risk Management Framework.⁴⁷ In the Treasury Department Organizational Structure and Governance section of the Treasury Policy, ICC proposes removing text indicating that the Treasury Department is part of ICC’s Operations Department. The Treasury Department is not and has never been a part of the Operations Department.⁴⁸

ICC also proposes corrections to the Funds Management section of the Treasury Policy. Specifically, ICC would replace certain current references to the Treasury Director making investments with statements that the Treasury Department makes these investments.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ ICC’s proposed replacement of cash management strategies with collateral management strategies is described above in Section 4.

⁴⁷ Notice, 89 FR at 73735.

⁴⁸ *Id.*

ICC proposes these changes because it is ICC's practice for Treasury Department personnel to make these investments under the Treasury Director's supervision.⁴⁹

In the Funds Management section's discussion of investment of US Dollar cash posted as Margin or to the Guaranty Fund, ICC proposes a change to reflect that ICC has multiple FRB accounts rather than a single FRB account.⁵⁰ ICC also proposes changing the description of the minimum cash it is required to invest in a bilateral reverse repo under certain circumstances. The current description states that the minimum cash requirement is equal to 45% of the top two Clearing Participant's "risk margin," plus any excess margin not released, plus 45% of the total Guaranty Fund. The revised description would state that the minimum cash requirement is equal to 45% of the top two Clearing Participant's "Margin requirement," plus any excess margin not released, plus 45% of the total Guaranty Fund. ICC believes this change better reflects ICC's current practices because it is more detailed and accurate. ICC believes the term "Margin requirement" specifically includes both initial and mark-to-market margin requirements whereas the term "risk margin" is less specific.⁵¹ Where the Funds Management section discusses outside investment management of Guaranty Fund and Margin cash, ICC proposes using the plural term "investment managers" instead of the singular "investment manager" because, in practice, ICC uses more than one outside investment manager to help it invest Guaranty Fund and Margin cash.⁵² In a discussion of liquidity protection, ICC's proposal would describe a requirement for Clearing Participants to

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

maintain “tiers of collateral” rather than “tiers of assets.” This is because ICC believes the term “collateral” is more accurate in this instance because it is a more precise description.⁵³

ICC proposes corrections to the cash settlement section of the Treasury Policy as well. In relation to routine settlement procedures, the Treasury Policy currently indicates that, during the process of monitoring whether a Clearing Participant has made timely payment, if a Clearing Participant’s payment is late ICC’s Treasury Department contacts the Clearing Participant and/or the agent bank. Because ICC contacts the Clearing Participant directly if a payment is late and does not contact the agent bank, ICC proposes removing the reference to the agent bank.⁵⁴ With respect to settlement procedures during a SWIFT outage, the current Treasury Policy indicates that in the event that ICC is unable to send SWIFT messages to its direct settlement banks, the following back-up procedures would be used. ICC proposes changes to this provision so that it indicates that in the event that ICC is unable to send SWIFT messages to “Clearing Participant settlement banks,” rather than “direct settlement banks,” it would use certain back-up procedures. This proposal corrects an incorrect reference to “direct settlement banks” in the current Treasury Policy.⁵⁵ For the same reason, ICC proposes replacing the term “direct settlement banks” with “Clearing Participants” in revisions to procedures for communicating directly with a Clearing Participant when there is a SWIFT outage.⁵⁶ Specifically, ICC proposes changes to the Treasury Policy noting that when there is a SWIFT message disruption, it may become necessary to send a report directly to “ICC’s Clearing Participants” rather than “ICC’s direct settlement banks.” As noted above, under the direct settlement model, ICC does not maintain

⁵³ *Id.*

⁵⁴ *Id.* at 73736.

⁵⁵ *Id.*

⁵⁶ *Id.*

accounts at each of the Clearing Participant settlement banks. Instead, ICC maintains direct debit authority over the Clearing Participant settlement bank accounts as such authority is granted by each Clearing Participant. Thus, it is more accurate to describe the settlement banks as they relate to ICC's Clearing Participants, rather than being ICC's direct settlement banks.

ICC also proposes correcting language in the Treasury Policy related to its FRB accounts. Currently, a subsection of the Treasury Policy addressing ICC's FRB accounts addresses the possibility that ICC would have only one FRB account. Due to certain requirements that ICC segregate funds, ICC currently has separate FRB accounts for house and client margin. To reflect this, ICC would refer to "accounts" instead of an "account" or "account(s)" and remove outdated language focused on the possibility that ICC would have a single FRB account. ICC would also add text defining the terms House Account and Client Account,⁵⁷ replace text to utilize those terms,⁵⁸ and note that ICC maintains separate margin accounts for each Clearing Participant's House Positions and Client Positions.

The Proposed Rule Change would also correct portions of the Custodial Assets section of the Treasury Policy and update reporting requirements for ICC's custodial banks. Instead of indicating that custodial banks are required annually to submit a specific report, the updated Treasury Policy would explain that custodial banks are subject to ongoing monitoring pursuant to ICC's Counterparty Monitoring Procedures, and the current requirement that custodial banks must submit the specific report to ICC would be removed.⁵⁹ With respect to its collateral haircut methodology, ICC's proposed changes would require

⁵⁷ ICC's proposal would also refer to the Client Account as a Cleared Swaps Customer Account. The Proposed Rule Change would incorporate these definitions throughout the Treasury Policy.

⁵⁸ Specifically, ICC proposes replacing FRB House cash account with FRB House Account and FRB Client cash account with FRB Client Account.

⁵⁹ Notice, 89 FR at 73736.

ICC's Treasury Department to provide a report containing current "haircuts" to the ICC Risk Department at least once a month rather than only once a month and, further, this requirement would no longer depend on whether the haircuts changed. Relatedly, ICC proposes changes to reflect its current practice of making its haircuts publicly available and notifying Clearing Participants of any changes to those haircuts.⁶⁰ The current Treasury Policy notes only that ICC will establish and publish the haircuts to Clearing Participants monthly.

In the Bank Monitoring section of the Treasury Policy, ICC proposes updating the current reference to the CDS Clearing Counterparty Monitoring Procedures to reflect that these procedures are now called the Counterparty Monitoring Procedures.⁶¹

6. Proposed Deletions of Obsolete and Unnecessary Text

ICC's proposal would delete unnecessary and obsolete language throughout the Treasury Policy. In the description of the funds and requirements that ICC's Treasury Department manages, the Proposed Rule Change would remove a footnote identifying where to find the definition of Guaranty Fund because, under ICC's proposal, the location of this definition is now found in the Treasury Department Responsibilities section of the Treasury Policy.⁶²

ICC proposes changing the description of ICC's investment of US Dollar Cash posted as Margin or in the Guaranty Fund to remove language it deems unnecessary. Currently, a provision in this section indicates that, to facilitate reverse repo transactions, ICC has arrangements in place to settle reverse repo transactions, either by tri-party or bilateral,

⁶⁰ *Id.* at 73737.

⁶¹ *Id.*

⁶² Notice, 89 FR at 73735.

and that both arrangements settle delivery vs. payment. The proposed provision would instead note that, to facilitate reverse repo transactions, ICC has arrangements in place to settle reverse repo transactions delivery vs. payment. This section of the Treasury Policy also currently requires that when a security must be substituted, ICC will ensure the replacement security is eligible and is valued correctly by reviewing the replacement ticket issued by the counterparty. ICC proposes deleting this requirement in its entirety. In each case, ICC proposes the deletions because it does not believe that the Treasury Policy needs to discuss these matters at the current level of detail.⁶³

The Proposed Rule Change would delete unnecessary provisions in the Cash Settlement section of the Treasury Policy as well. With respect to non-routine settlement procedures, the Treasury Policy current explains that if ICC must process a cash payment from a Clearing Participant outside of the normal daily process, an ICC authorized person will work with the Clearing Participant to confirm the particulars of the non-routine settlement. The Treasury Policy currently further explains that ICC sends SWIFT MT-204(USD)\MT-202(EUR) settlement instructions to the designated bank via the SWIFT network. The proposed rule change would maintain the substance of this provision – ICC would work with the Clearing Participant to confirm settlement outside of the daily process – but it would delete the reference to the specific SWIFT message. ICC maintains that reference the specific SWIFT message is unnecessary because ICC and the Clearing Participant in question would be expected to separately confirm the particulars of the settlement, and further the type of SWIFT message could change in the future.⁶⁴

In the Treasury Policy’s discussion of settlement procedures in the event of a SWIFT

⁶³ *Id.*

⁶⁴ *Id.* at 73736.

outage, the Proposed Rule Change would also remove the requirement that Margin Deficit Call Reports would be sent using a password protected email. The Treasury Policy currently explains that, in the event of a SWIFT outage, it may become necessary for ICC to manually send these reports,⁶⁵ as needed to satisfy margin debit calls. The Treasury Policy currently explains that these Margin Deficit Call Reports would be sent using a password protected email. The Proposed Rule Change would remove the requirement that the email be password protected. Because ICC does not believe that email security measures need to be addressed in the Treasury Policy, the Proposed Rule Change would instead require Margin Deficit Call Reports to be sent via email.⁶⁶ Thus, ICC would still send the Margin Deficit Call Reports via e-mail, as needed, but the Treasury Policy would not contain a requirement that this email be password protected.⁶⁷

Currently, the Treasury Policy explains that, when a bank rejects a SWIFT debit message because of a technical defect, the Treasury Department will manually update the SWIFT Transaction Summary Report and will manually initiate and send a SWIFT MT202 (bank to bank) and/or MT204 (direct debit) message to reverse and/or correct previous message(s) to the bank. ICC would amend this text to indicate that the Treasury Department will correct the previous message(s) and/or re-issue a corrected SWIFT message to the bank. Thus, rather than referring to the specific type of SWIFT message (*i.e.* MT202), the revised Treasury Policy would refer to SWIFT messages generally. This change would remove what ICC views as unnecessary detail regarding reissuing and correcting the SWIFT message and the specific type of SWIFT message that will be sent, and further helps ensure that the

⁶⁵ As described in Section II.5, ICC proposes changes to the Treasury Policy to send these reports to ICC's Clearing Participants rather than ICC's direct settlement banks. See *infra* Section II.5.

⁶⁶ Notice, 89 FR at 73736.

⁶⁷ Nevertheless, per other ICC policies, such as the ICE Corporate Information and Security Policy, the Commission expects this information would be sent in a secure manner.

Treasury Policy remains accurate if the numbers of SWIFT messages are updated or otherwise changed.⁶⁸

ICC would also remove unnecessary text from the Treasury Policy’s Custodial Assets section and Treasury Management for Client Business section. Specifically, ICC would remove outdated language contemplating a scenario where ICC only has one FRB securities account.⁶⁹ ICC has multiple FRB securities accounts.⁷⁰ Further, when discussing when client margin is due, ICC proposes removing text highlighting that ICC’s deadlines are in keeping with daily payment processes. ICC states that it views this text as unnecessary.⁷¹ The remaining text would still note when payments related to client business are due to ICC.

In Appendix 2 of the Treasury Policy, ICC would remove information related to its key contacts at a number of specific banks. Specifically, ICC proposes removing the names of banks for which it maintains a list of key contacts. ICC does not believe it needs to list this level of detail in the Treasury Policy because the specific banks are likely to change.⁷²

7. Proposed Changes for Consistency Purposes

Finally, some of ICC’s proposed changes are designed to ensure that the Treasury Policy is internally consistent with itself, other ICC rules and procedures, and external regulatory requirements. In the Funds Management Section of the Treasury Policy, ICC proposes to add the word “requirements” in multiple places to ensure that Margin and Guaranty Fund requirements are referred to consistently throughout the document.⁷³ To

⁶⁸ Notice, 89 FR at 73736.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 73737

⁷² *Id.*

⁷³ Notice, 89 FR at 73735. For example, ICC would add the word requirements to the introductory paragraph of the Funds Management section so that it notes that Treasury is responsible for

ensure the Treasury Policy is consistent with other ICC rules and procedures, ICC proposes adding language to the Treasury Policy indicating that it maintains and manages House Margin and Client Margin separately.⁷⁴ To ensure the Treasury Policy is consistent with certain regulatory requirements applicable to ICC, the Proposed Rule Change would require that Initial Margin and Guaranty Fund requirements are held in a manner which minimizes the risk of loss or delay in ICC's access to collateral, which mirrors the language used in the relevant regulatory requirements.⁷⁵ This would be a change from the current language, which indicates that Margin and Guaranty Fund requirements must be held in highly liquid and short term investments.

The text and titles in and around several tables in the Funds Management section of the Treasury Policy would also be changed to ensure they are consistent with other sections of the Treasury Policy.⁷⁶ Specifically, in these tables ICC proposes using the terms "USD cash" instead of "US Dollar Cash" and "US Cash," "US Treasury Securities" instead of "US Treasuries," and "EUR cash" instead of "Euro Cash" to mirror the terms used in the rest of the revised Treasury Policy.⁷⁷ ICC also proposes using defined terms throughout the Treasury Policy, such as House Margin.

ICC proposes changes to the Participants' Withdrawal subsection of the Funds Management section as well. Specifically, ICC would add text indicating that Guaranty Fund deposits are not eligible to be returned to a withdrawing Clearing Participant until after all of

developing investment strategies and managing each of the types of funds and requirements in accordance with their respective restrictions and ICC's Investment Policy. In another example, ICC proposes clarifying that the Treasury Department is responsible for cash and non-cash collateral originating from Initial Margin requirements posted by Clearing Participants.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Similar changes are made throughout the Treasury Policy.

the open positions of such withdrawing Clearing Participant are closed out and all obligations of such withdrawing Clearing Participant to ICC have been satisfied. ICC proposes this change to make this provision consistent with Rule 807 of the ICC Rulebook. Similarly, a current provision in the Participants' Withdrawal subsection indicates that, if a Clearing Participant provides notice of withdrawal less than 60 days from the end of the quarter, the Clearing Participant's withdrawal will be effective at the end of the subsequent calendar quarter. However, because this is not consistent with or required under ICC's rules, the Proposed Rule Change would delete this provision from the Treasury Policy.⁷⁸

Finally, in the section of the Treasury Policy discussing ICC's use of committed repo facilities, ICC proposes modifying certain text describing how expenses are attributed. Currently, the Treasury Policy indicates that interest expenses incurred through such facilities are attributed to the account of the defaulting Clearing Participant. ICC's proposal would indicate that all expenses incurred through such facilities, including interest expenses, are attributed to the account of the defaulting Clearing Participant. ICC indicates that this proposed change is consistent with the approach for allocation of close-out costs to a defaulter under ICC's Rulebook.⁷⁹

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.⁸⁰ For the reasons given below, the Commission finds that the proposed rule

⁷⁸ *Id.* at 73735.

⁷⁹ *Id.*

⁸⁰ 15 U.S.C. 78s(b)(2)(C).

change is consistent with Section 17A(b)(3)(F) of the Act⁸¹ and Rule 17Ad-22(e)(7)⁸² and (e)(16).⁸³

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

Under Section 17A(b)(3)(F) of the Act, ICC’s rules, among other things, must be “designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions” and “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.”⁸⁴ Based on a review of the record, and for the reasons discussed below, ICC’s proposed rule change is consistent with Section 17A(b)(3)(F).

Among other things, the Proposed Rule Change updates the Treasury Policy by adding additional detail to various provisions and making various clarifications.⁸⁵ For example, the Proposed Rule Change would better explain what the Treasury Department does; define specific terms, such as Margin, and use those terms consistently throughout the Treasury Policy; and align the language and descriptions used in the Treasury Policy with ICC’s current practices, such as assigning responsibility for ICC’s timely receipt of requested payments to the Clearing Participants under the direct settlement model.

The Proposed Rule Change also updates the Treasury Policy by correcting certain inaccuracies within the policy, deleting unnecessary language, and making various conforming changes to ensure that the Treasury Policy is internally consistent with itself,

⁸¹ 15 U.S.C. 78q-1(b)(3)(F).

⁸² 17 CFR 240Ad-22(e)(7).

⁸³ 17 CFR 240Ad-22(e)(16).

⁸⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁵ Notice, 89 FR at 73734.

consistent with other ICC policies and rules, and consistent with external rules. For example, because relevant investment and collateral management policies are now housed in the Treasury Policy instead of the Risk Management Framework, ICC would remove language indicating that developing investment and collateral management strategies could only be performed within ICC's Risk Management Framework. As a result, ICC's Treasury Department will be required to work to develop investment and collateral management strategies irrespective of whether it does so within ICC's Risk Management Framework. The Treasury Policy would also be updated to correctly identify the parties responsible for investing certain funds, correctly identify certain procedures referenced within the Treasury Policy, and make changes reflecting that ICC has more than one FRB account and more than one investment manager. ICC would also remove what it believes are unnecessary details from certain provisions of the Treasury Policy, such as information identifying specific types of repo transactions and specific information regarding e-mail security. To help ensure the Treasury Policy is both internally and externally consistent, the Proposed Rule Change would revise the Treasury Policy to indicate that ICC manages House Margin and Client Margin separately—consistent with other ICC policies and procedures—and modify certain terms used in the Treasury Policy to mirror the terms used elsewhere in the Treasury Policy and in other ICC rules. These changes also improve the clarity of the Treasury Policy and decrease the possibility for error in using and applying the Treasury Policy. Moreover, eliminating unnecessary details and provisions from the Treasury Policy helps ensure both that it will need to be amended less frequently in the event those details change and that, in the event revisions are necessary, that such revisions are less prone to error. Avoiding errors in the amendment process also improves their clarity as a whole and decreases the possibility for error in applying them.

The Proposed Rule Change would also expand certain provisions in the Treasury

Policy by replacing specific terms in the Treasury Policy with more general terms and adding broadening language to existing text. For example, in certain instances, ICC would refer to collateral generally instead of more specific forms of collateral. ICC would also account for potential changes in banking relationships and SWIFT messages by referring to these relationships and messages more generally. Taken together, the use of these broader, more general terms would immediately improve the accuracy of the Treasury Policy and help ensure that it remains accurate in the event there are non-substantive changes to ICC's banking relationships and the specific types of SWIFT messages that ICC uses.

By adding additional details and clarifications, correcting inaccuracies, deleting unnecessary language, making conforming changes to ensure internal and external consistency, and replace unnecessarily specific terms with broader, more general terms, the Proposed Rule Change helps ensure that the Treasury Policy is and will remain clear, consistent, and current, which in turn decreases the likelihood that the Treasury Policy and its provisions will be applied erroneously or inconsistently. This decreases the likelihood of ICC's mismanagement of collateral, which facilitates the prompt and accurate clearance and settlement of transactions and assures the safeguarding of securities and funds within ICC's custody or control.

ICC also proposes adding additional criteria for settlement banks. Because settlement banks ultimately custody the funds that Clearing Participants will use to satisfy their obligations to ICC, ICC needs visibility into a settlement bank's liquidity. To ensure that ICC has such visibility, the Proposed Rule Change would update the Treasury Policy to require that settlement banks provide specific liquidity information to ICC. An example of the liquidity information that ICC requires from settlement banks is the banks' Liquidity Coverage Ratio. In the event that the bank does not report LCR, the Proposed Rule Change would specify that ICC will consider other criteria to assess the liquidity of the bank. These

other criteria may include a description of the bank's liquidity risk management policy or the liquidity coverage ratio of the settlement bank's affiliated reporting entity within the bank's group. Ensuring that ICC has this information will help ICC avoid a relationship with a settlement bank that is unable to satisfy obligations on a Clearing Participant's behalf, despite the Clearing Participant being financially sound. Preventing relationships with illiquid settlement banks would help facilitate the prompt and accurate clearance and settlement of transactions and assure the safeguarding of securities and funds within ICC's custody or control.

Finally, ICC proposes changes to its investment guidelines. Specifically, ICC proposes eliminating the restriction that it may only invest in certain U.S. Treasury Securities when bank deposits or Treasury/Agency reverse repos become unavailable or are not feasible. The Proposed Rule Change would specify that ICC would primarily directly invest in U.S. Treasury securities with respect to stable balances, for example, restricted cash held for regulatory purposes. ICC proposes this change because it believes the change would give it greater flexibility while preserving the quality of investments. ICC also proposes requiring the value of collateral in the case of a reverse repo to be fixed at 102 percent instead of ranging between 100.5 percent to 102 percent. Given the safety of these investments, ICC's proposal to potentially invest cash held for regulatory purposes in U.S. Treasury securities is consistent with the safeguarding of securities and funds within ICC's custody or control.⁸⁶ Further, ICC's proposal to ensure that the value of collateral will always be 102 percent in a reverse repo provides ICC with greater protection in the event that it provides cash to an entity in exchange for the entity's promise to repurchase a security from ICC at a higher price

⁸⁶ Certain maturity limitations will still apply to the U.S. Treasuries in which ICC is allowed to invest. *Id.* at 73738.

because it helps to ensure that ICC will receive a larger amount if an entity is unable to purchase securities back at the agreed upon price. This protects ICC as it invests its cash balances and therefore is consistent with the safeguarding of securities and funds within ICC's control.

Accordingly, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁸⁷

B. Consistency with Rule 17Ad-22(e)(7)

Rule 17Ad-22(e)(7) requires ICC to “establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . effectively measure, monitor, and manage the liquidity risk that arises or is borne by the covered clearing agency . . . by at a minimum . . . undertaking due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has . . . the capacity to perform as required under its commitments to provide liquidity to the covered clearing agency.”⁸⁸ Based on a review of the record, and for the reasons discussed below, ICC's proposed rule change is consistent with Rule 17Ad-22(e)(7).

The Proposed Rule Change would add to ICC's minimum criteria for settlement banks by requiring that a settlement bank provide specific liquidity information such as the Liquidity Coverage Ratio. Obtaining this information can help ensure that ICC is able to determine whether a settlement bank with which it has a relationship is facing liquidity issues. Performing such diligence is consistent with the requirements of Rule 17Ad-22(e)(7) because a settlement bank's liquidity issues may prevent an otherwise liquid Clearing Participant from satisfying its obligations.

⁸⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁸ 17 CFR 240.17Ad-22(e)(7).

Accordingly, that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(7).⁸⁹

C. Consistency with Rule 17Ad-22(e)(16)

Rule 17Ad-22(e)(16) requires ICC to “establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . safeguard the covered clearing agency’s own and its participants’ assets, minimize the risk of loss and delay in these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.”⁹⁰

Based on a review of the record, and for the reasons discussed below, ICC’s proposed rule change is consistent with Rule 17Ad-22(e)(16).

As noted above, ICC proposes eliminating the restriction that it may only invest its operating capital in certain U.S. Treasury Securities when bank deposits or Treasury/Agency reverse repos become unavailable or are not feasible. While ICC is not required to invest its own or its Participants’ assets, if it does so, it generally should seek to minimize the risk of loss or delay in access to the invested assets by investing in highly liquid assets.⁹¹ The Commission has previously stated that U.S. Treasury securities are highly liquid.⁹² ICC’s proposal to invest its assets in U.S. treasury securities is therefore consistent with Rule 17Ad-22(e)(16).

Accordingly, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(16).⁹³

IV. Conclusion

⁸⁹ 17 CFR 240.17Ad-22(e)(7).

⁹⁰ 17 CFR 240.17Ad-22(e)(16).

⁹¹ Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70837 (Oct. 13, 2016) (File No. S7-03-14).

⁹² *Id.*

⁹³ 17 CFR 240.17Ad-22(e)(16).

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, Section 17A(b)(3)(F) of the Act⁹⁴ and Rule 17Ad-22(e)(7)⁹⁵ and (e)(16) thereunder.⁹⁶

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICC-2024-005) be, and hereby is, approved.⁹⁷

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹⁸

Sherry R. Haywood,

Assistant Secretary.

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⁹⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁹⁵ 17 CFR 240.17Ad-22(e)(7).

⁹⁶ 17 CFR 240.17Ad-22(e)(16).

⁹⁷ In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹⁸ 17 CFR 200.30-3(a)(12).