



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102871; File No. SR-ICC-2025-002]

### **Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Procedures for Identification of Contract Reference Obligations**

April 16, 2025.

#### *I. Introduction*

On February 13, 2025, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) 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 revise the ICE Clear Credit Rules (the “Rules”) and adopt new Procedures for Identification of Contract Reference Obligations (the “Procedures”).<sup>3</sup> The proposed rule change was published for comment in the *Federal Register* on March 5, 2025.<sup>4</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 Credit Default Swap (“CDS”) contracts. ICC is proposing to revise the Rules and adopt the new Procedures to codify and specify in further detail its processes used for selecting Contract

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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> Capitalized terms used but not defined herein have the meanings specified in the Procedures for Identification of Contract Reference Obligations or in the Rule for the Determination of Substitute Reference Obligation as applicable.

<sup>4</sup> Securities Exchange Act Release No. 102504 (Feb. 27, 2025), 90 FR 11348 (Mar. 5, 2025) (File No. SR-ICC-2025-002) (“Notice”).

Reference Obligations, including selecting a new Contract Reference Obligation to replace an existing one. Under its current Rules, ICC generally selects the Contract Reference Obligation for each cleared single-name CDS Contract and selects a replacement obligation when required. The Contract Reference Obligation is the obligation of a Reference Entity that is the subject of a CDS contract, like debt issued by a private company or bonds issued by a sovereign entity.<sup>5</sup> As such, the Contract Reference Obligation is relevant for determining if a Credit Event has occurred pursuant to the Applicable Credit Derivatives Definitions<sup>6</sup> of a CDS contract and the obligations of a Reference Entity that can be delivered pursuant to the CDS contract when a Credit Event has occurred.<sup>7</sup>

*B. Rule 20-601*

ICC is proposing to adopt Rule 20-601, titled “Determination of Substitute Reference Obligations.” Rule 20-601 clarifies ICC’s responsibilities when selecting a substitute Contract Reference Obligation. Under the proposed rule, ICC’s role as a Calculation Agent pursuant to the Applicable Credit Derivatives Definitions<sup>8</sup> with respect to identifying a Substitute Reference Obligation to replace a Contract Reference Obligation for which a Substitute Event has occurred will be limited to performing the functions set out in the new Procedures. Rule 20-601 will also define “Contract Reference Obligation” for this purpose to be the applicable Contract Reference Obligation for the relevant single-name transaction type under the Rules.

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<sup>5</sup> In the Rules, ICC defines a reference obligation for each particular CDS contract it clears, as specified under the applicable subchapter of the Rules for a particular single-name transaction type (such as a SNAC Contract Reference Obligation).

<sup>6</sup> The term “Applicable Credit Derivatives Definitions” is a defined term in ICC Rule 20-102. It means the particular set of contract definitions that apply to a CDS contract. The contract definitions that apply to a CDS contract are the 2014 definitions or 2003 definitions, both as published by the International Swaps and Derivatives Association, Inc., and as supplemented from time to time.

<sup>7</sup> Specifically, pursuant to the Applicable Credit Derivatives Definitions, it is generally the case that (i) the Contract Reference Obligation will be a Deliverable Obligation, regardless of whether it meets the otherwise applicable Deliverable Obligation criteria, and (ii) in order to be eligible as such, other Deliverable Obligations must not be subordinated in right of payment to the Contract Reference Obligation.

<sup>8</sup> Under the Applicable Credit Derivatives Definitions, the Calculation Agent is the person responsible for making certain determinations required by a CDS contract, such as finding that an entity is the successor to the original Reference Entity of a CDS contract or finding a new Reference Obligation to replace an existing Reference Obligation. ICC serves as the Calculation Agent for the CDS contracts it clears.

### *C. Reference Obligation Procedures*

The new Procedures contain the methodology and process for the identification of Contract Reference Obligations with respect to each Single-Name CDS Contract accepted for clearing by ICC (both as an initial matter and following a Substitution Event). The Procedures codify ICC's current practices for the selection of Contract Reference Obligations, while also establishing a new process for public consultation regarding such selections, including a process for resolving any objections raised during the public consultation process.

Pursuant to the Procedures, ICC will first identify a Contract Reference Obligation for the Reference Entity for a single name CDS Contract when ICC begins clearing the contract. The Procedures refer to this reference obligation as the Original Reference Obligation.

ICC will identify a Substitute Reference Obligation to replace this Original Reference Obligation in accordance with new Rule 20-601 and the Procedures. ICC chooses a Substitute Reference Obligation to replace the Original Reference Obligation when the Original Reference Obligation is no longer an obligation of the entity referenced in the CDS contract. This can occur, for example, when a company redeems the debt that is the subject of the CDS contract.

As provided in the Procedures, ICC will not select an Original Reference Obligation, or a Substitute Reference Obligation, where either "Standard Reference Obligation" or "No Reference Obligation" is indicated on the List of Eligible Reference Entities for the relevant transaction type maintained by ICC, as published on its website.

The Procedures also state ICC's overall objective in selecting Contract Reference Obligations. ICC's objective in doing so is to reflect CDS market participants' consensus as to the most appropriately representative obligation of the relevant seniority of the Reference Entity. The Procedures include factors that market participants may consider relevant for this purpose, including outstanding principal amount, remaining maturity, liquidity, and availability of public information concerning the obligation.

ICC will begin the selection process by using commercially available reference data from a data vendor to identify the most liquid reference obligation used in connection with the trading of CDS on the applicable Reference Entity. This is ICC's starting point when selecting either an Original Reference Obligation or a Substitute Reference Obligation. The Procedures refer to the most liquid reference obligation used in connection with the trading of CDS on the applicable Reference Entity as the "Preferred" reference obligation. ICC will identify a proposed Original Reference Obligation based on the current Preferred, if available, or a proposed Substitute Reference Obligation based on a change in the Preferred.

The Procedures specify how ICC will consult with Clearing Participants and the public when selecting an Original or Substitute Reference Obligation. After identifying an Original or Substitute Reference Obligation, ICC will take the following steps:

- submit the proposal to the ICC Operations Working Group ("OWG") for review;
- submit the proposal to the ICC Trading Advisory Group ("TAG") for review; and
- publish the proposal on its website for review by other market participants and members of the public.

ICC's OWG consists of operations personnel from ICC's Clearing Participants. The role of the OWG is to review and provide feedback regarding various operational matters, including consultation regarding the selection and substitution of Contract Reference Obligations. The OWG typically meets weekly, and OWG meeting materials are distributed by ICC's Client Services Department to all OWG members in advance of the meeting date. There is no limit to the number of Clearing Participant operational personnel that can participate in OWG meetings, no quorum requirements, and no mandatory attendees. OWG Members may object to any proposed Original or Substitute Reference Obligation, either at an OWG meeting or by email to ICC any time before the deadline set by ICC (the "Objection Date").

ICC's TAG consists of trading personnel from ICC's Clearing Participants. The role of the TAG is to provide market insight into a variety of trading topics, including consultation

regarding the selection and substitution of Contract Reference Obligations. The TAG typically meets weekly, and proposed new or substitute Contract Reference Obligations are sent to the members of the TAG in advance of meetings via email. There is no limit to the number of Clearing Participant trading personnel that can participate in TAG meetings, no quorum requirements, and no mandatory attendees. TAG members may object to any proposed Original or Substitute Reference Obligation, either at a TAG meeting or by email to ICC prior to the Objection Date. The Procedures set out the process for OWG or TAG members to make objections.

The process for public consultation, noted above, takes place in conjunction with, and is in addition to, consultations with the OWG and TAG. During the time of consultation with the OWG and TAG, ICC publishes any proposed Original or Substitute Reference Obligation on its website and invites market participants and the public to submit any objections by the Objection Date. A person may object by emailing the reasons for objection to ICC prior to the Objection Date.

The Procedures also explain how ICC will resolve any objections raised through these consultations. First, ICC will postpone adopting the proposed Original or Substitute Reference Obligation until ICC has addressed the objections to its satisfaction. The Procedures describe a series of non-exhaustive steps that ICC may take to resolve the objections as it determines appropriate, recognizing that different steps may be appropriate for different situations or objections. Potential steps include the following:

- obtaining additional information from the objector;
- contacting (or asking the objector to contact) the relevant market data vendor that has identified a reference obligation as Preferred;
- conducting a legal review of the available documentation for the proposed Original or Substitute Reference Obligation;

- consulting OWG or TAG members and other market participants with relevant views or information, such as the person that objected;
- consulting ICC's CDS Risk Committee; and
- submitting (directly or indirectly) a question to the relevant Credit Derivatives Determinations Committee whether a proposed Substitute Reference Obligation is an appropriate choice.

If the consultation noted above leads to the data vendor identifying a different Preferred reference obligation, ICC will consider such obligation as an alternative proposed Contract Reference Obligation. ICC will then take this alternative through the consultation process, including the process for resolving any objections raised to this alternative, pursuant to the same processes described above.

Finally, the Procedures specify that they do not apply to the determination of a Contract Reference Obligation for a new trade resulting from a Restructuring Credit Event (which would be determined in accordance with the Rules). The Procedures also permit ICC to deviate from the public consultation process in certain limited circumstances. Specifically, with respect to a Succession Event that requires the identification of a new Contract Reference Obligation, or when a Contract Reference Obligation is changed in connection with the re-naming of a Reference Entity, the Procedures require ICC to follow the industry-agreed timelines for implementing the Succession Event or re-naming. In such instances, the industry-agreed timeline may not allow sufficient time for ICC to go through the normal consultation process or would require an abbreviated one. ICC would, however, follow as much of the normal consultation process as possible given the applicable timeline.

### 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.<sup>9</sup> Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”<sup>10</sup>

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>11</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>12</sup> Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.<sup>13</sup>

After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC. More specifically, 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>14</sup> Rule 17Ad-22(e)(1),<sup>15</sup> and Rule 17Ad-22(e)(23)(ii).<sup>16</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

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<sup>9</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>10</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>16</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

transactions.<sup>17</sup> The proposed new Procedures clarify ICC's process for selecting Original and Substitute Reference Obligations, while also establishing a new process for public consultation and addressing any objections that are raised during such consultation. Pursuant to the Procedures, when ICC selects an Original or Substitute Reference Obligation, ICC will review and consult with its OWG, TAG, external market participants, and members of the public, and take appropriate steps, as described in the Procedures, to resolve any objections raised during these consultations. These processes will help ensure any Original Reference Obligation, or changes thereto, are accurate, representative of the Reference Entity, and reflect market expectations. In doing so, the proposed rule change helps promote the consistent clearance and settlement of single-name CDS transactions at ICC. Accordingly, the proposed rule change promotes the prompt and accurate clearance and settlement of transactions at ICC, consistent with Section 17A(b)(3)(F) of the Act.<sup>18</sup>

B. *Consistency with Rule 17Ad-22(e)(1)*

Rule 17Ad-22(e)(1) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>19</sup> By explaining how ICC selects an Original or Substitute Reference Obligation and by requiring ICC to consult with market participants regarding such selection, the Procedures help establish a clear and transparent basis for ICC's selection of an Original or Substitute Reference Obligation. Similarly, by allowing members of the OWG and the TAG, market participants, and the public an opportunity to raise objections, and by requiring ICC to take steps to resolve any such objections, the Procedures help establish a clear and enforceable basis for ICC's selection of an Original or Substitute Reference Obligation. If any OWG or TAG members, market participants,

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

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(1).

or the public raise any objections, ICC would postpone the adoption of the proposed Original or Substitute Contract Reference Obligation until any objections have been sufficiently addressed. Finally, new Rule 20-601 establishes that, in acting as Calculation Agent pursuant to the Applicable Credit Derivatives Definitions, with respect to identifying a Substitute Reference Obligation to replace a Contract Reference Obligation for which a Substitution Event has occurred, ICC's role is limited to following the process set out in the Procedures. This ensures that the process set out in the Procedures is enforceable against ICC. By establishing enforceable procedures that establish the process ICC must follow in consulting both internally and externally when selecting a new Contract Reference Obligation for CDS, ICC is increasing the clarity, transparency, and enforceability of the legal basis for its activities in connection with selecting Original and Substitute Contract Reference Obligations. Accordingly, the proposed rule change is consistent with Rule 17Ad-22(e)(1).<sup>20</sup>

*C. Consistency with Rule 17Ad-22(e)(23)(ii)*

Rule 17Ad-22(e)(23)(ii) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.<sup>21</sup> The proposed rule change enables market participants to better understand the risks associated with participating with ICC. The Procedures explain how ICC selects an Original or Substitute Reference Obligation, and how ICC consults with market participants regarding its selection. The Procedures are publicly available. Thus, in adopting the Procedures, the proposed rule change enables market participants to understand how ICC determines Original and Substitute Reference Obligations, therefore allowing market

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<sup>20</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>21</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

participants to better understand the risks associated with clearing CDS at ICC. Accordingly, the proposed rule change is consistent with Rule 17Ad-22(e)(23)(ii).<sup>22</sup>

#### IV. *Conclusion*

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act,<sup>23</sup> Rule 17Ad-22(e)(1),<sup>24</sup> and Rule 17Ad-22(e)(23)(ii)<sup>25</sup> thereunder.

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>26</sup> that the proposed rule change (SR-ICC-2025-002) be, and hereby is, approved.<sup>27</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>22</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>24</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>25</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</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>28</sup> 17 CFR 200.30-3(a)(12).