



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103151; File No. SR-ICC-2025-007]

### **Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Credit Recovery Plan and the ICE Clear Credit Wind-Down Plan**

May 29, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on May 19, 2025, ICE Clear Credit LLC (“ICE Clear Credit” or “ICC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

*I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change*

The principal purpose of the proposed rule change is to revise its (i) Recovery Plan (the “Recovery Plan”), and (ii) the Wind-Down Plan (the “Wind-Down Plan”) (collectively, the “Plans”).<sup>3</sup>

*II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be

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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 Rules.

examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

*(a) Purpose*

ICC proposes revising the Recovery Plan and the Wind-Down Plan, which serve as 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, consistent with Securities and Exchange Commission (“SEC” or the “Commission”) Rule 17Ad-22(e)(3)(ii)<sup>4</sup> and SEC Rule 17Ad-26.<sup>5</sup> ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

*ICC Recovery Plan*

Consistent with the regulations applicable to ICC, the Recovery Plan is designed to establish ICC’s actions to maintain its viability as a going concern to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC’s viability. The proposed amendments reflect and relate to changes that impacted ICC in the past year, including changes necessary to comply with new regulatory requirements. The proposed changes described below include revisions to ICC’s governance structure. In addition, the proposed changes update the description of ICC’s clearing services, service providers and ICC’s management of risks from relationships with service providers for core services. Finally, ICC proposes general updates and edits to the Plans intended to promote clarity and to ensure that the information provided is current. In Section I. and throughout the

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<sup>4</sup> See 17 CFR 240.17ad-22(e)(3)(ii).

<sup>5</sup> See 17 CFR 240.17ad-26.

document, the proposed changes specify that the information provided in the amended Recovery Plan is current as of December 31, 2024, unless otherwise stated.

ICC proposes revisions to the Recovery Plan to add references to various new regulatory requirements that were finalized in 2024. Most notably, ICC proposes to add references to SEC Rule 17Ad-26<sup>6</sup> which sets out the requirements for the recovery and wind-down plans of covered clearing agencies such as ICC. ICC proposes to update Section III. ‘Regulatory Requirements for the Recovery Plan’ of the Recovery Plan to add a summary of new SEC Rule 17Ad-26. In addition to the summary in Section III. of the Recovery Plan, ICC proposes to add references to SEC Rule 17Ad-26 throughout the Recovery Plan, including to Sections I., II., V., VII., VIII., and IX.

In addition, ICC proposes revisions to the Recovery Plan to add references to new SEC Rule 17Ad-25 which lays out certain requirements for clearing agency boards of directors and conflicts of interest.<sup>7</sup> Primarily, proposed re-titled Section V. ‘Clearing Services & Service Providers’ of the Recovery Plan contains references to SEC Rule 17Ad-25(a), SEC Rule 17Ad-26(a)(i) and (ii), and SEC Rule 17Ad-26(b), as they relate to requirements for a clearing agency’s management of risks from relationships with service providers for core services<sup>8</sup> (described in greater detail below). In addition, ICC proposes to add a reference to SEC Rule 17Ad-25 in Section IV. of the Recovery Plan in the list of applicable regulations related to evaluating the independence of managers of ICC’s Board.

With respect to governance structure changes, ICC proposes to update the Recovery Plan to reflect that ICC added a Board level Nominating Committee in 2024.<sup>9</sup> Such change to

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<sup>6</sup> 17 CFR 240.17ad-26.

<sup>7</sup> 17 CFR 240.17ad-25.

<sup>8</sup> 17 CFR 240.17ad-25(a), 17 CFR 240.17ad-26(a)(i) and (ii), and 17 CFR 240.17ad-26(b).

<sup>9</sup> *See* Exchange Act Release No. 101820 (December 5, 2024), 89 FR 99917 (December 11, 2024) (SR-ICC-2024-010).

ICC's governance structure is required under SEC Rule 17Ad-25(c).<sup>10</sup> With the addition of the Nominating Committee, ICC proposes to add Sub-Section IV.C.3.vi. 'Nominating Committee' to the Recovery Plan to add a description of the Nominating Committee. The proposed new sub-section describes the role of the Nominating Committee, which is to assist the Board in (i) identifying and attracting highly qualified individuals to serve as members of the Board; (ii) evaluating the individuals nominated to the Board by the Risk Committee; and (iii) evaluating and providing recommendations to the Board on whether members of the Board qualify as independent under applicable independence standards. The proposed new sub-section also provides a description of the composition of the Nominating Committee (i.e., a minimum of three (3) members, all of which are members of the Board, a majority of which meet the independence standards, and one member is appointed as chairperson). Members of the Nominating Committee shall be appointed by the Board, subject to the written consent of ICC's parent entity.<sup>11</sup> In addition, ICC proposes to revise Section IV.C. 'Management/Governance' of the Recovery Plan to add a reference to the Nominating Committee's role in evaluating the independence of members of the Board.

In addition, ICC proposes to update the Recovery Plan to reflect that the composition of the Risk Committee changed in 2024.<sup>12</sup> Specifically, two (2) additional Risk Committee seats were added which increased the size of the Risk Committee from twelve (12) members to fourteen (14) members. The two (2) additional Risk Committee seats are for representatives of customers of Clearing Participants, as required under applicable Commodity Futures Trading Commission ("CFTC") regulations.<sup>13</sup> As a result,

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<sup>10</sup> 17 CFR 240.17ad-25(c).

<sup>11</sup> ICC's sole member and parent entity is ICE US Holding Company L.P. ("ICE US Holding").

<sup>12</sup> See Exchange Act Release No. 100876 (August 29, 2024), 89 FR 72538 (September 5, 2024) (SR-ICC-2024-009).

<sup>13</sup> 17 CFR 39.24(b)(11).

ICC proposes to revise Section IV.C. ‘Management/Governance’ of the Recovery Plan to reference the new size and composition of the Risk Committee.

Furthermore, ICC proposes to update the Recovery Plan to reflect that ICC added a Risk Advisory Working Group to ICC’s governance structure in 2024.<sup>14</sup> The addition of the Risk Advisory Working Group to ICC’s governance structure is required under applicable CFTC regulations.<sup>15</sup> With the addition of the Risk Advisory Working Group, ICC proposes to add Sub-Section IV.C.2.ii. ‘Risk Advisory Working Group’ to the Recovery Plan to add a description of the Risk Advisory Working Group. The proposed new sub-section describes the role of the Risk Advisory Working Group, which is a forum to seek risk-based input from a broad array of market participants regarding all matters that could materially affect the risk profile of ICC. The proposed new sub-section also provides a description of the composition of the Risk Advisory Working Group which is chaired by the ICC Chief Risk Officer and includes a minimum of two (2) members who are representatives of Clearing Participants and a minimum of two (2) members who are representatives of customers of Clearing Participants. Members of the Risk Advisory Working Group are appointed by the ICC President, subject to the approval of the Risk Committee. In addition to the summary in proposed new Sub-Section IV.C.2.ii of the Recovery Plan, ICC proposes to add references to the Risk Advisory Working Group to Sections IV.C. and IX. of the Recovery Plan.

In addition, ICC proposes to update the Recovery Plan to reflect that ICC eliminated both the Advisory Committee and the Risk Management Subcommittee from ICC’s governance structure in 2024.<sup>16</sup> Specifically, ICC proposes to remove (i) Section

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<sup>14</sup> See Exchange Act Release No. 100876 (August 29, 2024), 89 FR 72538 (September 5, 2024) (SR-ICC-2024-009).

<sup>15</sup> 17 CFR 39.24(b)(12).

<sup>16</sup> See Exchange Act Release No. 100876 (August 29, 2024), 89 FR 72538 (September 5, 2024) (SR-ICC-2024-009).

IV.C.2.iii. of the Recovery Plan which described the retired Advisory Committee; and (ii) Section IV.C.3.iv. of the Recovery Plan which described the retired Risk Management Subcommittee. In connection with the retirement of these two governance committees, ICC proposes to remove references to the Advisory Committee and the Risk Management Subcommittee from Sections IV.C. and IX. of the Recovery Plan.

Related to the proposed governance changes described above, ICC proposes to revise Section IV.C. 'Management/Governance' of the Recovery Plan to update the chart which summarizes ICC's governance structure. Specifically, the chart would be updated to reflect the changes to the composition of the Risk Committee, addition of the Nominating Committee, addition of the Risk Advisory Working Group, and removal of the Advisory Committee and the Risk Management Subcommittee.

Also, ICC proposes to update Section IV.C.1. 'ICC Board of Managers' of the Recovery Plan to reflect changes to the managers of the Board. Specifically, ICE US Holding replaced former Independent Manager Vincent Tese with Marti Tirinnanzi, and former Risk Committee nominated Non-Independent Manager Biswarup Chatterjee resigned from the Board, and as a result of the vacancy created by Mr. Chatterjee's resignation, new Risk Committee nominated Non-Independent Manager Viktor Vadasz was appointed to the Board. ICC also proposes to update the titles of members of the Board to ensure they are current, including noting that Terrence Martell is now Chairperson of the Board (a title previously held by former member of the Board Vincent Tese).

With respect to proposed changes related to updating the description of ICC's clearing services, service providers and ICC's management of risks from relationships with service providers for core services, ICC proposes to amend and rename Section V. 'Clearing Services & Service Providers' of the Recovery Plan. Such proposed revisions are intended to update the Recovery Plan to reflect the changes and clarification made to

ICC's Operational Risk Management Framework in 2024.<sup>17</sup> Specifically, ICC proposes to rename Section V. from 'Critical Services & Providers of Critical Services' to 'Clearing Services & Service Providers'. The proposed revisions also include replacing the term "vendors" to "service providers". Also, ICC proposes clarifications to provide a defined term to existing abbreviations 'Master Service Agreement' ("MSA") in the 'Critical Services Provided to ICC by ICE Affiliates' table, as well as replace 'SA/SLA' with 'Clearing Settlement and Services Agreement' ("CSSA") to reflect the applicable legal agreements between ICC and Intercontinental Exchange, Inc. ("ICE Inc."). ICC proposes to remove the bullet point list of items that may be included in the risk assessments of third parties providing critical services in Section V.A.2. in an effort to ensure consistency with the changes and clarification made to ICC's Operational Risk Management Framework in 2024.<sup>18</sup> Instead, ICC proposes to include a bullet point list of items that may be included in the risk assessments of external service providers for core services ("SPCS"), which would be conducted by ICC's BCP and DR Oversight Committee<sup>19</sup> ("BDOC"), in new Section V.B. For clarity, ICC proposes to move a statement regarding the analysis and management of risk posed by third party external service providers that provide critical services to ICC to directly below the table highlighting the critical services provided to ICC by third party service providers in Section V.A.2. Further, new Section V.B. 'Core Services' to the Recovery Plan adds procedures regarding ICC's management of the risks related to relationships with SPCS. Specifically, proposed Section V.B. updates the description of how ICC identifies and

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<sup>17</sup> See Exchange Act Release No. 101819 (December 5, 2024), 89 FR 99949 (December 11, 2024) (SR-ICC-2024-011).

<sup>18</sup> *Id.*

<sup>19</sup> The ICC BCP and DR Oversight Committee is a subcommittee of the ICC Compliance Committee and assists the ICC Compliance Committee in fulfilling its oversight responsibilities with respect to: (i) providing Business Continuity Planning ("BCP") and Disaster Recovery ("DR") guidance; (ii) approving BCP and DR program documentation; (iii) reviewing reports on the effectiveness of BCP and DR testing; and (iv) the performance of such other functions as the ICC Compliance Committee may assign from time to time.

manages its SPCS using a two-pronged assessment approach broken down between internal and external service providers, consistent with the recent changes to the Operational Risk Management Framework.<sup>20</sup> With respect to internal service providers and external service providers, the proposed changes to the Recovery Plan describe certain services provided by ICE Inc. and the applicable legal agreements between ICC and ICE Inc. Proposed Section V.B. also identifies and discusses the staffing roles necessary to support the core services on a daily basis and in the event of recovery. In addition to the proposed changes to Section V., ICC proposes additional changes and references to ICC's clearing services and service providers in Sections I., II. and VI. of the Recovery Plan to ensure consistency with the revisions made, and terminology used, in revised Section V. of the Recovery Plan.

Furthermore, ICC proposes to update the contractual agreement analysis chart contained in Section VI. 'Interconnections and Interdependencies' in the Recovery Plan. Such proposed changes are related to the addition of analysis of the contractual agreement with an additional external service provider, additional settlement services providers, as well as the removal of the contractual analysis of a retired settlement services provider.

ICC proposes to update Section IX.B. 'Governance Structure and Controls' of the Recovery Plan to provide additional details regarding ICC's testing of the Recovery Plan. First, ICC proposes to clarify that the Recovery Plan will be tested at least every twelve (12) months rather than annually. In addition, ICC proposes to clarify that such testing will include the participation of Clearing Participants and, when practical, other stakeholders. Furthermore, ICC proposes to confirm that its testing of the Recovery Plan will be in addition to ICC's annual default management drills and exercises. Also, ICC

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<sup>20</sup> See Exchange Act Release No. 101819 (December 5, 2024), 89 FR 99949 (December 11, 2024) (SR-ICC-2024-011).

proposes to add that when Recovery Plan testing is of a non-default loss scenario, ICC will consider whether it is appropriate or practical to have Clearing Participants involved in the testing. Furthermore, also with respect to the testing of non-default scenarios, ICC proposes changes to clarify that ICC will also consider including other stakeholders in such testing in order to allow for participation by stakeholders in those aspects of testing that would affect such stakeholders as required under SEC Rules 17Ad-26(a)(8)(i) and (ii).<sup>21</sup>

ICC further proposes to update ‘Exhibit 35: Key ICC Reports and Descriptions’ [sic] in Section XII. of the Recovery Plan. Such proposed changes to Exhibit 35 [sic] are necessary to reflect the general reorganization and consolidation of such key reports by ICC which occurred in 2024. Such reorganization and consolidation of the key reports were made to increase efficiency and transparency with respect to ICC’s key reports. Such reorganization and consolidation is reflected in the proposed changes to Exhibit 35 [sic] to delete the former report name, description, frequency and identification of the relevant MIS system, and the addition of the new report name, description, frequency and identification of the relevant MIS system.

In addition to the foregoing proposed changes, ICC proposes general updates to the Recovery Plan to ensure that the information in the Recovery Plan is current and accurate. Namely, the proposed changes ensure that relevant information regarding ICC for the purposes of recovery planning, such as information about ICC’s ownership and operation, is current with respect to:

- Clearing Participants in Section IV.B.;
- ICC revenue, volume, and expense data in Section IV.D.;
- ICC personnel and facilities in Section VI.A.;

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<sup>21</sup> 17 CFR 240.17ad-26(a)(8)(i) and (ii).

- identification of ICC’s counterparties in the Counterparty Chart in Section VI.B.;
- change in contact information for SEC contacts in Section VII.B.;
- contact information for clearing participant default insurance in Section VIII.B.;
- ICE Inc., insurance coverage in Section VIII.B.;
- ICE Inc. and ICC balance sheet information in Section VIII.B.;
- ICC dividend payments made in 2024 in Section VIII.B.;
- ICC 2024 outsourcing fees in Section VIII.B.;
- ICC 2024 compensation data in Section VIII.B.;
- ICC lease payments to ICE Inc. Section VIII.B.;
- legal expenses for recovery in Section X.;
- calculation of ICC’s projected 12-month operating expenses in Section X.;
- ICC and ICE Inc. financial information in Section XI.; and
- financial service providers that hold CP cash and collateral in Appendix C in Section XIII.

Finally, ICC proposes non-substantive drafting changes and improvements to the Recovery Plan, such as the correction of typographical errors, the re-numbering of sub-sections to reflect the addition and deletion of sub-sections as described above, and updating the revision history in the Recovery Plan.

#### *ICC Wind-Down Plan*

Consistent with the regulations applicable to ICC, the Wind-Down Plan is designed to establish how ICC could be wound-down in an orderly manner. The proposed amendments reflect and relate to changes that impacted ICC in the past year, including changes necessary to comply with new regulatory requirements. The proposed changes described below include revisions to ICC’s governance structure. In addition, the

proposed changes update the description of ICC’s clearing services, service providers and ICC’s management of risks from relationships with service providers for core services. Finally, ICC proposes general updates and edits to the Wind-Down Plan intended to promote clarity and to ensure that the information provided is current. In Section I and throughout the document, the proposed changes specify that the information provided in the amended Wind-Down Plan is current as of December 31, 2024, unless otherwise stated.

ICC proposes revisions to the Wind-Down Plan to add references to various new regulatory requirements that were finalized in 2024. Most notably, ICC proposes to add references to SEC Rule 17Ad-26<sup>22</sup> which sets out the requirements for the recovery and wind-down plans of covered clearing agencies such as ICC. ICC proposes to update Section III. ‘Regulatory Requirements for the Wind-Down Plan’ of the Wind-Down Plan to add a summary of new SEC Rule 17Ad-26. In addition to the summary in Section III. of the Wind-Down Plan, ICC proposes to add references to SEC Rule 17Ad-26 throughout the Wind-Down Plan, including to Sections I., II., V., VI., VII., and X.

In addition, ICC proposes revisions to the Wind-Down Plan to add references to new SEC Rule 17Ad-25 which lays out certain requirements for clearing agency boards of directors and conflicts of interest.<sup>23</sup> Primarily, proposed new Section VII.B.1. ‘Core Services’ of the Wind-Down Plan contains references to SEC Rule 17Ad-25, SEC Rule 17Ad-26(a)(i) and (ii), and SEC Rule 17Ad-26(b), as they relate to requirements for a clearing agency’s management of risks from relationships with service providers for core services<sup>24</sup> (described in greater detail below). In addition, ICC proposes to update the Wind-Down Plan to reflect that the composition of the Risk Committee changed in

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<sup>22</sup> 17 CFR 240.17ad-26.

<sup>23</sup> 17 CFR 240.17ad-25.

<sup>24</sup> 17 CFR 240.17ad-25, 17 CFR 240.17ad-26(a)(i) and (ii), and 17 CFR 240.17ad-26(b).

2024.<sup>25</sup> Specifically, two (2) additional Risk Committee seats were added which increased the size of the Risk Committee from twelve (12) members to fourteen (14) members. The two (2) additional Risk Committee seats are for representatives of customers of Clearing Participants, as required under applicable CFTC regulations.<sup>26</sup> As a result, ICC proposes to revise Section IV.B. ‘Management/Governance’ of the Wind-Down Plan to reference the new size and composition of the Risk Committee.

Furthermore, ICC proposes to update the Wind-Down Plan to reflect that ICC added a Risk Advisory Working Group to ICC’s governance structure in 2024.<sup>27</sup> The addition of the Risk Advisory Working Group to ICC’s governance structure is required under applicable CFTC regulations.<sup>28</sup> With the addition of the Risk Advisory Working Group, ICC proposes to add Sub-Section IV.B.2.ii. ‘Risk Advisory Working Group’ to the Wind-Down Plan to add a description of the Risk Advisory Working Group. The proposed new sub-section describes the role of the Risk Advisory Working Group, which is a forum to seek risk-based input from a broad array of market participants regarding all matters that could materially affect the risk profile of ICC. The proposed new sub-section also provides a description of the composition of the Risk Advisory Working Group which is chaired by the ICC Chief Risk Officer and includes a minimum of two (2) members who are representatives of Clearing Participants and a minimum of two (2) members who are representatives of customers of Clearing Participants. Members of the Risk Advisory Working Group are appointed by the ICC President, subject to the approval of the Risk Committee. In addition to the summary in proposed new Sub-

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<sup>25</sup> See Exchange Act Release No. 100876 (August 29, 2024), 89 FR 72538 (September 5, 2024) (SR-ICC-2024-009).

<sup>26</sup> 17 CFR 39.24(b)(11).

<sup>27</sup> See Exchange Act Release No. 100876 (August 29, 2024), 89 FR 72538 (September 5, 2024) (SR-ICC-2024-009).

<sup>28</sup> 17 CFR 39.24(b)(12).

Section IV.B.2.ii. of the Wind-Down Plan, ICC proposes to add additional references to the Risk Advisory Working Group to Section IV.B. of the Wind-Down Plan.

In addition, ICC proposes to update the Wind-Down Plan to reflect that ICC eliminated both the Advisory Committee and the Risk Management Subcommittee from ICC's governance structure in 2024.<sup>29</sup> Specifically, ICC proposes to remove references to the retired Advisory Committee and the retired Risk Management Subcommittee from Section IV.B. of the Wind-Down Plan.

Related to the proposed governance changes described above, ICC proposes to revise Section IV.B. 'Management/Governance' of the Wind-Down Plan to update the chart which summarizes ICC's governance structure. Specifically, the chart would be updated to reflect the changes to the composition of the Risk Committee, addition of the Nominating Committee, addition of the Risk Advisory Working Group, and removal of the Advisory Committee and the Risk Management Subcommittee.

Also, ICC proposes to update Section IV.B.1. 'ICC Board of Managers' of the Wind-Down Plan to reflect changes of the managers of the Board. Specifically, ICE US Holding replaced former Independent Manager Vincent Tese with Marti Tirinnanzi, and former Risk Committee nominated Non-Independent Manager Biswarup Chatterjee resigned from the Board, and as a result of the vacancy created by Mr. Chatterjee's resignation, new Risk Committee nominated Non-Independent Manager Viktor Vadasz was appointed to the Board. ICC also proposes to update the titles of members of the Board to ensure they are current, including noting that Terrence Martell is now Chairperson of the Board (a title previously held by former member of the Board Vincent Tese).

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<sup>29</sup> See Exchange Act Release No. 100876 (August 29, 2024), 89 FR 72538 (September 5, 2024) (SR-ICC-2024-009).

With respect to proposed changes related to updating the description of ICC’s clearing services, service providers and ICC’s management of risks from relationships with service providers for core services, ICC proposes to amend and rename Section VI.C. ‘Continuation of the Critical Operations and Clearing Services in Wind-Down’ of the Wind-Down Plan. In addition, ICC proposes to revise Section VII. ‘Interconnections and Interdependencies: Impact on Wind-Down Plan’ of the Wind-Down Plan. Such proposed revisions are intended to update the Wind-Down Plan to reflect the changes and clarification made to ICC’s Operational Risk Management Framework in 2024.<sup>30</sup> The proposed revisions also include replacing the term “vendors” to “service providers”. Also, ICC proposes clarifications to provide a defined term to existing abbreviations “MSA” in the ‘Critical Services Provided to ICC by ICE Affiliates’ table, as well as replace ‘SA/SLA’ with “CSSA” to reflect the applicable legal agreements between ICC and ICE Inc. ICC proposes to remove the bullet point list of items that may be included in the risk assessments of third parties providing critical services in Section VII.B. in an effort to ensure consistency with the changes and clarification made to ICC’s Operational Risk Management Framework in 2024.<sup>31</sup> Instead, ICC proposes to include a bullet point list of items that may be included in the risk assessments of SPCS, which would be conducted by ICC’s BDOC, in new Section VII.B.1. For clarity, ICC proposes to move a statement regarding the analysis and management of risk posed by third party external service providers that provide critical services to ICC to directly below the table highlighting the critical services provided to ICC by third party service providers in VII.B.

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<sup>30</sup> See Exchange Act Release No. 101819 (December 5, 2024), 89 FR 99949 (December 11, 2024) (SR-ICC-2024-011).

<sup>31</sup> *Id.*

Further, new Section VII.B.1. ‘Core Services’ to the Wind-Down Plan adds procedures regarding ICC’s management of the risks related to relationships with SPCS. Specifically, proposed Section VII.B.1. updates the description of how ICC identifies and manages its SPCS using a two-pronged assessment approach broken down between internal and external service providers, consistent with the recent changes to the Operational Risk Management Framework.<sup>32</sup> With respect to internal service providers and external service providers, the proposed changes to the Wind-Down Plan describes certain services provided by ICE Inc. and the applicable legal agreements between ICC and ICE Inc. Proposed Section VII.B.1. also identifies and discusses the staffing roles necessary to support the core services on a daily basis and in the event of wind-down. In addition to the proposed changes to Section VII., ICC proposes additional changes and references to ICC’s clearing services and service providers in Sections II. and VI. of the Wind-Down Plan to ensure consistency with the revisions made, and terminology used, in revised Section VII. of the Wind-Down Plan.

Furthermore, ICC proposes to update the contractual agreement analysis chart contained in Section VIII. ‘Contractual Agreements - Impact on Wind-Down Plan’ in the Wind-Down Plan. Such proposed changes are related to the addition of analysis of the contractual agreement with an additional external service provider, additional settlement services providers, as well as the removal of the contractual analysis of a retired settlement services provider.

ICC proposes to update Section X. ‘Wind-Down Plan Governance’ of the Wind-Down Plan to provide additional details regarding ICC’s testing of the Wind-Down Plan. First, ICC proposes to clarify that the Wind-Down Plan will be tested at least every twelve (12) months rather than annually. In addition, ICC proposes to clarify that it will

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<sup>32</sup> *Id.*

consider whether it is appropriate or practical to have Clearing Participants involved in the wind-down testing. Furthermore, ICC proposes to update Section X of the Wind-Down Plan to add the process that senior management, the Risk Committee, and the Board must take following the test of a Wind-Down pursuant to SEC Rule 17Ad-26(a)(8)(iii).<sup>33</sup>

In addition to the foregoing proposed changes, ICC proposes general updates to the Wind-Down Plan to ensure that the information in the Wind-Down Plan is current and accurate. Namely, the proposed changes ensure that relevant information regarding ICC for the purposes of wind-down planning, such as information about ICC's ownership and operation, is current with respect to:

- Clearing Participants in Section IV.A.;
- change in contact information for the SEC contacts in Section VI.A.;
- correction of the ICE US Holding contact in Section VI.A.;
- ICC personnel and facilities in Section VII.C.;
- identification of ICC's counterparties in the Counterparty Chart VII.D.;
- financial resources to support wind-down in Section IX.; and
- Banking Institutions and Example Proportion of Holdings charts in Section XI.C.

Finally, ICC proposes non-substantive drafting changes and improvements to the Wind-Down Plan, such as the correction of typographical errors, the re-numbering of sub-sections to reflect the addition and deletion of sub-sections as described above, and updating the revision history in the Wind-Down Plan.

*(b) Statutory Basis*

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<sup>33</sup> 17 CFR 240.17ad-26(a)(8)(iii).

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>34</sup> and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.<sup>35</sup> In particular, Section 17A(b)(3)(F) of the Act<sup>36</sup> requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest.

ICC believes the proposed changes would enhance its ability to effectuate a successful recovery as well as to execute an orderly wind-down by providing updates and additional clarity with respect to ICC's recovery and wind-down processes and procedures. As discussed herein, the proposed revisions ensure that relevant information regarding ICC for recovery and wind-down planning is current and up to date, and consistent with new regulatory requirements. To support and enhance the implementation of the Plans, additional language clarifications and regulatory cites or edits are included so that the Plans remain up-to-date, transparent, and focused on clearly articulating the policies and procedures used to support ICC's recovery and wind-down efforts. The Plans would thus promote ICC's ability to continue providing clearing services with as little disruption as possible, and should continuation not be feasible, promote ICC's ability to discontinue clearing services in an orderly manner with minimum negative impact to the marketplace and stakeholders. Accordingly, in ICC's view, the proposed rule change is consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the

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<sup>34</sup> 15 U.S.C. 78q-1.

<sup>35</sup> 17 CFR 240.17ad-22.

<sup>36</sup> 15 U.S.C. 78q-1(b)(3)(F).

safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>37</sup>

The proposed rule change would also satisfy the relevant requirements of Rule 17Ad-22.<sup>38</sup> Rule 17Ad-22(e)(2)<sup>39</sup> requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are (i) clear and transparent; (ii) clearly prioritize the safety and efficiency of the covered clearing agency; (iii) support the public interest requirements of Section 17A of the Act<sup>40</sup> applicable to clearing agencies, and the objectives of owners and participants; (iv) establish that the board of managers and senior management have appropriate experience and skills to discharge their duties and responsibilities; (v) specify clear and direct lines of responsibility; and (vi) consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency. The proposed changes update the Risk Committee composition, add references to the Nominating Committee and the Risk Advisory Working Group, and remove references to the Advisory Committee and the Risk Management Subcommittee thereby, clarifying ICC's governance arrangements that are relevant to recovery and wind-down, including the roles and responsibilities of the Board, applicable committees, and management. Such governance arrangements further promote the safety and efficiency of ICC and support the public interest requirements in Section 17A of the Act<sup>41</sup> applicable to clearing agencies, and the objectives of owners and participants, by updating ICC's governance structure, such that ICC continues to

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<sup>37</sup> *Id.*

<sup>38</sup> 17 CFR 240.17ad-22.

<sup>39</sup> 17 CFR 240.17ad-22(e)(2).

<sup>40</sup> 15 U.S.C. 78q-1.

<sup>41</sup> *Id.*

clearly define relevant roles and responsibilities that prioritize the safety and efficiency of ICC so that it continues to provide safe and sound central counterparty services in the context of recovery or wind-down. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(2).<sup>42</sup>

Rule 17Ad-22(e)(3)(ii)<sup>43</sup> requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by 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. The Recovery Plan continues to establish ICC's actions to maintain its viability as a going concern to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC's viability. The Wind-Down Plan continues to establish how ICC could be wound-down in an orderly manner should its recovery efforts fail. As described above, the proposed changes include updates and edits to promote clarity and to ensure that the information in the Plans is current and consistent with applicable regulatory requirements. In ICC's view, such changes would ensure that the Plans remain useful and effective in a recovery and wind-down scenario. The proposed rule change would thus promote ICC's ability to carry out a successful recovery or orderly wind-down, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).<sup>44</sup>

Rule 17Ad-22(e)(15)<sup>45</sup> requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and

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<sup>42</sup> 17 CFR 240.17ad-22(e)(2).

<sup>43</sup> 17 CFR 240.17ad-22(e)(3)(ii).

<sup>44</sup> *Id.*

<sup>45</sup> 17 CFR 240.17ad-22(e)(15).

manage ICC's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that ICC can continue operations and services as a going concern if those losses materialize, including by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken; (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of ICC's current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of ICC, as contemplated by the plans established under Rule 17Ad-22(e)(3)(ii)<sup>46</sup>; and (iii) maintain a viable plan, approved by the Board and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under Rule 17Ad-22(e)(15)(ii).<sup>47</sup>

The Plans continue to analyze ICC's particular circumstances and risks to ensure that ICC maintains financial resources necessary to implement both Plans and that ICC remains in compliance with all regulatory capital requirements. The Plans includes information on the financial resources maintained by ICC for recovery and to support wind-down in compliance with relevant regulations and include procedures to follow in case of any shortfall. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(15).<sup>48</sup>

The proposed amendments also are consistent with Rule 17Ad-25(c) which requires ICC to establish a nominating committee and a written evaluation process whereby such nominating committee shall evaluate nominees for serving as directors and

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<sup>46</sup> 17 CFR 240.17ad-22(e)(3)(ii).

<sup>47</sup> 17 CFR 240.17ad-22(e)(15)(ii).

<sup>48</sup> 17 CFR 240.17ad-22(e)(15).

evaluate the independence of nominees and directors.<sup>49</sup> The proposed rule changes to the Recovery Plan are designed to reflect the addition of the Nominating Committee to ICC's governance structure, consistent with requirements of new Commission Rule 17Ad-25.<sup>50</sup> The amendments to the Recovery Plan provide the purpose of the Nominating Committee and its composition. In ICC's view, the amendments to the Recovery Plan adding references to ICC's recently established Nominating Committee ensure that ICC documentation is current and up to date with respect to applicable regulatory requirements. In ICC's view, the amendments to the Recovery Plan are therefore consistent with the requirements of Rule 17Ad-25(c).<sup>51</sup>

Rule 17Ad-25(i) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to (1) require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework; (2) require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the required risk evaluation; (3) require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and (4) require senior management to perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration

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<sup>49</sup> 17 CFR 240.17ad-25(c).

<sup>50</sup> 17 CFR 240.17ad-25.

<sup>51</sup> 17 CFR 240.17ad-25(c).

in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.<sup>52</sup> The proposed revisions to the Plans add references and details with respect to ICC's operational risk management program which includes, without limitation, ICC's management of the risks associated with relationships with SPCS. Such amendments to the Plans are intended to provide clarity and transparency with respect to ICC's clearing services, service providers and its management of the risks associated with its relationships with SPCS, and apply such operational risk management program to recovery and wind-down to enhance ICC's ability to identify and manage risks associated with service providers during recovery or wind-down, consistent with the requirements of Rule 17Ad-25(i).<sup>53</sup>

The proposed rule change would also satisfy the requirements of Rule 17Ad-26, which broadly covers the requirements for the recovery and orderly wind-down plans of covered clearing agencies.<sup>54</sup> Rule 17Ad-26 requires ICC to (1) identify and describe its core payment, clearing, and settlement services and address how ICC would continue to provide such core services in the event of a recovery and during an orderly wind-down, including by: (i) identifying the staffing roles necessary to support such core services; and (ii) analyzing how such staffing roles necessary to support such core services would continue in the event of a recovery and during an orderly wind-down; (2)(i) identify and describe any service providers for core services, specifying which core services each service provider supports; and (ii) address how ICC would ensure that service providers for core services would continue to perform in the event of a recovery and during an

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<sup>52</sup> 17 CFR 240.17ad-25(i).

<sup>53</sup> *Id.*

<sup>54</sup> 17 CFR 240.17ad-26.

orderly wind-down, including consideration of its written agreements with such service providers and whether the obligations under those written agreements are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan; (3) identify and describe scenarios that may potentially prevent ICC from being able to provide its core services as a going concern, including uncovered credit losses, uncovered liquidity shortfalls, and general business losses; (4) identify and describe criteria that could trigger ICC's implementation of its recovery and orderly wind-down plans and the process that the ICC uses to monitor and determine whether the criteria have been met, including the governance arrangements applicable to such process; (5) identify and describe the rules, policies, procedures, and any other tools or resources on which ICC would rely in a recovery or orderly wind-down; (6) address how the rules, policies, procedures, and any other tools or would ensure timely implementation of the recovery and orderly wind-down plan; (7) require ICC to inform the Commission as soon as practicable when ICC is considering implementing a recovery or orderly wind-down; (8) include procedures for testing ICC's ability to implement the recovery and orderly wind-down plans at least every 12 months, including by: (i) requiring ICC's participants and, when practicable, other stakeholders to participate in the testing of its plans; (ii) requiring that such testing be in addition to default management testing; (iii) providing for reporting the results of such testing to ICC's board of directors and senior management; and (iv) specifying the procedures for, as appropriate, amending the plans to address the results of such testing; and (9) include procedures requiring review and approval of the plans by ICC's Board at least every 12 months or following material changes to ICC's operations that would significantly affect the viability or execution of the plans, with such review informed, as appropriate, by ICC's testing of the plans.

The Plans continue to establish ICC's actions in the event of recovery or orderly wind-down, and as modified by these proposed changes, include coverage of all the

requirements of Rule 17Ad-26.<sup>55</sup> Specifically, the Plans (1) describe how ICC identifies staffing roles necessary to support recovery and orderly wind-down; (2) describe its service providers for core services, and include an analysis of its agreements with its service providers for core services and the potential impact of the initiation of its recovery and orderly wind-down plan on such contractual agreements; (3) describe scenarios that potentially could prevent ICC from being able to provide its identified core services; (4) describe criteria that would cause ICC to trigger implementation of the Plans and ICC's monitoring methods to determine if the criteria have been met; (5) identify ICC Rules, policies, procedures and tools for implementation of the Plans; (6) describe how the Rules, policies, procedures and tools ensure a timely recovery or wind-down process; (7) require notification of the Commission by ICC when it is considering implementing the Plans; (8) cover testing of the Plans every twelve (12) months; and (9) include annual review of the Plans by the Board. ICC believes the Plans continue to provide appropriate procedures and tools, and comprehensively describe ICC's plans for recovery and orderly wind-down consistent with the requirements of Rule 17Ad-26.<sup>56</sup>

*(B) Clearing Agency's Statement on Burden on Competition*

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The proposed changes to the Plans will apply uniformly across all market participants. The changes are being proposed to promote clarity and ensure that the information provided is current in the Plans. ICC does not believe the amendments would affect the costs of clearing or the ability of market participants to access clearing. Therefore, ICC does not believe the proposed rule changes would impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

(C) *Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. *Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Within 45 days of the date of publication of this notice in the *Federal Register* or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. *Solicitation of Comments*

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-ICC-2025-007 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ICC-2025-007. This file number should be included on the subject line if email is used. To help the Commission process and

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of ICC and on ICC's website at <https://www.ice.com/clear-credit/regulation>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ICC-2025-007 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>57</sup> 17 CFR 200.30-3(a)(12).