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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83387; File No. SR-ICC-2018-005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the ICC Clearing Rules to Implement the European Union General Data Protection Regulation

June 6, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 25, 2018, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which Items have been prepared by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder<sup>4</sup> so that the proposal was immediately effective upon filing with the Commission. 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 change is to make changes to the ICC Clearing Rules (the “ICC Rules”) to comply with certain requirements of the European Union (“EU”) General Data Protection Regulation (“GDPR”).<sup>5</sup>

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016.

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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

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

(a) Purpose

ICC proposes revisions to Rule 407 to update its policies on data protection to facilitate compliance with the requirements of the GDPR, which took effect on May 25, 2018. The proposed revisions are described in detail as follows.

The amendments reflect that ICC's policies on use of personal data will now primarily be stated in a privacy notice made available to Clearing Participants ("CPs") and other market participants, and accordingly certain existing provisions in the Rules relating to personal data will be removed or modified, as discussed herein. ICC proposes minor changes to terminology in Rule 407(a)(iv) to replace the term Data Protection Directive with Data Protection Regulation, which will refer to the GDPR. ICC proposes corresponding changes throughout the document. Under the proposed revisions, Rule 407(i) states that subsections (i) through (m) apply to the extent that ICC is within scope of the GDPR, and notes ICC's right to process "Personal Data" (as defined in the

GDPR)<sup>6</sup> for purposes permitted under the GDPR. The proposed amendments also remove existing subsections (j) and (k), as the relevant provisions containing ICC's obligations with respect to Personal Data will now be set out in a privacy notice, and, instead, include ICC's commitment to keeping Personal Data confidential in a new subsection (j) and intentionally omit subsection (k). The proposed updates to Rule 407(l) specify that CPs must ensure they have a lawful basis for processing Personal Data provided to ICC. ICC also proposes including references to defined terms used in the GDPR in Rule 407(m). The proposed new Rule 407(n) states that recording telephone conversations with ICC will take place to the extent permitted or required under applicable law.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>7</sup> requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F)<sup>8</sup>, because ICC believes that the proposed rule change will protect investors and the public interest, as the proposed revisions provide additional clarity on the rights and obligations of ICC

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<sup>6</sup> Personal Data is defined in the GDPR as information related to a natural person that would identify that person, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

and its CPs relating to Personal Data and facilitate ICC's compliance with the GDPR. As such, the proposed rule change is designed to protect investors and the public interest within the meaning of Section 17(A)(b)(3)(F)<sup>9</sup> of the Act.

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

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to facilitate compliance with EU requirements applicable to Personal Data under the GDPR, and apply to all CPs and market participants. Although the amendments could impose certain additional costs on CPs, these result from the requirements imposed by the GDPR, and are generally applicable throughout the EU. As a result, ICC does not believe the amendments would adversely affect competition among CPs, the market for clearing services generally or access to clearing in cleared products by CPs or other market participants.

(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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

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

investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,<sup>10</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of its filing. Pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> however, the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. ICC has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that ICC may implement the proposed rule change by the effective date of the GDPR (May 25, 2018). The Commission notes that the proposed rule change is limited to revising Rule 407 to facilitate compliance with the requirements of the GDPR, including committing ICC to keeping Personal Data confidential and clarifying that ICC's policies on use of personal data will now primarily be stated in a privacy notice. The proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) affect the safeguarding of funds or securities in the custody or control of ICC or for which it is responsible.

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<sup>10</sup> ICC has satisfied this requirement.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

Waiver of the five-day pre-filing requirement and the 30-day operative delay would allow ICC to implement the proposed rule change by the effective date of the GDPR and therefore comply with EU law. Therefore, the Commission believes that waiving the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2018-005 on the subject line.

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<sup>15</sup> For purposes only of waiving the five-day pre-filing requirement and the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2018-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2018-005 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>16</sup>

Eduardo A. Aleman,  
Assistant Secretary.

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



