



This document is scheduled to be published in the Federal Register on 08/17/2018 and available online at <https://federalregister.gov/d/2018-17741>, and on [govinfo.gov](http://govinfo.gov)

8011-01

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83832; File No. SR-ICC-2018-006)

August 13, 2018

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to Amending the ICC Clearing Rules Regarding Mark-to-Market Margin

I. Introduction

On June 13, 2018, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the ICC Clearing Rules (the “ICC Rules”)<sup>3</sup> to more clearly characterize Mark-to-Market Margin payments as settled-to-market rather than collateralized-to-market. The proposed rule change was published in the Federal Register on June 29, 2018.<sup>4</sup> 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

The proposed rule change would revise Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settlement payments

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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> Available at [https://www.theice.com/publicdocs/clear\\_credit/ICE\\_Clear\\_Credit\\_Rules.pdf](https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf). Capitalized terms used herein but not otherwise defined have the meaning set forth in the ICC Rules.

<sup>4</sup> Securities Exchange Act Release No. 34-83513 (June 25, 2018), 83 FR 30802 (June 29, 2018) (SR-ICC-2018-006) (“Notice”).

(“settled-to-market”) rather than collateral (“collateralized-to-market”).<sup>5</sup> The proposed rule change would not change the manner in which Mark-to-Market Margin is calculated, or other current ICC operational practices.<sup>6</sup> Rather, the proposed rule change would revise terminology to further clarify the legal characterization that payments of Mark-to-Market Margin represent settlement rather than collateral payments.<sup>7</sup> ICC states that these clarifying changes are the result of ICC’s analysis of the legal characterization of Mark-to-Market Margin payments, at the request of its Clearing Participants (“CPs”).<sup>8</sup>

The proposed rule change would revise Rule 401 to reference Mark-to-Market Margin Balance, a new term that is defined in Rule 404 to mean the aggregate amount of Mark-to-Market Margin paid or received.<sup>9</sup> The new definition would be used in several calculations to describe specifics pertaining to the Mark-to-Market Margin calculation.<sup>10</sup> For example, the proposed rule change would amend Rule 401(a), which governs House Margin, to state that ICC calculates a net amount of Mark-to-Market Margin by subtracting a CP’s Mark-to-Market Margin Balance from a CP’s Mark-to-Market Margin

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<sup>5</sup> Under the settled-to-market model, the transfer of Mark-to-Market Margin constitutes a settlement of the contract’s outstanding exposure, with the receiving party taking outright title to the Mark-to-Market Margin and the transferring party retaining no rights to such margin. Under the collateralized-to-market model, the transfer of Mark-to-Market Margin constitutes a pledge of collateral, such that the transferring party has a right to reclaim the collateral and the receiving party has an obligation to return the collateral. For further explanation of the settled-to-market model and collateralized-to-market model, see Notice, 83 FR at 30803.

<sup>6</sup> Notice, 83 FR at 30803.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

Requirement.<sup>11</sup> The proposed rule change would make corresponding changes to reference Mark-to-Market Margin Balance in Rule 401(b)(ii), which covers Client-Related Mark-to-Market Margin.<sup>12</sup>

As stated above, the proposed rule change would not modify the current calculation of Mark-to-Market Margin, or other operational practices, but, instead, would replace certain specifics relating to ICC's Mark-to-Market Margin calculation with the new defined term Mark-to-Market Margin Balance.<sup>13</sup> In addition, the proposed rule change would not change the manner in which Initial Margin is calculated, posted and held.<sup>14</sup>

Further, the proposed rule change would revise Rule 401(g) to specify that amounts ICC currently pays to CPs as interest on any Mark-to-Market Margin would no longer be considered interest but instead would be treated as a new payment obligation between ICC and CPs and referred to as the "price alignment amount."<sup>15</sup> A price alignment amount would be economically equivalent to the "interest" that ICC pays or charges a CP for any net Mark-to-Market Margin transferred between the parties under current Rule 401(g).<sup>16</sup> Because the term interest may be more typically associated with collateral, however, the proposed rule change would refer to such an amount as price

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<sup>11</sup> Notice, 83 FR at 30803.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

alignment to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments.<sup>17</sup> ICC states that such change would not affect ICC's operations because ICC would continue to pay or charge a CP an amount, which would serve the same purpose and would be calculated identically, for any net Mark-to-Market Margin transferred between the parties.<sup>18</sup>

The proposed rule change would also clarify in proposed revisions to Rule 401(g) that the rate ICC may pay or charge a CP for a price alignment amount on any Mark-to-Market Margin or interest on any Initial Margin in the form of cash may be negative. This proposed revision is intended by ICC to more clearly address the effect negative market rate environments could have on how such amounts might be paid or charged by ICC to CPs.<sup>19</sup>

The proposed rule change would add and clarify references to amounts that ICC will continue to treat as collateral to avoid confusion over the proper characterization of Mark-to-Market Margin under the ICC Rules. Specifically, the proposed rule change would update Rule 401(h) to provide that CPs may substitute, in accordance with the ICC Procedures and applicable law, Eligible Margin only for an amount of Initial Margin.<sup>20</sup> CPs would no longer be able to substitute Eligible Margin for Mark-to-Market Margin because under the proposed rule change, ICC would take outright title to the Mark-to-Market Margin and CPs would retain no substitution or other rights to such Mark-to-

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<sup>17</sup> Notice, 83 FR at 30803.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

Market Margin. The proposed changes to Rule 402, which governs ICC's rights with respect to the use of margin, would exclude Mark-to-Market Margin from subsections (a) and (b), would remove details relating to Mark-to-Market Margin from subsection (b), and would specify subsection (c)'s applicability to Initial Margin. Because ICC's rights with respect to Mark-to-Market Margin would now be set out in Rule 402(e), it would no longer be necessary to refer to Mark-to-Market Margin in Rule 402(a) and (b). To avoid uncertainty, the proposed rule change would clarify that the requirements set forth in Rule 406(c) regarding collateral for Client-Related Positions apply to Initial Margin.<sup>21</sup>

The proposed rule change would similarly add and clarify references to amounts that ICC would treat as settled to avoid confusion over the proper characterization of Mark-to-Market Margin under the ICC Rules. The proposed rule change would add language to Rule 402(e) to describe ICC's rights with respect to Mark-to-Market Margin and more clearly state that Mark-to-Market Margin payments constitute a settlement. The proposed rule change would also update Rule 401(l) to refer to settlement finality in relation to Mark-to-Market Margin.<sup>22</sup> Further, the proposed rule change would add new subsection (c) to Rule 404 to define Mark-to-Market Margin Balance as a sum equal to the Mark-to-Market Margin value transferred by the CP to ICC minus the Mark-to-Market Margin value transferred by ICC to the CP.<sup>23</sup>

Finally, the proposed rule change would make clarifications and conforming changes to Chapters 8 and 20 of the ICC Rules. The proposed rule change would revise

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<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

Rule 801(a)(i), which describes how ICC calculates a CP’s Required Contribution to the General Guaranty Fund, to refer to the transfer of Mark-to-Market Margin.<sup>24</sup> This change would characterize Mark-to-Market Margin as settled, rather than collateral, by referring to the amount of Mark-to-Market Margin transferred to ICC in respect of a defaulting CP’s positions. The proposed rule change would not change ICC’s calculation of a CP’s Required Contribution, which would continue to take into account the expected loss to ICC associated with a CP’s default after the application of Initial Margin and Mark-to-Market Margin.<sup>25</sup>

The proposed rule change would also replace, in the defined term MTM in Rule 808, the phrase “amount of MTM held by any Participant or ICE Clear Credit” with a conforming reference to the new defined term Mark-to-Market Margin Balance.<sup>26</sup> This proposed change would not alter the operation of Rule 808, which describes how and when ICC would implement Reduced Gains Distributions.

The proposed rule change would replace terminology in Rule 810(e) that is commonly used in conjunction with collateral by changing the words “posted” to “transferred” and removing the phrase “and be offset against”. This change would avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments.<sup>27</sup> This proposed change would not alter the operation of Rule 810, which describes ICC’s termination of clearing operations.

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<sup>24</sup> Notice, 83 FR at 30803.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

Finally, the proposed rule change would clarify in Rule 20-605(c)(i)(B), which specifies the resources to be used to cover losses with respect to Client-Related Positions, that ICC would use the defaulting CP's Client-Related Mark-to-Market Margin, to the extent not previously applied to pay Mark-to-Market Margin to other CPs.<sup>28</sup> Because Mark-to-Market Margin would be settled with ICC, ICC would obtain outright title to the Mark-to-Market Margin and would be able to use the Mark-to-Market Margin for purposes other than collateralizing a CP's position, in accordance with ICC's Rules and applicable regulatory requirements. The proposed rule change would make this point clear and therefore clarify that Mark-to-Market Margin payments constitute settlement rather than collateral.

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<sup>28</sup> Notice, 83 FR at 30803.

### **III. Discussion and Commission Findings**

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>29</sup> For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act<sup>30</sup> and Rules 17Ad-22(b)(2) and 17Ad-22(d)(1) thereunder.<sup>31</sup>

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

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.<sup>32</sup>

As described above, the proposed rule change would revise Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settlement payments rather than collateral. To facilitate this characterization, the proposed rule change would introduce a new definition, Mark-to-Market Margin Balance, and a new concept, price alignment amount. Moreover, the proposed rule change would

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<sup>29</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>30</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>31</sup> 17 CFR 240.17Ad-22(b)(2), (d)(1).

<sup>32</sup> 15 U.S.C. 78q-1(b)(3)(F).

update the terminology used in certain rules, and the application of certain rules to Mark-to-Market Margin, in light of the characterization of Mark-to-Market Margin payments as settlement payments rather than collateral. The proposed rule change would not change the manner in which Mark-to-Market Margin is calculated, or other current ICC operational practices.

The Commission believes that by clarifying the treatment of Mark-to-Market Margin payments, the proposed rule change would help ensure that Mark-to-Market margin is treated as settled payments rather than collateral, consistent with ICC's intention. In doing so, the Commission further believes the proposed rule change would clarify that ICC has all rights and outright title to such Mark-to-Market Margin. The Commission believes the proposed rule change would clarify ICC's interest in and rights to Mark-to-Market Margin, thereby supporting ICC's ability to use Mark-to-Market Margin to cover credit and market losses.

The Commission further believes that in this regard the proposed rule change would remove potential confusion regarding the treatment of Mark-to-Market Margin, thereby helping to improve the operation and effectiveness of ICC's margin system. Given that an effective margin system is necessary to manage ICC's credit exposures to its CPs and the risks associated with clearing security based swap-related portfolios, the Commission believes that the proposed rule change would help improve ICC's ability to avoid the losses that could result from the mismanagement of credit exposures and the risks associated with clearing security based swap-related portfolios. Because such losses could disrupt ICC's ability to promptly and accurately clear security based swap transactions, the Commission believes that the proposed rule change, by improving the

operation and effectiveness of ICC's margin system, would thereby help promote the prompt and accurate clearance and settlement of securities transactions.

Similarly, given that mismanagement of ICC's credit exposures to its CPs and the risks associated with clearing security based swap-related portfolios could cause ICC to realize losses on such portfolios and threaten ICC's ability to operate, thereby threatening access to securities and funds in ICC's control, the Commission believes that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of the ICC or for which it is responsible. Finally, for both of these reasons, the Commission believes the Framework would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.<sup>33</sup>

#### B. Consistency with Rule 17Ad-22(b)(2)

Rule 17Ad-22(b)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.<sup>34</sup>

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<sup>33</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>34</sup> 17 CFR 240.17Ad-22(b)(2).

As described above, the proposed rule change would revise Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settlement payments rather than collateral. Specifically, the Proposed Rule Change would revise Rule 401 to reference Mark-to-Market Margin Balance, a new term that is defined in Rule 404 to mean the aggregate amount of Mark-to-Market Margin paid or received. The new definition would be used in Rule 401(a), regarding House Margin, which would be revised to state that ICC calculates a net amount of Mark-to-Market Margin by subtracting a CP's Mark-to-Market Margin Balance from a CP's Mark-to-Market Margin Requirement. Moreover, under the proposed revised Rule 401(g), ICC would pay or charge a CP price alignment, which would be economically equivalent to interest, on any Mark-to-Market Margin and interest on any cash Initial Margin at a rate that may be negative. The proposed rule change would not modify the current calculation of Mark-to-Market Margin, or other operational practices, but, instead, would replace certain specifics relating to ICC's Mark-to-Market Margin calculation with the new defined term Mark-to-Market Margin Balance.

The Commission believes that by clarifying the treatment of Mark-to-Market Margin payments, the proposed rule change would help ensure that Mark-to-Market margin is treated as settled payments rather than collateral. The Commission believes that in this regard the proposed rule change would help ensure that the margin system is operating consistently for all CPs and in a manner that is consistent with ICC's view on the treatment of Mark-to-Market Margin by confirming that all Mark-to-Market Margin would be treated as settlement payments. In doing so, the Commission further believes the proposed rule change would clarify that ICC has all rights and outright title to such

Mark-to-Market Margin. The Commission believes the proposed rule change would thereby clarify ICC's interest in and rights to Mark-to-Market Margin, thereby supporting ICC's ability to use Mark-to-Market to cover credit and market losses. The Commission therefore believes the proposed rule change would help ICC maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions.

Moreover, as noted above, the proposed rule change resulted from a request by CPs for ICC to confirm it treats Mark-to-Market Margin as settlement payments. CPs therefore may hesitate to post Mark-to-Market Margin if ICC does not consistently treat such margin as settlement payments. Thus, the Commission believes the proposed rule change would help ICC enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(b)(2).<sup>35</sup>

#### C. Consistency with Rule 17Ad-22(d)(1)

Rule 17Ad-22(d)(1) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.<sup>36</sup>

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<sup>35</sup> 17 CFR 240.17Ad-22(b)(2).

<sup>36</sup> 17 CFR 240.17Ad-22(d)(1).

As discussed above, the proposed rule change would revise Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settlement payments rather than collateral. The proposed rule change would also revise terminology to further clarify the legal characterization that payments of Mark-to-Market Margin represent settlement rather than collateral payments. These clarifying changes are the result of ICC's analysis of the legal characterization of Mark-to-Market Margin payments, at the request of its CPs.

Thus, ICC intends to treat Mark-to-Market Margin payments as settled rather than collateral, and the Commission believes that the proposed rule change's clarifications and additions would help ensure that ICC's margin system operates consistently with this intention. The Commission further believes that the proposed rule change would help ensure that the margin system is operating consistently for all CPs by confirming that all Mark-to-Market Margin would be treated as settlement payments. In ensuring the consistent treatment of Mark-to-Market Margin, the Commission believes that the proposed rule change would help ensure that the policies and procedures underlying ICC's margin system provide a well-founded, transparent, and enforceable legal framework.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(1).<sup>37</sup>

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<sup>37</sup> 17 CFR 240.17Ad-22(d)(1).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act<sup>38</sup> and Rules 17Ad-22(b)(2) and 17Ad-22(d)(1) thereunder.<sup>39</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>40</sup> that the proposed rule change (SR-ICC-2018-006) be, and hereby is, approved.<sup>41</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

Robert W. Errett  
Deputy Secretary

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<sup>38</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>39</sup> 17 CFR 240.17Ad-22(b)(2), (d)(1).

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</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>42</sup> 17 CFR 200.30-3(a)(12).

[FR Doc. 2018-17741 Filed: 8/16/2018 8:45 am; Publication Date: 8/17/2018]