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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88954; File No. SR-ICC-2020-007]

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

May 27, 2020.

I. Introduction

On April 10, 2020, 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 (the “Act”),¹ and Rule 19b-4,² a proposed rule change to amend Chapter 2 of the ICC Rules relating to requirements applicable to ICC’s Clearing Participants. The proposed rule change was published for comment in the Federal Register on April 20, 2020.³ 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

As discussed below, the proposed rule change would amend Chapter 2 of the ICC Rules, which relates to requirements applicable to ICC’s Clearing Participants.

The proposed rule change would amend ICC Rule 201(b), which sets out the standards that each of ICC’s Clearing Participants must meet, to add a new standard in standard in subparagraph (xiv). New subparagraph (xiv) would require that a Clearing Participant

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Clearing Rules, Exchange Act Release No. 88628 (Apr. 14, 2020); 85 Fed. Reg. 21907 (Apr. 20, 2020) (SR-ICC-2020-007).

participate in default management simulations, new technology testing and other exercises, as notified by ICE Clear Credit from time to time.

The proposed rule change would also amend Rule 206(a), which requires that each Clearing Participant immediately notify ICC, orally and in writing, upon the occurrence of certain specified events. The proposed rule change would amend Rule 206(a) to delete the requirement that Clearing Participants provide notices orally, so that instead Clearing Participants would only be required to provide notice in writing.

Finally, the proposed rule change would amend Rule 206(c), which requires a Clearing Participant that is a broker-dealer to notify ICC of, among other things, any matter of which the Clearing Participant must notify FINRA under FINRA Rule 3070. The proposed rule change would replace “FINRA Rule 3070” with “FINRA Rule 4530(a)(1)(A),(C),(E) and 4530(b) (or any similar rules),” as FINRA Rule 3070 is no longer applicable and has been superseded by FINRA Rule 4530.⁴

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

⁴ FINRA Rule 4530 generally requires that its members promptly report to FINRA after the member or an associated person of the member has been found to have violated any securities or other rules and regulations of a regulatory body, is named as a defendant or respondent in any proceeding brought by a domestic or foreign regulatory body, or is indicted, or convicted of, or pleads guilty to any felony or any misdemeanor that involves the purchase or sale of any security, etc. Further, this rule also generally requires that each member shall promptly report to FINRA after the member has concluded or reasonably should have concluded that an associated person of the member or the member itself has violated any securities or other rules and regulations of a regulatory body.

organization.⁵ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ and Rule17Ad-22(d)(2).⁷

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.⁸ By updating the standards for membership applicable to Clearing Participants as discussed above, the proposed rule change should help to ensure that ICC's Clearing Participants participate in default testing and other testing conducted by ICC. In addition, the proposed rule change should help to ensure that all of ICC's Clearing Participants are prepared for, and ready to take actions in response to, a Clearing Participant default, thereby helping to improve ICC's management of a Clearing Participant default. Because the Commission believes that a Clearing Participant default, if not properly managed, could cause ICC to incur losses which could hinder its clearance and settlement of securities transactions and safeguarding of securities and funds in its custody or control, the Commission believes this aspect of the proposed rule change should help to promote the prompt and accurate clearance and

⁵ 15 U.S.C. 78s(b)(2)(C).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 240.17Ad-22(d)(2).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control.

Similarly, by eliminating the requirement for oral notices and updating the reference to the current FINRA rule requiring notification by a Clearing Participant that is a broker-dealer of violations of regulatory rules and regulations, the proposed rule change should help to ensure that ICC receives notice from a Clearing Participant of events or situations which could affect the Clearing Participant's ability to satisfy the standards and obligations applicable to it as a participant in ICC. The proposed rule change would allow ICC to respond as needed to mitigate any potential negative effects to ICC arising from such events or situations that could hinder ICC's clearance and settlement of securities transactions and safeguarding of securities and funds in its custody or control. Consequently, the Commission believes this aspect of the proposed rule change should help to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control.

Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control, consistent with Section 17A(b)(3)(F) of the Act.⁹

⁹ 15 U.S.C. 78q-1(b)(3)(F).

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

Rule 17Ad-22(d)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in ICC; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation requirements that are objective and publicly disclosed, and permit fair and open access.¹⁰ The adoption of a new standard applicable to Clearing Participants – participation in default management simulations, new technology testing and other exercises, as notified by ICE Clear Credit from time to time –should establish a participation requirement that is objective in that it applies to all Clearing Participants equally, and is publicly disclosed, in that it would be part of ICC’s publicly available rulebook. Moreover, this new participation standard should allow ICC to test a Clearing Participant’s operational response to a simulated default, thereby helping to ensure that a Clearing Participant has robust operational capacity to meet obligations arising from participation in ICC. Finally, the elimination of the requirement for oral notices and updating of the reference to the current FINRA rule should help to ensure that ICC receives notice from a Clearing Participant of events or situations which could affect the Clearing Participant’s ability to satisfy the standards and obligations applicable to it as a participant in ICC. Taken together, the Commission believes that the proposed rule change should help ICC to monitor that Clearing Participants are meeting their participation requirements on an ongoing

¹⁰ 15 U.S.C. 17Ad-22(d)(2).

basis. For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(2).¹¹

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 Act¹² and Rules 17Ad-22(d)(2).¹³

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-ICC-2020-007), be, and hereby is, approved.¹⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

¹¹ 15 U.S.C. 17Ad-22(d)(2).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(d)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).

