

Second, given the proposed additive nature of the gap risk charge, the Commission believes the adjustments to the gap risk charge calculation (*i.e.*, establishing floors for the gap risk haircuts applicable to the two largest positions) are reasonably designed to cover NSCC's exposure to members arising from gap risks. The Commission believes the adjustments to the gap risk charge calculation are reasonable because the record shows the proposal should improve NSCC's ability to mitigate against idiosyncratic risks that NSCC may face when liquidating a portfolio that contains a concentration of positions, while balancing NSCC's consideration of the potential costs to members that may be subject to the gap risk charge.<sup>58</sup> The Commission believes that the established floors for the two haircuts should also help ensure that the gap risk charge collects margin sufficient to cover the potential exposure in a gap risk event.

Third, by providing additional specific objective criteria to determine which positions would be subject to the gap risk charge, the Commission believes that NSCC should be able to better identify those securities that may be more prone to idiosyncratic risks. Specifically, the proposal should ensure that ETFs identified as non-diversified (whether index-based or not) and therefore more prone to idiosyncratic risks will be subject to the gap risk charge.

Taken together, the Commission believes that the proposal should permit NSCC to calculate a gap risk charge that is more appropriately designed to address the gap risks presented by concentrated positions in portfolios. Accordingly, the Commission believes the proposal is consistent with Rule 17Ad-22(e)(6)(i) under the Exchange Act because it is designed to assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of portfolios with identified concentration risks.<sup>59</sup>

#### IV. Conclusion

*It is therefore noticed*, pursuant to section 806(e)(1)(I) of the Clearing

materials submitted to the Commission, which included more granular information, at a member level, of the impacts of this proposal as compared to the current methodology. *See* note 55 *supra*.

<sup>58</sup> As part of the confidential materials submitted to the Commission, NSCC provided analysis of alternative potential haircuts and thresholds that it considered when developing the proposal. *See* note 55 *supra*. The Commission's review of those materials further supports its belief as to the reasonableness of this aspect of the proposal.

<sup>59</sup> 17 CFR 240.17Ad-22(e)(6)(i).

Supervision Act, that the Commission DOES NOT OBJECT to Advance Notice (SR-NSCC-2022-802) and that NSCC is AUTHORIZED to implement the proposal as of the date of this notice, or the date of an order by the Commission approving proposed rule change SR-NSCC-2022-015, whichever is later.

By the Commission.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023-17127 Filed 8-9-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98055; File No. SR-ICC-2023-007]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan

August 4, 2023.

#### I. Introduction

On June 5, 2023, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Recovery Plan and Wind-Down Plan. The proposed rule change was published for comment in the **Federal Register** on June 22, 2023.<sup>3</sup> The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

##### A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.<sup>4</sup> The proposed rule change would amend both the Recovery Plan and the Wind-Down Plan, which serve as plans for the recovery and orderly wind-down of ICC, respectively, if such recovery or wind-down is necessitated by credit losses,

liquidity shortfalls, losses from general business risk, or any other losses incurred by ICC. The Recovery Plan is designed to establish ICC's actions to maintain its viability as a going concern by addressing any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens ICC's viability as a going concern. The Wind-Down Plan is designed to establish how ICC could be wound down in an orderly manner in the event that it cannot continue as a going concern.

##### B. Recovery Plan

ICC proposes general updates and edits to its Recovery Plan to promote clarity and to ensure that the information in it is current. The proposed amendments to the Recovery Plan reflect and relate to changes that impacted ICC in the past year. To that end, the current Recovery Plan includes in the introduction a disclaimer that, unless otherwise specified, all information provided in the plan is current as of December 31, 2021. The proposed rule change would update that date to December 31, 2022. The proposed amendments to the Recovery Plan also would include changes to the coverage amount under the ICC clearing participant ("CP") default insurance policy ("CP Default Insurance Policy"), and the addition of ICC-specific procedures for financial resource calculations.

Section IV covers key recovery elements. Within this section, the proposed rule change would amend clearing participation (IV.B), management and governance (IV.C), and key performance metrics (IV.D). In Section IV.B, ICC would create a reference to a membership category, Associate Clearing Participant. In Section IV.C, ICC would make a correction to the Management/Governance chart to indicate that the business continuity plan ("BCP") and disaster recovery ("DR") Oversight Committee is not a sub-committee of the ICC Audit Committee. In Section IV.C, ICC would update the description of ICE Holding Board Chairman Vincent Tese, who is currently listed as an independent director of both ICE Holding and ICE Inc. The proposed rule change would amend the description to remove his listing as an independent director of Ice Inc. In Section IV.D, ICC would update its revenues, volumes, and expenses for years 2021 and 2022.

The proposed rule change also would amend Section VI of the Recovery Plan, which covers interconnections and interdependencies. Specifically, ICC proposes to amend Sections VI.A

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Recovery Plan and the ICC Wind-Down Plan; Exchange Act Release No. 97734 (June 15, 2023), 88 FR 40874 (June 22, 2023) (File No. SR-ICC-2023-007) ("Notice").

<sup>4</sup> Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Clearing Rules.

(Operational), VI.B (Financial), and VI.C (Contractual Agreements). The proposed updates to Section VI.A would reflect changes in the last year and would update the descriptions of ICC's personnel and facilities, as well as its in-house systems. Section VI.B currently includes a "Counterparty Chart" that lists all of ICC's various counterparties and indicates which function(s) each counterparty performs (*i.e.*, Clearing Participant, Custodian, Depository, etc.) would update the roles in its counterparty chart. The proposed changes to Section VI.B would update that chart to reflect changes to the functions performed by certain counterparties. The only proposed update to Section VI.C would be to the chart of counterparty contractual agreements in that section. Specifically, ICC would remove the reference to a service no longer received from a specific external service provider (*i.e.*, receipt of market data to value FX positions and collateral).

The proposed rule change would make several updates to Section VIII of the Recovery Plan, which addresses ICC's recovery tools, primarily in Section VIII.B. First, the proposed rule change would update the name of the carrier for ICC's CP Default Insurance Policy, which is maintained at the ICE Group level and may be used as a recovery tool in a CP default scenario pursuant to ICC's Rules, provided certain conditions are met. Second, it would amend the amount of coverage to reflect that the Policy coverage amount has increased to \$75 million (from \$50 million, as reflected in the current Recovery Plan); third, it would update the points of contact for ICC's Default Insurance Policy; and fourth, it would update the coverage amount under the Professional Liability/Cyber (E&O) Insurance Policy from \$110 million to \$120 million to reflect that coverage amount under that policy has increased since the last update to the Recovery Plan. Fifth, in Section VIII.B.1.iii (Direct Infusion of Cash to ICC from Parent/ICE Group), ICC would update the current description of ICC's, ICE Inc's, and ICE Group's respective year-end cash balances to reflect their most current consolidated balance sheets. Finally, the proposed rule change would add a footnote in Section VIII.B that references and describes ICC's Risk Appetite Statements and Metrics, which define the thresholds ICC has established with respect to regulatory capital requirements and provide for alerts in the event that ICC is nearing a breach of these amounts (*i.e.*, the current alert is triggered if ICC maintains 110% or less

of its required regulatory capital). The reference to and description of ICC's Risk Appetite Statements and Metrics is intended to provide further details on how decreases in ICC's regulatory capital will trigger escalation within ICC, which in turn may lead to potential remedial actions, including whether ICC should initiate its plan to raise additional equity.

Section X of the Recovery Plan identifies ICC's Financial Resources for Recovery. The proposed rule change would add details regarding the calculation of ICC's financial resources available for recovery to reflect new ICC-specific Financial Resource Calculation Procedures that ICC has added since the last update to the Recovery Plan. Specifically, the Recovery Plan would specify that ICC completes a voluntary annual calculation of regulatory requirements under European Market Infrastructure Regulation ("EMIR") guidelines. It would note that ICC's calculation approximates the EMIR requirements and is calculated by ICE Treasury on an annual basis upon the finalization of ICC's statutory audit and financial statements, as well as a discussion of future expectations with the ICE Treasury Director, and specify that the EMIR Estimate includes four elements relating to: winding down/restructuring; operational and legal risks; credit and counterparty risk/market risk; and business risks. The proposed update would also include a reference to the Financial Resource Calculation Procedures and note that the procedures include additional details regarding the calculation of regulatory capital requirements under EMIR guidelines. The proposed rule change also would amend Section X to update the expected costs of recovery and wind-down, including expenses related to legal services, consulting, operations, regulatory capital requirements, and other wind down costs.

Section XI of the Recovery Plan (Financial Information) provides the balance sheet and income statement for ICC and the consolidated balance sheet and income statement for ICE Inc. and its subsidiaries. The proposed rule change would update the financial information in this section to reflect the most current financial statements for both entities.

The proposed rule change would make minor edits to Section XIII, Appendix G, which covers form default insurance proof of loss, by updating the carrier and policy number for ICC's CP Default Insurance Policy. In Section XIV, which contains the index of exhibits, the proposed rule change

would update the index of exhibits with the current versions of policies and procedures, consistent with updated footnote references. Finally, the proposed rule change would make non-substantive typographical fixes in the ICC Recovery Plan, as well as conforming changes in the ICC Wind-Down Plan, including updates to entity names, and grammatical and formatting changes.

### C. Wind-Down Plan

ICC proposes updates and edits to promote clarity and to ensure that the information provided in the Wind-Down Plan is current. The proposed rule change reflects and relates to changes that have impacted ICC in the past year, including the addition of ICC-specific procedures for financial resource calculations. The current Wind-Down Plan includes in the introduction a disclaimer that, unless otherwise specified, all information provided in the plan is current as of December 31, 2021. The proposed rule change would update that date to December 31, 2022.

Section II of the Wind-Down Plan is an overview of the structure of ICC. Section II.A addresses ownership of ICC. The proposed rule change would add additional language for the headquarter location for ICC. Section IV addresses membership and ICC governance. The proposed rule change would amend the Management and Governance chart in Section IV.B because the previous chart incorrectly indicated that the BCP and DR Oversight Committee are sub-committees of the ICC Audit Committee. Additionally, the proposed rule change would update the description of Vincent Tese in Section IV.B, so that he is listed as just an independent director of ICC, but is no longer listed as an independent director of ICE Inc.

In the beginning of Section VII, which addresses interconnections and interdependencies, the proposed rule change would update ICC revenue. Later in VII.C.2, the proposed rule change would update the number of personnel and facilities. In Section VII.C, which addresses operational services, the proposed rule change would update a list of in-house systems. Section VII.D addresses financial services and the proposed rule change would update the roles on its counterparty chart.

Section IX addresses financial resources to support wind-down. In this section, the proposed rule change would include additional details regarding the calculation of ICC's financial resources available for wind-down to reflect the new ICC-specific Financial Resource

Calculation Procedures. The proposed rule change would add details regarding the calculation of regulatory capital requirements under EMIR guidelines. Similar to the proposed changes in the Recovery Plan, the proposed rule change would specify that calculations are performed by ICE Treasury on an annual basis upon the finalization of ICC's statutory audit and financial statements and include a discussion of future expectations with the ICC Treasury Director. Similar to the proposed changes in the Recovery Plan, the proposed rule change would note that ICC's calculation approximates the EMIR requirements and is calculated by ICE Treasury on an annual basis upon the finalization of ICC's statutory audit and financial statements, as well as a discussion of future expectations with the ICC Treasury Director, and specify that the EMIR Estimate includes four elements relating to: winding down/restructuring; operational and legal risks; credit and counterparty risk/market risk; and business risks. The proposed update would also include a reference to the Financial Resource Calculation Procedures and note that the procedures include additional details regarding the calculation of regulatory capital requirements under EMIR guidelines.

The proposed rule change would update and edit to promote clarity and consistency in the ICC Wind-Down Plan. In the counterparty contractual agreements chart in Section VIII, the proposed rule change would remove the reference to a service no longer received from a specific external service provider (*i.e.*, receipt of market data to value FX positions and collateral). In Section XII, the proposed rule change would update the index of exhibits with the current versions of policies and procedures, consistent with updated footnote references.

### 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>5</sup> For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>6</sup> and Rule 17Ad-22(e)(3)(ii).<sup>7</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.<sup>8</sup>

As noted above, the proposed rule change primarily would update the Recovery Plan and Wind-Down Plan with current information about ICC's facilities, finances, operations, and Board. The Commission believes that by providing the most current information for ICC's revenues, volumes, and expenses, the proposed rule change will support ICC's ability to monitor its finances and compare its regulatory capital to its estimated recovery and wind-down costs. This in turn will help ensure ICC has the financial resources to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

Further, the Commission believes that updating the Counterparty Chart to reflect current roles and changes to the functions performed by certain counterparties will generally support those utilizing the Plans by providing users of the Plans a correct overview of ICC's counterparties. Similarly, the Commission believes that updating the description of ICC's Default Insurance Policy and Professional Liability/Cyber (E&O) Insurance Policy to reflect increase coverage amounts and current points of contact will generally support those utilizing the Plans by providing users of the Plans a correct overview of these insurance policies. The Commission believes that these proposed changes would strengthen both plans by ensuring those utilizing them have information necessary to carry out recovery or an orderly wind-down, which in turn should help ICC to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

ICC also proposed to include a reference to the thresholds for regulatory capital requirements that would trigger alerts for ICC nearing a capital requirement breach. This may lead to potential remedial actions, including whether ICC should initiate its plan to raise additional equity. The

Commission believes that these proposed changes would strengthen the plans by ensuring those utilizing them have all of the information necessary to carry out recovery or an orderly wind-down, which in turn will help ensure ICC can promptly and accurately clear and settle trades and safeguard of securities and funds which are in its custody or control at these times.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>9</sup>

#### B. Consistency With Rule 17Ad-22(e)(3)(ii)

Rule 17Ad-22(e)(3)(ii) 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.<sup>10</sup>

The Commission believes the proposed changes described above that would add current financial, personnel, and board information support ICC's maintenance of plans for the recovery and orderly wind-down of ICC with updated accurate information. The proposed rule change also would add details regarding the calculation of ICC's financial resources available for wind-down to reflect the new ICC Financial Resource Calculation Procedures. Additionally, ICC adds a reference to its thresholds for regulatory capital requirements that would trigger alerts for when ICC is nearing a capital requirement breach. The Commission believes that current financial information provides relevant information to those using the Plans to understand the resources available for recovery or an orderly wind-down.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(3)(ii).<sup>11</sup>

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of

<sup>5</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

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

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

<sup>10</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>11</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

Section 17A(b)(3)(F) of the Act<sup>12</sup> and Rule 17Ad-22(e)(3)(ii).<sup>13</sup>

It is therefore ordered pursuant to Section 19(b)(2) of the Act<sup>14</sup> that the proposed rule change (SR-ICC-2023-007), be, and hereby is, approved.<sup>15</sup>

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

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-17102 Filed 8-9-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98063; File No. SR-IEX-2023-08]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Pursuant to IEX Rule 15.110 To Amend IEX's Fee Schedule

August 4, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 25, 2023, Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) under the Act,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members<sup>6</sup> (the "Fee Schedule") pursuant to IEX Rule 15.110(a) and (c), to modify the fees applicable to executions of and with

displayed orders for securities priced at or above \$1.00 per share. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,<sup>7</sup> and will be operative on September 1, 2023.

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to modify the fees applicable to executions of and with displayed orders with an execution price at or above \$1.00 per share. The Exchange currently does not charge Members a fee for an execution at or above \$1.00 per share that provides displayed liquidity and charges Members \$0.0009 per share for an execution at or above \$1.00 per share that removes displayed liquidity.<sup>8</sup>

As proposed, for executions at or above \$1.00 per share, Members that enter displayed orders that provide liquidity will receive a rebate of \$0.0004 per share and Members that enter orders that remove displayed liquidity will be charged a fee of \$0.0010 per share, unless a lower fee applies.<sup>9</sup> The proposed fee change would also apply to executions when the adding and removing orders originated from the same Member.

The Exchange provides the following Fee Codes on execution reports to Members for executions of and with

displayed liquidity: "ML" for orders that provide displayed liquidity, "MLS" for orders that provide displayed liquidity that executes against an order that originated from the same Member, "TL" for orders that remove displayed liquidity, and "TLS" for orders that remove displayed liquidity added by the same Member.<sup>10</sup> These existing Fee Codes will continue to apply.

Specifically, the Exchange is proposing to make the following changes to its Fee Schedule:

- Replace the words "Effective January 2, 2023" at the top of the Fee Schedule with the words "Effective July 25, 2023" and on the line immediately after, add "New underlined text and deletions in brackets will be operative on September 1, 2023" (to indicate the date the fees in this proposal will be operative).

- Modify the first bullet point under the "Transaction Fees" header to specify that all fees identify the cost "or rebate" per share executed. And add a sentence stating that "Rebates are indicated by parentheses ()."

- In the "Base Rates" table, change the fee for executions at or above \$1.00 per share for Fee Code ML from "FREE" to "\$0.0004".

- In the "Base Rates" table, change the fee for executions at or above \$1.00 per share for Fee Code TL from "\$0.0009" to "\$0.0010".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code ML from "FREE" to "\$0.0004".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code TL from "\$0.0009" to "\$0.0010".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code MLS from "FREE" to "\$0.0004".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code TLS from "\$0.0009" to "\$0.0010".

The Exchange is not proposing to change the fees applicable to executions of and with displayed orders with an execution price below \$1.00 per share, which would remain free for such orders that provide displayed liquidity and 0.09% of the total dollar volume of the execution for orders that take displayed liquidity. IEX is also not proposing to make any changes to the fees applicable to the execution of

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> See IEX Rule 1.160(s).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> See Investors Exchange Fee Schedule, available at <https://www.iexexchange.io/resources/trading/fee-schedule>.

<sup>9</sup> As discussed *infra*, if a Retail order removes displayed liquidity, the Retail order would not be charged a fee.

<sup>10</sup> See *supra* note 8.