

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93610; File No. SR–ICC–2021–020]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Stress Testing Framework and the Indirect Participant Risk Monitoring and Review Policy

November 18, 2021.

I. Introduction

On September 27, 2021, 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 thereunder,² a proposed rule change to revise the ICC CDS Clearing; Stress-Testing Framework (“Stress Testing Framework”) and to adopt and formalize the ICC Indirect Participant Risk Monitoring and Review Policy (“Indirect Participant Risk Policy”). The proposed rule change was published in the **Federal Register** on October 7, 2021.³ The Commission did not receive 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 the Stress Testing Framework, which describes various stress tests executed by ICC and the governance process surrounding these tests. The proposed changes relate primarily to clarifications of ICC’s stress testing practices, updates to descriptions of stress scenarios and governance, and clean-up changes to certain definitions and references throughout the Stress Testing Framework, as well as the addition of an appendix to the Stress Testing Framework to provide details on ICC’s existing stress test methodology. The proposed rule change also would adopt the Indirect Participant Risk Policy to memorialize ICC’s existing risk management practices for the adequate identification, monitoring, and management of risks arising from, and relating to, indirect participants, defined

as the underlying clients of ICC’s Clearing Participants (“CPs”).⁴

A. Stress Testing Framework

The proposed changes define and/or abbreviate various terms throughout the document, starting in Section 2 (Overview). For example, the term Guaranty Fund would be abbreviated as “GF.” Regarding the stress test methodology in Section 3 (Methodology), ICC would define the term financial resources in a new footnote to mean “available funds from the Initial Margin (IM) requirements and GF contributions related to the selected portfolios.” The proposed footnote also would clarify that the related analysis of IM requirements may exclude certain charges to “provision for losses associated with bid/offer exposure upon portfolio liquidation.” Similarly, ICC would make corresponding changes to the subsequent text in Section 3 to conform the description of charges that may be excluded from analyzed IM requirements. As summarized in more detail below, ICC also would add a new Section 16 as Appendix A that describes details on ICC’s stress test methodology, and would add references to such appendix in Sections 3, 5 (Predefined Scenarios), and 13 (Interpretation of Results). ICC would add proposed footnotes in Subsection 5.1 (Historically Observed Extreme but Plausible Market Scenarios) that contain formulas for defining the greatest observed N-day relative spread increases and decreases regarding certain spread scenarios. The proposed amendments to Section 12 (Portfolio Selection) would specify that client stress testing is executed daily (rather than “at least monthly”), and also reference the Indirect Participant Risk Policy for further details on the analysis. In Section 14 (Post-Stress Testing Review & Governance Structure), ICC proposes a grammatical update to make the term “meeting” plural to reflect the weekly and monthly meetings of the ICC Risk Management Department (“Risk Department”), and to memorialize that the Stress Testing Framework is subject to review by the ICC Risk Committee and review and approval by the Board at least annually. ICC also proposes to include the Indirect Participant Risk Policy as a reference in Section 15.

As noted above, ICC proposes new Section 16 as Appendix A, which is intended to provide more detail and clarity on ICC’s stress test methodology and would not change the existing

methodology.⁵ The proposed appendix defines key terms and sets out underlying formulas and equations used for stress testing. Key terms and related equations to define them include, among others, Stress Testing Profit/Losses, which represent the CP portfolio hypothetical response to the considered stress testing scenarios. The proposed appendix also explains the determination of the order of defaulting CP Affiliate Groups (“AGs”), which consist of CPs that fall under a common parent entity, in order to establish if the available financial resources are sufficient to cover hypothetical losses associated with the two greatest CP AG uncollateralized stress losses, and discusses the consideration given to wrong way risk exposure. Finally, the proposed appendix details how ICC determines if the available financial resources are sufficient to cover the hypothetical losses associated with the two greatest CP AG uncollateralized losses under the extreme but plausible scenarios.

B. Indirect Participant Risk Policy

The risk management program at ICC includes various elements designed to ensure the adequate identification, monitoring and management of risks arising from and relating to indirect participants. ICC proposes to adopt the proposed Indirect Participant Risk Policy to memorialize such practices, analyses, and associated governance arrangements. The proposed Indirect Participant Risk Policy document is divided into seven sections, which are summarized below.

Section 1 (Background) introduces the purpose of the document and defines key terms. More specifically, Section 1 defines Indirect Participants (“IPs”) as the underlying clients of ICC’s CPs. Section 1 also defines Futures Commission Merchants/Broker Dealers (“FCMs/BDs”) as ICC’s CPs with clients. Section 1 states that Indirect Participants can pose risk to CPs and indirectly to ICC due to the presence of Large Traders (“LTs”). A Large Trader is defined as a client of a CP, or a simultaneous client of multiple CPs, that exhibits large risk exposure in its portfolio that transpires through concentrated position(s), significant level of collateralization, and large uncollateralized losses under extreme but plausible market stress scenarios.

Sections 2 through 4 describe and memorialize the identification, monitoring, and risk management practices related to IPs and the presence of LTs. Section 2 introduces a client-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Stress Testing Framework and the Indirect Participant Risk Monitoring and Review Policy, Exchange Act Release No. 93235 (Oct. 1, 2021); 86 FR 55888 (Oct. 7, 2021) (SR–ICC–2021–020) (“Notice”).

⁴ The following description of the proposed rule change is substantially excerpted from the Notice.

⁵ See Notice at 55888.

focused risk report, named the Client Gross Margin Report (“CGMR”), that enables ICC to determine the presence of potential LTs and assess the level of risk that they may pose to the CP and/or ICC. The CGMR summarizes client risk exposure across all FCMs/BDs and corresponding IPs, which allows the Risk Department to monitor and identify the FCMs/BDs with the largest IPs. The Risk Department and Risk Committee review the results from the CGMR at least on a monthly basis, and the Risk Department has the ability to monitor the IPs more frequently, if it deems necessary. Section 3 introduces and details the Large Trader Report, which is a complementary report to the CGMR that summarizes ICC’s IPs with risk profiles prone to adverse risk distribution, due to their size, across all FCMs/BDs. The criteria for the selection of IPs in the Large Trader Report is based on analyzing IPs’ U.S. Dollar (“USD”) equivalent Gross IM requirements across FCMs/BDs and identifying a select group of accounts with the largest total USD equivalent Gross IM requirements. Section 3 also describes another complementary report, called the Adverse Risk Distribution Report, which indicates the probability of an IP adversely distributing its risk across multiple FCMs/BDs and thus provides guidance on additional IPs to be included for reporting. Section 3 states that the Large Trader Report and the Adverse Risk Distribution Report analysis are executed daily, and that the Risk Committee reviews the results from both reports at least on a monthly basis. Section 4 introduces and describes the Customer Stress Test Risk Report (“CSTRR”), which is an additional complementary analysis to the CGMR for client portfolio level stress testing. The CSTRR analysis assumes that individual LTs are entering a state of default and triggering the default of their corresponding FCMs/BDs. The IPs selected for the analysis exhibit the largest stress loss over financial resources being tested for each of the selected top FCMs/BDs with the largest USD equivalent Gross IM requirements, thereby capturing the clients with the largest risk exposure, who are deemed LTs. Section 4 states that the Risk Department executes individual client portfolio stress testing on a daily basis, and reviews the results with the Risk Committee at least on a monthly basis.

Section 5 (Governance) memorializes governance procedures associated with the performance and review of the risk analyses summarized above. The Indirect Participant Risk Policy specifies

the group or individual involved in the execution, interpretation, review, and reporting of the analyses as well as the frequency. More specifically, Section 5 states that the Risk Department staff executes and reviews the CGMR and Large Trader Report at least monthly, with monthly reporting to the Risk Committee. Section 5 also states that the IP stress testing is executed daily by the Risk Department with monthly review and reporting to the Risk Committee via the CSTRR. Section 5 further states that the Chief Risk Officer, or a designee, performs the review and interpretation of the CGMR, Large Trader Report, and CSTRR results. Section 5 also sets out the actions to be taken if the Risk Department and the Risk Committee deem the risk arising from IPs to be significant.

Sections 6 and 7 provide additional reference information regarding the Indirect Participant Risk Policy. In Section 6, ICC includes a references section with a specific reference to the Stress Testing Framework. Section 7 includes a revision history that tracks the date, version, and revisions to the document.

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.⁶ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁷ and Rules 17Ad-22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19) thereunder.⁸

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.⁹

As described in Section II.A above, the proposed changes to the Stress Testing Framework generally provide

more detail to inform the ongoing implementation of the stress testing methodology for use in ICC’s daily risk management process by defining key terms, adding a new appendix that describes ICC’s existing stress test methodology with specific formulas or equations, referencing such appendix in relevant sections of the document, memorializing the internal governance review and approval process, and making other clarification and clean-up changes.

The Commission believes that, by defining the key term “financial resources” and clarifying that the related analysis of IM requirements may exclude certain charges to provision for losses associated with bid/offer exposure upon portfolio liquidation, the proposed rule change would enhance ICC’s ability to establish whether available financial resources are sufficient to cover hypothetical losses of the two greatest clearing participant affiliate groups.

The proposed rule change also updates certain terminology and references, and makes other clarifying updates to the Stress Testing Framework. Specifically, such changes include: using “GF” to reference the term Guaranty Fund; adding footnotes that contain formulas for defining the greatest observed N-day relative spread increases and decreases regarding certain spread scenarios; making the term “meeting” plural to reflect the weekly and monthly meetings of the Risk Department; specifying that client stress testing is executed daily (rather than “at least monthly”); including the Indirect Participant Risk Policy as a general reference in Section 15 of the document and specifically cross-referencing the Indirect Participant Risk Policy in Section 12 for further details on the client stress testing analysis; adding Appendix A to provide more detail and clarity on ICC’s stress test methodology by defining key terms and underlying formulas and equations used for stress testing, explaining how ICC accounts for wrong way risk exposure, and also how ICC determines the order of defaulting CP AGs and whether the available financial resources are sufficient to cover the hypothetical losses associated with the two greatest CP AG uncollateralized losses under the extreme but plausible scenarios; and including specific references to proposed Appendix A in relevant sections of the document. The Commission believes that all of these clarifications and updates enhance the accuracy, completeness, and readability of the Stress Testing Framework.

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17Ad-22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

Further, as described in Section II.A above, the proposed changes to the Stress Testing Framework specify that it is subject to review by the Risk Committee and review and approval by the Board at least annually. The Commission believes that these revisions update and clarify the governance arrangements of the Stress Testing Framework and, in turn, would help to facilitate consistent, ongoing adherence by the relevant groups at ICC.

For these reasons, the Commission believes that the proposed changes to the Stress Testing Framework, taken together, would enhance the accuracy and transparency of ICC's stress testing practices and related governance processes. The Commission also believes that having policies and procedures that clearly and accurately document ICC's stress testing practices and related governance processes are an important and integral component to the effectiveness of ICC's risk management system, which promotes the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and contributes to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. As such, the proposed rule changes to the Stress Testing Framework are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible within the meaning of Section 17A(b)(3)(F) of the Act.¹⁰

As described in Section II.B above, the proposed Indirect Participant Risk Policy memorializes ICC's current practices, analyses, and associated governance arrangements to ensure the adequate identification, monitoring, and management of risks arising from and relating to indirect participants. The Commission believes all seven sections of the proposed document, as discussed in Part II.B above, would help ensure that ICC is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible. More specifically, the Commission believes that Section 1, by defining key terms used throughout the document, such as Indirect Participants, Large Traders, and FCMs/BDs; Sections 2 through 4, by

describing and memorializing the identification, monitoring, and specific risk reports and analyses related to Indirect Participants and the presence of Large Traders; Section 5, by memorializing governance procedures associated with the performance and review of ICC's risk analyses; Section 6, by including a references section with a specific reference to the Stress Testing Framework; and Section 7, by including a revision history that tracks the date, version, and revisions of all document changes, would complement the Stress Testing Framework and strengthen ICC's overall risk management program by formalizing the additional risk management practices and associated governance processes specifically designed for identifying and monitoring indirect participants that can pose significant risks to CPs, and indirectly to ICC. By helping ICC manage such risks and the credit exposures associated with clearing credit default swaps ("CDS") transactions, the Commission believes that the proposed adoption of the Indirect Participant Risk Policy would help improve ICC's ability to avoid the losses that could result from the underestimation of ICC's credit exposures and miscalculation of margin requirements for such transactions. Because such losses could disrupt ICC's ability to operate and thus clear and settle CDS transactions, the Commission finds the proposed Indirect Participant Risk Policy, by helping to enhance ICC's overall risk management and financial stability, would help to ensure that ICC is able to promptly and accurately clear and settle CDS transactions. Additionally, because such losses could also threaten access to securities and funds in ICC's control, the Commission finds the proposed rule change would help assure the safeguarding of securities and funds that are in the custody or control of ICC or for which it is responsible.

Therefore, for all of the foregoing reasons, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.¹¹

B. Consistency With Rules 17Ad-22(e)(2)(i) and (v) Under the Act

Rules 17Ad-22(e)(2)(i) and (v) require ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements

that are clear and transparent and specify clear and direct lines of responsibility, respectively.¹²

The Commission believes that the proposed changes to the Stress Testing Framework, in changing the term "meeting" to "meetings" to reflect that Risk Department management holds weekly and monthly meetings to review and discuss the previous period's stress testing results and issues for each considered stress test scenario involving CP AGs, would strengthen the governance arrangements set forth in the Stress Testing Framework by updating and clearly documenting the frequency of Risk Department management meetings to review and discuss the previous period's stress testing results for CP AGs, consistent with Rule 17Ad-22(e)(2)(i).¹³ The Commission also believes that the proposed changes to the Stress Testing Framework, in memorializing that the Stress Testing Framework is subject to review by the Risk Committee and review and approval by the Board at least annually, would specify the roles and responsibilities of the Risk Committee and the Board in reviewing and approving the Stress Testing Framework on an annual basis, consistent with Rule 17Ad-22(e)(2)(v).¹⁴

Further, the Commission believes that the proposed Indirect Participant Risk Policy, in specifying in Section 2 that the Risk Department and Risk Committee review the results from the CGMR at least on a monthly basis, and the Risk Department has the ability to monitor the IPs more frequently, if it deems necessary; in specifying in Section 3 that the Large Trader Report and the Adverse Risk Distribution Report analysis are executed daily by the Risk Department, and that the Risk Committee reviews the results from both reports at least on a monthly basis; and in specifying in Section 4 that the Risk Department executes individual client portfolio stress testing on a daily basis, and reviews the results with the Risk Committee at least on a monthly basis, would clearly document the roles and responsibilities of the Risk Department and the Risk Committee in the ongoing execution and review of specific risk reports and analyses related to Indirect Participants and the presence of Large Traders, consistent with Rule 17Ad-22(e)(2)(v).¹⁵ The Commission also believes that Section 5, in memorializing the governance procedures associated with the

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹³ 17 CFR 240.17Ad-22(e)(2)(i).

¹⁴ 17 CFR 240.17Ad-22(e)(2)(v).

¹⁵ 17 CFR 240.17Ad-22(e)(2)(v).

performance and review of ICC's risk analyses as specified in Sections 2 through 4 above; in specifying that the Chief Risk Officer, or a designee, performs the review and interpretation of the CGMR, Large Trader Report, and CSTRR results; and in documenting the actions to be taken if the Risk Department and the Risk Committee deem the risk arising from Indirect Participants to be significant, would clearly assign governance responsibilities to the Risk Department, the Risk Committee, and the Chief Risk Officer in terms of the execution, interpretation, review, and reporting of the risk analyses, as well as the frequency of performing such responsibilities, consistent with Rule 17Ad-22(e)(2)(v).¹⁶

The Commission therefore finds that these aspects of proposed rule change would ensure that ICC's governance processes for the Stress Testing Framework and the Indirect Participant Risk Policy are clear, transparent, and documented accurately, consistent with the requirements of Rules 17Ad-22(e)(2)(i) and (v).¹⁷

C. Consistency With Rule 17Ad-22(e)(4)(vi) Under the Act

Rule 17Ad-22(e)(4)(vi) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements, as applicable, by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions; conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions; and reporting the results of its analyses to appropriate decision makers at ICC.¹⁸

The Commission believes that the proposed changes to the Stress Testing Framework, in defining the key term "financial resources" and clarifying that the related analysis of IM requirements may exclude certain charges to provision for losses associated with bid/offer exposure upon portfolio liquidation; in specifying that client stress testing is executed daily (rather

than "at least monthly"), and also referencing the Indirect Participant Risk Policy for further details on the analysis; and in adding Appendix A to provide more detail and clarity on ICC's stress test methodology by defining key terms and underlying formulas and equations used for stress testing, explaining how ICC accounts for wrong way risk exposure, and also how ICC determines the order of defaulting CP AGs and whether the available financial resources are sufficient to cover the hypothetical losses associated with the two greatest CP AG uncollateralized losses under the extreme but plausible scenarios, would more clearly describe how ICC manages its credit exposures to CPs and tests the sufficiency of its total financial resources available to cover the default of the two greatest CP AGs.

For all of the foregoing reasons, the Commission finds that these aspects of the proposed rule change are consistent with the requirements of Rule 17Ad-22(e)(4)(vi).¹⁹

D. Consistency With Rule 17Ad-22(e)(19) Under the Act

Rule 17Ad-22(e)(19) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to ICC arising from arrangements in which firms that are indirect participants in ICC rely on the services provided by direct participants to access ICC's payment, clearing, or settlement facilities.²⁰ The Commission believes the proposed Indirect Participant Risk Policy, in describing and memorializing the identification, monitoring, and specific risk reports and analyses related to Indirect Participants and the presence of Large Traders, would formalize ICC's risk management practices and governance procedures associated with the performance and review of the risk reports and analyses that are specifically designed for identifying and monitoring indirect participants that can pose material risks to their CPs as direct participants of ICC, and indirectly to ICC. The Commission also believes that the proposed changes to the Stress Testing Framework, in specifying that individual client legal entity stress testing is executed daily (rather than "at least monthly"), would enhance ICC's ability to more readily identify, monitor, and manage the level of risks arising from indirect participants as clients of CPs who rely on their CPs to access clearing and settlement facilities at ICC.

For these reasons, the Commission finds that these aspects of the proposed rule change are consistent with the requirements of Rule 17Ad-22(e)(19).²¹

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 Act²² and Rules 17Ad-22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19) thereunder.²³

It is therefore ordered pursuant to Section 19(b)(2) of the Act²⁴ that the proposed rule change (SR-ICC-2021-020) be, and hereby is, approved.²⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34420; File No. 812-15249]

MVP Private Markets Fund, et al.

November 18, 2021.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act. Applicants request an order to permit a closed-end management investment company to co-invest in portfolio companies with affiliated investment funds.

APPLICANTS: MVP Private Markets Fund (the "Fund"), Portfolio Advisors, LLC ("Portfolio Advisors"), PA Surf Fund, L.P., PA MAC Fund, L.P., PA-Ham Asia Investment Vehicle, L.P., Portfolio Advisors Private Equity Fund IX (Offshore), L.P., Portfolio Advisors Private Equity Fund IX, L.P., PA Growth

²¹ 17 CFR 240.17Ad-22(e)(19).

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 17 CFR 240.17Ad-22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 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).

²⁶ 17 CFR 200.30-3(a)(12).

¹⁶ 17 CFR 240.17Ad-22(e)(2)(v).

¹⁷ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹⁸ 17 CFR 240.17Ad-22(e)(4)(vi).

¹⁹ 17 CFR 240.17Ad-22(e)(4)(vi).

²⁰ 17 CFR 240.17Ad-22(e)(19).