

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91806; File No. SR-ICC-2021-005]

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

May 10, 2021.

I. Introduction

On March 23, 2021, ICE Clear Credit LCC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to update and formalize the ICC Recovery Plan and the ICC Wind-Down Plan (collectively, the “Plans”). The proposed rule change was published for comment in the **Federal Register** on April 5, 2021.³ 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

A. Background

As a “covered clearing agency,” ICC is required to, among other things, “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 the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.”⁴ The Commission has previously clarified that it believes that such recovery and wind-down plans are “rules” within the meaning of Exchange Act Section 19(b) and Rule 19b-4 because such plans would constitute changes to a stated policy, practice or interpretation of a

covered clearing agency.⁵ The Plans have been in place at ICC for a number of years. However, ICC has now filed them with the Commission for the first time since becoming a “covered clearing agency” under the definition in Rule 17Ad-22(a)(5).⁶

B. Recovery Plan

The Recovery Plan describes the actions ICC takes to (i) restore ICC to a stable and sustainable condition in the event that it comes under severe stress and (ii) maintain effective arrangements for ensuring that losses that threaten ICC’s viability as a going concern are allocated. The Recovery Plan consists of 14 sections, which are detailed below.

First, Section 1 of the Recovery Plan introduces and summarizes key aspects of ICC’s plan for recovery and explain its purpose. Section 1 explains that the Recovery Plan relies on ICC’s existing Rules and policies and procedures and describes recovery tools available to ICC.

Section 2 of the Recovery Plan provides an overview of ICC and the regulation to which it is subject, including key information regarding ICC’s ownership structure, regulatory registrations, and designations. Section 2 explains that ICC’s sole critical operation is providing CDS clearing services.

Section 3 of the Recovery Plan discusses the applicable regulatory requirements and obligations, including regulatory guidance ICC considered in writing the plan.

Section 4 provides an overview of the key elements in any recovery of ICC. First, Section 4 discusses the legal entities that are material to ICC for the Recovery Plan. The Recovery Plan defines a material legal entity (“MLE”) as a legal entity that is significant to the activities of ICC’s critical operation and/

or to the delivery of a critical service.⁷ Section 4 explains the metrics and information that ICC considered to identify the MLEs. Moreover, Section 4 explains that there are two MLEs for the Recovery Plan: ICC itself and ICC’s ultimate parent company, Intercontinental Exchange, Inc. (“ICE”). With respect to ICC, Section 4 also explains (i) the requirements for ICC’s Clearing Participants (“CPs”), such as operational capacity, financial responsibility, and capital; (ii) the governance arrangements and committees that have a direct and indirect role in default management and recovery, including the roles and responsibilities of the Board, Risk Committee, CDS Default Committee, and Advisory Committee, among others; (iii) ICC’s key performance metrics in respect of the services that it provides; and (iv) ICC’s management of collateral, including the forms of collateral that ICC accepts to satisfy initial margin (“IM”) and guaranty fund (“GF”) requirements and the monitoring of collateral counterparties.

As further explained in Section 4, the CDS Default Committee is responsible for assisting ICC during the execution of certain default management and recovery procedures and convenes upon the declaration of default. The Default Committee is comprised of up to three representatives from eligible CPs. For a CP to be eligible to serve on the Default Committee, the Board or its designee, after consultation with the ICC Risk Committee, needs to approve the CP for participation. The Recovery Plan lists the CPs currently eligible for participation on the Default Committee. Each member of the Default Committee is deemed seconded to ICC and takes actions in the best of interest of ICC.

Section 5 analyzes the critical services that are necessary to continue daily operations of CDS clearing services. Section 5 categorizes the critical services by those that are provided to ICC by ICE and those that are provided to ICC by external third parties.

Section 6 details the interconnections and interdependencies between ICC and other entities, including operational and financial interconnections. Section 6 explains the interconnection between ICE and ICC, including through services provided to ICC by ICE, such as accounting, human resources, audit, and facilities. Section 6 also details the IT systems and applications critical to

⁵ Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70809 (Oct. 13, 2016).

⁶ ICC became a “covered clearing agency” following a change in the definition of the term in Rule 17Ad-22(a)(5). The previous definition of “covered clearing agency” in Rule 17Ad-22(a)(5) stated that “covered clearing agency” means a designated clearing agency or a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). Under this definition, ICC was not a covered clearing agency. Under the revised definition, “covered clearing agency” means a registered clearing agency that provides the services of a central counterparty or central securities depository. Under the revised definition, ICC is a covered clearing agency. See Definition of “Covered Clearing Agency”, Exchange Act Release No. 88616 (April 9, 2020), 85 FR 28853, 28854-55 (May 14, 2020).

⁷ For purposes of the Recovery Plan, critical services are services and operations, such as information technology support and operations, human resources, and facilities, which are necessary to continue the ICC’s critical operation (CDS central clearing services).

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 ICC Recovery Plan and the ICC Wind-Down Plan, Exchange Act Release No. 91439 (March 30, 2021); 86 FR 17649 (April 5, 2021) (SR-ICC-2021-005) (“Notice”).

⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

ICC's clearing operations, including those provided by ICE, those provided by external third parties, and those that ICC provides to itself, through in-house systems. Section 6 also explains how ICC uses financial entities and monitors financial entities that have multiple roles and relationships with ICC (such as a CP that also provides financial services to ICC). Finally, Section 6 analyzes ICC's contractual arrangements in the context of continuing services under those contracts during recovery.

Section 7 of the proposed Recovery Plan describes the potential stress scenarios that may prevent ICC from meeting obligations and providing services, as well as the recovery tools available to ICC to address such scenarios. Section 7 of the Recovery Plan categorizes stress scenarios as: (i) Uncovered credit losses and/or liquidity shortfalls triggered by a CP or multiple CPs defaulting ("CP default stress scenario"), and (ii) stress triggered by general business risks, operational risks, or other risks that may threaten ICC's viability as a going concern, other than a CP default ("non-CP default stress scenario"). Section 7 also discusses the monitoring mechanisms for both categories of scenarios, such as daily monitoring of GF and collateral requirements and daily review of back-testing and stress-testing results, as well as the process for notifying regulators of the initiation of the Recovery Plan. Finally, Appendix D further analyzes each scenario, including the triggering events and the specific steps ICC takes when the scenario occurs or appears likely to occur.

Section 8 of the proposed Recovery Plan describes the circumstances in which ICC initiates the Recovery Plan and the tools that are available to ICC to achieve recovery. Specifically, under both the CP default stress scenario and the non-CP default stress scenario, Section 8 defines the point at which ICC activates the Recovery Plan and the point at which ICC begins recovery. Section 8 then describes the recovery tools available to ICC. Appendix E further analyzes and summarizes these recovery tools, including whether the particular tool is mandatory under ICC's rules or voluntary and the specific governance steps that required to implement each tool. For a CP default stress scenario, these recovery tools include:

- Auctions to close out a defaulter's portfolio (ICC Rule 20–605(d)(v) and (f)(ii));
- An insurance policy covering specified losses resulting from a CP default (ICC Rule 802);

- CPs' obligation to replenish their GF contribution to the required level in the event of any use of the GF contributions of non-defaulting CPs (ICC Rule 803(a)) and to make assessment contributions to the GF following a CP default and the consumption of the pre-funded GF (ICC Rule 803(b)), subject to a cap;

- Partial tear-up of remaining positions (ICC Rules 20–605(f)(iii) and 809) where ICC terminates positions of non-defaulting CPs that exactly offset those in the defaulter's remaining portfolio; and

- Reduced gains distributions ("RGD") (ICC Rule 808) for up to five consecutive business days, allowing ICC to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to CPs, as ICC attempts a secondary auction or conducts a partial tear-up.

Section 8 also discusses the tools that are available to ICC to address a situation where ICC experiences liquidity shortfalls triggered by a default of one or more CPs and has insufficient liquid resources in the proper currency to meet payments obligations. These tools include entering into transactions to exchange certain sovereign debt securities for cash or to exchange U.S. dollar cash for Euro cash under one of ICC's committed repurchase or committed foreign exchange agreements, respectively.

Finally, Section 8 discusses the tools available to ICC in the event that ICC experiences severe stress triggered by a non-CP default stress scenario, including the application of resources from ICC and contributions from CPs to address certain investment and custodial losses. ICC Rule 811 provides a mechanism for allocating investment losses and custodial losses as between ICC and CPs, with ICC being responsible for a first loss position up to the amount of defined resources and with CPs being responsible for the remaining loss, in proportion to and capped at their margin and GF contributions. Additional tools to address non-CP default stress scenarios include insurance coverage, seeking additional capital through the ICE group, renegotiating certain agreements, and reducing personnel and other expenses.

Section 9 of the Recovery Plan describes the governance arrangements that provide oversight and direction in respect of the Recovery Plan, including design, implementation, testing, review, and ongoing maintenance. Specifically, overall responsibility for the Recovery Plan rests with the ICC Board. The ICC Board is responsible for reviewing and approving the Recovery Plan. The ICC

Board has, in turn, delegated to the ICC President responsibility for implementing the Recovery Plan, as well as considering and developing any needed amendments or modifications to the Recovery Plan over time, and the ICC President is accountable to the ICC Board with respect to such matters. Accordingly, ICC management prepared the Recovery Plan under the direction of the ICC President.

Section 9 also describes how ICC considers feedback from CPs and customers in developing the Recovery Plan, including through detailed consultation with CPs as to overall design and implementation. Moreover, Section 9 describes how ICC considers the interests of CPs and customers on an ongoing basis, including through the ICC Risk Committee and CP representation on the ICC Board.

Finally, Section 9 describes the process for reviewing and approving the Recovery Plan, including changes to the Recovery Plan and testing. ICC Management, the ICC Risk Committee, and the ICC Board are responsible for reviewing and approving the Recovery Plan. Annually, the ICC General Counsel coordinates with ICC management to review and update the Recovery Plan. Moreover, ICC's General Counsel coordinates with ICC management to revise the Recovery Plan promptly when warranted by material changes to ICC's Rules, policies, procedures, or other circumstances. The ICC Risk Committee reviews the annual update and ongoing material amendments to the Recovery Plan and make a recommendation to the ICC Board with respect to Board approval. The ICC Board considers the Risk Committee's recommendation and is ultimately responsible for approval of revisions to the Recovery Plan. ICC notifies its regulatory authorities of changes to the Recovery Plan. Section 9 notes that ICC tests the Recovery Plan at least annually, as part of its annual default management drills, and ICC management provides the results of such testing, as well as any changes it recommends due to such testing, to the ICC Board and Risk Committee.

Section 10 of the Recovery Plan analyzes the financial resources that ICC maintains for recovery in compliance with relevant regulations, including the procedures it follows in case of any shortfall. This section also discusses the timing for implementing ICC's recovery tools and ICC's projected estimated recovery and wind-down costs. Specifically, Section 10 provides that ICC maintains capital in accordance

with SEC Rule 17Ad-22(e)(15)⁸ as well as CFTC requirements and, on a voluntary basis, calculates what its regulatory capital requirement would be if ICC was subject to EU-based clearing house regulatory capital requirements. ICC maintains regulatory capital in an amount at least equal to the highest of these three requirements (Commission, CFTC, and EU). Section 10 provides that currently the EU regulatory capital requirement results in the highest capital requirement and therefore ICC maintains regulatory capital in accordance with this requirement, which results in ICC maintaining regulatory capital in an amount materially more than the amounts required by SEC Rule 17Ad-22(e)(15)⁹ or CFTC requirements. Section 10 then describes how ICC maintains this regulatory capital as liquid assets funded by equity and how ICC could raise additional capital from its parent company in the event of any shortfall in its regulatory capital. Finally, Section 10 describes the estimated costs and time period for implementing the Recovery Plan and how ICC estimates these figures, and demonstrates how ICC's regulatory capital exceeds these costs.

The remaining sections provide additional relevant information for the Recovery Plan. Section 11 provides financial information relevant to ICC and ICE. Section 12 sets forth key systems used by ICC to generate reports to monitor and support clearing operations. Section 13 consists of the appendices to the Recovery Plan, including a glossary, diagrams and charts of clearing processes and financial service providers, and analyses related to different stress scenarios and recovery tools. Section 14 is an index of exhibits to the Recovery Plan.

C. Wind-Down Plan

The Wind-Down Plan establishes how ICC could be wound-down in an orderly manner. ICC only invokes the Wind-Down Plan where recovery actions in the proposed Recovery Plan fail to preserve ICC's viability as a going concern (and therefore recovery is not possible) and resolution is not triggered. ICC could also use the Wind-Down Plan where ICC makes a business decision to exit all clearing activities. The proposed Wind-Down Plan is divided into 12 sections, which are detailed below.

Similar to the proposed Recovery Plan, the Wind-Down Plan provides necessary background and context regarding ICC for wind-down planning. Section 1 of the Wind-Down Plan

introduces the plan, summarizes key aspects of the Wind-Down Plan, and explains the plan's purpose. Section 2 provides an overview of ICC and the regulation to which it is subject, including key information regarding ICC's ownership structure and regulatory registrations and designations. Section 3 describes the regulatory requirements and obligations applicable to ICC, including regulatory guidance that ICC considered in writing the plan.

Section 4 of the Wind-Down Plan describes ICC's CPs and the governance arrangements that are relevant to wind-down, including the roles and responsibilities of the Board and Risk Committee. If ICC's recovery efforts fail, the ICC Board determines whether to implement the Wind-Down Plan and determines which options to use to achieve an orderly wind-down, taking into consideration the interests of CPs, through both the recommendations of the Risk Committee and the participation of CPs on the Board itself. ICC also regularly takes into account feedback of customers of CPs, both through its Advisory Committee and through direct communications with representatives of customers. Finally, Section 4 describes the ICC committees involved in the wind-down process, with the Risk Committee the principal committee involved in the wind-down process.

Next, Section 5 of the Wind-Down Plan describes the potential stress scenarios that could prevent ICC from meeting obligations and providing services, resulting in wind-down. Similar to the Recovery Plan, Section 5 categorizes the stress scenarios as: (i) CP default stress scenarios, and (ii) severe stress triggered by general business risks, operational risks, or other risks that may threaten ICC's viability as a going concern, other than a CP default ("non-CP default severe stress scenarios"). Appendix D further analyzes each scenario, including, among other things, the events triggering wind-down under each scenario. These triggering events fall into two broad categories: (i) A critical reduction in market participation, and (ii) a critical reduction in ICC's financial resources below regulatory capital requirements. With respect to a business decision to wind-down, the triggering event is the Board's decision to exit the business.

Section 6 examines ICC's options for wind-down, how ICC executes those options, and the potential obstacles to an orderly wind-down. ICC has three options for wind-down: (i) A transfer of CDS clearing activities from ICC to an

alternative clearinghouse; (ii) the sale of ICC to another entity; or (iii) the termination of open positions. Although Section 6 presents the three options as alternatives, it also notes that the options could be used in combination with each other. Section 6 also notes that while the selection of the wind-down option depends on the circumstances, ICC prefers a transfer or sale and considers termination only if a transfer or sale cannot be achieved. Moreover, ICC could use any these options in the event ICC makes a business decision to exit all clearing activities.

To execute these options, the ICC Board first makes a decision to wind-down, and as noted above, that is only in the event that recovery fails to preserve ICC's viability as a going concern and resolution is not triggered. Section 6 notes that before the Board makes a wind-down decision, ICC first consults with, among others, market participants, potential alternative clearing houses, and regulators. Moreover, once the ICC Board makes the decision to wind-down, ICC informs both the CFTC and the Commission.

After the ICC Board agrees in principle to a wind-down, ICC staff undertakes an analysis under the direction of the Board and may consult with CPs, market participants, alternative clearing houses, swap execution platforms, and regulators with respect to the options and approaches to wind-down, to gain their input and relevant information for consideration by the ICC Board. The ICC Board ultimately decides which of the options to use. Section 6 notes that, to the extent possible, ICC's primary determinant of feasibility for wind-down options is the ability to continue providing centralized clearing of CDS with as little disruption as possible. If continuation is not feasible, the primary determinant is the ability to discontinue CDS clearing services in an orderly manner with minimum negative impact to the marketplace and stakeholders.

Section 6 sets forth the plans that ICC uses for executing each wind-down option, including the approach, timeline, potential impediments, and other considerations. The Board considers and approves the execution plan prior to implementation. Where the Board makes a business decision to wind-down, ICC executes wind-down using one or more of the wind-down options listed above, with an execution plan based on those provided in the Wind-Down Plan.

Finally, Section 6 discusses the potential obstacles to executing an orderly wind-down. These obstacles

⁸ 17 CFR 240.17Ad-22(e)(15).

⁹ 17 CFR 240.17Ad-22(e)(15).

include, among others: Staff retention; the ability to continue to receive key services from affiliates or third party vendors; risk of litigation; and finding an appropriate buyer.

Section 7 describes the interconnections and interdependencies between ICC and other entities. Similar to the Recovery Plan, Section 7 analyzes the legal entities that are material to ICC for the Wind-Down Plan, the critical services provided to ICC by ICE or external third parties, and ICC's operational and financial interconnections. This analysis identifies ICE as ICC's sole MLE for the purpose of wind-down and explains the interconnection between ICE and ICC, including through services provided to ICC by ICE, such as accounting, human resources, audit, and facilities.

Again, similar to the Recovery Plan, Section 7 also (i) details the critical services that are necessary to continue daily operations of CDS clearing services; (ii) categorizes the critical services by those that are provided to ICC by ICE and those that are provided to ICC by external third parties; (iii) describes the IT systems and applications critical to ICC's clearing operations; and (iv) explains how ICC uses financial service providers and how ICC monitors entities that have multiple roles and relationships with ICC (such as a CP that also provides financial services to ICC).

Section 8 of the Wind-Down Plan analyzes ICC's contractual arrangements in the context of continuing services during wind-down.

Section 9 of the Wind-Down Plan analyzes the financial resources maintained by ICC to support wind-down in compliance with relevant regulations, including the procedures to follow in case of any shortfall. This section also discusses the timing for executing the wind-down options and ICC's projected estimated recovery and wind-down costs. As with the Recovery Plan, this section of the Wind-Down Plan notes that ICC maintains capital in accordance with SEC Rule 17Ad-22(e)(15)¹⁰ as well as CFTC requirements and, on a voluntary basis, calculates what its regulatory capital requirement would be if ICC was subject to EU-based clearing house regulatory capital requirements. ICC maintains regulatory capital in an amount at least equal to the highest of these three requirements (Commission, CFTC, and EU). Section 9 provides that currently the EU regulatory capital requirement results in the highest capital requirement and therefore ICC

maintains regulatory capital in accordance with this requirement, which results in ICC maintaining regulatory capital in an amount materially more than the amounts required by SEC Rule 17Ad-22(e)(15)¹¹ or CFTC requirements. Section 9 then describes how ICC maintains this regulatory capital as liquid assets funded by equity and how ICC could raise additional capital from its parent company in the event of any shortfall in its regulatory capital. Section 9 describes the estimated costs and time period for implementing the Wind-Down Plan and how ICC estimates these figures, and demonstrates how ICC's regulatory capital exceeds these costs.

Section 10 of the Wind-Down Plan describes the governance arrangements that provide oversight and direction in respect of the Wind-Down Plan, including design, implementation, testing, review, and on-going maintenance. Specifically, overall responsibility for the Wind-Down Plan rests with the ICC Board. The ICC Board reviews and approves the Wind-Down Plan. As explained in Section 10, the ICC Board has delegated to the ICC President responsibility for implementing the Wind-Down Plan, as well as considering and developing any needed amendments or modifications to the Wind-Down Plan over time, and the ICC President is accountable to the ICC Board with respect to such matters. Accordingly, ICC management prepared the Wind-Down Plan under the direction of the ICC President.

Section 10 also notes that in developing and approving the Wind-Down Plan, ICC management and the ICC Board consider the legitimate interests of CPs, customers of CPs, and other relevant stakeholders, and that ICC considers the legitimate interests of such stakeholders in the execution and implementation of the Wind-Down Plan.

Section 10 describes the process for reviewing and approving the Wind-Down Plan, including changes to the Wind-Down Plan and testing. ICC Management, the ICC Risk Committee, and the ICC Board review and approve the Wind-Down Plan. Annually, the ICC General Counsel coordinates with ICC management to review and update the Wind-Down Plan. Moreover, ICC's General Counsel coordinates with ICC management to revise the Wind-Down Plan promptly when warranted by material changes to ICC's Rules, policies, procedures, or other circumstances. The ICC Risk Committee reviews the annual update and ongoing

material amendments to the Wind-Down Plan and makes a recommendation to the ICC Board with respect to Board approval. The ICC Board considers the Risk Committee's recommendation and is ultimately responsible for approval of revisions to the Wind-Down Plan. ICC notifies its regulatory authorities of changes to the Wind-Down Plan. Section 10 notes that ICC tests the Recovery Plan at least annually, as part of its annual default management drills, and ICC management provides the results of such testing, as well as any changes it recommends due to such testing, to the ICC Board and Risk Committee.

Finally, Section 10 describes the governance for implementation of the Wind-Down Plan. As discussed elsewhere in the Wind-Down Plan, the ICC Board decides whether to wind-down and selects the option to use to achieve an orderly wind-down. ICC informs both the Commission and the CFTC of the decision to wind-down. The ICC President is responsible for implementing and overseeing the execution of the wind-down option chosen by the ICC Board.

The remaining sections provide additional relevant information for the Wind-Down Plan. Section 11 contains appendices, including a glossary, diagrams and charts of both clearing processes and financial service providers, and analyses related to different stress scenarios. Lastly, Section 12 is an index of exhibits to the Wind-Down Plan.

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.¹² After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act;¹³ Rules 17Ad-22(e)(2)(i), (iii), and (v);¹⁴ Rule 17Ad-22(e)(3)(ii);¹⁵ and Rules 17Ad-22(e)(15)(i) and (ii).¹⁶

¹² 15 U.S.C. 78s(b)(2)(C).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

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

¹⁵ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁶ 17 CFR 240.17Ad-22(e)(15)(i) and (ii).

¹⁰ 17 CFR 240.17Ad-22(e)(15).

¹¹ 17 CFR 240.17Ad-22(e)(15).

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) 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.¹⁷

As discussed in greater detail below, the Commission believes that the Recovery Plan, generally, is designed to help ICC promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, by providing a roadmap for actions it may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize. Specifically, as described above, the Recovery Plan establishes triggers for the potential application of the recovery tools described in the Recovery Plan. The Commission believes that establishing such triggers alongside a list of available recovery tools helps ICC more promptly determine when and how it may need to manage a significant stress event, and, as needed, stabilize its financial condition.

Moreover, as described above, the Recovery Plan specifies the steps that ICC takes in recovery and the governance framework applicable to taking such steps. It analyzes the anticipated impact of the recovery tools, the incentives created by such tools, and the risks associated with using such tools. It also explains how the tools are transparent, measurable, manageable, and controllable. The Commission believes that by identifying the steps ICC takes and the tools it uses to bring about recovery in the face of losses, the Recovery Plan increases the likelihood that recovery is orderly, efficient, and successful. By increasing the likelihood of an orderly, efficient, and successful recovery, the Commission believes that the Recovery Plan enhances ICC's ability to maintain the continuity of its CDS clearing service during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate settlement of CDS transactions. The Commission also believes that the Recovery Plan helps assure the

safeguarding of securities or funds in the custody or control of ICC by reducing the likelihood of a disorderly or unsuccessful recovery that could disrupt access to such securities or funds.

Further, the Commission believes that the Wind-Down Plan, generally, is designed to help ICC to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible by providing a roadmap to wind-down designed to ensure the availability of ICC's services to the marketplace, while reducing disruption to the operations of CPs and financial markets. For example, as described above, the Wind-Down Plan provides for the wind-down of ICC's operations as well as addressing transfer of membership and critical services in the case that recovery tools fail to return ICC to financial viability. Moreover, under the Wind-Down Plan, the ICC Board seeks a wind-down option that allows the continuance of centralized clearing of CDS with as little disruption as possible. Further to that end, the Wind-Down Plan notes that while the selection of the wind-down option depends on the circumstances, ICC prefers a transfer or sale and considers termination only if a transfer or sale cannot be achieved. By establishing the Wind-Down Plan to enable continuity in ICC's critical services and membership in an orderly manner while winding down its services, the Commission believes that the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible.

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 or control or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.¹⁸

B. Consistency With Rules 17Ad-22(e)(2)(i), (iii), and (v)

Rules 17Ad-22(e)(2)(i), (iii), and (v) require that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; that support the public interest requirements

in 17A of the Act¹⁹ applicable to clearing agencies, and the objectives of owners and participants; and that specify clear and direct lines of responsibility.²⁰

As described above, the Plans are designed to identify clear lines of responsibility concerning the recovery and wind-down of ICC including (i) the ongoing development of the Plans; (ii) the ongoing maintenance and testing of the Plans; (iii) reviews and approvals of the Plans and updates to the Plans; and (iv) the functioning and implementation of the Plans. As described above, the ICC General Counsel coordinates with ICC management to review and update the Plans annually, or more frequently when warranted by material changes to ICC's Rules, policies, procedures, or other circumstances. The ICC Risk Committee reviews the annual update and ongoing material amendments to the Plans and makes a recommendation to the ICC Board with respect to Board approval. The ICC Board considers the Risk Committee's recommendation and is responsible for approving revisions to the Plans. Moreover, the Plans describe the governance for implementation of recovery and wind-down, including the parties responsible for execution of recovery tools and wind-down options. The Plans also explain how ICC receives input from relevant stakeholders, including CPs through the ICC Risk Committee and CP representation on the ICC Board, and customers of CPs through ICC's Advisory Committee and direct communications with customer representatives.

In considering the above, the Commission believes that the Plans help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent by specifying lines of control and responsibility. The Commission also believes that the Plans help contribute to establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Act²¹ applicable to clearing agencies, and the objectives of owners and participants, because they specify the process ICC takes to receive input from various ICC stakeholders. In addition, the Commission believes that the Plans help contribute to

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 15 U.S.C. 78q-1.

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

²¹ 15 U.S.C. 78q-1.

establishing, implementing, maintaining, and enforcing written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility because they identify who is responsible for the ongoing development, maintenance, reviews, approval, functioning, and implementation of the Plans.

Therefore, the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v).²²

C. Consistency With Rule 17Ad–22(e)(3)(ii)

Rule 17Ad–22(e)(3)(ii) requires that ICC 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.²³

As described above, the Recovery Plan provides a plan for ICC's recovery necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses by defining the recovery tools that ICC may use to address stress scenarios that could eventually prevent ICC from being able to provide its critical services as a going concern. For example, the Recovery Plan describes (i) the potential stress scenarios that may prevent ICC from being able to meet obligations and provide services; (ii) the mechanisms ICC uses to monitor for the occurrence of such scenarios; and (iii) the tools ICC uses to recover from those stress scenarios, including when and how ICC uses those tools. Moreover, the Recovery Plan discusses the tools that are available to ICC to address a situation where ICC experiences liquidity shortfalls triggered by a default of one or more CPs and has insufficient liquid resources in the proper currency to meet payments obligations. Therefore, the Commission believes the Recovery Plan helps ICC 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 a plan for the recovery of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

As discussed above, the Wind-Down Plan provides a plan for orderly wind-down of ICC in the event the actions described in the Recovery Plan fail to preserve ICC's viability as a going concern and resolution is not triggered. Once triggered, the Wind-Down Plan is designed to maintain continued access to ICC's critical services and minimize market impacts while ICC seeks to ultimately wind-down its services. Moreover, the Wind-Down Plan provides options for wind-down and describes plans for executing those options, as well as the responsibilities of various groups at ICC. The ICC Board seeks a wind-down option that allows the continuance of centralized clearing of CDS with as little disruption as possible and gives preference to a transfer or sale, to minimize the disruption to the marketplace and ICC's CDS clearing service. Therefore, the Commission believes that the Wind-Down Plan helps ICC 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 a plan for the orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(3)(ii).²⁴

D. Consistency With Rules 17Ad–22(e)(15)(i) and (ii)

Rules 17Ad–22(e)(15)(i) and (ii)²⁵ require that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage ICC's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that ICC can continue operations and services as a going concern if those losses materialize, including by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as

appropriate, of its critical operations and services if such action is taken and (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of ICC's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of ICC, as contemplated by the plans established under Rule 17Ad–22(e)(3)(ii).²⁶

As discussed above, both of the Plans describe how ICC maintains capital in accordance with SEC Rule 17Ad–22(e)(15).²⁷ ICC does so by maintaining regulatory capital as if it was subject to EU-based clearing house regulatory capital requirements, which results in ICC maintaining an amount of capital exceeding what is required by Rule 17Ad–22(e)(15).²⁸ Moreover, the Plans describe how ICC ensures that it maintains this amount, including through monthly calculations of ICC's net assets and its regulatory capital requirements. The Plans also describe how ICC maintains this regulatory capital as liquid assets funded by equity and how ICC could raise additional capital from its parent company in the event of any shortfall in its regulatory capital. Finally, the Plans describes the estimated costs and time period for implementing recovery and wind-down and how ICC estimates these figures, and demonstrate how ICC's regulatory capital exceeds these costs.

Therefore, the Commission finds that the proposed rule change is consistent with Rules 17Ad–22(e)(15)(i) and (ii).²⁹

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 Act,³⁰ Rules 17Ad–22(e)(2)(i), (iii), and (v),³¹ Rule 17Ad–22(e)(3)(ii),³² and Rules 17Ad–22(e)(15)(i) and (ii).³³

It is therefore ordered pursuant to Section 19(b)(2) of the Act³⁴ that the proposed rule change (SR–ICC–2021–005) be, and hereby is, approved.³⁵

²⁶ 17 CFR 240.17Ad–22(e)(3)(ii).

²⁷ 17 CFR 240.17Ad–22(e)(15).

²⁸ 17 CFR 240.17Ad–22(e)(15).

²⁹ 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

³⁰ 15 U.S.C. 78q–1(b)(3)(F).

³¹ 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

³² 17 CFR 240.17Ad–22(e)(3)(ii).

³³ 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 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).

²² 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

²³ 17 CFR 240.17Ad–22(e)(3)(ii).

²⁴ 17 CFR 240.17Ad–22(e)(3)(ii).

²⁵ 17 CFR 240.17Ad–22(e)(15)(i) and (ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91830; File No. SR-BX-2021-012]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell

May 10, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 27, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“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

The Exchange proposes to relocate its equity and general rules from its current Rulebook into its new Rulebook shell.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, 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 purpose of this rule change is to relocate BX’s equity and general rules from the current Rulebook into the new Rulebook shell.³ The Exchange also proposes a number of minor, non-substantive changes to the Rulebook shell as described below. The relocation and harmonization of these rules is part of the Exchange’s continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of these rules into their new location in the Rulebook shell will facilitate the use of the Rulebook by members.

Universal Changes

The Exchange proposes to update all cross-references within the Rulebook shell to the new relocated rule cites. The Exchange proposes to replace internal rule references to simply state “this Rule” where the rule is citing itself without a more specific cite included in the Rule. For example, if BX Rule 4619 refers currently to “Rule 4619” or “this Rule 4619” the Exchange will amend the phrase to simply “this Rule.” Except where the Exchange specifies below that it will retain the current rule numbering, the Exchange also proposes to conform the paragraph numbering and lettering to that used in the Rulebook shell for greater consistency, and to correct punctuation. The Exchange proposes to rename the term “Commentary” with “Supplementary Material.” Furthermore, the Exchange proposes to delete reserved rules, other than those within the 5000 Series Rules and 11100 Series Rules which are both being relocated without deleting the reserved rules, with the exception of Rules 5300 and 5400, which are currently reserved, and are being deleted. The Exchange also proposes to delete rules that are currently marked as deleted.

The Exchange proposes to update the references to the 9000 Series and 9600 Series to refer to the General 5, 9000 Series and General 5, 9600 Series respectively in connection with a prior rule change that incorporated Nasdaq

General 5, Rule 9000 and 9600 Series into BX General 5.⁴

The Exchange also proposes to delete the following section headers that are currently within the BX Rules: 2100. General Standards; 2800. Special Products; 2900. Responsibilities to Other Brokers or Dealers;⁵ 2000A. Business Conduct; 3000. Responsibilities Relating to Associated Persons, Employees, and Others’ Employees; 3300. Trading; 4000. Listing and Trading on the Exchange; 4100. General; 4400. Other Listing Rules; 4600. Requirements for Equities Market Makers and Other Participants in the Nasdaq BX Equities Market; 4610. Registration and Other Requirements; 4700. The Nasdaq BX Equities Market; 4750. Execution Services; 5000. BX Venture Market Listing Rules; 6000. Other Systems and Programs;⁶ 7000A. Order Audit Trail Series; 7400A. Order Audit Trail System; and 11000. Uniform Practice Code.

General 1

The Exchange proposes to amend the section heading from General 1, General 1 to General 1, Section 1. The Exchange also proposes to retitle General 1, Section 1 from “General Provisions” to “Definitions.” The Exchange proposes to update the citations within General 1, Section 10 (Exchange Review Council) to account for rule relocations proposed herein and remove the word “Rules” associated with the citations.

General 2

The Exchange proposes to relocate Rule 4615 (Sponsored Participants) to General 2, Section 22, which is currently reserved, to harmonize the Exchange’s rule numbering to that of Nasdaq PHLX LLC (“Phlx”) General 2, Section 22, which currently sets forth the same rule on Phlx.

General 3

The Exchange proposes to reword references to the Nasdaq Rule 1000 Series to Nasdaq General 3, Rule 1000 Series to reflect the placement and numbering of the rule within the

⁴ See Securities and Exchange Act Release No. 88938 (June 1, 2020), 85 FR 33235 (May 26, 2020) (SR-BX-2020-009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the BX Disciplinary Rules and Incorporate by Reference the Disciplinary Rules of The Nasdaq Stock Market LLC).

⁵ BX proposes to delete the other non-substantive rule text under this header which replicates the header and indicates that Rule 2910 was deleted.

⁶ BX proposes to delete the non-substantive reference to 6800 which is reserved under this header.

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Previously, the Exchange filed to relocate other rules within its Rulebook. See Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR-BX-2019-039).