SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change to Amend the ICE Clear Credit Clearing Rules

November 16, 2016.

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 November 4, 2016, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. 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 principal purpose of the proposed rule change is to revise the ICC Rulebook (the ''Rules'') to amend the ICC Clearing Rules (''ICC Rules'') relating to default management, clearing house recovery and wind-down, and to adopt certain related default auction procedures.

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

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

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

(a) Purpose

ICC submits proposed amendments to the ICC Rules relating to clearing house default management, recovery and wind-down to address the risk of uncovered losses from a clearing participant (''Participant'') default or series of Participant defaults, among other risks. ICC also proposed to adopt two related sets of new default auction procedures: initial default auction procedures and secondary default auction procedures.[3]

I. Summary of Proposed Amendments

The amendments would, among other matters:

(i) Enhance existing tools and establish new tools and procedures (and an order of priority for using such tools and procedures) to manage a Participant default or series of defaults and return to a matched book, specifically:

(A) Initial default auctions, to be conducted in accordance with a defined set of default auction procedures;

(B) if such initial default auctions are not fully successful, conducting a secondary auction of all remaining positions, to be conducted in accordance with a defined set of secondary auction procedures; and

(C) if a secondary auction is unsuccessful, partial tear-up of positions of non-defaulting Participants corresponding to the defaulter's remaining portfolio; (Rules 20–605(d)–(f), 809)

(ii) in connection with the new default management steps described in (i) above, eliminate forced allocation as a default management tool; (Rule 20–605(c))

(iii) in connection with these default management steps, provide the ability to implement reduced gains distributions (a.k.a., variation margin haircutting) following exhaustion of other financial resources for up to five business days; (Rule 808)

(iv) adopt new governance and consultation requirements for the use of these default tools and procedures; (Rule 20–605(l))

(v) clarify in the Rules the distinction between the obligation of a Participant to ''replenish'' its guaranty fund contribution and its obligation to meet additional ''assessments'' that may be levied in respect of a Participant default. Consistent with the existing Rules, a Participant's liability for assessment contributions will remain capped at ''1x'' its guaranty fund contribution in respect of any single default; (Rule 803)

(vi) establish a ''cooling-off period'' triggered by certain Participant defaults that result in guaranty fund depletion, in which case the aggregate liability of Participants for replenishments of the guaranty fund and assessments would be capped at ''3x'' its guaranty fund contribution for all defaults during that period; (Rule 806)

(vii) establish a new process under which a Participant may withdraw from the clearing house, both in the ordinary course of business and during a cooling-off period, and related procedures for unwinding all positions of such a Participant and capping its continuing liability to ICC; (Rule 807)

(viii) move ICC's current ''pro rata'' contribution to the guaranty fund higher in the priority waterfall of default resources; and (Rule 802(b))

(ix) clarify the procedures for full clearing service termination, where that is determined to be appropriate by ICC. (Rule 810)

The proposed amendments are described in more detail in the following sections:

II. Revisions to Default Management Tools and Steps

Rule 20–605, which specifies ICC's remedies upon a Participant default, has been substantially revised, both to implement the additional recovery tools discussed herein and to improve overall clarity. ICC's existing default remedies (as modified as discussed herein), such as initial default auctions, are referred to in the revised rule as ''Standard Default Management Actions''. The additional default management tools being adopted, such as secondary auctions, partial tear-up and reduced gain distributions, are referred to in the revised rule as ''Secondary Default Management Actions''. As discussed herein, additional governance and other requirements apply to Secondary Default Management Actions.

Overall Structure of Revised Rule 20–605

Rule 20–605 has been restructured to reflect the distinction between Standard Default Management Actions and Secondary Default Management Actions referred to in the preceding paragraph, and to make certain drafting improvements. In the revised rule:

- Rules 20–605(a) and (b) set out the definition of Default and ICC's ability to declare a Participant in Default, which are substantially the same as in the current Rule.
- Rule 20–605(c) specifies the Defaulting Participant's resources that may be used to cover losses (and the order in which those resources may be applied). In substance, it is consistent with the current Rule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the auction procedures will not be published, ICC will make such procedures available to all Participants, subject to existing confidentiality arrangements between ICC and Participants and the confidentiality provisions set forth in the auction procedures. ICC will also make such procedures available to customers of Participants at the request of such customers (and/or permit Participants to do so), subject to confidentiality arrangements.

• Rule 20–605(d) and (e) provide for Standard Default Management Actions, which are largely consistent with the current Rules but include the improvements to initial default auctions discussed below. Rule 20–605(e) also sets out the ability of ICC to defer the use of Standard Default Management Actions (which is largely consistent with the current Rules) or bypass the use of Standard Default Management Actions and proceed to the use of Secondary Default Management Actions.

• Rule 20–605(f) provides for the Secondary Default Management Actions, as discussed below.

• Rule 20–605(l) has been revised to impose enhanced governance procedures for Secondary Default Management Actions and certain other matters, as discussed below. As revised, Rule 20–605(l) specifies certain default management actions to be taken in consultation with the CDS Default Committee and other default management actions to be taken in consultation with the Risk Committee. The rule also requires that certain default management actions be taken by the ICC Board (and provides that such decisions may not be delegated to an officer).

Initial Default Auctions

As revised, Rule 20–605(d)(v) provides for ICC to run one or more default auctions with respect to the remaining portfolio of the defaulting Participant.

Default auctions are to be conducted in accordance with a new defined set of default auction procedures. Under those procedures, ICC may break the portfolio into one or more lots, each of which will be auctioned separately. Participants will have an obligation to bid for each lot in a minimum amount determined by ICC. (A Participant may transfer or outsource its minimum bid requirement to an affiliated Participant, and similarly a Participant may aggregate its own minimum bid requirement with that of its affiliated Participant.) A minimum bid requirement will not apply where the bid would be in breach of applicable law or the Rules (including Rules relating to entry into self-referencing credit default swaps) or where the relevant lot includes sovereign credit default swaps referencing the country in which the Participant (or its ultimate parent) is domiciled.

Non-Participants may bid indirectly through a Participant. In addition, Non-Participants have the option to bid directly in the auction, provided that (i) a Participant has confirmed that it will clear any resulting transactions of the Non-Participant; (ii) the Non-Participant makes a minimum deposit of US$10 million which may be applied by ICC in the same manner as Participants' guaranty fund contributions (*e.g.,* subject to ''juniorization'' as described below); and (iii) the Non-Participant has entered into an agreement with ICC pursuant to which it agrees to the auction terms and confidentiality requirement in the same manner as they apply to Participants. If an auction for any lot or lots fails, as determined in accordance with the default auction procedures, ICC may determine to have a subsequent default auction or auctions under these auction procedures.

The auction for each lot will be conducted as a modified Dutch auction, with all winning bidders paying or receiving the auction clearing price.

Under Rule 802(b)(i)(B), all available default resources (both pre-funded guaranty fund contributions of Participant, assessment contributions of Participant and ICC contributions to the guaranty fund) may be used to pay the cost of an initial default auction. Guaranty fund and assessment contributions of non-defaulting Participants are subject to ''juniorization'' and will be applied using a defined default auction priority set out in the default auction procedures based on the competitiveness of their bids. A portion of each Participant's guaranty fund contributions is allocated to the auction cost of each lot, and is further divided into three tranches. The lowest (and first-used) tranche consists of contributions of Participants that failed to bid in the required amount in the relevant auction. The second, or subordinate, tranche includes contributions of Participants whose bids were less competitive than a defined threshold based on the auction clearing price. The final, or senior, tranche includes contributions of Participants whose bids were more competitive than a second threshold. (For Participants who bid in the band between the two thresholds, their contributions will be allocated between the senior and subordinate tranches based on a formula.) Thus, contributions of Participants who fail to bid will be used before those who bid, and contributions of those who bid uncompetitively will be used before those who bid competitively. A parallel juniorization approach applies to the use of assessment contributions. With this design, ICC believes that the default auction procedures give Participants a strong incentive to bid competitively, with the goal of reaching an efficient auction clearing price that permits the clearing house to close out the defaulter's portfolio within the resources of the clearing house.

Secondary Auction

If the initial default auctions are not fully successful in closing out the defaulting Participant's portfolio, ICC will proceed to use Secondary Default Management Actions with respect to the remaining portfolio. The first such step would be to conduct a secondary auction with respect to the defaulter's remaining portfolio under Rule 20–605(f)(ii). (As discussed below, ICC may in certain circumstances invoke reduced gains distributions in connection with such an auction.)

The secondary auction will be conducted pursuant to a separate set of secondary auction procedures. The secondary auction will also use a modified Dutch auction format, with all winning bidders paying or receiving the auction clearing price. ICC will endeavor to auction off the remaining portfolio in a single lot, although it may break the portfolio into separate lots if certain Participants are not able to bid on particular contracts or it otherwise determines that doing so would facilitate the auction process. A secondary auction for a lot will be deemed successful if it results in a price for the lot that is within ICC's remaining default resources, which will be allocated to each lot for this purpose based on the initial margin requirements for the lot. The secondary auction procedures contemplate that non-Participants may bid directly in the secondary auction (without need for a minimum deposit, but provided that a Participant has confirmed that it will clear any resulting transactions of the Non-Participant), or may bid through a Participant.

Under Rule 802(b)(i)(B), in the case of a secondary auction, ICC will apply all remaining clearing house default resources. Guaranty fund and assessment contributions of non-defaulting Participants, to the extent remaining, will be subject to ''juniorization'' in a secondary auction, similar to that described above for initial default auctions, in accordance with the secondary auction priority set forth in the secondary auction procedures.

If a secondary auction is unsuccessful for any lot, ICC may run another secondary auction for that lot on a subsequent business day. ICC may repeat this process as necessary. However, pursuant to Rule 808(e), if ICC has invoked reduced gains distributions, the last attempt at a secondary auction (if needed) will occur on the last day of the five-business-day reduced gain

distribution period. On that last day, the secondary auction for each lot will be successful if it results in a price that is within the default resources for such lot. ICC may also determine, for a secondary auction on that last day, that an auction for a lot will be partially filled. With respect to any lot that is not successfully auctioned, in whole or in part, ICC will proceed to partial tear-up under Rules 808(e) and 809, as described below.

Partial Tear-Up

If the secondary auction does not result in the close out of all of the defaulter's remaining portfolio within the clearing house's remaining resources, then ICC will proceed to a partial tear-up of the remaining positions under Rules 20–605(f)(iii) and 809. Under Rule 809(a), ICC will be permitted to use partial tear-up only after it has attempted one or more initial default or secondary auctions. Pursuant to revised Rule 20–605(l)(iv) and (v), ICC must consult with the Risk Committee before invoking partial tear-up, and any decision to use partial tear-up must be made by the ICC Board. Rule 809(b) specifies certain notice requirements in connection with any partial tear-up.

Pursuant to Rule 809(c), in a partial tear-up, ICC will terminate positions of non-defaulting Participants that exactly offset those in the defaulting Participant's remaining portfolio (*i.e.,* positions in the identical contracts and in the same aggregate notional amount) (''Tear-Up Positions''). ICC will terminate Tear-Up Positions across both the house and customer origin accounts of all non-defaulting Participants that have such positions, on a pro rata basis. Within the customer origin account of a non-defaulting Participant, Tear-Up Positions of customers will be terminated on a pro rata basis. Where ICC has entered into hedging transactions relating to the defaulter's positions that will not themselves be subject to tear-up, ICC may offer to assign or transfer those transactions to Participants with related Tear-Up Positions.

ICC will determine a termination price for all Tear-Up Positions, in accordance with Rule 809(e) based on the last established end-of-day mark-to-market settlement price. Under Rules 809(b)(iv) and (d), tear-up will occur contemporaneously with the determination of such price (at 5 p.m., New York time). Because the termination price will equal the current mark-to-market value as determined pursuant to the ICC end-of-day settlement price process (and will be satisfied by application of mark-to-market margin posted (or that would have been posted but for reduced gain distribution) under Rule 809(d)), no additional amount will be owed by ICC in connection with the tear-up.

Reduced Gains Distributions

As an additional Secondary Default Management Action, where ICC has exhausted its remaining available default resources (including assessment contributions), ICC may invoke reduced gain distributions under Rules 20–605(f)(i) and 808 for up to five consecutive business days. Reduced gain distribution will allow ICC to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to Participants, as it attempts a secondary auction or conducts a partial tear-up. Rule 808(b) specified certain conditions to the commencement of reduced gain distribution, including that ICC has exhausted all other available default resources and has determined that reduced gain distribution is appropriate in connection with a secondary auction or partial tear-up. Pursuant to revised Rule 20–605(l)(iv) and (v), ICC must consult with the Risk Committee before using reduced gain distribution, and any decision to use reduced gain distribution must be made by the ICC Board. Rule 808(c) specifies certain notice requirements in connection with reduced gain distributions.[4]

Pursuant to Rule 808(d), at the end of each day in the five business day period, ICC must determine whether it expects that there will be favorable conditions for completing a successful secondary auction. If so, ICC may continue the reduced gain distribution for that day.

Under Rule 808(e), if ICC conducts a successful secondary auction on any day, any reduced gain distribution period that is in effect will end. If ICC has been unable to conduct a successful secondary auction by the end of the five business day reduced gain distribution period, ICC will proceed to conduct a partial tear-up under Rule 809 as of the close of business on such fifth business day.

Pursuant to Rule 808(f) and (h), if reduced gain distribution applies on any day, the net amount owed on such day to each Participant that is deemed to be a ''cash gainer'' in respect of its house or customer origin account (*i.e.,* a Participant that would otherwise be entitled to receive mark-to-market margin or other payments in respect of such account) will be subject to a percentage haircut. Haircuts are determined independently on each day of reduced gain distribution. Haircuts are applied separately for the house and customer origin accounts. Under Rule 808(p), within the customer origin account, haircuts are applied on a gross basis across the different customer portfolios, such that each customer portfolio receives the same haircut percentage. For each day of reduced gain distribution, ICC will notify Participants and the market more generally of the amount of the reduction, through a circular made available in the ordinary course on its Web site and through electronic distribution, promptly following the close of business on such day and completion of the relevant calculations as of the close of business (which is expected to be at approximately 7:30 p.m. New York time), in accordance with Rule 808(c).

Following the conclusion of the closing-out process for a default, ICC will apply any recoveries from the defaulting Participant to make payments to non-defaulting Participants in an amount equal to the aggregate net amount of haircuts made during the period of reduced gain distributions, pursuant to Rule 808(m).

Removal of Forced Allocation as a Default Management Tool

Existing Rule 20–605(c)(vii), which allowed ICC to make a forced allocation of positions in the defaulter's portfolio, has been removed in light of the new default management tools described above.

Governance for Use [sic] Default Management Tools

The proposed amendments add new governance requirements around the ICC's use of the revised default management tools.

Under new Rule 20–605(l)(iii), ICC will consult with its CDS Default Committee with respect to establishing the terms for default auctions and secondary auctions, including defining different lots for default auctions. In the context of an initial auction, ICC will also consult with the CDS Default Committee as to whether to hold additional such auctions and/or to accept a partial fill of any lot in such an auction. Under existing Rule 20–617, CDS Default Committee members consist of experienced trading personnel at Participants that serve on the CDS Default Committee on a rotating basis and who are seconded to ICC to assist with default management. Under revised Rule 20–617(g), and consistent

[4] An error in the description of rule 808(c) was corrected by SEC staff and confirmed by ICC counsel via email on November 15, 2016.

with current practice, seconded committee members are required to act in the best interests of ICE Clear Credit (rather than in the interests of their Participant firm). Members of the CDS Default Committee are expected to work together with, and under the supervision of, the ICC risk department, and are also supported by legal, compliance and other relevant ICC personnel. Ultimate decisions as to matters subject to consultation with the CDS Default Committee will be made by ICC management.

Under new Rule 20–605(l)(iv), ICC will consult with its Risk Committee, to the extent practicable, with respect to key decisions involving Secondary Default Management Actions, including whether to hold a secondary auction, invoke reduced gains distribution, implement a partial tear-up and/or terminate the clearing service. The amendments also establish notice and similar procedures for Risk Committee consultation in this context, and address circumstances in which such consultation is impracticable (in which case ICC may act without prior consultation but must generally consult as soon as is practicable). In particular, under the ICC Code of Business Conduct and Ethics for Committee Members,[5] the Risk Committee is charged with acting in the interests of the clearing house, rather than the interests of individual members (or the Participants they may represent). Consistent with its current practice, the Risk Committee would be provided with detailed, confidential information concerning the proposed actions to be taken. Under Chapter 5 of the Rules and the Charter of the Risk Committee,[6] the committee is to have the resources and authority appropriate to discharge its function. Under the Rules, the role of the Risk Committee is advisory, and accordingly, the final decision with respect to Secondary Default Management Actions (like other actions) will rest with the ICC Board as discussed below. In practice, ICC management and the ICC Board have worked collaboratively with the Risk Committee, and there is no history of the ICC Board acting over the objection of the Risk Committee. As discussed below, Participants and their interests are also significantly represented on the ICC Board.

[5] An error in the title of ICC Code of Business Conduct and Ethics for Committee Members was corrected by SEC staff and confirmed by ICC counsel via email on November 9, 2016.

[6] An error in the title of Rules and the Charter of the Board of Managers of ICC was corrected by SEC staff and confirmed by ICC counsel via email on November 9, 2016.

In addition, new Rule 20–605(l)(v) provides that certain key decisions involving Secondary Default Management Actions must be made by majority vote of the ICC Board (and may not be delegated to an officer). These include whether to hold a secondary auction, invoke reduced gains distribution, implement a partial tear-up and/or terminate the clearing service. Under the existing constitutive documents of the clearing house, including the Board charter and Governance Playbook, a majority of the ICC Board is required to be independent of ICC management. In addition, under the Board charter, four of the eleven members of the Board are designated by the Risk Committee (two of which are independent of Participants and two of which need not be so independent (and thus may be representatives of Participants)).

III. Clarifications of Guaranty Fund Requirements and Uses

Various clarifications and conforming changes have been made to the provisions of Rules 801 and 802, which address the contributions to and uses of the guaranty fund. Provisions in Rules 803 and 804 have also been moved and reorganized. These changes include the following:

- The changes clarify the distinction between the obligation of a Participant to ''replenish'' its guaranty fund contribution (Rule 803(a)) and its obligation to make ''assessment contributions'' (Rule 803(b)). These clarifications do not change the substance of existing requirements. For this purpose, an ''assessment'' provides additional resources beyond funded resources to cover losses from a particular default that has already occurred. By contrast, a ''replenishment'' is designed to restore the required level of the guaranty fund following application thereof, and thus replenishments are to be used to cover future potential defaults.
- Rule 803(b) also permits assessments to be called in anticipation of any charge against the guaranty fund following a default, rather than only after such a charge.
- A parallel distinction has been made with respect to ICC's contribution to the guaranty fund between required replenishments and additional contributions where assessments have been levied on Participants (subject to a similar 1x limit per default (which is $25 million), and an aggregate 3x limit for replenishments and assessments in a cooling-off period (which is $75 million)). (Rule 801(b)).
- ICC's current ''pro rata'' contribution to the guaranty fund has been moved higher in the priority waterfall, such that it will be used prior to the application of guaranty fund contributions of non-defaulting Participants. Similarly, additional ICC contributions to the guaranty fund where assessments have been levied on Participants will be applied before such assessments. (Rule 801(b))
- Rule 801(a) has been revised generally to conform to the revised assessment limitations set forth in the other rules in Chapter 8.
- Rules 802(a) and (c), which address the allocation of recoveries from a defaulting Participant, have been simplified and revised to conform to the other changes in the default waterfall.
- Rule 802(c) has also been revised to state ICC's obligations with respect to seeking recoveries from a defaulting Participant. Specifically, ICC will exercise the same degree of care in enforcement and collection of any claims against the defaulter as it exercises with respect to its own assets that are not subject to allocation to Participants and others.

IV. Cooling-Off Period

New Rule 806 implements the ''cooling-off period'' concept. (Related definitions, including for ''cooling-off period,'' ''cooling-off period trigger event,'' ''cooling-off termination period'' and ''sequential guaranty fund depletion,'' have been included in Rule 102.) A ''cooling-off period'' is triggered by certain calls for assessments or by sequential guaranty fund depletion within a 30 calendar day period. Pursuant to Rule 806(b), liability of Participants for assessments as a result of the default or defaults that triggered the cooling-off period or that occur during the cooling-off period remains capped at ''1x'' the required guaranty fund contribution per default. In addition, the total amount of replenishments and assessment contributions during the cooling-off period cannot exceed three times the required guaranty fund contribution, regardless of the number of defaults during the period. The foregoing caps are based on a Participant's individual guaranty fund contribution immediately prior to the default that triggered the cooling-off period. Under Rule 806(e), Participants may also be required to provide additional initial margin during the period, which will facilitate ICC's ability to continue to satisfy its regulatory minimum financial resources requirements.

V. Participant Withdrawal

New procedures for the withdrawal of Participants are added in revisions to Rule 207 and new Rule 807. These apply both to ordinary course terminations outside of a default scenario and termination during a cooling-off period. Under Rule 807(a), Participants may withdraw from ICC during a cooling-off period by providing an irrevocable notice of withdrawal in the first 10 business days of the period (subject to extension in certain cases if the cooling-off period is extended). Participants may withdraw from ICC at other times by notice to ICC under Rule 207. In either case, Participants must close out all outstanding positions by a specified deadline, generally within 20 to 30 business days following notice of withdrawal. Withdrawal is not effective, pursuant to Rule 807, until the Participant has closed out all outstanding positions and satisfied any related obligations, and a withdrawing Participant remains liable under Rule 807(b) with respect to charges and assessments resulting from defaults that occur before such time. Under Rule 807(f), a Participant that seeks to withdraw other than during the first 10 business days of a cooling-off period may, at the direction of ICC, be required to make a deposit of up to three times its required guaranty fund contribution (including any Specific WWR Guaranty Fund Contribution). Such a deposit would not impose new liabilities on the Participant, but provide assurance that the withdrawing Participant will continue to meet its obligations in respect of defaults and potential defaults before its withdrawal is effective. It thus reduces the potentially destabilizing effect that Participant withdrawal (or a series of Participant withdrawals) could have on the clearing house during a stressed situation. Rule 807(a) also specifies the timing for the return of guaranty fund contributions to a withdrawing Participant. Certain related definitions (including ''termination close-out deadline date'' and ''termination date'') have been added in Rule 102.

VI. Clearing Service Termination

New Rule 810 revises and replaces current Rule 804, and addresses the procedures for full clearing service termination. As under current Rule 804, full termination will occur following an ICC default as provided in Rule 805, and in circumstances where termination is otherwise determined to be appropriate by the ICC Board in consultation with the Risk Committee. In the latter case, pursuant to revised Rule 20–605(l)(iv) and (v), ICC must consult with the Risk Committee before terminating the clearing service, and any decision to do so must be made by the ICC Board.

Rule 810(b) specifies more precisely the time at which termination will occur, which, in the case of an ICC default, will be 5 p.m. New York time on the second business day following the default. In the case of other termination scenarios, termination will occur at the time specified by ICC in the circular, which must be within one business day of the issuance of the circular. Rule 810(c) specifies notice requirements for full termination. Rule 810(d) establishes a procedure for determination of the termination price. ICC will determine a termination price for all positions (based on the last established mark-to-market price, if available, a final price submission process, or certain other specified objective sources). Rule 810(e) clarifies the procedures for determining a net amount owed to or by each Participant (separately for its house and customer accounts) in connection with the termination. Rule 810(e) in particular clarifies the treatment of mark-to-market margin and reduced gain distributions in the calculation of net amounts owed. ICC will use all available default resources and net payments owed by Participants to make net payments owed to Participants, and in the event of a shortfall, available amounts will be applied on a pro rata basis.

VII. Additional Changes

ICC has proposed certain additional changes to the Rules that are generally in the nature of drafting improvements, clarifications and conforming changes. In particular, ICC has revised Rule 102 to include, for clarity, additional cross-references to various terms that are defined in other parts of the Rules. Similarly, updated definitions and cross-references have been added in new Rule 700 for Chapter 7 of the Rules, in Rule 901 for Chapter 9 of the Rules, in new Rule 2100 for Chapter 21 of the Rules, in Rule 2200 for Chapter 22 of the Rules,[7] and in Rule 26E–102 for Chapter 26E of the Rules. Rule 102 has also been revised to add new defined terms that are used in the rule changes discussed above, such as those relating to cooling-off period and the distinction between initial phase default resources (generally available for standard default management actions) and final phase default resources (generally available for secondary default management actions).

Certain other conforming changes have been made throughout the Rules to reflect the new default management tools and provisions discussed above, including in Rules 207, 209 and 502. In Rule 312, ICC has clarified its liability for certain actions in connection with the default management process, and made certain other conforming changes. In Rule 406(g), ICC has clarified its liability for certain investments of customer funds, consistent with Commodity Futures Trading Commission (''CFTC'') requirements. In Rule 601, ICC has clarified that its emergency authority does not override the limitations on Participant liability in Chapter 8 of the Rules, or permit partial tear-up of positions except as otherwise provided in the Rules. Certain other typographical and cross-reference corrections have been made throughout the Rules. Certain incorrect references in the Rules to the title of ''chief executive officer'' have been removed, in light of the fact that the senior ICC officer is titled ''president.''

(b) Statutory Basis

ICC believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act[8] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22,[9] and in particular are consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[10] As discussed herein, the proposed rule changes are principally designed to address the risks posed to ICC by a significant default by one or more Participants, as well as certain other loss events. Although ICC has established the level of its required financial resources in order to cover defaults in extreme but plausible market conditions, consistent with regulatory requirements, ICC nonetheless faces the risk of a loss scenario (however implausible) that exceeds such conditions (as a result of which its financial resources may not be sufficient to cover the loss in full). The proposed rule changes are intended to enhance the ability of ICC to manage the risk of

[7] An error in the citation was corrected by SEC staff and confirmed by ICC counsel via email on November 9, 2016.

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 240.17Ad–22.

[10] 15 U.S.C. 78q–1(b)(3)(F).

such a default. ICC does not propose to change its existing risk methodology or margin framework, which are its initial lines of defense against losses from Participant default. However, as discussed herein, the amendments provide additional default tools and procedures, including initial and secondary auction procedures and partial tear-up, that are designed to permit ICC to restore a matched book and limit its exposure to potential losses from a Participant default in extreme scenarios that may not be able to be addressed by standard risk management and default procedures. The enhanced procedures for full termination also serve as a means of addressing general business risk, operational risk and other risks that may otherwise threaten the viability of the clearing house. Moreover, the amendments clarify the ability of Participants to withdraw from the clearing house (and specify the responsibilities and liabilities of the clearing house and the Participant in such situations.)

In the proposed rule changes, ICC has sought to develop default management tools that permit and incentivize involvement of both Participants and customers of Participants in a default management scenario. For example, the new default auction procedures are designed to incentivize competitive bidding through the possibility of juniorization of guaranty fund and assessment contributions. The auction procedures further contemplate that customers may participate directly in default auctions at their election (subject to making the required clearing deposit), or alternatively may participate through a Participant (without the need for such a deposit). ICE Clear Credit believes that such participation will lead to more effective and efficient auctions, and give customers of Participants the opportunity to protect against the possibility of partial tear-up (to the extent the consequences thereof are adverse to them) and reduced gain distribution through bidding competitively in the auction.

The amendments also more clearly allocate certain losses as among ICC, Participants and their customers. The amendments are designed to plan for a remote and unprecedented, but potentially extreme, type of loss event—a loss from one or more Participant defaults that exhausts funded resources and requires additional recovery or wind-down steps. Such losses will necessarily and adversely affect some or all Participants, customers or other stakeholders. In ICE Clear Credit's view, its current Rules, with the possibility of forced allocation, could force certain risks of loss only on Participants, in a way that is unpredictable and difficult to quantify in advance, and that Participants have strongly stated is undesirable from their perspective. ICE Clear Credit believes that the amendments take a more balanced approach that distributes potential losses more broadly, to both Participants and customers that would otherwise have potential gains. Specifically, in the event of a partial tear-up, all market participants (both Participants and customers) holding the relevant positions would be affected on a pro rata basis. Similarly, losses arising from reduced gain distribution (which would be invoked only following exhaustion of all other resources) would be shared on a pro rata basis by both Participants and customers with gain positions. In the event of a full termination, any shortfall in resources would similarly be shared on a pro rata basis across all Participants and their customers. ICE Clear Credit also believes that the amendments provide greater certainty as to the consequences of default and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

In light of extensive discussions with Participants, customers and others, and the views expressed by industry groups and others, ICE Clear Credit believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme default scenario to both Participants and their customers on the basis of their positions. ICE Clear Credit further believes that the approach taken will facilitate the ability of the clearing house to fully allocate the loss so that it can continue clearing operations and withstand and/or recover from extreme loss events. The amendments therefore further the prompt and accurate clearance and settlement of cleared transactions. The amendments will also support the stability of the clearing system, as part of the broader financial system, and will promote the protection of market participants from the risk of default by another market participant and the public interest more generally. In light of the importance of clearing houses to the financial markets they serve, the policy in favor of clearing of financial transactions as set out in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the potential adverse consequences of a clearing house failure for the financial markets, the amendments support the public interest.

In addition to the Act, the amendments are designed to satisfy the requirements of CFTC Rules 39.35 and 39.39 applicable to ICC as a derivatives clearing organization designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and to be consistent with relevant international standards, including the Principles of Financial Market Infrastructure developed by CPMI–IOSCO.

The amendments will also satisfy the specific relevant requirements of Rule 17Ad–22,[11] as set forth in the following discussion:

Financial Resources. ICC's funded margin and guaranty fund resources are currently designed to be sufficient to meet ICC's financial obligations to clearing members notwithstanding a default by the two clearing members creating the largest combined loss, in extreme but plausible market conditions, consistent with regulatory requirements. ICC does not propose to reduce such funded resources. The amendments are intended to enhance and provide greater certainty as to the additional resources, beyond the funded margin and guaranty fund resources, that will be available to support clearing operations in more extreme Participant default scenarios. ICC also proposes to maintain the current level of its own contributions to default resources, but to move those resources higher in the default waterfall (so that they are used prior to the guaranty fund contributions of non-defaulting Participants) and thus provide additional protection for the contributions of non-defaulting Participants.

As set forth above, the amendments would maintain the existing ''1x'' limitation on assessments per default, and impose a new limitation on guaranty fund replenishments and assessments during a cooling-off period resulting from guaranty fund depletion. The amendments will require that Participants continue to replenish and meet assessment obligations during the cooling-off period, subject to a 3x limit. In addition, in the event the 3x limit is reached, the amended rules allow ICC to call on Participants for additional initial margin in order to ensure that it maintains sufficient resources to comply with applicable minimum regulatory financial resources requirements. In ICC's view, these changes provide an appropriate balance between several competing interests of the clearing house and Participants. Although the amendments may in theory limit the maximum resources available to the

[11] 17 CFR 240.17Ad–22.

clearing house (as compared to the absence of a cap), the changes will provide greater certainty for Participants as to their maximum liability with respect to the guaranty fund in the event of defaults (and thus their maximum amount of mutualized risk), in order to facilitate their own risk management, regulatory and capital considerations. This greater certainty is in turn intended to help stabilize the clearing house during a period of significant stress, including where there are multiple defaults. In particular, a cooling-off period and limit on assessments may reduce the risk of cascading defaults, where the financial demands placed on non-defaulting Participants for repeated assessments or replenishments could cause such Participants to themselves experience financial stress or even default, which could make the default management process more difficult. The cooling-off period thus reduces the potential procyclical effect of requiring additional mutualized guaranty fund contributions in times of stress. The period is designed to give the clearing house time to work out the default without exacerbating these stresses, while also allowing the clearing house and Participants time to assess whether the defaults will be able to be resolved and normal clearing will be able to resume.

In addition, the amendments will ensure that ICC maintains sufficient resources to continue operations in compliance with minimum regulatory financial resources requirements, either through replenishment of the guaranty fund in the normal course, or in an extreme situation where the 3x cap is reached, by providing ICC the ability to call for additional initial margin. ICC recognizes that the ability to call for such additional initial margin, particularly in times of stress, may have a potential procyclical impact and potential liquidity impact on Participants and their customers that is greater than guaranty fund replenishment, because initial margin is not subject to mutualization. As a result, the amount of additional initial margin required may exceed the amount of guaranty fund replenishment that would be required in the absence of the 3X cap. At the same time, ICC believes that these risks are limited to a particular remote loss scenario, and are mitigated by certain factors. ICC expects to limit the additional margin to the amount necessary to maintain minimum regulatory financial resources compliance, which may be less than the amount ICC would otherwise require under its guaranty fund methodology. ICC also expects that over the course of a cooling-off period, aggregate potential stress losses, and thus the need for additional financial resources, will generally decrease. In particular, Participants (and their customers) have the opportunity during the cooling-off period to reduce or rebalance the risk in their own portfolios, and thus mitigate potential stress loss and exposure to initial margin increases. Participants and their customers can also participate in default management (through participation in auctions), which will help them reduce their own risk profile. Greater involvement in default management may enhance competitive bidding, which in turn may reduce the likelihood that the 3X cap will be reached. In addition, and most importantly, additional initial margin posted by Participants is not subject to mutualization and cannot be used to cover defaults of other Participants. As a result, while Participants may be required to post more funds as additional initial margin than in a replenishment of a mutualized guaranty fund, the risk of loss to Participants of those additional margin funds is substantially less than for guaranty fund replenishment. Based on discussions with its Participants, ICC understands that for these reasons Participants prefer the use of additional initial margin in this remote, but potentially highly stressed scenario, notwithstanding the potentially higher procyclical or liquidity effect.

The clearing house has set the length of the cooling-off period at a duration of 30 calendar days, which is intended to be long enough to provide the clearing house and Participants with a measure of stability and predictability as to the use of guaranty fund resources and avoid incentivizing Participants to withdraw from the clearing house following a default. This period is consistent with the timeframe for the normal, periodic recalculation of ICC's guaranty fund under Rule 801 (which is done on a monthly basis), a period that ICC has found appropriately balances stable guaranty fund requirements with the ability to make changes as necessary. ICC also believes, based on its analysis of the OTC derivatives markets and historical default scenarios involving a large OTC market participant, that 30 days has historically been an adequate period for the market to stabilize following a significant default event. (This was, for example, observed in the interest rate swap market following the Lehman insolvency.) ICC similarly believes that in the context of a cooling-off period, 30 calendar days is an appropriate time horizon to seek to stabilize the clearing house, in light of the products cleared by ICC, and reduce stress on non-defaulting Participants (and their customers) as the clearing house conducts its default management. It provides a minimum period for Participants (and their customers) to reduce or rebalance their positions in an orderly manner to facilitate continued clearing operations once the cooling-off period ends. The 30-day cooling-off period will thus help provide stability for the market and predictability for Participants and their customers as they seek to manage their own risks. In ICC's view, this may increase the willingness and ability of Participants and their customers to participate in a default auction and absorb the defaulter's positions through the default management process.

A shorter cooling-off period, in ICC's view, may result in greater potential assessment and replenishment liability for Participants, which in turn may increase the risk of a default (or series of defaults) caused by an inability of Participants to meet such liabilities on a timely basis. A shorter period may also give non-defaulting Participants an incentive to withdraw quickly from the clearing house following a default. That may destabilize the clearing house, make it more difficult to resolve the default and achieve recovery following default, and reduce confidence in the ability of the clearing house to resume non-distressed clearing operations going forward. A longer cooling-off period may thus help stabilize the clearing system during the default management process. On the other hand, a longer cooling-off period may make it more likely that the 3X cap will be reached, which could in turn increase the stress on clearing house resources and make it more likely that ICC would need to call additional margin from Participants in order to meet ICC's regulatory financial resources requirements, which can itself adversely affect Participants. In ICC's view, the 30-day cooling-off period and assessment limits balance the interests of both the clearing house and Participants and in the aggregate enhances the likelihood that the clearing house can withstand a default.

In ICC's view, the amendments are thus consistent with the financial resources requirements of Rule 17Ad–22(b)(2)–(3).[12]

Settlement Process and Reduced Gain Distribution. The amendments contemplate that as a Secondary Default Management Action, in extreme cases,

[12] 17 CFR 240.17Ad–22(b)(2)–(3)

ICC may implement reduced gains distributions for up to five business days where it has exhausted all other financial resources (including assessment contributions). In such case, ICC will continue to collect mark-to-market margin owed to it from all non-defaulting Participants, but will reduce outbound payments of mark-to-market margin owed to Participants to reflect available resources. ICC will calculate the haircut amount on a daily basis for each day of reduced gain distribution, without consideration of reductions on prior days. As a result, settlement on any day of reduced gain distributions will be final, as ICC does not have any ability to reverse or unwind the settlement. As a result, in ICC's view, the amendments are consistent with the requirements of requirements of Rule 17Ad–22(d)(5), (12) and (15) [13] as to the finality and accuracy of its daily settlement process.

Default Procedures. The amendments clarify and augment the Rules and procedures relating to default management, with the goal of enhancing the ability of the clearing house to withstand extreme default events. The amendments more clearly distinguish between standard default management events, largely covered by its existing default rules and procedures, and more extreme default management scenarios, for which recovery tools may be appropriate. The amendments include a new set of initial auction procedures, designed to facilitate liquidation of the defaulter's portfolio through a multi-lot modified Dutch auction. The auction procedures require participation of all Participants (unless outsourced to another Participant in accordance with the Rules), and permit direct participation in the auction by customers as well as Participants. The procedures also provide incentives for competitive bidding through juniorization of guaranty fund and assessment contributions, as discussed above. The amendments further include a set of secondary auction procedures, intended to provide for an effective final auction of the entire remaining portfolio, prior to the exercise of recovery tools such as tear-up.

Following extensive consultation with Participants, ICE Clear Credit is proposing to remove the existing tool of forced allocation, which may result in unpredictable and unquantifiable liability for Participants. Instead, ICE Clear Credit will have the option to invoke a partial tear-up of positions to restore a matched book in the event that it is unable to auction the defaulter's remaining portfolio. Partial tear-up, if used, will occur at the most recent mark-to-market settlement price determined by ICC, contemporaneously with such determination. As a result, partial tear-up will not result in additional loss to Participants as compared to the most recent mark to market settlement (and if reduced gain distribution is invoked, partial tear-up will not entail additional loss beyond that resulting from such reduced gain distribution). ICE Clear Credit believes that this revised set of tools will maximize the clearing house's ability to efficiently, fairly and safely manage extreme default events. The amendments further provide for the allocation of losses that exceed funded resources, through assessments and replenishments to the guaranty fund, as described herein, and the use of reduced gains distributions when necessary, following the exhaustion of all other resources. The amendments thus are designed to permit ICC to fully allocate losses arising from default by one or more Participants, with the goal of permitting the clearing house to resume normal operations.

As a result, in ICE Clear Credit's view, the amendments will allow it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults, in accordance with Rule 17Ad–22(d)(11).[14]

Operational Resources. ICC believes that its operational systems and capabilities are sufficient to support the proposed rule changes and new default management tools that would be implemented under those amendments. ICC contemplates testing of the use of the new tools and procedures as part of its regular default management exercises, in order to identify and manage any related operational risks. ICC has developed various automated systems relating to the default management process, and has done significant preparatory work to incorporate the new recovery tools and procedures in those systems. Once the rule amendments are effective, ICC will complete the incorporation of those tools into its systems, and test such systems as part of its regular system testing process. The results of such testing will be shared with appropriate ICC risk and governance committees and regulators, consistent with the treatment of the results of other default management testing. These arrangements will address relevant sources of operational risk in the default management process and are designed to minimize such risks, within the meaning of Rule 17Ad–22(d)(4).[15]

Well-Founded Legal Framework. Rule 17Ad–22(d)(1) requires that a clearing agency have rules and policies reasonably designed to provide a well-founded, transparent and enforceable legal framework for each aspect of its activities in all relevant jurisdictions. ICC believes that the amendments will provide a clearer and more transparent set of default management procedures for addressing extreme loss events, and thus provide greater certainty to the clearing house, Participants and other market participants as to the various tools available to the clearing house and the potential liabilities of Participants and others in such events. ICC further believes that the amendments will permit the clearing house to conduct an orderly recovery or, if necessary, wind-down process, in accordance with the requirements of applicable regulations. ICC has in addition considered and obtained legal advice, as appropriate, as to the enforceability of the amendments. As a result, ICC believes the amendments are consistent with the requirements of Rule 17Ad–22(d)(1).

Governance Arrangements. Rule 17Ad–22(d)(8) requires that a clearing agency have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures. ICE Clear Credit believes the amendments discussed herein satisfy these requirements. The amendments are designed to address extreme loss scenarios resulting from Participant default, and provide an orderly means for recovery or wind-down of clearing operations if necessary. The amendments also clarify the procedures for clearing service termination, which is designed to address other extreme loss scenarios that may necessitate wind-down of operations, to provide greater certainty as to the circumstances under which such termination may occur and the timing and price of any such termination, among other matters. The amendments set out in detail the responsibilities of ICE Clear Credit management, the ICE Clear Credit Board, the ICC Risk Committee (consisting of representatives of Participants) and the ICC CDS Default Committee (consisting of trading personnel seconded from Participants to assist with default management) for key

[13] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

[14] 17 CFR 240.17Ad–22(d)(11).

[15] 17 CFR 240.17Ad–22(d)(4).

decisions relating to the use of recovery and wind-down tools. As discussed above, the revised Rules build on the existing procedures (and historical practice) for consultation with the Risk Committee and CDS Default Committee, and provide adequate resources for those committees to perform their functions. They also reflect the collaborative relationship between the Board and Risk Committee, and the independence of the Board and the significant participation of Participants on the Board. In taking decisions concerning these matters, the Rules, the ICC mission statement, and the relevant governance committee charters will require the Board to take into consideration both the interests of Participants, customers and other stakeholders and the broader goal of providing safe and sound central counterparty services to reduce systemic risk in an efficient and compliant manner, consistent with the requirements of the Act and Rule 17Ad–22(d)(8). These governance procedures have been tailored to provide for meaningful consultation with relevant stakeholders while preserving the ability of the clearing house to act decisively in the exigent and likely unpredictable circumstances of a major Participant default or defaults or other significant loss events.

As noted above, key decisions involving the use of recovery or wind-down tools (including the use of partial tear-up, reduced gain distribution or full clearing service termination) are subject to additional governance requirements that require consultation with the Risk Committee and further require that decisions must be made by the Board (and cannot be delegated to an officer). A majority of the members of the Board are independent of ICE management and the ICE parent. The interests of Participants are clearly taken into consideration, through both the recommendations of the Risk Committee and the participation of Participant representatives on the Board itself. ICC regularly also takes into account the feedback of customers of Participants, both through its buy-side advisory committee and otherwise. Although ICC does not provide for direct customer participation in governance (unlike in the case of Participants), ICC believes that approach is appropriate in light of the particular risks faced by Participants (in light of their financial responsibilities to the clearing house) and the role Participants are required to play in the default management process.

For the foregoing reasons, ICE Clear Credit believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act[16] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[17]

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments will apply uniformly to all Participants (and customers of Participants). ICC does not anticipate that the amendments would affect the day-to-day operation of the clearing house under normal circumstances, or even in typical default management scenarios. ICC is not proposing to alter the standards or requirements for becoming or remaining a Participant, or otherwise using the clearing services it provides. ICC also does not propose to change its methodology for calculation of margin or guaranty fund contributions. The amendments are intended to address instead the risk of extreme loss events, and provide the clearing house additional tools and resources to withstand and/or recover from extreme loss events, so that it can restore a matched book, fully allocate any losses, and resume normal clearing operations. The amendments are consistent with requirements for clearing organizations to implement such procedures under applicable law and regulation, and relevant international standards. As a result, ICC does not believe the amendments will adversely affect the ability of Participants or other market participants to continue to clear CDS contracts. ICC also does not believe the enhancements will limit the availability of clearing in CDS products for Participants or their customers or otherwise limit market participants' choices for selecting clearing services in CDS.

In the case of an extreme default scenario, as discussed herein, the proposed rules and default management procedures may impose certain costs and losses on Participants or their customers, as well as ICC. ICC has sought to appropriately balance the allocation of such costs and losses, with appropriate techniques (such as competitive auctions) through which Participants and customers can mitigate the risks of such losses. The amendments also remove the tool of forced allocation, which potentially forced Participants to face uncertain and unquantifiable liability in certain default scenarios. The amendments contain features such as cooling-off periods, that provide appropriate and transparent limits on the potential liability faced by Participants. As a result, in ICC's view, while the proposed amendments may impose certain costs and losses on market participants, that allocation is appropriate in light of the default management goals of the clearing house, the goals of promoting orderly clearing house recovery, and the broader public interest in the strengthening of the clearing system to withstand significant default events. As a result, ICC does not believe that the proposed rule changes impose any burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule changes have been discussed at length with Participants (individually and as a group). The changes have been developed over the course of several years, and throughout that time ICC has regularly consulted with Participants on both the overall design and the detailed drafting of the amendments. Several aspects of the amendments reflect specific requests of Participants and concerns identified by Participants, as discussed above, including the removal of forced allocation, introduction of a cooling-off period and establishment of aggregate limitations on assessments and replenishments. The introduction of partial tear-up and reduced gain distributions as recovery tools have also been discussed in detail with Participants, and have been drafted to take into account and suggestions issues raised by Participants, including to define the circumstances in which those tools may be used and to limit the adverse impact of such tools on netting, regulatory capital and other matters. Certain Participants have expressed concern in particular with the potential use of reduced gain distribution as a recovery tool. While ICC believes reduced gain distribution is an important tool for ensuring its ability to fully allocate losses, ICC has, in light of such concerns, limited the use of reduced gain distribution to scenarios in which all other financial resources of the clearing house have been exhausted. ICC has also consulted with Participants on the details of the initial and secondary auction procedures, and has taken into account comments and suggestions concerning such matters as minimum bid requirements, use of a

[16] 15 U.S.C. 78q–1.

[17] 17 CFR 240.17Ad–22.

Dutch versus other auction methodologies, degree and triggers for juniorization and participation by customers. Certain of the proposed governance arrangements in the amendments also reflect feedback from Participants, including with respect to the role of Risk Committee in major decisions. Throughout the process, ICC has regularly shared drafts of the amendments with Participants, and sought (and received) comment from Participants and Participants' internal and external counsel on such drafts, which ICC has taken into consideration in the drafting of the amendments.

ICC has discussed the amendments individually with members of its buy-side advisory committee, which consists of customers of Participants. ICC also considered the views of industry groups representing customers of Participants, both through discussions with members of such groups and through the public statements and positions of such groups. Certain buy-side customers have expressed concern with aspects of the amendments, particularly the application of partial tear-up and reduced gain distributions to customer positions. As discussed above, ICC believes the use of these recovery tools, for customer as well as proprietary positions of Participants, reflects an appropriate balancing of the legitimate interests of the clearing house, Participants and customers in extreme default scenarios. ICC also believes that the risks of such recovery tools are mitigated by the expanded opportunity for customers to participate, either directly or indirectly, in default auctions, as noted above. Other buy-side customers have expressed concern with the potential use of reduced gain distribution before the exhaustion of all other potential clearing house resources. As discussed above, in light of such concerns, ICC has limited the use of reduced gain distribution to scenarios where all other financial resources of the clearing house have been exhausted. Certain customers have also suggested that the clearing house increase the amount of its own contribution to the guaranty fund, and place such contribution higher in the priority waterfall of default resources. As discussed above, ICC has increased the priority of its contributions in the waterfall, to a position prior to the guaranty fund contributions of non-defaulting Participants (although ICC has not proposed to change the aggregate amount of its contribution).

ICC will notify the Commission of any written comments on the proposed rule changes received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2016–013 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2016–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. [sic] Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2016–013 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 15c3–5, SEC File No. 270–601, OMB Control No. 3235–0673

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–5 (17 CFR 240.15c3–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c3–5 under the Exchange Act requires brokers or dealers with access to trading directly on an exchange or alternative trading system (''ATS''), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The rule requires brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to

[18] 17 CFR 200.30–3(a)(12).