

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92504; File No. SR-ICC-2021-017]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Credit Operating Agreement and Governance Playbook

July 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on July 20, 2021, ICE Clear Credit LLC (“ICE Clear Credit” or the “Clearing House”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Credit. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to amend and restate ICE Clear Credit’s Fifth Amended and Restated Operating Agreement (such amended and restated document, the Sixth Amended and Restated Operating Agreement or “Sixth A&R Operating Agreement”) to (i) reduce the number of managers on its Board of Managers (the “Board”) designated by its Parent, ICE US Holding Company L.P., (“ICE-designated managers”), and (ii) remove outdated provisions and make certain other non-substantive amendments.<sup>3</sup> ICE Clear Credit proposes corresponding changes to the Governance Playbook to update the composition of the Board and to make other non-substantive amendments. These revisions do not require any changes to the ICE Clear Credit Clearing Rules (the “Rules”).

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Credit included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Credit has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (a) Purpose

ICE Clear Credit proposes to adopt the Sixth A&R Operating Agreement, which would amend and restate its Fifth Amended and Restated Operating Agreement, and to make corresponding changes to the Governance Playbook. The proposed revisions are described in detail as follows.

###### I. Sixth A&R Operating Agreement

ICE Clear Credit is proposing to adopt the Sixth A&R Operating Agreement to reduce the number of ICE-designated managers on the Board and to remove outdated provisions and make other non-substantive amendments.

###### Board of Managers

Proposed amendments to Section 3.02(a)(i) would reduce the number of Parent Independent Managers (those independent managers designated by the Parent with no material relationships with ICE Clear Credit or its affiliates) from four to three managers. It would also remove all references to names of such Parent Independent Managers, as such persons have been appointed and need not be named in the operating agreement. Section 3.02(a)(ii) would reduce the number of Parent Non-Independent Managers (those non-independent managers designated by the Parent) from three to two managers. It would also similarly remove all references to names of such Parent Non-Independent Managers. The amendments would not change the numbers of Risk Committee Independent Managers or Risk Committee Non-Independent Managers (those independent and non-independent managers designated by the Risk Committee under the Rules, rather than by the Parent).

The amendments also update Section 3.03 to reflect prior amendments to the operating agreement that the Board will meet no less frequently than quarterly at such time and place as may be determined by the chair and may meet more frequently (either in person or telephonically) as circumstances dictate, and to remove a requirement that the Board meet telephonically no less than twice per calendar year.

###### Removal of Outdated Information Related to Conversion

Sections 2.01 and 2.02 would be revised to remove outdated provisions of the Fifth Amended and Restated Operating Agreement relating to the operation of the Clearing House prior to its conversion in 2011 to a Delaware limited liability company and to reflect the occurrence of that conversion. Related defined terms would be removed and/or updated as necessary to reflect these changes.

###### General Drafting Clarifications and Improvements

ICE Clear Credit additionally proposes other general drafting clarifications and improvements. The proposed changes revise outdated references to the name, jurisdiction of organization, and/or governing document of certain Intercontinental Exchange, Inc. entities and replace references to the Chief Executive Officer with references to the President (which is the correct title of the relevant officer) to reflect prior amendments to the operating agreement. The other changes that would be made throughout the Sixth A&R Operating Agreement include updating the Clearing House’s and the Parent’s notice information as presented in Section 7.01(a) and (b), updating the Clearing House’s registered office and agent in Delaware, referencing the Fifth Amended and Restated Operating Agreement where necessary, updating the definition of ICE’s Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE as well as other typographical and grammatical updates.

###### II. Governance Playbook

ICE Clear Credit proposes conforming changes to update the composition of the Board and to make other non-substantive amendments to the Governance Playbook, which consolidates governance arrangements set forth in ICE Clear Credit’s Rules, operating agreement, and other ICE Clear Credit policies and procedures. The changes to Section III.A would similarly reduce the number of Parent

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Capitalized terms used but not defined herein have the meanings specified in the Sixth A&R Operating Agreement.

Independent Managers from four to three managers and the number of Parent Non-Independent Managers from three to two managers. Footnote 1 would reference an amended version of the limited partnership agreement of the Parent and update the jurisdiction of organization of the Parent.<sup>4</sup> In Section III.C, ICE Clear Credit proposes a minor clarification with respect to the receipt and review of resignation letters from managers. Additionally, the proposed changes to Section III.F update the number of independent managers on the Board as well as a link to ICE's Board of Director Governance Principles.

#### (b) Statutory Basis

ICE Clear Credit believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments to the number of ICE-designated managers are intended to promote efficient operation of the Board while maintaining appropriate diversity of viewpoints, representation of the interests of Participants and independence standards for managers. Specifically, as noted above, the amendments will not affect the number of managers designated by the Risk Committee under the Rules. ICE Clear Credit believes a board of 9 managers (rather than 11) remains an appropriate size for oversight of its ongoing operations. The other proposed clarifications and changes enhance readability and ensure that the Sixth A&R Operating Agreement and the Governance Playbook are clear and up to date, including by removing outdated provisions, incorporating prior amendments, or making other general clarifications and improvements, which would further ensure that relevant individuals carry out their responsibilities under the documents. In ICE Clear Credit's view, the amendments will thus enhance the

overall governance of the Clearing House and are consistent with the prompt and accurate clearance and settlement of cleared contracts, the safeguarding of securities and funds in the custody or control of ICE Clear Credit or for which it is responsible, and the protection of investors and the public interest. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).<sup>7</sup>

Further, Section 17A(b)(3)(C) of the Act<sup>8</sup> requires that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Sixth A&R Operating Agreement and the Governance Playbook will continue to set out the composition of the Board, with five managers (three independent and two non-independent) designated by the Parent and four managers (two independent and two non-independent) designated by the Risk Committee following the proposed amendments. The amendments will not affect the number of managers designated by the Risk Committee, the majority of whose members (9 of 12) are Participant representatives, and Participants will continue to be represented on the Board. As such, ICE Clear Credit believes that its governance arrangements, as modified by the proposed amendments, will continue to provide a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs and are thus consistent with the requirements of Section 17A(b)(3)(C) of the Act.<sup>9</sup>

Rule 17Ad-22(e)(2)<sup>10</sup> requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that, among other matters, establish that the board of directors have appropriate experience and skills to discharge their duties and responsibilities and consider the interests of relevant stakeholders of the clearing agency. As noted above, ICE Clear Credit believes the reduction in the number of ICE-designated managers is consistent with the ongoing effective oversight of the Clearing House by the Board. The amendments will not affect the number of managers designated by the Risk Committee, and thus will not adversely affect representation of Participants on the Board. Moreover, a majority of the Board will continue to be independent and have no material

relationships with ICE Clear Credit and its affiliates. As such, ICE Clear Credit believes that the amendments set out in the Sixth A&R Operating Agreement and Governance Playbook are consistent with the requirements of Rule 17Ad-22(e)(2).<sup>11</sup>

#### (B) Clearing Agency's Statement on Burden on Competition

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update ICE Clear Credit's operating agreement and Governance Playbook, and specifically the number of managers designated by the Parent. As a result, ICE Clear Credit does not expect that the proposed changes will adversely affect access to clearing or the ability of Participants, their customers or other market participants to continue to clear contracts. ICE Clear Credit also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Credit does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

#### (C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Credit. ICE Clear Credit will notify the Commission of any written comments received with respect to the proposed rule change.

### 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 such proposed rule change, or

<sup>4</sup> See SR-ICC-2021-010 for more information on the change in the jurisdiction of organization of the Parent.

<sup>5</sup> 15 U.S.C. 78q-1.

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

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

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

<sup>10</sup> 17 CFR 240.17 Ad-22(e)(2).

<sup>11</sup> 17 CFR 240.17 Ad-22(e)(2).

(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](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2021-017 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-ICC-2021-017. 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 website (<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 website 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. 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 website at <https://www.theice.com/clear-credit/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2021-017 and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92492; File No. SR-ICEEU-2021-013]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the ICE Clear Europe Articles of Association

July 26, 2021.

#### I. Introduction

On May 25, 2021, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4,<sup>2</sup> a proposed rule change to amend its Articles of Association (the "Articles"). The proposed rule change was published for comment in the **Federal Register** on June 11, 2021.<sup>3</sup> The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

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

As discussed further below, the proposed rule change would amend the Articles to: (i) Update definitions related to the ICE Clear Europe Board of Directors (the "Board") and references to Board committees; (ii) modify the composition and structure of the Board and Board committees; (iii) revise the provisions regarding Super-Quorum Matters; (iv) add an article regarding presence at a Board meeting and amend an article related to expenses for directors; and (v) adopt gender-neutral language and make non-substantive typographical edits throughout the Articles.<sup>4</sup>

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

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

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

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Articles of Association, Exchange Act Release No. 92120 (June 7, 2021); 86 FR 31348 (June 11, 2021) (SR-ICEEU-2021-013) ("Notice").

<sup>4</sup> The description that follows is excerpted from the Notice, 86 FR at 31348. Capitalized terms not otherwise defined herein have the meanings

#### *A. Definitions Related to the Board and Board Committees*

Beginning in the defined terms found in Article 3, the proposed rule change would change the name of the Risk Committee to Product Risk Committee and update references to this committee throughout the Articles accordingly. This change would reflect the correct current name and function of this committee (and distinguish the Product Risk Committee from other existing risk committees). Further, the proposed rule change would delete from the definition of Product Risk Committee the statement that it is composed of the directors, to reflect that the committee is comprised of directors as well as representatives of Clearing Members.

The proposed rule change would next delete definitions of, and references to, Board committees other than the Product Risk Committee. The proposed rule change would delete from article 3<sup>5</sup> the definitions of Audit Committee, Board Risk Committee, Compensation Committee, and Nomination Committee. In addition, the proposed rule change would also amend the defined term Committees. Currently that term is defined to mean certain committees of the Board (Audit Committee, Board Risk Committee, etc.). The proposed rule change would revise this definition to mean any committee constituted by the Board under the Articles. Although ICE Clear Europe is not proposing to change its current committee structure at this time, it does not believe the committees need to be defined in the Articles. Given that the Board is authorized to create, modify, or dissolve committees as it determines to be appropriate, the amendments would facilitate future changes to the committee structure by the Board without need to amend the Articles.<sup>6</sup> The proposed rule change would retain the definition of, and references to, the Product Risk Committee, however, because that Committee plays a specific role relating to the CDS Director, as discussed below.<sup>7</sup>

#### *B. Composition and Structure of the Board and Board Committees*

The proposed rule change also would make certain revisions to the composition of the Board and Board committees. Currently, the Articles provide that the number of directors shall be not less than six and not more

assigned to them in the ICE Clear Europe Clearing Rules or the Articles, as applicable.

<sup>5</sup> References herein to the numbering of particular articles will be to the articles as amended.

<sup>6</sup> Notice, 86 FR at 31348.

<sup>7</sup> Notice, 86 FR at 31348.