

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 Section, 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 Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

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-ICEEU-2018-006 and should be submitted on or before May 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83071; File No. SR-ICC-2018-003]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to Amendments to the ICC Operational Risk Management Framework

April 19, 2018.

#### I. Introduction

On February 23, 2018, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission

("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to update the ICC Operational Risk Management Framework ("Framework"). The proposed rule change was published for comment in the **Federal Register** on March 7, 2018.<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

The Framework details ICC's program of operational risk assessment and oversight.<sup>4</sup> The proposed rule change would modify the Framework to remove the role of the Operational Risk Manager ("ORM") and assign several of its responsibilities to the ICE, Inc. Enterprise Risk Management Chief Risk Officer for North American Clearing Houses ("ERM").<sup>5</sup> The ORM was an ICC employee responsible for implementing the Framework across ICC, and reported directly to ICC's Chief Compliance Officer. The ERM, in contrast, is an ICE, Inc. employee and is responsible for the ICE, Inc. Enterprise Risk Management Department's ("ERM Department") coverage of ICC,<sup>6</sup> which provides the oversight and framework for identifying, assessing, managing, monitoring, and reporting on risk across the ICE, Inc. organization as a whole.<sup>7</sup> Going forward, responsibility for overseeing the management of the Framework will rest with the ERM, in conjunction with the ICC Compliance Committee.<sup>8</sup>

The proposed rule change would remove from the risk assessment process all references to the ORM and assign to the ERM the ORM's responsibilities under the identify, monitor, mitigate, and report components of the Operational Risk Lifecycle.<sup>9</sup> Similarly,

the proposed rule change would remove from the performance objective setting and monitoring process all references to the ORM and assign to ICC Systems Operations and the ERM the ORM's responsibilities under the mitigate and report components of the Operational Risk Lifecycle.<sup>10</sup> The proposed rule change would eliminate the ORM's responsibilities related to business continuity planning ("BCP") and disaster recovery ("DR") from the "Business Continuity Planning and Disaster Recovery" risk focus area and reassign those responsibilities to ICC, the ICC BCP and DR Oversight Committee, and the ICC Compliance Committee.<sup>11</sup> Finally, the proposed rule change would remove from the "New Products, Processes and Initiatives" risk focus area reference to the ORM's role on the ICC New Initiative Approval Committee and note that the ERM conducts post-implementation reviews of new initiatives.<sup>12</sup>

The proposed rule change would revise the "Vendor Assessment" risk focus area of the Framework to clarify that the ICC BCP and DR Oversight Committee will replace the ORM in performing the following functions: (1) Reviewing and recommending that the ICC Compliance Committee approve the inventory of critical vendors and (2) conducting a service provider risk assessment for each critical vendor.<sup>13</sup> The proposed rule change would also add to the Framework procedures for the assessment process of critical vendors.<sup>14</sup>

The proposed rule change would modify the "ICE Information Security" risk focus area of the Framework to refer to the ICE Information Security Department's overall governing document and to reflect changes to the membership of the Department's governance committee.<sup>15</sup>

Finally, the proposed rule change would make clarifying edits to the Framework to reflect current practices and other non-material changes.<sup>16</sup> For example, the proposed rule change would make minor grammatical and structural changes to the Framework and update the appendix to more clearly summarize and describe the regulatory requirements and industry guidance to which ICC is subject.<sup>17</sup>

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

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

<sup>3</sup> Securities Exchange Act Release No. 82798 (March 1, 2018), 83 FR 9786 (March 7, 2018) (SR-ICC-2018-003) ("Notice").

<sup>4</sup> Notice, 83 FR at 9787. Capitalized terms used herein but not otherwise defined have the meaning set forth in the ICE Clear Europe rulebook, which is available at <https://www.theice.com/clear-europe/regulation#rulebook>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* ICC's operational risk program is framed by an Operational Risk Lifecycle, the goal of which is to actively identify, assess, monitor, mitigate, and report on all plausible sources of operational risk. See Securities Exchange Act Release No. 77769 (May 5, 2016), 81 FR 29312 (May 11, 2016) (SR-ICC-2016-003) (describing the Framework).

<sup>10</sup> Notice, 83 FR at 9787.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Notice, 83 FR at 9787.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 9787-9788.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>18</sup> For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act<sup>19</sup> and Rules 17Ad–22(d)(4) and 17Ad–22(d)(8) thereunder.<sup>20</sup>

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

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.<sup>21</sup> Sound policies, practices, and procedures with respect to assessment and oversight of operational risk are an important component of a registered clearing agency's ability to comply with these requirements because disruptions to clearing agency operations can impair the prompt and accurate clearance and settlement of securities transactions, safeguarding of securities and funds, and protection of investors and the public interest.<sup>22</sup>

The Commission believes the proposed rule change will enhance ICC's ability to control its operational risk, and consequently promote the prompt and accurate clearance and settlement of securities transactions, by ensuring that the Framework accurately reflects the current assignment of responsibilities among ICC and ICE, Inc. personnel. It also will add to the Framework procedures for the assessment of critical vendors, which will both increase ICC's ability to identify critical vendors and enable ICC to manage the risks posed by its critical

vendors. Finally, by eliminating the ORM from, and incorporating the ERM Department into, the oversight process for the management of the Framework, the personnel overseeing the management of the Framework will no longer be limited to the ICC organization, but instead will have a broad view of how the Framework interacts with and is affected by the ICE, Inc. organization as a whole. This will, among other things, allow ICC to rely on the ERM Department in responding to broad risks that affect ICC as part of the larger ICE, Inc. organization while simultaneously focusing on operational risks unique to ICC.

Taken together, the Commission believes these proposed changes will improve ICC's ability to assess and manage operational risks, including by identifying sources of operational risk and minimizing them through the development of appropriate systems, controls, and procedures, thereby enhancing ICC's ability to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible and, in general, protect investors and the public interest. Therefore, the Commission finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible and, in general, protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.<sup>23</sup>

#### B. Consistency With Rule 17Ad–22(d)(4)

Rule 17Ad–22(d)(4) requires that a registered clearing agency that is not a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.<sup>24</sup> As discussed in detail above in Section III.A, the proposed rule change will make a number of enhancements to the Framework that, taken together, will improve ICC's ability to assess and manage operational risks, including by identifying sources of operational risk and minimizing them through the development of appropriate systems, controls, and procedures. Accordingly, the Commission finds that the proposed

rule change is reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures, consistent with Rule 17Ad–22(d)(4).<sup>25</sup>

#### C. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad–22(d)(8) requires that a registered clearing agency that is not a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act<sup>26</sup> applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.<sup>27</sup> By updating the Framework so that it identifies and refers to appropriate personnel and accurately reflects the assignment of responsibilities among ICC and ICE, Inc. personnel, the proposed rule change will ensure that ICC's governance of the Framework is clear, transparent, and documented accurately. Therefore, the Commission finds that the proposed rule change establishes governance arrangements that are clear and transparent to fulfill the public interest requirements of Section 17A of the Act<sup>28</sup> applicable to clearing agencies and the objectives of participants and to promote the effectiveness of the clearing agency's risk management procedures, consistent with Rule 17Ad–22(d)(8).<sup>29</sup>

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>30</sup> and Rules 17Ad–22(d)(4) and (8) thereunder.<sup>31</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>32</sup> that the proposed rule change (SR–ICC–2018–003) be, and hereby is, approved.<sup>33</sup>

<sup>18</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>19</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>20</sup> 17 CFR 240.17Ad–22(d)(4) and (8).

<sup>21</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>22</sup> See Clearing Agency Standards, Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220, 66249 (Nov. 2, 2012) (noting that efforts to “address risks posed by potential operational deficiencies to a clearing agency and its participants” support “the requirement in Section 17A of the Exchange Act that a clearing agency must be so organized and have the capacity to be able to facilitate prompt and accurate clearance and settlement”).

<sup>23</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>24</sup> 17 CFR 240.17Ad–22(d)(4).

<sup>25</sup> 17 CFR 240.17Ad–22(d)(4).

<sup>26</sup> 15 U.S.C. 78q–1.

<sup>27</sup> 17 CFR 240.17Ad–22(d)(8).

<sup>28</sup> 15 U.S.C. 78q–1.

<sup>29</sup> 17 CFR 240.17Ad–22(d)(8).

<sup>30</sup> 15 U.S.C. 78q–1.

<sup>31</sup> 17 CFR 240.17Ad–22(d)(4) and (8).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83064; File No. SR-BX-2018-014]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarify the Requirements for Delivery of a Contrary Exercise Advice

April 19, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 9, 2018, Nasdaq BX, Inc. (“BX” or “Exchange”) 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 by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the rules of the Exchange, at Chapter VIII, Exercises and Deliveries.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to correct Chapter VIII, Exercises and Deliveries, Section 1, Exercise of Options Contracts, to clarify the requirements for delivery of a Contrary Exercise Advice. Section 1(b) currently provides that option holders desiring to exercise or not exercise expiring options must either (i) take no action and allow exercise determinations to be made in accordance with the Options Clearing Corporation’s Ex-by-Ex procedure where applicable, or (ii) submit a “Contrary Exercise Advice” to the Options Clearing Corporation through the participant’s clearing firm. In actual practice, however, an option holder delivers a Contrary Exchange Advice to the Exchange, not to the Options Clearing Corporation. The Exchange therefore proposes to replace the words “Options Clearing Corporation through the participants clearing firm” in Section 1(b)(ii) with a reference to the Exchange and make similar, conforming changes to Section 1(e)(i). As amended, Section 1(b) would be consistent with Nasdaq ISE Rule 1100(b) which directs option holders to submit Contrary Exercise Advices to the Exchange (not to the Options Clearing Corporation).

The Exchange proposes to further replace the words “by the deadline specified in paragraph (d) below” with the words “as specified in paragraph (d) below” given that paragraph (d) contains a number of requirements associated with submission of Contrary Exercise Advices in addition to the deadline. As revised, Section (b)(ii) tracks the language of ISE Rule 1100(b)(ii) which permits an options holder desiring to exercise or not exercise expiring options to “submit a “Contrary Exercise Advice” to the Exchange as specified in paragraph (d) . . . .” (which, like the counterpart BX paragraph (d) rule, specifies various requirements associated with submitting Contrary Exercise Advices).

Finally, the Exchange proposes to make a number of minor nonsubstantive revisions to Chapter VIII which are designed simply to facilitate administration of the rules. References to “BX” and to “BX Regulation” are proposed to be replaced with references to “the Exchange.”<sup>3</sup> Substituting the

word “Exchange” for BX in various places will provide the Exchange flexibility to determine the most appropriate department or individual within the Exchange to oversee the particular rule, and will also facilitate the incorporation by reference of the amended rule into the rules of BX’s affiliated exchanges in the future.<sup>4</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by identifying the correct entity to which option holders must deliver Contrary Exercise Advices and by substituting the word “Exchange” for BX in various places which will enable the amended rule to be incorporated by reference into rules of affiliated exchanges in the future, which should enhance the ability of members of BX and affiliated exchanges to understand and comply with a uniform set of rules across the exchanges.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes will apply equally to all option holders desiring to exercise options under the BX rules. Further, the proposed changes merely correct an incorrect reference to OCC and conform the wording of the rule more closely to that of a Nasdaq ISE rule for the sake of administrative convenience. The Exchange does not

in Section 2(a) and (b), of Chapter VIII. The Exchange notes that Chapter 11, Exercises and Deliveries, of the ISE Rulebook likewise uses the generic term “the Exchange” throughout that chapter.

<sup>4</sup> Recently, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, Nasdaq Stock Market LLC; Nasdaq PHLX LLC; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (“Affiliated Exchanges”). See Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR-BX-2017-054). The changes proposed herein are being made in connection with that effort, to align the BX rules with those of the Affiliated Exchanges more closely.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>34</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> The changes are proposed to be made in Section 1(b), (d), (e), (f), (g), (h), (i), (k) and (l), as well as