

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76479; File No. SR-ICC-2015-015]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Related to the ICC Rule Enforcement Process for Missed Submissions

November 19, 2015.

#### I. Introduction

On September 30, 2015, 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 (SR-ICC-2015-015) to the ICC Clearing Rules (the “Rules”) related to the ICC rule enforcement process for Missed Submissions. The proposed rule change was published for comment in the *Federal Register* on October 16, 2015.<sup>3</sup> The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

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

As part of ICC’s end-of-day price discovery process, ICC Clearing Participants (“CPs”) are required to submit end-of-day prices for specific instruments related to their open interest at ICC, in accordance with Rule 404(b) and ICC Procedures. Failure of a CP to provide submissions required by ICC pursuant to Rule 404(b) and ICC Procedures constitute a Missed Submission. In order to provide incentive against Missed Submissions, ICC has adopted a summary assessment approach described in Rule 702(e) and Schedule 702 of the Rules.

Currently, under Rule 702(e)(ii)(2), a CP may be eligible for a once-in-a-lifetime conditional waiver from such assessments if one or more Missed Submissions are the first instance(s) of a Missed Submission for the type of instrument (index or single name) and the CP provides adequate explanation of the cause and plans for remedial actions.

Given the increased automation of price submissions, ICC recognizes that there may be circumstances, due to technological failures, which may result

in Missed Submissions. ICC also notes that, due to the significant length of time since the inception of the end-of-day process, many CPs have utilized their once-in-a-lifetime waiver. As such, ICC believes it is reasonable to provide, under limited circumstances, a conditional once-a-year waiver for such Missed Submissions caused by technical failures, as described below. ICC believes that such Rule changes will not affect the integrity and effectiveness of the end-of-day price discovery process. ICC believes such Rule changes provide a valuable and practical balance between the technicalities of the price discovery process and appropriate penalization for Missed Submissions.

The proposed Rule text provides for the replacement of ICC’s current once-in-a-lifetime waiver for Missed Submissions with a conditional once-a-year waiver for Missed Submissions caused by technical failures. Under revised Rule 702(e)(ii)(2), a CP would be eligible for one waiver per year for single name Missed Submissions, and one waiver per year for index Missed Submissions. A CP may request such waiver(s) be applied against all Missed Submissions for a given instrument class on a given day. CPs would be required to provide documentation with a waiver request, explaining that the root-cause of the Missed Submission was a technology issue and including a remediation plan to fix the cause of the Missed Submission. ICC states that it would review and evaluate the waiver request and accept unless it had legitimate concerns that the root-cause of the Missed Submission had not been adequately identified, was not due to a technical issue, and/or would not be corrected by the provided remediation plan. ICC would maintain its current ability to provide waivers for Missed Submissions deemed to be due to extraordinary circumstances outside of a CP’s control, as set forth in Rule 702(e)(ii)(3). Pending regulatory approval, ICC plans to implement these changes on January 1, 2016, and apply the once-a-year waiver to the 2016 calendar year, and each calendar year going forward. ICC represents that there are no changes to ICC policies and procedures as a result of the Rule changes.

#### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>4</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is

consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act<sup>5</sup> requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. Section 17A(b)(3)(G) of the Act<sup>6</sup> requires that rules of the clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency, including through the use of fines or any other fitting sanctions. Furthermore, Section 17A(b)(3)(H) of the Act<sup>7</sup> requires, among other things, that rules of the clearing agency, in general, provide a fair procedure with respect to the disciplining of participants.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder applicable to ICC. The proposed rule change would replace ICC’s current once-in-a-lifetime waiver for Missed Submissions, which has already been utilized by many of ICC’s CPs, with a conditional once-a-year waiver for Missed Submissions (one waiver each for single name and index Missed Submissions) caused by technical failures. The proposed rule change also provides details surrounding the process by which CPs can request such conditional waivers and ICC’s review and evaluation of each request. The Commission believes that allowing for a once-per-year waiver for technical failures causing Missed Submissions is appropriate given the increased automation of end-of-day price submissions and is reasonably designed to maintain the integrity of ICC’s end-of-day pricing process, thereby promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions in accordance with Section 17A(b)(3)(F) of the Act.<sup>9</sup>

Additionally, the Commission believes that allowing for a once-per-year conditional waiver for technical failures in the summary assessment process for Missed Submissions is designed to ensure that CPs are

<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. 34-76122 (Oct. 9, 2015), 80 FR 62593 (Oct. 16, 2015) (SR-ICC-2015-015).

<sup>4</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

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

<sup>8</sup> 15 U.S.C. 78q-1.

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

appropriately disciplined for violations of ICC's rules consistent with Section 17A(b)(3)(G) of the Act.<sup>10</sup> The Commission also finds that the proposed process for the requesting and review of the conditional waivers is reasonably designed to provide for a fair procedure with respect to the disciplining of CPs for Missed Submissions in accordance with Section 17A(b)(3)(H) of the Act.<sup>11</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>12</sup> and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-ICC-2015-015) be, and hereby is, approved.<sup>14</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76483; File No. SR-FINRA-2015-047]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 6191(a) To Implement the Quoting and Trading Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

November 19, 2015.

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 November 13, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II,

and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt FINRA Rule 6191 to implement the quoting and trading requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

On August 25, 2014, NYSE Group, Inc., on behalf of Financial Industry Regulatory Authority, Inc. ("FINRA"), BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act<sup>3</sup> and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program ("Pilot").<sup>4</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>5</sup> The Plan<sup>6</sup> was

<sup>3</sup> 15 U.S.C. 78k-1.

<sup>4</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>5</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>6</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan. FINRA also proposes supplementary

published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>7</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require members to comply with the applicable quoting and trading increments for Pilot Securities.<sup>8</sup>

The Pilot Securities will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Pilot will consist of a Control Group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.<sup>9</sup> During the pilot, Pilot securities in the Control Group will be quoted and traded at the currently permissible increments. Pilot Securities in the first test group ("Test Group One") will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.<sup>10</sup> Pilot Securities in the second test group ("Test Group Two") will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.<sup>11</sup> Pilot Securities in the third test group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at the price of a Trading

material as part of this proposed rule change to, among other things, provide that the terms used in proposed Rule 6191 shall have the same meaning as provided in the Plan, unless otherwise specified.

<sup>7</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) ("Approval Order").

<sup>8</sup> Proposed Rule 6191 shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

<sup>9</sup> See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

<sup>10</sup> See Section VI(B) of the Plan.

<sup>11</sup> See Section VI(C) of the Plan.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(G).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>12</sup> 15 U.S.C. 78q-1.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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).

<sup>15</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.