

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100274; File No. SR-ICC-2024-003)

June 5, 2024

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

I. Introduction

On April 16, 2024, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to revise its Collateral Risk Management Framework (“CRMF”). The proposed rule change was published for comment in the *Federal Register* on April 26, 2024.<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

ICC is registered with the Commission as a clearing agency for the purpose of clearing credit default swaps (“CDS”) contracts. The CRMF describes ICC’s risk management methodology for the collateral it accepts from Clearing Participants to collateralize their individual credit exposure to ICC, including a description of ICC’s quantitative risk management approach that accounts for the risk associated with fluctuations of collateral asset prices (i.e., “haircuts”). Collateral used to cover obligations are subject to a “haircut” assessment, where the

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<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 Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Collateral Risk Management Framework; Exchange Act Release No. 100008 (Apr. 22, 2024), 89 FR 32496 (Apr. 26, 2024) (File No. SR-ICC-2024-003) (“Notice”).

assets are priced and posted at a discount to account for certain market risks. The current CRMF contemplates two risk measures for the haircut model approach--a 2-day 99.9% Value-at-Risk (“VaR”) and a 5-day Expected Shortfall (“ES”)--and requires ICC to use the measure that produces the more conservative result. Based on a comprehensive review of its risk calculations and data, ICC has determined that VaR has never produced the more conservative measurement and, therefore, ICC has always used the ES measurement instead of VaR.<sup>4</sup> These risk calculations and data also show that ES will continue to produce more conservative results compared to VaR in essentially all circumstances going forward.

Based on these results, the purpose of the proposed rule change is to amend ICC’s CRMF to permit ICC to rely solely on the ES to establish its haircut factors for the purposes of pricing and posting collateral. To do so, the proposed rule change would remove all references to the VaR from the CRMF.

The proposed rule change also would remove, renumber, and revise certain figures in the CRMF. The current CRMF contains various charts, graphs, and other figures (collectively, “Figures”) by which ICC displays the data used to establish the relevant measurements, including Figures relevant to both the VaR and ES measurements. To effectively remove all references to VaR from the CRMF, the proposed rule change also would remove and revise certain Figures as necessary to effectuate the removal of VaR from the CRMF. Specifically, in connection with the deletion of the 2-day 99.9% VaR risk measure, the proposed rule change would remove Figures 11, 12, 26, 27, 28, 29, 38, and 39 because those figures relate to the VaR

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<sup>4</sup> See Notice, *supra* note 3, at 32496. ICC has provided responses to Commission requests for collateral risk data and analysis as part of its confidential Exhibit 3 to File No. SR-ICC-2024-003. The confidential collateral risk data that ICC provided to the Commission as part of this filing shows the risk calculations conducted by ICC.

risk measure, including 1-day 99.9% VaR which was used to calculate the VaR risk measure. As a consequence of deleting those figures, the proposed rule change would renumber the remaining figures.

ICC has further determined that altering certain Figures within the CRMF would better illustrate the data used to establish the remaining applicable ES risk measure. As discussed below, the changes are consistent with the current practice of the ICC under its current CRMF, or are being amended for illustrative purposes, and therefore will have no practical impact.

Therefore, the proposed rule change would revise certain figures to correct the label on the y-axis from percentage to bps and to make other typographical fixes, specifically Figures 16, 17, 20, 21, 28 and 30 (as renumbered). It would also correct the label on the x-axis in certain figures. Specifically, the proposed rule change would revise Figures 12, 13, and 26 (as renumbered), to correct the label on the x-axis from percentage to bps. In doing so, the proposed rule change would re-scale those figures to reflect the change from percentage to bps. While the change from percentage to bps does not affect the data underlying the figures, the change affects the presentation of these figures because the scale will be larger as 1 bps equals 1/100 of a percentage point.

The proposed rule change would similarly re-scale Figure 5 to make the x-axis bps and would also adjust the bin size of Figure 5, which relates, illustratively, to the thickness of the bars in the figure. The phrase “bin size” in risk data refers to the width of intervals used to group similar data points when analyzing risk. A change in bin size, while not changing the data, can apportion the data more widely or more narrowly across a figure within newly created intervals. As the distributions change, so could the trend lines across the intervals change.

Finally, ICC has corrected certain other deficiencies by updating a footnote to a current link on its website, and in correcting small typographical errors elsewhere in the CRMF.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.<sup>5</sup> Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”<sup>6</sup>

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>7</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>8</sup> Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.<sup>9</sup>

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<sup>5</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>6</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

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

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

<sup>9</sup> *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) (“Susquehanna”).

After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to ICC. More specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>10</sup> and Rules 17Ad-22(e)(5) thereunder.<sup>11</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 ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.<sup>12</sup> Based on the review of the record, and for the reasons described below, ICC's proposed updates in the manner described above are consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act because it would clarify the CRMF by eliminating an unnecessary risk measurement. The use of ES as a risk measurement to establish haircut factors for pricing collateral is already a part of ICC's risk methodology, and ICC has determined that this calculation will always be more conservative than, and thus always used in lieu of, a VaR risk measurement. The confidential risk calculations and data provided by ICC and reviewed by the Commission demonstrate that ES has always been the most conservative methodology for setting collateral haircut factors when compared to VaR and that it is reasonable to expect that, going forward, ES will continue to be the most

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

<sup>11</sup> 17 CFR 240.17Ad-22(e)(5).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

conservative methodology for setting collateral haircut factors in essentially all circumstances. Therefore, there would be no actual change in the actual haircut calculation when ICC applies its risk methodology after the proposed rule change is effectuated. Removing VaR as a risk measurement would help avoid the impression that ICC uses both VaR and ES, and therefore would make the CRMF clearer and easier to apply in practice.

Having policies and procedures that clearly and accurately document the way ICC measures risk associated with fluctuations of collateral asset prices is an important component to the effectiveness of ICC's risk management system and supports ICC's ability to maintain adequate financial resources and collateral management resources. The proposed rule change is, consequently, consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>13</sup>

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<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

b. Consistency with Rule 17Ad-22(e)(5) of the Act

Rule 17Ad-22(e)(5) under the Act requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if it requires collateral to manage its or its participants' credit exposure.<sup>14</sup> Based on the review of the record, and for the reasons described below, ICC's proposed revisions are consistent with Rule 17Ad-22(e)(5).

As noted above, while ICC's current CRMF indicates that it will use either VaR or ES to establish haircut factors for the purposes of pricing and posting collateral, in practice ES has always produced the more conservative results and therefore ICC has never utilized VaR to set and enforce the haircut factors it uses to price collateral. By removing VaR from CRMF and definitively identifying ES as the exclusive risk methodology that ICC will use to set and enforce the haircut factors it uses to price collateral going forward, the proposed revisions will make the CRMF more clear and transparent as a risk management framework and help facilitate ICC's efficient and effective pricing of Clearing Member collateral. Adjusting the Figures in the CRMF to better illustrate the data used by ICC will likewise enhance the clarity and transparency of ICC's risk methodology, and improve ICC's ability to communicate and explain its risk for establishing haircut factors for the purposes of pricing and posting collateral.

Accordingly, the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(5) under the Act.<sup>15</sup>

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<sup>14</sup> 17 CFR 240.17Ad-22(e)(5).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(5).

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F)<sup>16</sup> of the Act and Rule 17Ad-22(e)(5) thereunder.<sup>17</sup>

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>18</sup> that the proposed rule change (SR-ICC-2024-003), be, and hereby is, approved.<sup>19</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>17</sup> 17 CFR 240.17Ad-22(e)(5).

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

<sup>19</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>20</sup> 17 CFR 200.30-3(a)(12).