

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85105; File No. SR-ICC-2018-011)

February 11, 2019

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's New Initiatives Approval Policy and Procedural Framework

I. Introduction

On December 18, 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"),¹ a proposed rule change (SR-ICC-2018-011) to adopt a revised ICC New Initiatives Approval Policy and Procedural Framework ("NIA Policy"). The proposed rule change was published for comment in the Federal Register on December 28, 2018.² The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.³

II. Description of the Proposed Rule Change

ICC proposes to revise the NIA Policy, which sets forth ICC's policies and procedures for the review and approval of certain new initiatives to be offered or implemented by ICC.⁴ The NIA Policy clarifies and harmonizes the policies, procedures,

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 34- 84889 (December 20, 2018), 83 FR 67445 (December 28, 2018) (SR-ICC-2018-011) ("Notice").

³ Capitalized terms used herein but not otherwise defined have the meaning set forth in the NIA Policy or the ICC rulebook, which is available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf.

⁴ Notice, 83 FR at 67445.

and documentation for the review and approval of new initiatives that involve potentially significant changes.⁵ The intention of the NIA Policy is to notify all relevant departments of the introduction of the new initiative, share information between departments, and establish requirements for the pre-launch verification and testing of the new initiative.⁶

New projects subject to the NIA policy are those that involve new and material changes to the risk or pricing methodology, significant changes to the processing system, significant changes to ICC rules, significant changes to clearing operating procedures, material modifications to significant capabilities provided by ICC, or significant changes to models.⁷ A steering committee, comprised of members of management, is responsible for prioritizing new initiatives and guiding their implementation.⁸

The New Initiative Approval Committee (“NIAC”) identifies, reviews, and approves new initiatives and is a management committee that includes department heads, and representatives from Enterprise Risk, Quality Systems, and Systems Operations.⁹ The NIAC also determines the conditions, restrictions, and limitations of new initiatives.¹⁰ Additionally, the NIAC documents its process with an approval matrix, risk assessment, a form verifying that all conditions and restrictions have been satisfied prior to enactment of the new initiative, and a tracking log for the identification and review of

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id. at 67445-67446.

¹⁰ Id. at 67446.

new initiatives.¹¹ The NIAC also reviews initiatives after implementation to ensure compliance with any conditions.¹² The chair of the NIAC maintains the NIA Policy, ensures cooperation and coordination between the steering committee and NIAC, and brings material changes to the NIA Policy to the ICC board for review and approval.¹³

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.¹⁴ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹⁵ and Rules 17Ad-22(d)(4) and (d)(8) thereunder.¹⁶

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 and, to the extent applicable, derivative agreements, contracts and transactions, and to assure the safeguarding of securities and funds which

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ 15 U.S.C. 78s(b)(2)(C).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(d)(4) and (d)(8).

are in the custody or control of the clearing agency or for which it is responsible.¹⁷ As discussed above, the proposed rule change would revise the NIA Policy, which sets forth, clarifies, and harmonizes ICC's policies and procedures for approval of new initiatives that involve potentially significant changes, including initiatives that 1) involve new and material modifications to the risk or pricing methodology; 2) involve potential significant changes to the processing system, ICC Clearing Rules, or clearing operating procedures; 3) involve new and material modifications to existing and significant capabilities provided by ICC; or 4) involve Model Changes¹⁸ classified as Materiality A under ICC's Model Validation Framework¹⁹ (collectively, "New Initiatives"). The Commission believes that, if not clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures, such New Initiatives could pose operational or other risks to ICC.

The NIA Policy would clearly describe and formalize the roles of the key participants involved in identifying, reviewing, and ultimately approving any such potentially significant New Initiatives, and identify such participants' specific authority and responsibilities. It also would identify, clearly describe, and formalize the specific steps to be taken during the identification, review, and approval of New Initiatives. By doing so, the Commission believes that the NIA Policy will enhance ICC's ability to manage risks and avoid potential disruptions to operations related to New Initiatives,

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ Model Changes include new and enhanced risk modeling components of ICC's risk management system. Depending on how substantially the Model Change affects the system's assessment of risk for the related risk driver(s), it is classified as Materiality A (i.e., substantial impact) or Materiality B (i.e., no substantial impact).

¹⁹ Notice, 83 FR at 67445

thereby enhancing ICC's ability to ensure the prompt and accurate clearance and settlement of securities transactions. This, in turn, would enhance ICC's ability to ensure it is in a better position to promptly clear and settle securities transactions and assure the safeguarding of securities and funds which are in the custody or control of ICC, or for which it is responsible. Therefore, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁰

B. Consistency with Rule 17Ad-22(d)(4)

Rule 17Ad-22(d)(4) requires, in relevant part, 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.²¹ The Commission believes that the NIA Policy would do this through establishing revised and clarified definitions, personnel responsibilities, and documentation procedures related to the identification, review, and approval of New Initiatives.

Specifically, the revised NIA Policy would ensure that ICC's system of approving New Initiatives defines such initiatives (as noted above) as being those that most significantly impact key areas and functions of ICC, and therefore helps ensure that ICC will appropriately address, and therefore enhance its ability to mitigate, the potential operational and other risks associated with implementing such New Initiatives. Further, by clearly identifying and transparently communicating the role of ICC's management

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240.17Ad-22(d)(4).

across multiple departments and functions, the Commission believes that the NIA Policy would enhance ICC's ability to identify sources of operational risk by involving the most relevant and responsible parties in focusing on the most impactful initiatives.

Additionally, the revisions to the NIA Policy would create a system in which new initiatives would be assessed by relevant stakeholders throughout ICC and through which such assessments would be documented. For instance, the NIAC would utilize detailed matrixes and forms to evidence that requisite approvals for new initiatives were obtained, risks and mitigation plans were considered, and all appropriate conditions were met prior to the implementation of a New Initiative. The Commission believes that such documentation would enhance ICC's ability to minimize operational risk by requiring thorough reviews and justifications of its actions. As a result, the Commission finds that the proposed rule, taken as a whole, enhances ICC's process of identifying and minimizing sources of operational risk associated with New Initiatives and is consequently consistent with Rule 17Ad-22(d)(4).²²

C. Consistency with Rule 17Ad-22(d)(8)

Rule 17Ad-22(d)(8)²³ requires, in relevant part, that a registered clearing agency that is not a covered clearing agency 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.²⁴ The NIA Policy proposed by ICC describes the roles of key participants in the identification,

²² Id.

²³ 17 CFR 240.17Ad-22(d)(8).

²⁴ 15 U.S.C. 78q-1.

review, approval, and assessment of new initiatives. In particular, the NIA Policy describes the steering committee's role in prioritizing the implementation of initiatives as well as NIAC's role and composition, including the participation of the heads of departments and representatives of Enterprise Risk, Quality Systems, and Systems Operations. Additionally, the proposal clarifies that the NIA Policy contains procedures for notifying and seeking input from all relevant departments on the introduction of New Initiatives. By setting forth clearly delineated managerial roles and requiring information sharing across ICC related to New Initiatives, the Commission finds that the proposed rule change enhances and fosters governance arrangements that are clear and transparent and is therefore consistent with the requirements of Rule 17Ad-22(d)(8).²⁵

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 of the Act²⁶ and Rules 17Ad-22(d)(4) and 17Ad-22(d)(8)²⁷ thereunder.

²⁵ 17 CFR 240.17Ad-22(d)(8).

²⁶ 15 U.S.C. 78q-1.

²⁷ 17 CFR 240.17Ad-22(d)(4) and (d)(8).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²⁸ that the proposed rule change (SR-ICC-2018-011) be, and hereby is, approved.²⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Eduardo A. Aleman
Deputy Secretary

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 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).

³⁰ 17 CFR 200.30-3(a)(12).