

April 19, 2018

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

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”),¹ and Rule 19b-4 thereunder,² 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, 2018.³ 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.⁴ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 82798 (March 1, 2018), 83 FR 9786 (March 7, 2018) (SR-ICC-2018-003) (“Notice”).

⁴ 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>.

ICE, Inc. Enterprise Risk Management Chief Risk Officer for North American Clearing Houses (“ERM”).⁵ 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,⁶ which provides the oversight and framework for identifying, assessing, managing, monitoring, and reporting on risk across the ICE, Inc. organization as a whole.⁷ Going forward, responsibility for overseeing the management of the Framework will rest with the ERM, in conjunction with the ICC Compliance Committee.⁸

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.⁹ 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

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ 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).

components of the Operational Risk Lifecycle.¹⁰ 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.¹¹ 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.¹²

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.¹³ The proposed rule change would also add to the Framework procedures for the assessment process of critical vendors.¹⁴

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

¹⁰ Notice, 83 FR at 9787.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

overall governing document and to reflect changes to the membership of the Department's governance committee.¹⁵

Finally, the proposed rule change would make clarifying edits to the Framework to reflect current practices and other non-material changes.¹⁶ 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.¹⁷

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.¹⁸ For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act¹⁹ and Rules 17Ad-22(d)(4) and 17Ad-22(d)(8) thereunder.²⁰

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

¹⁵ Notice, 83 FR at 9787.

¹⁶ Id.

¹⁷ Id. at 9787-9788.

¹⁸ 15 U.S.C. 78s(b)(2)(C).

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ 17 CFR 240.17Ad-22(d)(4) and (8).

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.²¹ 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.²²

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

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 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").

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.²³

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.²⁴ As

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17Ad-22(d)(4).

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).²⁵

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 Act²⁶ 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.²⁷ 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

²⁵ 17 CFR 240.17Ad-22(d)(4).

²⁶ 15 U.S.C. 78q-1.

²⁷ 17 CFR 240.17Ad-22(d)(8).

to fulfill the public interest requirements of Section 17A of the Act²⁸ 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).²⁹

²⁸ 15 U.S.C. 78q-1.

²⁹ 17 CFR 240.17Ad-22(d)(8).

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 Act³⁰ and Rules 17Ad-22(d)(4) and (8) thereunder.³¹

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act³² that the proposed rule change (SR-ICC-2018-003) be, and hereby is, approved.³³

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

Eduardo A. Aleman
Assistant Secretary

³⁰ 15 U.S.C. 78q-1.

³¹ 17 CFR 240.17Ad-22(d)(4) and (8).

³² 15 U.S.C. 78s(b)(2).

³³ 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).

³⁴ 17 CFR 200.30-3(a)(12).