

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92918; File No. SR-ICC-2021-017)

September 9, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICE Clear Credit Operating Agreement and Governance Playbook

I. Introduction

On July 20, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend and restate ICC’s Fifth Amended and Restated Operating Agreement (the “Operating Agreement”) and make changes to the ICE Clear Credit LLC Governance Playbook (the “Governance Playbook”). The proposed rule change was published for comment in the Federal Register on July 30, 2021.³ 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

A. Operating Agreement

The proposed rule change would amend and restate the Operating Agreement to (i) reduce the number of managers on ICC’s Board of Managers (the “Board”) designated by its parent company, ICE US Holding Company L.P. (“Parent”); (ii) remove certain outdated

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Credit Operating Agreement and Governance Playbook, Exchange Act Release No. 92504 (July 26, 2021); 86 Fed. Reg. 41123 (July 30, 2021) (SR-ICC-2021-017) (“Notice”).

provisions; and (iii) incorporate certain prior amendments and make other non-substantive updates. After making such amendments with the proposed rule change, ICC would adopt the amended Operating Agreement as the Sixth Amended and Restated Operating Agreement.⁴

i. Reduction in the Number of Managers Designated by Parent

Currently, the Operating Agreement provides that the Board will consist of, among other managers, four managers elected by Parent and at all times be independent in accordance with the requirements of each of the New York Stock Exchange listing standards, the Act, and ICE's Board of Director Governance Principles (collectively, the "Parent Independent Managers"). The proposed rule change would reduce the number of Parent Independent Managers from four to three.

Similarly, the Operating Agreement currently provides that the Board will consist of, among other managers, three other managers elected by Parent (collectively, the "Parent Non-Independent Managers"). The proposed rule change would reduce the number of Parent Non-Independent Managers from three to two.

As part of these changes, the proposed rule change would also remove the names of the Parent Independent Managers and Parent Non-Independent Managers. The Operating Agreement currently lists out the names of the individual Parent Independent Managers and Parent Non-Independent Managers. The proposed rule change would remove the names of these individuals and instead would refer to the Parent Independent Managers and Parent Non-Independent Managers only.

⁴ This description is substantially excerpted from the Notice. Capitalized terms not otherwise defined herein have the meanings assigned to them in the Operating Agreement or ICE Clear Credit Rulebook, as applicable.

Finally, consistent with these changes, the proposed rule change would reduce the total number of managers on the Board from eleven to nine, reflecting one less Parent Independent Manager and one less Parent Non-Independent Manager.

ii. Removal of Outdated Provisions

The proposed rule change would next remove outdated provisions related to the conversion of ICC from a New York trust company to a Delaware limited liability company in 2011 and ICC's operation prior to the conversion. The Operating Agreement currently describes how ICC made such a conversion and how ICC operated prior to the 2011 conversion. The proposed rule change would remove these provisions as they are outdated and no longer need to be included in the Operating Agreement. The proposed rule change would update related defined terms and references as needed.

iii. Prior Amendments and Other Updates

Finally, the proposed rule change would make certain other amendments and updates to the Operating Agreement. First, the proposed rule change would update Section 3.03 to reflect prior amendments that ICC made to the Operating Agreement without filing a proposed rule change or restating the Operating Agreement. Section 3.03 provided that the Board shall meet (i) in person no less frequently than quarterly and (ii) telephonically no less frequently than two times per calendar year. ICC previously amended this provision to provide instead that the Board will meet no less frequently than quarterly at such time and place as the Chair shall determine, and may meet more frequently (either in person or telephonically) as circumstances dictate. ICC also previously amended this provision to remove the requirement that the Board meet telephonically no less than twice per calendar year. Although ICC previously amended the Operating Agreement to make these changes, it did not file a proposed rule change or restate the Operating Agreement at such time. Thus, the proposed rule change would reflect these prior

amendments and ensure their inclusion in the Sixth Amended and Restated Operating Agreement.

Second, throughout the Operating Agreement, the proposed rule change would correct outdated references to the name, jurisdiction of organization, and governing document of Parent and certain related legal entities and would replace references to the Chief Executive Officer of ICC with references to the President (which is the correct title). ICC previously amended the Operating Agreement to include these changes but, like the changes to Board meetings described immediately above, did not file a proposed rule change and did not restate the Operating Agreement after making these changes. Thus, the proposed rule change would reflect these prior amendments and ensure their inclusion in the Sixth Amended and Restated Operating Agreement.

Third, the proposed rule change would update the contact information and addresses listed in Section 7.01 that are used for providing notice to ICC and Parent under the Operating Agreement.

Fourth, the proposed rule change would update the contact information and address for ICC's registered office and agent in Delaware listed in Section 2.06.

Fifth, the proposed rule change would update references throughout the Operating Agreement to refer to the Sixth Amended and Restated Operating Agreement or the Fifth Amended and Restated Operating Agreement, as needed in the context of the section.

Sixth, the proposed rule change would update the definition of ICE's Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE.

Finally, the proposed rule change would correct minor typographical and grammatical errors.

B. Governance Playbook

The proposed rule change would update the Governance Playbook to reflect the changes to the Operating Agreement described above. First, the proposed rule change would update Section III.A to reflect the revised composition of the Board – nine total managers with three Parent Independent Managers and two Parent Non-Independent Managers. The proposed rule change would make a similar change to Section III.F.

Second, the proposed rule change would update certain references found in Footnote 1. Footnote 1 describes an aspect of the partnership agreement of ICC's Parent. The proposed rule change would update the name of the partnership agreement to reflect the current name of that agreement and would correct the description of Parent's jurisdiction of organization.

Third, the proposed rule change would update Footnote 5 to link to the current Independence Policy of the Board of Directors of ICE, similar to the change to the Operating Agreement discussed above amending the definition of ICE's Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE.

Finally, the proposed rule change would make a minor revision to Section III.C. That section currently provides that upon the resignation of a manager, ICC's legal group is responsible for obtaining a resignation letter. The proposed rule change would revise this provision to provide that ICC's legal group is responsible for reviewing a resignation letter if received, rather than obtaining one. While it is common practice for a resigning manager to submit a resignation letter, there is no overall requirement that a resigning manager submit a resignation letter, and thus the legal group would no longer be responsible for obtaining one.

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.⁵ After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ and Rules 17Ad-22(e)(2)(i) and (v).⁷

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

Section 17A(b)(3)(F) 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, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.⁸

The Commission believes that the changes discussed in Part II.A.i above would improve the operation of the Board and clarity of the Operating Agreement. In particular, the Commission believes that reducing the overall number of managers from eleven to nine, by reducing the number of Parent Independent Managers from four to three and reducing the number of Parent Non-Independent Managers from three to two, would help to ensure the efficient operation of the

⁵ 15 U.S.C. 78s(b)(2)(C).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 240.17Ad-22(e)(2)(i), (v).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

Board and clarify the extent of Parent's ability to appoint managers. Moreover, the Commission believes that removing the names of the individual Parent Independent Managers and Parent Non-Independent Managers would help to ensure that ICC is not required to amend the Operating Agreement due to changes in such managers, thereby helping to ensure the efficiency and flexibility of the Operating Agreement.

Similarly, the Commission believes that removal of the outdated provisions related to the conversion of ICC and its operation prior to 2011, as discussed in Part II.A.ii above would help to promote the consistency and readability of the Operating Agreement.

Moreover, the Commission believes that the other changes to the Operating Agreement discussed in Part II.B.iii above would help to ensure the clarity and efficient operation of the Operating Agreement. Specifically, the Commission believes that requiring the Board to meet no less frequently than quarterly at such time and place as determined by the Chair and authorizing the Board to meet more frequently (either in person or telephonically) as circumstances dictate, would help to ensure the efficient operation of the Board and provide flexibility as to how and when the Board meets. Similarly, the Commission believes that correcting (i) outdated references to the name, jurisdiction of organization, and governing document of Parent and certain related legal entities; (ii) references to the Chief Executive Officer of ICC so they refer instead to the President; (iii) references to the Sixth Amended and Restated Operating Agreement and the Fifth Amended and Restated Operating Agreement; (iv) the definition of ICE's Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE; and (v) minor typographical and grammatical errors would help to ensure that the Operating Agreement is clear, understandable, free of errors, and correctly applied. Updating the contact information and addresses that are used for providing notice to ICC and Parent and the contact

information and address for ICC's registered office and agent in Delaware would similarly help to ensure that the Operating Agreement is clear and correctly applied.

For similar reasons, the Commission believes that updating the Governance Playbook to reflect these changes to the Operating Agreement, as discussed in Part II.B above, would help to ensure the clarity and efficient operation of the Governance Playbook. In particular, the Commission believes that updating Section III.A to reflect the revised composition of the Board – nine total managers with three Parent Independent Managers and two Parent Non-Independent Managers – would, for the reasons discussed above, help to ensure the efficient operation of the Board. Moreover, the Commission believes that updating the description related to Parent in Footnote 1 and the link to the current Independence Policy of the Board of Directors of ICE in Footnote 5 would help to ensure that the Governance Playbook is clear, understandable, and correctly applied. Finally, the Commission believes that revising Section III.C to specify that ICC's legal group is responsible for reviewing a resignation letter if received, rather than obtaining one, would clarify the role of ICC's legal group.

Thus, the Commission believes that all of these changes, as discussed above, would help to ensure the efficient operation of the Board, Operating Agreement, and Governance Playbook and help to ensure the Operating Agreement and Governance Playbook are clear, free of errors, understandable, and correctly applied. Because ICC operates pursuant to Board oversight and the governance set forth in the Operating Agreement and Governance Playbook, the Commission believes that these improvements would thereby generally help to improve the efficiency and consistency of ICC's operations. The Commission also believes that in so doing, these improvements would thereby help to ensure that ICC is able to promptly and accurately clear and settle securities transactions and assure the safeguarding of securities and funds in ICC's custody

or control or for which it is responsible. Therefore, the Commission finds the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.⁹

B. Consistency with Rule 17Ad-22(e)(2)(i) and (v)

Rules 17Ad-22(e)(2)(i) and (v) require that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.¹⁰ As discussed above, the Commission believes that the changes to the Operating Agreement and Governance Playbook would help to ensure that both documents are clear, understandable, and free from error. Because ICC's governance operates pursuant to the Operating Agreement and Governance Playbook, the Commission therefore believes the proposed rule change would help to ensure that ICC's governance arrangements are clear. Moreover, the Commission believes that revising Section III.C of the Governance Playbook to specify that ICC's legal group is responsible for reviewing a resignation letter if received, rather than obtaining one, would specify a clear and direct responsibility of the legal group. Therefore, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i) and (v).¹¹

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(e)(2)(i), (v).

¹¹ 17 CFR 240.17Ad-22(e)(2)(i), (v).

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) of the Act¹² and Rules 17Ad-22(e)(2)(i) and (v).¹³

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-ICC-2021-017) be, and hereby is, approved.¹⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(2)(i), (v).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).