

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97586; File No. SR-ICC-2023-006)

May 25, 2023

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on May 12, 2023, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been primarily prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Credit LLC ("ICC") proposes a rule change to update the ICC New Initiatives Approval Policy and Procedural Framework ("NIA Policy"). This change does not require any revisions to the ICC Clearing Rules ("Rules").

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The NIA Policy sets forth ICC's policies and procedures for the review and approval of certain new initiatives to be offered or implemented by ICC ("New Initiatives"). New Initiatives are any new project approved by the Steering Committee (i.e., an ICC management committee responsible for prioritizing the implementation of initiatives and monitoring and guiding delivery) and identified by the New Initiative Approval Committee (the "NIAC") as requiring its approval prior to launch. The intention of the NIA Policy is to notify all relevant departments of the introduction of the New Initiative, provide for information sharing between departments, ensure prior to the launch of a New Initiative that all required governance and regulatory filings have been completed and New Initiative risks are considered, and establish requirements for the pre-launch verification and testing of the New Initiative.

ICC proposes to update its NIA Policy with the addition of Exhibit B, Approvals Matrix Review and Approval Process. ICC believes that such a change will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed rule change is described in detail as follows.

The addition of the procedures set forth in Exhibit B, Approvals Matrix Review and Approval Process to Section IV Procedural Framework - Activity Steps is designed to formalize ICC's current New Initiatives review and approval process. Specifically,

Exhibit B formalizes and describes ICC’s procedures regarding the use of an “Approvals Matrix” in its review and approval of a given New Initiative. The lifecycle of an Approvals Matrix for a given New Initiative is set forth in Exhibit B and, in general, consists of three activity steps described below.

The first step is “Creation” of the Approvals Matrix. Upon the request of the NIAC Chair, the ICC Legal Department prepares an initial draft Approvals Matrix related to the particular New Initiative. An initial draft may be requested prior to the completion of the New Initiative, and in any case prior to ICC being granted all required approvals. Should the initial draft be requested prior to being granted all required approvals, a complete list of requires approvals (both granted and to be granted) will be incorporated in the Approvals Matrix. Furthermore, the Approvals Matrix will include the following information: (i) items requiring approval (e.g., ICC Clearing Rules, ICC procedures), (ii) required filings/approvals related to each item (e.g., ICC Risk Committee recommendation to the ICC Board of Managers, ICC Board of Managers, Commodity Futures Trading Commission (“CFTC”), Securities Exchange Commission (“SEC”)), and (iii) the applicable dates such requests were made, regulatory filings were filed and/or approvals were granted. The ICC Compliance Department and ICC Risk Oversight Officer (“ROO”) both review the initial draft Approvals Matrix and provide their feedback and confirmation that the information captured in the Approvals Matrix is accurate.

The purposed second step is “Review/Maintenance” of the Approvals Matrix. With respect to a particular New Initiative, the NIAC Chair may include a review of the applicable Approvals Matrix at NIAC meetings and must include a review of the

Approvals Matrix in the relevant Pre-Launch Verification meeting.<sup>3</sup> Should either type of review result in modifications to the applicable Approvals Matrix, the ICC Legal Department will update the applicable Approvals Matrix with the modifications.

The purposed third step is “Finalization” of the Approvals Matrix. Prior to Pre-Launch Verification of the given New Initiative by the NIAC, the NIAC Chair will confirm with the ICC Legal Department that all required approvals have been received, including by the ICC Compliance Department and the ROO.

Furthermore, ICC proposes to update its NIA Policy with the addition of Exhibit C, Risk Assessment Review and Approval Process to Section IV Procedural Framework - Activity Steps. Exhibit C is designed to formalize ICC’s current New Initiatives risk review and approval process. Proposed Exhibit C provides that a “Risk Assessment” associated with a given New Initiative must be created, maintained and updated in accordance with procedures include in Exhibit C.<sup>4</sup>

The purposed first step is “Creation” which describes the initial risk assessments performed by the ICC President and ICC Functional Area Heads,<sup>5</sup> which is documented on the Risk Assessment of the applicable New Initiative. The draft Risk Assessment document is then reviewed/edited by all Functional Area Heads. Each Functional Area

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<sup>3</sup> The purpose of the Pre-Launch Verification meeting, with respect to a particular New Initiative, is to review the applicable Approvals Matrix, the risk assessments and any post-launch stipulations in advance of the approval of the New Initiative.

<sup>4</sup> A Risk Assessment is a document (in the form of the template attached as **Attachment B** to the NIA Policy) reviewed by the NIAC that describes key risks identified by the ICC Functional Area Heads and includes mitigation plans, residual impact ratings and other comments.

<sup>5</sup> ICC Functional Area Heads include the General Counsel, Chief Compliance Officer, Chief Operating Officer, Chief Risk Officer and Head of ICC Technology.

Head considers the universe of key risks for their functional area when completing the Risk Assessment, and documents in the Risk Assessment their view on the main risks and any related mitigations. For each of the main risks identified, the following information is provided; a description of the risk, a description of any expected / implemented risk mitigations and a High / Medium / Low rating of the residual risk after considering the expected / implemented risk mitigations. Each Functional Area Head includes references to any work logs or other supporting materials used by the Functional Area Head when performing the Risk Assessment. All Functional Area Heads return their section of the initial draft Risk Assessment to the NIAC Chair. The NIAC Chair compiles all returned sections of the initial draft Risk Assessment into a single document. The NIAC Chair circulates the compiled initial draft Risk Assessment to all Functional Area Heads. Each Functional Area Head reviews all the risks identified in the initial draft Risk Assessment by the other Functional Area Heads, provides any revisions / additions to the document, and provides a residual risk rating for each identified risk. At the discretion of the NIAC Chair, the review and residual risk rating of each Functional Area Head's identified risks by the other Functional Area Heads can be performed collaboratively during a NIAC meeting. The NIAC Chair circulates to the Functional Area Heads the finalized initial draft of the Risk Assessment.

The purposed second step is "Review/Maintenance" of the Risk Assessment. In NIAC meetings pertaining to the relevant New Initiative, the NIAC Chair may include a review of the Risk Assessment and must include a review of the Risk Assessment in the Pre-Launch Verification meeting. Functional Area Heads may adjust their risk ratings as mitigation plans evolve to eliminate or reduce risk. Following any review of the Risk

Assessment (whether in NIAC meetings or otherwise), the NIAC Chair coordinates the update and re-circulation of the Risk Assessment to the Functional Area Heads. The NIAC Chair will date or mark the Risk Assessment accordingly to indicate what is the most current version of the Risk Assessment as it moves through the new initiatives process.

The purposed third step is “Finalization” of the Risk Assessment. During the Pre-Launch Verification NIAC meeting for the given New Initiative, the NIAC reviews and discusses the latest Risk Assessment and residual risk ratings; any further revisions are noted to the NIAC Chair prior to the NIAC voting to approve the New Initiative. After the Pre-Launch Verification NIAC meeting for the given New Initiative, the NIAC Chair circulates to the NIAC the final Risk Assessment and the Functional Area Heads provide their sign-off via email to the NIAC Chair.

Furthermore, ICC proposes to update Section IV.A. of the NIA Policy by changing the name of Step 1 from “Submission” to “Creation”. The purpose of this minor change is to better describe ICC’s actual process, which is first the creation of a new project proposal by the ICC Steering Committee, which is subsequently submitted to the NIAC for review pursuant to the NIA Policy.

In addition to the forgoing proposed modifications to the NIA Policy, ICC also proposes to formalize a series of non-material updates to the NIA Policy which were reviewed and approved by the NIAC in 2019 and 2020. Such proposed changes, which are described below, concern the administration of ICC and were made to update the NIA Policy to reflect changes in ICC’s officer positions and titles which were made within the organization.

In 2019 the NIAC approved changes to the NIA Policy<sup>6</sup> to update the composition of the NIAC in response to changes to officer positions and titles made within ICC. Specifically, revisions were made to Section II.G., “New Initiative Approval Committee”, to remove references of two out-of-date ICC officer titles (“Senior Director, Products and Services” and “Head of Special Projects”) from the list of individuals comprising the NIAC. In addition, as the Head of Special Projects at ICC use to serve as the Chairman of the NIAC, Section II.G. also was revised to indicate that the Chairman of the NIAC will no longer automatically be the Head of Special Projects as such position no longer exists within ICC. Rather, Section II.G. was modified to indicate that the Chair of the NIAC will be the individual so designated. In addition, Section II.H., which defines the “New Initiative Approval Committee Chair,” was modified to delete the identification of the “Head of Special Projects” as that officer title no longer exists at ICC, and to insert the new definition of “the individual designated to serve as the Chair of the New Initiative Approval Committee by ICE Clear Credit management.” Furthermore, Section III.B. of the NIA Policy which identified the “Head of Special Projects” as serving at the NIAC Chair was deleted and the remainder of Section III was re-lettered to reflect the deletion of Section III.B. Similarly, the outdated title “Head of Special Projects” was removed from Attachment C and Attachment F to the NIA Policy, as the title is no longer in use at ICC.

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<sup>6</sup> Version 2.1 of the NIA Policy was reviewed and approved by the NIAC on December 12, 2019.

In 2020 the NIAC approved additional changes to the NIA Policy<sup>7</sup> to correct Attachment D which contains the NIAC Charter. Specifically, Section III, “Membership” of Attachment D was modified to indicate that the Chair of the NIAC will be designated by ICC management. Similarly, Exhibit A to Attachment D which lists the member of the NIAC was modified to delete the “Head of Special Projects” as the NIAC Chair and modify the definition of the “Committee Secretary” to indicate that such position will be designated by the NIAC Chair rather than the outdated “Head of Special Projects.”

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>8</sup> requires, among other things, that the rules of a 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; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed additional procedural details to ICC's NIA Policy included in the proposed rule change are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),<sup>9</sup> because ICC believes that the proposed additional procedural details to ICC's NIA Policy enhances policies, practices, and procedures with respect to the New Initiatives. Such sound policies, practices, and procedures are an

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<sup>7</sup> Version 2.1.1. of the NIA Policy was reviewed and approved by the NIAC on March 04, 2020.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> Id.

important component of ICC's ability to comply with these requirements because disruptions to operations resulting from a new offering or implementation can impair the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.<sup>10</sup> In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.<sup>11</sup> Rule 17Ad-22(e)(17)(i)<sup>12</sup> requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in relevant part, manage its operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls. The proposed rule change provides additional procedural details to ICC's NIA Policy regarding the Approvals Matrix review and approval process, and the Risk Assessment review and approval process. Such changes will enhance ICC's implementation of New Initiatives and ICC believes such procedures will reduce the

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<sup>10</sup> Id.

<sup>11</sup> 17 CFR 240.17Ad-22.

<sup>12</sup> 17 CFR 240.17Ad-22(e)(17)(i).

likelihood of a disruption in its operations from a New Initiative. Moreover, the documentation of ICC's procedural process will improve ICC's ability to identify sources of operational risk and minimize them through the development of appropriate systems, policies, procedures, and controls consistent with the requirements of Rule 17Ad-22(e)(17)(i).<sup>13</sup>

Furthermore, the proposed rule is consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v)<sup>14</sup> which requires, in part, that a covered clearing agency 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. The non-material changes approved by the NIAC in 2019 and 2020 to update the NIA Policy to reflect changes to ICC's officer positions and titles that were made within the organization are consistent with the requirement to maintain clear and transparent governance arrangements, and with the requirement to specify clear and direct lines of responsibility. Such changes improve the accuracy and transparency of ICC's governance arrangements and improve the clarity of the lines of responsibility. In ICC's view, the proposed changes are therefore consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v).<sup>15</sup>

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed change to update ICC's NIA Policy will apply

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<sup>13</sup> Id.

<sup>14</sup> 17 C.F.R. 270.17Ad-22(e)(2)(i) and (v).

<sup>15</sup> Id.

uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2023-006 on the subject line.

Paper Comments:

Send paper comments in triplicate to, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2023-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ICC-2023-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Sherry R. Haywood  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).