

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97914; File No. SR-ICC-2023-006)

July 14, 2023

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 May 12, 2023, 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 New Initiatives Approval Policy and Procedural Framework ("NIA Policy"). The proposed rule change was published for comment in the Federal Register on June 1, 2023.³ The Commission has not received any comments on 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. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.⁴ From time to time, ICC implements new projects. After ICC's Steering Committee⁵ approves some projects, ICC's New Initiative Approval Committee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 97586 (May 25, 2023), 88 FR 35934 (June 1, 2023) (File No. SR-ICC-2023-006) ("Notice").

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Clearing Rules.

⁵ The Steering Committee is an ICC management committee responsible for prioritizing the implementation of initiatives and monitoring and guiding delivery of those initiatives. Notice, 88 FR at 35934.

(“NIAC”) must then approve them prior to their launch.⁶ New Steering Committee-approved projects that must be approved by the NIAC prior to their launch are called New Initiatives.⁷ New Initiatives may involve new and material modifications to the risk or pricing methodology; potentially significant changes to the processing system, ICC Clearing Rules, or clearing operating procedures; or Model Changes classified as Materiality A⁸ under ICC’s Model Validation Framework.⁹ The NIA Policy sets forth ICC’s policies and procedures for the review and approval of New Initiatives to be offered or implemented by ICC.¹⁰ The NIA Policy is meant to notify all relevant ICC 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.¹¹

ICC proposes three groups of changes to its NIA Policy. First, ICC proposes edits to a review and approval process described in the NIA Policy. Second, ICC proposes formalizing two existing review and approval processes by formally incorporating them into the NIA Policy. Third, ICC seeks to formalize non-material changes to the NIA

⁶ *Id.*

⁷ *Id.*

⁸ ICC classifies its Model Changes based on how substantially the Model Change affects the ICC risk management system’s assessment of risk for the related risk driver. Model Changes classified as Materiality A have a substantial impact on the risk management system’s assessment of risk for a related risk driver. Securities Exchange Act Release No. 85105 (Feb. 11, 2019), 84 FR 4570 n.18 (Feb. 15, 2019) (File No. SR-ICC-2018-011) (“Order”).

⁹ *Id.*

¹⁰ Notice, 88 FR at 35934.

¹¹ *Id.*

Policy that were reviewed and approved by the NIAC in 2019 and 2020.¹²

1. Edits to a Review and Approval Process in the NIA Policy

ICC seeks to edit the review and approval process for New Initiatives. As noted above, New Initiatives are any new projects approved by the Steering Committee and identified by the New Initiative Approval Committee as requiring approval prior to launch.¹³ ICC seeks to change the title of the first step of the New Initiatives review and approval process from “Submission” to “Creation.” In the first step of the New Initiatives review and approval process, the Steering Committee creates a new project proposal and submits it to the NIAC for review. Although the first step of the process remains unchanged, ICC believes that changing the title of the first step from “Submission” to “Creation” will better describe the first step of the New Initiatives review and approval process.¹⁴

2. Description of Existing Review and Approval Processes

ICC also proposes describing two existing review and approval processes in its NIA Policy, specifically, the review and approval process for Approvals Matrices and Risk Assessments.

a. Approvals Matrix Review and Approval Process

ICC seeks to describe in the NIA Policy its existing three-step review and approval process for Approvals Matrices. An Approvals Matrix is a document reviewed by the New Initiative Approval Committee that evidences and ensures that all necessary

¹² *Id.* at 35935.

¹³ *Id.* at 35934.

¹⁴ *Id.* at 35935.

approvals have been obtained and all relevant comments have been addressed.¹⁵ For example, the Approvals Matrix would help ensure that ICC has obtained all necessary regulatory approvals for a New Initiative. ICC is describing in the NIA Policy the existing¹⁶ review and approval process for Approvals Matrices to formalize and describe ICC's procedures regarding the use of an Approvals Matrix in its review and approval of a given New Initiative.¹⁷

The first step of the Approvals Matrix review and approval process is "Creation." In this step, the NIAC Chair requests an initial draft Approvals Matrix. The NIAC Chair may request an initial draft Approvals Matrix prior to completion of a New Initiative, and in any case prior to ICC being granted all required approvals. Upon this request, the ICC Legal Department prepares the initial draft Approvals Matrix. The Approvals Matrix should include items requiring approval (e.g., ICC Clearing Rules or ICC Procedures); required filings/approvals related to each item (e.g., CFTC, SEC, and ICC Board of Managers); and the date on which approvals were requested, the date on which regulatory filings were filed, and/or the date on which approvals were granted. The list of required approvals included in the Approvals Matrix should be complete. This means that it should include both granted and to-be-granted approvals. Ultimately, the ICC Compliance Department and ICC Risk Oversight Officer both review the initial draft Approvals Matrix, provide their feedback, and confirm that the information captured in

¹⁵ New Initiatives Approval Policy and Procedural Framework, Section II.A.

¹⁶ ICC's current NIA Policy defines Approvals Matrix. It also includes a template for the Approvals Matrix and discusses aspects of the Approvals Matrix review and approval process, for example it identifies certain persons responsible for review of the Approvals Matrix. New Initiatives Approval Policy and Procedural Framework.

¹⁷ Notice, 88 FR at 35934.

the Matrix is accurate.

The second step of the Approvals Matrix review and approval process is “Review/Maintenance.” As part of the review and maintenance process, there may be meetings, such as NIAC meetings and a Pre-Launch Verification meeting.¹⁸ The NIAC Chair may include a review of the Approvals Matrix in a NIAC meeting pertaining to the relevant New Initiative, and must include a review of the Approvals Matrix in the relevant Pre-Launch Verification meeting. If the Approvals Matrix must be changed, the ICC Legal Department will make the necessary changes at the request of the NIAC Chair. To indicate which version of the Approvals Matrix is the most current as it moves through the New Initiatives process, the Approvals Matrix will be dated and marked accordingly.

The third step of the Approvals Matrix review and approval process is “Finalization.” During this step of the review and approval process, the NIAC Chair confirms with the ICC Legal Department that all required approvals have been received. At the request of the NIAC Chair, the ICC Legal Department must circulate the final Approvals Matrix to the ICC Compliance Department and ICC Risk Oversight Officer. The ICC Legal Department must then provide confirmation to the NIAC Chair that the ICC Compliance Department and the ICC Risk Oversight Officer have reviewed the Approvals Matrix.

b. Risk Assessment Review and Approval Process

ICC also seeks to describe in the NIA Policy its existing three-step review and

¹⁸ Pre-Launch Verification meetings are meant to allow for review of the applicable Approvals Matrix, the risk assessments, and any post-launch stipulations in advance of the approval of the New Initiative. *Id.* at 35935 n.3.

approval process for Risk Assessments. A Risk Assessment is a document reviewed by the NIAC that describes key risks identified by the ICC Functional Area Heads¹⁹ and includes mitigation plans, residual impact ratings, and other comments.²⁰ ICC proposes describing the review and approval process for Risk Assessments in the NIA Policy to formalize ICC's current²¹ New Initiatives risk review and approval process.²²

The first step of the Risk Assessment review and approval process is "Creation." This section of the Risk Assessment review and approval process provides detailed instructions with respect to how the initial draft Risk Assessment should be created and reviewed. It requires the NIAC Chair to request that the ICC President, General Counsel, Chief Compliance Officer, Chief Operating Officer, Chief Risk Officer, and Head of ICC Technology all perform initial risk assessments and document these assessments in the Risk Assessment document. Once the ICC President and Functional Area Heads complete and document their assessments, all Functional Area Heads must provide their section of the initial draft Risk Assessment to the NIAC Chair. At that point, it is the NIAC Chair's responsibility to compile the sections received from the Functional Area Heads into a single initial draft Risk Assessment and circulate that Risk Assessment to all Functional Area Heads for their review. As they review the initial draft Risk Assessment, Functional Area Heads should each provide a residual risk rating for each identified risk

¹⁹ Some examples of ICC Functional Area Heads include the General Counsel, Chief Compliance Officer, Chief Operating Officer, Chief Risk Officer, and Head of ICC Technology. *Id.* at 35935 n.5.

²⁰ *Id.* at 35935 n.4.

²¹ ICC's current NIA Policy defines Risk Assessment. It also includes a template for the Risk Assessment and discusses aspects of the Risk Assessment review and approval process, for example it identifies certain persons responsible for review of the Risk Assessment. New Initiatives Approval Policy and Procedural Framework.

²² Notice, 88 FR at 35935.

in the initial draft Risk Assessment. This review and residual risk rating of each identified risk may be completed during an NIAC meeting, at the discretion of the NIAC Chair. The final version of the initial draft Risk Assessment will be circulated to all Functional Area Heads by the NIAC Chair.

The proposed “Creation” portion of the Risk Assessment review and approval process, in the NIA Policy, also specifies the content of the initial draft Risk Assessment. Under the proposed change, when completing the Risk Assessment, each Functional Area Head should consider the key risks for their functional area. Functional Area Heads should also document in the Risk Assessment their view of the main risks and any related mitigations. The documentation of the main risks includes: 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 should include reference to any work logs or other supporting materials used by the Functional Area Head when performing the Risk Assessment. In the event that an initial draft Risk Assessment is requested prior to the completion of a New Initiative, it should reflect the information available at that time related to the risks and/or expected risks associated with the New Initiative.

The second step of the Risk Assessment review and approval process is “Review/Maintenance” of the Risk Assessment. During the “Review/Maintenance” portion of the Risk Assessment review and approval process, Functional Area Heads may change their risk ratings as mitigation plans evolve to eliminate or reduce risk. The Pre-Launch Verification meeting must include a review of the Risk Assessment. At the discretion of the NIAC Chair, NIAC meetings related to a New Initiative may include a

review of the Risk Assessment. During this step, the NIAC Chair also coordinates the post-review update and recirculation of the Risk Assessment to the Functional Area Heads and marks the Risk Assessment to indicate which version of the document is most current.

The third step of the Risk Assessment review and approval process is “Finalization” of the Risk Assessment. At the Pre-Launch Verification NIAC meeting, the NIAC reviews the latest version of the Risk Assessment and residual risk ratings. The NIAC Chair is made aware of any further revisions to the Risk Assessment prior to the NIAC voting to approve the New Initiative. The NIAC Chair sends the final Risk Assessment to the NIAC after the Pre-Launch Verification NIAC meeting. Ultimately, the Functional Area Heads provide their sign-off on the final Risk Assessment via e-mail to the NIAC Chair.

3. 2019 and 2020 Non-Material Updates

ICC seeks to formalize changes to the NIA Policy, reviewed and approved by the NIAC in 2019 and 2020, that ICC deems non-material. These changes were made to reflect changes in ICC’s officer positions and titles.²³

In 2019, ICC made changes to the positions comprising the NIAC and the NIAC’s leadership. Section II.G describes and identifies who is on the NIAC and who chairs it. It previously listed the Senior Director, Products and Services and Head of Special Projects as members of the NIAC, and identified the Head of Special Projects as the NIAC Chair. The changes delete these positions from the NIAC as they no longer exist. ICC also adds text to Section II.G to reflect that any member of the NIAC may now be

²³ *Id.* at 35935.

the NIAC Chair. The term NIAC Chair is defined in Section II.H. Since the Head of Special Projects can no longer be the NIAC Chair because that position title no longer exists at ICC, ICC has changed the definition of NIAC Chair to “the individual designated to serve as Chair of the New Initiative Approval Committee by ICC management.” Additional references to either the Head of Special Projects, its role as the NIAC Chair or both have been deleted in Section III.B, Attachment C, and Attachment F of the NIA Policy as well.

In 2020, ICC made additional changes to the NIA Policy related to the 2019 changes. Attachment D of the NIA Policy contains the NIAC Charter. ICC added text to Attachment D making it clear that ICC Management designates one of the NIAC members to serve as the NIAC Chair. Additionally, references to the Head of Special Projects have been removed from Exhibit A of Attachment D. Specifically, Exhibit A of Attachment D no longer lists the Head of Special Projects as the NIAC Chair and indicates that the Chair of the NIAC, rather than the Head of Special Projects, may designate who will serve as Committee Secretary.

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.²⁴ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act²⁵ and Rules

²⁴ 15 U.S.C. 78s(b)(2)(C).

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

17Ad-22(e)(2)²⁶ and (e)(17).²⁷

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

Under Section 17A(b)(3)(F) of the Act, ICC’s rules, among other things, must 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 . . . and, in general, to protect investors and the public interest”²⁸ Based on its review of the record, and for the reasons discussed below, the Commission believes that ICC’s proposed rule change is consistent with Section 17A(b)(3)(F) because it helps ensure that New Initiatives are clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures.

The Commission has stated that New Initiatives may pose operational or other risks to ICC if not clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures.²⁹ The proposed changes to the NIA Policy make the NIA Policy clearer. For example, ICC seeks to better describe the steps of the review and approval process for New Initiatives with its edits to the existing New Initiatives review and approval process. ICC’s description of a review and approval process for Approvals Matrices and Risk Assessments clarifies a process through which ICC ensures that it obtains all necessary approvals and identifies and addresses all relevant risks with

²⁶ 17 CFR 240Ad-22(e)(2).

²⁷ 17 CFR 240Ad-22(e)(17).

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

²⁹ Order, 84 FR at 4570.

respect to a New Initiative. By incorporating the 2019 and 2020 revisions into the NIA Policy, ICC helps ensure that the NIA Policy is accurate in that it reflects current NIAC membership, persons eligible for NIAC positions, and the persons responsible for naming others to specific NIAC positions. Because the proposed changes make the NIA Policy clearer, they should allow the policy to be applied consistently as well. As such, the proposed revisions should enhance ICC's ability to manage risks and avoid potential disruptions to operations related to New Initiatives. This enhances ICC's ability to ensure the prompt and accurate clearance and settlement of securities transactions which also helps ICC assure the safeguarding of securities and funds which are in its custody and control, or for which it is responsible.

The Commission believes, therefore, that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.³⁰

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

Rule 17Ad-22(e)(2)(i) and (v) require ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.³¹ The proposed rule change identifies who is eligible to serve as NIAC Chair, which makes the lines of responsibility described in the NIA Policy clearer. As such, ICC's governance arrangements are made clearer and more transparent overall as a result of the proposed rule change. The proposed rule change also identifies who designates the NIAC Chair and Committee Secretary and identifies individuals

³⁰ 15 U.S.C. 78q-1(b)(3)(F).

³¹ 17 CFR 240.17Ad-22(e)(2).

responsible for tasks in each step of the review and approval process for Approvals Matrices and Risk Assessments. Including a description of these responsibilities in the NIA Policy helps ensure that clear and transparent information is available regarding roles and responsibilities related to New Initiatives. Thus, the Commission believes, that the proposed rule change is consistent with the requirements of Rules 17Ad-22(e)(2)(i) and (v) of the Act.³²

C. Consistency with Rule 17Ad-22(e)(17)

Rule 17Ad-22(e)(17) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures and controls.³³ Operational risk refers to the likelihood that deficiencies in information systems or internal controls, human errors or misconduct, management failures, unauthorized intrusions into corporate or production systems, or disruptions from external events such as natural disasters, would adversely affect the functioning of a clearing agency.³⁴ As noted above, New Initiatives may pose operational or other risks to ICC if not clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures.³⁵ The proposed rule change describes a standardized method for creating, reviewing, and finalizing Approvals Matrices and Risk Assessments. In doing so it helps ensure that New Initiatives are clearly and consistently identified, reviewed, and approved. The proposed rule change

³² 17 CFR 240.17Ad-22(e)(2).

³³ 17 CFR 240.17Ad-22(e)(17).

³⁴ Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70837 (Oct. 13, 2016) (File No. S7-03-14).

³⁵ Order, 84 FR at 4570.

thereby identifies and aids in mitigating a plausible source of operational risk. Thus, the Commission believes, that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(17) of the Act.³⁶

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, Section 17A(b)(3)(F) of the Act³⁷ and Rules 17Ad-22(e)(2)³⁸ and (e)(17) thereunder.³⁹

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICC-2023-006) be, and hereby is, approved.⁴⁰

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

J. Matthew DeLesDernier,

Deputy Secretary.

³⁶ 17 CFR 240.17Ad-22(e)(17).

³⁷ 15 U.S.C. 78q-1(b)(3)(F).

³⁸ 17 CFR 240.17Ad-22(e)(2).

³⁹ 17 CFR 240.17Ad-22(e)(17).

⁴⁰ In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴¹ 17 CFR 200.30-3(a)(12).