

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98572; File No. SR-ICC-2023-013)

September 27, 2023

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

I. Introduction

On August 15, 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 revise the ICC Treasury Operations Policies and Procedures ("Treasury Policy"). The proposed rule change was published for comment in the Federal Register on August 28, 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

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.⁴ ICC requires that its Clearing Participants post margin to collateralize their credit exposure to ICC, based on the size and risk of their cleared positions. On a daily basis, ICC determines margin requirements (i) for a Clearing Participant's own cleared positions (referred to as "house" positions) and (ii) for the cleared positions of its clients. ICC also requires that Clearing Participants contribute to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 98200 (Aug. 22, 2023), 88 FR 58628 (Aug. 28, 2023) (File No. SR-ICC-2023-013) ("Notice").

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Clearing Rules or the Treasury Policy, as applicable.

its Guaranty Fund.

ICC's Treasury Department is responsible for daily cash and collateral management of margin and Guaranty Fund assets, including Client-Related Initial Margin assets.⁵ The Treasury Policy contains policies and procedures that aid the ICC Treasury Department in carrying out these responsibilities.⁶

Aside from non-substantive, typographical changes (for example, the addition of quotation marks around the word "haircuts"), ICC proposes to make two categories of changes to the Treasury Policy. First, ICC proposes clarifications and changes to the way it values the collateral that Clearing Participants provide to ICC to cover their margin and Guaranty Fund requirements. Second, ICC proposes adding a new section to its Treasury Policy addressing circumstances under which it would use a foreign exchange facility to convert one currency to another.

1. ICC's Collateral Valuation

In valuing collateral, ICC's currently effective Treasury Policy aims to accurately and effectively price assets posted as collateral and haircut those assets for their native market risks⁷ and related cross-currency risks.⁸ The proposed rule change would not change these overall aims, but ICC notes that it would clarify and simplify some already-existing procedures which achieve these aims.⁹ It would also change the haircut process

⁵ Notice, 88 FR at 58628.

⁶ *Id.*

⁷ ICC defines native market risk as the risk of a decrease in value of the asset posted as collateral. *Id.*

⁸ ICC defines cross-currency risk as the risk of the change in value of one currency as compared to the value of another currency. *Id.*

⁹ Notice, 88 FR at 58628.

for Great British Pounds posted as Client-Related Initial Margin to cover a Euro-denominated product requirement.

Current Valuation Process

ICC's valuation process depends on the type of collateral. Currently, ICC accepts US Treasuries, US Dollars ("USD"), Euros, and for client-related margin only, Great British Pounds ("GBP"). Moreover, ICC currently clears products denominated in USD and in Euros.

With respect to US Treasuries covering a USD-denominated product requirement, the currently effective Treasury Policy provides that ICC calculates the cover value as follows: accrued interest plus mid-price multiplied by principal less applicable haircut established by the ICC Risk Department.¹⁰ For US Treasuries or USD covering a Euro-denominated product requirement, ICC haircuts the USD value at the currency haircut for Euros (after first converting the US Treasuries to USD).

With respect to Euro covering a Euro-denominated product requirement, there is no haircut. With respect to Euro covering a USD-denominated product requirement, ICC first converts the Euro to the USD value and then haircuts the USD value at the Euro currency haircut established by the ICC Risk Department.

With respect to GBP covering a USD-denominated product requirement, ICC first converts the GBP to the USD value and then haircuts the USD value at the GBP currency haircut established by the ICC Risk Department. With respect to GBP covering a Euro-denominated product requirement, ICC first converts the GBP to the USD value and then

¹⁰ ICC's Risk Department calculates haircuts on an on-going basis. ICE Clear Credit LLC Treasury Operations Policies and Procedures. ICC describes the qualitative manner in which it derives its collateral haircuts in its Collateral Risk Management Framework. Securities Exchange Act Release No. 96557 (Dec. 21, 2022), 87 FR 79922 (Dec. 28, 2022) (File No. SR-ICC-2022-013) ("Order").

haircuts the USD value at the GBP currency haircut established by the ICC Risk Department. ICC then converts the Euro-denominated product requirement to the USD value, and ICC then grosses up the resulting USD requirement by the Euro currency haircut.

Amended Valuation Process

The proposed rule change would delete much of the currency-specific language and replace it with general principles that would apply to any currency ICC accepts. In doing so, the proposed rule change would not alter the substance of the current process, except with respect to the valuation of GBP in certain circumstances, as discussed below.

The proposed rule change would delete the language described above related to collateral posted in the currency of the obligation, and replace it with general language stating that posted cash collateral used to cover a specific currency obligation in the currency of the posted collateral is not subject to a haircut. Language related to collateral posted in a currency other than the currency of the obligation would also be deleted. In its place, the proposed rule change would add language stating that posted cash collateral used to cover a specific currency obligation is first converted to its value expressed in the currency of the obligation, and further haircut to capture the potential foreign exchange risk between the posted cash collateral and the currency of the obligation.

With respect to US Treasuries, the proposed rule change would maintain the current language regarding cover value. As under the current Treasury Policy, ICC would determine the cover value as accrued interest plus mid-price multiplied by principal, less applicable haircut. Finally, the proposed rule change would specify that the cover value of US Treasuries used to cover a specific non-USD currency obligation is

computed by foreign exchange haircutting the corresponding USD-equivalent cover value, where the applicable foreign exchange haircut captures the potential foreign exchange risk between the USD cash and the currency of the obligation.

For US Treasuries, USD, and Euros, this proposed change is consistent with currently effective policies. However, the proposed rule change would alter ICC's process for GBP. With respect to GBP used to cover a Euro-denominated product requirement, the proposed rule change would delete a provision requiring ICC to convert the GBP cash value to its USD value, haircut the USD value, convert the Euro-denominated product requirement to its USD value, and gross up the resulting USD requirement by the Euro currency haircut. Deleting the currently effective haircut process related to GBP used to cover a Euro-denominated product requirement and replacing it with the proposed changes makes the process more efficient by eliminating what amounts to a double haircut.¹¹

2. ICC's Use of a Foreign Exchange Facility

ICC also proposes adding a new section to its Treasury Policy titled "Non-Committed FX Facility." This section addresses circumstances under which ICC would use a foreign exchange facility to convert one currency to another. The proposed section begins by noting that ICC has access to foreign exchange facilities with various commercial counterparties. The facilities are uncommitted, which means that they do not require ICC's counterparties to provide requested currencies, but ICC still may use them to convert one currency to another for same day settlement.

The proposed section also describes circumstances under which ICC would need

¹¹ Notice, 88 FR at 58628; *see, infra*, note 20 and related text.

to convert Client-Related Initial Margin, posted by Clearing Participants in GBP, into another currency. ICC may need to convert Client-Related Initial Margin posted in GBP in the context of a default of the client that provided the GBP as margin. None of the contracts that ICC clears settles in GBP. Therefore, to the extent that margin is posted in GBP, it would need to be converted to the currency of an obligation before it is used to satisfy that obligation.

ICC proposes to state in the Policy that the circumstances where it would need to convert GBP to another currency are very narrow. The added section provides two reasons to support ICC's position. First, as mentioned above, ICC does not currently clear any contracts that are settled in GBP; thus, GBP is not required for daily settlement. Second, use of Client-Related Initial Margin in the context of a Clearing Participant default is very limited.¹² The proposed section closes by noting that if ICC needs to convert GBP collateral to either USD or Euro in the context of a Clearing Participant default, ICC would use one of its non-committed foreign exchange arrangements to do so.

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.¹³ For the reasons given below, the Commission finds that

¹² For example, ICC would use a client's Client-Related Initial Margin only where that particular client has defaulted.

¹³ 15 U.S.C. 78s(b)(2)(C).

the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁴ and Rule 17Ad-22(e)(5).¹⁵

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”¹⁶ 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 ICC can monitor its collateral and enhances ICC’s ability to deal with a potential default.

ICC’s proposed changes to its collateral valuation process do not change any fundamental aspects of the process, but instead serve to simplify and make more efficient the description of the process; thus, ICC’s proposed changes help to ensure that the collateral valuation process is clearer and more transparent to members. As noted above, ICC’s currently effective Treasury Policy aims to accurately and effectively price assets posted as collateral and haircut those assets for their native market risks and related cross-currency risks.¹⁷ ICC’s proposed changes align with these aims related to collateral valuation. A number of ICC’s proposed changes—for example, ICC’s non-material edits

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240Ad-22(e)(5).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ Notice, 88 FR at 58628.

to policies governing the valuation process for U.S. Treasuries posted as collateral—merely clarify and simplify pre-existing procedures related to collateral valuation. ICC’s proposal to add text requiring that posted cash used to cover a specific currency obligation is first converted to its value expressed in the currency of the obligation and then haircut to capture the potential foreign exchange risk supports its stated aim to accurately price assets and haircut them for their cross-currency risks. The changes help to make the process clearer and more transparent, which would in turn facilitate the accurate valuation of ICC’s financial resources and ensure that ICC is able to determine whether it needs to bolster resources available to it in order to clear and settle trades.

ICC’s proposed addition of the Non-Committed FX Facility section to its Treasury Policy enhances ICC’s ability to deal with a potential default. ICC proposes to add a Non-Committed FX Facility section to its Treasury Policy that notes that ICC has access to non-committed foreign exchange facilities with various commercial counterparties that may be used to convert currency, including GBP, to another currency for same day settlement. Adding the Non-Committed FX Facility section of the Treasury Policy ensures that members have knowledge of ICC’s access to non-committed foreign exchange facilities and notice of the potential for specific scenarios, such as the possibility that ICC would be unable to exchange currency using ICC’s non-committed foreign exchange facilities to satisfy certain obligations. Such notice should make it easier for ICC and its Clearing Participants to manage these scenarios should they ever arise during a potential default. Therefore, the addition of the Committed FX Facility section promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody

or control of the clearing agency 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.¹⁸

B. Consistency with Rule 17Ad-22(e)(5)

Rule 17Ad-22(e)(5) requires ICC to “establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits”¹⁹ 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 Rule 17Ad-22(e)(5) because the change to its haircut process for GBP used to cover a Euro-denominated product requirement is appropriately conservative.

ICC proposes to alter its currently effective haircut process for GBP used to cover a Euro-denominated product requirement. The currently effective haircut process requires that ICC convert the GBP cash value to its USD value and haircut the USD value at the GBP currency haircut. It also requires that the Euro-denominated product requirement be converted to its USD value. The USD value of the Euro-denominated product requirement is then grossed up by the EUR currency haircut.²⁰ ICC proposes to eliminate this process, which is in effect is a double haircut requirement, and replace it

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(2).

²⁰ The USD value of the Euro-denominated product requirement is grossed up by the EUR currency haircut because ICC’s treasury system automatically would haircut the Euro value in the process of converting it to the USD value. Securities Exchange Act Release No. 97489 (May 11, 2023), 88 FR 31571, 31573 (May 17, 2023) (File No. SR-ICC-2023-003).

with an approach in which the posted GBP is converted directly to the currency of the obligation and then haircut once.

ICC's proposed process would still align with its collateral valuation process, which requires that assets posted as collateral are haircut for their native market risks and cross-currency risk. The proposed process would still apply a haircut that addresses cross-currency risk, but would eliminate an extraneous haircut that, according to ICC, is a byproduct of its previous clearing system business logic.²¹ As such, the Commission believes that the proposed change is consistent with Rule 17Ad-22(e)(5) because it remains appropriately conservative.

²¹ Notice, 88 FR at 58628 n.5.

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 Act²² and Rule 17Ad-22(e)(5) thereunder.²³

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICC-2023-013) be, and hereby is, approved.²⁴

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 17 CFR 240.17Ad-22(e)(5).

²⁴ 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).

²⁵ 17 CFR 200.30-3(a)(12).