

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101382; File No. SR-ICC-2024-009)

October 18, 2024

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the Clearing Rules, Risk Management Framework, Governance Playbook and Sixth Amended and Restated Operating Agreement

I. Introduction

On August 19, 2024, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4,² a proposed rule change to revise the ICC (i) Clearing Rules (the “Rules”), (ii) Risk Management Framework (the “Framework”), (iii) Governance Playbook (the “Playbook”), and (iv) Sixth Amended and Restated Operating Agreement (the “Operating Agreement”).³ On August 27, 2024, ICC filed Partial Amendment No. 1 to the proposed rule change (hereafter, “proposed rule change”).⁴ The proposed rule change was published for comment in the Federal Register on September 5, 2024.⁵ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rules, Framework, Playbook, and Operating Agreement, as applicable.

⁴ Partial Amendment No. 1 amends the Exhibit 5A to correct a typographical error.

⁵ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the Clearing Rules, Risk Management Framework, Governance Playbook and Sixth Amended and Restated Operating Agreement; Exchange Act Release No. 34-100876 (Aug. 29, 2024), 89 FR 72538 (Sep. 5, 2024) (SR-ICC-2024-009) (“Notice”).

II. Description of the Proposed Rule Change

A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing Credit Default Swap (“CDS”) contracts.⁶ The Proposed Rule Change amends the Rules, the Framework, the Playbook, and the Operating Agreement. The amendments primarily eliminate ICC’s existing Risk Management Subcommittee; establish a new Risk Advisory Working Group; and add to ICC’s Risk Committee representatives of persons that are not Clearing Participants but have an interest in the operations of ICC, such as customers of Clearing Participants. The amendments are discussed below according to the document being amended.

B. Rules

As noted above, ICC proposes to add representatives of non-Clearing Participant parties to its existing Risk Committee, eliminate its Risk Management Subcommittee, and establish a Risk Advisory Working Group. Currently, as described in ICC Rule 509, the Risk Management Subcommittee is a subcommittee of the Risk Committee, and it includes, as a member, a representative of a Non-Participant Party.⁷ As with the Risk Committee, ICC may not take certain actions, such as determining products eligible for clearing, without first consulting the Risk Management Subcommittee.

Going forward, ICC proposes including representatives of Non-Participant Parties as members of the Risk Committee, rather than a subcommittee of the Risk Committee.

⁶ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Rules, the Framework, the Playbook, and the Operating Agreement, as applicable.

⁷ The term “Non-Participant Party” is defined in the Rules as a Person that is not ICE Clear Credit, a Participant or an Affiliate of a Participant, including, without limitation, a “cleared swaps customer” as defined in CFTC Rule 22.1

ICC is therefore adding these representatives directly to the Risk Committee.

Accordingly, amendments to Rule 501 state that the Risk Committee will include representatives of Non-Participant Parties. These amendments also add a more general description of the role of the Risk Committee with respect to ICC's Board, to better reflect the inclusion of non-Participants. The Board will consult with the Risk Committee on any matters that may materially affect the risk profile of ICC, and the Board will consider and respond to the proposals, recommendations and other input provided by the Risk Committee. Consistent with this more general description of the role of ICC's Risk Committee, ICC is amending Rule 502 to clarify that the specific actions subject to Risk Committee consultation, which are already listed in Rule 502, are not intended to limit the general provisions described above in Rule 501.

Moreover, ICC is amending Rule 503(a) to make certain changes to the composition of the Risk Committee, increase the size of the Risk Committee from twelve to fourteen members, and add both the requirement to have and the process for selecting two Risk Committee members who are representatives of Non-Participant Parties. Amended Rule 503(a) requires that: (1) two Non-Participant Parties each appoint a representative to serve on the Risk Committee; (2) the two Non-Participant Parties making those appointments themselves be selected by a majority vote of the other Risk Committee Members; and (3) those Non-Participant Parties making the appointments be active in clearing transactions at ICC. Amended Rule 503 further requires that the appointed representatives have risk management experience and expertise and be subject to the Risk Committee's approval, which could not be unreasonably withheld,

conditioned, or delayed.⁸ Additionally, the rule requires that the representatives be employees of the Non-Participant Parties or Affiliates thereof. The amended rule provides that a Non-Participant Appointee may be removed at any time without cause by the Non-Participant Party that appointed the individual, and that if the position becomes vacant, the Non-Participant Party may appoint another individual. Finally, new Rule 503(c) requires that a Non-Participant Party appointing someone to the Risk Committee execute a confidentiality agreement and cause its appointee to execute an acknowledgment of their confidentiality obligations. The amendments also make conforming changes to the Confidentiality Agreement for Risk Committee participants to specify that it is being executed by a Market Participant rather than a Clearing House member.

To support and facilitate these changes, ICC also is amending Rule 505 to revise the definition of a quorum to a majority of the Risk Committee. The amendments to Rule 505 also delete an additional requirement in the existing Rule that at least half of the Participant Appointees must be present, and reflect the appointment of members by Non-Participant Parties.

As a result of adding representatives of Non-Participant Parties to the Risk Committee ICC has determined to eliminate its existing Risk Management Subcommittee. As discussed above, the Risk Management Subcommittee is a subcommittee of the Risk Committee and includes a representative of a Non-Participant

⁸ Existing Rule 503(a)(ii) requires that the Board approve each member of the Risk Committee, and that such approval cannot be unreasonably withheld, conditioned or delayed.

Party. Going forward Non-Participant Parties will have two representatives directly on the Risk Committee, rather than one representative on the subcommittee.

Accordingly, ICC is amending the Rules to remove references to the Risk Management Subcommittee and to update certain rules to reflect the elimination of the subcommittee. For example, Rule 201 currently provides that the Risk Management Subcommittee will have consultation rights over certain changes to the qualifications for Clearing Participants and the admission of new Clearing Participants. The amendments replace references in Rule 201 to the Risk Management Subcommittee with references to the Risk Committee. Similarly, Rule 202 currently provides that ICC's Board will make decisions on a potential Clearing Participant's application on the advice of the ICC management and the Risk Management Subcommittee. The amendments replace references in Rule 202 to the Risk Management Subcommittee with references to the Risk Committee. The amendments also remove references to consultation with the Risk Management Subcommittee from Rule 601(b), which describes circumstances in which the Board or an officer of ICC is excused from consulting with the Risk Committee or subcommittee. Finally, the amendments eliminate a reference to the Risk Management Committee in Rule 703, which relates to investigations of potential violations of the Rules by ICC's Clearing Participants.

With the elimination of the Risk Management Subcommittee, ICC is also establishing a new Risk Advisory Working Group. The Risk Advisory Working Group will include representatives of Participants and Non-Participant Parties and is intended to be a broad forum for risk-based input. Accordingly, ICC is amending Rule 509 to create the Risk Advisory Working Group. The amendments clarify that the role of the working

group is advisory, such that neither the Board nor the Risk Committee is required to accept or act upon any proposal of the working group. The amendments specify that the Risk Advisory Working Group must include as members a minimum of two representatives of Participants and a minimum of two representatives of Non-Participant Parties. Other amendments remove a reference to reporting requirements to the CFTC and SEC.

ICC proposes other changes to reflect the new Risk Advisory Working Group. For example, another amendment to Rule 503(a) provides for a minimum number of Participant and Non-Participant Party members on the Risk Advisory Working Group. ICC is revising the limitations on liability in Rule 512 to apply to the Risk Advisory Working Group and its members. Amendments to Rule 512 also provides that the Risk Advisory Working Group meet at least twice per year, and that the working group provide the Risk Committee with a summary of the topics discussed and main points raised at each meeting.

Finally, the amendments make drafting corrections and clarifications to account for the other changes being made, including the deletion of definitions relevant to the Risk Management Subcommittee. For example, ICC is amending Rule 507 to allow participation in meetings by audio or video conference. In addition, the amendments add the definitions of Non-Participant Appointees and Risk Advisory Working Group.

C. Framework

ICC is amending the Framework to reflect the changes being made to the Rules as described above. All references to the Risk Management Subcommittee will be replaced with references to the new Risk Advisory Working Group. Additionally, the governance

structure chart will be updated to remove the Risk Management Subcommittee and add the Risk Advisory Working Group. Similarly, the Risk subsection will be updated to describe the role of the Risk Advisory Working Group in providing risk-based feedback to ICC on all matters that could materially affect the risk profile of ICC as discussed above.

The amendments also remove references to ICC's existing Advisory Committee. The Advisory Committee was intended to be a forum to solicit input from Non-Participant Parties. ICC has found that participation in the Advisory Committee has been very limited, to the point that the Advisory Committee is effectively dormant and has not met for years.⁹ As a result, ICC is discontinuing the Advisory Committee and is instead providing roles for Non-Participant Parties on the Risk Committee and the Risk Advisory Working Group, as discussed above.

Finally, the amendments also add a new revision history section to the Framework and re-number the Appendices.

D. Playbook

ICE Clear Credit is amending the Playbook to conform to the amendments to the Rules and Framework discussed above and to make other changes, as discussed below.

The amendments revise Section III of the Playbook as it relates to the election of ICC Board members. Currently, ICC's Parent must annually elect all Board members no less than five business days after March 14, which is the date that the Risk Committee is reconstituted each year. The amendments eliminate the five business day requirement and instead require that ICC's Parent annually elect all Board members following the

⁹ Notice, 89 FR at 72540.

reconstitution date of March 14. ICC is making this change to allow Risk Committee members sufficient time, following reconstitution of the Risk Committee, to consider and nominate appointees to the Board.¹⁰ Although ICC is removing the five business day requirement, pursuant to Section 3.03(e) of the Operating Agreement, ICC’s parent must still elect all managers annually at a meeting to be held during the first four months of each calendar year.

The amendments also revise Section IV of the Playbook, which describes ICC’s various governance committees. Here the amendments update the description of the Risk Committee; eliminate the descriptions of the Advisory Committee, Risk Management Subcommittee, and the FCM Executive Council;¹¹ add a description of the Risk Advisory Working Group; and revise the description of the Steering Committee. With respect to the Risk Committee, the amendments specify that the Risk Committee includes representatives of customers of ICC CPs and that the Board is required to consult with the Risk Committee with respect to matters that could materially affect the risk profile of ICC. The amendments increase the size of the Risk Committee from twelve to fourteen members and require two members of the Risk Committee to be representatives of customers of CPs. The amendments to Section IV of the Playbook also summarize the procedures for selecting the two representatives of customers of CP members, as set out in amended Rule 503, add a reference to Chapter 5 of the Rules, which describes the Risk Committee, and rename the Chairman of the Risk Committee to the Chairperson.

¹⁰ Notice, 89 FR at 72540.

¹¹ Like the Advisory Committee, the FCM Executive Council is a dormant committee that has not met for years. Notice, 89 FR at 72540.

The amendments to the Playbook also add a description of the purpose and membership of the Risk Advisory Working Group. The amendments provide that the ICC Chief Risk Officer will serve as Chairperson of the Risk Advisory Working Group, a minimum of two members will be representatives of CPs, and a minimum of two members will be representatives of customers of CPs. Another amendment details that the Members of the Risk Advisory Working Group will be appointed by the ICC President, subject to the approval of the Risk Committee. The amendments also specify that the Risk Advisory Working Group will meet at least two times a year, and additionally as needed to consult all matters that could affect ICC's risk profile. The amendments specify the documents relevant to the Risk Advisory Working Group will be maintained on a shared Legal network drive, including the Risk Advisory Working Group charter, meeting materials, and summaries of the main points and topics discussed during meetings. Additionally, administrative procedures in the Playbook that refer to the use of ICC's Diligent account for distributing information to Risk Management Subcommittee Members will be removed because ICC will not use the Diligent system to distribute information to members of the Risk Management Working Group. Finally, references to ICC websites will be updated.

In the description of the Steering Committee in the Playbook, the amendments remove references to ICE Clear Europe. Because ICE Clear Europe discontinued its CDS clearing offering in late 2023 it no longer participates in the Steering Committee.¹²

Finally, the amendments to the Playbook make conforming changes to the description and composition of the Risk Committee, consistent with the amendments to

¹² Notice, 89 FR at 72540.

the Rules discussed above. References to the Risk Management Subcommittee and Advisory Committee will be eliminated or replaced with references to the Risk Advisory Working Group, as applicable.

E. Operating Agreement

In accordance with the changes discussed above, ICC is amending and restating its Operating Agreement to delete any reference to the Advisory Committee, including the deletion in its entirety of Section 3.12 of the Operating Agreement, which describes the establishment and composition of the Advisory Committee. The amendments also remove the defined term “Buy-Side Firms,” because that term is only used in Section 3.12, which, as noted, is being deleted in its entirety.

III. Discussion

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹³ For the reasons discussed below, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁴ and Rule 17Ad-22(e)(2), and Rule 17Ad-22(e)(3).¹⁵

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 ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and

¹³ 15 U.S.C. 78s(b)(2)(C).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad-22(e)(2)-(3).

transactions and the protection of investors and the public interest.¹⁶ Based on a review of the record, and for the reasons discussed below, the proposed changes to the Rules, Framework, Playbook, and Operating Agreement are consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

As noted above, the proposed rule change eliminates the Risk Management Subcommittee and Advisory Committee and adds the Risk Advisory Working Group. Specifically, the proposal amends the Rules, Framework, Governance Playbook, and Operating Agreement to remove references to the Risk Management Subcommittee and Advisory Committee and add rules to create the new Risk Advisory Working Group. The Risk Advisory Working Group will be chaired by the ICC Chief Risk Officer, with a minimum of two members representing Clearing Participants and a minimum of two members representing customers of Clearing Participants. The Risk Advisory Working Group will meet at least twice a year, or more frequently as needed, and will consult on all matters that could affect ICC's risk profile.

These changes enhance ICC's risk management. Rather than having the Risk Committee rely on a subcommittee to perform various risk management monitoring and responsibilities, the Risk Committee will directly perform them. Moving the responsibilities of the Risk Management Subcommittee into the Risk Committee will allow the Board-level Risk Committee itself to be more engaged in monitoring and managing ICC's risk profile. Because ICC's Board is ultimately responsible for ensuring that ICC complies with all relevant regulatory requirements,¹⁷ this enhanced monitoring

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ See ICC Governance Playbook, Section III and ICC Operating Agreement, Section 3.01.

and management of risk at the Board level is consistent with the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest in the operation of clearing services.

Additionally, as noted above, the proposal expands the Risk Committee to include representatives of Non-Participant Parties and requires the Board to consult with the Risk Committee on any matters that may materially affect ICC's risk profile. The two Non-Participant Parties will be representatives of customers of clearing members. Moreover, the Board also will be required to consider and respond to the proposals and recommendations provided by the Risk Committee. These changes will encourage participation by Non-Participant Parties at ICC, which in turn could encourage the clearing of transactions involving Non-Participant Parties. These changes also will provide ICC's Board with input from Non-Participant Parties on risk-related matters, potentially broadening the outlook and advice the Board receives. For these reasons, these changes as well are consistent with the prompt and accurate clearance and settlement of securities transactions.

Eliminating a dormant Advisory Committee and instead expanding the Risk Committee to have representatives of customers of clearing participants will help ensure the Risk Committee has a broad view from more stakeholders of the risks ICC faces. Consequently, ICC's Board could be in a better position to navigate risks as they arise. Further, by requiring the Board to consider and respond to Risk Committee proposals and recommendations, ICC's Board will be better informed and equipped to consider,

respond to, and address the various risks faced by ICC. These changes to the Risk Committee also promote the prompt and accurate clearance of settlement and securities transactions and derivative agreements, contracts and transactions cleared by ICC.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹⁸

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

Rules 17Ad-22(e)(2)(i) and (vi) require each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that are clear and transparent¹⁹, and consider the interests of participants' customers and other relevant stakeholders.²⁰

As described above, the proposed changes to the Rules, Framework, Playbook, and Operating Agreement expand the Risk Committee to include two representatives of Non-Participant Parties. In addition, the proposed changes also create a Risk Advisory Working Group that also includes, at a minimum, two representatives from Non-Participant Parties. The inclusion of Non-Participant Parties will help the Risk Committee and Risk Advisory Working Group to better consider matters that may materially affect the risk profile of ICC by including a wider array of viewpoints. Accordingly, the Risk Committee and Risk Advisory Working Group will be better able to advise the Board on how ICC can manage its risk profile.

The proposed changes also clearly describe the duties of the Risk Committee and Risk Advisory Working Group to consult on any matters that may materially affect ICC's

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(2)(i).

²⁰ 17 CFR 240.17Ad-22(e)(2)(vi).

risk profile and require the Board to both consider and respond to any proposals from the Risk Committee. Additionally, the proposed changes require the Risk Advisory Working Group to meet at least twice a year and provide the Risk Committee with a summary of topics discussed at each meeting.

By clearly describing the responsibilities of the Risk Advisory Working Group and Risk Committee, these proposed changes provide for clear and transparent governance arrangements and consideration of participants' customers and relevant stakeholders.

For the reasons stated above, the Commission finds the proposed rule changes are consistent with Rules 17Ad-22(e)(2)(i) and (vi).²¹

C. Consistency with Rule 17Ad-22(e)(3) under the Act

Rule 17ad-22(e)(3) requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which, among other things, includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency.²²

As discussed above, the proposed rule changes create a Risk Advisory Working Group that will meet at least twice annually and advise both the Risk Committee and the

²¹ 17 CFR 240.17Ad-22(e)(2)(i) and (e)(2)(vi).

²² 17 CFR 240.17Ad-22(e)(3).

Board on any issues that could materially affect the risk profile of ICC. The Risk Committee as well will meet at least twice annually and advise the Board on any issues that could materially affect ICC's risk profile. In turn, the proposed rules require the Board to consider and respond to any Risk Committee proposals. Having both a Risk Advisory Working Group and Risk Committee considering risks that could affect ICC will help the Board identify, measure, monitor, and manage the range of risks ICC faces.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(3)(i) and (iv) under the Act.²³

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act²⁴ and Rules 17Ad-22(e)(2)²⁵ and 17Ad-22(e)(3)²⁶ thereunder.

²³ Id.

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

²⁵ 17 CFR 240.17Ad-22(e)(2)(i) and (e)(2)(vi).

²⁶ 17 CFR 240.17Ad-22(e)(3).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²⁷ that the proposed rule change, as modified by Partial Amendment No. 1 (SR-ICC-2024-009), be, and hereby is, approved.²⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,

Deputy Secretary.

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 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).

²⁹ 17 CFR 200.30-3(a)(12).