

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101603; File No. SR-ICC-2024-011)

November 13, 2024

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Operational Risk Management Framework

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2024, 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*

The principal purpose of the proposed rule change is to revise the Operational Risk Management Framework. These revisions do not require any changes to the ICC Clearing Rules (the “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

ICC proposes to revise its ORMF. The ORMF details ICC's dynamic and independent program of risk assessment and oversight that aims to reduce operational incidents, encourage process, and control improvement, bring transparency to operational performance standard monitoring, and fulfill regulatory obligations. ICC believes such proposed revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

The primary purpose of the proposed revisions is to incorporate procedures designed to comply with Commission Rule 17Ad-25(i)<sup>3</sup> which imposes requirements on ICC related to the management of risks from relationships with service providers for core services<sup>4</sup> ("SPCS"). ICC proposes adding new Section II.B. 'Management of Risks from Relationships with Service Providers for Core Services' to the ORMF which adds procedures regarding ICC's management of the risks related to relationships with SPCS.

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<sup>3</sup> 17 CFR 240.17ad-25(i).

<sup>4</sup> Commission Rule 17Ad-25(a) defines 'Service Provider for Core Services' as any person that, through a written services provider agreement for services provided to or on behalf of a registered clearing agency, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of the registered clearing agency.

Specifically, proposed Section II.B. imposes the following requirements on ICC: (1) ICC senior management is required to evaluate and document the risks related to an agreement with a SPCS, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the ORMF; (2) ICC senior management is required to submit to the Board for review and approval any agreement that would establish a relationship with a SPCS, along with a risk evaluation described in (1) above; (3) ICC senior management is required to establish policies and procedures that govern relationships and manage risks related to such agreements with SPCS and the Board is required to be responsible for reviewing and approving such policies and procedures; and (4) ICC senior management is required to perform ongoing monitoring of the relationships with SPCS, and report to the Board which will provide its evaluation of any action taken by ICC senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring, or if the risks or issues cannot be remedied, require ICC senior management to assess and document weaknesses or deficiencies in the relationship with the SPCS for submission to the Board. Also, ICC proposes to include in new Section II.B. a description of how ICC will identify and manage its SPCS using a two-pronged assessment approach broken down between internal and external service providers. With respect to internal service providers, the proposed addition to the ORMF describes certain services provided by ICC's ultimate parent, Intercontinental Exchange, Inc. ("ICE, Inc.") and the applicable legal agreements between ICC and ICE, Inc. With respect to the identification and oversight of external service providers, the proposed revisions to the ORMF describe the use of ICE, Inc.'s third party risk management

program and of ICC's counterparty monitoring procedures. As a result of the proposed addition of new Section II.B., the remainder of the ORMF has been re-lettered.

ICC further proposes to revise and replace the former 'Vendor Assessment' processes in Section II.B. with updated Section II.C. 'External Service Provider Assessments' processes. Accordingly, the proposed revisions include renaming "critical vendors" as "external SPCS" and, together with new Section II.B., clarifying that ICC's assessment of external SPCS is in addition to, and will take into consideration, ICE, Inc.'s third party risk management program. ICC proposes to remove the bullet point list of items that may be included in the risk assessments and replace it with language to mirror the regulatory requirement of new Commission Rule 17Ad-25(i).<sup>5</sup> In particular, ICC, through its BCP and DR Oversight Committee<sup>6</sup> ("BDOC"), must evaluate and document the risks related to an agreement with an external SPCS, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the ORMF. ICC also proposes updating and reordering the language describing the responsibilities of the BDOC. The BDOC will continue to review and recommend approval of the inventory of ICC external SPCS (formerly the "critical vendor" inventory) and will continue to assign risk ratings to the risk assessments in order to determine the frequency of ongoing risk assessment reviews. The risk ratings continue to be based on the risk assessments and consideration of the risk

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<sup>5</sup> 17 CFR 240.17ad-25(i).

<sup>6</sup> The ICC BCP and DR Oversight Committee is a subcommittee of the ICC Compliance Committee and assists the ICC Compliance Committee in fulfilling its oversight responsibilities with respect to: (i) providing Business Continuity Planning ("BCP") and Disaster Recovery ("DR") guidance; (ii) approving BCP and DR program documentation; (iii) reviewing reports on the effectiveness of BCP and DR testing; and (iv) the performance of such other functions as the ICC Compliance Committee may assign from time to time.

direction for strategic, reputational, compliance, legal, and operational risk presented by the external SPCS (formerly critical vendor). ICC is proposing to also clarify that the risk ratings will take into consideration ICC's plan to complete core processing if the service is unavailable. In order to provide for more internal consistency, ICC is proposing to replace the terminology of "Tier" with "Risk Rating" noting that the criteria and schedule for periodic reviews remains the same.

Furthermore, ICC proposes clarifications to the 'Introduction' section of the ORMF to provide uniform abbreviations to existing defined terms. By incorporating these abbreviations, ICC aims to enhance the clarity and readability of the ORMF.

Also, ICC proposes revising the 'Operational Risk Lifecycle' chart in Section I. of the ORMF to replace "Respond" with "Monitor," and to replace "Monitor" with "Mitigate." The purpose of the revisions to the Operational Risk Lifecycle chart is to ensure that it accurately reflects the description of the operational life cycle narrative contained in Section I. Furthermore, ICC proposes to correct typographical errors in Sections I.A. and I.B., to, in each case, delete an erroneous "The."

ICC also proposes revisions to Section II., 'Operational Risk Focus Areas', to update ICC's reference to certain functions performed by ICE, Inc. ICC proposes to remove the reference to functions being "outsourced" to ICE, Inc. and instead notes that the functions performed by ICE, Inc. are described in the ORMF (e.g., the newly added Section II.B.) and such functions are performed pursuant to services agreements entered into between ICC and ICE, Inc.

In addition, ICC proposes to amend Section II.A., 'Business Continuity Planning and Disaster Recovery,' to better describe the steps in the collaboration process with

respect to the business impact analysis (“BIA”) process. Specifically, ICC is proposing to reorder and restate the steps for completing BIA surveys used in creating test plans. Specifically, ICC is clarifying that each critical business unit begins by performing the BIA; then business continuity plans (“BCPs”) are created for those processes identified in the BIA; finally, the BCPs are tested, and the results of such testing are reported. This refresh of the language in Section II.A. better describes the order of ICC’s process with respect to recovery from a wide-scale disruption.

ICC proposes revisions to Section II.F. (previously Section II.E.) ‘Technology Control Functions.’ Specifically, ICC proposes changes to the description of the responsibilities of the ICC Technology Department to more accurately reflect the responsibilities of the ICC Technology Department control functions. Such proposed changes clarify that the ICC Technology Department is responsible for end to end design, development, testing, deployment, maintenance and day to day operations of enterprise software systems needed for ICC core functions. In addition, ICC proposes to update the reference to the title of the ‘ICC Project Delivery Policy’ to the document’s current title which is the ICC ‘Credit Technology Delivery Method.’ Also, ICC proposes a minor revision to change a reference to the ICC technology director to rather reference the ICC Technology leadership team to more accurately reflect that technology releases are assessed by the entire ICC Technology leadership team and not just the ICC technology director.

Furthermore, ICC proposes to amend *Appendix I* in the ORMF to include the titles of the relevant regulatory requirements while removing the summaries of such regulations. The purpose of this proposed amendment is to streamline the reference

process in order to provide the reader with a more direct reference to all the applicable regulations and to avoid the need to review and update summaries of applicable regulations as they are amended from time-to-time. By removing the summaries, employees instead should refer to the full current regulation which will ensure employees are reviewing the most up-to-date language in the regulations.

Lastly, ICC proposes to revise the ‘Revision History’ section of the ORMF to reflect the proposed changes described above.

In addition to the foregoing proposed modifications to the ORMF, ICC also proposes to formalize a series of non-material updates to the ORMF which were reviewed and approved by the Board in 2021, 2022 and 2023. Such proposed changes, which are described below, are the output of the annual review of the ORMF conducted by the ICC Compliance Committee<sup>7</sup> (the “Compliance Committee”) and reviewed and approved by the Board.

In 2021 the Board approved non-material changes to the ORMF<sup>8</sup> to clarify language in Section I.A. ‘Risk Assessment.’ Specifically, revisions were made to clarify the language which describes the Compliance Committee’s review of risk assessments. In addition, such Board approved changes in 2021 made minor clarifications to Section I.B. to provide further clarity regarding one of the current responsibilities of the ICE, Inc. Enterprise Risk Management (“ERM”) function. Specifically, such change clarified that, with respect to the incident management and mitigation process, ERM may review and

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<sup>7</sup> The ICC Compliance Committee is an internal ICC committee that oversees and manages ICC’s compliance program that establishes the framework for identifying, assessing, measuring, monitoring, mitigating, and reporting on compliance risks for ICC.

<sup>8</sup> Version 4.0.4 of the ORMF was reviewed and approved by the Compliance Committee on November 18, 2021, recommended by the Risk Committee for approval by the Board on December 8, 2021, and approved by the Board on December 8, 2021.

challenge corrective action plan decisions and priority levels. Both 2021 changes are non-material as they are intended to clarify the description of current practices and the readability of the ORMF, and as such, do not change current practices. As part of these 2021 changes, the ORMF was re-dated December 8, 2021, the version was changed to 4.0.4 and the version history was updated to reflect these changes.

In 2022 the Board approved non-material changes to the ORMF<sup>9</sup> in connection with the annual review of the document. No changes were made to the ORMF as a result of the 2022 review. However, the document was re-dated December 13, 2022, the version was changed to 4.0.5 and the version history was updated to reflect the annual review.

In 2023 the Board approved non-material changes to the ORMF<sup>10</sup> to make minor language clarifications and to update the title of a cross- referenced ICE, Inc. procedures document. To date, the 2023 changes have not been incorporated into the ORMF and ICC is proposing to add the 2023 changes to the changes described herein. Specifically, ICC proposes to revise Section II.E. (previously Section II.D.), ‘ICE Information Security’ to update the title of a cross-referenced ICE, Inc. procedures document from ‘ICE Information Security Risk Management and Assessment Procedures’ to ‘ICE IS GRC Risk Assessment Profile Procedures’<sup>11</sup> (the “Cross-Referenced Procedure”). The Cross-Referenced Procedure was renamed in order to better reflect the subjects covered in the procedures. Such renaming does not affect the content, ownership, or use of the Cross-

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<sup>9</sup> Version 4.0.5 of the ORMF was reviewed and approved by the Compliance Committee on November 29, 2022, recommended by the Risk Committee for approval by the Board on December 13, 2022, and approved by the Board on December 13, 2022.

<sup>10</sup> Proposed modifications to Version 4.0.5 of the ORMF was reviewed and approved by the Compliance Committee on November 28, 2023, recommended by the Risk Committee for approval by the Board on December 13, 2023, and approved by the Board on December 13, 2023.

<sup>11</sup> “IS” stands for Information Security and “GRC” stands for Governance, Risk and Compliance.



Referenced Procedure. In addition, ICC proposes to clarify language in paragraph 2 of Section II.E. Specifically, ICC proposes to delete the word “potential” from the reference to security controls because the word improperly narrows the sentence’s meaning and does not accurately describe ICC’s current practice of reviewing not only potential security controls but also existing security controls. In connection with the 2023 changes, ICC proposes updating the version history to reflect these changes.

(b) Statutory Basis

ICC believes that the proposed changes are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (“Act”)<sup>12</sup> and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.<sup>13</sup> In particular, Section 17A(b)(3)(F) of the Act<sup>14</sup> requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F)<sup>15</sup>, because the proposed rule change enhances ICC’s ability to control its operational risk by ensuring that ICC is incorporating detailed practices on managing relationship and risks with SPCS. As such, the proposed rule change is designed to promote the prompt and accurate

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<sup>12</sup> 15 U.S.C. 78q-1.

<sup>13</sup> 17 CFR 240.17ad-22.

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> *Id.*

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>16</sup>

Rule 17Ad-22(e)(17)<sup>17</sup> requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) 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; (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and (iii) establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations. The proposed revisions provide details and updates with respect to ICC's management of SPCS and assuring that risks and relationships between ICC and the SPCS are continuously being monitored. Such detailed processes are intended to enhance ICC's ability to identify relevant sources of operational risk, both internal and external, and define processes and controls for the mitigation of the impact of such identified risks through the use of appropriate systems, policies, procedures, and controls, thereby ensuring that ICC will continue to fulfill regulatory obligations, consistent with the requirements of Rule 17Ad-22(e)(17).<sup>18</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> 17 CFR 240.17ad-22(e)(17).

<sup>18</sup> *Id.*

Rule 17Ad-25(i) requires that a registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to

(1) Require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework; (2) Require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the required risk evaluation; (3) Require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and (4) Require senior management to perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.<sup>19</sup>

The proposed revisions add detailed procedures with respect to ICC's management of the risks associated with relationships with SPCS. Such procedures include the requirement that ICC evaluate and document the risks related to an agreement with a SPCS and whether such risks can be managed in a manner consistent with the ORMF. The new

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<sup>19</sup> 17 CFR 240.17ad-25(i).

procedures also require that such risk evaluation be provided to the Board, along with any agreement that would establish a relationship with a SPCS, for the Board's review and approval. Furthermore, such new procedures establish ICC's processes for managing and monitoring the risks associated with such relationships with SPCS, including procedures for remediation of any significant deterioration in performance or to address changing risks. Such detailed procedures are intended to enhance ICC's ability to identify and manage risks associated with SPCS, consistent with the requirements of Rule 17Ad-25(i).<sup>20</sup>

Furthermore, the proposed changes are consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v)<sup>21</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 Board in 2021 and 2023 to update the ORMF to clarify the description of the Compliance Committee and ERM responsibilities, as well as the general updates to ensure the ORMF is accurate and up-to-date, 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>22</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> 17 CFR 240.17ad-22(e)(2)(i) and (v).

<sup>22</sup> *Id.*

(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 changes to revise the ORMF will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change would impose 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-ICC-2024-011 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-2024-011. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>). 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 am and 3 pm. Copies of such filings will also be available for inspection and copying at ICC’s principal office and on ICC’s website at <https://www.ice.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-2024-011 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).