

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91024; File No. SR-ICC-2021-003)

February 1, 2021

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 1934¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 21, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily 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 ICC 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

¹ 15 U.S.C. 78s(b)(1).

² 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 the Operational Risk Management Framework, which 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 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 proposed amendments incorporate reference to the Intercontinental Exchange, Inc. ("ICE, Inc.") Enterprise Risk Management Policy ("ERM Policy") and relevant regulations applicable to ICC as a covered clearing agency. The ICE, Inc. Enterprise Risk Management Department ("ERM") provides the oversight and framework for identifying, assessing, managing, monitoring and reporting on risk across the ICE, Inc. organization and has dedicated resources focused on the various ICE, Inc. business units, including ICC. ERM, in conjunction with relevant ICC individuals, oversees the management of this Operational Risk Management Framework.

ICC proposes updates to the risk assessment process in the Operational Risk Management Framework, which includes identifying, assessing, monitoring, and

mitigating plausible sources of operational risk. Under the “identify” component, ICC proposes to more generally refer to its “risk-scenario-based assessment methodology” as its “risk-based assessment methodology,” which more appropriately describes the methodology. ICC proposes similar changes throughout the risk assessment process to replace “risk scenarios” with “risks.” The proposed changes also cross reference the ERM Policy, noting that ERM maintains an inventory of material risks faced by the clearing house. Under the “assess” component, ICC proposes to incorporate the ERM Policy and its relevant guidelines. ICC proposes minor clarifications with respect to the assessment of material risks and the controls and mitigations used to prevent risks from materializing. ICC proposes additional specifics relating to the determination of residual risk ratings for identified risks. ICC further proposes to reference the ERM Policy regarding risk scores and guidance relating to control identification, effectiveness assessment and testing, among others. With respect to the “mitigate” component, the proposed changes cross reference relevant guidelines in the ERM Policy and include minor updates regarding documenting output and reviewing risk assessments. The proposed changes also update the “report” component to more clearly state that ERM is responsible for operational risk reporting to appropriate parties.

ICC proposes updates to Appendix 1 of the Operational Risk Management Framework that summarizes relevant regulatory requirements and industry guidance for ICC. Specifically, ICC proposes to reference its status as a covered clearing agency and

to reference relevant regulations applicable to ICC as a covered clearing agency relating to operational risk requirements, namely Rules 17Ad-22(e)(17) and (21).³

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁵ In particular, Section 17A(b)(3)(F) of the Act⁶ 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 17(A)(b)(3)(F)⁷, because the proposed rule change enhances ICC's ability to control its operational risk by ensuring that the Operational Risk Management Framework accurately reflects ICC's operational risk program, including the role of ERM and the regulatory operational risk requirements applicable to ICC. The proposed changes cross reference the ERM Policy and provide additional detail regarding ERM's role in the risk

³ 17 CFR 240.17Ad-22(e)(17) and (21).

⁴ 15 U.S.C. 78q-1.

⁵ 17 CFR 240.17Ad-22.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ Id.

assessment process. The cross-references are intended to ensure clarity and consistency between relevant terms and processes across the Operational Risk Management Framework and the ERM Policy and are not intended to change the substance of either document. Additionally, the proposed changes reference regulations applicable to ICC as a covered clearing agency relating to operational risk requirements to ensure that relevant regulatory requirements are addressed as part of ICC's operational risk program. ICC believes that such changes further ensure that ICC, through its operational risk program, is able to manage its operational risks by identifying plausible sources of operational risk and mitigating their impact through the use of appropriate systems, policies, procedures, and controls to avoid disruptions to operations, thereby promoting the prompt and accurate clearance and settlement of securities transactions, 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. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.⁸

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Id.

The amendments would also satisfy relevant requirements of Rule 17Ad-22.⁹ Rule 17Ad-22(e)(2)(i) and (v)¹⁰ requires each covered clearing agency to 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 Operational Risk Management Framework clearly assigns and documents responsibility and accountability for operational risk actions and decisions. The proposed changes more clearly specify the role of ERM in the risk assessment process. Moreover, the proposed revisions continue to allow for feedback from, and notification to, relevant stakeholders, such as ICC committees, management, and the Board. These governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of relevant committees and ICE, Inc. and ICC personnel is clearly documented. In ICC's view, the proposed rule change continues to ensure that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad-22(e)(2)(i) and (v).¹¹

Rule 17Ad-22(e)(17)¹² requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to

⁹ 17 CFR 240.17Ad-22.

¹⁰ 17 CFR 240.17Ad-22(e)(2)(i) and (v).

¹¹ Id.

¹² 17 CFR 240.17Ad-22(e)(17).

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 clarifications regarding the risk assessment process would enhance ICC's ability to identify relevant sources of operational risk and mitigate their impact through the use of appropriate systems, policies, procedures, and controls, including by more specifically setting out the risk assessment process itself and the role and responsibilities of ERM regarding the identification, assessment, mitigation, and reporting of plausible sources of operational risk. Such amendments further strengthen the risk assessment process and enhance ICC's ability to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed changes also update the regulatory operational risk requirements applicable to ICC as a covered clearing agency to ensure that ICC will continue to fulfill regulatory obligations, consistent with the requirements of Rule 17Ad-22(e)(17).¹³

Rule 17Ad-22(e)(21)¹⁴ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it

¹³ Id.

¹⁴ 17 CFR 240.17Ad-22(e)(21).

serves, and have its management regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared or settled; and (iv) use of technology and communication procedures. As noted above, ERM provides the oversight and framework for identifying, assessing, managing, monitoring and reporting on risk across the ICE, Inc. organization and has dedicated resources focused on ICC, allowing ICC to be efficient and effective in meeting the requirements of its participants and the markets it serves. Moreover, the amended framework more clearly sets out the ERM function with respect to ICC to ensure the fulfillment of relevant responsibilities, thereby promoting ICC's ability to be efficient and effective in meeting the requirements of its participants and the markets it serves. Further, the proposed revisions clarify responsibilities regarding review of risk assessments and operational risk reporting to appropriate parties, which would promote management's regular review of the efficiency and effectiveness of ICC's clearing and settlement arrangements, operating structure, product scope, and use of technology and communication procedures. The proposed rule change is thus reasonably designed to meet the requirements of Rule 17Ad-22(e)(21).¹⁵

(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 the Operational Risk Management Framework will apply uniformly across all market participants. Therefore, ICC does not

¹⁵ Id.

believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

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

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

should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICC-2021-003 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549.

All submissions should refer to File Number SR-ICC-2021-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2021-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).