

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91090; File No. SR-ICC-2021-004)

February 9, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Governance Playbook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 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 update and formalize the ICC Governance Playbook. 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 update and formalize the Governance Playbook. ICC believes such changes 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 update and formalize the Governance Playbook following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

The Governance Playbook consolidates governance arrangements set forth in ICC's Rules, operating agreement, and other ICC policies and procedures. The Governance Playbook contains information regarding the governance structure at ICC, which includes the Board, committees, and management. The document is divided in six parts and sets out (i) the purpose of the document, (ii) an introduction to the ICC governance structure, (iii) information on the ICC Board of Managers (the "Board"; each member a "Manager"); (iv) descriptions of the committees at ICC, (v) descriptions of the special purpose committees at ICC, and (vi) a revision history and appendix.

The Board has sole responsibility for the control and management of ICC's operations, subject only to prior consultation rights of the ICC Risk Committee and the ICC Risk Management Subcommittee as described in Chapter 5 of the ICC Rules. The Governance Playbook details reporting lines of relevant personnel to the Board as well as how the Board guides management with respect to strategic planning and priority setting.

Additionally, the Governance Playbook describes the composition of the Board, and details the fitness standards required of each Board member and the Board as a whole. Such procedures are in place to ensure that the Board consists of suitable individuals having appropriate skills and incentives and that Managers have the appropriate experience, skills, and integrity necessary to discharge their Board responsibilities. The Governance Playbook describes the election procedures for new Managers and specifies who is responsible for electing new Managers and for ensuring such Managers meet the fitness standards. The Governance Playbook contains information regarding scheduling of meetings and meeting frequency, and lists all documents relevant to Board operations. The Governance Playbook sets forth the process for determining the independence of those Managers who are required to be independent. Additionally, the document lists the independence qualifications considered as part of such independence determinations and describes the annual questionnaire process each independent Manager is required to complete. The performance of the Board and its individual Managers is reviewed on an annual basis, through a self-evaluation survey; the Governance Playbook describes this survey process.

The Governance Playbook also contains information on required disclosures under relevant regulations. The arrangements in place at ICC ensure that all major decisions of the Board are clearly disclosed to clearing members, other relevant stakeholders, and ICC's regulators. Further, major decisions of the Board having a broad market impact are clearly disclosed to the public. With respect to information made available to the public, ICC posts on its website relevant rules and material procedures and documents. ICC maintains a comprehensive public Disclosure Framework that

describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, which is updated every two years or more frequently following material changes to ICC's systems or environment in which it operates.

The Governance Playbook describes the Board's role in reviewing the performance and compensation of management, who are responsible for executing the Board's decisions throughout the year. As part of this process, the Board will consider whether management continues to have the appropriate experience, skills, and integrity necessary to discharge their responsibilities.

Additionally, the Governance Playbook contains information regarding the roles and responsibilities of the various committees at ICC, including the Audit Committee, Risk Committee, Risk Management Subcommittee, Advisory Committee, Futures Commission Merchant ("FCM") Executive Council, Participant Review Committee, Credit Review Subcommittee, New Initiatives Approval Committee, Operations Working Group, Trading Advisory Group, Business Continuity Planning ("BCP") and Disaster Recovery ("DR") Oversight Committee of the Compliance Committee, Risk Working Group, Compliance Committee, and Steering Committee. The Governance Playbook further details the membership composition and meeting frequency for each committee and contains a listing of all relevant committee documents (including, as applicable, a charter, meeting minutes, and agendas). As applicable, the Governance Playbook details procedures for electing new members to a committee. The Governance Playbook also includes procedures for the annual Audit Committee performance review and the annual reconstitution of the Risk Committee.

Further, the Governance Playbook contains information regarding ICC's special purpose committees, including the Business Conduct Committee, Regional CDS Committees, and the CDS Default Committee. The Governance Playbook contains a brief description of each special purpose committee, details membership composition and meeting frequency, and lists relevant committee documents. As applicable, the Governance Playbook contains information regarding the appointment of new members.

Finally, the Governance Playbook includes a revision history and an appendix with relevant information, including a record of the roles, responsibilities, and required skills of key senior management and a template relating to the reconstitution of the Risk Committee.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad-22.⁴ In particular, Section 17A(b)(3)(F) of the Act⁵ 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

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 240.17Ad-22.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F)⁶, because the proposed rule change would promote governance of ICC that is effective and efficient and ensure that ICC has governance arrangements that are clear and transparent and promote its safety and efficiency. The proposed rule change details ICC's governance structure and assigns ownership to responsible parties of relevant governance procedures, including those responsible for electing new Managers, for ensuring such Managers meet fitness standards, and for ensuring that management has the appropriate experience and skills necessary to discharge their responsibilities. The document describes fitness standards required of each Board member and the Board as a whole, the review of management, and the roles and responsibilities of the various committees at ICC. ICC believes that the Governance Playbook augments its governance procedures and ensures that it has clear and transparent governance arrangements that support its ability to provide clearing services and effectively manage the risks associated with discharging its responsibilities, 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

⁶ Id.

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.⁷

The amendments would also satisfy relevant requirements of Rule 17Ad-22.⁸ Rule 17Ad-22(e)(2)⁹ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are (i) clear and transparent; (ii) clearly prioritize the safety and efficiency of the covered clearing agency; (iii) support the public interest requirements in Section 17A of the Act¹⁰ applicable to clearing agencies, and the objectives of owners and participants; (iv) establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; (v) specify clear and direct lines of responsibility; and (vi) consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency. The Governance Playbook clearly assigns and documents responsibility and accountability for governance actions and decisions and details reporting lines of relevant personnel to the Board. The Governance Playbook documents the role of the Board, relevant committees, and management in the governance process in order to provide for clear and transparent governance arrangements that specify clear and direct lines of responsibility. Moreover, the governance arrangements set out in the document promote the safety and efficiency of

⁷ Id.

⁸ 17 CFR 240.17Ad-22.

⁹ 17 CFR 240.17Ad-22(e)(2).

¹⁰ 15 U.S.C. 78q-1.

ICC and support the public interest requirements in Section 17A of the Act¹¹ applicable to clearing agencies, and the objectives of owners and participants, by describing the roles, responsibilities, and required skills of the Board, committees, and management, thereby ensuring that such groups have the appropriate experience, skills, and integrity necessary to discharge their responsibilities and to ensure that ICC continues to provide safe and sound central counterparty services. Further, ICC's governance structure, as set out in the Governance Playbook, is designed to provide a forum for ICC to receive feedback from multiple stakeholders as ICC's committees are actively involved in the governance process to ensure that ICC's rules, strategy, and major decisions reflect appropriately the interests of market participants and other relevant stakeholders. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(2).¹²

Rule 17Ad-22(e)(23)¹³ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for (i) publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures; (ii) providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; (iii) publicly disclosing relevant basic data on transaction volume and values; (iv) a comprehensive public disclosure that

¹¹ Id.

¹² 17 CFR 240.17Ad-22(e)(2).

¹³ 17 CFR 240.17Ad-22(e)(23).

describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, accurate in all material respects at the time of publication; and (v) updating the public disclosure every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary to ensure statements previously provided remain accurate in all material respects. The Governance Playbook contains procedures regarding required disclosures to ensure transparency and availability of sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in ICC. The document requires that ICC post on its website relevant rules and material procedures and maintain a comprehensive public Disclosure Framework that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework, which is updated every two years or more frequently following material changes to ICC's systems or environment in which it operates. Therefore, ICC believes the proposed rule change is consistent with the requirements of Rule 17ad-22(e)(23) [sic].¹⁴

(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 rule change to update and formalize the Governance Playbook 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.

¹⁴ Id.

(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, security-based swap submission, or advance notice 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-2021-004 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-2021-004. 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 NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2021-004 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).