

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91279; File No. SR-ICC-2021-003)

March 8, 2021

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

I. Introduction

On January 21, 2021, 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 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change notice to revise the ICC Operational Risk Management Framework.³ The proposed rule change was published for comment in the Federal Register on February 5, 2021.⁴ The Commission did not receive comments regarding 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 proposing to revise its Operational Risk Management Framework to incorporate reference to the Intercontinental Exchange, Inc. (“ICE, Inc.”) Enterprise Risk Management Policy (“ERM Policy”) and to ICC’s status as a covered clearing agency

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 ICC’s Clearing Rules.

⁴ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Operational Risk Management Framework, Exchange Act Release No. 91024 (February 1, 2021); 86 Fed. Reg. 8447 (February 5, 2021) (SR-ICC-2021-003) (“Notice”).

and the relevant rules applicable to ICC as a covered clearing agency relating to operational risk requirements, namely Rules 17Ad-22(e)(17) and (21) under the Act.⁵

The proposal would make updates to the risk assessment process in the Operational Risk Management Framework, which addresses identifying, assessing, monitoring, and mitigating plausible sources of operational risk.⁶ Under the “identify” component, the proposal would use the more general term “risk-based assessment methodology,” to replace use of the term “risk-scenario-based assessment methodology.”⁷ ICC proposes similar changes throughout the “assess” component to replace “risk scenarios” with “risks.”⁸ The proposed changes also cross reference the Enterprise Risk Management Policy (“ERM Policy”), noting that the ICE, Inc. Enterprise Risk Management Department (“ERM”) maintains an inventory of material risks faced by ICC.⁹

Further, under the “assess” component, ICC proposes to incorporate the ERM Policy and its relevant risk assessment guidelines.¹⁰ ICC also proposes additional

⁵ 17 CFR 240.17Ad-22(e)(17) and (21).

⁶ Notice, 86 Fed. Reg. at 8447.

⁷ Id.

⁸ Id.

⁹ Id. 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.’s various business units, including ICC. ERM, in conjunction with relevant ICC individuals, oversees the management of this Operational Risk Management Framework.

¹⁰ Notice, 86 Fed. Reg. at 8447-8448.

information relating to the determination of risk ratings for identified risks.¹¹ 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.¹² The proposed changes also update the “report” component to more clearly state that ERM is responsible for operational risk reporting to appropriate parties.¹³

Appendix 1 of the Operational Risk Management Framework summarizes relevant regulatory requirements and industry guidance applicable to ICC. The proposal would revise appendix 1 to reference ICC’s status as a covered clearing agency and to update relevant regulations applicable to ICC as a covered clearing agency relating to operational risk,¹⁴ namely Rules 17Ad-22(e)(17) and (21).¹⁵

III. Commission Findings

Section 19(b)(2)(C) of the Act directs 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.¹⁶ For the reasons given below, the Commission finds that

¹¹ Notice, 86 FR at 8448.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ 17 CFR 240.17Ad-22(e)(17) and (21).

¹⁶ 15 U.S.C. 78s(b)(2)(C).

the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁷ and Rule 17Ad-22(e)(17)(i) thereunder.¹⁸

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 transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.¹⁹

As discussed above, the proposed rule change would amend the Operational Risk Management Framework to explicitly reference the ICE, Inc. ERM Policy and the role that the ERM plays in establishing guidelines for operational risk management. In particular, the proposed rule change would state that the ICE, Inc. ERM Policy provides the Risk Assessment guidelines, including how ICC rates, identifies and mitigates various risks.

Additionally, the proposed rule change updates Appendix 1 of the Operational Risk Management Framework to state that ICC is a “covered” clearing agency and that it is subject to Rules 17Ad-22(e)(17) and (21), which require policies and procedures designed to manage operational risk.

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 17 CFR 240.17Ad-22(e)(17)(i).

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

As described above, the proposal would update the ICC Operational Risk Management Framework to note with more specificity ERM's role in ICC's operational risk management and to reference the ERM Policy as a source of information for such things as an inventory of material risks faced by ICC. With these changes, the Commission believes that ICC's Risk Management Framework should better reflect a more comprehensive set of the risk assessment standards used by ICC with respect to operational risk.

Further, the Commission believes that by adding references to ICC as a "covered" clearing agency and that, as such, ICC is subject to Rules 17Ad-22(e)(17) and (21), the proposed rule change strengthens the Operational Risk Framework by highlighting its specific regulatory obligations.

By enhancing ICC's risk management tools as noted above, the Commission finds the proposed rule change would enhance ICC's ability to identify and respond to operational risks presented by its clearing activities, adhere to specific regulatory requirements and, in turn, enhance its ability to avoid disruption to clearing operations and address operational risks in a timely fashion. By better positioning ICC to continue its critical operations and services and mitigating the risk of financial loss contagion that could be caused by ICC's failure, the Commission believes that these changes are designed to help facilitate prompt and accurate clearance and settlement and assure the safeguarding of securities and funds which are in the custody or control of ICC.

Therefore, the Commission finds the proposed rule change is consistent with section 17A(b)(3)(F) of the Act.²⁰

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

Rule 17Ad-22(e)(17)(i) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, manage its operational risks by, among other things, 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.²¹

As noted above, the proposed rule change would revise the Operational Risk Framework to note that ERM maintains a register of material risks faced by ICC. The Commission believes that this reference facilitates ICC's ability to more effectively identify plausible sources of operational risk, monitor them on an ongoing basis, and thus take appropriate and timely action to mitigate the impact of these risks. The proposal would further note that ERM provides risk assessment guidelines. The Commission believes this change also enhances ICC's ability to manage risks by providing clear and specific guidance in how to assess and mitigate a particular risk's impact once identified.

The Commission also believes that the regulatory update in Appendix 1 will strengthen ICC's ability to manage and mitigate operational risk by specifically noting the legal standards with respect to operational risk applicable to it as a covered clearing agency. In particular, the covered clearing agency standards added to the Operational

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 C.F.R. 240.17Ad-22(e)(17)(i).

Risk Framework address the obligation of ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, manage operational risk through a system for identification and mitigation of risk, ensuring that systems have a high degree of operational reliability, and establishment of a business continuity plan, as well as procedures for regularly reviewing the efficiency and effectiveness of its clearing and settlement arrangements, operating structure, products, and use of technology.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with the obligation under Rule 17Ad-22(e)(17)(i).²²

²² 17 C.F.R. 240.17Ad-22(e)(17)(i).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act,²³ and Rule 17Ad-(e)(17)(i)²⁴ thereunder.

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²⁵ that the proposed rule change (SR-ICC-2021-003), be, and hereby is, approved.²⁶

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²³ 15 U.S.C. 78q-1.

²⁴ 17 CFR 240.17Ad-22(e)(17)(i).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 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).

²⁷ 17 CFR 200.30-3(a)(12).