

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91361; File No. SR-ICC-2021-004)

March 18, 2021

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Governance Playbook

I. Introduction

On January 29, 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 to update and formalize the ICC Governance Playbook. The proposed rule change was published for comment in the Federal Register on February 16, 2021.³ 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

The principal purpose of the proposed rule change is to update and formalize the ICC Governance Playbook.⁴ Specifically, the proposed rule change would consolidate and summarize governance arrangements set forth in the ICC Clearing Rules (“Rules”), operating agreement, and other ICC policies and procedures within the Governance Playbook document. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Governance Playbook; Exchange Act Release No. 91090 (Feb. 9, 2021); 86 Fed. Reg. 9557 (Feb. 16, 2021) (“Notice”).

⁴ The description that follows is substantially excerpted from the Notice, 86 Fed. Reg. at 9557.

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,” with 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 of the Governance Playbook and an appendix that outlines the roles, responsibilities, and required skills of key senior management positions and provides an email template relating to the annual reconstitution of ICC’s Risk Committee.

1. Purpose

ICC proposes to formalize and update the purpose section of the Governance Playbook. Specifically, the purpose section includes a statement that the governance guidelines set forth in the Governance Playbook are intended to comply with applicable Commission and Commodity Futures Trading Commission (“CFTC”) regulations. This statement would include an updated citation to a relevant CFTC Regulation.

2. Introduction to ICC Governance Structure

In the introduction section of the Governance Playbook, ICC proposes to formalize its general mission and describe its overall governance structure, comprised of its Board, committees and management. The introduction section reflects the Board-determined mission statement that ICC is to provide safe and sound central counterparty services to reduce systemic risk in an efficient and compliant manner while generating positive returns for shareholders. The introduction section also states that ICC’s governance arrangements are clear and transparent, promote its safety and efficiency and support the stability of the broader financial system, other relevant public interest considerations and the objectives of relevant stakeholders.

3. Board of Managers

In this section of the Governance Playbook, ICC proposes to formalize the Board's 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 its Rules. This section would clarify that ICC's officers, including the Chief Operating Officer, Chief Compliance Officer, Chief Risk Officer and General Counsel, are designated by the Board following a determination that they possess the requisite experience and skills to discharge their responsibilities and report to the ICC President. The section also formalizes additional reporting lines of certain ICC officers to ensure that relevant personnel have sufficient access to the Board, consistent with relevant regulation. Specifically, the Chief Compliance Officer has an additional reporting line directly to the Board, and the Chief Risk Officer has an additional reporting line directly to the Chairperson of the Risk Committee, who also is a Manager on the Board. This section of the Governance Playbook details how the Board guides management with respect to strategic planning and priority setting.

Additionally, this section of the Governance Playbook describes the composition of the Board, and specifies the fitness standards required of each Manager, as well as the fitness standards and qualifications of the Board as a whole. ICC represents that it includes such procedures in the Governance Playbook 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.⁵ 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

⁵ See Notice, 86 Fed. Reg. at 9557.

Governance Playbook also 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 Governance Playbook also describes the self-evaluation survey process by which ICC reviews the performance of the Board and its individual Managers on an annual basis in accordance with applicable regulation.

The Governance Playbook also contains information on required disclosures of the Board's major decisions under relevant regulations. The Governance Playbook formalizes arrangements by which all major decisions of the Board are clearly disclosed to clearing members, other relevant stakeholders, and ICC's regulators. In addition, the Governance Playbook provides governance procedures for clearly disclosing to the public the Board's major decisions that have a broad market impact. 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. ICC updates the Disclosure Framework every two years or more frequently following material changes to ICC's systems or environment in which it operates.

Further, the Governance Playbook describes the Board's role in reviewing the performance and compensation of senior managers who are responsible for executing the Board's decisions throughout the year. As part of this process, the Board will consider, in

accordance with relevant regulation, whether senior management continues to have the appropriate experience, skills, and integrity necessary to discharge their responsibilities.

4. Committees

In this section of the Governance Playbook, ICC would formalize 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 and updates 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.

5. Special Purpose Committees

This section of the Governance Playbook would formalize 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.

6. Revision History and Appendix

Finally, the Governance Playbook includes a revision history to document the date, versions, and revisions to the Governance Playbook document. An appendix follows the revision history with relevant detailed information, including a record of the roles, responsibilities, and required skills of key senior management in Appendix 1, and an email template relating to the annual reconstitution of the ICC Risk Committee composition in Appendix 2.

III. Discussion and 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 such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁶ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁷ and Rules 17Ad-22(e)(2) and (e)(23)(i), (iv), and (v) thereunder.⁸

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as 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 to protect the public interest.⁹

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17Ad-22(e)(2) and (e)(23)(i), (iv), and (v).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

As noted above, the principal purpose of the proposed rule change is to formalize and update the Governance Playbook as a single reference document of governance guidelines that consolidates and summarizes the ICC governance arrangements set forth in the Rules, operating agreement, and a number of written ICC policies and procedures. The introduction section of the Governance Playbook states its intended purposes to ensure that ICC's governance arrangements are clear and transparent, promote ICC's safety and efficiency and support the stability of the broader financial system, other relevant public interest considerations and the objectives of relevant stakeholders.

The Governance Playbook also reflects the Board's 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 ICC's Rules. The Governance Playbook describes the composition of the Board and the election procedures for new Managers, provides information regarding scheduling of meetings and meeting frequency, and updates required disclosures under relevant regulations of the Board's major decisions. The Governance Playbook describes the role of the Board in reviewing the performance and compensation of senior managers responsible for executing the Board's decisions, information regarding the roles and responsibilities of the various committees at ICC, information regarding ICC's special purpose committees, and a revision history and an appendix with relevant information that outlines the roles, responsibilities, and required skills of key senior management positions and provides an email template relating to the annual reconstitution of ICC's Risk Committee.

Governance arrangements are critical to the sound operation of clearing agencies.¹⁰ Specifically, clear and transparent governance documents promote accountability and reliability in the decisions, rules, and procedures of a clearing agency.¹¹ Clear and transparent governance documents also provide interested parties, including owners, members, and general members of the public, with information about how a clearing agency's decisions are made and what the rules and procedures are designed to accomplish.¹² Further, the decisions, rules, and procedures of a clearing agency are important, as they can have widespread impact, affecting multiple market members, financial institutions, markets, and jurisdictions.¹³

The Commission believes that the proposed rule change would provide ICC stakeholders with a better understanding of how ICC makes decisions that could ultimately affect them and, potentially, the broader financial system. The proposed rule change would also help the Board, as well as ICC's management, employees, and members, understand the roles and responsibilities of ICC officers, committees and subcommittees. The Commission further believes that the Governance Playbook should enhance the clarity and transparency of ICC's governance structure and facilitate the efficiency and effectiveness of ICC's governance procedures by providing a single, consolidated summary document of governance guidelines for ease of reference. For these reasons, the proposed rule change should facilitate ICC's ability to provide clearing services that are supported by, and consistent with, clear and transparent

¹⁰ Securities Exchange Act Release No. 71699 (May 21, 2014), 79 Fed. Reg. 29508, 29521 (May 22, 2014) ("Covered Clearing Agency Standards Proposing Release").

¹¹ Securities Exchange Act Release No. 64017 (March 3, 2011), 76 Fed. Reg. 14472 (March 16, 2011) at 14488.

¹² Id.

¹³ Covered Clearing Agency Standards Proposing Release, 79 Fed. Reg. at 29521.

governance arrangements that comply with relevant regulations and internal policies and procedures, thereby helping ICC maintain prudent risk management processes to promote the prompt and accurate clearance of settlement and securities transactions and derivative agreements, contracts and transactions cleared by ICC, to assure the safeguarding of securities and funds in the custody or control of ICC, and to protect the public interest.¹⁴

For these reasons, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹⁵

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

Rule 17Ad-22(e)(2) under the Act requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, and specify clear and direct lines of responsibility.¹⁶

As stated above, the proposed rule change would update and formalize the Governance Playbook to reflect the governance arrangements in place at ICC, including those that specify: the Board's responsibility for the control and management of ICC's operations, the composition of the Board, the election procedures for new Managers, the fitness standards and qualifications required of each Manager and the Board as a whole, and the process to review the performance of ICC's senior managers. The Commission believes that these aspects of the proposed rule change should help ICC ensure that the Board and individual Managers, as well as ICC's senior

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(2).

managers, including the Chief Operating Officer, Chief Compliance Officer, Chief Risk Officer and General Counsel, have the appropriate experience and skills to discharge their duties and responsibilities. Further, the Commission believes the Governance Playbook specifies clear and direct lines of responsibility by identifying reporting lines of certain ICC officers to ensure they have sufficient access to the Board, consistent with relevant regulation. For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(2)¹⁷ under the Act.

C. Consistency with Rule 17Ad-22(e)(23)(i), (iv), and (v) under the Act

Rule 17Ad-22(e)(23)(i), (iv), and (v) under the Act requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for, among other things, (1) publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures, (2) a comprehensive public disclosure that 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 (3) 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.¹⁸ As noted above, the Governance Playbook reflects updated arrangements by which all major decisions of the Board are clearly disclosed to clearing members, other relevant stakeholders, and ICC's regulators. In addition, the Governance Playbook provides governance procedures for clearly disclosing to the public the Board's major decisions that have a broad

¹⁷ 17 CFR 240.17Ad-22(e)(2).

¹⁸ 17 CFR 240.17Ad-22(e)(23)(i), (iv), and (v).

market impact. With respect to information made available to the public, the Governance Playbook specifies that ICC posts on its website all relevant rules and material procedures and documents, as required by applicable regulations. The Commission believes that these aspects of the Governance Playbook should help ensure that ICC publicly discloses all relevant rules and material procedures, including key aspects of its default rules and procedures.

In addition, the Governance Playbook specifies that ICC maintains a comprehensive public Disclosure Framework that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework. The Governance Playbook formalizes the process by which ICC Legal will update the public Disclosure Framework every two years or more frequently following material changes to ICC's systems or environment in which it operates, including updates for major decisions of the Board with a broad market impact. The Commission believes that these aspects of the Governance Playbook should help ensure ICC's compliance with its regulatory obligation to provide a comprehensive public disclosure that is updated every two years or more frequently following material changes.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(23)(i), (iv), and (v)¹⁹ under the Act.

D. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act²⁰ and Rules 17Ad-22(e)(2) and (e)(23)(i), (iv), and (v) thereunder.²¹

¹⁹ 17 CFR 240.17Ad-22(e)(23)(i), (iv) and (v).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240.17Ad-22(e)(2) and (e)(23)(i), (iv), and (v).

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act²² that the proposed rule change (SR-ICC-2021-004), be, and hereby is, approved.²³

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman
Deputy Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 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).

²⁴ 17 CFR 200.30-3(a)(12).