

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92753; File No. SR-ICC-2021-015]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Governance Playbook, ICC Risk Management Framework, and ICC Treasury Operations Policies and Procedures

August 25, 2021.

I. Introduction

On June 30, 2021, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4,² a proposed rule change to amend the Governance Playbook, Risk Management Framework, and Treasury Operations Policies and Procedures (“Treasury Policy”) (together, the “Documents”). The proposed rule change was published for comment in the **Federal Register** on July 20, 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 proposed rule change would amend the ICC Governance Playbook, Risk Management Framework, and Treasury Policy to update descriptions of certain internal committees and make other clarification or clean-up changes.⁴ ICC maintains the Participant Review Committee (“PRC”) and the Credit Review Subcommittee of the PRC (“CRS”) (together, the “Committees”), which are internal committees that

assist in fulfilling counterparty review responsibilities with respect to ICC’s Clearing Participants (“CPs”) and financial service providers (“FSPs”). The proposed changes would amend descriptions related to membership composition, meeting frequency, and responsibilities of the Committees in the Documents to reflect recent changes to the Committees’ charters.⁵

A. Governance Playbook

The proposed rule change would amend Section IV of the Governance Playbook (Committees) to (i) simplify the description of the membership composition of the PRC by eliminating unnecessary prefatory language and (ii) add the ICC Risk Oversight Officer as a member. The proposed rule change would also amend the description of the CRS to remove the authority to approve FSPs and specify that the CRS has an advisory role and may make recommendations to the PRC with respect to matters of creditworthiness of CPs and creditworthiness and performance of FSPs. These changes would place FSP approval authority with the PRC and have its subcommittee, the CRS, assist it in fulfilling its counterparty review and approval responsibilities.

The proposed changes would also update the membership composition of the CRS to include the Risk Oversight Officer (similar to the PRC), remove the ICC Risk Management representative as a voting member of the CRS, and state that Risk Management representatives will participate as non-voting members and present materials to allow the CRS to perform its responsibilities and duties. These changes would thus change Risk Management’s role at the subcommittee level.

The proposed rule change would also make a grammatical edit to refer to “financial services providers” as “financial service providers” in the description of the PRC and throughout the document.

B. Risk Management Framework

The proposed rule change would amend Section II of the Risk Management Framework (Governance and Organization) to update a chart that details the governance and committee structure at ICC. The updated chart would indicate the current practice that the Intercontinental Exchange, Inc. (“ICE, Inc.”) Enterprise Risk Management Department (“ERM”) reports to the Board and corrects a typographical error to replace the “BCP

Oversight Committee” with the “BCP & DR Oversight Committee.”

In Section II.A (Committees), the proposed changes would clarify current practice that, in addition to the overall Risk Management Framework and its associated policies and procedures being subject to Risk Committee review on at least an annual basis, the policies and procedures that comprise ICC’s overall risk management framework are further subject to full Board review and approval at least annually.

The proposal would also make a grammatical edit to refer to “financial services providers” as “financial service providers” and add a footnote to specify that the types of entities included as FSPs are those to which ICC has actual or potential credit exposure, such as settlement banks, custodians, and other entities. Additionally, the proposal would specify that the PRC meets at least quarterly and more frequently as needed.

The proposed changes would distinguish PRC and CRS responsibilities with respect to FSPs. The changes remove the authority from the CRS to approve FSPs and specify that it has only an advisory role, which is similar to its role in monitoring CPs’ ongoing compliance with the standards and requirements of membership. The changes note that the PRC is responsible for overseeing the assessments and ultimate approval of FSPs. The CRS, as a subcommittee of the PRC, is responsible for assessing the creditworthiness and performance of would-be FSPs by conducting initial due diligence, performing ongoing credit monitoring of FSPs, and then making recommendations to the PRC for its approval.

Finally, the proposed rule change would amend Appendix 1 to the document to update language (consistent with the remainder of the document) related to the membership composition of the PRC, including the addition of the President, Chief Operating Officer, and Risk Oversight Officer as members of the PRC, as well as to clarify current practice that the PRC would meet at least quarterly, and more frequently as needed.

C. Treasury Policy

To reflect the CRS’s new advisory role, the proposed rule change would amend Section IV (Cash Settlement) of the Treasury Policy by removing the required approval of the CRS before ICC may begin using a bank’s services and replacing it with the required approval of the PRC. Consistent with the CRS’s advisory role as a subcommittee, Section IV would be further amended to

¹⁸ 17 CFR 200.30-3(a)(12).

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, ICC Risk Management Framework, and ICC Treasury Operations Policies and Procedures; Exchange Act Release No. 92402 (July 14, 2021); 86 FR 38370 (July 20, 2021) (SR-ICC-2021-015) (“Notice”).

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICC Rules, as applicable.

⁵ The description of the proposed rule change is excerpted substantially from the Notice.

indicate that the CRS would be authorized to make recommendations to the PRC regarding approval of the bank prior to accepting such services.

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)(i) and (v).⁸

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, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.⁹ As discussed above, the proposed rule change would change the roles of the CRS and PRC internal committees in approving financial services providers and making recommendations with respect to matters of creditworthiness of CPs and the creditworthiness and performance of FSPs, with FSP approval being reserved for the PRC. The proposed changes also add the Risk Oversight Officer to both committees and remove representatives from Risk Management from voting participation in the CRS. The Commission believes that changing the roles of the internal committees in this way would enhance ICC's ability to efficiently manage the risks associated with assessment and approval of CP and FSP counterparties by centering decision making and support amongst distinct committees. Further, the Commission believes that by changing voting representation in the CRS, the proposed changes would support its changed support role by clearly specifying how participation on the CRS works. The Commission believes that these changes would thus enhance ICC's ability to maintain the appropriate financial resources necessary for the

prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.

The Commission also believes that clarifying current practices related to the reporting line for the ERM, the frequency that the PRC meets, and the frequency with which the review and approval process of the policies and procedures that comprise ICC's overall risk management framework occurs, strengthens the Documents by ensuring that users are aware of reporting lines and when policies and procedures should be reviewed and approved. The Commission believes that this in turn enhances ICC's ability to promptly and accurately settle transactions and safeguard funds and securities by ensuring regular Document review intervals. Similarly, the grammatical changes noted above enhance the overall clarity of the Documents.

For the reasons stated above, the Commission therefore believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.

B. Consistency With Rule 17Ad-22(e)(2)(i) and (v)

Rules 17Ad-22(e)(2)(i) and (v) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.¹⁰

As described above, the proposed rule changes would revise the specific role of the PRC and CRS regarding counterparty review and approval by making the PRC solely responsible for approval and oversight of FSPs and placing the CRS in a supporting position to make recommendations to the PRC after assessing and monitoring counterparties. The proposed changes also change the membership composition of the CRS to include the Risk Oversight Officer and remove the ICC Risk Management representative as a voting member while continuing to present materials to allow the CRS to perform its responsibilities and duties.

The Commission believes that by differentiating the responsibilities of the various committees, subcommittees, and their participants as noted above, these proposed changes provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility to those serving on those

committees and utilizing the Documents.

The proposed changes would also revise a governance chart in the Documents to clarify that the ERM reports to the Board of ICC, which the Commission believes provides transparent governance and specify clear and direct lines of responsibility between the ERM and the Board.

Lastly, by clarifying the review and approval process of the policies and procedures that comprise ICC's overall risk management framework, which consists of review by the Risk Committee and review and approval by the Board at least annually, the proposed rule change helps ensure that the risk management policies and procedures are subject to clear governance and specific direct lines of responsibility.

For the reasons stated above, the Commission believes the proposed rule changes are consistent with Rules 17Ad-22(e)(2)(i) and (v).¹¹

IV. 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 Act¹² and Rules 17Ad-22(e)(2)(i) and (v).¹³

It is therefore ordered pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-ICC-2021-015), be, and hereby is, approved.¹⁵

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

Jill M. Peterson,

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Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

¹¹ *Id.*

¹² 15 U.S.C. 78q-1(b)(3)(F).

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

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).

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)(i) and (v).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

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