

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100876; File No. SR-ICC-2024-009)

August 29, 2024

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the Clearing Rules, Risk Management Framework, Governance Playbook and Sixth Amended and Restated Operating Agreement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 19, 2024, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been primarily prepared by ICC. On August 27, 2024, ICC filed Partial Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereafter, “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 its (i) Clearing Rules (the “Rules”), (ii) Risk Management Framework (the “Framework”), (iii) Governance Playbook (the “Playbook”), and (iv) Sixth Amended and Restated Operating Agreement (the “Operating Agreement”).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 amends the Exhibit 5A to correct a typographical error.

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 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

The amendments are intended principally to provide for (i) the elimination of the Risk Management Subcommittee, (ii) the establishment of a Risk Advisory Working Group and (iii) expansion of the Risk Committee to include representatives of Non-Participant Parties and clarification of certain other arrangements relating to the operation of the Risk Committee, among other clarifications, as discussed herein. ICC believes that 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.

I. Rules

ICC proposes to eliminate its Risk Management Subcommittee, which is currently tasked under the Rules with consulting with the Board and the Risk Committee as to eligible products, standards for ICC Clearing Participants ("Participants" or "CPs") and approvals or denials of Participant applications. ICC believes the subcommittee is

unnecessary and the relevant consultative and advisory functions can be performed (and in fact are typically performed as a matter of current practice) by the Risk Committee itself. In addition, the newly established Risk Advisory Working Group will support those consultative and advisory functions. Accordingly, ICC is amending the Rules to remove references to the Risk Management Subcommittee throughout the Rules, including the deletion of Rule 510 (which set out the responsibilities of the Risk Management Subcommittee) and Rule 511 (which addresses the membership of Risk Management Subcommittee), among others.

Rules 201 and 202 (which cover Qualifications and Applications of Participants) would be amended to remove references to the Risk Management Subcommittee. In addition, Rule 201 would be amended to add references to the Risk Committee's consultation rights over any proposed amendment to the qualifications for Participants as well as with respect to satisfying or ceasing to satisfy ICC's internal credit criteria, to reflect current practices. Furthermore, Rule 202 would be amended to add a reference to the Risk Committee's consultation rights over approvals or denials of Participant applications to reflect current practices.

Rule 509 (which currently provides for the establishment of the Risk Management Subcommittee) would be amended to provide for the establishment of the new Risk Advisory Working Group, as a forum to seek risk-based input from a broad array of market participants regarding all matters that could materially affect the risk profile of ICE Clear Credit, consistent with the requirements of Commodity Futures Trading Commission ("CFTC") regulations.⁴ The amendment would clarify that the role of the

⁴ See 17 C.F.R. 39.24(b)(12).

working group is advisory, such that neither the Board nor the Risk Committee is required to accept or act upon any proposal of the working group. The members of the Risk Advisory Working Group would include a minimum of two representatives of Participants and a minimum of two representatives of Non-Participant Parties. While Rule 509 would provide for a minimum number of Participant and Non-Participant Party members on the Risk Advisory Working Group, Rule 509 provides the flexibility for more than the minimum number of Participants and Non-Participant Parties to participate on the Risk Advisory Working Group, subject to interest and availability of such representatives. The amendments would remove a reference to reporting requirements to the CFTC and SEC, which are inapplicable in the context of the Risk Advisory Working Group.

The limitations on liability provided by Rule 512 (which currently apply to the Risk Management Subcommittee) would be revised to apply to the Risk Advisory Working Group and its members. Rule 512 would also provide that the Risk Advisory Working Group would meet when necessary or desirable, but at least twice per year, and that the working group would provide the Risk Committee with a summary of the topics discussed and main points raised at each meeting, as required by CFTC regulations.⁵

Consistent with the requirements of CFTC regulations,⁶ ICC would also modify its existing Risk Committee to include representatives of Non-Participant Parties, as discussed below. The amendments would also revise the role of the Risk Committee in Rule 501 to provide generally that the Board would consult with the Risk Committee on

⁵ See 17 C.F.R. 39.24(b)(12).

⁶ See 17 C.F.R. 39.24(b)(11).

any matters that may materially affect the risk profile of ICC (in addition to the specified actions set forth in Rule 502), and to state explicitly that the Board would consider and respond to the proposals, recommendations and other input provided by the Risk Committee. In addition, Rule 502 would be amended to clarify that the specific actions subject to Risk Committee consultation specified therein are not intended to limit the general provisions of Rule 501. Furthermore, Rule 502 would be amended to delete a cross reference to Rule 510 (which sets out the responsibilities of the Risk Management Subcommittee) which is being deleted as discussed herein. With the proposed deletion to the cross reference to Rule 510, Rule 502 would be further amended to directly reference the current consultation rights of the Risk Committee over: (i) any proposed amendments to the qualifications for Participants and (ii) approvals or denials of Participant applications.

The amendments would make certain changes to the composition of the Risk Committee in Rule 503(a). The size of the Risk Committee would be increased to fourteen instead of twelve members. The two additional members of the Risk Committee would be representatives of Non-Participant Parties. The amendments set out the process for selection of these representatives. The two Non-Participant Parties would be selected by a majority vote of the other Risk Committee Members (i.e., the Participant Appointees and the three members appointed by ICC). The Non-Participant Parties must be active in clearing transactions at ICE Clear Credit. The selected Non-Participant Party would select an individual to serve as its Non-Participant Appointee. This person must have risk management experience and expertise and would be subject to both the Risk Committee's and Board's approval, neither which would be unreasonably withheld, conditioned, or

delayed. This person would also only be eligible if they are an employee of the Non-Participant Party or an Affiliate thereof. The Non-Participant Appointee may be removed at any time without cause by the Non-Participant Party that appointed the individual. If a vacancy were to occur in the position, the Non-Participant Party may appoint another individual in accordance with Rule 503. In addition, under new Rule 503(c), a Non-Participant Party appointing a Non-Participant Appointee to the Risk Committee would have to execute a confidentiality agreement and would have to cause the Non-Participant Appointee to execute an acknowledgment of their confidentiality obligations in a form reasonably prescribed by ICC.

Under Rule 505 as amended, a majority of the Risk Committee would constitute a quorum. The amendments would delete an additional requirement in the existing Rule that at least half of the Participant Appointees must be present. ICC believes this requirement is unnecessary in light of the revised size and composition of the Risk Committee. ICC believes that a majority quorum requirement is a well-established and standard business practice and strikes the right balance to ensure a material number of Risk Committee members are present at Risk Committee meetings without being overly burdensome. Furthermore, ICC believes that any additional quorum requirements that would apply either to the Participant Appointees or the Non-Participant Appointees are not necessary or appropriate and may impede the ability of the Risk Committee to achieve a quorum, as attendance by Risk Committee members is largely outside of ICC's control. The inability to achieve a quorum at Risk Committee meetings (particularly if that occurs regularly) could be detrimental to ICC's ability to conduct its business given its requirement to consult with the Risk Committee prior to taking the Specified Actions

listed in Rule 502. Rule 506, which provides for the elimination of certain fiduciary duties for Risk Committee members and appointing parties, would be revised to reflect that the appointment of members by Non-Participant Parties. The amendments would make certain other clarifications in Rule 507 relating to participation in meetings by audio or video conference to more specifically provide examples of communications equipment used for Risk Committee meetings.

In light of the expansion of the requirement to consult with the Risk Committee as described above, the amendments would clarify the consultation process in Rule 601 in the event of an emergency. Specifically, the amendments would reflect that for matters otherwise subject to Risk Committee consultation (in addition to Specified Actions), there would be no obligation to do so where the Board or Eligible Officer determines that the delay caused by consultation would create significant risks to the clearing system and Participants generally, consistent with the existing standard under Rule 601, subject to the requirement to consult as promptly as practicable after taking the relevant action.

Moreover, the amendments would revise Rule 703 to provide that the Business Conduct Committee would hear any matter referred to it by the Review Subcommittee⁷ (rather than the Risk Management Subcommittee). This change corrects an erroneous reference in the current Rule to the Risk Management Subcommittee. The amendments would also make conforming changes to the form of Confidentiality Agreement for Risk Committee participants to specify Market Participant instead of Clearing House member (to reflect that the Risk Committee would include Non-Participant Appointees).

⁷ Under existing Rule 703(c), the Review Subcommittee is a three-person subcommittee of the Business Conduct Committee that is empaneled from time-to-time by the Business Conduct Committee, as necessary, to receive and review investigation reports of possible ICC Rule violations.

Finally, the amendments would make drafting corrections and clarifications to account for the other changes being made. These would include the deletion of definitions relevant to the Risk Management Subcommittee (i.e., Independent ICE Subcommittee Managers, Risk Management Subcommittee, and Subcommittee Specified Action) as these definitions are no longer necessary or relevant with the elimination of the Risk Management Subcommittee. In addition, the amendments add the definition of Non-Participant Appointees to reflect the new category of Risk Committee members as discussed above, and also adds the definition of Risk Advisory Working Group to define the new Risk Advisory Working Group.

II. Risk Management Framework

ICC would amend the Framework to reflect the changes being made to the Rules as described above. References to the Risk Management Subcommittee would be deleted and references to the new Risk Advisory Working Group would be added where relevant. As a result, the chart illustrating the governance structure of ICE Clear Credit would be replaced to show the elimination of the Risk Management Subcommittee and the addition of the Risk Advisory Working Group. The amendments would also remove references to an Advisory Committee, which is a committee of Non-Participant Party representatives that would no longer be maintained in light of the changes to the Risk Committee composition discussed above. The Advisory Committee is effectively a dormant committee in that it met only on an as-needed basis and has not met for a number of years. While the primary role of the Advisory Committee was to act as a forum to solicit input from Non-Participant Parties, the Advisory Committee has proven ineffective in achieving its primary role. As a result, ICC believe that it appropriate to discontinue the

Advisory Committee. ICC believes the proposed roles for Non-Participant Parties on the Risk Committee and the Risk Advisory Working Group will provide a greater opportunity for meaningful participation by Non-Participant Parties in ICC’s governance process than was afforded by the Advisory Committee in practice (even though it may have had more members and even though the Risk Advisory Working Group does not directly consult with the Board).

The subsection on Risk would be updated to reflect the role of the Risk Advisory Working Group, to provide risk-based feedback to ICC on all matters that could materially affect the risk profile of ICC as discussed above. The amendments would also add a revision history section to the Framework (as Section VII) to document revisions made to the Framework on a going forward basis. As a result of the addition of the new section, Section VII. Appendices would be re-numbered as Section VIII.

III. Governance Playbook

ICE Clear Credit would also amend the Playbook to conform to the amendments to the Rules and Framework discussed above. References to the Risk Management Subcommittee and Advisory Committee would be deleted throughout the Playbook, and references to the Risk Advisory Working Group would be added where relevant. The description of the Steering Committee, which oversees the implementation of all credit default swap (“CDS”) product launches and initiatives, would be revised to remove references to ICE Clear Europe (“ICEU”) as ICEU discontinued its CDS clearing offering in late 2023 and therefore no longer participates in the Steering Committee. References to the FCM Executive Council would also be removed, as that council would no longer be maintained. The FCM Executive Council is an obsolete committee in that its

primary purpose was to provide Participants a forum to provide feedback to ICC as it proposed Rules, policies and procedures related to the addition of customer clearing to ICC's clearing offering. As customer clearing is now an established and mature business at ICC, the primary purpose of the committee has been achieved and therefore the FCM Executive Council has not met in a number of years. As a result, ICC believes it is appropriate to discontinue maintaining the FCM Executive Council.

The amendments would also delete a requirement that the election of ICC Board members would follow no less than 5 business days after the Risk Committee Reconstitution Date. The elections would still occur after the Risk Committee Reconstitution Date but there would not be a specific timeframe in order to give sufficient time to on-board new Risk Committee members following the Risk Committee Reconstitution Date, and to allow the Risk Committee sufficient time to consider and nominate Risk Committee Board Appointees.

Conforming changes would also be made to the description and composition of the Risk Committee consistent with the amendments to the Rules discussed above (including the deletion of all previous language referring to and describing the Risk Management Subcommittee). Specifically, the amendments would add that the Risk Committee would include representatives of customers of ICC CPs and that the Board is required to consult with the Risk Committee with respect to matters that could materially affect the risk profile of ICC. The amendments would state that the Risk Committee would consist of fourteen rather than twelve members and that two of the members would be representatives of customers of CPs and address the procedures for selecting the two representatives of customers of CP members under the Rules. The amendments would

also add a reference to Chapter 5 of the Rules, which is the chapter describing the Risk Committee. In addition, the amendments would change the reference to the Chairman of the Risk Committee to the Chairperson to be more gender inclusive.

The amendments would add a description of the Risk Advisory Working Group, including its purposes and membership, consistent with the amendments to the Rules discussed above. The amendments provide that the ICC Chief Risk Officer would serve as Chairperson of the Risk Advisory Working Group. Moreover, a minimum of two members would be representatives of CPs and a minimum of two representatives would be customer of CPs. Members of the Risk Advisory Working Group would be appointed by the ICC President, subject to the approval by the Risk Committee. The amendments would also specify that the Risk Advisory Working Group would meet on as-needed basis to consult all matters that could affect ICC's risk profile but would meet at least two times per year. The amendments would also make clear that the relevant documents to be maintained for the Risk Advisory Working Group include meeting materials and summary of the main points and topics discussed during the meeting. Furthermore, administrative procedures referring to the use of the Diligent account for distributing information to Risk Management Subcommittee Members would be removed, as this procedure would not be needed for Risk Advisory Working Group members as the Diligent information distribution system will not be used for the Risk Advisory Working Group. Certain reference to ICC websites would also be updated.

VI. Operating Agreement

ICC would amend and restate its Operating Agreement (the Sixth Amended and Restated Operating Agreement would now be the Seventh Amended and Restated

Operating Agreement) to conform to the amendments to the Rules, Framework and Playbook as detailed above. The amendments would delete any reference to the Advisory Committee, including Section 3.12 in its entirety (which describes the establishment and composition of the Advisory Committee), as the Advisory Committee is dormant. The Advisory Committee's former function of soliciting feedback from Non-Participant Parties will now be accomplished by the expansion of the Risk Committee to include representatives of Non-Participant Parties and the creation of the Risk Advisory Working Group (whose members will represent both Participants and Non-Participant Parties), as discussed above. Given the proposed addition of two Non-Participant Party representatives on the Risk Committee, and a minimum of two Non-Participant Party representatives on the Risk Advisory Working Group, ICC believes the proposed revisions will increase the opportunities for Non-Participant Parties to participate in ICC's formal governance structure as compared to the dormant Advisory Committee (even though the Advisory Committee may have included more members and even though the Risk Advisory Working Group does not directly consult with the Board). Furthermore, the defined "Buy-Side Firms" will also be removed as this was only relevant to Section 3.12.

(b) Statutory Basis

ICE Clear Credit believes that the proposed amendments to the Rules are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the "Act")⁸ and the regulations thereunder applicable to it. In particular, Section

⁸ 15 U.S.C. 78q-1.

17A(b)(3)(F) of the Act⁹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed amendments are designed to reflect the expansion of the Risk Committee to include representatives of Non-Participant Parties, and the establishment of the newly formed Risk Advisory Working Group, consistent with requirements under CFTC regulations. The amendments would also provide for the elimination of the Risk Management Subcommittee, which ICC believes is unnecessary as the relevant responsibilities can and should be performed by the Risk Committee. In ICC's view, the amendments will facilitate the ability of ICC to consult with relevant stakeholders and interested parties with respect to matters affecting the risk profile of the clearing house. Thus, the proposed amendments enhance the overall risk management of ICE Clear Credit and are consistent with the prompt and accurate clearance and settlement of securities transactions and 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 in the operation of clearing services, within the meaning of Section 17A(b)(3)(F) of the Act.¹⁰

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

The proposed amendments are also consistent with relevant provisions of Rule 17ad-22. Rule 17ad-22(e)(3)(i)¹¹ provides that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] [m]aintain a sound risk management framework that” among other matters identifies, measures, monitors and manages the range of risks that it faces. The amendments ensure that ICC Board continues to receive and consider feedback from the Risk Committee that may materially affect ICC’s risk profile and expands the Risk Committee to include participation by Non-Participant Appointees to provide additional perspectives from stakeholders on such matters. The amendments would also reflect the creation of the Risk Advisory Working Group, including the selection process and governance procedures of the group to ensure that it functions effectively. The Risk Advisory Working Group is intended to provide advice to ICC with respect to matters that could materially affect its risk profile. The amendments would thus strengthen and enhance ICC’s risk management more generally. In ICE Clear Credit’s view, the amendments are therefore consistent with the requirements of Rule 17ad-22(e)(3)(i).¹²

Rule 17ad-22(e)(2) provides that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] [p]rovide for governance arrangements that are [c]lear and transparent”¹³ and “[c]onsider the interests of participants’ customers ... and other

¹¹ 17 CFR 240.17ad-22(e)(3)(i).

¹² 17 CFR 240.17ad-22(e)(3)(i).

¹³ 17 CFR 240.17ad-22(e)(2)(i).

relevant stakeholders of the covered clearing agency”¹⁴. The proposed amendments are intended to enhance the Risk Committee structure to provide for feedback on topics affecting risk management generally and to expand the committee composition to include representatives of Non-Participant Parties, to better facilitate consideration of the interests of participants’ customers. The amendments also establish the Risk Advisory Working Group to provide for further consultation with interested stakeholders on risk matters. The amendments also clarify the responsibilities of the Board with respect to consultation with the Risk Committee and Risk Advisory Working Group with respect to risk matters. In ICE Clear Credit’s view, the amendments to the Rules are therefore consistent with the requirements of Rule 17ad-22(e)(2).¹⁵

(B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to clarify certain matters relating to the operation of its Risk Committee and related risk advisory arrangements. The amendments do not otherwise change the rights and responsibilities of ICC or its Participants. Accordingly, ICE Clear Credit does not believe the amendments would affect the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Credit does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

¹⁴ 17 CFR 240.17ad-22(e)(2)(vi).

¹⁵ 17 CFR 240.17 Ad-22(e)(2).

(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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ICC-2024-009 on the subject line.

Paper Comments:

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ICC-2024-009. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice 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 am and 3 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.ice.com/clear-credit/regulation>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ICC-2024-009 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,
Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).