SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104762; File No. 600-45]

ICE Clear Credit LLC; Order Granting an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934

January 30, 2026.

I. Introduction

On August 1, 2025, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") an application on Form CA-1 ("Application") under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")[1] seeking to register as a clearing agency to provide central counterparty ("CCP") services for transactions involving U.S. Treasury securities, which ICC refers to as its "Treasury Business." Such services would be provided by ICC, the same entity that is already deemed registered as a clearing agency with respect to other services.[2] Notice of the Application was published for comment in the *Federal*

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1 15 U.S.C. 78q–1.

2 ICC started in 2009 as ICE Trust U.S. and was regulated as a bank by the New York State Banking Department and the Federal Reserve Board of Governors. In 2011, ICC converted to a Delaware limited liability company and changed its name to ICE Clear Credit LLC. On July 16, 2011, pursuant to Section 17A(l) of the Exchange Act, ICC was deemed registered with the Commission as a clearing agency solely for the purpose of clearing security-based swaps. Since then, ICC has been operating an ongoing business related to the clearance of credit-default swaps (''CDS''), which ICC refers to as its "CDS Business." Although the Application pertains to ICC's proposed Treasury Business, the Application also contains information about the CDS Business, and where relevant, this Order refers to information pertaining to ICC's existing CDS Business, including referring to ICC's existing, publicly available disclosure framework regarding the CDS Business (the "Disclosure Framework"). *See* ICC Disclosure Framework, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf. References in this Order to the CDS Business are made to the extent relevant to the Application, for instance with respect to issues that pertain to ICC as an entity. As described in the Application, the Treasury Business would be distinct from ICC's existing CDS Business, having separate membership requirements, financial risk management and default waterfalls, and rulebooks. *See* Exhibit J of the Application. If ICC determines in the future to provide clearing agency services other than its Treasury Business or CDS Business, or to perform the functions of a clearing agency for transactions in other types of securities, ICC would need to amend its application on Form CA-1 to so reflect and submit any related proposed rule changes as required under Section 19(b) of the Exchange Act. Capitalized terms not otherwise defined in this order are defined in the Application.

Register on August 21, 2025.[3] On November 18, 2025, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Exchange Act to determine whether to grant or deny the Application.[4]

The Commission received comment letters, as well as a response letter from ICC.[5] The comment letters generally supported the expansion of access to the clearing of transactions in U.S. Treasury securities through the approval of new clearing agencies, including ICC, but also expressed concerns with the Application and recommended certain changes. The comment letters received, and ICC's response letter thereto, are discussed in Part III.

This order grants ICC's Application for registration as a clearing agency for the reasons set forth in Part III below.

II. Statutory Standard for Registration as a Clearing Agency

Clearing agencies are broadly defined under the Exchange Act and undertake a variety of functions,[6] including providing the services of a CCP.[7] Pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder, an entity that meets the definition of a clearing agency must register with the Commission (or obtain from the Commission an exemption from registration prior to performing the functions of a clearing agency).[8] In addition to the requirements set forth

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3 Release No. 34–103727 (Aug. 18, 2025), 90 FR 40879 (Aug. 21, 2025) ("Notice"). Non-confidential aspects of the Application, including any exhibits thereto cited in this order, are available on the Commission's website at: https://www.sec.gov/rules-regulations/commission-orders-notices/icc-form-ca-1.

4 Release No. 34–104195 (Nov. 18, 2025), 90 FR 52752 (Nov. 21, 2025).

5 The public comment file for the Application is available on the Commission's website at: https://www.sec.gov/comments/600-45/600-45.htm.

6 15 U.S.C. 78c(a)(23)(A) (providing the definition of "clearing agency"); *see also* Release No. 34–78961 (Sept. 28, 2016), 81 FR 70786, 70897 (Oct 13, 2016) ("CCA Standards Adopting Release") (stating that clearing agencies are broadly defined in the Exchange Act and undertake a variety of functions).

7 *See* 17 CFR 240.17ad–22(a)(2) (defining "central counterparty" as a clearing agency that interposes itself between counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer).

8 15 U.S.C. 78*q*–1(b); 17 CFR 240.17ab2–1 ("Rule 17Ab2-1").

in Rule 17Ab2-1, Section 19(a)(1) of the Exchange Act establishes the standard for Commission review of an application for registration as a clearing agency. Pursuant thereto, the Commission shall grant registration of a clearing agency if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to the applicant are satisfied.[9] The Commission shall deny such registration if it does not make such finding.[10]

The requirements of the Exchange Act applicable to clearing agencies are set forth in Section 17A of the Exchange Act and the rules and regulations thereunder.[11] Accordingly, to grant ICC's Application for registration as a clearing agency, the Commission must find that the Application satisfies the requirements of Section 17A(b) of the Exchange Act and rules and regulations thereunder, including the determinations set forth in paragraphs (A) through (I) of Section 17A(b)(3) of the Exchange Act.[12]

After a clearing agency's application for registration is granted, the clearing agency must continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder. The Commission has explained that "[a]n approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed."[13] Rather, the Commission stated that a registered clearing agency's

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9 15 U.S.C. 78*q*–1; 15 U.S.C. 78s(a)(1).

10 15 U.S.C. 78s(a)(1).

11 Rules for registered clearing agencies include recordkeeping requirements, 17 CFR 240.17a-1; the filing process for proposed rule changes, 17 CFR 240.19b-4; rules addressing operations and risk management, governance and conflicts of interest, and plans for recovery and wind-down at, respectively, 17 CFR 240.17ad–22 ("Rule 17Ad-22"), 240.17ad–25 ("Rule 17Ad-25"), and 240.17ad–26 ("Rule 17Ad-26"); and the requirements set forth in Regulation Systems Compliance and Integrity, 17 CFR 242.1000 *et seq*. ("Regulation SCI"). The Commission conducts ongoing monitoring of registered clearing agencies through its supervisory program for registered clearing agencies. The Commission also assesses compliance with Commission rules by conducting examinations and investigations. *See* 15 U.S.C. 78q(b); 15 U.S.C. 78u(a).

12 15 U.S.C. 78s(a); 15 U.S.C. 78*q*–1(b)(3)(A)–(I). The determinations are described further below.

13 *See* Release No. 34–69838 (June 24, 2013), 78 FR 39027, 39029 (June 28, 2013) (approving an application by the Fixed Income Clearing Corporation for permanent registration as a clearing agency).

obligation to continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder means that "[t]he self-regulatory obligations of [a] fully registered clearing agenc[y] cannot end" after registration.[14] To ensure such compliance, the Commission stated that it "will continue to use its oversight, inspection, and enforcement authority as necessary and appropriate to further the purposes of the [Exchange] Act."[15]

III. Review of Application under Statutory Standard for Registration

Consistent with the requirements in Sections 17A and 19(a)(1) of the Exchange Act described above, the Commission below discusses how the Application satisfies each of the statutory requirements to be registered as a clearing agency.[16]

A. Organization and Capacity

1. Statutory Standard: Section 17A(b)(3)(A)

Section 17A(b)(3)(A) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the

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14 *See* Release No. 34–20221 (Sept. 23, 1983), 48 FR 45167, 45171 (Oct. 3, 1983) (approving nine applications for permanent registration as a clearing agency).

15 *Id.*

16 *See* 15 U.S.C. 78*q*–1(b)(3)(A)–(I) (describing the statutory determinations that the Commission must make regarding the rules and structure of a clearing agency to grant registration). In 1980, the Commission published a statement of the views and positions of Commission staff regarding the requirements of Section 17A. *See* Release No. 34–16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

Exchange Act) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of Section 17A of the Exchange Act.[17]

Consistent with this standard, the Commission does not assess in this order whether ICC's ultimate implementation of the rules, policies, and procedures set forth in its Application with respect to the Treasury Business will comply with each of the Commission's rules for clearing agencies, as ICC is not yet operating as a clearing agency for its Treasury Business.[18] Rather, the Commission assesses whether ICC is *so organized* and *has the capacity to* comply with the provisions of the Exchange Act and the rules and regulations thereunder,[19] by analyzing ICC's organization and governance, as well as its operational arrangements.[20] Under this standard, the registration of a clearing agency "depends on a prediction about compliance with the law."[21] Section 17A assumes that "an applicant would produce a business plan that, if faithfully executed, would comply" with the Exchange Act.[22] To make its required statutory

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17 15 U.S.C. 78*q*–1(b)(3)(A).

18 *See supra* notes 13–14 and accompanying text (explaining that approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed and that the obligations of a fully registered clearing agency cannot end after registration).

19 With respect to ICC's ability to safeguard securities and funds for which it is responsible, the Commission addresses that topic in Part III.E, in conjunction with discussing Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of the clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. With respect to ICC's ability to enforce compliance by its participants with the rules of the clearing agency, the Commission addresses that topic in Part III.F in conjunction with discussing Section 17A(b)(3)(G) of the Exchange Act, which requires that the rules of the clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency.

20 In Part III.E, the Commission further analyzes ICC's capacity to conduct risk management consistent with the statutory requirements for safeguarding securities and funds set forth in Section 17A(b)(3)(F) of the Exchange Act.

21 *Bd. of Trade of City of Chicago v. S.E.C.*, 883 F.2d 525, 533 (7th Cir. 1989) (vacating Delta Government Options Corporation ("Delta")'s temporary registration as a clearing agency and remanding to the Commission to decide whether Delta's proprietary trading system would operate as an unregistered national securities exchange in violation of Sections 5 and 6 of the Exchange Act).

22 *Id*. at 533–34.

determination under Section 17A(b)(3)(A), the Commission must "find[] that the applicant is *able* and *likely* to comply," and upon registration and commencement of operations as a registered clearing agency, compliance with Section 17A(b)(3)(A) "is likely to be carried out."[23]

2. Summary of Proposed Operations

The following is an overview of ICC's proposed clearing agency operations for its Treasury Business.

a) Types of Transactions Accepted for Clearing

As described in Exhibit J, ICC will accept for clearing transactions involving U.S. Treasury securities including (i) transactions in repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities to which a Treasury Participant[24] of ICC is a counterparty, and (ii) purchases and sales of U.S. Treasury securities (a) by a Treasury Participant of ICC resulting from the Treasury Participant's operation of a trading facility on which it becomes the counterparty to both the buyer and seller for transactions executed on the platform, and (b) between a Treasury Participant of ICC and a registered broker-dealer or a government securities dealer or broker.[25]

ICC will accept transactions directly from electronic trading venues on which they are executed. For transactions not executed on trading venues, such as those executed by voice,

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23 *Id*. at 534 (emphasis in original).

24 A Treasury Participant is a member of ICC participating in the Treasury Business. More specifically, a Treasury Participant is a person who has: (i) been approved by ICC for the submission of transactions involving U.S. Treasury securities; (ii) entered into an agreement with ICC specifically relating to such transactions; and (iii) agreed to abide by ICC's rules and procedures related to such transactions. Notice, 90 FR at 40880.

25 *See* Exhibit J of the Application, at 2.

Treasury Participants also can submit those transactions to ICC. Transactions are submitted to ICC through ICE Link.[26]

According to Exhibit J, ICC accepts Trades[27] pursuant to Rule 309 of the ICC Treasury Clearing Rules (the "Treasury Rules").[28] As described in that rule, ICC shall accept for clearance all transactions that are submitted in accordance with, and meet the requirements established by, ICC's rules and procedures, including implementation of and compliance with applicable risk filters required by ICC based on ICC's internal risk rating for the Treasury Participant and evaluation of the risk of the Treasury Participant's existing and proposed Trades. ICC's criteria for accepting Trades will be non-discriminatory across trading venues.[29] Any Trade not accepted by ICC for clearing will be rejected. ICC will accept or reject Trades submitted for clearance promptly after submission to ICC, and within any timeframe required under Rule 17Ad-22 or any related regulatory interpretation.[30]

b) Novation

Following acceptance by ICC in accordance with Treasury Rule 309, the existing Trade is extinguished, and the two Treasury Participants are deemed to have each entered into an exactly offsetting transaction with ICC. With respect to each such Treasury Participant, its position in such transaction shall become an Open Position. Trades may also be matched and submitted for

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26 *See id.*, at 8. As described in Exhibit J, ICE Link is ICC's connectivity network and is a post-trade matching and affirmation platform. ICE Link supports transactions executed on trading venues, transactions executed by voice that are submitted to ICE Link for matching and submission to clearing, bunched trades and allocations, and customer transfers. *See* Exhibit J of the Application, at 8, n.3.

27 The term "Trades" means transactions in contracts that are cleared by ICC's Treasury Business. *See* Treasury Rule 102. The Treasury Rules are Annex E-2 to the Application.

28 *See* Exhibit J of the Application, at 8.

29 *See* Treasury Rule 309(e).

30 *See id*.

the same entity, in which case, such entity will be deemed to have entered into two separate and distinct transactions with ICC.[31]

As described in Exhibit J, ICC will require that any Trade submitted to it for clearing be identified as either a Trade for a Treasury Participant (a "House Position") or a Trade for a Non-Participant Party for whom the Treasury Participant is clearing transactions at ICC (a "Client" and a "Client-Related Position").[32] Trade submissions for Client-Related Positions will indicate the Treasury Participant that is the clearing broker for the Trade and the Treasury Participant that is the executing party for the Trade. ICC will record the Client-Related Position in the relevant Client account of the Treasury Participant acting as the clearing broker for the Trade. If a trade submission indicates that the Treasury Participant acting as the clearing broker is also the executing party to the Trade, ICC will record the Treasury Participant's leg as a House Position for that Treasury Participant. If a trade submission indicates that a Treasury Participant is the clearing broker while a different Treasury Participant is the executing party, ICC will (i) record the Client-Related Position in the relevant Client account of the Treasury Participant acting as the clearing broker for the Trade, and (ii) record the Treasury Participant's leg as a House Position for the other Treasury Participant acting as executing party to the Trade.[33]

c) Settlement Process

In Exhibit J, ICC describes its ability to settle transactions. For each business day, ICC will calculate net settlement obligations for each specific issue of Treasury security (identified by its CUSIP) for which settlement of transactions therein is to occur on such day. A Treasury

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31 *See* Exhibit J of the Application, at 8.

32 *See* Exhibit J of the Application, at 8-9 (describing "done with" and "done away" trading).

33 *See id.*, at 8-9.

Participant settles with ICC the net deliver / receive obligation resulting from (i) its own House Positions and (ii) its Client-Related Positions from its Clients that have elected to settle with ICC through the Treasury Participant. A Client may, in coordination with the Treasury Participant through which it clears, elect to settle with ICC through that Treasury Participant or settle directly with ICC.[34] Regardless of who is settling with ICC (Treasury Participant or Client), all securities and cash are exchanged on a delivery-versus-payment / receive-versus-payment basis, and obligations settle at the ICC end-of-day price, with a separate Variation Payment to align net cashflows with the trade price.[35]

d) Approach to Settlement Fails

Exhibit J describes the steps ICC will follow in the case of a settlement failure. If there is a failure to deliver a Settling Security, ICC is not required to deliver the Settling Security, and the party that was supposed to receive the Settling Security is not required to pay for it. The party that failed to deliver will be required to deliver on the next ICC Settlement Day. That party also will be obligated to pay ICC a Fail Charge in an amount determined by ICC, and ICC will be obligated to provide a corresponding Fail Charge payment to the party that was supposed to receive the Settling Security. If ICC incurs any actual costs or expenses in the settlement process from the failure to deliver a Settling Security, the party that failed to deliver also will be obligated to reimburse ICC for any of those charges.[36]

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[34] Specifically, pursuant to Chapter 22 of the Treasury Rules, CP House Delivery Settlement Accounts are established by Treasury Participants for the settlement of Net Settlement Obligations in respect of House Positions, CP Client Delivery Settlement Accounts are established by Treasury Participants for the settlement of Net Settlement Obligations in respect of Client-Related Positions (other than those to be settled through Individual Client Direct Settlement Accounts), and Individual Client Direct Settlement Accounts are established by Non-Participant Parties of Treasury Participants for the direct settlement of Net Settlement Obligations in respect of Client-Related Positions in its Non-Participant Party Portfolio.

[35] *See* Exhibit J of the Application, at 10-11.

[36] *See id.*, at 11.

If the party set to receive a Settling Security fails to pay for that security, ICC still may determine to accept delivery of the Settling Security. In this case, the party that was supposed to receive the Settling Security (but failed to pay for it) will be required to pay ICC any losses, costs and expenses, including financing costs, incurred by ICC in accepting the security and liquidating any security received. Alternatively, ICC can also fully terminate the Net Settlement Obligation and replace the Net Settlement Obligation with an obligation to cash settle based on the price determined by ICC. Under both circumstances, ICC can apply Initial Margin provided by the failing party to settle any amounts owed.[37]

e) Default management

Pursuant to the Treasury Rules, upon ICC's determination that a Treasury Participant is in Default,[38] ICC must provide notice of the Default, including the identity of the defaulting participant, as soon as reasonably practicable to the other Treasury Participants and the public.[39] Treasury Rule 20-605(d) provides that ICC may hedge open positions of the defaulter.[40] ICC also may initiate the Closing-out Process with respect to the defaulting Treasury Participant.[41] The Closing-out Process includes the immediate termination of all of such defaulting Treasury Participant's Open Positions and then the satisfaction of any Reimbursement Obligations by the

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37 See *id*.

38 ICC may determine that a Treasury Participant is in Default if the Treasury Participant or guarantor, among other things, (i) fails to meet any membership obligations, (ii) is in breach of the terms of membership or is suspended, or (iii) is terminated, suspended or has certain clearing privileges revoked pursuant to Treasury Rule 615(b). *See* Exhibit J of the Application, at 6.

39 Treasury Rule 20-605(b).

40 Treasury Rule 20-605(d).

41 Treasury Rule 20-605(a). As defined in Treasury Rule 102, "Closing-out Process" means, in connection with the Default of a Treasury Participant, the process of termination of Open Positions, determination of amounts owing with respect thereto, netting of such amounts, liquidation and application of any Margin and/or Collateral, and application of Post-Default Portability Rules pursuant to Treasury Rule 20A-02, if applicable.

defaulting Treasury Participant, for which ICC can apply the Margin and other assets provided by the defaulting Treasury Participant based on the waterfall set forth in Treasury Rule 20-605(c).

Regarding margin, ICC will collect Initial Margin for both House Positions and Client-Related Positions. As described in Exhibit J, and as further set out in Treasury Rule 401(b), each Treasury Participant is responsible for ensuring that Margin is met for its Client-Related Positions and transferring to ICC cash or other collateral needed to meet such Margin requirement. Clients may choose between net or gross margin position accounts, as described further in Exhibit J.[42] These accounts allow a Client to choose whether to fund all, some, or none of its Margin requirement. ICC will maintain Client-funded Client Margin in separate, legally segregated, margin accounts from House-funded Client Margin or House Margin. Finally, ICC will determine Margin for each Treasury Participant in respect to its House Positions and in respect of any applicable Client-Related Positions, following the close of business on each ICE Business Day, based on 99% Value-at-Risk equivalent risk measures with additional liquidity and concentration requirements.[43]

With respect to safeguarding securities and funds in its custody or control or for which it is responsible, as described in Exhibit L, ICC safeguards its own assets, and the assets of Treasury Participants and their Clients. ICC does so by using only approved settlement banks, custodians, and other financial service providers that ICC has chosen based on their ability to provide the services required by ICC, creditworthiness, relevant experience and operational

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42 Specifically, depending on the agreement between the Treasury Participant and its related Non-Participant parties, margin or collateral associated with the relevant Client-Related Positions may be held in one of four different type of accounts: (i) Client-Funded Gross IM Accounts, (ii) Clearing Participant-Funded Gross IM Accounts, (iii) Hybrid Gross IM Accounts, and (iv) Net Client IM Accounts.

43 *See* Exhibit J of the Application, at 3.

stability. ICC conducts due diligence reviews to assess whether its settlement banks and custodians employ adequate accounting practices, safekeeping procedures and internal controls that protect deposits, ensure full segregation and protection of financial instruments, and allow ICC prompt access to assets when required. In addition, ICC monitors the financial health of the financial institutions in which it holds its settlement and custodial accounts on an on-going basis, with an emphasis on measures related to liquidity and cash management.[44]

With respect to U.S. Dollar and U.S. Treasury securities collateral posted by participants in the CDS Business, to the fullest extent available, ICC holds such cash and U.S. Treasury securities at its accounts with the Federal Reserve Bank of Chicago.[45] For the Treasury Business, ICC will use four different accounts to legally segregate House collateral, Client-related collateral, and variation payments. ICC will hold collateral either in a bank deposit at a commercial bank or invest the collateral using reverse repurchase agreements backed by certain U.S. Treasury securities.

f) Business Continuity Practices

In Exhibit K, ICC describes how it provides for the security of the systems that ICC uses to perform the functions of a clearing agency. ICC does this through the application of the Corporate Information Security Policy ("CISP"). The CISP describes the information security policies for the creation, transfer and storage of sensitive data applicable to all users at ICC. The CISP covers areas such as access to data; remote access to networks; protection of data; network security; and security testing.[46]

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44 *See* Exhibit L of the Application, at 1.

45 *See id*.

46 *See* Exhibit K of the Application, at 1. ICC submitted the CISP as a confidential annex to the Application.

In addition to information security, ICC also provides for business continuity and disaster recovery. Moreover, ICC states that it has a comprehensive business continuity and disaster recovery program that supports the continued performance of critical functions in the event ICC's headquarters or primary data center is unavailable due to significant business interruption.[47] Maintaining the continued performance of critical functions in the event ICC's headquarters or primary data center is unavailable due to significant business interruption, should help ensure that ICC is able to facilitate the prompt and accurate clearance and settlement of securities transactions even during the loss of its headquarters or primary data center.[48]

3. Organization, Governance, and Analysis

ICC is a Delaware limited liability company, which is wholly owned by ICE US Holding Company, L.P. ("Parent").[49] While Parent is ICC's direct shareholder, ICC's ultimate parent company is Intercontinental Exchange, Inc. ("ICE"). Under this structure, ICC's ultimate parent company, ICE, provides services to ICC, such as services related to IT.[50] ICC is managed by a

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47 ICC describes its business continuity and disaster recovery program in its Disclosure Framework, as it relates to ICC's operation as a whole. The Disclosure Framework is consistent with, and provides public facing information related to, the contents of Exhibit K of the Application. *See* ICC Disclosure Framework, Principle 17, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf ("The business continuity/disaster recovery program has six objectives: (i) ensure continuity and recovery of critical functions through its secondary/disaster recovery facility; (ii) minimize the disruption to clients and business partners; (iii) protect the firm's books and records; (iv) reduce the number and frequency of ad hoc decisions following a significant business interruption; (v) educate employees about contingency plans and roles and responsibilities in executing the plans; and (vi) comply with regulatory requirements. As part of the business continuity and disaster recovery program, ICC maintains a detailed Business Continuity Plan ('BCP'). The BCP outlines ICC's strategy to resume clearing operations within two hours following: (i) loss of key personnel or reduction of available staff; (ii) loss of primary work facility; (iii) loss of primary data center; and (iv) a widescale disruption affecting staff, data and facilities. ICC conducts regular BCP and disaster recovery testing and requires CP participation at least annually.").

48 *See* ICC Disclosure Framework, Principle 17, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

49 *See* Exhibit C of the Application.

50 *See* Exhibit K of the Application, at 1 (stating that "ICE operates various systems on behalf of its regulated subsidiaries"); Exhibit I of the Application ("ICC receives certain clearing services from ICE under the

Board of Managers ("Board") consisting of nine members,[51] along with specialized committees of the Board, including the ICC Audit Committee, ICC Nominating Committee, and ICC Risk Committee.[52] Each Board committee has a written charter that lays out the membership structure and responsibilities of that committee.[53]

As noted, ICC intends to conduct the Treasury Business within the same legal entity—ICC—that is currently conducting ICC's existing CDS Business. Accordingly, ICC's existing organization, governance, and disclosure framework for the CDS Business will also apply to the Treasury Business. With respect to organization and governance, ICC is a Delaware limited liability company.[54] As described above and in Exhibit A of the Application, the Parent, ICE, ICC's Board of Managers, CDS Risk Committee, Treasury Risk Committee, and executives, are the persons who will direct the management and policies of ICC, including in connection with the Treasury Business.[55] The ICC Board has full responsibility for the operations of ICC and approves ICC's initiatives without any requirements for approval from Parent or ICE.[56] Moreover, at least a majority of ICC's Board consists of independent directors.[57]

Administrative Services Agreement dated July 1, 2025 by and between Intercontinental Exchange Holdings, Inc. and ICC and the Amended and Restated Clearing Settlement Services Agreement dated October 15, 2018 by and between Intercontinental Exchange Holdings, Inc. and ICC").

51 *See* Exhibit B of the Application.

52 *See* Exhibit C of the Application.

53 ICC submitted these charters as confidential annexes to the Application.

54 *See* Exhibit C of the Application.

55 *See* Exhibit A of the Application. As noted in Exhibit A, the CDS Risk Committee and the Treasury Risk Committee each have certain consultation rights as set forth in Rule 502 of the CDS Rule Book and Rule 502 of the Treasury Rule Book.

56 *See* ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf. As part of the Application, ICC also submitted confidentially the relevant Board committee charters, which are consistent with the ICC Disclosure Framework.

57 *See id.*

In addition to the Board, ICC's Board committees and non-Board committees are also involved in ICC's governance and risk management. For example, the ICC Board Risk Committee is a Board level committee that assists the ICC Board in fulfilling its oversight responsibilities with respect to risk management of ICC.[58] In particular, the ICC Board Risk Committee oversees (i) risk management models, systems, and processes used to identify and manage systemic, market, credit, and liquidity risks at ICC and (ii) matters that could materially affect the risk profile of ICC. The ICC Board Risk Committee consists of at least five Board members, a majority of which meet ICC's independence requirements, and includes Board members that are representatives of ICC's Clearing Participants.[59] The ICC Nominating Committee assists the Board in (i) identifying and attracting highly qualified individuals to serve as Board members; (ii) evaluating the individuals nominated to the Board by the non-Board risk committees; and (iii) evaluating and providing recommendations to the Board on whether Board members qualify as independent under ICC's Independence Requirements.[60] Finally, the ICC Audit Committee provides the Board with an independent opinion and makes recommendations on matters of importance to ICC's financial condition; financial information, policies, practices, systems and controls; legal and regulatory compliance relating to financial matters; and business ethics.[61]

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58 *See id.*

59 *See id.*

60 The ICC Nominating Committee consists of at least three Board members, a majority of whom meet ICC's independence requirements. *See* ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

61 The ICC Audit Committee consists of at least three Board members, all of whom meet ICC's independence requirements. *See* ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

Moreover, ICC's non-Board level risk committees are also involved in ICC's governance and risk management. The Treasury Rules establish a Treasury Risk Committee, which includes representatives from Treasury Participants and non-participants. Pursuant to Treasury Rule 502, ICC shall not take, or permit to be taken, certain actions without consulting the Treasury Risk Committee. Such actions include, among other things, modifying the Treasury Rules with respect to clearing new or existing Contracts, modifying provisions related to margin, and modifying provisions related to the Treasury Guaranty Fund.[62] Finally, pursuant to Treasury Rule 508(a), effective as of the Treasury Governance Commencement Date, the Treasury Risk Committee will have authority to designate to ICC's Parent two members for election to the Board.[63]

Use of the ICC Board Risk Committee and non-Board risk committees supports ICC's Application meeting the statutory standard in Section 17A(b)(3)(A). Such committees will help ensure that ICC has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions because the committees will help identify and manage risks

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62 *See* Treasury Rule 502.

63 *See* Treasury Rule 508(a). One of the persons selected must satisfy ICC's Independence Requirements. The "Treasury Governance Commencement Date" is defined in ICC's Operating Agreement. It means the date of the first annual Board election occurring after the Treasury Business accounts for a specified percentage of ICC's revenue and ICC has obtained a specified percentage of the overall market share for Treasury clearing. Specifically, it is the date of the first annual election of managers that occurs after the first two consecutive calendar quarters following June 30, 2026, in which (a) the aggregate transaction-based revenue of the Treasury Business in each quarter is at least twenty percent (20%) of the aggregate transaction-based revenue of ICC in such quarter and (b) the arithmetic average of (i) the Treasury Clearing Market Share for the first such calendar quarter and (ii) the Treasury Clearing Market Share for the second such calendar quarter is greater than or equal to ten percent (10%).Treasury Clearing Market Share means, for a specified period, a fraction (expressed as a percentage), the numerator of which is the publicly reported aggregate notional value of transactions involving U.S. Treasury securities cleared by ICC in such period, and the denominator of which is the publicly reported aggregate notional value of transactions involving U.S. Treasury securities cleared by all Treasury CCPs in such period. After the Treasury Governance Commencement Date, the Treasury Risk Committee will designate two managers for election to the Board, including an independent manager. ICC's existing CDS Risk Committee, which includes representatives from Participants and non-participants, currently designates four managers for election to the Board. After the Treasury Governance Commencement Date, the overall number of managers designated by ICC participants and non-participants will remain at four (of nine), with the selection split between the two non-Board risk committees.

that, if not properly managed, could impede ICC's ability to clear transactions. Moreover, the other Board committees mentioned above – Audit and Nominating have distinguishable areas of focus and are designed to operate within the larger corporate framework, which is another way that ICC meets the statutory standard in Section 17A(b)(3)(A) and complies with the Exchange Act and rules and regulations thereunder.[64]

ICC's governance arrangements include a process for classifying certain directors as independent. Five members of the Board are appointed by the Parent, and three of those are required to be independent.[65] An additional four members of the Board are currently nominated by the CDS Risk Committee, and two of those are required to be independent.[66] As described above, after the Treasury Governance Commencement Date, the Treasury Risk Committee will nominate two of these managers. The ICC Nominating Committee evaluates and recommends to the Board if each Manager, and any nominee for Manager, qualifies as independent under ICC's Independence Standards.[67] These independence standards are intended to be consistent with the NYSE Listing Standards, ICE's Board of Director Governance Principles, and the applicable provisions and rules of the Exchange Act.[68] Independent directors help promote the ability of the Board to perform its oversight of management function at ICC and support a plurality of

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64 *See supra* note 11 (summarizing the Commission rules applicable to registered clearing agencies).

65 *See* ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

66 *See* ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

67 *See id.*; *see also* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Governance Playbook and Seventh Amended and Restated Operating Agreement, Release No. 34–101820 (Dec. 5, 2024), 89 FR 99917 (Dec. 11, 2024) (SR-ICC-2024-010).

68 *See* ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

viewpoints voiced at the Board level,[69] which should help ensure the effective management of ICC and that ICC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(A).

With respect to its operational arrangements and capacity to facilitate prompt and accurate clearance and settlement, as generally described in Part III.A.2 above, ICC's systems and processes will enable trade submission, matching, novation, netting, settlement and settlement fails management, and promote data security and business continuity. ICC's rules, policies and procedures include governance processes that support and oversee these clearing agency operations. These governance processes demonstrate that ICC is so organized and has the capacity to facilitate prompt and accurate clearance and settlement and to comply with the Exchange Act and rules and regulations thereunder. For example, the ICC Chief Compliance Officer has an additional reporting line to the Board of Managers, and the ICC Chief Risk Officer has an additional reporting line to the Chairperson of the ICC Treasury Risk Committee.[70] These elements of the Application demonstrate that ICC will have multiple reporting channels for the oversight of legal and regulatory compliance.

Additionally, as described above and in Exhibit L of the Application, ICC has in place safeguards for its own assets, and the assets of Treasury Participants and their Clients.[71] For example, ICC uses only approved settlement banks, custodians, and other financial service

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69 *See* Clearing Agency Governance and Conflicts of Interest, Release No. 34–98959 (Nov. 16, 2023), 88 FR 84454, 84457 (Dec. 5, 2023) ("Clearing Agency Governance Release") ("requiring a certain percentage of independent directors helps promote the ability of the board to perform its oversight of management function and to support a plurality of viewpoints voiced at the board level.").

70 *See* Exhibit C of the Application, at 1.

71 *See* Exhibit L of the Application, at 1.

providers that ICC has chosen based on their ability to provide the services required by ICC, creditworthiness, relevant experience, and operational stability. ICC conducts due diligence on these service providers and monitors their financial health on an on-going basis. Moreover, ICC currently holds cash and U.S. Treasury securities from its CDS Business at its accounts with the Federal Reserve Bank of Chicago. For the Treasury Business, ICC will use four different accounts to legally segregate house collateral, client-related collateral, and variation payments. These practices demonstrate that ICC is so organized and has the capacity to safeguard securities and funds in its custody or control or for which it is responsible.

Finally, the ICC Chief Compliance Officer has an additional reporting line directly to the ICC Board, and the ICC Chief Risk Officer has an additional reporting line directly to the Chairperson of the ICC Risk Committee, who also is a non-executive manager on the ICC Board.[72] Having multiple personnel, layers of review and reporting, and the ability to access additional resources in order to proactively manage its risks is one way ICC demonstrates it is so organized and has the capacity to comply with the provisions of the Exchange Act and the rules and regulations thereunder.[73]

For the reasons discussed above, the Commission determines that ICC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions, to safeguard securities and funds in its custody or control or for which it is responsible, and to comply with the provisions of the Exchange Act and the rules and regulations thereunder.

B. Participation Standards

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72 *See* Exhibit C of the Application.

73 *See supra* note 11 (summarizing the Commission rules applicable to registered clearing agencies and the Commission's tools for the supervision and examination of registered clearing agencies).

1. Statutory Standard and Analysis: Section 17A(b)(3)(B)

Section 17A(b)(3)(B) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system or the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.[74] Section 3(a)(24) of the Exchange Act defines a "participant" with respect to a clearing agency as any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities, and further states that the term does not include a person whose only use of a clearing agency is (i) through another person who is a participant or (ii) as a pledgee of securities.[75]

Treasury Rule 102 defines Treasury Participant as a person that has been approved by ICC for the submission of Contracts in the Treasury Clearing Service and that is party to an agreement with ICC specifically relating to transactions in such Contracts. Treasury Rule 201(b) states that Treasury Participants must meet and maintain such standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as may be established by ICE Clear Credit from time to time and that no person shall be admitted as a Treasury Participant or be permitted to remain as a Treasury Participant unless, in ICC's determination, the person meets the standards set out in Treasury Rule 201(b). Treasury Rule 201(c) further states that, for the avoidance of doubt, and without limiting Treasury Rule 201(b),

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74 Section 17A(b)(3)(B) of the Exchange Act also states that the rules of the clearing agency are subject to the provisions of Section 17A(b)(4) of the Exchange Act.

75 15 U.S.C. 78c(a)(24).

the following categories of persons may be approved by ICC as Treasury Participants, provided that such applicant meets and maintains the applicable standards for participation set forth in Treasury Rule 201(b): (i) registered broker-dealer; (ii) registered investment company; (iii) bank; (iv) insurance company; or (v) such other person or class of persons that the SEC may designate as appropriate.[76] The Treasury Rules distinguish a Treasury Participant from a Non-Participant Party, which is defined as a person that is not ICC or a Treasury Participant.[77] Non-Participant Parties may include, without limitation, an Affiliate of a Participant.[78]

The Commission finds that Treasury Rule 201 provides for all the categories of persons listed in Section 17A(b)(3)(B), including clearing agencies, to become participants. Treasury Rules 201(a) and 201(b) do not limit the type of person who can become a Treasury Participant, as long as that person meets ICC's standards.[79] While the categories of persons listed in part (c) of Treasury Rule 201 do not explicitly include clearing agencies, it is clear from the rule itself that the list is not intended to be exclusive, as it states, "without limiting Section 201(b)." Consistent with this reading of Treasury Rule 201, ICE Clear Credit stated in its letter that Treasury Rule 201(c) "is a non-exclusive list of the types of entities that ICC may approve as a Treasury Participants (provided that they meet and maintain the ICC participation standards set

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76 Treasury Rule 201(c). *See* Annex E-2 of the Application. Treasury Rule 201(c) is identical to ICC's existing CDS Rule 201(c).

77 Treasury Rule 102.

78 *Id*.

79 Treasury Rule 201(a) provides that ICC "shall determine whether any applicant for status as a Treasury Participant, or any existing Treasury Participant, satisfies the qualifications established by" ICC and only those persons found by ICC "to be so qualified shall be permitted to become or remain, as applicable, Treasury Participants." Treasury Rule 201(b) sets out certain standards that an applicant for admission as Treasury Participant, and any existing Treasury Participant on an ongoing basis, must satisfy. Among other things, Treasury Participants and applicants must maintain a minimum of $50 million of Adjusted Net Capital and demonstrate to the ICC Board of Managers, upon recommendation by ICC senior management, that such person seeking to be a Treasury Participant satisfies the stringent credit criteria established by the ICC Board of Managers. *See infra* Section III.B.2 for a discussion of ICE Clear Credit's membership standards.

out in Treasury Rule 201(b)).”[80] Because Rule 201(c) does not limit Rule 201(b), and because Rule 201(b) does not limit the type of person that may become a Treasury Participant, registered clearing agencies could become Treasury Participants, and accordingly, the Commission finds that the Application satisfies the requirements of Section 17A(b)(3)(B) of the Exchange Act.

One commenter recommended that ICC explicitly permit Futures Commission Merchants (“FCMs”) to become Treasury Participants or Non-Participant Parties and adjust its rules to accommodate FCMs’ participation.[81] In response, ICC explained that Treasury Rule 201(c) is non-exclusive, and ICC may accept FCMs as Treasury Participants provided that they meet and maintain the ICC participation standards set out in Treasury Rule 201(b).[82] With respect to adjusting the Treasury Rules to accommodate FCMs, ICC stated that certain of the inconsistencies between the Treasury Rules and the CFTC Rules are outside the control of ICC.[83]

FCMs are not one of the types of persons listed in Section 17A(b)(3)(B) of the Exchange Act, nor has the Commission, by rule, designated that FCMs may become participants in a clearing agency. These suggestions therefore pertain to certain choices ICC has made in designing its clearing agency but do not bear on whether ICC’s Application is consistent with a specific Commission rule, or whether ICC’s Application more generally meets the standard for registration. However, the Commission understands that Treasury Rule 201(b) would allow an

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80 *See* letter from Stanislav Ivanov, ICC, dated Dec. 3, 2025 (“ICC Response Letter”), at 3.

81 *See* letter from Allison Lurton, FIA, dated Oct. 6, 2025 (“FIA”), at 3-5. This commenter suggested, among other things, that ICC adjust certain of its rules to accommodate FCMs’ clearing of repurchase transactions involving customer funds pursuant to rules of the Commodity Futures Trading Commission (“CFTC”). For example, the commenter noted that ICC’s requirement to submit for clearing all Trades in furtherance of Rule 17Ad-22(e)(18)(iv) could be inconsistent with an existing CFTC rule that permits an FCM to enter into a repurchase transaction involving customer funds only with certain permitted counterparties, not including SEC-registered clearing agencies.

82 *See* ICC Response Letter at 3.

83 *Id.*

FCM to join ICC, if it meets the participation standards set out in Rule 201(b), just as a clearing agency would be able to do so.[84] In addition, the Treasury Rules do not prohibit an FCM (or any other type of entity) from being a Non-Participant Party. Therefore, the commenter's request for an explicit acknowledgement in the Treasury Rules that FCMs may join is unnecessary.

Another commenter proposed clarifications to the Treasury Rules related to registered investment companies.[85] The commenter suggested these clarifications would help ICC obtain potential no-action relief and that such no-action relief, if granted, would facilitate the participation of registered investment companies.[86] In response, ICC stated that it appreciated the proposed clarifications and will continue to work with market participants, particularly on matters affecting Treasury Participants or Clients that are registered investment companies.[87]

Section 17A(b)(3)(B) of the Exchange Act does not specify how registered investment companies' participation should be facilitated. The clarifications sought by the commenter pertain to certain choices ICC has made in designing its clearing agency and do not bear on whether ICC's Application is consistent with a specific Commission rule, or whether ICC's Application more generally meets the standard for registration.

For these reasons, the Commission finds that the Application satisfies the requirements of Section 17A(b)(3)(B) of the Exchange Act.

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84 *See id*.

85 *See* letter from Robert Toomey, SIFMA, William C. Thum, SIFMA Asset Management Group, and Tara R. Buckley, Investment Company Institute, dated Oct. 6, 2025 ("SIFMA & AMG"), at 6-9.

86 *Id.* at 6-9 (noting that in the adopting release to Rule 17Ad-22(e)(18)(iv) "the SEC granted no-action relief stating that 'if a registered investment fund's cash and/or securities are placed and maintained in the custody of FICC for purposes of meeting FICC's margin deposit requirements that may be imposed for eligible secondary market transactions in connection with the fund's participation in the Sponsored Program, it would not provide a basis for enforcement action under Section 17(f) of the 1940 Act so long as [certain criteria are met]'").

87 ICC Response Letter at 7.

2. Statutory Standard and Analysis: Section 17A(b)(4)(B)

Section 17A(b)(4)(B) of the Exchange Act states that a registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. Section 17A(b)(4)(B) also provides that a registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

With respect to the criteria for participation under Section 17A(b)(4)(B) of the Exchange Act, the Application describes how ICC requires that all Treasury Participants meet and maintain standards of business integrity, financial responsibility, creditworthiness, operational capability, experience and competence.[88] Among other things, Treasury Participants must: maintain a minimum of $50 million of Adjusted Net Capital;[89] demonstrate to the ICC Board of Managers, upon recommendation by ICC senior management, that such person seeking to be a Treasury Participant satisfies the stringent credit criteria established by the ICC Board of Managers; demonstrate sufficient financial ability to make its anticipated Treasury Guaranty Fund Contributions and provide Margin as required by the Treasury Rules; demonstrate risk management competence; and participate in default management simulations, technology testing, and other exercises as notified by ICC from time to time.[90]

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88 *See* Exhibit O of the Application.

89 For the purposes of Treasury Rule 201(b)(i), Adjusted Net Capital means (i) for a Treasury Participant that is a Broker-Dealer, its net capital as defined in Rule 15c3-1 and as reported on its FOCUS Report and (ii) for a Treasury Participant that is not a Broker-Dealer, the amount of its net capital as determined pursuant to a similar risk adjusted capital calculation methodology acceptable to ICC.

90 *See* Exhibit O of the Application; Treasury Rule 201(b).

In making the determination as to whether a person meets the qualifications to become a Treasury Participant and maintains these standards, ICC reserves the right to examine the books and records of any applicant or Treasury Participant.[91] Such an examination may be performed onsite at the applicant or Treasury Participant, during normal business hours, and with reasonable advance notice.[92] In the case of a Treasury Participant, such an examination would be performed not more frequently than annually, unless ICC determines that a more frequent examination of the Treasury Participant is appropriate for the protection of the clearing system operated by ICC pursuant to the Treasury Clearing Rules.[93]

Pursuant to Treasury Rule 203, ICC may suspend or revoke any Treasury Participant's clearing privileges for failure to comply with the Treasury Rules or may impose additional capital, Margin, Trade, and Contract restrictions on a Treasury Participant to protect ICC and the other Treasury Participants. Its rules provide that ICC has the authority to deny participant status to entities that are subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act[94] or revoke participant status of entities that become subject to such a statutory disqualification.[95]

ICC uses a due diligence process to ensure that all applicants meet the required criteria for participation and conducts on-going monitoring of participants.[96] In this regard, ICC requires Treasury Participants to submit statements of financial condition at such times and in such

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91 ICC Treasury Clearing Rule 201(a).

92 *Id.*

93 *Id.*

94 15 U.S.C. 78c(a)(39).

95 *See* Exhibit O of the Application, at 1; Treasury Rules 201 and 207.

96 *See* Exhibit O of the Application, at 1*;* Treasury Rule 201(a).

manner as prescribed by ICC and requires each Treasury Participant that is a Broker-Dealer to provide ICC a copy of its FOCUS Reports, as and when filed with the Financial Industry Regulatory Authority.[97] ICC further requires Treasury Participants to notify ICC immediately in writing of certain events, such as a material adverse change in a Treasury Participant's financial condition or any proposed material reduction in a Treasury Participant's operating capital.[98] If ICC determines a Treasury Participant is in danger of not meeting the requirements or otherwise poses an unacceptable level of risk to ICC or other participants of the Treasury Business, as applicable, ICC may take action to limit ICC's exposure, including an increase in initial margin requirements, reduction of participant positions, or reduction of the concentration thresholds applicable to the participant.[99] ICC also may, in the event a Treasury Participant fails to comply with the Treasury Rules or procedures, suspend or revoke the Treasury Participant's clearing privileges and impose additional capital, margin, or other requirements on a Treasury Participant.[100] Finally, where a Treasury Participant commits a material breach of the Treasury Rules or any of the terms or provisions of any agreement between ICC and the Treasury Participant, which is not remedied promptly after notice from ICC, ICC may impose limitations, conditions, and restrictions upon a Treasury Participant or, subject to the requirements of Treasury Rule 615(b), terminate the status of the Treasury Participant.[101]

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97 Treasury Rule 204. The rule further provides that any Treasury Participant that is not a Broker-Dealer shall provide to ICC a copy of such forms as ICC may determine to be necessary on a comparable schedule to that which a Broker-Dealer would be required to follow in filing such forms with the Financial Industry Regulatory Authority.

98 Treasury Rule 206.

99 *See* Exhibit O of the Application; Treasury Rules 203, 207, and 209.

100 Treasury Rule 203.

101 Treasury Rule 207.

Commenters recommended that ICC establish "more specific capital requirements on applicants who wish to become Treasury Participants, depending on their entity type"[102] and adjust the capital requirements "based on the activity of the Participant."[103] ICC stated in its response that the membership requirements are the same for all applicants and include fitness criteria, financial standards, and operational standards, which ICC states are appropriate and specific enough for potential applicants.[104]

While Section 17A(b)(4)(B) of the Exchange Act provides that ICC may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility as ICC may establish, it does not set out any minimum capital requirement that a participant must satisfy, nor does it specify certain requirements regarding financial responsibility for each type of Treasury Participant or require these standards be adjusted based on a Treasury Participant's activities.

Section 17A(b)(4)(B) of the Exchange Act therefore does not require a registered clearing agency to establish capital standards specific to each type of participant or to adjust capital standards in response to the level of a participant's activity. ICC's Treasury Rules give ICC the ability to establish more specific standards, however, if ICC determines they are needed.[105] As

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102 FIA at 5; *see also* SIFMA & AMG at 11-12;letter from Katherine Darras, International Swaps and Derivatives Association, dated Oct. 6, 2025 ("ISDA"), at 2.

103 SIFMA & AMG at 11-12.

104 ICC Response Letter at 3.

105 Treasury Rule 203(b) ("In addition to any other rights granted to ICE Clear Credit under these Rules, for the protection of ICE Clear Credit and the Treasury Participants, ICE Clear Credit shall be authorized: (i) to impose such additional capital, Margin or other requirements on a Treasury Participant; (ii) to allow such Treasury Participant to submit Trades for liquidation only; (iii) to limit or restrict the type of Contracts that may be cleared by such Treasury Participant in any of its accounts with ICE Clear Credit; or (iv) to limit or restrict the aggregate notional or other reference amount of positions in Contracts that are permitted to be maintained by such Treasury Participant in any of its accounts with ICE Clear Credit in the Treasury Clearing Service . . . .").

stated above, for the protection of ICC and other Treasury Participants, ICC can impose additional capital, margin, or other requirements on a Treasury Participant.[106] Moreover, ICC conducts on-going monitoring of Treasury Participants, including obtaining statements of financial position. Therefore, pursuant to its Treasury Rules ICC could, if needed for the protection of ICC and Treasury Participants, adjust capital requirements,[107] as recommended by commenters.

Because the Treasury Rules would establish robust financial standards and operational competency standards for Treasury Participants that clearly denote ongoing compliance obligations and set forth consequences for failing to meet those obligations, the Treasury Rules are sufficient to protect the clearing agency from the risks that can be associated with Treasury Participants who would not otherwise meet such competency standards.

For the reasons discussed above, the Commission determines that the rules of ICC regarding participation in the clearing agency are consistent with the standards set forth in Section 17A(b)(4)(B) of the Exchange Act.

C. Fair Representation

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106 Treasury Rule 203. Per Treasury Rule 203(a), ICC may only suspend or revoke a Treasury Participant's clearing privileges subject to the requirements of Treasury Rule 615(b). That rule imposes certain procedural requirements, including consultation with ICC's regulators and consent of the Board.

107 As noted above, ICC was deemed registered with the Commission as a clearing agency in 2011 solely for the purpose of clearing security-based swaps. Since that time, ICC has been operating its CDS Business and acting as a CCP for CDS. As a CCP for CDS, ICC is subject to Rule 17Ad-22(b)(7). That rule requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership. Rule 17Ad-22(b)(7) allows ICC to provide for a higher net capital requirement as a condition for membership if ICC demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application. Thus, if ICC were to establish more specific capital requirements on applicants who wish to become Treasury Participants, as suggested by commenters, ICC would need to do so in compliance with Rule 17Ad-22(b)(7).

1. Statutory Standard: Section 17A(b)(3)(C)

Section 17A(b)(3)(C) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.[108]

2. Summary of Application and Analysis

Under Section 17A(b)(3)(C) of the Exchange Act, the Commission considers whether the Application provides fair representation both to shareholders and to participants in the selection of directors and the administration of affairs. In doing so, the Commission undertakes an analysis of the documents in the Application that govern or otherwise affect the selection of directors by the clearing agency and the administration of its affairs. Such documents include, for example, the constitution, articles of incorporation, bylaws, rules, and written policies or procedures. Such analysis considers both qualitative and quantitative factors, including the number of board positions reserved for management or to represent participants, as well as the existence of provisions in governing documents that may impede participation in the selection of directors or the administration of affairs. The Commission also considers the overall organization of the clearing agency, the nature of the products it clears, and the structure of the market it serves, including the nature of existing clearing and settlement arrangements in the market served, the existence of other clearing agencies that would compete to offer services, and the size of the market served by the applicant, to evaluate whether the representation proposed by the applicant

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[108] Section 17A(b)(3)(C) of the Exchange Act also states that the Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.

is consistent with the requirements of the Exchange Act.[109] Finally, because ICC will operate the Treasury Business in the same existing legal entity where it operates the CDS Business, the Commission considers ICC's existing arrangements that affect its CDS Business, to the extent they indicate whether ICC, as an entity, would provide fair representation to shareholders and participants of its Treasury Business.

After performing this analysis, the Commission finds that the Application provides fair representation for the reasons set forth below.

With respect to the fair representation of the shareholders in the selection of its directors and administration of its affairs, ICC's Parent may elect up to five members of ICC's Board of Managers, which consists of nine members total.[110] Subject to the consultation rights of the CDS Risk Committee and Treasury Risk Committee, the management of the affairs of ICC is vested exclusively in the Board of Managers. Taken as a whole, these provisions assure a fair representation of the shareholders of ICC in the selection of its directors and administration of its affairs.

With respect to fair representation of the participants of ICC in the selection of its directors and administration of its affairs, ICC's Parent is the sole shareholder of ICC, and the Application includes no provision to make ICC voting stock available for purchase to Treasury Participants. As such, ICC operates in a manner that is different from some other registered

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109 Accordingly, the level of participant representation needed to ensure fair representation consistent with the Exchange Act may vary depending on the facts and circumstances, including the market or markets to which the application is directed.

110 *See* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Governance Playbook and Seventh Amended and Restated Operating Agreement, Release No. 34–101820 (Dec. 5, 2024), 89 FR 99917 (Dec. 11, 2024) (File No. SR–ICC–2024–010).

clearing agencies, which are constituted of owner-members.[111] Four positions on the Board, however, are reserved for persons designated by the respective non-Board level Risk Committees.[112]

Specifically, pursuant to Treasury Rule 508(a), effective as of the Treasury Governance Commencement Date, the Treasury Risk Committee shall have authority to designate to ICC's Parent two members for election to the Board (with one independent).[113] Moreover, pursuant to Treasury Rule 502, ICC shall not take, or permit to be taken, certain actions without consulting the Treasury Risk Committee. Such actions include, among other things, modifying the Treasury Rules with respect to clearing new or existing Contracts, modifying provisions related to margin, and modifying provisions related to the Treasury Guaranty Fund. ICC's Treasury Risk Committee will include representatives of Treasury Participants and non-participants.[114] This right will apply immediately from adoption of the Treasury Rules and will not depend on the application of the Treasury Governance Commencement Date. Finally, ICC currently has the

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111 Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. 94-75, 94th Cong., 1st Sess. 123-24 (1975) ("[T]he bill establishes no norm as to whether clearing agencies should or should not be operated for profit. The bill makes no attempt to set up particular standards of representation or participation. Rather, it provides that the Commission must assure itself that the rules of the clearing agency regarding the manner in which decision are made give fair voice to participants as well as to shareholder . . . .").

112 *See* Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Governance Playbook and Seventh Amended and Restated Operating Agreement, Release No. 34–101820 (Dec. 5, 2024), 89 FR 99917 (Dec. 11, 2024) (File No. SR–ICC–2024–010). Pursuant to Treasury Rule 508(a), effective as of the Treasury Governance Commencement Date, the Treasury Risk Committee will have authority to designate to ICC's Parent two of these persons for election to the Board.

113 As stated above, the Treasury Governance Commencement Date means the date of the first annual Board election occurring after the Treasury Business accounts for a specified percentage of ICC's revenue and ICC has obtained a specified percentage of the overall market share for Treasury clearing. *See supra* note 633.

114 Per Treasury Rule 503, the Treasury Risk Committee will have fourteen members total, with nine being representatives of Treasury Participants, two being representatives of non-participants, two being officers of ICC, and one being an independent member of the Board of Managers.

same arrangement for its CDS Business, and the CDS Risk Committee currently can designate four members for election to the Board (with two independent).[115]

Taken as a whole, the above-described provisions of the Application provide Treasury Participants with the right to nominate certain members of ICC's Board of Managers after the Treasury Governance Commencement Date, as well as the immediate right to consult on certain matters affecting ICC. Although the Treasury Risk Committee will not be able to designate two members for election to the Board until after the Treasury Governance Commencement Date, prior to that time participants in the CDS Business will, as now, be able to designate four members for election to the Board. Thus, while the Treasury Risk Committee will not be able to designate to ICC's Parent two members for election to the Board (with one independent) until the Treasury Governance Commencement Date, ICC's current participants can designate four members for election to the Board (with two independent) through the CDS Risk Committee. Taken together, these provisions provide for fair representation to all of ICC's participants, meaning Treasury Participants and participants in the CDS Business, regarding the selection of ICC's Board of Managers and the administration of ICC's affairs at ICC as a whole, consistent with Section 17A(b)(3)(C) of the Exchange Act.

For the reasons discussed directly above, the Commission determines that the rules of ICC assure fair representation in the selection of its directors and administration of its affairs consistent with Section 17A(b)(3)(C) of the Exchange Act.

D. Fees

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115 *See* ICC CDS Rules, Chapter 5. After the Treasury Governance Commencement Date, the CDS Risk Committee and Treasury Risk Committee each will designate two managers for election to the Board, including an independent manager. The overall number of managers designated by ICC participants and non-participants will remain at four (of nine), with the selection split between the two non-Board risk committees.

1. Statutory Standard: Section 17A(b)(3)(D) and (E)

Section 17A(b)(3)(D) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[116] Section 17A(b)(3)(E) of the Exchange Act states that a clearing agency shall not be registered unless the rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.[117]

2. Summary of Application and Analysis

ICC's Application does not include a fee schedule or schedule of prices; however, the Application describes ICC's (i) authority to determine and equitably allocate fees; (ii) rules regarding fees; and (iii) the status of its proposed fee schedule.[118] The Application also references the current fees for the CDS Business and explains where details about the fees for the CDS Business can be found on ICC's website.[119] The Application also states that ICC is developing its fee schedule and will engage the marketplace on its ultimate fee structure and that the fee schedule will be published on ICC's website when the Treasury Business is launched after filing a proposed rule change with the Commission pursuant to section 19(b)(3)(A) of the Exchange Act.[120]

Treasury Rule 606 requires that clearing fees and other charges for ICC services be as fixed from time to time by ICC with the approval of the Board of Managers.

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116 15 U.S.C. 78*q*–1(b)(3)(D).

117 15 U.S.C. 78*q*–1(b)(3)(E).

118 *See* Exhibit E of the Application.

119 *Id.*

120 *Id.*

In its letter, ICC explained the factors that ICC will consider in setting fees for the Treasury Business. While ICC may consider various factors, it identified four as examples: (i) market projections, including anticipated volume, revenue and market participation in the Treasury Business, (ii) costs and expenses in offering the Treasury Business, taking into account the investments that ICC has made and the level of investment and development needed for the clearing service, (iii) external service provider charges incurred by ICC, and (iv) market participant feedback.[121] ICC further stated it will consider the impact on competition in setting the clearing fees and will ensure that such fees do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[122] In Exhibit E of the Application, ICC further stated that its fee schedule for the Treasury Business will be submitted to the Commission as a proposed rule change pursuant to Section 19(b)(3)(A) of the Exchange Act.[123]

a) Analysis

While ICC does not yet have a fee schedule for the Treasury Business, the Application identifies ICC's existing fee schedule for the CDS Business and the rules governing any fees that it will assess on its participants, as described above. These rules require that fees and other charges be fixed by ICC with approval of the Board of Managers. In its letter, ICC further identified the factors it will consider in setting fees.[124] As noted above, these factors would include, among other things, market projections and costs and expenses in offering the Treasury Business. In the Application, ICC stated it will engage the marketplace as it develops its ultimate

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121 ICC Response Letter at 8.

122 *Id.*

123 *See* Exhibit E of the Application.

124 ICC Response Letter at 8.

fee structure.[125] The Commission believes that considering these factors, and engaging the marketplace as it develops its ultimate fee structure, both should help ensure that ICC's fee schedule for the Treasury Business is consistent with Section 17A(b)(3)(D) of the Exchange Act.

Separately, any fees, dues or other charges that ICC intends to assess must be filed as a proposed rule change pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.[126] Clearing agency fees are subject to the requirements of the Exchange Act, including Section 17A(b)(3)(D), and thus, the Commission would consider if any future fee schedule for the Treasury Business is consistent with 17A(b)(3)(D) when it is filed as a proposed rule change.[127]

Finally, under Section 17A(b)(3)(E) of the Exchange Act, ICC may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants. Although ICC does not yet have a fee schedule for the Treasury Business, a review of ICC's current fee schedule for its CDS Business shows that ICC does not impose any schedule of prices, or fix rates or other fees, for services rendered by its CDS Participants.[128] Moreover, because any fees, dues or other charges that ICC intends to assess must be filed as a proposed rule change pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, the Commission will be able to

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125 *See* Exhibit E of the Application.

126 *See* 15 U.S.C. 78s(b); 17 CFR 240.19b–4; *see also* Exhibit E of the Application (acknowledging its obligations under Section 19(b) and Rule 19b–4).

127 15 U.S.C. 78q–1(b)(3)(D); *see also* 15 U.S.C. 78s(b) (requiring proposed rule changes to be filed by the Commission, which shall publish notice thereof and give interest persons an opportunity to respond). Some proposed rule changes regarding dues, fees, or charges take effect upon filing. *See* 15 U.S.C. 78s(b)(3)(A)(ii); *see also* 15 U.S.C. 78s(b)(3)(C) (specifying when the Commission may temporarily suspend the immediate effectiveness of such filings).

128 *See* Exhibit E of the Application. Details of the CDS Business's current fees can be found at: https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees.pdf and https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.

consider if any future fee schedule for the Treasury Business imposes any schedule of prices, or fix rates or other fees, for services rendered by Treasury Participants.

Accordingly, the Commission determines that the Application is consistent with Section 17A(b)(3)(D) of the Exchange Act and Section 17A(b)(3)(E) of the Exchange Act.[129]

E. Rules Designed to Promote Prompt and Accurate Clearance and Settlement and the Safeguarding of Securities and Funds

1. Statutory Standard: Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency are 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 the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. It also states that a clearing agency shall not be registered unless the Commission determines that the rules are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of this section or the administration of the clearing agency.[130]

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129 15 U.S.C 78q–1(b)(3)(E).

130 With respect to the provisions in Section 17A(b)(3)(F) of the Exchange Act requiring that the rules of the clearing agency are not designed to permit unfair discrimination in the admission of participants or among

2. Summary of Application and Analysis

The Commission has adopted multiple rules that are related to Section 17A(b)(3)(F), in that they establish requirements related to financial risk management, default management and loss allocation, and recovery and orderly wind-down. Specifically, these Commission rules implicate the safeguarding of securities and funds and promoting the prompt and accurate clearance and settlement of securities transactions, including the collection of margin, composition of the guaranty fund, default management and loss allocation procedures, and other risks.[131] To analyze ICC's Application under Section 17A(b)(3)(F), the Commission has considered ICC's Treasury Rules concerning its account structures, margin system, guaranty fund, default management, and loss allocation processes, as set forth in further detail below.

As a threshold matter, the Application establishes a comprehensive risk management framework consistent with Commission rules that help ensure ICC will collect sufficient margin to cover its exposures, maintain an appropriately sized Guaranty Fund, and be able to manage a default and allocate losses appropriately, if or when needed. ICC's risk management framework is designed to address the particular features of ICC's proposed participation structure, *i.e.*, to manage the risks presented by Treasury Participants and Clients clearing via a Treasury Participant who have different obligations and access to ICC. For these reasons and the reasons discussed below, the Commission determines that ICC's rules are consistent with the

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participants in the use of the clearing agency and not regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the clearing agency, those topics have been addressed in Parts III.B and III.G, concerning the statutory requirements for, respectively, participant standards of the clearing agency and addressing the clearing agency's burden on competition. With respect to the provisions requiring that the rules foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, those topics have been addressed in Part III.G, concerning the statutory requirements addressing the clearing agency's burden on competition.

131 *See* 17 CFR 240.17ad-22(e)(4), (e)(6), (e)(13), (e)(23)(ii); 240.17ad-26.

requirements for the prompt and accurate clearance and settlement of securities and the safeguarding of funds and securities as set forth in Section 17A(b)(3)(F) of the Exchange Act and do not regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of Section 17A of the Exchange Act or the administration of the clearing agency.

a) Account Structure and Safeguarding of Securities and Funds

ICC offers separate margin accounts for the positions of Treasury Participants and their Clients. A House Margin Account holds Margin for House Positions.[132] Margin for Client positions may be held in a Client-Funded Gross IM Account, Clearing Participant-Funded Gross IM Account, Hybrid Gross IM Account, or Net Client IM Account.[133] ICC states that these accounts serve two important functions.[134] They keep House Margin separate from Client-Funded Margin and they also keep Client-Funded Margin separate from House Margin.[135] Specifically, Client-Funded Margin is housed in Client-Funded Gross IM Accounts or the relevant subaccount associated with Hybrid Gross IM Accounts.[136] Alternatively, House-Funded Client Margin is held in Clearing Participant-Funded Gross IM Accounts, Net Client IM Accounts, or the relevant subaccount associated with a Hybrid Gross IM Account.[137] Once posted, ICC either invests Initial Margin in a bank deposit at a commercial bank or pursuant to reverse repurchase agreements backed by certain U.S. Treasury securities.[138]

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132 Exhibit J of the Application, at 5; Treasury Rule 102.

133 Exhibit J of the Application, at 5.

134 *Id.*

135 *Id*.

136 *Id.* Hybrid Gross IM Accounts have separate subaccounts dedicated to contributions from Treasury Participants and Non-Participant Parties. Treasury Rules, at Rule 102.

137 Exhibit J of the Application, at 5.

138 Exhibit L of the Application, at 2.

In Exhibit L, ICC describes how it safeguards its own assets and the assets of Treasury Participants and Clients.[139] ICC does so by using only approved settlement banks, custodians, and other financial service providers that ICC has chosen based on their ability to provide the services required by ICC, creditworthiness, relevant experience and operational stability. ICC conducts due diligence reviews to assess whether its settlement banks and custodians employ adequate accounting practices; safekeeping procedures and internal controls that protect deposits; ensure full segregation and protection of financial instruments and allow ICC prompt access to assets when required. In addition, ICC monitors the financial health of the financial institutions in which it holds its settlement and custodial accounts on an ongoing basis, with an emphasis on measures related to liquidity and cash management.[140]

As further described in Exhibit J, ICC will use its established direct settlement model to manage the settlement of Variation Payments, Initial Margin, and Treasury Guaranty Fund contributions. Treasury Participants will provide ICC with direct debit authority against their Treasury Business accounts, which are designated accounts that can accommodate SWIFT messages. ICC will move cash between its commercial bank accounts for settlement of payments. ICC also will maintain a second set of accounts as a backup facility if ICC is unable to access its primary bank account. Treasury Participants will be responsible for ensuring that ICC has timely received any requested payments; if not, ICC may declare them in default.[141]

Commenters made suggestions regarding risk management procedures related to the relationship between a Treasury Participant and a Client, including with respect to porting of

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139 *Id*.

140 Exhibit L of the Application, at 1.

141 Exhibit J of the Application, at 4.

Client accounts,[142] a Client default,[143] and the holding of Client collateral.[144] Commenters also made suggestions regarding how the Treasury Rules affect the legal relationship between a Treasury Participant and a Client.[145]

In its response letter, ICC stated that it may consider amending the Treasury Rules, such as Treasury Rule 316(g), to address some of the comments, such as permitting a Treasury Participant to manage a Client default unless it elects to have ICC manage the Client default.[146] ICC further explained, however, that the Treasury Rules currently permit a Treasury Participant, upon request to ICC, to manage the default of its Client.[147] With respect to the relationship among ICC, Treasury Participants, and their Clients, ICC explained that it intentionally omitted any privity of contract between ICC and Clients, because ICC has no legal agreements with

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142 FIA at 10-11 and ISDA at 7-8 (require all parties to consent prior to porting a Client, including the transferring Treasury Participant and the receiving Treasury Participant; only port if the transfer of positions does not result in margin deficiency for receiving Treasury Participant; allow a Client to designate a backup Treasury Participant to receive positions); SIFMA & AMG at 10 (make porting subject to agreement of all parties and prior notice to Client).

143 *See* FIA at 7-9 and ISDA at 3-6 (among other things, allow a Treasury Participant to trigger a Client default and manage the default; allow a Treasury Participant to port a Client's transactions to another Treasury Participant; convert a House position into a Client position or transfer a Client's transactions to the Treasury Participant's House account upon a Client default; permit a Client's transactions to settle in the ordinary course after default; narrow the indemnity that a Treasury Participant provides to ICC in the event ICC manages a Client default; and allow a receiving party to conduct a buy-in at its discretion where a delivery party has failed to deliver securities). *See also* SIFMA & AMG at 10 (clarify the obligations of Treasury Participants in determining losses arising from Client positions; provide a means for Clients to dispute determinations made by Treasury Participants; and allow Client transactions to settle in the ordinary course after a Treasury Participant's default).

144 SIFMA & AMG at 3 and 5-6 (clarify where and how it will hold Pledged Items and clarify there will not be cross-contamination between Gross IM and Net IM Accounts in the event of application of funds in the Treasury Guaranty Fund).

145 *See* SIFMA & AMG at 12 (clarify that certain of the Treasury Rules do not dictate the terms of the relationship between a Treasury Participant and a Client); FIA at 13 (allow a Treasury Participant to obtain a Client's agreement to be bound by all of the Treasury Rules generally, rather than identifying each particular Treasury Rule in the agreement between the Treasury Participant and Client and make available an account analysis and legal opinion demonstrating that a Treasury Participant acts as an agent when clearing transactions for a Client).

146 ICC Response Letter at 5.

147 *Id.*

Clients.[148] Moreover, ICC stated that the Treasury Rules should not, and do not, dictate the terms of the relationship between Treasury Participants and Clients.[149]

ICC further stated that the commenters' suggestions generally consist of clarifications or recommendations to refine or add optionality. While ICC committed to working with commenters on their suggestions and clarifications, ICC also stated that the comments did not necessarily affect whether the Application is consistent with the Exchange Act or the rules thereunder.[150] The Commission agrees that the commenters' suggestions pertain to certain choices ICC has made in designing its clearing agency but do not bear on whether ICC's Application is consistent with a specific Commission rule, or whether ICC's Application more generally meets the standard for registration.

b) Margin System

As described in Exhibit J, a Treasury Participant must post margin for its own positions and on behalf of its Clients. Specifically, each Treasury Participant is responsible for ensuring that Margin is met for its Client-Related Positions and transferring to ICC cash or other collateral needed to meet such Margin requirement. Clients may choose between net or gross margin position accounts, as described further in Exhibit J.[151] These accounts allow a Client to choose whether to fund all, some, or none of its Margin requirement. ICC will maintain Client-funded Client Margin in separate, legally segregated, margin accounts from House-funded Client Margin or House Margin. Finally, ICC will determine Margin for each Treasury Participant in respect of

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148 ICC Response Letter at 7.

149 *Id*.

150 ICC Response Letter at 5.

151 Exhibit J of the Application, at 3. As noted, Client-Related Positions may be held in: (i) Client-Funded Gross IM Accounts, (ii) Clearing Participant-Funded Gross IM Accounts, (iii) Hybrid Gross IM Accounts or (iv) Net Client IM Accounts.

its House Positions and in respect of any applicable Client-Related Positions, following the close of business on each ICE Business Day, based on 99% Value-at-Risk equivalent risk measures with additional liquidity and concentration requirements.[152]

ICC's margin system also includes a Variation Payment. The Variation Payment results from changes in the market value of a Treasury Participant's own positions and the positions of the Treasury Participant's Clients.[153]

Commenters made suggestions regarding ICC's margin system, including requiring Treasury Participants to return to Clients any Client-funded collateral that is in excess of the margin requirements for the Client positions;[154] re-characterizing ICC's security interest in collateral;[155] implementing a collateral-in-lieu model;[156] clarifying certain points regarding variation margin[157] and intraday margin;[158] and establishing cross-margining relationships.[159] ICC responded that it will consider the request for clarifications and continue to engage with

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152 The estimated Value-at-Risk measures are based on forward-looking simulated scenarios corresponding to at least a 2-day margin period of risk. ICC also uses Monte-Carlo simulations to estimate Initial Margin requirements and considers anti-procyclicality in determining margin amounts. Exhibit J of the Application, at 3-4.

153 Exhibit J of the Application, at 4.

154 SIFMA & AMG at 5.

155 SIFMA & AMG at 4 (define ICC's security interest in collateral as a "springing" security interest, meaning that the security interest only applies if a repurchase agreement is characterized as a loan).

156 SIFMA & AMG at 3.

157 FIA at 11-12; ISDA at 8 (clarify the language regarding the settlement of variation margin in Treasury Rule 401(*l*) so outstanding exposures are not reset to zero); SIFMA & AMG at 4 (base the variation margin payment on changes in the value of collateral rather than the market price of the trade); and SIFMA & AMG at 13 (provide legal opinion that cash transferred as variation margin payments will be treated as settlement payments rather than posted margin).

158 SIFMA & AMG at 5 (clarify when Clients are required to satisfy intraday margin calls, as Treasury Rule 401(a)(ii) specifies that intraday margin needs to be delivered by Treasury Participants within one hour of notice but does not make clear if margin calls affecting Clients will similarly need to be satisfied within one hour.).

159 SIFMA & AMG at 5; letter from Jiri Krol, Alternative Investment Management Association, dated Oct. 6, 2025 ("AIMA"), at 2.

market participants on these suggestions.[160] ICC also stated that it will file any changes to the Treasury Rules as proposed rule changes under Section 19(b) under the Exchange Act, as appropriate. Overall, the commenters' suggestions pertain to certain choices ICC has made in designing its clearing agency, but do not bear on whether ICC's Application is consistent with a specific Commission rule, or whether ICC's Application more generally meets the standard for registration.

Commenters also requested that ICC allow Treasury Participants to post Treasury securities as collateral.[161] In response, ICC explained that Treasury Participants may use Treasuries, not just cash, to satisfy a portion of their requirements.[162] ICC further stated that the use of Treasuries to satisfy a portion of margin and guaranty fund requirements is explicitly permitted by Schedule 401 to the Treasury Rules.[163] Thus, the Treasury Rules already address the commenters' request.

c) Guaranty Fund

As described in Exhibit J, ICC will establish and maintain a Treasury Guaranty Fund. Treasury Participants will be required to contribute to the Treasury Guaranty Fund, per Treasury Rule 801.[164] ICC will base a Treasury Participant's contribution on its House Positions and its Client-Related Positions.[165] Treasury Participants will be required to contribute to the Treasury Guaranty Fund on behalf of their Clients.[166]

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160 ICC Response Letter at 6-7.

161 FIA at 12; ISDA at 8.

162 ICC Response Letter at 6.

163 Schedule 401 is included at the end of the Treasury Rules, which are Annex E-2 to the Application.

164 Exhibit J of the Application, at 6.

165 Treasury Rule 801.

166 *Id.*

As described in Exhibit J, the required contribution to the Treasury Guaranty Fund by a Treasury Participant is risk-based and uses a set of stress scenarios that includes adverse changes to the underlying U.S. Treasury security-related term structures in response to changes in the U.S. interest rate levels across different tenors and maturities enhanced with changes of associated term structure shapes.[167] More specifically, as set out in Treasury Rule 801, each Treasury Participant's required contribution to the Treasury Guaranty Fund will be based on the greater of (i) such Treasury Participant's proportionate share of the aggregate Treasury Participant Loss Exposure, which is calculated as the two largest Participant Loss Exposures, and (ii) $20 million. Participant Loss Exposure for any Treasury Participant is the amount determined by ICC using its stress test methodology, calculated on a net exposure basis separately within the House Positions and Client-Related Positions of that Treasury Participant. The amount is equal to the expected losses to ICC associated with the default of that Treasury Participant considering both (i) the uncollateralized loss (meaning the loss after application of Initial Margin and after considering any Variation Payment transferred in respect of such positions given default), and (ii) the uncollateralized loss from contracting or widening credit spreads.

Regarding the Treasury Guaranty Fund sizing, Rule 17Ad-22(e)(4)(iii) requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, maintain additional financial resources at a minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. As described in Exhibit J, ICC will size the Treasury Guaranty Fund to provide

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[167] Exhibit J of the Application, at 6.

financial resources based on Cover-2 regulatory standards.[168] As further described in Treasury Rule 801, this means ICC will set the size of the Treasury Guaranty Fund to, at a minimum, maintain pre-funded financial resources sufficient to enable ICC to meet its financial obligations to Treasury Participants notwithstanding a default by the two Treasury Participants (including any of their affiliated Treasury Participants) creating the largest combined loss to ICC in extreme but plausible market conditions. ICC's approach is consistent with Commission rules because ICC's Treasury Guaranty Fund sizing methodology may produce a Treasury Guaranty Fund size larger than the one computed to the default of the participant family that would potentially cause the largest aggregate credit exposure. Therefore, the Treasury Guaranty Fund sizing methodology is reasonably designed to be consistent with Rule 17Ad-22(e)(4)(iii).

d) Default Management and Loss Allocation

In Exhibit J, ICC states that it operates using a contemporary clearinghouse risk waterfall, including a robust risk management framework.[169]

Pursuant to the Treasury Rules, upon ICC's determination that a Treasury Participant is in Default,[170] ICC must provide notice of the Default, including the identity of the defaulting participant, as soon as reasonably practicable to the other Treasury Participants and the public.[171] Treasury Rule 20-605(d) provides that ICC may hedge open positions of the defaulter.[172] ICC

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168 *Id.*

169 Exhibit J of the Application, at 3.

170 ICC may determine that a Treasury Participant is in Default if the Treasury Participant or guarantor, among other things, (i) fails to meet any membership obligations, (ii) is in breach of the terms of membership or is suspended, or (iii) is terminated, suspended or has certain clearing privileges revoked pursuant to Treasury Rule 615(b). *See* Exhibit J of the Application, at 6.

171 Treasury Rule 20-605(b).

172 *Id.*

also may initiate the Closing-out Process with respect to the defaulting Treasury Participant.[173] The Closing-out Process includes the immediate termination of all of such defaulting Treasury Participant's Open Positions and then the satisfaction of any Reimbursement Obligations by the defaulting Treasury Participant, for which ICC can apply the Margin and other assets provided by the defaulting Treasury Participant based on the waterfall set forth in Treasury Rule 20-605(c).

With respect to the default of a Treasury Participant that is also a participant in ICC's CDS Business, ICC stated that should a participant default in one business line, ICC will not automatically declare the participant in default in the other business line. Default in one business line, however, could lead to ICC determining that the participant is likely to fail to meet its obligations to the other business line, which could in turn be a basis for declaring the participant to be in default in the other business line. Where a common participant is declared in default in both the CDS Business and Treasury Business, ICC will conduct independent liquidations and default auctions and maintain separate default resources.[174]

With respect to the default of a Client, ICC will resolve the default, unless the associated Treasury Participant requests to manage the default directly instead. Based on the election of a Treasury Participant, if ICC resolves a Client's Default, ICC will only use the Client-Funded Initial Margin for Client-Related Positions to cover any losses. If the losses exceed the Client-Funded Initial Margin, then ICC may cover any remaining losses with the Client-related margin

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173 Treasury Rule 20-605(a). As defined in Treasury Rule 102, "Closing-out Process" means, in connection with the Default of a Treasury Participant, the process of termination of Open Positions, determination of amounts owing with respect thereto, netting of such amounts, liquidation and application of any Margin and/or Collateral, and application of Post-Default Portability Rules pursuant to Treasury Rule 20A-02, if applicable.

174 ICC Response Letter at 8-9.

that was funded by the Treasury Participant, if any. The Treasury Participant is liable for any remaining losses associated with the Client, so ICC also can apply the Treasury Participant's contributions to the Treasury Guaranty Fund in accordance with Treasury Rule 802 or make special Margin calls to the Treasury Participant. However, ICC will not apply any Initial Margin with respect to any House Positions of the Treasury Participant with respect to such excess Client losses.

A Treasury Participant may request to directly manage the Client's default. In that case, the Treasury Participant is responsible for managing the closing of Client-Related Positions between the Treasury Participant and defaulting Client. The Treasury Participant remains responsible to ICC for the performance of any such Client-Related Positions, and ICC will not be responsible for any losses, costs, or expenses.

ICC also employs liquidity risk management mechanisms that are designed to allow ICC to satisfy its liquidity obligations. As further described in Treasury Rule 812(a), if a Settlement Payment Failure or a Delivery Failure occurs, and ICC determines that it would otherwise have or may have insufficient cash liquidity to complete physical settlement, ICC may designate a Settlement Liquidity Event. In the case of a Settlement Liquidity Event, Treasury Rule 812(b) sets out a waterfall of resources that ICC may apply or use to obtain cash liquidity, as described below. ICC must fully use resources at one level of the waterfall before using resources from a subsequent level.

1. The portion of Initial Margin provided by the Failing Party in respect of its House Account or its portion of the Treasury Guaranty Fund contribution that is in cash;
2. Cash portions of the ICC initial Contribution;
3. The ICC Continuing Contribution;

4. The Treasury Guaranty Fund contributions of Treasury Participants other than Failing Parties on a pro rata basis;
5. The Initial Margin provided by Treasury Participants other than Failing Parties in respect of their House Accounts that is in cash on a pro rata basis;
6. Credit facilities or committed repurchase agreement facilities secured by non-cash Initial Margin and Treasury Guaranty Fund contributions provided by Failing Parties;
7. Cash obtained by ICC requiring Treasury Participants other than Failing Parties to substitute cash for the non-cash portions of their existing House Initial Margin and guaranty fund contributions;
8. An additional liquidity contribution from ICC's own resources;[175] and
9. Lines of credit, loan agreements, repurchase agreements or similar facilities on a secured or unsecured basis.[176]

Commenters requested that ICC obtain legal opinions relating to the default management aspects of ICC's margin framework (*i.e.*, confirming the bankruptcy remoteness of margin held by ICC and enforceability of ICC's rules in the event of insolvency).[177] ICC responded that it will continue to consider these and provide documentation or submit changes under Section 19(b) of the Exchange Act, as appropriate.[178] ICC stated that the Application nevertheless

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175 Treasury Rule 812(b). In connection with this, ICC may impose a liquidity assessment on Treasury Participants to transfer additional cash in an amount determined by ICC in accordance with Treasury Rule 812(b)(vi).

176 Treasury Rule 812(b).

177 FIA at 12-13; ISDA at 8-9; and SIFMA & AMG at 13. These requests for legal opinions relate to ICC's ability to safeguard securities and funds for which it is responsible, which implicate the Commission's required determination in Section 17A(b)(3)(F) of the Exchange Act. *See supra* section III.E.

178 ICC Response Letter at 7-8.

demonstrated that the Treasury Business is built on a well-founded, clear, transparent, and enforceable legal basis, consistent with Rule 17Ad-22(e)(1) under the Exchange Act.[179]

Regarding legal opinions, the Commission has previously stated that "[b]ecause the appropriate use of legal opinions will vary on a case-by-case basis, the Commission does not believe it is appropriate to modify Rule 17Ad-22(e)(1) to include a specific requirement for legal opinions addressing particular matters."[180] Accordingly, ICC's approach is consistent with Commission rules.

Commenters also requested that ICC eliminate Treasury Rule 808, which allows ICC to haircut variation margin gains in certain situations involving the default of a Treasury Participant (also known as reduced gains distribution).[181] These commenters stated that the variation margin gains haircutting / reduced gains distribution ("VMGH"), while commonplace in derivatives clearing, is not appropriate for repo clearing. [182] Also, these commenters noted that because repos are used as liquidity and funding instruments, use of VMGH could have serious liquidity implications and exacerbate the stressed market conditions likely to exist in a Treasury Participant default scenario.[183] ICC explained that while VMGH may not be appropriate in all circumstances of Treasury clearing, it is a tool that ICC may use in limited circumstances.[184] ICC further stated that Treasury Rule 808 may become more relevant to Treasury clearing as the Treasury Business evolves.[185]

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179 *Id*.

180 *See* CCA Standards Adopting Release, *supra* note 6, 81 FR at 70801–02.

181 FIA at 10; ISDA at 6.

182 *Id.*

183 *Id.*

184 ICC Response Letter at 5.

185 *Id.*

Commission rules do not require or prohibit the use of a particular default management tool, such as VMGH.[186] As such, ICC has discretion regarding the tools it will use to manage a default in its Treasury Business, including VMGH, subject to consistency with the Exchange Act and the rules thereunder.[187] As the Commission has noted in other instances, tools like VMGH, which allocate losses to non-defaulting customers, may be necessary to prevent the potential transmission of systemic risk.[188] Even if, as suggested by commenters, VMGH is not appropriate for repo clearing because it could cause liquidity concerns and exacerbate stressed market conditions, Commission rules and the applicable Exchange Act standards do not address such issues or prohibit ICC from using VMGH or maintaining it as a tool to use at least in limited circumstances. Accordingly, ICC's approach is consistent with Commission rules.

Regarding default management, one commenter described ICC's corporate contribution to the default waterfall as "dynamic and capped at a relatively high level" and recommended "the SEC evaluate the amount, structure, and adjustment cadence to assess the adequacy of the ICC contribution."[189] As further described in Treasury Rule 801(b), ICC's total expected contribution is $100 million.[190]

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186 *See* CCA Standards Adopting Release, *supra* note 6, 81 FR at 70829 ("Rule 17Ad–22(e) does not prescribe a specific tool or arrangement to achieve its requirements . . . when determining the content of its policies and procedures with respect to default management, each covered clearing agency must have the ability to enhance its policies and procedures to meet the evolving challenges and risks in the securities market that the covered clearing agency serves.").

187 *See* Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plans, Release No. 34–101446 (Oct. 25, 2024), 89 FR 91000, 91022 (Nov. 18, 2024) ("RWP Adopting Release") ("The Commission also disagrees that prescribing the tools a CCA must deploy in recovery and wind-down scenarios would be most effective at protecting non-defaulting customers' assets. As the Commission has previously explained, a 'one-size-fits-all' approach specifying recovery and orderly wind-down tools is not productive, and it is not possible to assess the utility of a particular tool in isolation without considering the context of RWP as a whole and the particular circumstances of a CCA.").

188 *Id.* at 91022 ("tools . . . to allocate losses to non-defaulting customers may be necessary to prevent the potential transmission of systemic risk").

189 SIFMA & AMG at 12.

190 Treasury Rule 801(b); Exhibit J of the Application, at 6.

The appropriate amount of a clearing agency's own contribution to its default management process varies depending on the structure of the clearing agency, the characteristics of the assets cleared, and the markets served by the clearing agency, and registered clearing agencies have taken different approaches to applying their own resources to the default management process. The Commission does not require that a CCA have "skin-in-the-game" to address or allocate losses, and Rule 17Ad-22(e)(4)(iii) does not require any particular amount of "skin-in-the-game."[191] Previously, the Commission has considered commenters' views regarding requirements for "skin-in-the-game," stating that such new requirements can help successfully manage the divergent incentives of a CCA's owners and participants and could be appropriate in the future.[192] However, as the Commission has also stated, it is appropriate to provide a CCA with flexibility, subject to its responsibilities as a self-regulatory organizations ("SRO") under the Exchange Act, to structure its default management processes to take into account the particulars of its financial resources, ownership structures, and risk management frameworks.[193] Furthermore, the proper alignment of incentives is an important element of a CCA's risk management practices, and "skin-in-the-game" may play a role in those risk management practices in many instances but in other instances may not be essential to a governance framework.[194] ICC is afforded this flexibility under the CCA regulatory framework and has the discretion to size its corporate contribution subject to its obligations and responsibilities as an SRO under the Exchange Act. Setting aside the size of the corporation contribution ICC

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191 *See* RWP Adopting Release, *supra* note 187187, 89 FR at 91037; CCA Standards Adopting Release, *supra* note 6, 81 FR at 70805–06.

192 *See* RWP Adopting Release, *supra* note 187187, 89 FR at 91037; Clearing Agency Governance Release, *supra* note 69, at 84504; CCA Standards Adopting Release, *supra* note 6, 81 FR at 70806.

193 *See* CCA Standards Adopting Release, *supra* note 6, 81 FR at 70806.

194 *See id.*

determines to include in its default waterfall, ICC is required by Rule 17Ad-22(e)(4)(iii) to maintain written policies and procedures reasonably designed to maintain financial resources to cover a wide range of foreseeable stress scenarios, including the default of the largest participant family in extreme but plausible market conditions.[195] For the reasons previously discussed in Part III.E.2.c), the Treasury Rules are consistent with the requirements of Rule 17Ad-22(e)(4)(iii).

F. Participant Discipline

1. Statutory Standard and Analysis: Section 17A(b)(3)(G)

Section 17A(b)(3)(G) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to Sections 17(d) or 19(g)(2) of the Exchange Act) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

With respect to discipline and sanctions, Treasury Rule 609(a) provides that ICC has the power to discipline Treasury Participants, including by suspension or revocation of clearing privileges, for engaging in conduct inconsistent with just and equitable principles of trade or for any act or practice, or the omission thereof, that violates ICC's rules or procedures.[196] ICC also has the power to assess fines or charges against a Treasury Participant in accordance with the process outlined in Chapter 7 of the Treasury Rules.[197]

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195 *See* 17 CFR 240.17ad–22(e)(4)(iii).

196 Treasury Rule 609(a).

197 Treasury Rule 609(b).

Chapter 7 of the Treasury Rules sets out a process for ICC to use when disciplining Treasury Participants. Treasury Rule 701 provides that ICC has the authority to initiate and conduct investigations of conduct that is inconsistent with just and equitable principles or violations of ICC's rules and procedures.[198] This authority is generally vested in the ICC Chief Compliance Officer, other ICC employees, and ICC's Business Conduct Committee.[199] Chapter 7 outlines the requirements for a formal hearing on a disciplinary action, including notice to the Treasury Participant, a written answer by the Treasury Participant, and the right to request a hearing before a hearing panel.[200] Per Treasury Rule 712, if the hearing panel finds that a Treasury Participant committed an alleged violation, it must render a written decision to that effect, and the written decision must include an order stating any penalty imposed.[201] The penalty shall be one or more of the following: (i) a cease and desist order or reprimand; (ii) a fine up to one hundred thousand dollars for each violation plus the monetary value of any benefit received as a result of the alleged violation; and (iii) a recommendation to the Board to impose a suspension or revocation of clearing privileges or a termination of Treasury Participant status.

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198 Treasury Rule 701.

199 Treasury Rules 702 and 703. Per Treasury Rule 703(b), the Business Conduct Committee shall be comprised of the independent managers of the ICC Board.

200 Treasury Rules 704, 705, 706, 711, and 712.

201 Treasury Rule 712.

Further, Rule 207 of the ICC Treasury Clearing Rules provides that in the case of a Termination Event,[202] ICC may, in its sole discretion, terminate the status of a Treasury Participant, subject to Rule 615(b).[203]

Commenters stated that ICC's proposed fines could be excessive if imposed for each failure to submit a transaction for clearing in accordance with Treasury Rule 303.[204] Treasury Rule 303 generally requires each Treasury Participant to submit to ICC or another covered clearing agency (as defined in Exchange Act Rule 17Ad-22) for clearing all Trades in Contracts that are eligible for clearing and are Eligible Secondary Market Transactions, in furtherance of Rule 17Ad-22(e)(18)(iv).[205] These commenters asked ICC to consider good-faith efforts to remedy failures and further that ICC allow Treasury Participants to (i) initially notify ICC of non-compliance with the trade submission requirement, then (ii) work to remediate the issue that may have caused the non-compliance, without the imposition of penalties. In response, ICC explained that the fines are for general application, not particular to Treasury Rule 303, and provide a fair procedure for disciplining Treasury Participants.[206] ICC further explained that the

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202 Termination Event is defined in Treasury Rule 207(b) to mean, among other things, the default of a Treasury Participant and the material breach by the Treasury Participant of the Treasury Rules or any of the terms or provisions of any agreement between ICC and the Treasury Participant which is not remedied promptly after notice from ICC.

203 Rule 615(b) of ICC Treasury Clearing Rules provides, in part, that "[a]ny determination to suspend or revoke the clearing privileges of a Treasury Participant, or to terminate its status as a Treasury Participant, granted to [ICC] pursuant to these Rules or the Treasury Procedures, including, without limitation, as provided in Rules 203(a), 207(a) and 609(a), shall be made only with the consent of the Board (in a vote excluding any member who is an employee of such Treasury Participant or any Affiliate). . .").

204 FIA at 7; ISDA at 3.

205 17 CFR 240.17ad-22(e)(18)(iv). Commenters also requested clarifications to certain parts of Rule 303, such as allowing trades to continue bilaterally if rejected by ICC; excepting trades that fail to submit to ICC because of technological issues; and incorporating into the definition of Eligible Secondary Market Transaction any future definitions or interpretations issued by the Commission. *See* FIA at 6; ISDA at 2-3; SIFMA & AMG at 11. In response, ICC explained that it intends Treasury Rule 303 to comply with Rule 17Ad-22(e)(18)(iv). ICC Response Letter at 4.

206 ICC Response Letter at 4.

fines are not automatic for violations of the Treasury Rules, including Rule 303.[207] ICC cited, for example, Treasury Rule 702(d), which allows ICC to issue a warning letter to a Treasury Participant.

ICC has procedures for enforcing rules and disciplining Treasury Participants that are consistent with the requirements of the Exchange Act. ICC's rules provide it with authority to discipline Treasury Participants for rule violations and to impose each of the sanctions enumerated in the Exchange Act. Accordingly, the Commission determines that the Treasury Rules provide that ICC's Treasury Participants shall be appropriately disciplined for violation of any provision of the rules consistent with the requirements of Section 17A(b)(3)(G) of the Exchange Act.

2. Statutory Standard and Analysis: Section 17A(b)(3)(H)

Section 17A(b)(3)(H) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any persons seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.[208]

Chapter 7 of the Treasury Rules sets out a process for ICC to use when disciplining Treasury Participants. Treasury Rule 701 allows ICC to initiate and conduct investigations of conduct that is inconsistent with just and equitable principles or violations of ICC's rules and procedures and which is allegedly committed by Treasury Participants, and impose sanctions for

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207 *Id.*

208 Section 17A(b)(3)(H) of the Exchange Act also states that the rules of the clearing agency must be in accordance with the provisions of Section 17A(b)(5) of the Exchange Act.

such conduct.[209] This authority is generally vested in the ICC Chief Compliance Officer, other ICC employees, and ICC's Business Conduct Committee, which is comprised of the independent managers of the ICC Board.[210] More specifically, ICC staff conducts investigations of possible violations, prepares written reports respecting such investigations, furnishes such reports to the Chief Compliance Officer and Business Conduct Committee, and conducts the prosecution of such violations.[211] The Business Conduct Committee can direct that an investigation of any suspected violation be conducted by ICC and shall hear any matter referred to it.[212] Moreover, the Business Conduct Committee may, as it deems appropriate, establish a subcommittee of three members (the "Review Subcommittee"), to receive and review written investigation reports and written settlement agreements.[213]

Chapter 7 requires that ICC provide notice to a Treasury Participant during an investigation and potential disciplinary action. Where a Treasury Participant is the subject of a written report regarding ICC staff's investigation of a potential violation, ICC staff must provide the Treasury Participant with a copy of that written report.[214] ICC staff must provide the report no less than five business days prior to distributing the report to the Review Subcommittee of the Business Conduct Committee. ICC staff must also give the Treasury Participant an opportunity

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209 Treasury Rule 701.

210 Treasury Rules 702 and 703.

211 Treasury Rule 702(b).

212 Treasury Rule 703(a).

213 Treasury Rule 703(c). Treasury Rule 702(d) also allows the ICC President, Chief Compliance Officer, or another ICC employee designated by the Board, to conclude that a violation may have occurred. In that case, the President, Chief Compliance Officer, or other employee may issue a warning letter or negotiate a written settlement agreement. A Review Subcommittee of the Business Conduct Committee must approve the written settlement agreement.

214 Treasury Rule 702(c).

to submit written comments regarding or evidence relevant to the report.[215] Any written comments received from the Treasury Participant must accompany distribution of the report to the Review Subcommittee or be furnished to the Review Subcommittee at or before the time of its meeting, depending on the date on which the Treasury Participant's comments are received by ICC staff.[216]

If, after initial review of an investigation report, a Review Subcommittee concludes that a violation may have occurred, it must allow the Treasury Participant a reasonable opportunity to prepare and present evidence.[217] If the Review Subcommittee then concludes that a violation may have occurred, the Review Subcommittee must advise the Treasury Participant of that fact.[218] The Review Subcommittee may then (i) refer the matter back to ICC staff for further investigation; (ii) approve a pre-negotiated settlement agreement; (iii) refer the matter to a formal hearing of a Hearing Panel;[219] or (iv) negotiate and enter into a written settlement agreement on its own.

If the Review Subcommittee refers the matter to a formal hearing in front of a Hearing Panel, then ICC staff must serve a notice on the Treasury Participant.[220] The notice must include certain information, such as the acts in which the Treasury Participant is alleged to have engaged and how those acts violate ICC's rules or procedures.[221] Finally, if the Hearing Panel finds that a

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215 *Id.*

216 *Id.*

217 Treasury Rule 703(d).

218 Treasury Rule 703(e).

219 The Hearing Panel must consist of three members of the Business Conduct Committee, selected by the Chairman of that committee, who were not on the Review Subcommittee for the alleged violation and are not otherwise ineligible.

220 Treasury Rule 704.

221 *Id.*

Treasury Participant committed an alleged violation, it must issue a written decision to that effect, and the written decision must include a penalty.[222]

In addition to the requirements related to informing a Treasury Participant, Chapter 7 includes other requirements intended to enhance the fairness of ICC's disciplinary process, such as independence of the people hearing the matter. As described above, the Business Conduct Committee must be comprised of ICC's independent Board members.[223] If a member of a Review Subcommittee believes he or she has a direct financial, personal or other interest in the matter under consideration, the member must notify the Business Conduct Committee, and the Business Conduct Committee must replace such person on the Review Subcommittee for that particular matter.[224] No member of the Hearing Panel may hear a case in which that member, in the determination of the Chairman of the Business Conduct Committee, has a direct financial, personal or other interest in the matter under consideration.[225] Finally, Treasury Rule 708 gives Treasury Participants a means of challenging the inclusion of a member of the Hearing Panel for cause.

Throughout the disciplinary process, Treasury Participants may respond to the investigation and allegations. As described above, if, after initial review of an investigation report, a Review Subcommittee concludes that a violation may have occurred, it must allow the Treasury Participant a reasonable opportunity to prepare and present evidence.[226] Treasury Rule

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222 Treasury Rule 712. The written decision must include certain information, including a summary of the allegations and a summary of the Treasury Participant's answer. If the Hearing Panel finds that a Treasury Participant did not commit an alleged violation, it must also render a written decision to that effect. Treasury Rule 712.

223 Treasury Rule 703(b).

224 Treasury Rule 703(c).

225 Treasury Rule 707(c).

226 Treasury Rule 702(c).

705 gives a Treasury Participant the ability to serve a written answer on ICC, following service of a written notice of charges. A Treasury Participant will have an opportunity for a hearing in front of the Hearing Panel, and during such hearing the Treasury Participant may, among other things, be represented by legal counsel or any other representative of its choosing; present witnesses and documentary evidence; and cross-examine witnesses.[227]

As described, ICC has established procedures to ensure that any Treasury Participant assessed with a rule violation receives notice of the alleged violation, and is afforded an opportunity to contest the allegations, including by requesting a hearing at which the participant may be represented by counsel. The Treasury Rules address discipline of Treasury Participants, denial of participation, and prohibitions or limitations imposed by the clearing agency with respect to access to services offered by the clearing agency. The Commission therefore determines that the Treasury Rules provide a fair procedure consistent with Section 17A(b)(3)(H) of the Exchange Act.

G. Burden on Competition

1. Statutory Standard: Section 17A(b)(3)(I)

Section 17A(b)(3)(I) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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227 Treasury Rules 711 and 712.

2. Summary of Application and Analysis

As discussed in Part III.B, ICC's rules permit all of the participant categories required by Section 17A(b)(3)(B) of the Exchange Act to be Treasury Participants.[228] In addition, as contemplated by Section 17A(b)(4)(B), ICC may deny participation to, or condition the participation of, a Treasury Participant if the Treasury Participant does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of ICC.[229]

Commenters that supported ICC's Application stated that the inclusion of another clearing agency for the Treasury market would provide competition and increase resilience and diversity in clearing models.[230] One commenter, supporting ICC's Application, stated that approval will provide needed competition and increase choice for participants in the Treasury market.[231] This commenter further stated that ICC's model will allow Treasury Participants to offer done-away clearing services in a balance sheet-efficient and operationally familiar manner, thus offering capital and operational efficiencies and reducing costs.[232] The Commission agrees

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228 As stated above, one commenter recommended that ICC explicitly permit FCMs to become Treasury Participants and adjust its rules to allow FCMs to do so. FIA at 3-5. In response, ICC explained that Treasury Rule 201(c) is non-exclusive, and ICC may accept FCMs as Treasury Participants provided that they meet and maintain the ICC participation standards set out in Treasury Rule 201(b). ICC Response Letter at 3. FCMs are not among the list of the types of persons listed in Section 17A(b)(3)(B) of the Exchange Act, and Commission rules do not require a particular access model. A CCA in the U.S. Treasury market, however, generally should seek to provide access in as flexible a means as possible, consistent with its responsibility to provide sound risk management and comply with other provisions of the Exchange Act, the Covered Clearing Agency Standards, and other applicable regulatory requirements, and it generally should consider a wide variety of appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. *See* Release No. 34–99149 (Dec. 13, 2023), 89 FR 2714, 2760 (Jan. 16, 2024).

229 *See* Treasury Rules 201-203.

230 FIA at 1; ISDA at 1.

231 AIMA at 2.

232 *Id.*

that the inclusion of another clearing agency for the Treasury market could provide competition and increase resilience, choice, and diversity in clearing models.

More generally, in the context of establishing standards for participation, ICC's Treasury Rules may impact competition among market participants by restricting access of its clearing services for market participants unable to meet its standards for participation; however, such a burden on competition can be in furtherance of, and consistent with, the Exchange Act, including Sections 17A(b)(3)(B), 17A(b)(4)(B), and 17A(b)(3)(F) thereof.[233] Consistent with Section 17A(b)(4)(B) of the Exchange Act, for example, ICC may deny participation or condition participation based on its rules' standards for "financial responsibility, operational capability, experience, and competence."[234] Because such participation requirements enable ICC to manage, mitigate, and, where possible, reduce the risk it faces in its capacity as a CCP, the Commission determines that ICC's Treasury Rules are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[235] Similarly, should ICC's financial and operational competency standards impact competition, these standards are in the furtherance of assuring ICC's safeguarding of securities and funds in ICC's custody or control. Therefore, the Commission determines that ICC's Treasury Rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[236]

IV. Conclusion

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233 15 U.S.C. 78q–1(b)(3)(B), (b)(4)(B), (b)(3)(F).

234 15 U.S.C. 78q–1(b)(4)(B).

235 15 U.S.C. 78q–1(b)(3)(F).

236 15 U.S.C. 78q–1(b)(3)(F).

For the reasons discussed above, the Commission finds that ICC satisfies the requirements for registration as a clearing agency, including those requirements set forth in Section 17A of the Exchange Act and Commission rules and regulations thereunder.[237]

IT IS HEREBY ORDERED that the application for registration as a clearing agency filed by ICE Clear Credit LLC (File No. 600-45) pursuant to Sections 17A and 19(a) of the Exchange Act be, and hereby is, APPROVED.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

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[237] 15 U.S.C. 78q–1(b)(3).