

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101820; File No. SR-ICC-2024-010)

December 5, 2024

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 22, 2024, ICE Clear Credit LLC (“ICE Clear Credit” or “ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise ICC’s (i) Governance Playbook (the “Playbook”), and (ii) Seventh Amended and Restated Operating Agreement (the “Operating Agreement”).

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

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

The amendments are intended principally to provide for the establishment of a Nominating Committee. ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

I. Operating Agreement

ICC would amend and restate its Operating Agreement³ to add a Nominating Committee. As provided in revised Section 3.12 of the Operating Agreement, the Board will establish and maintain a Board level Nominating Committee which will be responsible for evaluating the independence and fitness of the persons proposed to be designated as Managers of the Board. In connection with this addition, the amendments would add a definition of 'Nominating Committee' to Section 1.01 of the Operating Agreement. Furthermore, proposed Section 3.12(a) of the Operating Agreement provides that the Nominating Committee will be composed of at least three members, a majority of

³ Following Commission approval, ICC proposes to implement the collective changes to the Operating Agreement proposed herein and the changes to the Operating Agreement described in ICC rule filing SR-ICC-2024-009 (approved by the Commission and available here: <https://www.federalregister.gov/documents/2024/10/24/2024-24638/self-regulatory-organizations-ice-clear-credit-llc-order-approving-proposed-rule-change-as-modified>) in the same version of the amended and restated Operating Agreement.

which are required to be independent (i.e., either a Parent Independent Manager⁴ or a Risk Committee Independent Manager⁵). Two of the members of the Nominating Committee will be required to be Managers nominated to the Board by the Risk Committee, and one of these Risk Committee nominees will be required to be a Risk Committee Independent Manager, and the other Risk Committee nominee is not required to be an independent (i.e., they may be a Risk Committee Non-Independent Manager⁶). The chairperson of the Nominating Committee will be a Parent Independent Manager. Proposed Section 3.12(b) of the Operating Agreement provides that the Nominating Committee will have access to the records of ICC, as well as access to Managers of the Board, and ICC officers and employees. The Nominating Committee will meet as needed to fulfill its duties, but in no event less than annually. Proposed Section 3.12(c) of the Operating Agreement provides for the limitation of the fiduciary duties on the members of the Nominating Committee. Such proposed limitation of fiduciary duties on members of the Nominating Committee is analogous to the current limitation of fiduciary duties provided in the Operating Agreement for members of the ICC Audit Committee and Managers of the Board. Specifically, proposed Section 3.12(c) provides that notwithstanding any provision of, any duty otherwise existing under, or anything to the contrary at applicable law (whether common or statutory), in equity or otherwise, the

⁴ As defined in the Operating Agreement, ‘Parent Independent Manager’ means a Manager of the Board elected by the Parent that meets the independence requirements of each of the New York Stock Exchange listing standards, the Securities Exchange Act of 1934, and Intercontinental Exchange, Inc. Board of Director Governance Principles (collectively, the “Independence Standards”).

⁵ As defined in the Operating Agreement, ‘Risk Committee Independent Manager’ means a Manager of the Board nominated by the Risk Committee that meets the Independence Standards.

⁶ As defined in the Operating Agreement, ‘Risk Committee Non-Independent Manager’ means a Manager of the Board nominated by the Risk Committee that is not required to meet the Independence Standards.

Operating Agreement is not intended to, and does not, create or impose any fiduciary duties on the members of the Nominating Committee. Further, each of the Parent and the other parties to or bound under the Operating Agreement waives any and all fiduciary duties that, absent such waiver or otherwise, may be implied or may otherwise apply under applicable law (whether common or statutory), in equity or otherwise to the members of the Nominating Committee. In addition, the parties to the Operating Agreement agree that the only duties and obligations of the members of the Nominating Committee to ICC, the Parent, ICC Clearing Participants, or any other person under applicable law (whether common or statutory), in equity or otherwise, are limited solely to performing those contractual duties expressly set forth in the Operating Agreement. Proposed Section 3.12(c) further provides that that none of the foregoing waivers or limitations shall be construed as eliminating the implied covenant of good faith and fair dealing.

Furthermore, the amendments would modify Section 3.02 of the Operating Agreement to add the Nominating Committee's role in the evaluation of potential members of the Board. Specifically, Section 3.02(a) of the Operating Agreement would be revised to indicate that the Parent shall not elect any person as a Manager of the Board until the Nominating Committee provides their evaluation of such person to the Parent. In addition, the amendments add the related definitions of 'Nominating Committee Evaluation' and 'Nominating Committee Charter'⁷ to Section 1.01 of the Operating Agreement.

⁷ 'Nominating Committee Evaluation' means, in respect of any person, the Nominating Committee's written evaluation of such person's independence and fitness for election as a Manager, based on the standards and pursuant to the process set forth in the Nominating

In addition, the amendments would add a definition of ‘SEC’ to Section 1.01 of the Operating Agreement. Furthermore, the amendments would modify the current definition of ‘Governmental Authority’ contained in Section 1.01 of the Operating Agreement to include reference to the SEC to reflect the list of governmental authorities more accurately with jurisdiction over ICC. Lastly, the amendments would add a reference to members of the Nominating Committee to the definition of ‘Covered Persons’ contained in Section 1.01 of the Operating Agreement. Such change properly adds members of the new Nominating Committee to the list of persons to which the liability and indemnification provisions (contained in Article VI of the Operating Agreement) apply.

II. Governance Playbook

ICE Clear Credit would also amend the Playbook to conform to the amendments to the Operating Agreement discussed above. Section I and Section III of the Playbook would be revised to add reference to Commission Rule 17Ad-25⁸ to the list of applicable regulations covering the governance structure of ICC. Such change properly adds reference to new Commission Rule 17Ad-25⁹ as such rule applies to the governance structure of Commission registered clearing agencies, including ICC. Section II of the Playbook would be amended to add the new Nominating Committee to the existing chart summarizing ICC’s governance structure. Section III of the Playbook would be amended to add the defined term ‘Manager’ to reference any individual member of the Board.

Committee Charter. ‘Nominating Committee Charter’ means the Charter of the Nominating Committee.

⁸ 17 CFR 240.17ad-25.

⁹ *Id.*

Furthermore, ICC's definition of the independence standards it applies to independent Managers of the Board would be revised to include a reference to Commission Rule 17Ad-25¹⁰ which provides for independence requirements for Commission registered clearing agencies, including ICC. The amendments would also formalize the defined term 'Independence Standards.' Section III.A. of the Playbook would also be amended to remove the fitness standards for serving as a Manager on ICC's Board and, as a result, the related definition of 'Qualified Manager' would also be removed. As a replacement for these specified fitness standards, the amendments would add a reference that the fitness standards for serving as a Manager, and the criteria for selecting new Managers will be specified by the new Nominating Committee and thereafter approved by the Board. Such process for having Manager fitness standards specified by the Nominating Committee is intended to comply with new Commission Rule 17Ad-25(c)(3)¹¹ which requires this process. The amendments would add the defined term 'Manager Fitness Standards' to refer to these Nominating Committee specified and Board approved fitness standards for Managers. The Nominating Committee will be formed, and their process of specifying the Manager Fitness Standards will occur, following Commission approval, and ICC implementation, of these proposed rule changes. Once such Manager Fitness Standards are specified by the new Nominating Committee and are approved by the Board, they will be included as new Appendix 1 to the Playbook. Due to the addition of Appendix 1, subsequent appendices would be renumbered and references to such appendices would be updated as well.

¹⁰ *Id.*

¹¹ 17 CFR 240.17ad-25(c)(3).

Section III.B. of the Playbook would be revised to add the Nominating Committee's role in the evaluation of potential members of the Board. Specifically, the Nominating Committee shall provide their evaluation and recommendation of an individual they believe to be qualified to become a Manager of the Board to the Parent, consistent with the Manager Fitness Standards. Furthermore, such section would be amended to reference that the Nominating Committee may consult with the Board, the Parent, the Risk Committee and ICC management regarding the skills, experience, and incentives of the potential new Manager. As a result of the addition of the Nominating Committee and its role in evaluating potential new Managers, the provisions in Section III.B. of the Playbook regarding the Parent's consultation and information sharing related to potential new Managers is proposed to be removed as this role will be assumed by the Nominating Committee. In addition, the amendments will include a reference that the Parent will document their election of a new Manager, typically through a unanimous written consent of the directors of the Parent's general partner, to provide additional transparency on current practices. Section III of the Playbook would also be amended to add the Nominating Committee to the list of parties that will be notified regarding the removal or resignation of a current Manager. With respect to the election of Managers designated by the Risk Committee, the amendments would add the Nominating Committee to the list of parties that would receive the biographical information of potential Managers designated by the Risk Committee. The amendments would also indicate that the Nominating Committees shall provide their evaluation and recommendation of individuals designated by the Risk Committee for a Manager position.

Section III of the Playbook would also be revised with respect to the annual election process of Managers by the Parent, noting that in connection with this process, the Nominating Committee will provide the Parent with their evaluation of any proposed new Manager which will be based on the Board approved Manager Fitness Standards. With respect to any re-designated Manager, the Nominating Committee will be added to the list of parties that will receive details from ICC management regarding each re-designated Manager's performance/attendance from the previous year, including information specific to Nominating Committee performance such as results from the Nominating Committee evaluation process.

Section III.E. of the Playbook would be revised to add clarifying information to ICC's conflicts of interest process regarding potential Manager conflicts. Specifically, Section III.E. would be amended to clarify that ICC's Code of Business Conduct and Ethics policy applicable to Managers provides for the disclosure and resolution of conflicts of interest, and further clarifies that resolution of Manager conflicts of interest means mitigation or elimination.¹² Such section will also be amended to indicate that the ICC legal department will maintain documentation of any conflicts of interest disclosed by Managers and the mitigation or elimination thereof.

Section III.F. of the Playbook would be revised to add the Nominating Committee's role in evaluating and recommending to the Board if each Manager, and any nominee for Manager, qualifies as independent under the Independence Standards. Such evaluation by the Nominating Committee shall be provided to the Board to aid in the

¹² Please note that the identification and resolution of conflicts of interest covered in the Playbook relate to conflicts of interest involving Managers. With respect to potential conflicts of interest involving ICC staff (including senior managers), such employee conflicts of interest are covered in other ICC policies and procedures outside of the Playbook.

Board's independence determination with respect to each Manager. In addition, ICC proposes amendments to clarify that (i) Nominating Committee members shall recuse themselves from evaluating their own independence and (ii) Managers shall recuse themselves from the determination of their own independence. Such section would also be modified to use the defined term Independence Standards. Furthermore, the independence qualifications described in Section III.F. of the Playbook would be modified to incorporate additional independence qualification definitions provided in new Commission Rule 17Ad-25(a), for example the definition of 'family member.' To ensure compliance with the independence qualification requirement of new Commission Rule 17Ad-25(a),¹³ Section III.F. of the Playbook would be augmented with the following additional relationships that would disqualify an individual from being deemed independent:

- In addition to an individual that is employee of an ICE Group company, an individual that otherwise receives compensation from an ICE Group company.
- An individual with a family member that is (or has been in the year prior to the determination date) an employee or otherwise receives compensation from any ICE Group company.
- An individual, or a family member of such individual, that is or has been in the year prior to the determination date, receiving payments from ICE Group companies that could reasonably affect the independent judgement or decision-making of the individual (other

¹³ 17 CFR 240.17ad-25(a).

than director and committee fees of pension or other forms of deferred compensation for prior services not contingent on continued service).

- In addition to an individual that is an employee of a firm that is the ICE Group's internal or external auditor, an individual that has a family member who is either a partner of such auditing firm or a current employee of such auditing firm, or the individual has a family member that was within the prior year from the determination date an employee of such auditing firm and personally worked on the ICE Group audit within that time.
- An individual with a family member that is, or has been within the prior year from the determination date, employed as an executive officer of another company where any of ICC's executive officers at the same time serves or served on that company's compensation committee.
- An individual, or a family member of such individual, that is or has been within the prior year from the determination date, a partner or controlling shareholder on any organization to or from which an ICE Group company is making or receiving payments for property or services other than: (i) payments arising solely from investments in the ICE Group company securities; or (ii) payments under non-discretionary charitable contribution matching programs.

Further amendments would be made to the description of the ICC annual independence questionnaire process to add the Nominating Committee's role with respect

to evaluating and recommending to the Board if each Manager qualifies as independent under the Independence Standards. Specifically, the section would be amended to indicate that the completed independence questionnaires will be provided to the Nominating Committee to aid in their evaluation/recommendation process. In addition, ICC proposes amendments to describe the process followed should the circumstances regarding an existing Manager's independence change. Specifically, in such event, the Nominating Committee shall re-evaluate and recommend to the Board whether such Manager continues to qualify as independent under the Independence Standards. Following such re-evaluation and recommendation by the Nominating Committee, the Board shall determine if such Manager continues to be independent.

With respect to the Board performance review process described in Section III.G. of the Playbook, such section would be revised to indicate that the ICC General Counsel will provide a summary of all Board performance survey results (including survey results related to individual Board member performance) to the Nominating Committee.

In addition, Section IV of the Playbook would be revised to add the Nominating Committee to the list of ICC's primary governance committees. Furthermore, Section IV.B. would be added to the Playbook to describe the Nominating Committee's purpose, its membership composition, the new Nominating Committee member administration procedures, the Nominating Committee meeting frequency, the Nominating Committee performance review process, and the documents relevant to the Nominating Committee. The additional sections describing the Nominating Committee's purpose, its composition and its meeting frequency reflect the same changes made to the Operating Agreement described above. The section describing the new Nominating Committee member

administrative procedures provides an overview of the steps that will be taken by the ICC legal department to onboard a new member of the Nominating Committee (e.g., updating distribution lists and updating the permissions of such individual on the Diligent platform which is used to distribute materials to the Board and other committees, including the Nominating Committee). The proposed revisions also add a description of the Nominating Committee performance review process and procedures. Such performance review process is conducted on an annual basis and includes each member of the Nominating Committee completing a self-evaluation survey. The annual review process is designed to gather feedback on the operation of the Nominating Committee and solicit suggestions for improvements, as well as provide a forum for the identification of problems with respect to the performance of the Nominating Committee. Such process includes the compilation of a summary of the survey responses received from the Nominating Committee by the ICC legal department, which are presented to the entire Nominating Committee. Such summary shall include disclosure of the minimum, maximum, and average score for each survey item, as well as a summary of relevant comments received throughout the process. The proposed process and procedures for the Nominating Committee annual performance review process are fully analogous to the performance review processes currently in place for both the Board and the ICC Audit Committee. Lastly the revisions add information related to relevant documents of the Nominating Committee (e.g., meeting agendas, minutes and meeting materials), noting that such relevant documents will be maintained by the ICC legal department on their shared network drive.

ICC also proposes a number of other drafting clarifications and conforming changes, such as updating use of relevant defined terms, rule references and other non-substantive drafting improvements, would also be made throughout the Playbook. Various provisions would also be relabeled or renumbered in the Playbook. The amendments would also update the revision history section to the Playbook.

(b) Statutory Basis

ICE Clear Credit believes that the proposed amendments to the Operating Agreement and the Playbook are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the “Act”)¹⁴ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act¹⁵ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed amendments are designed to reflect the addition of the Nominating Committee to ICC’s governance structure, consistent with requirements of new Commission Rule 17Ad-25. The amendments provide details on the purpose of the Nominating Committee and its composition. In ICC’s view, the amendments will improve ICC’s governance structure by reducing the likelihood that conflicts of interest may influence the Board. Thus, the proposed amendments enhance the overall risk

¹⁴ 15 U.S.C. 78q-1.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

management of ICC and are consistent with the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest in the operation of clearing services, within the meaning of Section 17A(b)(3)(F) of the Act.¹⁶

The proposed amendments are also consistent with relevant provisions of Rule 17Ad-22(e)(2) which provides that the “covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] provide for governance arrangements that are [c]lear and transparent”¹⁷ and “[c]onsider the interests of participants’ customers ... and other relevant stakeholders of the covered clearing agency”¹⁸. The proposed amendments are intended to add a Nominating Committee to ICC’s governance structure with the role of evaluating the independence and fitness of the persons proposed to be designated as Managers of the Board. As such, the Nominating Committee is intended to improve ICC’s governance structure by reducing the likelihood that conflicts of interest may influence the Board. In ICC’s view, the amendments to the Operating Agreement and the Playbook are therefore consistent with the requirements of Rule 17Ad-22(e)(2).¹⁹

The proposed amendments also are consistent with the relevant provisions of Rule 17Ad-25(c) which provides that “Each registered clearing agency must establish a

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17ad-22(e)(2)(i).

¹⁸ 17 CFR 240.17ad-22(e)(2)(vi).

¹⁹ 17 CFR 240.17ad-22(e)(2).

nominating committee and a written evaluation process whereby such nominating committee shall evaluate nominees for serving as directors and evaluate the independence of nominees and directors.”²⁰ The proposed amendments add a new Nominating Committee to ICC’s governance structure with the role of evaluating the independence and fitness of the persons proposed to be designated as Managers of the Board. In ICC’s view, the amendments to the Operating Agreement and Playbook are therefore consistent with the requirements of Rule 17Ad-25(c).²¹

The proposed amendments also are consistent with the relevant provisions of Rule 17Ad-25(f) which provides for circumstances which would “preclude a director from being an independent director. . .”²² The proposed amendments would add circumstances that would disqualify individuals from being deemed independent consistent with the requirements of Rule 17Ad-25(f).²³ In ICC’s view, the amendments to the Operating Agreement and Playbook are therefore consistent with the requirements of Rule 17Ad-25(f).²⁴

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

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to add a Nominating Committee. The amendments do not otherwise change the rights and responsibilities of

²⁰ 17 CFR 240.17ad-25(c).

²¹ *Id.*

²² 17 CFR 240.17ad-25(f).

²³ *Id.*

²⁴ *Id.*

ICC or its market participants. Accordingly, ICE Clear Credit does not believe the amendments would affect the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Credit does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ICC-2024-010 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICC-2024-010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission’s Internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit’s website at <https://www.ice.com/clear-credit/regulation>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ICC-2024-010 and should be submitted on or before [[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

IV. Discussion and Commission’s Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.²⁵ Under the Commission’s Rules of Practice, the “burden

²⁵ 15 U.S.C. 78s(b)(2)(C).

to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”²⁶

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.²⁸ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.²⁹

After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC. More specifically, for the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(A) and (F) of the Act³⁰ and Rules 17Ad-22(e)(2) and 17Ad-25 thereunder.³¹

²⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) (“*Susquehanna*”).

³⁰ 15 U.S.C. 78q-1(b)(3)(F) and 15 U.S.C. 78q-1(b)(3)(F).

³¹ 17 CFR 240.17Ad-22(e)(2) and 17 CFR 240.17ad-25.

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

Section 17A(b)(3) of the Act requires, among other things, that ICC be so organized and has the capacity to be able to comply with the provisions of the Act and the rules and regulations thereunder,³² and that ICC's rules be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.³³ Based on review of the record, and for the reasons discussed below,³⁴ ICC's changes are consistent with ICC being so organized and having the capacity to comply with the provisions of the Act and the rules and regulations thereunder and with fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. Accordingly, the proposed rule change is consistent with the requirements of Sections 17A(b)(3)(A) and (F) of the Act.³⁵

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

Rule 17Ad-22(e)(2) requires covered clearing agencies to, among other things, provide for governance arrangements that are clear and transparent,³⁶ establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities,³⁷ and specify clear and direct lines of responsibility.³⁸ In adopting Rule 17Ad-22(e)(2), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining

³² 15 U.S.C. 78q-1(b)(3)(A).

³³ 15 U.S.C. 78q-1(b)(3)(F).

³⁴ See infra Section IV. B. (Consistency with Rule 17Ad-22(e)(2) under the Act).

³⁵ 15 U.S.C. 78q-1(b)(3)(A) and 15 U.S.C. 78q-1(b)(3)(F).

³⁶ 17 CFR 240.17Ad-22(e)(2)(i).

³⁷ 17 CFR 240.17Ad-22(e)(2)(iv).

³⁸ 17 CFR 240.17Ad-22(e)(2)(v).

policies and procedures, including, in part, whether the board of directors contains suitable members with the appropriate skills and incentives to fulfill the board's multiple roles, and whether the board of directors should include non-executive board members.³⁹

ICC's proposed changes would strengthen ICC's written independence qualifications for current and potential Board members and establish a Nominating Committee to evaluate Board members against these independence qualifications. As discussed above, the proposed rule change would update the Playbook to augment the list of relationships that disqualify a person from being an independent member of the Board by adding to the list new, additional relationships as specified in Rule 17Ad-25 under the Exchange Act.⁴⁰ For example, pursuant to the current Playbook, an individual that is an employee of an ICE Group company is not considered independent. Under the proposed rule change, the Playbook would be updated to specify that an individual that otherwise receives compensation from an ICE Group company also would not be considered independent.

Strengthening the criteria by which ICC evaluates both current Managers and nominees would help ICC review each individual nominee within the broader context of the Board's overall makeup and the specific skills, knowledge, experience, and perspectives represented by each Manager and nominee. An increased focus on director independence would help ensure that Managers have the appropriate incentives to perform the Board's functions and fulfill its responsibilities. Moreover, the addition of a Nominating Committee to ICC's governance structure will help ensure that ICC

³⁹ Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70806 (Oct. 13, 2016) (File No. S7-03-14) ("Standards for Covered Clearing Agencies").

⁴⁰ 17 CFR 240.17ad-25.

evaluates the independence and fitness of the persons proposed to be designated as Managers of the Board as required by Rule 17Ad-25 under the Exchange Act.⁴¹ Accordingly, the proposed changes are consistent with ensuring that ICC's board of directors contains members with the appropriate skills and incentives to discharge their duties.

In addition to establishing the Nominating Committee, the proposed changes also would establish the Nominating Committee's role, responsibilities, and composition. Pursuant to ICC's revised Operating Agreement, the Nominating Committee would have at least three members, a majority of which would be independent. The Nominating Committee would be responsible for evaluating and recommending individuals to be members of the Board. For each potential member of the Board, the Nominating Committee would produce a written evaluation of such person's independence and fitness for election as a Manager, based on the standards and pursuant to the process set forth in the Nominating Committee Charter. These changes would establish clear and direct lines of responsibility for the Nominating Committee.

Based on the foregoing, the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(2) under the Act.⁴²

C. Consistency with Rule 17Ad-25 under the Act

Rule 17Ad-25 requires, among other things, that covered clearing agencies establish a nominating committee, written evaluation process, fitness standards, and evaluation of the independence of nominees and directors.⁴³

⁴¹ 17 CFR 240.17ad-25.

⁴² 17 CFR 240.17Ad-22(e)(2).

⁴³ 17 CFR 240.17ad-25.

The amendments and revisions discussed above are consistent with the relevant provisions of Rule 17Ad-25(c), which provides that “[e]ach registered clearing agency must establish a nominating committee and a written evaluation process whereby such nominating committee shall evaluate nominees for serving as directors and evaluate the independence of nominees and directors.”⁴⁴ As stated, ICC’s proposed changes would add a new Nominating Committee to ICC’s Board, with the role of evaluating the independence and fitness of the persons proposed to be designated as members of the Board. The proposed changes would establish the Nominating Committee’s purpose, composition, authority, and responsibilities. As discussed above, ICC’s proposed changes also would amend the Playbook to establish specific additional relationships, as enumerated in Rule 17Ad-25,⁴⁵ that would disqualify a person from being an independent member of the Board.

Accordingly, based on the foregoing, the proposed rule change is consistent with the requirements of Rule 17Ad-25 under the Act.⁴⁶

V. Accelerated Approval of Proposed Rule Change

Under Section 19(b)(2) of the Act,⁴⁷ the Commission may approve a proposed rule change prior to the 30th day after the date of publication of notice of filing of the

⁴⁴ 17 CFR 240.17ad-25(c).

⁴⁵ 17 CFR 240.17ad-25.

⁴⁶ 17 CFR 240.17ad-25.

⁴⁷ 15 U.S.C. 78s(b)(2).

proposed rule change in the Federal Register if the Commission finds good cause for doing so.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁸ to approve the proposed rule change prior to the 30th day after the date of publication of notice of filing of the proposed rule change in the Federal Register. As discussed above, the proposed rule change would establish a Nominating Committee. The Nominating Committee would have at least three members, a majority of which would be independent. As further discussed above, the Nominating Committee would be responsible for evaluating and recommending individuals to be members of the Board. For each potential member of the Board, the Nominating Committee would produce a written evaluation of such person's independence and fitness for election as a Manager, based on the standards and pursuant to the process set forth in the Nominating Committee Charter.

Moreover, as discussed above, the proposed rule change would add to the list of relationships that disqualify a person from being an independent member of the Board. ICC currently has a list of relationships that disqualify a person from being considered independent, and the proposed rule change would add new, additional relationships to this list, based on the specific relationships enumerated in Rule 17Ad-25 under the Exchange Act.⁴⁹ For example, currently an individual that is employee of an ICE Group company is not considered independent. Under the proposed rule change, an individual

⁴⁸ 15 U.S.C. 78s(b)(2).

⁴⁹ 17 CFR 240.17ad-25.

that otherwise receives compensation from an ICE Group company would also not be considered independent.

Rule 17Ad-25 requires, among other things, that covered clearing agencies establish: a nominating committee; written evaluation process; fitness standards; and standards for the evaluation of the independence of nominees and directors.⁵⁰ The proposed rule change would establish a Nominating Committee, make the Nominating Committee responsible for evaluating and recommending individuals to be potential members of the Board, and augment ICC's existing independence standards to be consistent with Rule 17Ad-25.⁵¹ Based on the foregoing, and as discussed above, the proposed rule change is consistent with the requirements of Rule 17Ad-25 under the Act.⁵²

The compliance date for Rule 17Ad-25 generally is December 5, 2024.⁵³ Approving the proposed rule change on an accelerated basis will allow ICC to establish, among other things, a nominating committee and additional independence standards, by this compliance date. Accordingly, the Commission finds good cause to approve the proposed rule change on an accelerated basis prior to the 30th day after the date of publication of notice of filing of the proposed rule change in the Federal Register, pursuant to Section 19(b)(2) of the Act.⁵⁴

⁵⁰ 17 CFR 240.17ad-25.

⁵¹ 17 CFR 240.17ad-25.

⁵² 17 CFR 240.17ad-25.

⁵³ Securities Exchange Act Release No. 98959 (Nov. 16, 2023), 88 FR 84454 (Dec. 5, 2023) (File No. S7-21-22) (explaining that the compliance date for Rule 17Ad-25 is December 5, 2024, except that the compliance date for the independence requirements of the board and board committees in Rules 17Ad-25(b)(1), (c)(2), and (e) is December 5, 2025).

⁵⁴ 15 U.S.C. 78s(b)(2).

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, Sections 17A(b)(3)(A) and (F) of the Act⁵⁵ and Rules 17Ad-22(e)(2) and 17Ad-25.⁵⁶

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-ICC-2024-010) be, and hereby is, approved on an accelerated basis.⁵⁷

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Sherry R. Haywood,

Assistant Secretary.

⁵⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁶ 17 CFR 240.17Ad-22(e)(2) and 17 CFR 240.17ad-25.

⁵⁷ In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵⁸ 17 CFR 200.30-3(a)(12).