



**Application to the Ontario Securities Commission
for Exemption from Recognition as a Clearing Agency in Ontario**

ICE Clear Credit LLC

October 8, 2013

Responses to Criteria for Recognition and Exemption from Recognition as a Clearing Agency

October 8, 2013

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

Dear Sir/Madam:

Re: ICE Clear Credit LLC—Application for Exemption from Recognition as a clearing agency in Ontario

This application is filed with the Ontario Securities Commission (OSC) by ICE Clear Credit LLC (ICC), seeking the following relief:

An order, pursuant to section 147 of *The Securities Act* (Ontario) (the OSA), exempting ICE Clear Credit LLC from the requirement to be recognized by the OSC as a clearing agency pursuant to subsection 21.2(0.1) of the OSA.

Approval Criteria

OSC Staff has prescribed criteria that it will apply when considering applications for recognition or exemption from recognition by clearing agencies under subsection 21.2(0.1) of the OSA, which criteria is contained in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*. This application follows those criteria.

Part I: Introduction

1. Application
2. Legal and ownership structure
3. Regulatory Status
4. ICC's Clearing Initiatives

Part II: Criteria for Recognition and Exemption from Recognition as a Clearing Agency

1. Foreign Clearing Agency Response
 - A. Requirements imposed on ICC by the CFTC and SEC
 - B. Description of how CFTC and SEC oversight of ICC ensures ongoing compliance with the criteria

Part III: Application of Approval Criteria to the Clearing House

1. Governance
2. Fees
3. Access
4. Rules and Rulemaking
5. Due Process
6. Risk Management
7. Systems and Technology
8. Financial Viability and Reporting
9. Operational Reliability
10. Protection of Assets
11. Outsourcing
12. Information Sharing and Regulatory Cooperation

Part IV: Submissions

Table of Contents

KEY TERMS & ABBREVIATIONS.....4

PART I: INTRODUCTION.....4

1.1 APPLICATION4

1.2 LEGAL AND OWNERSHIP STRUCTURE4

1.3 REGULATORY STATUS5

1.4 ICC’S CLEARING INITIATIVES.....6

PART II: CRITERIA FOR EXEMPTION FROM RECOGNITION AS A FOREIGN CLEARING AGENCY6

2.1 ICE CLEAR CREDIT RESPONSE TO APPENDIX A TO OSC STAFF NOTICE 24-7026

PART III: APPLICATION OF APPROVAL CRITERIA TO THE CLEARING HOUSE.....12

3.1 GOVERNANCE12

3.2 FEES.....19

3.3 ACCESS.....19

3.4 RULES AND RULEMAKING.....22

3.5 DUE PROCESS25

3.6 RISK MANAGEMENT26

3.7 SYSTEMS AND TECHNOLOGY35

3.8 FINANCIAL VIABILITY AND REPORTING.....40

3.9 OPERATIONAL RELIABILITY.....42

3.10 PROTECTION OF ASSETS.....42

3.11 OUTSOURCING44

3.12 INFORMATION SHARING AND REGULATORY COOPERATION44

PART IV: SUBMISSIONS45

Key Terms & Abbreviations

Abbreviation or Term	Full Title
BD	Broker Dealer
CEA	United States Commodity Exchange Act
CDS	Credit Default Swaps
CFTC	United States Commodity Futures Trading Commission
Clearing Participant	Clearing participant of ICC
DCO	Derivatives Clearing Organization
DFA	Dodd-Frank Wall Street Reform and Consumer Protection Act
FCM	Futures Commission Merchant
GF	ICC Guaranty Fund
ICE	IntercontinentalExchange, Inc.
IM	Initial Margin
Rules	ICC Rules
SEA	United States Securities Exchange Act of 1934
SEC	United States Securities and Exchange Commission
SCA	Securities Clearing Agency
SRO	Self-Regulatory Organization

Part I: Introduction

1.1 Application

ICE Clear Credit LLC (ICC or clearing house) submits this Application to the Ontario Securities Commission (OSC) to obtain the following relief:

An order, pursuant to section 147 of The Securities Act (Ontario) (OSA), exempting ICC from the requirement to be recognized by the OSC as a clearing agency pursuant to subsection 21.2(0.1) of the OSA.

Pursuant to subsection 21.2(0.1) of the OSA and set forth in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*, OSC Staff has prescribed criteria that it will apply when considering applications for recognition or exemption from recognition by clearing agencies. This Application provides responses to these criteria.

1.2 Legal and Ownership Structure

ICC is a limited liability company organized under the laws of the state of Delaware in the United States. ICC is headquartered at 353 N. Clark Street, Suite 3100, Chicago, Illinois 60654, United States and its primary place of business is the United States.

ICC is a wholly-owned subsidiary of ICE U.S. Holding Company L.P. (the ICC Parent) which in turn is a wholly-owned subsidiary of IntercontinentalExchange, Inc. (ICE), a publicly traded company listed on the New York Stock Exchange. ICE operates three regulated futures exchanges: ICE Futures Canada, ICE Futures Europe and ICE Futures U.S.¹ In addition to ICC, ICE owns and operates four clearing houses: ICE Clear Canada, a recognized clearing house located in Winnipeg, Manitoba that serves the markets of ICE Futures Canada; ICE Clear U.S., a CFTC-regulated DCO located in New York and serving the markets of ICE Futures U.S.; ICE Clear Europe, a Recognized Clearing house located in London that

¹ ICE Futures Canada, ICE Futures Europe and ICE Futures U.S., pursuant to section 147 of the OSA, are respectively exempt from the requirement to be recognised as exchanges under section 21 of the OSA.

services ICE Futures Europe and operates as ICE's European CDS clearing house; and The Clearing Corporation, a CFTC-regulated DCO. The Clearing Corporation (TCC) is also a wholly-owned subsidiary of the ICC Parent. ICC has arrangements in place for certain functions to be performed on its behalf by its affiliate, TCC, and its ultimate parent, ICE. The services covered generally include intra-group services supporting the clearing operations of ICC (*i.e.*, operational staff and IT), and other ancillary services. Currently, ICC and TCC operate seamlessly and have consistent senior management.

The ICC Board, the governing body of ICC, has eleven members. Seven members of the ICC Board are appointed by the ICC Parent. The ICC Parent's representatives include three members of ICE management, and four members of ICE's Board of Directors (ICE Board) who are independent. The additional four members of the ICC Board are designated by the ICC Risk Committee, two are independent and two need not be independent. All ICC Board members are ultimately elected by the ICC Parent annually. The ICC Board has full responsibility for the operations of ICC and approves ICC's initiatives without any requirements for approval from the ICC Parent or ICE. Please see section 3.1(c) below for further details on the composition of the Board.

1.3 Regulatory Status

ICC was launched in March 2009 as ICE Trust U.S. LLC and was regulated as a limited purpose limited liability trust company by the New York State Banking Department and the Board of Governors of the Federal Reserve System. On July 16, 2011, in accordance with Section 725 and 763 of the DFA, the clearing house became a CFTC-registered DCO and a SEC-registered securities clearing agency. ICC converted to a Delaware limited liability company and changed its name to ICE Clear Credit LLC.

As a DCO, ICC is subject to regulatory supervision by the CFTC, a U.S. federal regulatory agency. The CFTC reviews, assess and enforces a DCO's adherence to the CEA and the regulations promulgated thereunder on an ongoing basis, including but not limited to, the DCO's compliance with "Core Principles" relating to financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement and system safeguards. ICC is subject to ongoing examination and inspection by the CFTC.

Additionally, ICC is a SCA as defined in the SEA. Accordingly, ICC is regulated by the SEC, a federal regulatory agency that reviews, assesses and enforces a clearing agency's adherence to the SEA and the regulations promulgated thereunder on an ongoing basis, including but not limited to, the clearing agency's compliance relating to risk management, participant access, records of financial resources and audited financial statements and minimum operating standards. ICC has frequent contact with the SEC, which includes regular reporting as well as reporting that arises on an "as requested" basis.

ICC's regulatory oversight by the CFTC and SEC allows ICC the ability to clear the following products: North American CDS Index contracts, European CDS Index contracts, North American and European CDS Single Name contracts, Emerging Markets CDS Index contracts and Latin American Sovereign Single Name contracts (collectively, the Clearing Products). Regulation by both the CFTC and the SEC is necessary due to the regulatory status of CDS. ICC's index CDS products constitute "Commodity-Based Swaps" that are subject to the jurisdiction of the CFTC while ICC's single name CDS products constitute "Security-Based Swaps" that are subject to the jurisdiction of the SEC.

On July 18, 2012, ICC was designated as a systemically important financial market utility (SIFMU, a.k.a. systemically important derivatives clearing organization (SIDCO)) by the Financial Stability Oversight Council (FSOC). SIFMUs receive increased oversight by regulators including the Board of Governors of the Federal Reserve System.

1.4 ICC's Clearing Initiatives

ICC launched the clearing of iTraxx Index contracts on February 25, 2013 and intends to launch European Single Name contracts at a later date. At the current time, ICC has no specific plans in relation to Canadian Dollar contracts or Canadian government bonds (Federal or provincial.)

Further information on ICC can be found at: www.theice.com/clear_credit.jhtml.

1.4.1 Participation of Canadian resident participants in clearing arrangements at ICC

ICC does not maintain offices or other physical installations in Ontario or any other Canadian province or territory and does not intend to open an office or to establish any physical installations in Ontario or elsewhere in Canada, at this time. As noted before, ICE operates ICE Futures Canada and ICE Clear Canada, wholly-owned subsidiaries in Winnipeg, Manitoba. ICE Clear Canada pursuant to section 147 of the OSA is exempt from the requirement to be recognised as a clearing agency under subsection 21.2(0.1) of the OSA. ICC is willing to extend Clearing Participant status to any Canadian firms as long as they satisfy the application requirements set forth in the Rules. ICC offers clearing services to foreign Clearing Participants for proprietary (house) positions. Pursuant to CFTC Regulations, ICC client clearing is available through U.S. based FCMs/BDs. As of March 2013, one Ontario-based bank, The Bank of Nova Scotia, is a Clearing Participant.

Part II: Criteria for Exemption from Recognition as a Foreign Clearing Agency

2.1 ICE Clear Credit Response to Appendix A to OSC Staff Notice 24-702

Appendix A to OSC Staff Notice 24-702 instructs ICC to describe the requirements that are imposed by a foreign regulator in the clearing agency's jurisdiction and describe how the oversight of the foreign clearing agency by the foreign regulator ensures ongoing compliance with the criteria.

2.1.1 Requirements imposed on ICC by CFTC and SEC

Please find below a list of the main statutes and regulations relevant to ICC in the United States:

- The DFA, which can be found at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>
- The CEA, as amended, and the regulations promulgated thereunder, which can be found at: www.ag.senate.gov/download/commodity-exchange-act and <http://www.ecfr.gov>
- The SEA, as amended, and the regulations promulgated thereunder, which can be found at: <http://www.sec.gov/about/laws/sea34.pdf> and <http://www.ecfr.gov>

2.1.2 Description of how CFTC and SEC oversight ensure ongoing compliance with the criteria

2.1.2.1 Oversight by the CFTC

The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility for DCOs. The CFTC has been designated by the FSOC as ICC's primary regulator. The CFTC monitors clearing at ICC and receives from ICC routine reports on various different cycles and event specific reports related to, among other things, significant changes to the financial profiles of ICC and/or its Clearing Participants. The CFTC conducts periodic on-site examinations and holds regularly scheduled bimonthly meetings with ICC representatives.

The CFTC has seven major operating units. The CFTC's Division of Clearing and Risk, the main operating unit examining and overseeing ICC, interacts directly with ICC. The Division of Clearing and Risk oversees DCOs, the clearing of swaps, futures, and options on futures, and market participants that may pose risk to the clearing process. The oversight program is designed to assure that DCOs, DCO clearing participants, other market participants that may pose risk to the clearing process, and the clearing of swaps, futures, and options on futures are in compliance with the CEA and CFTC regulations, including requirements imposed by the DFA. Division staff develop regulations, orders, and guidance on issues pertaining to DCOs; review DCO applications and rule submissions and make recommendations to the Commission; make determinations and recommendations to the Commission as to which types of swaps should be cleared, as well as to the initial eligibility or continuing qualification of a DCO to clear swaps; assess compliance by DCOs with the CEA and Commission regulations, including examining systemically important DCOs at least once a year; and conduct risk assessment and financial surveillance through the use of risk assessment tools, including automated systems to gather and analyze financial information, to identify, quantify, and monitor the risks posed by DCOs, clearing members, and market participants and its financial impact.

ICC is required to provide information about it and its activities to the CFTC pursuant to Section 5c(c) of the CEA and Parts 39 and 40 of the CFTC Regulations. Parts 39 and 40 of the CFTC Regulations require that any changes to ICC's rules, including interpretations or resolutions, must be either certified to the CFTC as being in compliance with the CEA and CFTC Regulations or submitted to the CFTC for approval. The CFTC may notify a DCO that the proposed change does not comply with the CEA or CFTC regulations and may require it to take action to comply with the law.² Unless otherwise prohibited by CFTC Part 40, a clearing house can self-certify rule changes to the CFTC. ICC must certify that the rule change does not violate the CEA or CFTC Regulations. Self-certification allows ICC to put a rule into effect after a ten business day period. Other rule changes that a DCO wants to submit to the CFTC, or is required to submit to the CFTC, for approval must be done pursuant to Part 40 of the CFTC Regulations.

The CFTC may investigate any action of ICC, alter or supplement the ICC Rules, suspend or revoke its registration, impose fines for violations of the CEA or CFTC Regulations and direct ICC to take whatever action the CFTC determines is necessary to maintain or restore orderly trading in the event of an emergency. In addition, any emergency action of ICC must be immediately reported to the CFTC.³

As a registered DCO, ICC is required to comply with the DCO Core Principles set forth in Section 5b(c)(2) of the CEA as interpreted and implemented by the CFTC in CFTC Regulation Part 39 (Part 39),⁴ which was amended by the CFTC to implement certain provisions of the DFA and to establish regulatory standards for compliance with the DCO Core Principles. Certain Part 39 requirements will not become effective until later in 2013.

The eighteen DCO Core Principles are as follows:

I. Core Principle A (Compliance with Core Principles): A DCO is required to comply with the DCO Core Principles and any requirement that the CFTC may impose by rule or regulation. A DCO shall have reasonable discretion in establishing the manner of such compliance. Additionally, each DCO is required to employ a Chief Compliance Officer whose duty it is to review of the DCO's compliance with the Core

² See CFTC Regulation 40.5 which describes the CFTC procedure whereby proposed changes to rules can be voluntarily submitted to the CFTC for CFTC approval, CFTC Regulation 40.6 which prescribes the CFTC procedure for self-certification of rules changes and CFTC Regulation 40.10 which prescribes the special certification procedures for submission of rules by systemically important DCOs.

³ See Section 8a of the CEA.

⁴ 17 CFR. § 39 (2012).

Principles, establish written policies and procedures designed to prevent violations of the Act and prepare a written report for submission to the CFTC regarding the DCO's compliance with the Core Principles. Section 39.10 of Part 39 codifies these requirements and establishes minimum requirements that a DCO must meet in order to comply with DCO Core Principle A.

II. Core Principle B (Financial Resources): A DCO is required to possess financial resources that, at a minimum, exceed the total amount that would enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions and to cover its operating costs for a period one year, as calculated on a rolling basis. Section 39.11 of Part 39 codifies these requirements and establishes minimum requirements that a DCO must meet in order to comply with DCO Core Principle B.

III. Core Principle C (Participant and Product Eligibility): A DCO is required to establish appropriate admission and continuing eligibility standards for members of, and participants in, the DCO, including sufficient financial resources and operational capacity to meet the obligations arising from participation. Core Principle C further requires that such participation and membership requirements be objective, be publicly disclosed, and permit fair and open access. Core Principle C also requires that each DCO establish and implement procedures to verify compliance with each participation and membership requirement, on an ongoing basis. Core Principle C also requires that each DCO establish appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing. Section 39.12 of Part 39 codifies these requirements and establishes minimum requirements that a DCO must meet in order to comply with DCO Core Principle C.

IV. Core Principle D (Risk Management): A DCO is required to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures. It further requires each DCO to measure its credit exposures to each clearing member not less than once during each business day and to monitor each such exposure periodically during the business day. Core Principle D also requires each DCO to limit its exposure to potential losses from defaults by clearing members through margin requirements and other risk control mechanisms, to ensure that its operations would not be disrupted and that non-defaulting clearing members would not be exposed to losses that non-defaulting clearing members cannot anticipate or control. Finally, Core Principle D provides that a DCO must require margin from each clearing member sufficient to cover potential exposures in normal market conditions and that each model and parameter used in setting such margin requirements must be risk-based and reviewed on a regular basis. Section 39.13 of Part 39 establishes the requirements that a DCO would have to meet in order to comply with DCO Core Principle D.

V. Core Principle E (Settlement Procedures): A DCO is required to (1) complete money settlements on a timely basis, but not less frequently than once each business day; (2) employ money settlement arrangements to eliminate or strictly limit its exposure to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements); (3) ensure that money settlements are final when effected; (4) maintain an accurate record of the flow of funds associated with money settlements; (5) possess the ability to comply with the terms and conditions of any permitted netting or offset arrangement with another clearing organization; (6) establish rules that clearly state each obligation of the DCO with respect to physical deliveries; and (7) ensure that it identifies and manages each risk arising from any of its obligations with respect to physical deliveries. Section 39.14 of Part 39 establishes the requirements that a DCO would have to meet in order to comply with DCO Core Principle E.

VI. Core Principle F (Treatment of Funds): A DCO is required to (i) establish standards and procedures that are designed to protect and ensure the safety of its clearing members' funds and assets; (ii) hold such funds and assets in a manner by which to minimize the risk of loss or of delay in the DCO's

access to the assets and funds; and (iii) only invest such funds and assets in instruments with minimal credit, market, and liquidity risks. Section 39.15 of Part 39 establishes the requirements that a DCO would have to meet in order to comply with DCO Core Principle F.

VII. Core Principle G (Default Rules and Procedures): A DCO is required to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or otherwise default on their obligations to the DCO. In addition, DCO Core Principle G requires each DCO to clearly state its default procedures, make its default rules publicly available, and ensure that it may take timely action to contain losses and liquidity pressures and to continue meeting its obligations. Section 39.16 of Part 39 establishes requirements that a DCO would have to meet in order to comply with DCO Core Principle G.

VIII. Core Principle H (Rule Enforcement): A DCO is required to (1) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and for the resolution of disputes; and (2) have the authority and ability to discipline, limit, suspend or terminate a member's or participant's activities for violations of its rules. Section 39.17 of Part 39 codifies the requirements of DCO Core Principle H and further requires a DCO to report the initiation of a rule enforcement action against a clearing member or the imposition of sanctions against a clearing member, no later than two business days after the DCO takes such action.

IX. Core Principle I (System Safeguards): DCO Core Principle I requires a DCO to establish and maintain a program of risk analysis and oversight that identifies and minimizes sources of operational risk through the development of appropriate controls and procedures, and automated systems that are reliable, secure and have adequate scalable capacity. DCO Core Principle I also requires that the emergency procedures, back-up facilities, and disaster recovery plans that a DCO is obligated to establish and maintain specifically allow for the timely recovery and resumption of the DCO's operations and the fulfillment of each obligation and responsibility of the DCO. Finally, DCO Core Principle I requires that a DCO periodically conduct tests to verify that the DCO's back-up resources are sufficient to ensure daily processing, clearing, and settlement. Section 39.18 of Part 39 codifies these requirements and delineates the minimum requirements a DCO would have to satisfy in order to comply with DCO Core Principle I.

X. Core Principle J (Reporting): A DCO is required to provide the Commission with all information that the CFTC determines to be necessary to conduct oversight of the DCO including daily, quarterly and annual reporting. Section 39.19 of Part 39 establishes the requirements a DCO would have to meet in order to comply with DCO Core Principle J, namely periodic reporting to the CFTC.

XI. Core Principle K (Recordkeeping): A DCO is required to maintain records of all activities related to the business of the DCO, in a form and manner that is acceptable to the CFTC and for a period of not less than five years. Section 39.20 of Part 39 establishes the requirements a DCO would have to meet in order to comply with DCO Core Principle K.

XII. Core Principle L (Public Information): A DCO is required to provide market participants sufficient information to enable them to identify and evaluate accurately the risks and costs associated with using the DCO's services. Specifically, a DCO is required to make available to market participants: information concerning the rules, operating and default procedures governing its clearing and settlement systems; and also to disclose publicly and to the CFTC the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; each clearing and other fee charged to members, the DCO's margin-setting methodology, daily settlement prices, and other matters relevant to participation in the DCO's clearing and settlement activities. Section 39.21 of Part 39 requires a DCO to provide market participants with sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO.

XIII. Core Principle M (Information Sharing): A DCO is required to enter into and abide by the terms of each appropriate and applicable domestic and international information-sharing agreement that it enters into and to use relevant information obtained under such agreements in carrying out its risk management program. Section 39.22 of Part 39 codifies the requirements of DCO Core Principle M.

XIV. Core Principle N (Antitrust Considerations): Unless appropriate to achieve the purposes of the CEA, the DCO is required to avoid (1) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (2) imposing any material anticompetitive burden on trading on the contract market. Section 39.23 of Part 39 codifies the requirements of DCO Core Principle N.

XV. Core Principle O (Governance Fitness Standards): The DFA added DCO Core Principle O, which provides that each DCO must (1) establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants and (2) establish and enforce appropriate fitness standards for (A) directors, (B) members of any disciplinary committee, (C) members of the DCO, (D) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (E) any party affiliated with any entity mentioned above. As of the submission of this application, the CFTC's proposed regulations implementing DCO Core Principle O have yet to be finalized. Section 39.24 of Part 39 will codify the requirements of DCO Core Principle O.

XVI. Core Principle P (Conflicts of Interest): The DFA added DCO Core Principle P, which requires a DCO to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO and to establish a process for resolving such conflicts of interest. As of the submission of this Application, the CFTC's proposed regulations implementing DCO Core Principle P have yet to be finalized. Section 39.25 of Part 39 will codify the requirements of DCO Core Principle P.

XVII. Core Principle Q (Composition of Governing Boards): A DCO is required to ensure that the composition of the governing board or committee of the DCO includes market participants. The ICC Board of Managers and committees include market participants. Section 39.26 of Part 39 will codify the requirements of DCO Core Principle Q.

XVIII. Core Principle R (Legal Risk): The DFA sets forth new DCO Core Principle R, which requires a DCO to have a well-founded, transparent, and enforceable legal framework for each aspect of the DCO's activities. Section 39.27 of Part 39 sets forth the required elements of such a legal framework.

2.1.2.2 Oversight by the SEC

While the CFTC has been designated by the FSOC as ICC's primary regulator, ICC is also registered with the SEC as a clearing agency and interacts directly with the SEC's Division of Trading and Markets (formerly the Division of Market Regulation.) The Division of Trading and Markets establishes and maintains standards for fair, orderly, and efficient markets, and it regulates the major securities market participants, including broker-dealers, SROs (including stock exchanges and clearing agencies), and transfer agents. The SEC's regulation of clearing agencies is pursuant to Section 17A of the SEA. The SEC monitors clearing at ICC and receives from ICC routine reports on various different cycles. The SEC conducts periodic on-site examinations and holds regularly scheduled monthly meetings with ICC representatives.

I. Section 17A(b)(3)(A) of the SEA requires a clearing agency to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivatives contracts, safeguard securities and funds in its custody or control, and enforce compliance by its participants with the rules of the clearing.

II. Section 17A(b)(3)(B) of the SEA describes the entities that may become participants of a clearing agency and Section 17A(b)(3)(C) of the SEA requires that the clearing agency provide fair representation to participants. A clearing agency may condition participation on standards of financial responsibility, operational capacity, experience, and competency under Section 17A(b)(3)(4)(B) of the SEA. Section 17A(b)(3)(D), and (E) of the SEA require that a clearing agency assure an equitable allocation of fees, and that a clearing agency does not impose fees for services rendered by participants.

III. Section 17A(b)(3)(F) of the SEA requires that the rules of the clearing agency are designed to (i) promote the prompt and accurate clearance and settlement of securities transactions and derivatives contracts, (ii) promote the safeguarding of securities and funds in its custody or control, and (iii) foster cooperation and coordination with persons engaged in the clearance and settlement of securities and derivatives transactions, and (iv) in general protect investors and the public interest.

IV. Section 17A(b)(3)(G) of the SEA 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 by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction. Further, pursuant to Section 17A(b)(3)(H) of the SEA, the rules of the clearing agency must provide a fair procedure with respect to the disciplining of participants, the denial of participation, and the prohibition or limitation by the clearing agency of any person with respect to access to the services offered by the clearing agency.

V. Section 17A(b)(3)(I) of the SEA requires that the rules of the clearing agency do not impose any burden on competition not necessary or appropriate in the furtherance of the purpose of the SEA.

VI. Section 17A(b)(5)(A) of the SEA sets our further requirements with respect to disciplinary proceedings. In any proceeding by a registered clearing agency to determine whether a participant should be disciplined, the clearing agency must bring specific charges, provide notification of such charges to the participant, give the participant an opportunity to defend against such charges, and keep a record of the proceedings.

A. A determination to impose a disciplinary sanction must be supported by a statement setting forth:

1. Any act in which the participant was found to have engaged or which the participant was found to have omitted;
2. The specific provisions of the rules of the clearing agency that were deemed to be violated; and
3. The sanction imposed and the reasons for such sanctions.

B. Section 17A(b)(5)(B) of the SEA sets out certain requirements with respect to the denial of access to the clearing agency's services. In any proceeding by a registered clearing agency to determine whether a person shall be denied participation, prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency must notify such person of, and give him an opportunity to be heard upon the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency must be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

VII. Section 19(b) of the SEA, corresponding SEC Rules 19b-4, 19b-5 and 19b-7 require that proposed changes to the rules of a clearing agency be submitted to the SEC for approval. Within 45 days of the date of publication of notice of the filing of a proposed rule change, or within such longer period as the SEC may designate up to 90 days of such date if it finds such longer period to be appropriate or as to

which the clearing agency consents, the SEC must approve the proposed rule or institute proceedings to determine whether the proposed rule should be disapproved.

VIII. Pursuant to Section 19 of the SEA, the SEC or other appropriate regulator, may suspend or revoke the registration of a clearing agency, or impose other sanctions, including limiting its activities, subject to opportunity for notice and hearing, if the SEC or other appropriate regulator finds that the clearing agency has violated or is unable to comply with applicable provisions of the SEA and the rules thereunder.

On March 3, 2011, the SEC proposed seven new rules and an amendment to Section 17A of the SEA, including security-based swap clearing agencies. The proposed rules are designed to enhance the regulatory framework for the supervision of clearing agencies. Specifically, the SEC proposed to: (1) require dissemination of pricing and valuation information by security-based swap clearing agencies that perform central counterparty services; (2) require all clearing agencies to have adequate safeguards and procedures to protect the confidentiality of trading information of clearing agency participants; (3) exempt certain security-based swap dealers and security-based swap execution facilities from the definition of a clearing agency; (4) amend rules concerning registration of clearing agencies to account for security-based swap clearing agencies and to make other technical changes; (5) require all clearing agencies to have procedures that identify and address conflicts of interest; (6) require standards for all members of clearing agency boards of directors or committees; and (7) require all clearing agencies to designate a chief compliance officer.

The SEC finalized the first set of minimum standards for all clearing agencies under Rules 17Ad-22(b),(c), and (d) in January 2013. The rules prescribe risk management standards and practices, such as measuring credit exposure to participants at least once per day, using margin requirements to limit credit exposure to participants, maintaining sufficient financial resources to withstand a default by the two participants with the largest exposures to the clearinghouse, and an annual validation of the risk models. In addition, ICC must fulfill the requirements under Rule 17Ad-22(c) by maintaining a record of financial resources to meet a default of the two largest clearing participants, and posting ICC's annual audited financial report.

The standards within Rule 17Ad-22(d) require ICC to: provide for a well-founded, transparent, and enforceable legal framework; monitor and enforce financial resource and operational capacity requirements; holds assets in a manner that minimizes risk of loss or delay in accessing them; identify sources of operational risk; employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risk; be cost-effective; have governance arrangements that are clear and transparent; provide market participants with sufficient information; make aspects of clearing agency's default procedures publicly available; ensure end of day settlement or intraday settlement, when necessary; and state to participants the clearing agency's obligations with respect to physical deliveries.

Part III: Application of Approval Criteria to the Clearing House

In order for a clearing agency to be recognized, or exempted from recognition, by the OSC, the clearing agency must describe how it meets each criterion set forth in Appendix A to OSC Staff Notice 24-702. Where a specific criterion is not relevant because of the nature or scope of the clearing agency's activities, the clearing agency shall explain in reasonable detail why it is not relevant.

3.1 Governance

ICC's governance structure and governance arrangements ensure:

(a) *Effective oversight of ICC;*

ICC has established an organizational and governance structure that provides for effective and efficient oversight of ICC. As a Delaware limited liability company, ICC's corporate governance arrangements are set forth in ICC's Operating Agreement. In addition to the Rules, the Operating Agreement provides ICC's formal corporate decision-making powers and procedures and gives the ICC Board of Managers (Board) the sole responsibility for the management of the operations of ICC. The Operating Agreement and the Rules help ensure the integrity and competency of the Board.

The Board, as the governing body of ICC, has eleven members. Seven members of the ICC Board are appointed by the ICC Parent. The ICC Parent's representatives include three members of ICE management, and four members of ICE's Board of Directors (ICE Board) who are independent. Four members of the ICC Board are designated by the ICC Risk Committee, two are independent and two need not be independent. All ICC Board members are ultimately elected by the ICC Parent. This process is completed by written consent of the ICC Parent Board annually in March and as needed if there are any changes to the composition of the ICC Board. Please see section (c) below for further details on the composition of the Board.

Direct reporting lines from each of the relevant functions of ICC to a particular member of the Board have been established, thus providing the Board with effective control and oversight of the operating of such relevant functions. According to the Operating Agreement, Board Members may be removed by the ICC Parent at any time with or without cause. No other person in ICE's group of companies has the right to appoint or remove members of the governing body or other key individuals.

In addition to the Board, ICC has an Audit Committee and Business Conduct Committee (BCC) as well as six advisory committees that are designed to provide industry expertise to ICC. Those committees include the Risk Committee, Risk Management Subcommittee, Trading Advisory Committee, Advisory Committee, CDS Default Committee and Regional CDS Committees. ICC also has a Participant Review Committee (PRC) which is comprised of ICC senior management.

Further, ICC is required to have employees or agents who are denominated as officers. The Officers are obliged at all times to be subject to the supervision and control of the Board and to conform to policies and programs established by the Board, and the scope of the Officers' authority must be limited to such policies and programs. The acts of the Officers will bind ICC when within the scope of the authority of such Officers. Except as otherwise authorized by the Board or the CEO, no other person may have authority to bind or act for, or assume any obligations or responsibilities on behalf of, ICC. The Officers are obliged to keep the Board informed as to all matters of concern to ICC.

(b) *The clearing agency's activities are in keeping with its public interest mandate;*

ICC is committed to operating a clearing house in accordance with industry best practices and in accordance with public interest. ICC strives to ensure the integrity of its business and protect the stability of the financial system. ICC's rules, policies, procedures and activities are designed to fulfill the public interest mandate and provide a reliable clearing framework for market participants.

(c) *Fair, meaningful and diverse representation on the governing body and any committees of the Board, including a reasonable proportion of independent directors;*

The Board, which generally meets on a quarterly basis, consists of eleven Managers, six of whom are independent, and is constituted as follows:

- I. Four Managers are elected by the ICC Parent and are and will at all times be independent in accordance with the requirements of each of the NYSE listing standards, the SEA, and ICE's Board of Director Governance Principles (such four Managers, the ICC Parent Independent Managers). Pursuant to the Rules and the ICC Operating Agreement, the ICC Parent (A) will consult in good faith with the Risk Committee prior to electing any ICC Parent Independent Manager with respect to the skills and experience of such person and (B) will ensure that in no event an ICC Parent Independent Manager is a director, officer or employee of a Clearing Participant;
- II. Three additional Managers are elected by the ICC Parent (the ICC Parent Non-Independent Managers). Pursuant to the rules and Operating Agreement, the ICC Parent will consult in good faith with the Risk Committee prior to electing any ICC Parent Non-Independent Manager with respect to the skills and experience of such person;
- III. Two additional Managers that are and will at all times be independent in accordance with the requirements of each of the NYSE listing standards, the SEA, and ICE's Board of Director Governance Principles as would be applicable to the Clearing Participants if they were listed on the NYSE (such two Managers, the Risk Committee Independent Managers), and who are reasonably acceptable to the Board, are elected by the ICC Parent to the Board. The Risk Committee Independent Managers are designated to the ICC Parent in writing by the Risk Committee as set forth in the Rules. In practice, the Risk Committee has worked diligently to designate Risk Committee Independent Managers that have CDS experience and the ICC Parent has always respected the Risk Committee's designations; and
- IV. Two additional Managers (the Risk Committee Non-Independent Managers) that are designated by the Risk Committee as set forth in Rule 508(a) (preferably employed by a Participant, have broad experience in corporate governance and financial markets, etc.), and are reasonably acceptable to the Board, are elected by the ICC Parent to the Board. In practice, the Risk Committee Non-Independent Managers have been Clearing Participant representatives and the ICC Parent has always respected the Risk Committee's designations.

NYSE listing standards require each independent director (1) have no material relationship with the company, (2) to not have been an employee, or had an immediate family member be an executive officer, of the company within the last three years, (3) to not have received, or had an immediate family member receive, more than \$100,000 per year in compensation from the company, other than director/committee fees and pension or other forms of deferred compensation, within the last 3 years, (4) to not have been affiliated with or employed by, or had an immediate family member be affiliated with or employed by, a present or former internal or external auditor within the last 3 years, (5) to not have been employed, or had an immediate family member employed, as an executive officer of another company within the last 3 years where any of the listed company's present executives serve on that other company's compensation committee, and (6) to not have been an employee or executive officer, or had an immediate family member be an employee or executive officer, of a company within the last 3 years where such company makes payments to, or receives payments from, the listed company in excess of the greater of \$1 million or 2% of the other company's consolidated gross revenues during any fiscal year. As noted before, ICC has committees in addition to the Board as described below.

Audit Committee

The Audit Committee, which meets at least quarterly, provides the Board with an independent opinion and 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. ICC relies on the internal audit function of its ultimate parent company, ICE. The Audit Committee consists of at least three members who are either ICC Parent Independent Managers or Risk Committee Independent Managers. Currently, the Audit Committee consists of three members all of

whom are ICC Parent Independent Managers. The Audit Committee has the following major responsibilities:

- I. The performance of the internal controls, internal audit function, external auditors and annual financial reporting of ICC;
- II. Ensure the integrity of the ICC's financial statements;
- III. Ensure ICC's compliance with legal and regulatory requirements;
- IV. Confirm the external auditors' qualifications and independence; and
- V. Any other matters related to ICC's financial statements or accounting policies and any legal matter that could have a significant impact on ICC's financial statements and compliance programs and procedures which are delegated by the Board of the ICC to the Audit Committee.

Risk Committee

The Risk Committee is designed to provide industry expertise to the Board and to provide a source of input on risk issues for the members, whose capital backs positions at ICC.

- I. The Risk Committee is comprised of twelve members: nine representatives of Clearing Participants and three appointed by ICC.
- II. Each member of the Risk Committee shall have risk management experience and expertise and shall be subject to the approval of the Board, such approval not to be unreasonably withheld, conditioned or delayed (ICC Rule 503(a)(ii)).
- III. As the Risk Committee is an advisory committee, the Board is not bound to accept the Risk Committee's recommendations, and the Board has the ultimate authority to decide matters.

Risk Management Subcommittee

The Risk Management Subcommittee makes recommendations to the Risk Committee and Board before ICC takes action with respect to product eligibility for clearing; standards and requirements for initial and continuing Clearing Participant eligibility; and approval or denial of (or reviewing approvals or denials of) Clearing Participant applications. The Risk Management Subcommittee is comprised of two independent Board members, two Clearing Participant members of the Risk Committee representatives and one member of the Advisory Committee.

Participant Review Committee

The PRC is a multi-disciplinary committee of ICC Management formed for the explicit purpose of: (1) completing the due diligence related to the approval of applicants for Clearing Participant status, and (2) monitoring to confirm that Clearing Participants maintain good standing. The PRC meets on at least a monthly basis to execute these responsibilities.

The PRC reviews Clearing Participant membership applications (including supplemental materials) to determine if the applicant meets the Clearing Participant criteria set forth in the ICC Rules. PRC's membership recommendations are referred to the Risk Management Subcommittee and Risk Committee for review and all recommendations are then proposed to the Board of ICC for their approval.

The PRC also monitors Clearing Participants' compliance with the standards and requirements of membership. Monitoring is based on materials submitted on a periodic basis. On a regular basis (to be determined no less than annually), the PRC reviews all Clearing Participants to monitor continued compliance with the Clearing Participant Requirements. This monitoring complements the daily and intra-day monitoring performed by the ICC Risk Department.

Advisory Committee

The Advisory Committee (commonly known as the Buyside Advisory Committee) is designed to allow the “buyside,” as ultimate users of ICC, to have input on issues related to ICC. The Advisory Committee is comprised of representatives of up to twelve major “buyside” firms along with two members of ICC management and an ICC Parent Independent Manager. The Advisory Committee proposes actions to both the ICC Board and the Risk Committee for consideration, as applicable. However, neither the ICC Board nor the Risk Committee are under any obligation to accept any proposal made by, or take any action proposed by, the Advisory Committee. The up to twelve “buyside” representatives are selected by ICC following consultation with the Risk Committee and are representatives of the customers of ICC Clearing Participants and are not Clearing Participants.

Regional CDS Committee

The Regional CDS Committee handles dispute resolutions with respect to cleared CDS (*e.g.*, determining whether a reference entity has met the requirements for default pursuant to the CDS in question.)

CDS Default Committee

The CDS Default Committee has a fiduciary responsibility to ICC during the execution of its default management procedures. Members of the CDS Default Committee are chosen from a list of Committee Eligible Clearing Participants who are approved by the Board. Three Committee Eligible Clearing Participants are chosen on a rotating basis and are responsible for assisting ICC staff’s management of ICC’s exposure due to a Clearing Participant’s default.

Members of the CDS Default Committee are seconded to ICC to execute hedges on or liquidate, as appropriate, the positions held by the defaulting Clearing Participant. The CDS Default Committee also assists ICC in determining and managing Minimum Target Prices for portfolios auctioned or allocated that are related to a default. In this capacity, they consult regarding necessary auction(s) as well as the process to allocate remaining positions to non-defaulting Clearing Participants.

Business Conduct Committee (BCC)

The BCC is responsible for responding to the need for and managing through the investigation of a Clearing Participant’s suspected rules violation. ICC management and the Risk Committee may refer potential rule violations to the BCC for investigation, and pursuant to ICC Rule 703, the BCC has the authority to request, receive, and review written reports with respect to the suspected violation. The BCC is comprised of the ICC Parent Independent Managers.

In the event the initial investigation determines that a violation may have occurred, the BCC has the authority to:

- I. identify additional investigation requirements for ICC staff to pursue;
- II. approve a negotiated settlement agreement with the Clearing Participant which may provide for a penalty other than that recommended by the relevant ICC staff;
- III. refer the matter to a formal hearing;
- IV. negotiate and enter into a written settlement with the Clearing Participant (with or without an admission of guilt) agreeing to:
 - A. a cease and desist order or a reprimand; and/or
 - B. a fine of up to twenty-five thousand dollars for each violation alleged plus the monetary value of any benefit received as a result of the alleged violation.

Trading Advisory Committee

The Trading Advisory Committee (TAC) is comprised of Clearing Participant representatives. ICC maintains the TAC to review and revise the spread widths that are used in the determination of end-of-day settlement prices. The TAC is also responsible for reviewing and recommending the default notional values and spread widths for currently traded products on at least a monthly basis. The TAC recommends the default notional values and spread widths for new products. The TAC's recommendations are subject to the approval of the ICC Chief Risk Officer (CRO) or President.

- (d) *A proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;*

Investors and market participants are protected by the regulations of the CFTC and SEC, as well as by the rules and operation of ICC and the Board. Specifically, Section 39.7 of Part 39 makes it unlawful for any person, directly or indirectly, in or in connection with the clearing of transactions by a DCO to cheat or defraud or attempt to cheat or defraud any person, willfully to make or cause to be made any false report, statement or record, or willfully to deceive or attempt to deceive any person by any means whatsoever. Additionally, several DCO Core Principles ensure the safe operation of a DCO and, in turn, clearing participants and other market participants. Please see DCO Core Principles, B, D, F, G, I and L.

ICC's governance structure supports a proper balance among the interests of owners and Clearing Participants. The Risk Committee, the Risk Management Subcommittee, CDS Default Committee and Trading Advisory Committee all include Clearing Participant representation to help ensure that Clearing Participant interests are met.

- (e) *the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;*

ICC has effective mechanisms in place to handle any conflicts of interest that may arise amongst investors and Clearing Participants. CFTC Regulation 1.69 requires that ICC maintain rules that have been approved by the CFTC to address the avoidance of conflicts of interest. The CFTC requires that ICC Rules provide that a Member of the ICC Board, disciplinary committees or oversight panels must abstain from deliberations and voting involving any matter in which he or she or his or her employer has an interest. Regulation 1.69 also requires that ICC have procedures for determining whether a Board or Committee Clearing Participant has a conflict, including disclosure of any potential conflict to ICC. Regulation 1.69 further requires ICC to document that the conflict determination procedures have been followed and the result of such determination.

Additionally, Core Principle P (Conflicts of Interest) requires ICC to establish and enforce rules to minimize conflicts of interest in the decision-making process and establish processes for resolving any such conflicts. This requirement regulates the extent to which ICC is able to make decisions without the undue influence of an ICC member, an interested party or trade group. Section 5b(i)(2)(C) of the CEA requires ICC's CCO to "resolve any conflicts of interest that may arise" in consultation with ICC's Board or other senior officer of ICC. This duty indicates that ICC's CCO is more than just an advisor to management and must have the ability to enforce compliance with the CEA and CFTC regulations. Section 5b(i)(2)(D) of the CEA requires ICC's CCO to "be responsible for administering each policy." ICC Rule 702 provides ICC's CCO with the necessary powers and duties to ensure compliance with the aforementioned Sections as well as CFTC regulations. ICC has made a number of rules to deal with potential conflicts of interest among board members made with a view to complying with these requirements.

Concurrently, the DFA amended the SEA to require ICC to appoint a Chief Compliance Officer (CCO). Under SEC proposed Rule 3Cj-1(b), ICC's CCO is required to: (1) report directly to the ICC Board or to a senior officer of ICC; (2) resolve any conflicts of interest that may arise; (3) be responsible for administering each policy and procedure that is required to be established pursuant to Section 3C of the SEA, (4) ensure compliance with the SEA and SEC rules and regulations; (5) establish policies and procedures for the prompt remediation of any compliance issues that he or she identifies; and (6) establish and follow appropriate procedures for the prompt handling of management response, remediation, retesting, and closing of non-compliance issues.

Internally, ICC has established an Employee Code of Conduct & Ethics, and Codes of Conduct & Ethics for Managers and for Committee Members in accordance with DCO Core Principle P (Conflicts of Interest). In addition, ICC reviews and utilizes a Conflicts of Interest Questionnaire.

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

All of the members of the ICC Board are over the age of majority and are of sound mind. All of the members of the Board have experience in the clearing services field, and are regarded in the market as being persons with integrity and competence. The ICC Board consists of 11 Managers designated either by the ICC Parent, after good faith consultation with the Risk Committee regarding the skills and experience of designees, or designated by the Risk Committee and reasonably acceptable to the existing ICC Board of Managers.

(g) there are appropriate qualifications, limitations of liability and indemnity provisions for directors and officers of the clearing agency.

Managers are elected annually at a meeting of the sole member of ICC, to be held during the first four months of each calendar year. All of the members of the ICC Board and ICC Officers are over the age of majority and are of sound mind. All of the members of the Board are regarded in the market as being persons with integrity and competence.

No Manager or Officer of ICC shall be obligated personally for any such debt, obligation or liability of ICC. To the fullest extent permitted by applicable law, ICC shall indemnify each Covered Person⁵ against, and hold each Covered Person harmless from, all claims, suits, judgments, losses, damages, fines or costs (including reasonable legal fees and expenses) arising out of or resulting from any breach of representation or warranty made by ICC or the breach of or failure to perform any agreement or covenant made by ICC. ICC shall indemnify any Manager or Officer for losses incurred by reason of any act or omission performed or omitted by such Manager or Officer in good faith on behalf of ICC and in a manner reasonably believed to be within the scope of authority of the Manager or Officer, with exceptions for gross negligence, bad faith, willful misconduct or knowing and intentional violation of the law.

ICC purchases and maintains insurance, in amounts and with coverage at least equal to those typically maintained by similarly-situated companies, on behalf of any Manager or Officer against any liabilities asserted against such Manager or Officer and incurred by such Manager or Officer in any such capacity, or arising out of such Manager or Officer's status as such, whether or not ICC would have the power to indemnify such Manager or Officer against such liability.

⁵A Covered Person includes any Director, Manager, or Officer of ICC.

3.2 Fees

3.2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

CFTC Core Principle L, “Public Information” requires that each DCO disclose to the Commission information concerning each clearing and other fees that the DCO charges members and participants. Accordingly, ICC provides its fee schedule on its website.⁶ Section 17A(b)(3)(D) of the SEA requires that a clearing agency assure an equitable allocation of fees. This fee schedule is equal for all Clearing Participants in order to promote fair and open access.

ICC believes that its fee schedule is in line with current market practice, which was confirmed by the CFTC’s approval of the fee schedule. These fees do not create unreasonable barriers to access because of their uniform application to all Clearing Participants.

3.2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

ICC’s fees for clearing transactions are determined by ICC’s executive team and approved by the Board. Fees are set out in ICC’s Clearing Fee Schedule circular, which is posted on ICC’s website. The ICC Clearing Fee Schedule is reviewed as needed.

3.3 Access

3.3.1 The clearing agency has appropriate written standards for access to its services.

ICC has transparent and non-discriminatory rules based on objective criteria, governing eligibility for ICC membership, which are available to the public on ICC’s website. Chapter 2 of the ICC Rulebook sets out the admission and eligibility standards of all Participants, all of which are designed to permit fair and open access while protecting ICC and its Clearing Participants.

Core Principle C (Participant and Product Eligibility) requires ICC, *inter alia*, to have appropriate admission and continuing eligibility standards for members and participants. The orderly functioning of the clearing facility is further ensured by ICC’s compliance with the following Core Principles: Core Principle D, which requires ICC to maintain appropriate risk management tools and procedures; Core Principle F, which requires ICC to maintain standards and procedures to protect the safety of participants’ funds; Core Principle G, which requires ICC to have rules and procedures designed to allow efficient, fair and safe management of events when participants become insolvent or otherwise default on their obligations to ICC; Core Principle H, which requires ICC to have adequate arrangements to effectively monitor and enforce its rules; and Core Principle I, which requires ICC to establish safeguards regarding the physical functioning of its systems.

The SEC has proposed Rule 17Ad-23, which would require all clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to protect the confidentiality of transaction information received by the clearing agency. Such transaction information may include trade data, position data, and any non-public personal information about a clearing agency participant or any of its participants’ customers. While Rule 17Ad-23 has yet to be finalized, ICC has established policies and procedures designed to protect confidential information by limiting and monitoring access to ICC systems.

⁶ Please see:

https://www.theice.com/publicdocs/clear_credit/circulars/ICE%20Clear%20Credit%20Fee%20Schedule%20Notice.pdf

The Rules set out the criteria and procedures for applicants to become Clearing Participants. An applicant may apply to be an ICC Clearing Participant for the purpose of clearing transactions under ICC's Operating Agreement, Rules, regulations, and other policies and procedures of ICC and all amendments and modifications thereto which may be adopted from time to time (collectively referred to as ICC's Policies). The eligibility requirements are set forth in Rule 201.

Persons desiring to clear trades through ICC must make an application in the prescribed form set forth in Rule 202(a). Only persons found by ICC, in its sole discretion, to satisfy the qualifications for admission shall be permitted to clear trades through the facility pursuant to Rule 201(a). No applicant shall be admitted unless, in ICC's sole determination, it satisfies the following requirements (as set out in Rule 201(b)):

- I. It is regulated for capital adequacy (the Regulatory Requirement) by a competent authority such as the CFTC, SEC, Federal Reserve Board, Office of the Comptroller of the Currency, U.K. Financial Services Authority or any other regulatory body ICC designates from time to time for this purpose, or it is an Affiliate of an entity that satisfies the Regulatory Requirement and is subject to consolidated holding company group supervision;
- II. It has a minimal of \$50 million of Adjusted Net Capital (*provided* that this requirement may, at the discretion of ICC, be met by a Parent if such Parent provides a guarantee pursuant to Rule 205). In practice, parental guarantees have become uncommon following the promulgation of CFTC Rule 39.12, requiring DCOs to have a minimum capital requirement for membership no greater than \$50 million;
- III. at the time of admission, the Clearing Participant must demonstrate to ICC's Board, upon recommendation by ICC senior management after consultation with the Risk Management Subcommittee, that it (or, if a Parent has provided a guarantee of its obligations pursuant to Rule 205, its Parent) satisfies the internal stringent credit criteria established by the Board in its discretion, such satisfaction to be confirmed by an examination of its books and records;
- IV. the Clearing Participant (or, if applicable, its Parent), at no time after admission, must not cease to satisfy the internal credit criteria established by the Board after consultation with the Risk Management Subcommittee, upon its admission;
- V. the Clearing Participant must demonstrate that it has sufficient financial ability to make its anticipated General GF contributions and provide margin as required by ICC's Rules, and it will make and maintain a deposit or deposits of Collateral in the General GF as required by these Rules, so long as it is a Clearing Participant;
- VI. the Clearing Participant, on its own or through an arrangement acceptable to ICC, must demonstrate operational capacity with respect to agreements (whether or not cleared) substantially similar (as determined by ICC) to Contracts, including (1) having the ability to process the expected volumes and values of contracts within the required time frames (including at peak times and on peak days), (2) having the ability to submit required pricing data within the required time frames and (3) maintaining back-office facilities (or entering into a facilities management agreement in form and substance acceptable to ICC):
 - A. remote from both the exchange floor and/or trading desks;
 - B. with adequate systems (including but not limited to computer and communication systems) and records;
 - C. with adequate number of competent personnel with sufficient operational background and experience with procedures for the management and clearance of business transacted in the Markets and Contracts in which the Clearing Participant will participate; and
 - D. with such equipment (including computer software and hardware) as required by ICC.
- VII. the Clearing Participant, on its own or through an arrangement acceptable to ICC, must demonstrate risk management competence in its agreements and contracts;

- VIII. the Clearing Participant must establish relationships with, and designate to ICC, an approved settlement bank for confirmation and payment or delivery, as applicable, of all margin and any other payments or deliveries required to be made by it to or from ICC, or has made alternate arrangements to facilitate such payments and deliveries in a timely manner and in accordance with ICC Rules and Procedures;
- IX. the Clearing Participant must establish relationships with one or more swap data repositories and/or security-based swap data repositories as necessary for reporting its cleared contracts in accordance with applicable law;
- X. the Clearing Participant must provide in a timely manner all reports and information relating to the Clearing Participant, persons controlling the Clearing Participant, and related or affiliated organizations as required by ICC Rules or otherwise required by ICC, and upon becoming aware that any such report or information was at the time provided false or misleading in any material respect, it must promptly provide ICC a correcting amendment of or supplement to such report or information;
- XI. it is (and, if its Parent provides a guarantee pursuant to Rule 205, its Parent is) organized in a jurisdiction whose insolvency laws are acceptable to ICC; and
- XII. the Clearing Participant must not be subject to statutory disqualification under Section 8a(2) of the CEA or Section 3(a)(39) of the Securities SEA, or otherwise applicable CFTC or SEC regulations.

Rule 201(c) sets out, without limiting Rule 201(b), the categories of applicants that may be approved by ICC as Participants, provided such applicant meets and maintains the standards set forth in Rule 201(b). At this time, the Ontario Participant and all Ontario based entities that have expressed interest in becoming Participants at ICC, are Canadian Banks and would fall under the bank applicant category, listed in Rule 201(c)(iii).

A Clearing Participant can be approved for the clearing of contracts only if it meets the capital, regulatory and other requirements as specified by ICC from time to time, or, if it fails to meet such requirements itself, it has a Parent that meets such requirements (as determined by ICC in its sole discretion) and that guarantees the Clearing Participant's obligations relating to Contracts (ICC Rule 205). Each Clearing Participant has an ongoing obligation to notify ICC of certain changes in its financial condition, structure or otherwise. Those obligations are more fully set forth in the Rules, in particular Rule 206.

Additionally, Rule 502(b) provides that the Risk Committee must be consulted before any modification may be made to the criteria set out in Rule 201 of the Rules. Further, Rule 510 requires ICC to consult with its Risk Management Subcommittee before determining (1) the clearing eligibility of products, (2) the standards and requirements for Clearing Participant eligibility, (3) approval of Clearing Participant applications, and (4) whether to modify or change ICC Rules or Procedures.

In order to ensure that access to ICC is properly administered, the PRC was formed. Its purpose is to complete the due diligence of applicants for Clearing Participant status, ensure that Clearing Participants maintain good standing, and assist with the restriction, termination and suspension of Clearing Participants. The PRC is a multi-disciplinary committee comprised of ICC management.

3.3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of:

- (a) *each grant of access including, for each participant, the reasons for granting such access, and*
- (b) *each denial or limitation of access, including the reasons for denying or limiting access to an applicant.*

Rule 202 and Rule 510 require ICC management to consult with various committees before determining (1) the clearing eligibility of products, (2) the standards and requirements for Clearing Participant eligibility, (3) approval of Clearing Participant applications, and (4) whether to modify or change ICC Rules or Procedures. Specifically, the Participant Review Committee, which is made up of senior management from each ICC department, including Legal, Risk Management, Compliance and Client Services, reviews applications for membership. The PRC's membership recommendations are referred to the Risk Management Subcommittee and Risk Committee for review and all recommendations are then proposed to the Board of ICC for their approval.

ICC's Corporate Secretary maintains all documentation in relation to grants and denials of access in accordance with internal recordkeeping and document retention policies. Rule 202(a) states that in the event that an applicant for Participant status is denied participation or granted limited access to ICC, ICC shall provide to such applicant, CFTC and SEC a statement setting forth the specific grounds on which the applicant was denied or the Participant's access was limited. To date, ICC has not denied access.

3.4 Rules and Rulemaking

3.4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and (a) are not inconsistent with securities legislation, (b) do not permit unreasonable discrimination among participants, and (c) do not impose any burden on competition that is not necessary or appropriate.

ICC maintains a set of written rules and procedures which is publicly available on ICC's website. The Rules that govern all aspects of the clearing services offered by ICC, are consistent with applicable Ontario laws, apply equally and uniformly to all Clearing Participants and do not impose any burden on competition. ICC posts all proposed rule changes publicly on its website.

The CFTC undertakes periodic rule reviews of all DCOs, including ICC. All rule changes must be submitted to the CFTC and are subject to review to ensure compliance with U.S. law and CFTC Regulations. Under CFTC Regulation 40.5, DCOs are required to self-certify new rules and rule amendments.⁷ The CFTC publishes rule certifications publicly on its website.

The SEC also undertakes rule reviews of all clearing agencies, including ICC. Under Section 19(b) of the SEA, the SEC requires that a registered clearing agency file with the SEC, in accordance with such rules as the SEC may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO accompanied by a concise general statement of the basis and purpose of such proposed rule change. The SEC will, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The SEC will give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change.

3.4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

As noted before, ICC's rules and all proposed rule changes are transparent and publicly available on ICC's website. If ICC determines that it is necessary or beneficial to adopt new Rules or amend existing Rules, the Legal Department of ICC is responsible for drafting, revising, and updating the Rules and

⁷ As a result of being designated a SIDCO, ICC is required to provide to the CFTC a 60-day advance notice of any proposed changes to the ICC rules, procedures or operations that could "materially affect the nature or level of risks". This 60-day period starts over for each subsequent submission relating to the original notice, and the CFTC may approve in less than 60 days.

obtaining any necessary consultations and approvals of any Rule changes. In accordance with Chapter 5 of the Rules, ICC must, when applicable, consult with the Risk Committee and Risk Management Subcommittee prior to making a Rule change that involves certain actions. Notwithstanding the foregoing, the Board does not have any obligation to accept any proposal made by, or take any action proposed by, the Risk Committee or the Risk Management Subcommittee, and any deliberation and/or decision by the Board with respect to any such proposal shall be made at the sole discretion of the Board, with no obligation whatsoever to the Risk Committee in respect of such deliberation or decision, subject to any reporting requirements to the CFTC under applicable CFTC rules or to the SEC under applicable SEC rules.

Where ICC is required to (or decides to) carry out a consultation, it may engage in informal discussions with the Clearing Participants, with the Risk Committee or the Risk Management Subcommittee prior to beginning a formal consultation. There are no restrictions on ICC's Officers holding such discussions. Indeed, the Risk Committee and Risk Management Subcommittee are likely to be a forum at which possible future directions of the clearing house are discussed informally.

3.4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

Section 17A(b)(3)(A) of the SEA requires that a clearing agency have the capacity to enforce "compliance by its participants with the rules of the clearing agency." In addition, Section 17A(b)(3) requires that a clearing agency have a system to discipline clearing participants that violate its rules and that the procedures for disciplining a clearing participant be fair and equitable.

The CFTC's Core Principal H (Rule Enforcement) requires ICC (i) to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with ICC Rules and for the resolution of disputes, and (ii) to discipline, limit, suspend, or terminate the activities of a Clearing Participant due to a violation by the Clearing Participant of any Rule of ICC; and (iii) report to the CFTC regarding rule enforcement activities and sanctions imposed against Clearing Participants, in accordance with Section 39.19(c)(4)(xi) of Part 39.

ICC reviews clearing participants pursuant to CFTC Regulation 39.13(h). Regulation 39.13(h) requires ICC to review the risk management policies, procedures, and practices of each clearing member. The foundation of clearing participant monitoring is a credit performance assessment. Beyond the credit performance assessment, clearing participant margin and GF history is reviewed. The Clearing House uses an internal rating system to evaluate credit performance.

ICC's financial surveillance program, in collaboration with the ICC Risk Department, includes a combination of ongoing monthly financial surveillance and daily monitoring. ICC's ongoing monthly financial surveillance includes thorough reviews of all financial reports filed by FCM/Broker-Dealer Clearing Participants on a monthly basis. The monthly financial surveillance also includes thorough reviews of all financial reports filed by non- FCM/Broker Dealer Clearing Participants on a quarterly basis and any follow-up work required as a result of the review. Daily and intra-day monitoring focus on the compliance with the risk management and operational compliance requirements. Additionally, ICC reserves the right to perform ad hoc on-site examinations of Clearing Participant's records and procedures to verify compliance with the ICC Rules, CFTC and SEC capital requirements, CFTC customer segregation rules, SEC customer protection rules, "early warning" and regulatory notice requirements. The financial condition of each Clearing Participant is monitored on an ongoing basis and reported to the CRO and the PRC.

Any disputes with a Clearing Participant that relate to or arise out of any transaction with ICC or its status of Clearing Participant at ICC will be resolved in accordance with the Rules. The BCC, as detailed in Rule 703, is responsible for responding to the need for and managing through the investigation of a

Clearing Participant's suspected Rules violation. ICC management and the Risk Committee may refer potential rule violations to the BCC for investigation and the BCC has the authority to request, receive and review written reports with respect to the suspected violation.

3.4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

The Rules establish fair and transparent procedures for enforcing compliance with its rules and procedures. In particular, Part 7 of the Rules contains detailed rules with respect to disciplinary actions that may be taken by ICC and rights to, and the process of, appeal by the Clearing Participant that is being disciplined. Under the Clearing Participant Agreement, the Rules are a contract between ICC and each Clearing Participant which ICC is able to enforce. ICC Rule 615(b) authorizes the Board to suspend or revoke the clearing privileges of a Clearing Participant, or to terminate its status as a Clearing Participant, so long as any such determination is made with the consent of the Board (in a vote excluding any member who is an employee of such Clearing Participant or any Affiliate) after consultation with, and in consideration of the views expressed by, the staff of the regulators of ICC and shall not become effective until the next Business Day following notice of such suspension, revocation or termination to such Clearing Participant. ICC is able to assess fines pursuant to Rule 606(b) and in more extreme cases, it is able to suspend or expel a Clearing Participant from membership, pursuant to Rule 207.

Pursuant to Rule 203 and subject to the requirements of Rule 615(b), ICC may, for failure to comply with the Rules or ICC Procedures, suspend or revoke a Clearing Participant's clearing privileges. In addition, ICC may, for the protection of ICC and the Clearing Participants, (1) impose such additional capital, margin or other requirements as it deems appropriate; (2) allow the Clearing Participant to submit trades for liquidation only; (3) limit or restrict the type of contracts that may be cleared by such Clearing Participant in any of its accounts with ICC; or (4) limit or restrict the aggregate notional or other reference amount of positions in contracts that are permitted to be maintained by the Clearing Participant in any of its accounts with ICC.

Pursuant to Rule 207(a) when a Termination Event occurs, as defined in Rule 207(b) and below, ICC may decline to accept new trades, cause open positions to be transferred to another clearing organization designated by the market, with such security against claims and liabilities as ICC deems necessary for its protection, impose a trading activity limitation, require the Clearing Participant to cause all open positions to be closed out by a date specified by ICC, and otherwise take or omit to take such actions or any combination thereof as it deems necessary or appropriate in the circumstances.

Under Rule 207(b) a Termination Event means the occurrence of any of (i) the expiration or termination of the agreement for clearing services between ICC and the relevant market; (ii) the Clearing Participant becoming a Retiring Participant (A Participant who has notified ICC pursuant to the terms of its Participant Agreement of its intention to terminate its status as a Participant or who has been notified by ICC pursuant to the terms of its Participant Agreement or the ICC Rules of ICC's intention to terminate its status as a Participant); (iii) a Participant (or any Parent of a Clearing Participant providing a guarantee pursuant to Rule 205) making a materially false or misleading representation or warranty to ICC under or in connection with an agreement between ICC and the Clearing Participant (or parent); (iv) a Clearing Participant failing to satisfy the ongoing requirements to retain its status as a Clearing Participant pursuant to Rule 201, including in the event that any proposed material change in the ownership of the Clearing Participant (referred to in Rule 206(b)(ii)) were effected; (v) a material breach by the Clearing Participant of the Rules or any of the terms of provisions of any agreement between ICC and the Clearing Participant which is not remedied promptly after notice from ICC; (vi) the Clearing Participant being in default and (vii) the Clearing Participant being statutory disqualified under Section 8a(2) of the CEA or Section 3(a)(39) of the SEA (pursuant to Rule 207(b)(vi)).

Pursuant to Rule 702, ICC staff shall conduct investigations of possible violations, prepare written reports respecting such investigations, furnish such reports to the Chief Compliance Officer and the BCC and conduct the prosecution of violations. In the event the initial investigation determines that a violation of the Rules may have occurred, the BCC has the authority, after providing the Clearing Participant with proper written notice, to:

- I. identify additional investigation requirements for ICC staff to pursue;
- II. issue a warning letter to the Clearing Participant informing it that there may have been a violation and that such continued activity may result in disciplinary sanctions.
- III. approve a negotiated settlement agreement with the Clearing Participant which may provide for a penalty other than that recommended by the relevant ICC staff;
- IV. refer the matter to a formal hearing; and
- V. negotiate and enter into a written settlement with the Clearing Participant (with or without an admission of guilt) agreeing to:
 - A. a cease and desist order or a reprimand; and/or
 - B. a fine of up to twenty-five thousand dollars for each violation alleged plus the monetary value of any benefit received as a result of the alleged violation.

The CFTC's rules provide for it to be able to acknowledge complaints promptly pursuant to Title 17 CFR Section 10.21 which provides that adjudicatory proceedings are commenced upon the filing of a complaint and a notice of hearing with the Office of Proceedings. In addition, the SEC may affirm, modify, or set aside any disciplinary actions and may remand the SRO for further proceedings pursuant to Section 19(e) of the SEA. The SEC's rules enable it to make an objective, prompt and thorough initial investigation of complaints.

3.5 Due Process

3.5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

- (a) an applicant or a participant is given an opportunity to be heard or make representations; and*
- (b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.*

As discussed in Section 3.3.1 and 3.3.2 above, persons desiring to clear trades through ICC must make an application to the clearing house and shall be admitted, in ICC's sole determination, if it satisfies the requirements set forth in Rule 201(b).

Clearing Participants are provided with an opportunity to be heard or make representations after they are served with a formal Notice of Charges (Notice) pursuant to Rule 704 following the initiation of an investigation in a Rule violation. ICC staff will serve a Notice on the Clearing Participant alleged of a violation (Respondent) of the Rules stating the (1) acts, practices or conduct in which the Respondent is alleged to have engaged; (2) how such acts, practices or conduct constituted a violation of the rules, including specific grounds for any denial or prohibition or limitation under consideration; (3) that the Respondent is entitled, upon written request filed with ICC pursuant to Section 705, to a formal hearing on the charges; and (4) the requirements and timeframes for filing a written answer (Answer) to the Notice as set forth in Rule 705. According to Rule 705, the Respondent shall serve on ICC the Answer, which may include a written request for a hearing on the charges before the ICC Hearing Panel, within twenty days of the date of service of the Notice.

The Hearing Panel consists of three panel members selected by the BCC Chairman from members of the BCC who were not on the Review Subcommittee for such alleged violation. Within ten days after service on the Respondent of the date of the hearing and the names of the members of the Hearing Panel, the Respondent has the right to challenge, in writing, the inclusion of any member of the Hearing Panel for cause. The merits of such challenge shall be finally decided by the BCC Chairman in his or her sole discretion.

Upon commencement of the Hearing Panel, the Hearing Panel shall promptly notify the Respondent of any penalty imposed as well as the Respondent's right to a hearing on the penalty within 10 days, or such longer period as the Hearing Panel may determine, after the imposition of such penalty. Pursuant to Rule 711, there are specific procedures that each Hearing Panel must follow in any hearing before it. The Respondent shall be allowed to be represented by legal counsel or any other representative of its choosing and, either personally or through such representative, to present witnesses and documentary evidence and to cross-examine witnesses.

At the conclusion of the Hearing Panel, if the Hearing Panel finds that the Respondent has committed the violation charged, it shall render a written decision to that effect. ICC shall notify the CFTC and the SEC of any determination by a Hearing Panel that a Participant has committed a violation and the penalty imposed, and shall make available to the CFTC and the SEC the written decision of the Hearing Panel and any related materials upon request.

ICC's CCO maintains all documentation for any decision affecting Clearing Participants, including in relation to Rulebook violations, in accordance with internal recordkeeping and document retention policies.

3.6 Risk Management

3.6.1 The clearing agency's settlement services are designed to minimize risk.

The risk management techniques employed by ICC are comprehensive and specifically designed to prevent the accumulation of losses, ensure that sufficient resources are available to cover future obligations, resulting in the prompt detection of financial and operational weaknesses. This allows for swift and appropriate action to be taken to rectify any financial problems and protect the clearing system. ICC has never incurred any losses as a result of adverse credit events experienced by any Clearing Participant. The risk management techniques further ensure that clearing and settlement obligations by Clearing Participants are met in a timely manner. ICC has in place adequate and appropriate arrangements for managing, controlling and carrying out its relevant functions. The ICC risk management techniques have been reviewed by an independent third party.

In relation to ICC's arrangements for managing, controlling and carrying out its relevant functions, DCO Core Principle D (Risk Management) requires ICC to have the ability to manage the risks associated with discharging the responsibilities of a DCO through the use of appropriate tools and procedures. DCO Core Principle I (System Safeguards) requires ICC to have a program of oversight and risk analysis to ensure the automated systems of the DCO function properly and have adequate capacity and security, and further that the DCO has established and maintains procedures and a plan for disaster recovery and periodically tests backup facilities sufficient to ensure daily processing, clearing and settlement of transactions.

In general, SEC Rule 17Ad-22 establishes minimum requirements regarding the maintenance of effective risk management procedures and controls by clearing agencies. Section 805(a) of the DFA directs the CFTC to take into consideration relevant international standards and existing prudential requirements for clearing agencies that are designated as financial markets utilities.

In response to the regulatory obligations imposed on ICC relating to risk management, ICC has developed a systemic risk management approach based on a six-tiered waterfall approach. The strength of the approach is that each tier builds on the other tiers, and all tiers apply to all Clearing Participants without exception. The tiers are in order below:

Waterfall Level 1: Membership Criteria

The first level of the risk management approach is to assure that firms have the resources, controls and sophistication to participate in the central clearing services. Clearing Participants are required to meet membership criteria designed to ensure each Clearing Participant has sufficient operational capabilities, financial resources, risk management experience and regulatory oversight to be permitted to participate in ICC's central clearing facility. ICC offers clearing for proprietary (house) positions to all Clearing Participants. Client clearing is available through U.S. based FCM/BD Clearing Participants that meet regulatory requirements. Non-FCM/BD Clearing Participants may clear only proprietary positions.

The Participant Review Committee will recommend to the Board, approval or denial of a firm's application to be a Clearing Participant and also advise on whether the Clearing Participant continues to remain in good standing with ICC.

Financial Criteria

All Clearing Participants shall meet the financial criteria as further detailed in ICC Rule 201. If a Clearing Participant does not meet these criteria, it must submit a standard form parent guarantee, provided its parent meets the unmet criteria.

Operational Criteria

A Clearing Participant's operational and cash management capabilities in the following categories are evaluated:

- I. demonstrated Operational Competence in CDS;
- II. demonstrated Systems and Management Expertise in CDS;
- III. demonstrated ability to submit CDS pricing/spreads;
- IV. demonstrated Risk Management Expertise in CDS through the use of a risk management questionnaire;
- V. employee participants on industry committees (*e.g.*, ISDA, DTCC, etc.);
- VI. DTCC Deriv/Serv Participant; and
- VII. use of bank account that supports Society for Worldwide Interbank Financial Telecommunication (SWIFT) direct debit messages.

Legal Criteria

The Clearing Participant must be licensed and regulated for capital adequacy by a "competent authority" such as the Federal Reserve, the SEC, Commodity Futures Trading Commission, Office of the Comptroller of Currency, U.K. Financial Services Authority or other regulators as determined by ICC. This requirement could be met by an affiliate of the applicant.

Clearing Participants – Ongoing Monitoring

Upon approval of Clearing Participant status, Clearing Participants must continue to maintain standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as set forth in the ICC Rules in order to maintain good standing as a Clearing Participant. These standards are more fully set forth in Chapter 2 of the ICC Rules.

The financial condition of each Clearing Participant is monitored on an ongoing basis and reported to the CRO and the PRC. Clearing Participants are required to submit monthly and/or quarterly regulatory

filings (focus reports and call reports) as well as interim periodic financial statements (quarterly) and audited annual financial statements.

In addition to a review of the Clearing Participant's periodic regulatory filings and financial statements, the Risk Management Department monitors and analyzes the financial press and other news sources for pertinent information related to Clearing Participants.

On a weekly basis, the Risk Management Department reviews the weekly stress testing for extreme risk event scenarios to ensure sufficient margin coverage under drastic market conditions. Members of the Risk Management Department can make recommendations on additions or removals from the Watch List to the CRO based on the reports they have compiled and/or reviewed. The Watch List is a tool ICC uses to identify Clearing Participants or settlement banks that pose potential additional risk to ICC and its continued operations. In addition, monthly monitoring is conducted by the Risk Management Department.

Clearing Participants – Withdrawal

For the avoidance of risk associated with the withdrawal of a Clearing Participant, ICC requires that firms provide, in writing, notice of their intent to withdraw at least 60 days prior to the end of the calendar quarter. In the event they provide notice less than 60 days from the end of the quarter, their withdrawal will be effective at the end of the subsequent calendar quarter. During the time between notice of intent to withdraw and actual withdrawal, the Clearing Participant is subject to all rules and requirements of membership, including compliance with ICC's right of One Time Assessment.

Waterfall Level 2: Initial Margin (IM)

Adequate but not excessive margins will be collected to collateralize risk. The IM requirements account for credit spread risk, bid-offer risk (liquidity exposure), basis risk, jump-to-default risk, concentration risk, interest rate risk and recovery rate risk. Features of the methodology include stress scenarios for credit spread realizations derived from estimated log-return credit spread distribution assumptions, and specific stress scenarios for previously defined IM components. The main components of the computations are discussed below. Collectively, ICC believes this methodology and the selected risk parameters provide a robust and conservative IM approach.

I. Spread Response Requirements

The instrument spread response risk (margin) requirement is obtained by estimating scenario Profits/Losses (P/L) for a set of hypothetical contracting (tightening) and widening credit spread scenarios and by considering the largest loss. The scenario P/L is defined as the difference between the CDS prices at the hypothetical scenario spread level and at the current market (settlement) spread level. The mappings between spread levels and prices are performed by means of the ISDA standard conversion convention.

II. Recovery Rate Sensitivity Requirements

The recovery rate sensitivity requirement incorporates potential losses associated with changes in the market implied Recovery Rate (RR). Two additional sector-specific stress-test RRs are considered.

III. Bid-Offer Risk

The Bid/Offer requirement incorporates the transaction costs associated with liquidating the portfolio of a defaulting Clearing Participant. Transaction costs can lead to significant losses for large curve portfolios. The developed approach provides a general solution that can capture the proper liquidation cost for directional curve portfolios as well as for well-hedged portfolios.

The Bid/Offer requirement is estimated by considering the liquidity and the expected bid/offer widths for different instruments. The approach assumes, in general, that short-protection and long-protection position would be liquidated at different bid/offer widths.

IV. Jump-to-Default (JTD) Risk

The JTD requirement is incorporated to account for loss from credit event(s) associated with the underlying Single Names on which the defaulting Clearing Participant has sold protection. Index instruments are decomposed into their constituents and a Net Notional Amount is calculated for every instrument in a portfolio at the Single Name level.

V. Large Position Requirements (Concentration Charge)

Large positions are subject to additional risk assessments derived from the market depth and liquidity associated with the instruments under consideration. Concentration Charges apply to both long and short index and Single Name positions for which the overall position size is above a specific threshold that is determined by the Risk Department.

The Concentration Charges are progressive and can yield total requirements that asymptotically approach the full liability. The current price of the considered instrument is taken into account to determine the maximum potential Risk Factor loss.

VI. Interest Rate Sensitivity Requirements

Diversification benefits are provided across Risk Factors that exhibit low level of dependence (correlation). Risk Factors that exhibit rank correlations whose absolute value is below a pre-determined threshold, currently set at 0.25 will be eligible for diversification benefits. This benefit ensures that risk requirements accurately reflect the riskiness of a diversified portfolio.

VII. Basis Risk Requirements

Basis risk requirement is assessed upon a notional amount offset between an index derived Single Name position and an opposite “outright” Single Name position.

VIII. Currency Specific IM Requirements

ICC establishes currency specific requirements for portfolios comprising cleared instruments denominated in different currencies. The computed portfolio IM requirement is assessed in different currencies. The ratios between the currency specific non-additive component requirements are the same as the ratios between the IM component requirements for the same-currency sub-portfolios, if processed independently.

IX. Changes to Margin Methodology

On at least a monthly basis, ICC conducts a statistical analysis of the margin levels and market performance. Using the minimum standards established by ICC management in consultation with the Risk Working Group and the Risk Committee, the Risk Management Department will recommend margin methodology changes to the President and the Board for their approval.

X. Margin Calls/Collection

Margin requirements for each Clearing Participant are calculated and communicated at least once each day (by 4:00 AM ET in the daily flow) and margin is due no later than 9:00 AM ET. Eligible collateral can be substituted for cash posted as IM. Client-related IM is collected on a gross basis. In the event ICC is accepting sizable positions through the weekly backloading process, ICC will pre-collect IM. The weekly backloading process is a clearing cycle for bilateral trades that are already confirmed and certain in the Trade Information Warehouse (TIW).

Waterfall Level 3: Mark-to-Market Margin (MTM)

On a daily basis, concurrent with the calculation of IM for new positions, ICC will calculate the MTM for all Clearing Participants. ICC will determine the replacement value of each of its Clearing Participants' cleared positions based end-of-day prices determined through ICC's price discovery process. Any MTM deficits are payable in cash and will be included in the daily settlement process. MTM is calculated and

settled in the currency of the product. Excess margin is not paid away unless requested by a Clearing Participant. To determine the cash owed, ICC deducts both the cash deposits and unrealized P/L related to previously cleared positions from the margin required. Unrealized gains for each Clearing Participant are recognized in Clearing Participants' cash accounts as a "Cash Mark-to-Market Credit." Additionally, the President, Chief Risk Officer or his/her designee, shall have the authority to change margins as necessary to protect the interests of ICC.

Waterfall Level 4: Intraday Risk Monitoring/Special Margin Call Execution

Intraday, the adequacy of the collected IM (i.e. risk-based margin) is actively monitored and supported by automated feeds of the available intraday price data. This data is used to measure each Clearing Participant's intraday unrealised profit and loss to determine if ICC's intraday exposure to each Clearing Participant is covered by the margin on deposit. The data is also used to measure and further explain intraday volatility which contributes to the Risk Department's required determination of the type of daily market environment (as an input to the daily end-of-day settlement pricing process).

Clearing Participants submit data to a third party data provider (price or spread depending on the accepted convention for the respective product). The third party agency "scrapes" email messages and captures the prices and submits them to all market participants including ICC. This process is performed continuously throughout the day each time a new price is available. The bid-ask quotes are used as the intraday bid-ask and are automatically fed into the ICC risk management application. The ICC risk management application captures the intraday prices and immediately revalues a Clearing Participant's portfolio.

Further, at its own discretion, ICC may issue margin calls to Clearing Participants that exhibit insufficient levels of risk collateralization to protect the Clearing House and its Clearing Participants. If an additional margin call is made, the Clearing Participant has one hour to fully collateralize any deficits associated with the additional margin call.

Waterfall Level 5: Guaranty Fund (GF)

ICC requires all Clearing Participants to participate in funding the GF. The GF mutualises losses under extreme but plausible market scenarios. Typically these extreme scenarios are low probability events whose quantification is subject to significant estimation errors. The ICC GF is designed to provide adequate funds to cover losses associated with the default of the two Clearing Participants with the greatest potential losses.

Guaranty Fund Calculation for Clearing Participants

In sum, the size of the GF is designed to absorb the greatest combined uncollateralized loss resulting from the simultaneous default of two Clearing Participants. The methodology computes the magnitude of potential losses based on a comprehensive set of stress test scenarios, relying on a combination of quantitative and qualitative inputs.

Guaranty Fund Allocation

The Clearing Participant's GF requirement is the sum of four components which correspond to the four types of uncollateralized losses used to establish the GF size. Each component contribution is the prorated component Clearing Participant loss to the sum of all component Clearing Participant losses.

ICC establishes currency specific GF contributions for portfolios comprising cleared instruments denominated in different currencies. The computed GF contribution is assessed in different currencies. The ratios between the currency specific requirements are the same as the ratios between the IM requirements for the same-currency sub-portfolios, if processed independently.

The Risk Department performs the GF allocation process after the close of business on the last trading day of each month. The Clearing Participant's GF requirement for the next month is the greater of:

- I. the average of the Clearing Participant's GF requirements over all business days of the expiring month;
- II. the Clearing Participant's GF allocation from the last business day of the month; or
- III. the established Minimum GF contribution.

The next month's contributions reflect the GF currency ratios established on the day of the GF re-allocation. If the estimated total GF contribution expressed in US Dollars is smaller than the minimum GF contribution, only the Minimum GF contribution is required in US Dollars. If the estimated total GF contribution expressed in US Dollars is greater than the minimum GF contribution, but the US Dollar allocation is smaller than the minimum GF contribution, the Minimum GF contribution is required in US Dollars and the currency ratios apply to the GF contribution beyond the minimum GF contribution. If the US Dollar allocation is greater than the minimum GF contributions, the currency ratios apply.

General Wrong Way Risk and Contagion Measures

The GF approach may incorporate contributions resulting from wrong-way risk and contagion stress test scenarios. The additional requirements capture the exposure of ICC to Clearing Participants that hold large directional portfolios and/or to portfolios of highly correlated Risk Factors.

Guaranty Fund Calls/Collection

Funds to meet GF requirements are requested on the first business day of every month. However, on a daily basis, the Risk Department monitors GF size and allocations. If a Clearing Participant's daily estimated GF requirements exceed 5% of their prior day's GF collateral on deposit, additional GF contributions will be called. All deficits related to change in GF requirements must be met in cash by the end of the business day. The deficit may need to be met earlier at the Chief Risk Officer's discretion. Eligible collateral can be substituted for Cash posted to the GF.

In the event ICC is accepting sizable positions through the weekly back-loading process, ICC may pre-collect GF contributions. Additionally, in accordance with the rules, the President, or his/her designee, shall have the authority to request additional GF commitments as necessary to protect the interests of ICC.

Guaranty Fund Contributions from ICE

The ICC GF includes a capital contribution from ICE. ICE participates in the GF up to \$50 million. ICE's participation represents ICE's commitment to ensuring that the economic interests of the clearing house are aligned with the Clearing Participants. The ICE Contribution is in two types (Priority Contribution and Pro Rata Contribution) – each up to \$25 million as detailed in ICC Rule 801(b).

Guaranty Fund Capital Calling Sequence

Withdrawals from the GF will be made in a specific order:

- I. defaulting Clearing Participant's GF;
- II. Specific Wrong Way Risk (SWWR) GF component, only if the defaulting Clearing Participant contributes to the SWWR GF component as defined in Appendix 5;
- III. "First loss" funded by ICC's Priority Contribution (one-time loss not to exceed \$25 MM in total despite number of losses);
- IV. "First loss" tranche funded by ICE and the non-defaulting Clearing Participants' GF balances (see ICC Rule 801(c)(i) for the specifics of how this tranche is calculated); and
- V. Remainder of the GF (including the SWWR GF component if the defaulting Clearing Participant does not contribute to the SWWR GF component).

Waterfall Level 6: Guaranty Fund Replenishment

In the event any portion of the GF is consumed, the remaining Clearing Participants are obligated to contribute additional amounts to the GF to maintain a GF deposit equal to their required contribution. If a

Clearing Participant has given notice of its intent to terminate its Clearing Participant status and is a Retiring Clearing Participant, the Retiring Clearing Participant's contribution will be up to (but will not exceed) the Retiring Clearing Participant's GF obligation prior to the default.

In addition to the waterfall approach utilised by ICC, ICC employs models that calculate Initial and Market-to-Market Margin and GF requirements subject to regular testing, which includes back-testing and stress testing.

The Risk Department tests ad-hoc scenarios along with the pre-defined scenarios to study the impact of marketplace events on the risks faced by the clearing house. Stress scenarios are applied to actual portfolios that are cleared by ICC as well as randomly generated and pre-defined sample portfolios that are constructed by the Risk Department. The Risk Department maintains the stress scenarios and portfolios that are executed on a regular basis.

3.6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

ICC has established a risk management framework to ensure that proper policies, procedures and internal controls are in place relating to membership, risk management and the GF. The Risk Management Department is primarily responsible for ongoing monitoring of the Clearing Participants and ensuring the proper operation of the clearing house. Other responsibilities include:

- I. determining the current market conditions (i.e., normal, volatile or extreme);
- II. selecting the daily interest rate curve used in the conversion of spread to price;
- III. validating the quality of the prices submitted by Clearing Participants;
- IV. reviewing and approving end-of-day settlement prices calculated by Markit; and
- V. reviewing and approving matched trading interests identified by Markit as part of the MTM process.

The Chief Risk Officer (CRO) is responsible for reviewing and signing off on the Risk Department's recommendations. As such, the CRO must review the analysis, identify areas where additional information/insight is required and ensure that the conclusion is robust and supported.

The ICC Risk Management Department consists of a senior officer and several staff members, who conduct the daily risk analysis responsibilities. The head of the Risk Management Department is the Chief Risk Officer who has daily contact with the President of ICC and frequently reports on risk issues to the Board. The CRO reports on all issues requiring Board consideration or that are in response to items which the Board has raised.

The CRO is required to review the analysis, amend if appropriate, and document the conclusions of the assessment. The result is the CRO's summary (and/or ICC Reports) on the Clearing Participants and Settlement Banks financial and operational performance that are submitted to the Credit Review Subcommittee of the PRC (CRS). The CRS evaluates the CRO's findings as part of its regular review and submits the summary to PRC. On a monthly basis the PRC reviews the summary and all Clearing Participants in order to monitor continued compliance with the Clearing Participant Requirements.

In addition to the Risk Management Department, ICC employs an Operations Department. It is the Operations Department's responsibility to transmit information amongst ICC, the market and the Clearing Participants as well as archive data including prices submitted by the Clearing Participants, results from the MTM calculations and validate end-of-day settlement prices and trading interests.

Together, these departments administer the daily process and are accountable to the CEO and CRO, respectively. Changes to the pricing methodology, spread-to-price conversion determinants and revisions

to these policies and procedures are subject to review by the Risk Working Group and the Risk Committee. Material revisions to the pricing methodology, spread-to-price conversion determinants and these policies and procedures are submitted to the Board for review and approval.

As part of ICC's risk monitoring processes, typical safeguards include programs to ensure adequate expertise, training and supervision of personnel, as well as processes to regularly review internal control procedures. Policies and procedures related to operational risk will be reviewed on a regular basis. Processes will also address the availability, connectivity and capacity of computer systems, communications systems, power sources and data feeds.

All risk issues or control gaps identified within the Operational Risk Management program (i.e., risk assessments, risk mapping, risk indicators, etc.) are monitored until remediation, with the objective of aligning the operational risk profile to the risk appetite set by senior management.

3.6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

3.6.3.1 Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

In its operation as a clearing house, ICC acts as a central counterparty and rigorously controls the risks it assumes. The direct management of risk is the responsibility of the ICC CRO, but this oversight is balanced by a committee structure that provides for accountability, advisory input and, when necessary, specialized execution. Finally, ICC has in place financial safeguards to ensure the integrity of the marketplace and the contracts it clears. ICC's activities are designed and focused on ensuring that it maintains best practices and fulfils its public interest mandate.

3.6.3.2 The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

ICC minimizes principal risk by waiting for confirmation of the movement of cash (or securities) from Clearing Participants before releasing the corresponding securities (or cash.)

3.6.3.3 Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

DCO Core Principle E (Settlement Procedures) requires ICC to: (1) complete money settlements on a timely basis, and at least once each business day; (2) maintain an accurate record of the flow of funds associated with each money settlement; (3) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements); (4) ensure that money settlements are final when effected; (5) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization; (6) with respect to physical deliveries, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and (7) ensure that each risk arising from an obligation described in clause (6) is identified and managed.

Accordingly, ICC operates a clearing solution that enables Clearing Participants to clear house and client-related trades in the following ways depending on the trade date of the transaction: (1) Trade Date Clearing, which is a daily clearing cycle for trades submitted to clearing on trade date (T) or on T+1; and (2) Weekly Backloading, which is a clearing cycle for bilateral trades that are already confirmed and certain in the Trade Information Warehouse (TIW).

ICC supports three forms of risk-related settlement that are detailed below; (1) cash settlement of IM, Mark-to-Market Margin, upfront fees, quarterly coupons, cash settlement of credit event and GF requirements, (2) substitution of IM and GF cash with eligible collateral; and (3) physical delivery resulting from a credit event where no successful auction occurs.

ICC uses a direct settlement model (Direct Settlement) to manage daily and special cash movements. Cash settlement is relevant for the payment of initial and Mark-to-Market Margin as well as trade payments (e.g., upfront fees, coupons and cash settlement of credit event) and GF requirements. ICC will evaluate a transition to a Central bank model for US cash if available. Direct Settlement will continue for all non-US dollar cash.

In the event that ICC must affect a cash payment from a participant outside of the daily process, an ICC authorized person will work with the Clearing Participant to confirm the particulars of the non-routine settlement. ICC manually sends SWIFT MT-204 settlement instructions to the designated bank (may differ from the bank used for daily settlement) via the SWIFT network.

3.6.3.4 Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

In order to maintain adequate liquidity each day for requirement payments and settlements, ICC requires Clearing Participants to maintain tiers of assets for both IM and GF. These tiers are defined by the liquidity horizon for each asset type and are designed to ensure that ICC has sufficient intraday liquidity to manage cash payments in the event of a Clearing Participant's default.

To ensure ICC has immediate, intraday access to cash, ICC requires Clearing Participants to maintain IM and GF deposits in accordance with outlined thresholds. The remaining IM or GF contributions can be met with other forms of acceptable collateral, as defined, subject to the defined haircuts. ICC does not extend intraday credit to Clearing Participants.

The thresholds are set to approximate the equivalent of a 99% move of a Clearing Participant's total IM (risk-based) requirement. The US dollar cash threshold is based on the maximum assumed potential 1-day move (45%) and the US dollar denominated threshold (US dollar cash and US Treasuries) is set at the maximum assumed equivalent of a 2-day move (adds 20% for a total of 65% of assets).

Additional margin will be called if the Clearing Participant does not maintain the appropriate minimums by asset type (regardless of whether the total sum of eligible collateral meets the total margin obligation). Further, ICC will require all Clearing Participants to meet and maintain their minimum GF deposit of \$20 million in US dollar cash, regardless of whether their requirements are greater than the \$20 million minimum.

In the event of a default, the only same-day cash margin payment payable to non-defaulting Clearing Participants is for daily excess collateral for Mark-to-Market Margin. ICC will have a total of 45% of the defaulting Clearing Participant's IM and 45% of all Clearing Participants' GF assets in cash to meet this same day requirement. In addition, ICC will have access to cash proceeds of same day settlement of the sale of US Treasury securities representing the next 20% of margin and GF assets. The liquidity of ICC's margin and GF deposits accepted from participants is of paramount importance in the event of a participant's default.

3.6.3.5 Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is

not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

ICC allows for the substitution of non-cash collateral for cash, subject to the eligible collateral requirements. Collateral risk management focuses on managing the collateral that Clearing Participants post as protection against their potential credit exposures. Collateral risk management focuses on the value, quality and liquidity of the assets held as collateral.

ICC's policies regarding the acceptable forms of non-cash collateral for IM and GF and their associated haircuts are designed to provide protection for liquidity risk management. Acceptable forms of non-cash collateral for IM include US Treasury Securities (Bills, Notes and Bonds). Acceptable forms of non-cash collateral for the GF include US Treasury Securities.

ICC revalues its collateral holdings daily. The daily marked collateral is an input to the end of day processing and margin deficits based on changes in collateral valuations are included in the daily margin calls. Collateral is also monitored to ensure compliance with the liquidity thresholds. Collateral amounts, quality and liquidity are monitored daily by the ICC Treasury Department. ICC has relationships with multiple cash settlement agents to mitigate any potential losses and liquidity pressures arising from the failure of a cash settlement agent.

3.6.3.6 If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

ICC does not have any such links. Were it to establish one or more in the future, it would focus on ensuring that the legal structure and general risk management of the linkage or linkages was such as to reduce residual risks to a minimum.

3.6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

ICC does not engage in any activities other than those related to the clearing and settlement of CDS contracts.

3.7 Systems and Technology

3.7.1 For its settlement services systems, the clearing agency:

- (a) develops and maintains,**
 - (i) reasonable business continuity and disaster recovery plans;**
 - (ii) an adequate system of internal control;**
 - (iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support.**
- (b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,**
 - (i) makes reasonable current and future capacity estimates,**
 - (ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,**

**(iii) tests its business continuity and disaster recovery plans; and
(c) promptly notifies the regulator of any material systems failures.**

DCO Core Principle I (System Safeguards) requires ICC to establish and maintain a program of risk analysis and oversight that identifies and minimizes sources of operational risk through the development of appropriate controls and procedures and automated systems that are reliable, secure and have adequate scalable capacity. DCO Core Principle I also requires that the emergency procedures, back-up facilities, and disaster recovery plans that ICC is obligated to establish and maintain specifically allow for the timely recovery and resumption of ICC's operations no later than the next business day following disruption and the fulfillment of each obligation and responsibility of the DCO. Finally, DCO Core Principle I requires that ICC periodically conduct tests to verify that its back-up resources are sufficient to ensure daily processing, clearing, and settlement. Section 39.18 of Part 39 codifies these requirements and delineates the minimum requirements a DCO would have to satisfy in order to comply with DCO Core Principle I.

Under proposed regulation 39.30, the CFTC would require ICC to have physical, technological, and personnel resources, outside the relevant area, sufficient to meet the two-hour recovery time objective (RTO) in a wide-scale disruption. The CFTC's proposed rules regarding the RTO are consistent with the CPSS-IOSCO standards that include the two-hour RTO.

In accordance with the aforementioned regulations, ICC has and maintains a Business Continuity Plan Overview (the BCP). The BCP was developed to: (i) preserve the health and safety of staff; (ii) avoid confusion and reduce exposure to error during an interruption by providing an organized and consolidated approach to managing response, recovery, and resumption activities; (iii) reduce the impact resulting from short-term business interruptions by providing appropriate responses for rapid recovery from unplanned incidents; and (iv) resume essential operations in a timely manner.

The business continuity/disaster recovery program supports the continued performance of critical functions in the event the headquarters or primary data center is unavailable due to a significant business interruption. The business continuity/disaster recovery program has six objectives:

- I. to ensure the continuity and recovery of the critical functions through the use of its secondary/disaster recovery facility;
- II. to minimize the disruption to clients and business partners;
- III. to protect the firm's books and records;
- IV. to reduce the number and frequency of ad hoc decisions following a significant business interruption;
- V. to educate employees on the contingency plans and their roles and responsibilities in executing those plans; and
- VI. to comply with regulatory requirements.

ICC maintains a remote site contracted from a leading disaster recovery service to be used in the event of a disaster. The site currently used is a disaster-resistant "bunkered" site, with redundant power sources, data communications, and hardware. The site also has power generators that can maintain operations independent of local power availability. All electronic data (trade, positions and back office transactions) and risk management data are mirrored to the disaster recovery site in a real-time mode, so that all of the data necessary to recover the clearing systems is available at the remote site at any given time.

Under the BCP, every combination of alternate location and business function will be tested at least annually. Any identified issues are noted in the post-test report for follow up action. The BCP will be revised as needed after any significant change to services provided or systems used by ICC, but not less

than annually. Component and data center level failure scenarios are tested at least six times per year. Three of the six tests per year are open to CDS client participation and clients are required to participate in at least one test per year.

The program is the responsibility of the Network and Communications Group Manager who has as one of his key shared duties the role of Disaster Recovery Coordinator. This role is supported by staff across the various technical and business platforms as part of their day-to-day job functions. An Incident Response Team (IRT) for ICC is tasked with evaluating business disruptions and determining appropriate responses.

The IRT consists of core representatives from the major departments and services that support ICC. The prominence of each individual's role will be based on the nature of a given incident and which area has suffered the largest impact. Others may be brought into this team as needed to address unavailability of key personnel or impact from non-core systems or processes. All IRT members and designated critical staff will nominate deputies to fulfill their duties if necessary. The IRT has responsibility for coordinating the response of the organization to incidents.

The internal control needs of ICC are assessed as part of the global requirements of ICE Group. Please see section 3.7.2 of this Application for more information on the internal audit functions at ICC. ICC outsources certain information technology (IT) functions to TCC and ICE, Inc. The ICC IT Staff is organized into two groups: Project Development and Infrastructure. The Project Development team is responsible for applying project management and system development skills to design, develop, and configure application systems that enable business processes and meet service levels. The infrastructure team is responsible for ensuring the uptime and availability for all technology infrastructure and application systems through direct management of technology vendors and non-vendor managed technology. The Project Development and Infrastructure teams are comprised entirely of ICC and TCC staff.

ICC is obligated by CFTC Regulation 39.18 to promptly notify the CFTC Division of Clearing and Risk of any hardware or software malfunction, cyber security incident or targeted threat that materially impairs or creates a significant likelihood of material impairment, of automated operation, reliability, security or capacity, or any activity of the BC-DR plan. Additionally, ICC must notify the Commission of any planned changes to the automated systems that are likely to have a significant impact on the reliability, security or adequate scalable capacity of such systems and planned changes to the DCO's program of risk analysis and oversight.

Senior IT management must approve all planned changes to systems, whether the result of an incident, routine maintenance, or new application or infrastructure project. All changes have documented implementation and roll-back procedures.

Application changes are monitored and tracked via an Issue and Project Tracking system. This system tracks the progress of the development and testing of application changes. Major changes and new applications are made into projects following the formal ICC Delivery Method, whereas minor or routine changes need only be scrutinized and approved by technology management.

Additional measures for IT systems are planned to reinforce resiliency. By understanding the capacity of each hardware and software component, a good approximation can be developed of capacity needs and back-up facilities to support anticipated loads.

ICC has an adequate Information Security Program to protect data, assets and physical and environmental security. The Head of Infrastructure is responsible for the Information Security function across ICE. The

goal of the Information Security program is to protect the confidentiality, integrity, and availability of ICC and its clients' information systems and data. The Information Security program includes:

- I. Asset Management - Asset management enables efficient, cost-effective methods for supporting, securing, and planning for upgrades, migrations, staff training, and future technology installations.
- II. Physical and Environmental Security - The Information Security program enables the management of access to data centers and data and requires approval (*e.g.*, guards, ID badge, and biometric hand-scanner) for entry into two vendor owned centers where all production systems and data housed. Both data centers define equipment security surrounding location, support utilities, cabling security, maintenance, and secure removal and re-use. Approval is required for the use of special software, hardware, presentation equipment and home laptop use.
- III. Authorization, Authentication and Access Control - All computer systems have access controls that require the identity of the user requesting access (User-ID) and a confidential code, which is known only by the authorized user (password). Users are required to keep passwords confidential at all times. All policies must be adhered to whether internally or remotely connecting. Access to modify production data, programs and operating system is limited and requires confidentiality on the firm's data.
- IV. Internet, E-mail and Data Policy - All employees must comply with their internet and e-mail polices to ensure that confidential or non-public information is transmitted only in accordance with data policies. The Information Security program works to ensure that malicious computer viruses are not introduced into the environment through inappropriate internet use or the download of unauthorized software. All non-public data that traverses public networks is encrypted to ensure privacy. Data is stored on central file servers to allow offline and offsite access. Central file servers are backed-up nightly.
- V. Record Retention - ICC maintains records of transactions cleared on its facility for at least five years. Customized checklists are provided based on document type (banking records, accounting records, etc.) to assist employees in determining retention requirements and directs departments on an annual purging process to ensure records are not maintained longer than required.
- VI. Accountability, Compliance and Auditability - Adherence to security standards, reporting of violations and disciplinary action for non-compliant behavior is required. Logs for production system and application events are maintained and governs usage of firm equipment by requiring authorization. Policy also specifies non-disclosure of data and auditing policies (copying of proprietary data).

ICC also utilizes a capacity management process that encompasses the following:

- I. Monitoring the performance and throughput of IT Services and the supporting infrastructure components using industry standard monitoring products.
- II. Undertaking tuning activities to make the most efficient use of existing resources. The Performance Test environment is used to identify the tuning that will be most efficient.
- III. Understanding the demands currently being made for IT systems and producing forecasts for future requirements. The Performance Test environment is used to evaluate future capacity requirements.
- IV. Establishing, maintaining, and verifying the performance and capacity baselines, which enable IT to provide services of the quality defined in the Service Level Agreements (the SLAs).
- V. Utilizing the Performance Test environment to establish and predict the resource and capacity requirements is crucial to meeting the SLAs.

Testing is completed throughout the system development cycle, leveraging industry standard approaches on the appropriate technology platforms using standard procedures including:

- I. **Functional Testing:** This focuses on new requirements and new code introduced into the system. This is the first stage of testing and is focused on ensuring new features have been implemented correctly. This type of testing is based upon both black box and white box techniques. Black box testing is defined as verifying the functionality of an application using test cases built around specifications and requirements. White box testing is defined as verifying internal structures or workings of an application as opposed to its functionality.
- II. **Regression Testing:** This focuses on verification of existing functionality to ensure the introduction of new code has no adverse effects. This testing may be performed in conjunction with functional testing, although ideally begins when functional testing has completed.
- III. **Integration Testing:** This focuses on verification of the integrity of the interfaces and communication between applications, both internal and external. Integration testing does not cover the full scope of application functionality, but focuses on the flow of data throughout the system and the touch points with external systems and business partners. This testing begins once all functional and regression testing is complete.
- IV. **Production Parallel Testing:** This typically takes place in parallel to member simulation testing, two to three weeks prior to production implementation, once functional, regression, and integration testing are complete. Production parallel testing involves replaying production activity through a quality assurance environment and comparing key system outputs at defined verification points against production outputs created for the same business day. This testing functions like a “system regression,” focused on ensuring only explainable differences are found.
- V. **Smoke Testing:** This focuses on verification of functionality at a high level in order to determine obvious errors. It can be used for verification of application interactions when setting up a new environment, to ensure that the environment is prepped and ready for other levels of testing to begin. Smoke testing is also used for verification of release candidates prior to production deployment, when substantial testing has already been performed on a prior release candidate or snapshot of the same release.
- VI. **Performance Testing:** This focuses on analysis of responsiveness and stability of applications under a particular load. Analysis is performed on areas including, but not limited to, software, hardware, databases, networks, and messaging. Results are used as input into discussions regarding scalability, reliability, and resource usage. The role of quality assurance in this type of testing is ancillary to that of lead developers and architects.
- VII. **User Acceptance Testing (UAT):** This focuses on verification of business functionality exercised by our customers. The effort is coordinated with internal business representatives and external members to derive structured test scenarios to be executed either by members themselves or quality assurance staff per direction of members or business representatives. The expectation is that members sign-off on test results, indicating their readiness for production launch. This testing may be structured or “open.” Structured tests could be carried out in quality assurance environments or a member test environment, such as simulation and usually have defined inputs and expected results in the form of test cases or scenarios. Open tests are generally carried out in the Simulation environment, allowing members to execute scenarios of their choosing and at their convenience over a specified period of time prior to production launch.

Finally, ICC conducts regular external penetration tests via a third-party vendor to identify vulnerabilities in ICC’s networks and systems and to measure the effectiveness of controls employed by ICC.

3.7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

ICE’s Internal Audit Department is overseen by the Director of Internal Audit (e.g. Chief Audit Executive). The Director of Internal Audit reports functionally to the ICE Audit Committee and

administratively to the Chief Executive Officer of ICE. The Director of Internal Audit devotes a proportionate amount of his time to each of ICE's key business units including ICC. The internal audit department consists of 12 auditors. Four of the twelve auditors are dedicated to performing IT related audits. The Director of Internal Audit-Chicago reports functionally to the ICC Audit Committee and administratively to the Chief Audit Executive in Atlanta. Internal Audit has knowledge of ICC's systems and processes through a combination of review of documentation and process notes together with staff interviews. The overall systems framework follows that of ICE as a group. ICC Internal Audit consists of three auditors, a Director, one Senior Information Technology Auditor and one staff auditor. Additional resources are available at ICE to provide additional headcount or skill sets. Audits of the clearing processes are primarily conducted by internal audit staff. The internal audit function has full access to ICC's books and records and any other information that may be relevant to its activities.

The ICC Director of Internal Audit attends and presents internal audit reports at all ICC Audit Committee meetings. Internal audit reports presented to the Committee include: Annual Audit Plan Updates; Summaries of Audit Reports Issued (including presentation of any detail audit reports issued since the last Committee meeting); Audit Issues Updates (including any past due or extended issues); Risk Updates; and other reports as considered necessary. Internal Audit staff's familiarity with ICC's practices, procedures and Internal Audit's unlimited access to information provides a level of continuous monitoring and understanding. Hiring a third party as an additional reviewer for all audits would be duplicative. ICE's Internal Audit Department maintains on-going co-source arrangements with Protiviti and PricewaterhouseCoopers on an as needed basis. Oversight and supervision of the internal audit work provided by these outsource providers is the responsibility of the Chief Audit Executive. For outsourcing arrangements related to ICC internal audits, the Chief Audit Executive may delegate the oversight and supervision to the Chicago Director.

Any issues identified by internal audit are reported to the Audit Committee at a minimum quarterly and reporting includes the follow-up status of all outstanding issues, and statistics/trending on past due issues, extended issues, corrected issues and total outstanding issues. Additionally, every five years, an external assessment is performed by a qualified independent reviewer or a review team from outside ICE, or as an independent external validation of the internal assessment performed. The Chief Audit Executive discusses any perceived need for more frequent external assessments as well as the qualifications and independence of the external reviewer or review team, including any potential conflicts of interest, with the Audit Committee.

Finally, The ICE Audit Committee is responsible for the corporate audit function of ICE. However, ICC has a separate Audit Committee as detailed in Section 3.1 above. The audits and reviews performed by ICE Internal Audit are reviewed by both the ICE and ICC Audit Committees to provide assurance that ICC's internal controls are operating effectively.

3.8 Financial Viability and Reporting

3.8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

Default Resources

ICC has adequate financial and staff resources to carry out its activities in full compliance with its regulatory requirements and with industry best practices. As a systemically important derivatives clearing organization, ICC will be required by the CFTC, under Proposed Rule 39.29, to maintain financial resources sufficient to withstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO, in extreme but plausible market conditions. ICC is already in full

compliance with this proposed Rule. Pursuant to the CFTC's Core Principle B, a DCO is required to possess financial resources that, at a minimum, cover its operating costs for a period one year, as calculated on a rolling basis.

Additionally, SEC Rule 17Ad-22(b)(3) establishes similar requirements for clearing agencies. Specifically, Rule 17Ad-22(b)(3) states that a security-based swap clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participants to which it has the largest exposures in extreme but plausible market conditions.

ICC maintains adequate financial resources to discharge its financial obligations as a DCO. The financial resources of ICC dedicated to covering ICC's financial obligations to Clearing Participants in the event of a Clearing Participant's Default are Margin deposits, contributions to the GF, and ICC's assessment power. Clearing Participants' Margin and GF deposits are immediately available and highly liquid. After the application of a Defaulting Clearing Participant's Margin and GF deposit, and the respective GF contributions of ICC and non-Defaulting Clearing Participants, ICC may make an assessment against all non-Defaulting Clearing Participants. When a Non-Defaulting Participant elects to retire from being a Clearing Participant, its liability for assessments is limited to the amount of its respective required GF contribution, to be paid within one business day. To meet immediate liquidity needs in the event of a Clearing Participant's Default, ICC may borrow (through ICE), up to an aggregate principal amount of \$100,000,000 against ICE's senior unsecured revolving credit facility.

As set forth in its financial statements, ICC presently has financial resources, in the form of cash, which will enable it to cover its projected operating costs for a period of at least one year. ICC presently has designated a portion of these financial resources (equal to ICC's costs to provide central counterparty clearing services during a period of time sufficient for the orderly wind down of counterparty positions and clearing operations, which ICC has estimated to be nine months) as restricted cash (i.e., liquid assets set aside for this purpose) on its balance sheet.

ICC is required to enforce rules setting forth the appropriate minimum financial standards for its Clearing Participants and is charged with monitoring such requirements by routinely reviewing financial and other materials of its Clearing Participants. ICC Rule 202(b) requires Clearing Participants to meet and maintain such standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as established by ICC from time to time. ICC Rule 201(b)(ii) requires Clearing Participants to maintain adjusted net capital (ANC) at prescribed levels..

Operating Resources

Currently, there is no U.S. requirement for ICC to maintain specific levels of regulatory capital. Pursuant to section 39.11(a)(2) of Part 39 and DCO Core Principle B (Financial Resources), ICC is required to maintain financial resources with a value at least equal to the amount that would cover certain operating costs for a one-year period, including maintaining cash or a committed line of credit to satisfy six months of such operating costs.

ICC calculates the operating costs for a one-year period by using forecasts prepared by the Accounting and Finance Departments. Certain adjustments are then made to the projected operating costs. Adjustments include removing non-cash expenditures such as depreciation and amortization, removing volume-based expenditures, and removing expenses that are passed through to other entities. The adjusted one-year operating costs are then compared to the net assets of ICC to confirm net assets are greater than the projected expenses. Lastly, the adjusted operating expenses are multiplied by 50% to determine the amount of restricted cash committed line of credit required to meet the six month liquid financial resource requirement.

Staff Resources

ICC participates in ICE's annual performance reviews to assess the quality and talent of its staff. Reviews provide both staff and management with the ability to provide feedback related to individual performance, objectives of one's role and to identify any additional training that may be required to ensure adequate job performance. All ICE employees participate in these annual reviews.

3.9 Operational Reliability

3.9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

It is of utmost importance to ICC to have robust processes and procedures which ensure the accurate and reliable settlement of contracts. Pursuant to Core Principle E (Settlement Procedures) ICC is required to (1) complete money settlements on a timely basis, but not less frequently than once each business day; (2) employ money settlement arrangements to eliminate or strictly limit its exposure to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements); (3) ensure that money settlements are final when effected; (4) maintain an accurate record of the flow of funds associated with money settlements; (5) possess the ability to comply with the terms and conditions of any permitted netting or offset arrangement with another clearing organization; (6) establish rules that clearly state each obligation of the DCO with respect to physical deliveries; and (7) ensure that it identifies and manages each risk arising from any of its obligations with respect to physical deliveries. Additionally, Sections 17A(b)(3)(A) and 17A(b)(3)(F) of the SEA require ICC to have the capacity to facilitate and have rules designed to promote the prompt and accurate clearance and settlement of contracts.

The ICC Treasury Department serves to ensure that financial transactions, policies, and procedures meet organization objectives, needs, and regulatory body requirements. The Treasury Department is responsible for the daily tasks associated with cash and collateral management related to margin and GF. The Treasury Department is also responsible for portfolio investing; i.e., the department formulates and recommends the composition and term structure of ICC's portfolio of cash, collateral and capital holdings.

3.10 Protection of Assets

3.10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

ICC is not a public company. However, its ultimate parent company, ICE, is a publicly traded entity listed on the New York Stock Exchange (symbol: ICE,) and follows the U.S. generally accepted accounting principles (GAAP) required financial accounting and reporting principles. Audited financial statements of ICC, prepared in accordance with GAAP, must be prepared on an annual basis and will be consolidated as regards to the ICC Parent and its subsidiaries (ICC being one such subsidiary). ICC's financials are posted to the ICE website. ICE financials are published due to ICE's listing on NYSE. ICC has engaged Ernst and Young for audit purposes.

It is the responsibility of the ICC Audit Committee to provide the Board with an independent opinion and 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. The Audit Committee has the responsibilities detailed in Section 3.1.

The Audit Committee maintains free and open communication with the Board, the independent auditors, ICC's internal auditor, legal counsel and any other person responsible for the financial management of

ICC. Consistent with its functions, the Committee will encourage continuous improvement of, and will foster adherence to, ICC's policies, procedures and practices at all levels. In discharging its oversight role, the Audit Committee is empowered to investigate any matter brought to its attention with full access to all books, records, facilities, and other personnel of ICC and the authority to engage independent counsel and other advisors as it determines necessary to carry out its duties and responsibilities.

When acceptable forms of collateral are posted to the ICC accounts, they are held in ICC's name and control. ICC makes daily reports available to Clearing Participants detailing collateral held. ICC internally sub-accounts the assets of each Clearing Participant on its books and records.

The financial institutions that ICC uses for settlement and custody are among the largest in the world. ICC Treasury, in conjunction with the ICC Risk Department, monitors the financial health of the selected custody bank(s). ICC's Risk department will monitor their financial standing based on publicly available financials and market performance information. Any material change or increased risk will be cause for the Risk Department to notify Treasury. The GF and IM assets are held at the Bank of New York Mellon or BMO Harris Bank NA, each of which is not a Clearing Participant. By holding the IM and GF assets in custody at a non-Clearing Participant bank, ICC's default resources are further protected from exposure to Clearing Participants and this also provides an additional layer of diversification to the custody plan.

Section 39.15 of Part 39, Core Principle F (Treatment of Funds), requires ICC to have standards and procedures designed to protect and ensure the safety of member and participant funds. Specifically, it requires ICC to (i) establish standards and procedures that are designed to protect and ensure the safety of its Clearing Participants' funds and assets; (ii) hold such funds and assets in a manner by which to minimize the risk of loss or of delay in ICC's access to the assets and funds; and (iii) only invest such funds and assets in instruments with minimal credit, market, and liquidity risks. Each Clearing Participant is required to deposit IM for all positions carried in its segregated customer account with ICC, pursuant to ICC Rule 401. ICC collects the amount of IM owing directly from each Clearing Participant's segregated customer margin bank account in cash by wire transfer to the appropriate ICC account at one of its banks. Pursuant to ICC Rule 401 and ICC Procedures, each Clearing Participant may substitute certain other assets for the cash initially collected by ICC by electronically transferring other acceptable assets to designated custodian accounts at ICC's banks.

ICC safeguards and administers certain assets, namely IM deposited by Participants in respect of cleared transactions, and GF deposits made by Participants. IM is held by ICC pursuant to its Rules and its Agreements with its Clearing Participants. U.S. law and ICC Rules 401 and 801 address how IM funds are to be maintained and safeguarded. ICC does not hold any Clearing Participant assets other than IM and GF deposits.

The CFTC has adopted Part 22 of its regulations to specify in further detail the segregation requirements for customer margin provided in respect of cleared swaps. The Part 22 requirements establish a framework known as "legally segregated, operationally commingled", or "LSOC." As compared to the segregation requirements applicable to customer margin in connection with futures contracts, LSOC prohibits ICC, as a DCO, from using margin provided by non-defaulting customers of a failed FCM to cover losses on positions of a defaulting customer of the failed FCM. In this way, LSOC is intended to mitigate "fellow customer risk" in the event of a shortfall in customer assets following an FCM failure. ICC's books and records track each customer's cleared swaps and the associated collateral. Operationally, ICC holds all customer collateral in one account. If a customer defaults, ICC can apply FCM funds and the assets of the defaulting customer to cover the default-related losses. ICC does not use any funds from non-defaulting customers to cover the losses from a defaulting customer. In addition, customer funds cannot be used to cover losses arising from a FCM default. The CFTC Part 22 regulations include

detailed requirements, similar to those that apply to customer margin for futures transactions, addressing custody, segregation and investment of customer margin provided in respect of cleared swaps.

The CFTC Part 22 Regulations further require that customer funds, when deposited with a bank, must be held under an account name which clearly shows they are funds of the Clearing Participant's customers. Under CFTC Regulations 1.20 and 22.5, ICC obtains and retains a written acknowledgement from each settlement bank stating that the segregated funds deposited by ICC belong to Clearing Participants' customers and are held in accordance with the CEA.

The relevant U.S. legislative provision which ensures that assets are used or transferred only in accordance with the instructions of the owner of those assets is Section 4d(f) of the CEA. This stipulates that a DCO (such as ICC) that holds money, securities and property to margin, guarantee or secure the trades or positions of a customer, and any accruals relating thereto, be treated and dealt with as belonging to such customer. Instructions are given on behalf of the owners by Participants carrying their accounts, and the instructions are embodied in the Rules of ICC and the agreements Participants have with ICC. ICC was recently granted relief from the CFTC and SEC that permits both cleared swaps (i.e. index CDS) and cleared security-based swaps (i.e. single-name CDS) to be carried in the cleared swap account as described above and permit ICC to allow portfolio margining of index and single-name CDS positions in such account.

3.11 Outsourcing

3.11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

ICC has arrangements in place for certain functions to be performed on its behalf by its affiliate, The Clearing Corporation (TCC) and its ultimate parent, ICE. Pursuant to the Master Outsourcing Agreement, the parties are able to share information with competent regulatory authorities as needed. The services covered by the Master Outsourcing Agreement generally include intra-group services supporting the clearing operations of ICC (*i.e.*, operational staff and IT), and other ancillary services.

3.12 Information Sharing and Regulatory Cooperation

3.12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

CFTC Core Principle M (Information Sharing) and section 39.22 of Part 39 requires that ICC enter into and abide by the terms of all appropriate and applicable domestic and international information sharing agreements in order to carry out the DCO's risk management and surveillance programs. As a member of the Joint Audit Committee, ICC will abide by any other formal information sharing arrangement and agreements. Accordingly, ICC can confirm that it is willing to provide information about it and its activities to assist the OSC in the exercise of its functions, is willing to be open with the OSC or other appropriate bodies in regulatory matters, and will diligently pursue enquiries from the OSC or other appropriate bodies as necessary.

ICC is a party to the Intermarket Surveillance Group information-sharing agreement which calls for the sharing of information among securities and commodities exchanges in the U.S. ICC will notify the OSC

of its entry into information sharing agreements with other clearing organizations or other groups or associations, on a timely basis.

Part IV: Submissions

ICC submits that it meets the criteria set out for recognition as a clearing agency, all as outlined in appendix A to Staff Notice 24-702. ICC further submits that it would be appropriate and would not be prejudicial to the public interest for the OSC to exempt ICC from recognition due to the fact that it is already subject to appropriate direct regulatory oversight by the CFTC and SEC.

Yours Sincerely,



Christopher S. Edmonds
President
ICE Clear Credit LLC