

December 12, 2024

Re: Updates to ICC Operating Agreement and Governance Playbook Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation 40.6(a)

VIA ELECTRONIC PORTAL

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC (“ICC”) hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), a self-certification of amendments to its (i) Operating Agreement and (ii) Governance Playbook (the “Playbook”). ICC is registered with the Commission as a derivatives clearing organization (“DCO”). ICC intends to implement the changes no sooner than the tenth business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office.

Concise Explanation and Analysis

The amendments are intended to principally provide for the establishment of a Nominating Committee of the ICC Board of Managers (“Board” and each member thereof a “Manager”). This submission includes a description of the amendments to the Operating Agreement and the Playbook. Certification of the amendments pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

I. Operating Agreement

ICC is amending and restating its Operating Agreement¹ to add a Nominating Committee. As provided in revised Section 3.12 of the Operating Agreement, the Board will establish and maintain a Board level Nominating Committee which will be responsible for evaluating the independence and fitness of the persons proposed to be designated as Managers of the Board. In connection with this addition, the amendments would add a definition of ‘Nominating Committee’ to Section 1.01 of the Operating Agreement. Furthermore, proposed Section 3.12(a) of the Operating Agreement provides that the Nominating Committee will be composed of at least three members, a majority of which are required to be independent (i.e., either a Parent Independent Manager² or a Risk Committee Independent Manager³).

¹ Following completion of this self-certification process, ICC proposes to implement the collective changes to the Operating Agreement described herein and the changes to the Operating Agreement described in ICC’s self-certification with the Commission filed on July 3, 2024 and available here https://www.ice.com/publicdocs/regulatory_filings/2024_07_03.pdf in the same version of the amended and restated Operating Agreement.

² As defined in the Operating Agreement, ‘Parent Independent Manager’ means a Manager of the Board elected by ICC’s owner - ICE US Holding Company L.P. (“Parent”) - that meets the independence requirements of

Two of the members of the Nominating Committee will be required to be Managers nominated to the Board by the Risk Committee, and one of these Risk Committee nominees will be required to be a Risk Committee Independent Manager, and the other Risk Committee nominee is not required to be independent (i.e., they may be a Risk Committee Non-Independent Manager⁴). The chairperson of the Nominating Committee will be a Parent Independent Manager. Proposed Section 3.12(b) of the Operating Agreement provides that the Nominating Committee will have access to the records of ICC, as well as access to Managers of the Board, and ICC officers and employees. The Nominating Committee will meet as needed to fulfill its duties, but in no event less than annually. Proposed Section 3.12(c) of the Operating Agreement provides for the limitation of the fiduciary duties on the members of the Nominating Committee. Such proposed limitation of fiduciary duties on members of the Nominating Committee is analogous to the current limitation of fiduciary duties provided in the Operating Agreement for members of the ICC Audit Committee and Managers of the Board. Specifically, proposed Section 3.12(c) provides that notwithstanding any provision of, any duty otherwise existing under, or anything to the contrary under applicable law (whether common or statutory), in equity or otherwise, the Operating Agreement is not intended to, and does not, create or impose any fiduciary duties on the members of the Nominating Committee. Further, each of the Parent and the other parties to or bound under the Operating Agreement waives any and all fiduciary duties that, absent such waiver or otherwise, may be implied or may otherwise apply under applicable law (whether common or statutory), in equity or otherwise to the members of the Nominating Committee. In addition, the parties to the Operating Agreement agree that the only duties and obligations of the members of the Nominating Committee to ICC, the Parent, ICC Clearing Participants, or any other person under applicable law (whether common or statutory), in equity or otherwise, are limited solely to performing those contractual duties expressly set forth in the Operating Agreement. Proposed Section 3.12(c) further provides that that none of the foregoing waivers or limitations shall be construed as eliminating the implied covenant of good faith and fair dealing.

Furthermore, the amendments modify Section 3.02 of the Operating Agreement to add the Nominating Committee's role in the evaluation of potential members of the Board. Specifically, Section 3.02(a) of the Operating Agreement would be revised to indicate that the Parent shall not elect any person as a Manager of the Board until the Nominating Committee provides their evaluation of such person to the Parent. In addition, the amendments add the related definitions of 'Nominating Committee Evaluation' and 'Nominating Committee Charter'⁵ to Section 1.01 of the Operating Agreement.

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

each of the New York Stock Exchange listing standards, the Securities Exchange Act of 1934, and Intercontinental Exchange, Inc. Board of Director Governance Principles (collectively, the "Independence Standards").

³ As defined in the Operating Agreement, 'Risk Committee Independent Manager' means a Manager of the Board nominated by the Risk Committee that meets the Independence Standards.

⁴ As defined in the Operating Agreement, 'Risk Committee Non-Independent Manager' means a Manager of the Board nominated by the Risk Committee that is not required to meet the Independence Standards.

⁵ 'Nominating Committee Evaluation' means, in respect of any person, the Nominating Committee's written evaluation of such person's independence and fitness for election as a Manager, based on the standards and pursuant to the process set forth in the Nominating Committee Charter. 'Nominating Committee Charter' means the Charter of the Nominating Committee.

II. Governance Playbook

ICE Clear Credit would also amend the Playbook to conform to the amendments to the Operating Agreement discussed above. Section I and Section III of the Playbook would be revised to add reference to Rule 17Ad-25 under the Securities Exchange Act of 1934 (“SEC Rule 17Ad-25”) to the list of applicable regulations covering the governance structure of ICC. Such change properly adds reference to SEC Rule 17Ad-25 as such rule applies to the governance structure of ICC as an SEC registered clearing agency. Section II of the Playbook will be amended to add the new Nominating Committee to the existing chart summarizing ICC’s governance structure. Section III of the Playbook will be amended to add the defined term ‘Manager’ to reference any individual member of the Board. Furthermore, ICC’s definition of the independence standards it applies to independent Managers of the Board would be revised to include a reference to SEC Rule 17Ad-25 which provides for independence requirements for SEC registered clearing agencies, including ICC. The amendments would also formalize the defined term ‘Independence Standards.’ Section III.A. of the Playbook would also be amended to remove the fitness standards for serving as a Manager on ICC’s Board and, as a result, the related definition of ‘Qualified Manager’ would also be removed. As a replacement for these specified fitness standards, the amendments would add a reference that the fitness standards for serving as a Manager, and the criteria for selecting new Managers will be specified by the new Nominating Committee and thereafter approved by the Board. Such process for having Manager fitness standards specified by the Nominating Committee is intended to comply with SEC Rule 17Ad-25(c)(3) which requires this process. The amendments would add the defined term ‘Manager Fitness Standards’ to refer to these Nominating Committee specified and Board approved fitness standards for Managers. The Nominating Committee will be formed, and their process of specifying the Manager Fitness Standards will occur, following completion of the self-certification process, and ICC implementation of these proposed rule changes. Once such Manager Fitness Standards are specified by the new Nominating Committee and are approved by the Board, they will be included as new Appendix 1 to the Playbook. Due to the addition of Appendix 1, subsequent appendices will be renumbered and references to such appendices would be updated as well.

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

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

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

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

- In addition to an individual that is an employee of an ICE Group company, an individual that otherwise receives compensation from an ICE Group company.
- An individual with a family member that is (or has been in the year prior to the determination date) an employee or otherwise receives compensation from any ICE Group company.
- An individual, or a family member of such individual, that is or has been in the year prior to the determination date, receiving payments from ICE Group companies that could reasonably affect the independent judgement or decision-making of the individual (other than director and committee fees of pension or other forms of deferred compensation for prior services not contingent on continued service).
- In addition to an individual that is an employee of a firm that is the ICE Group's internal or external auditor, an individual that has a family member who is either a partner of such auditing firm or a current employee of such auditing firm, or the individual has a family member that was within the prior year from the determination date an employee or such auditing firm and personally worked on the ICE Group audit within that time.
- An individual with a family member that is, or has been within the prior year from the determination date, employed as an executive officer of another company where any of ICC's executive officers at the same time serves or served on that company's compensation committee.
- An individual, or a family member of such individual, that is or has been within the prior year from the determination date, a partner or controlling shareholder on any organization to or from which an ICE Group company is making or receiving payments for property or services other than: (i) payments arising solely from investments in the ICE Group company securities; or (ii) payments under non-discretionary charitable contribution matching programs.

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

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

In addition, Section IV of the Playbook would be revised to add the Nominating Committee to the list of ICC's primary governance committees. Furthermore, Section IV.B. would be added to the Playbook to describe the Nominating Committee's purpose, its membership composition, the new Nominating Committee member administration procedures, the Nominating Committee meeting frequency, the Nominating Committee performance review process, and the documents relevant to the Nominating Committee. The additional sections describing the Nominating Committee's purpose, its composition and its meeting frequency reflect the same changes made to the Operating Agreement described above. The section describing the new Nominating Committee member administrative procedures provides an overview of the steps that will be taken by the ICC legal department to onboard a new member of the Nominating Committee (e.g., updating distribution lists and updating the permissions of such individual on the Diligent platform which is used to distribute materials to the Board and other committees, including the Nominating Committee). The proposed revisions also add a description of the Nominating Committee performance review process and procedures. Such performance review process is conducted on an annual basis and includes each member of the Nominating Committee completing a self-evaluation survey. The annual review process is designed to gather feedback on the operation of the Nominating Committee and solicit suggestions for improvements, as well as provide a forum for the identification of problems with respect to the performance of the Nominating Committee. Such process includes the compilation of a summary of the survey responses received from the Nominating Committee by the ICC legal department, which are presented to the entire Nominating Committee. Such summary shall include disclosure of the minimum, maximum, and average score for each survey item, as well as a summary of relevant comments received throughout the process. The proposed process and procedures for the Nominating Committee annual performance review process are fully analogous to the performance review processes currently in place for both the Board and the ICC Audit Committee. Lastly the revisions add information related to relevant documents of the Nominating Committee (e.g., meeting agendas, minutes and meeting materials), noting that such relevant documents will be maintained by the ICC legal department on their shared network drive.

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

Core Principle Review:

ICC reviewed the DCO core principles ("Core Principles") as set forth in the Act with respect to the amendments to the Operating Agreement and Playbook. During this review, ICC identified the following Core Principle as being impacted:

Governance: The amendments are intended to comply with the requirements of Core Principle O and Commission Rule 39.24. The amendments add a Nominating Committee to ICC's governance structure with the role of evaluating the independence and fitness of the persons proposed to be designated as Managers of the Board. As such, the Nominating Committee is intended to improve ICC's governance structure by reducing the likelihood that conflicts of interest may influence the Board. Furthermore, the amendments provide transparent governance arrangements and enhance ICC's governance structure with respect to establishing and enforcing fitness standards for Managers of the Board, consistent with the requirements of Core Principle O and Regulation 39.24.

Composition of Governing Boards: The amendments are intended to comply with the requirements of Core Principle Q and Commission Rule 39.26. While the amendments address the governance structure around evaluating the independence and fitness of persons proposed to be designated as Managers of the Board, the amendments do not otherwise affect the composition of the Board. Therefore, the

amendments will not adversely affect the representation of ICC clearing participants on the Board. Furthermore, the majority of the Board will continue to be independent and have no material relationships with ICC or its affiliates. ICC believes that the amendments are thus consistent with ensuring that the Board includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof, and accordingly comply with the requirements of Core Principle Q and Regulation 39.26.

Amended Rules:

The proposed changes consist of amendments to the Operating Agreement and Playbook. ICC has respectfully requested confidential treatment for the Operating Agreement and Playbook, which were submitted concurrently with this self-certification submission.

Certifications:

ICC hereby certifies that the changes comply with the Act and the regulations thereunder. There were no substantive opposing views to the changes.

ICC further certifies that, concurrent with this filing, a copy of the submission was posted on ICC's website, and may be accessed at: <https://www.theice.com/clear-credit/regulation>

ICC would be pleased to respond to any questions the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6742.

Sincerely,



Eric J. Nield
General Counsel