

October 6, 2025

Submitted Electronically

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
1100 F Street, NE
Washington, DC 20549-1090

Re: ISDA Comments on SEC “ICE Clear Credit LLC; Notice of Filing of an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934” [Release No. 34-103727; File No. 600-45]

Dear Ms. Countryman:

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ respectfully submits this comment letter to the Securities and Exchange Commission (the “Commission” or the “SEC”) in response to the ICE Clear Credit LLC (“ICC”) application² for registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934, including the proposed Treasury Clearing Rules (the “Proposed Rules”).³ Terms used but not defined herein have the meaning in the ICC Proposed Rules.

ISDA encourages the SEC to facilitate clearing of U.S. Treasuries at additional clearing agencies in light of the SEC’s clearing mandate.⁴ Subject to the recommendations for improvement of ICC’s clearing model discussed herein, ISDA strongly supports ICC’s application to register as a clearing agency. The proposed framework for clearing in the ICC Application would create a competitive U.S. Treasury clearing landscape that, in turn, would provide for a more resilient U.S. Treasury market.

I. ICC Should Ensure That Treasury Participants Are Adequately Capitalized.

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on ISDA’s website: www.isda.org. Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#), and [YouTube](#).

² Notice of Filing of an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934 (Aug. 1, 2025), available [here](#) [hereinafter the ICC Application].

³ ICC Application, Annex E-2, available [here](#) [hereinafter the Proposed Rules].

⁴ Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities, Exchange Act Release No. 99149 (Dec. 13, 2023), 89 Fed. Reg. 2,714 (Jan. 16, 2024).

ISDA recommends that ICC amend Proposed Rule 201(b) to include requirements related to capital adequacy for applicants who wish to become Treasury Participants, depending on their entity type. The Fixed Income Clearing Corporation (“FICC”) imposes particular capital requirements on its applicants depending on whether the applicant is (among others) a bank, broker-dealer, FCM, or registered investment company.⁵ CME Securities Clearing Inc. (“CMESC”) has set forth similar standards in its proposed rules for Treasury clearing with particular requirements for broker-dealers, banks, non-broker-dealer FCMs, and unregistered investment pools.⁶

Ensuring that all ICC Treasury Participants are adequately capitalized will not only strengthen ICC’s resilience but would also enhance the overall safety and stability of the market and foster greater confidence in the Treasury clearing system.

II. ICC Should Make Certain Clarifications to the Trade Submission Requirements and Related Definitions.

A. ICC Should Clarify That Pursuant to the Proposed Rules, a Transaction May Continue Bilaterally in the Event That a Transaction Is Rejected.

As currently drafted, Proposed Rule 303(a) provides that:

each Treasury Participant shall be required to submit to [ICC] or another covered clearing agency...for clearing all Trades...that are Eligible Secondary Market Transactions, promptly following the execution thereof.

This rule could be read to imply that the requirement for a Treasury Participant to submit eligible secondary market transactions for clearing is actually an obligation to ensure that such transactions are accepted for clearing in all circumstances. Further and as a practical matter, the trade will likely be submitted to ICE through a variety of post-trade connectivity and middleware platforms, including ICE Link, that do not involve the Treasury Participant.

Consistent with the plain reading of the SEC’s transaction submission requirement,⁷ ISDA understands that SEC rules may allow a transaction to continue bilaterally, including where the failure to clear is outside the control of the Treasury Participant and its Non-Participant Party, such as technical or communication disruptions, malfunctions, or errors including cyber and other technological outages. Proposed Rule 303(a) should clarify that market participants may continue such transactions bilaterally in their discretion, particularly where market disruptions require bilateral execution to meet the liquidity needs of the Treasury markets. Further, ICC should adjust Proposed Rule 303(a) to reflect that a Treasury Participant is not responsible for the timing or any other aspects of the post-trade execution process that it does not control.

⁵ See FICC Government Securities Division Rules (“FICC Rules”), Rule 2A, Section 4(b).

⁶ See Notice of Filing of an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934, Exhibit E-3, at Rule 306(b) (Jan. 15, 2025), available [here](#).

⁷ 17 C.F.R. § 240.17ad-22(e)(18)(iv)(A).

B. ICC Should Amend Its Rules to Future-Proof the Implementation of the Transaction Submission Requirements by Automatically Incorporating Any SEC Interpretations, Guidance, or Definitional Changes.

Market participants continue to engage with the SEC to clarify or request interpretations with respect to particular aspects of the transaction submission requirement. Given that this space is still evolving, we recommend that ICC draft its rules in a manner that would automatically incorporate any SEC relief, interpretation, or updated definitions. In particular, the definition of “Eligible Secondary Market Transaction” should be revised to simply cross-reference the definitions adopted by the SEC and subject to any SEC interpretation or relief. Doing so will ensure that ICC’s rulebook remains aligned with SEC standards as they evolve through rule amendments, guidance and interpretation.

C. ICC Should Revise Its Proposed Penalties to Account for Treasury Participants’ Good-Faith Efforts Regarding the Trade Submission Requirement.

The proposed Disciplinary Rules⁸ provide that ICC may impose fines ranging between \$10,000 and \$100,000 on a Treasury Participant for each Violation of the Proposed Rules. This could result in high fines for inadvertent violations of the trade submission requirement in Rule 303(a). While ISDA appreciates that penalties could theoretically help prevent rule violations, the potential of fine for each failure to submit a transaction for clearing is excessive and does not account for the Treasury Participant’s good-faith efforts to remedy the problem. ISDA suggests that ICC allow Treasury Participants to work to remediate the issue that may have caused the non-compliance, without the immediate imposition of penalties.

III. ICC Should Make Other Changes to the Proposed Rules Regarding the Close-Out of Client-Related Positions to Strengthen Treasury Participants’ Control Over the Process and Protect Themselves from Loss, as Well as Other Changes to Default Management Rules.

A. The Treasury Participant Should Have the Authority to Close Out Against a Defaulting Client in the Ordinary Course.

Rule 316(g) provides that, in the event of a Client Default,⁹ ICC will manage the close-out of the Defaulting Client’s positions, unless the Treasury Participant carrying such positions elects otherwise by notice to ICC through a Participant Management Election. This gives ICC the power to manage the Non-Participant Party’s default in the ordinary course, which ISDA does not believe is appropriate. The Treasury Participant has the most direct financial interest at stake, as it is responsible for the obligations of its Defaulting Client, and is also best positioned to conduct an efficient and effective close-out due to its direct relationship with the Defaulting Client and familiarity with the relevant Client-Related Positions. Therefore, ICC should amend Proposed

⁸ Proposed Rules 700 *et seq.*

⁹ Proposed Rule 316(g) states that a Client Default exists when “a default or termination event with respect to a Non-Participant Party has occurred and is continuing under the applicable agreement between the Treasury Participant and Non-Participant Party with respect to the Client-Related Positions of the Non-Participant Party”.

Rule 316(g) to permit a Treasury Participant to manage a Client Default unless it elects to have ICC manage the Client Default. Furthermore, ICC should only otherwise be able to manage a Client Default if the Treasury Participant is also in Default (*i.e.*, in a double-default scenario).

ICC should also amend the Proposed Rules to provide certain guardrails for the scenario in which ICC is managing a Client Default under Proposed Rule 316(g). The Proposed Rule should clarify that ICC may permit some Client-Related Positions to continue in the ordinary course (*e.g.*, positions associated with overnight repos), and that it shall act within a short time horizon to close out or port all, but no fewer than all, of a Defaulting Client's other positions (so as not to expose the Treasury Participant to loss and margin requirements). We do not believe it is appropriate for ICC to have the ability to terminate only a portion of the Defaulting Client's term positions because this could result in the Treasury Participant facing a margin deficiency or other form of loss.

In addition, Proposed Rule 316(g) provides that "[t]he Treasury Participant must provide to [ICC] a written certification that the Client Default has occurred" which, read in isolation, seems to require notice regardless of whether the Treasury Participant wishes to exercise its close-out rights under the Proposed Rules and even when the Treasury Participant has waived the applicable Non-Participant Party default or termination event. We understand that this was not ICC's intent. ICC should therefore amend Proposed Rule 316(g) to clarify that the Treasury Participant need only provide ICC with a written certification of a Client Default if it seeks to exercise its close-out rights.

B. Proposed Rule 316(g) Should Be Amended to Limit Treasury Participant Indemnification of ICC for ICC's Close-Out of Defaulting Client Positions.

As currently drafted, Proposed Rule 316(g) requires the Treasury Participant to indemnify ICC:

against any loss, claim, liability, damage or expense arising out of any actions by ICE Clear Credit under Rule 316(g) (including without limitation any claims by the Defaulting Client as to whether the Client Default occurred and any claims by the Defaulting Client or any other third party as to the manner in which the Closing-Out Process was conducted).

A Treasury Participant should not be required to so broadly indemnify ICC for ICC's own actions in the event ICC manages the close-out of the Defaulting Client. Any indemnity obligations of Treasury Participants should be strictly limited to claims arising from the Treasury Participant's own gross negligence or willful misconduct, consistent with the limitation of liability extended to ICC itself elsewhere in the Proposed Rules.¹⁰

C. ICC Should Make Certain Other Changes to the Proposed Rules Regarding Remedies and Close-Out to Enable More Effective Management of Close-Out of Defaulting Client Positions.

¹⁰ See, *e.g.*, Proposed Rules 802(c)(ii), 811(l)(ii), and 811(u).

In addition to the above requests, ICC should consider making the following changes to the Proposed Rules, which will enhance the close-out process and clarify the rights of Treasury Participants in the event of a Client Default:

- ICC should permit the Treasury Participant itself to port Client-Related Positions to another Treasury Participant in the event of a Client Default.¹¹ Such optionality is vital for a Treasury Participant's ability to effectively mitigate risk with respect to a Defaulting Client. For example, a transfer may enable another Treasury Participant to assume a Defaulting Client's positions. In all instances, the receiving Treasury Participant should have to consent to the transfer of such Client-Related Positions, and margin should be transferred in such a manner as to ensure no Treasury Participant is left in a margin deficiency.¹²
- ICC should amend Proposed Rule 316(e) to permit the Treasury Participant to convert¹³ a House Position into a Client-Related Position.
- ICC should amend Proposed Rule 316(e) to explicitly provide that when a Client-Related Position is converted into a House Position after a Client Default, the positions may offset and compress (*i.e.*, liquidate) (and vice versa) against any opposite Position that may be in the relevant Account. We believe that is ICC's intent, but the Proposed Rules should clarify this explicitly.
- ICC should also explicitly permit a Treasury Participant to allow Client-Related Positions to settle in the ordinary course after a Client Default.
- ICC should amend Proposed Rule 316 to specifically provide that when the Treasury Participant offsets or converts Client-Related Positions in the event of a Client Default, the Treasury Participant is not acting as agent for the Non-Participant Party. This will ensure that the Treasury Participant is understood to not be acting as agent for the Defaulting Client in undertaking remedies, which is helpful in supporting the enforceability of these remedies across an array of jurisdictions.¹⁴

¹¹ Treasury Participants should be able to port Client-Related Positions to a Client Origin Account or House Account of another Treasury Participant.

¹² See Section IV.C below.

¹³ ISDA understands that to "convert" a Client-Related Position into a House Position, as currently provided in Proposed Rule 316(e), means to transfer such position to the House Account.

¹⁴ See, e.g., LCH Limited, FCM Regulations of LCH Limited, Regulation 46 ("Notwithstanding any other provision of these FCM Regulations, with respect to FCM Transactions involving an FCM Client or an FCM Affiliate cleared by an FCM Clearing Member as FCM Contracts, such FCM Clearing Member shall act solely as agent of such FCM Clients or FCM Affiliates in connection with the clearing of such FCM Contracts; provided, that each FCM Clearing Member shall remain fully liable for all obligations to the Clearing House arising in connection with such FCM Contracts. For the avoidance of doubt, following the occurrence of an FCM Client Default or an FCM Affiliate Default, the FCM Clearing Member is permitted, but not obligated, to act in a capacity other than as agent of the FCM Client or FCM Affiliate, which may include acting as principal. . ."), https://www.lseg.com/content/dam/posttrade/en_us/documents/lch/rulebooks/lch-ltd/240923-fcm-regulations-fmx-go-live-clean.pdf.

- ICC should explicitly provide in Proposed Rule 316(g) that where a Non-Participant Party has established a direct-settlement relationship with ICC under Proposed Rule 2204 and opened an Individual Client Direct Settlement Account, ICC will, in the event of a Client Default of that Non-Participant Party, direct payment and securities to settle in the House Account of the applicable Treasury Participant, or otherwise deliver such payment and securities at the direction of the Treasury Participant. The Treasury Participant guarantees the Non-Participant Party's obligations but is no longer involved in the settlement and therefore the Treasury Participant requires assurance that cash and securities needed to cover the Non-Participant Party's reimbursement obligations to the Treasury Participant do not dissipate. We understand that ICC is amenable to this change.
- ICC should include a provision that allows a Treasury Participant to liquidate the Client-Related Positions of a Defaulting Client by any other reasonable means that may be permitted by ICC.

D. Proposed Rule 2205 Should Be Amended to Strengthen a Treasury Participant's Rights in the Event of a Delivery Failure.

Under Proposed Rule 2205(c) and (d), ICC may buy-in securities in the event of a Delivery Failure. ICC should instead permit the Receiving Party to conduct a buy-in at its discretion and submit pricing information to ICC to determine loss amounts (including financing costs) that may be charged to the Delivering Party. This is important because the Receiving Party is most at risk in a Delivery Failure and should be able to direct any buy-in if it deems it appropriate to do so.¹⁵ We note that nothing would prevent ICC from continuing to assess a Fail Charge to the Delivering Party.

E. ICC Should Remove Rule 808 Regarding Reduced Gains Distribution.

Proposed Rule 808, which has been carried over from CDS Rule 808, allows ICC to impose Reduced Gains Distribution (*i.e.*, variation margin gains haircuts ("VMGH")) in the event of a severe Treasury Participant default scenario. Such a tool, while commonplace in derivatives clearing, is not appropriate for repo clearing. Were ICC to impose VMGH in the event of a Treasury Participant default, buy-side participants (*i.e.*, cash lenders/repo buyers) may cease lending for fear of being subject to haircuts and therefore loss. Because repos are used as liquidity and funding instruments, this could have serious liquidity implications and exacerbate the stressed market conditions likely to exist in a Treasury Participant default scenario. Moreover, we are not aware of any other repo clearinghouse whose rules provide for VMGH.¹⁶

IV. ICC Should Make Other Changes to the Proposed Rules Regarding the Transfer and Porting of Client-Related Positions.

¹⁵ See, *e.g.*, FICC Rule 11, Section 13 (permitting a member to buy-in securities and transmit pricing information to FICC).

¹⁶ See, *e.g.*, ISDA, Clearing Model Comparison (2024) (row on "Default Management Obligations" shows that no repo clearing service imposes variation margin gains haircuts), <https://www.isda.org/a/YE8gE/Clearing-Model-Comparison-061124.pdf>.

As a general matter, ISDA supports clear, pre-established porting rules and arrangements. These can help avoid the need to close out positions in times of market stress, potentially reducing market disruption and attendant risks to non-defaulting members and the clearing agency itself. We support the Proposed Rules' provision of a porting mechanism, and suggest the following changes to increase certainty and avoid unintended market disruptions.

A. ICC Should Allow Voluntary Transfers of Client-Related Positions.

ICC should amend the Proposed Rules to allow a Treasury Participant to transfer Client-Related Positions on a voluntary basis to another Treasury Participant, subject to the consent of the Non-Participant Party and the receiving Treasury Participant. The ability to transfer Client-Related Positions on a voluntary basis would give Treasury Participants crucial flexibility to manage their portfolios and provide options to their customers.¹⁷ We note that FICC is planning to permit this option.¹⁸

B. Non-Participant Parties Should Be Able to Designate Another Treasury Participant to Which Its Positions May Be Ported in the Event of a Treasury Participant Default.

Non-Participant Parties should be able to designate, as a non-binding preference, another Treasury Participant to port its activity to in the event ICC chooses to port Client-Related Positions when a Treasury Participant becomes a Defaulting Member under Proposed Rule 20-605(a)(ii). This will make porting more predictable for Non-Participant Parties, Treasury Participants, the applicable insolvency manager, and ICC itself. Notably, other clearinghouses allow for this in the context of both repo and derivatives clearing.¹⁹

C. ICC Should Only Be Able to Port Client-Related Positions, Whether in the Ordinary Course or After a Treasury Participant Default, if It Would Not Result in a Margin Deficiency or Increased Exposure for the Defaulting Participant.

Proposed Rule 20A-02 provides that ICC may transfer all or part of the portfolio of Client-Related Positions of a Defaulting Participant (the “**Eligible Transfer Positions**”) to another Treasury Participant, along with any related margin. As written, these provisions may be read to

¹⁷ Treasury Participants should be able to transfer Client-Related Positions to a Client Origin Account or House Account of another Treasury Participant.

¹⁸ See FICC, Notice of Filing of Amendment No. 1, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the GSD Rulebook Relating to Default Management and Porting With Respect to Indirect Participant Activity, 90 Fed. Reg. 45850 (Sept. 23, 2025) (new proposed FICC Rule 26, Section 1).

¹⁹ See, e.g., LCH Limited, Procedures Section 2B, RepoClear Clearing Service, Section 1.12.3, https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/lch-procedure-2b-registration-time.pdf; LCH Limited, Procedures Section 2C, SwapClear Clearing Service, Sections 1.28 and 1.28.4, https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/250113-procedure-2c-esma-default-rules-findings.pdf; CME Securities Clearing, Inc., Proposed Rule 412, Exhibit E-3 to Form CA-1 (Dec. 13, 2024), <https://www.sec.gov/files/cmesc-ca-1-exhibit-e-3-rulebook-12-13-24.pdf>; see also FICC Proposed Rule 26 (Sept. 18, 2025), available [here](#).

permit ICC to transfer Eligible Transfer Positions in such a way as to result in the transferee Treasury Participant or the Defaulting Participant having a margin deficiency or otherwise exposing it to additional loss.²⁰ We do not believe this was ICC's intent. Accordingly, ICC should revise Proposed Rule 20A-02 to explicitly provide that ICC may only transfer Eligible Transfer Positions to the extent it would not result in a margin deficiency and would be risk-mitigating for the transferee Treasury Participant or Defaulting Participant, as applicable.

V. ICC Should Clarify the Variation Margin Settlement Language in Proposed Rule 401(l).

Proposed Rule 401(l) provides that upon final settlement of Transfer of Variation Payment, the fair value of "outstanding exposures for the relevant Contracts" will be reset to zero. It appears such language is a holdover from ICC's CDS Rules,²¹ and does not seem appropriate for the repo market. Outstanding exposures under Treasury repos would not generally reset to zero upon the transfer of variation margin, as each party to the Treasury repo would still have an obligation to deliver cash or securities to the other on the off-leg. To avoid uncertainty as to the obligations of the parties and to clarify ICC's intent in this provision, we recommend that ICC revise Proposed Rule 401(l) to simply provide that "[o]nce settlement of a Transfer of Variation Payment in respect of the Margin Requirement for a Variation Payment Category is final, the Margin Requirement for such Variation Payment Category shall reset to zero."

VI. ICC Should Permit Treasury Participants to Post Treasuries as Initial Margin.

Proposed Rule 401(d) provides that, with respect to satisfaction of an Initial Margin requirement, a Treasury Participant must post "dollars or other currencies" and may only post assets (*i.e.*, Treasuries) for substitution purposes in accordance with Proposed Schedule 401. We understand that ICC intended that Initial Margin be funded with 50% cash and 50% Treasuries; however, Rule 401(d) appears to require 100% cash funding except for substitutions. ISDA requests that ICC clarify that Treasury Participants may use Treasuries to satisfy at least part of the Initial Margin requirement, as Treasuries are an important liquidity management tool and a useful way to substitute for cash. Given the safety of Treasuries and the deep liquidity of the market in general, allowing Treasury Participants to do so should pose no appreciable risk to ICC.

VII. Provision of Key Legal Opinions and Information

Providing the opinions detailed below is consistent with ICC's obligations under SEC Rule 17ad-22(e)(1) and (e)(23)(ii) to provide for a well-founded, transparent, and enforceable legal

²⁰ For example, if a Defaulting Participant's Non-Participant Party has two perfectly offsetting Client-Related Positions, then all else being equal, the Defaulting Participant would have no Initial Margin requirement with respect to such positions due to netting. However, if ICC were to only transfer one of these Client-Related Positions to another Treasury Participant, both the Defaulting Participant and the transferee Treasury Participant would have Initial Margin requirements.

²¹ See ICC CDS Rule 401(l) (providing that "[o]nce settlement of a Transfer of Mark-to-Market Margin in respect of the Margin Requirement for a Mark-to-Market Margin Category is final, the fair value of the outstanding exposures for the relevant Contracts in that Mark-to-Market Margin Category (taking into account the Mark-to-Market Margin provided in respect of such Margin Requirement) will be reset to zero.").

framework for each aspect of its activities in all relevant jurisdictions. Doing so would also provide Treasury Participants with sufficient information to enable them to identify and evaluate the risks, fees and other material costs they incur by participating in ICC's clearing services.

- *Bankruptcy Remoteness:* It is not immediately clear from the Proposed Rules whether the assets of Treasury Participants and Non-Participant Parties held at ICC would be held in a "bankruptcy remote" manner (*i.e.*, that such assets would not form part of ICC's estate in the event of ICC's insolvency and not available to cover ICC's CDS clearing operations). Accordingly, we urge ICC to obtain, and make available to all Treasury Participants on a reliance basis, a reasoned legal opinion from outside counsel, in which counsel opines that the assets of Treasury Participants and Non-Participant Parties at with ICC would be considered bankruptcy remote and available just for U.S. Treasury clearing operations. This is especially important because we understand that the same ICC legal entity will be responsible for both CDS and Treasury clearing.
- *Enforceability:* ICC should obtain legal advice regarding the enforceability of the Proposed Rules under the governing law of the Proposed Rules, applicable insolvency law, and the Federal Deposit Insurance Corporation Improvement Act of 1991 in the event of an insolvency of ICC or a Treasury Participant. ICC should make these opinions available to all Treasury Participants on a reliance basis.
- *Accounting:* ICC should make available to Treasury Participants any accounting analysis and related legal opinions it has obtained in respect of the Proposed Rules supporting the determination that a Treasury Participant's role in clearing for Non-Participant Parties is that of an agent.

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We appreciate the opportunity to submit comments in response to the ICC Application. ISDA's core mission is to ensure the safety and efficiency of the derivatives markets, but inefficiencies in the U.S. Treasury market could adversely affect collateral for derivatives and linked derivatives markets. To this end, ISDA has a strong interest in the development of a competitive U.S. Treasury clearing landscape, which, in turn, would enhance the resiliency of U.S. Treasury markets. We therefore strongly support ICC's application and hope that ICC and the Commission will consider our comments, as they reflect the extensive knowledge and experience of financial market professionals within our membership.

We look forward to further engaging ICC and the Commission on these important issues. Please do not hesitate to contact Ann Battle, Senior Counsel (abattle@isda.org), or Nicolette Cone, Associate General Counsel (ncone@isda.org), should you have any questions.



Katherine Darras
General Counsel
International Swaps and Derivatives Association (ISDA)