

# 7.

## Bourses, chambres de compensation, organismes d'autorégulation et autres entités réglementées

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- 7.1 Avis et communiqués
  - 7.2 Réglementation de l'Autorité
  - 7.3 Réglementation des bourses, des chambres de compensation, des OAR et d'autres entités réglementées
  - 7.4 Autres consultations
  - 7.5 Autres décisions
-

## 7.1 AVIS ET COMMUNIQUÉS

### Publication du rapport d'inspection de la Chambre de la sécurité financière

L'Autorité des marchés financiers (l'« AMF ») a pour mission d'encadrer les activités de distribution de produits et services financiers, notamment par la surveillance et le contrôle des organismes d'autoréglementation (OAR) reconnus.

En vertu du chapitre II du titre III de la *Loi sur l'encadrement du secteur financier* (RLRQ, c. E-6.1) et du plan de supervision, l'AMF réalise, au moins tous les trois ans, une inspection complète des activités de la Chambre de la sécurité financière (« CSF ») afin de vérifier :

- sa conformité aux dispositions législatives et aux conditions de sa reconnaissance à titre d'OAR ;
- le respect des décisions de l'AMF ;
- la manière dont il exerce ses fonctions et pouvoirs.

Prenez avis que l'AMF rend disponible aujourd'hui, sur son site Web, le rapport d'inspection de la CSF, couvrant la période du 1er janvier 2021 au 31 août 2024. Par ailleurs, à la suite de l'entrée en vigueur, le 4 juillet 2025, du chapitre I de la *Loi 16 – Loi modifiant diverses dispositions principalement dans le secteur financier*, (L.Q. 2025, c. 16) qui fusionne la CSF et de la Chambre de l'assurance de dommages pour former la Chambre de l'assurance, cette dernière sera responsable de la mise en œuvre des recommandations formulées dans le présent rapport.



6 août 2025

# Inspection de la Chambre de la sécurité financière

Rapport final

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## 1. SOMMAIRE

### Faits saillants

Conformément au plan de supervision, l'Autorité des marchés financiers (AMF) réalise au moins tous les trois ans une inspection complète des activités de la Chambre de la sécurité financière (CSF). La présente inspection portait sur l'ensemble des activités de la CSF et visait à vérifier si la CSF se conforme aux lois et aux décisions de l'AMF qui lui sont applicables et de quelle manière elle exerce ses fonctions et pouvoirs. La période couverte par l'inspection va du 1er janvier 2021 au 31 août 2024 et a été élargie au besoin pour certaines analyses. Des précisions sur la portée, la méthodologie et le contexte dans lequel s'inscrit l'inspection sont présentées aux annexes I et II.

Le 4 juillet 2025, la CSF et la Chambre de l'assurance de dommages ont été fusionnés au sein de la Chambre de l'assurance (ChA) qui conserve la même mission de protection du public. L'AMF poursuit son rôle de supervision à l'égard de la ChA, laquelle est reconnue à titre d'organisme d'autoréglementation, et assure une collaboration étroite avec la ChA afin de contribuer à une transition fluide et harmonieuse.

Dans ce contexte, l'AMF a réévalué l'ensemble des recommandations formulées dans le cadre des travaux d'inspection de la CSF et elle est d'avis que l'élaboration du plan d'action et sa mise en œuvre se doivent d'être poursuivies par la ChA.

À l'issue des travaux d'inspection CSF, l'AMF constate que :

Les pratiques de la CSF pourraient être rehaussées en matière de reddition de comptes. Notamment, l'information communiquée dans le rapport annuel de gestion mériterait d'être bonifiée. Les rapports d'activités du conseil d'administration (CA), la présence et les jetons versés à ses administrateurs ne sont pas présentés dans le rapport annuel de gestion. Les événements organisés par la CSF prennent une part importante de l'information présentée, comparativement aux éléments de performance clé relatifs à la déontologie, à la formation continue ou à la comparaison des indicateurs de performance d'une année à l'autre.

Par ailleurs, le délai moyen pour la conduite des dossiers d'enquête ne respecte pas les délais cibles établis à 210 jours. En 2024, le délai moyen d'enquête était de 265 jours, soit 55 jours au-dessus de la cible. La prise en charge des dossiers prioritaires d'enquête n'est pas optimale ou uniforme. Par ailleurs, en raison du roulement élevé de personnel en 2024 (26 %), 9 des 30 dossiers avec la cote de priorisation la plus élevée n'étaient pas assignés à un enquêteur.

De 2021 à 2024, la CSF a dégagé des excédents budgétaires pour chacun des exercices financiers. Cette situation s'est traduite par une augmentation de ses bénéfices non affectés, qui sont passés de 7 746 842 \$ en 2021 à 11 572 422 \$ en 2024, représentant une hausse de 49 %, soit une réserve équivalente à 9 mois d'opération (au 31 décembre 2024). Ces surplus s'expliquent, notamment par une augmentation des revenus de cotisation (attribuable à la hausse de la cotisation et du nombre de membres) ainsi que par certaines dépenses budgétées qui n'ont pas été engagées. Précisons que la tarification annuelle des membres est établie automatiquement en fonction de l'indice des prix à la consommation et non sur les besoins réels de la CSF. La CSF n'a pas de stratégie claire sur l'utilisation de ses surplus, ce qui soulève des interrogations quant à l'optimisation des services rendus aux membres.

Le traitement de certaines demandes de dispense liées à la formation continue obligatoire pose des enjeux juridiques. En effet, le traitement de la CSF des demandes de dispense permet, entre autres, à un représentant qui n'a pas exercé depuis plusieurs cycles de formation de conserver son droit de pratique, alors qu'autrement, il n'aurait pas pu le faire. Cela empêche l'AMF de suspendre ou de révoquer le certificat de ce représentant, ce qui peut constituer un risque pour le public.

Recommandations	Commentaires et plan d'action
<p>Au terme de l'inspection, 18 recommandations sont émises, dont 4 de niveau de priorité élevé, 10 de niveau moyen et 4 de niveau de priorité faible<sup>1</sup>.</p>	<p>La ChA doit établir un plan d'action dans les 30 jours suivant la réception du rapport final et mettre en place les mesures correctives dans les délais requis.</p> <p>L'AMF ne fait aucun commentaire et ne tire aucune conclusion quant aux opérations ou aux activités de la CSF qui ne sont pas visées par la présente inspection.</p>

### Liste - Recommandations émises

Recommandations	Priorité
1. Que la CSF bonifie l'information qu'elle rend publique relativement à la conduite de ses activités et de ses pratiques de gouvernance	Moyenne
2. Que la CSF s'assure que toute décision prise à huis clos soit consignée au procès-verbal.	Faible
<p>3. Que la CSF :</p> <p>S'assure que le CA procède à l'évaluation du PCD ou qu'elle modifie son <i>Manuel</i> pour qu'il corresponde à la pratique.</p> <p>Documente suffisamment le processus d'évaluation et s'assure de la traçabilité de l'appréciation de la performance du PCD.</p>	Moyenne
4. Que la CSF s'assure de réviser annuellement le plan de relève du PCD et de ses principaux directeurs comme prévu au <i>Manuel des politiques et règles de gouvernance</i> .	Moyenne
5. Que la CSF élabore et mette en œuvre un programme de formation continue pour les administrateurs, en sus du programme existant pour l'accueil de nouveaux administrateurs.	Moyenne
<p>6. Que le CRH bonifie la présentation des résultats de l'autoévaluation du CA afin de rehausser l'objectivité du traitement des commentaires des administrateurs</p> <p>6.1 Que le CA se dote d'un mécanisme clair et structuré pour mettre en œuvre les mesures d'amélioration identifiées dans le cadre des évaluations du CA et en faciliter le suivi.</p>	Moyenne
<p>7. Que la CSF :</p> <p>Désactive immédiatement les accès au système lors du départ d'un employé.</p> <p>Précise les rôles et responsabilités respectifs du directeur responsable et de la direction des ressources humaines concernant la transmission de la date effective de départ d'un employé.</p>	Élevée
8. Que la CSF mette en place un mécanisme de révision régulière des documents normatifs tels que ses procédures ou directives.	Faible
9. Que la CSF prenne des mesures concrètes pour favoriser l'embauche et la rétention de son personnel notamment en appliquant les recommandations formulées par le consultant dans le cadre du diagnostic organisationnel.	Élevée (répétition)

<sup>1</sup> Voir l'annexe II pour les définitions complètes des niveaux.

10. Que la CSF rehausse sa capacité à identifier et suivre les enquêtes prioritaires.	Moyenne
11. Que la CSF formalise la façon de tenir les dossiers qui sont liés notamment pour la consignation du rapport d'enquête, des documents probants et de l'historique.	Faible
12. Que la CSF assure un traitement uniforme de gestion des états du processus d'enquête et qu'elle clarifie la marche à suivre dans son procédurier.	Faible
13. Que la CSF formalise l'information à partager au plaignant et au représentant visé par une enquête déontologique et qu'elle s'assure de la partager de façon uniforme et de la consigner au dossier.	Moyenne
14. Que la CSF : Se dote d'objectifs clairement définis en matière d'accumulation de surplus et de constitution de réserve d'opération afin d'optimiser l'utilisation de ses ressources financières au bénéfice de ses membres ;  Évalue si le mode d'indexation annuelle de la cotisation est adéquat et suffisamment flexible pour répondre à ses besoins réels.	Moyenne
15. Que la CSF bonifie l'information financière qu'elle publie notamment pour permettre le rapprochement entre ses sources de revenus et ses activités (services offerts).	Moyenne
16. Que la CSF révise les mesures d'exception prévues à sa politique d'attribution des contrats afin de :  S'efforcer à solliciter un appel d'offres pour tout contrat ou entente dont le montant estimé dépasse les seuils établis.  Documenter systématiquement les motifs justifiant de ne pas aller en appel d'offres lors de circonstances exceptionnelles ou lorsqu'une mesure d'exception est requise.	Élevée (répétition)
17. Que la CSF mette en place un mécanisme de suivi adéquat des contrats et qu'elle applique sa Politique relativement au renouvellement de contrats récurrents (rotation de fournisseurs).	Moyenne
18. Que la CSF prenne les mesures nécessaires pour s'assurer que les dispenses soient octroyées conformément au <i>Règlement sur la formation continue obligatoire de la Chambre de la sécurité financière</i> .	Élevée

## 2. GOUVERNANCE

### CONTEXTE

La période d'inspection a été marquée par des changements importants au sein du CA. Notamment, un nouveau président a été élu le 12 juin 2024 et cinq nouveaux administrateurs indépendants ont rejoint le CA dans les deux dernières années.

À l'automne 2024, à la suite de la parution d'un article dans la Presse + portant sur les enjeux de roulement de personnel à la Direction de la déontologie et de l'éthique professionnelle (DDEP) ainsi que les préoccupations identiques soulevées dans les dernières inspections de l'AMF, le CA a été invité à prendre des actions concrètes afin de répondre à cette problématique. Entre autres, le CA a fait réaliser un diagnostic organisationnel complet par un consultant externe. La démarche s'est divisée en deux phases, la première visait le bureau de la DDEP et la seconde, l'ensemble de l'organisation.

### 2.1 Pratiques de gouvernance

Dans le cadre de l'inspection du volet gouvernance, l'AMF a porté une attention particulière à la culture organisationnelle de la CSF en matière de transparence, notamment à l'égard de l'information rendue publique. Un balisage des meilleures pratiques en la matière a notamment été réalisé.

#### 2.1.1 Rapport annuel de gestion

Le rapport annuel de gestion est le principal document par lequel la CSF rend compte de ses activités et de l'atteinte de ses objectifs stratégiques. L'information qui y est communiquée doit permettre à ses membres et aux autres parties prenantes d'apprécier sa performance.

L'AMF a entre autres analysé les rapports annuels de gestion d'organismes comparables à la CSF afin d'identifier les bonnes pratiques et d'examiner l'information présentée par la CSF au regard de celles-ci.

À l'issue de son analyse, l'AMF note que le rapport annuel de gestion de la CSF ne présente pas :

- De rapport d'activités du CA ni de ses comités statutaires ;
- De registre des présences de ses administrateurs et des allocations de présence versées ;
- D'état de ses ressources humaines, par exemple : le taux de roulement de son personnel, le nombre d'embauches, la répartition de l'effectif, les principales formations dispensées à son personnel dans la période.

Par ailleurs :

- La rémunération de ses hauts dirigeants n'est pas présentée (de façon consolidée ou individuelle) alors que certains autres organismes le présentent ;
- Les éléments de reddition de compte ou de performance sont généralement peu quantifiés, ce qui limite la capacité à évaluer la progression historique de la CSF ou à comparer sa performance sur des aspects précis ;
- La proportion du rapport annuel dédiée à la déontologie ou à la formation continue obligatoire, soit les deux principales activités de la CSF, est moindre que celle dédiée aux événements organisés par la CSF.

Contrairement à d'autres organismes, la section qui porte sur la déontologie n'aborde pas les tendances relatives aux mauvaises pratiques, les erreurs récurrentes constatées, les enjeux émergents ou les pratiques à hauts risques. La CSF aurait avantage à bonifier cette information, selon un sondage mené par la CSF, la proportion des membres qui consultent les décisions du comité de discipline serait en diminution et s'élèverait à 18 %. Selon un autre sondage, 67 % des membres auraient affirmé que les décisions du Comité de discipline devraient leur être mieux expliquées (vulgarisées) et présentées plus souvent.

Globalement, cette situation prive les membres d'informations essentielles pour évaluer la performance de la CSF. D'autres observations en ce sens sont abordées à la section finances (section 4.1.1).

Par ailleurs, le CA n'approuve pas le rapport annuel de gestion. Contrairement aux organismes publics ou aux sociétés par actions, le CA de la CSF n'est pas tenu de le faire. Toutefois une telle pratique renforce la transparence et responsabilise le CA à l'égard du rapport annuel.

Que la CSF bonifie l'information qu'elle rend publique dans la conduite de ses activités et dans ses pratiques de gouvernance.

Le rapport annuel devrait présenter :

- Un rapport d'activités du CA et de ses comités statutaires ;
- Un registre de présences et d'allocations de présence versées aux administrateurs ;
- Un portrait de la variation de ses ressources humaines.

Lorsque possible, la CSF devrait s'efforcer de présenter une information quantifiable ou mesurable ou supportée par des indicateurs afin de permettre ou de faciliter l'évaluation ou l'évolution de sa performance.

La CSF devrait considérer de faire adopter son rapport annuel pour renforcer la transparence et la responsabilité du CA à cet égard.

### 2.1.2 Tenue des procès-verbaux des réunions du CA et de ses comités

Conformément aux normes internes de la CSF<sup>2</sup>, certains sujets inscrits à l'ordre du jour d'une réunion du CA ou d'un comité statutaire peuvent être traités à huis clos s'il est déterminé que la protection de la confidentialité des renseignements le requiert. Lors d'une séance à huis clos, les administrateurs décident au fur et à mesure si un élément de délibération ou une résolution doit être consigné au procès-verbal (PV) de la séance. En pareille situation, le président du CA ou des comités verra à transmettre au secrétaire dans les meilleurs délais le libellé de la résolution adoptée par les administrateurs.

Pour certains sujets, la CSF consigne l'essentiel des échanges ainsi que la décision prise, comme c'est le cas, par exemple, des huis clos avec l'auditeur indépendant. Toutefois, pour d'autres sujets, notamment ceux portant sur les résultats de l'autoévaluation des administrateurs et des comités statutaires, ou encore sur l'évaluation des rendements et des objectifs du PCD, aucun élément n'est consigné aux PV. Par ailleurs, bien que des décisions sont prises lors de ces huis clos, aucune résolution n'est consignée dans les PV. Cette situation pose donc un risque de perte de mémoire organisationnelle ou de compréhension des fondements de certaines orientations.

Que la CSF s'assure que toute décision prise à huis clos soit consignée au procès-verbal

<sup>2</sup> Manuel des politiques et règles de gouvernance - Section 1.5.5, 5,3, 6,3 et 7,3.

### 2.1.3 Évaluation de rendement de la Présidente et chef de la direction

L'AMF a observé une certaine confusion à l'égard des rôles et responsabilités relatifs à l'évaluation du PCD. Selon le *Manuel des politiques et règles de gouvernance* de la CSF, c'est le CA qui doit effectuer l'évaluation de rendement et fixer la rémunération du PCD<sup>3</sup>. Or, dans la pratique, c'est le président du comité des ressources humaines (CRH) qui procède à l'évaluation du PCD et fait sa recommandation au CA.

Le CA confirme qu'il est responsable de l'évaluation du PCD et qu'il approuve la recommandation du CRH, cependant aucune décision à cet effet n'est colligée au PV. Finalement, selon le *Manuel*, le rôle du CRH quant à l'évaluation du PCD se limite à « élaborer et recommander au Conseil : les critères d'évaluation et de rendement du président et chef de la direction de la Chambre »<sup>4</sup>.

La CSF affirme que le CRH reçoit l'autoévaluation du PCD et choisit d'y apporter ou non des modifications selon sa propre appréciation. Ce dernier donne ensuite la note qui correspond à son évaluation dans le formulaire d'autoévaluation.

L'AMF considère que de modifier des éléments d'une autoévaluation pose des problèmes de traçabilité. En effet, cette façon de faire ne permet pas de distinguer l'autoévaluation du PCD et l'appréciation de l'évaluateur.

L'AMF n'a pas été en mesure de retracer une rétroaction (points forts ou points à améliorer) ou une appréciation de l'atteinte des objectifs/cibles ou rectifications/ajouts/précisions à l'égard du contenu de l'autoévaluation provenant de l'évaluateur. Seul un petit encadré pour inscrire des commentaires est rendu disponible à la fin du formulaire, mais celui-ci n'a pas été rempli lors des trois dernières évaluations (2021 à 2023).

De plus, certains objectifs n'étaient pas pondérés et/ou le calcul du résultat global était incomplet pour les évaluations 2022 et 2023. Ces aspects du processus ne sont pas réalisés avec rigueur. Plusieurs questions ont été nécessaires pour comprendre les résultats.

Que la CSF s'assure que le CA procède à l'évaluation du PCD ou qu'elle modifie son *Manuel* pour qu'il corresponde à la pratique.

Que la CSF documente suffisamment le processus d'évaluation et s'assure de la traçabilité de l'appréciation de la performance du PCD.

Le processus devrait :

- Prévoir une rétroaction écrite pour chaque objectif et de façon globale afin de documenter l'évaluation de l'atteinte des objectifs et l'appréciation de la performance du PCD ;
- Formaliser la validation et l'appréciation du contenu de l'autoévaluation par l'évaluateur et, le cas échéant, la nécessité d'apporter des précisions/correctifs

<sup>3</sup> *Manuel*, section 1.3.2

<sup>4</sup> *Manuel*, section 7.5

## 2.2 Conseil d'administration

### 2.2.1 Révision du plan de relève

Le CA est responsable d'approuver et de réviser annuellement le plan de relève du PCD et des principaux directeurs de la CSF<sup>5</sup>. Bien que le PCD ait indiqué que le CRH révisait le plan de relève, cette information n'a pas été retracée dans les PV du CA ni du CRH. De plus, dans la période d'inspection, aucune résolution n'a été retracée à cet effet.

La CSF a confirmé à l'AMF que les travaux sur le plan de relève ont débuté au courant de l'année 2024. La CSF affirme que le CRH a discuté du plan de relève à trois reprises au courant de l'automne 2024 et de l'hiver 2025, avant de le soumettre pour approbation au CA du mois de mars 2025.

Les travaux de révision du plan de relève ont été réalisés à l'extérieur de la période d'inspection. Par conséquent, l'AMF conclut que le CA n'a pas assuré pleinement sa responsabilité de réviser annuellement le plan de relève dans la période d'inspection.

Que la CSF s'assure de réviser annuellement le plan de relève du PCD et de ses principaux directeurs comme prévu au *Manuel des politiques et règles de gouvernance*.

### 2.2.2 Formation et déclarations des administrateurs

Le Charte du Comité de gouvernance et d'éthique de la CSF prévoit que celui-ci est notamment responsable d'élaborer et de réviser le programme d'accueil et d'intégration des nouveaux administrateurs de la CSF et de voir aux besoins de formation des administrateurs.

Dans les faits, l'AMF constate que la CSF offre une journée d'accueil en présentiel aux nouveaux administrateurs de son CA. À cette occasion, ces derniers reçoivent une présentation de la gouvernance et du cadre réglementaire de la CSF, une présentation du comité de direction et une formation sur le processus disciplinaire.

Au cours de la période d'inspection, la CSF ne détenait pas un programme formel de formation continue en gouvernance. Toutefois, le CA a tenu certaines présentations/formations de façon ponctuelle pour répondre à des besoins spécifiques d'administrateurs.

Selon les administrateurs de la CSF, le processus de planification stratégique ainsi que l'arrivée de cinq nouveaux administrateurs indépendants entre 2022 et 2024 justifiaient de reporter la planification des formations en gouvernance. La priorité a été donnée à l'intégration, ainsi qu'à la présentation des processus internes et de l'environnement externe. Notons également que plusieurs administrateurs estiment être bien formés, considérant qu'ils sont pratiquement tous des professionnels avec des obligations de formation continue.

Entre la transmission de la liste des questions de l'AMF et l'entrevue avec certains administrateurs, le CA a tenu une réunion lors de laquelle il a décidé d'augmenter le nombre de formations offertes à ses administrateurs afin de rendre le CA plus agile et compétent. Par conséquent, deux formations en gouvernance seront prochainement offertes aux administrateurs (rôle, devoirs et responsabilités des administrateurs et rôle du CA dans la gestion des risques).

Par ailleurs, l'AMF constate que les nouveaux administrateurs signent les déclarations (engagement solennel, conflits d'intérêts et activités externes) avant leur rencontre d'accueil lors de laquelle ils sont informés sur de nombreux sujets comme les conflits d'intérêts.

<sup>5</sup> *Manuel des politiques et règles de gouvernance* - Section 1.3.2. - Responsabilités particulières du Conseil

Finalement, il n'existe aucun mécanisme pour rappeler aux administrateurs sortants leurs obligations lorsqu'ils quittent leurs fonctions.

Que la CSF élabore et mette en œuvre un programme de formation continue pour les administrateurs, en sus du programme existant pour l'accueil de nouveaux administrateurs.

L'AMF est d'avis qu'il serait plus prudent de demander aux nouveaux administrateurs de signer les déclarations sur les conflits d'intérêts et sur les activités externes à la fin de la journée d'accueil, soit après avoir reçu l'information/les explications à cet effet.

La CSF devrait prévoir, minimalement, un rappel des obligations éthiques et déontologiques applicables lors du départ d'un administrateur.

### 2.2.3 Processus d'évaluation du fonctionnement du CA et de ses comités statutaires

Les pratiques de gouvernance du CA et de ses comités statutaires sont évaluées sur une base annuelle<sup>6</sup>. Pour ce faire, chaque administrateur remplit le questionnaire d'autoévaluation du CA et ceux siégeant sur un comité statutaire en complètent un second. Le questionnaire d'autoévaluation du CA, composé d'environ 60 questions, couvre un ensemble varié de thèmes liés au bon fonctionnement du CA et de ses comités : efficacité et performance du CA, surveillance et contrôle, leadership stratégique du CA, devoirs et obligations des administrateurs, relations entre le CA et la direction et efficacité et performance des comités). L'AMF atteste de la qualité du questionnaire d'autoévaluation. D'ailleurs, les administrateurs se disent très satisfaits des améliorations apportées à l'exercice d'autoévaluation 2023 par rapport à celui de 2022.

Le CA est ultimement responsable de son évaluation.<sup>7</sup> Le président du CA est, quant à lui, responsable de veiller, en consultation avec le Comité de gouvernance et éthique (CGE), à ce que soit mis en œuvre le processus d'évaluation du CA et des administrateurs. En pratique, c'est le CGE qui s'occupe de mettre en œuvre le processus d'évaluation du CA.

Afin de s'assurer que les administrateurs se sentent à l'aise de s'exprimer librement, le CGE a promis à ces derniers de ne pas partager les résultats bruts de l'autoévaluation. Malgré cela, deux administrateurs n'ont pas rempli le formulaire d'autoévaluation, allant ainsi à l'encontre de leur engagement de participer au processus d'évaluation du Conseil et à sa propre évaluation prévue au *Manuel des politiques et règles de gouvernance*<sup>8</sup>.

Les résultats détaillés ainsi qu'un sommaire préparé par deux membres du CGE sont présentés et discutés à huis clos au CGE. Ensuite, un sommaire est présenté à l'ensemble des administrateurs lors d'une réunion du CA.

Cependant, le sommaire est très concis et ne permet pas de bien comprendre les éléments à améliorer pour augmenter la performance et la qualité du fonctionnement du CA. Par ailleurs, le traitement des commentaires est difficile à comprendre ou opaque puisqu'il n'est pas documenté. Notamment, l'AMF n'a pas été en mesure de comprendre pourquoi certains commentaires d'administrateurs sont présentés au sommaire alors que d'autres non.

Par ailleurs, le CA n'a pas établi d'objectifs de fonctionnement clairs et mesurables, ni d'indicateurs de performance, autres que ceux implicitement inclus dans les questions de l'autoévaluation. De surcroît, aucun mécanisme structuré n'est en place pour mettre en œuvre les résultats des autoévaluations (ex. plan d'action) afin d'accroître la performance et le fonctionnement du CA.

<sup>6</sup>Les Chartes des comités statutaires disponibles dans le *Manuel des politiques et règles de gouvernance* prévoient quant à elles une révision chaque deux ans du fonctionnement de ces comités.

<sup>7</sup> Art. 1.4 l) Engagement des administrateurs.

<sup>8</sup> *Ibid.*

L'AMF constate que le CGE avait l'intention de développer un tel mécanisme, mais celui-ci ne s'est pas concrétisé. Le CGE a informé l'AMF que le besoin de développer un plan d'action formel n'était pas présent, considérant qu'il n'y avait pas de points majeurs à corriger.

Les administrateurs assureraient le suivi des points à améliorer en proposant des points à l'ODJ des réunions. Effectivement, certains éléments (ex. : gestion des risques, recentrage des points stratégiques à l'ODJ du CA) ont été adressés dans le cadre de comités statutaires lors de séances à huis clos. L'AMF considère que cette façon de faire n'est pas souhaitable puisqu'elle laisse peu de traces et n'est pas structurante. En effet, les meilleures pratiques en matière de gouvernance encouragent l'élaboration d'un tel mécanisme pour permettre au CA d'améliorer durablement son fonctionnement en intégrant des pratiques de gouvernance reconnues.

Bien que certaines pratiques du CA de la CSF semblent perfectibles, ce dernier s'est octroyé la note de performance de 3,9/4 (97,5 %) dans le cadre de l'autoévaluation de 2023.

Finalement, selon la PCD, le recours à des conseils externes pour évaluer ou accompagner le CA est inutile compte tenu du niveau d'expertise des administrateurs.

Que le CRH bonifie la présentation des résultats de l'autoévaluation du CA afin de rehausser l'objectivité du traitement des commentaires des administrateurs

Que le CA se dote d'un mécanisme clair et structuré pour mettre en œuvre les mesures d'amélioration identifiées dans le cadre des évaluations du CA et en faciliter le suivi.

Plusieurs méthodes peuvent être considérées et même combinées pour rehausser le processus d'évaluation telles que :

- L'autoévaluation des administrateurs du CA pour évaluer leur contribution individuelle ;
- L'évaluation des administrateurs par le président du conseil ;
- L'évaluation des administrateurs par leurs pairs ;
- L'observation de rencontres du CA et des comités par une firme externe indépendante ;
- L'évaluation externe via un expert en gouvernance conférant un regard neutre et critique au CA.

## 2.2.4 Mise en œuvre du plan d'action suivant une inspection

Dans le cadre d'une précédente inspection, la CSF avait jusqu'au 27 septembre 2024 pour renforcer sa *Politique contre le harcèlement, la discrimination et l'incivilité* (Politique) en décloisonnant la possibilité de diligenter une enquête pour mieux apprécier la gravité d'une situation inappropriée. La CSF a récemment confirmé à l'AMF avoir sollicité les services d'un expert indépendant pour recevoir et, le cas échéant, traiter les plaintes relatives à sa Politique. Cet expert relèvera directement du CRH. L'AMF accueille cette mesure positivement.

Cependant, la CSF a présenté à l'AMF les mesures qu'elle prévoyait déployer le 26 novembre 2024 et a déposé sa Politique pour commentaire à l'AMF le 4 décembre 2024, ce qui constitue un retard de deux mois par rapport au délai de mise en œuvre établi.

Par ailleurs, à la demande de l'AMF, la CSF a dû apporter certains correctifs par la suite pour conformer la Politique aux attentes.

L'AMF assurera le suivi de la mise en œuvre des mesures prévues au plan d'action.

## 2.3 Technologies et sécurité de l'information

### 2.3.1 Gestion des accès et mise à jour de la documentation

Afin d'éviter les accès non autorisés à ses informations, la CSF a mis en place une procédure de désactivation des comptes de messagerie et des accès logiques lors du départ d'un employé (Procédure pour les départs et arrivées d'employés). Cette procédure stipule que la désactivation doit intervenir à la date fixée par le directeur du département concerné, mais aucune cible précise n'est établie.

L'analyse des données de mars 2023 à août 2024 révèle que pour trois dossiers d'employé sur 23 la fermeture des accès logiques ne s'est pas faite avec diligence. Pour ces dossiers, le délai de fermeture des accès était de 4, 15 et même 63 jours. Pour sept dossiers, des délais négatifs sont constatés ce qui peut suggérer un retrait d'accès préventif pour des employés en arrêt de travail, ce qui constituerait une bonne pratique. Cependant, la procédure en place ne prévoit rien en ce sens. Le tableau 5 à l'annexe III présente le délai de fermeture des accès pour 23 dossiers d'employés.

En terminant, l'AMF a constaté que la *Procédure pour les arrivées et départs des employés* datait de juillet 2013. Cette procédure a été mise à jour en février 2025 à la suite de la demande documentaire de l'AMF. Cependant, il existe un écart entre cette procédure et la pratique en place. Selon la procédure, c'est au gestionnaire concerné par le départ d'un employé d'informer le responsable TI de la date de fermeture des accès. Or, **en pratique, cette information est transmise par la direction des ressources humaines.**

Ce flou dans l'attribution des rôles et responsabilités pourrait expliquer les délais observés dans les trois dossiers mentionnés précédemment.

Que la CSF :

- Désactive immédiatement les accès au système lors du départ d'un employé ;
- Précise les rôles et responsabilités respectifs du directeur responsable et de la direction des ressources humaines concernant la transmission de la date effective de départ d'un employé.

### 2.3.2 Mise à jour des procédures

L'AMF a constaté qu'en plus de la *Procédure pour les arrivées et départs des employés*, plusieurs autres documents du cadre normatif relatifs aux technologies de l'information et à la gestion documentaire ont été mis à jour à la suite de leur demande le 10 février 2025.

Le tableau ci-dessous présente la liste des procédures mises à jour après les demandes documentaires de l'AMF. Il est à noter que pour deux de ces procédures, la date exacte de la dernière mise à jour demeure inconnue.

Tableau 1 : Liste de documents mise à jour seulement après demande documentaire

N° de référence	Titre de procédure	Entrée en vigueur	Version avant demande AMF	Mise à jour après demande AMF
<b>Gestion documentaire et archives</b>				
DPAC-GDA-08-0006	Entreposage externe - Secteur GDA	2008-07-15	2017-11-01	2025-02-17
DPAC-GDA-11-0002	Enregistrement des documents institutionnels et répertoires dédiés	2012-08-10	2017-11-01	2024-00-00
DPAC-GDA-14-0001	Transfert des fichiers numériques dans le progiciel SyGED	2014-04-01	2017-11-01	2024-00-00
<b>Technologies de l'information</b>				
DPPO-TI-11-0002	Changement de mot de passe, verrouillage du poste informatique et octroi des droits d'accès	2011-09-16	2018-07-30	2025-02-11
DPPO-TI-13-0003	Procédure pour les départs et arrivées d'employés	2011-12-11	2013-07-15	2025-02-12
DPPO-TI-18-0001	Mise à jour du schéma réseau informatique	2018-03-01	2018-03-01	2025-02-12
DPPO-TI-18-0002	Inventaire du parc informatique	2018-03-01	2018-03-01	2025-02-12

L'utilisation de documents obsolètes expose la CSF à des risques d'inefficacité opérationnelle et/ou des risques liés à la sécurité informatique.

Que la CSF mette en place un mécanisme de révision régulier des documents normatifs tels que ses procédures ou directives.

### 3. DÉONTOLOGIE

#### CONTEXTE

Les années 2023 et 2024 ont été marquées par un taux de roulement du personnel élevé à la DDEP.

**Tableau 2 : Taux de roulement annuel entre 2022 et 2024**

Année	Nombre de postes	Départ(s)	Embauche(s)	Solde	Taux de roulement
2022	19	2	0	-2	11 %
2023	19	6	3	-3	32 %
*2024	19	5	2	-3	26 %
<b>Total :</b>		<b>13</b>	<b>5</b>	<b>-8</b>	<b>23 %</b>

*\*jusqu'au 30 août 2024 (8 mois)*

Notamment, le Syndic en poste depuis décembre 2018 a quitté ses fonctions au mois d'août 2023. Son remplaçant est resté en fonction quelques mois, soit de janvier à septembre 2024. La CSF a récemment pourvu le poste de Syndic à l'interne (mars 2025).

Les enjeux de roulement de personnel à la DDEP ne sont pas nouveaux, ils avaient d'ailleurs été constatés lors de l'inspection de 2018 et celle de 2021.

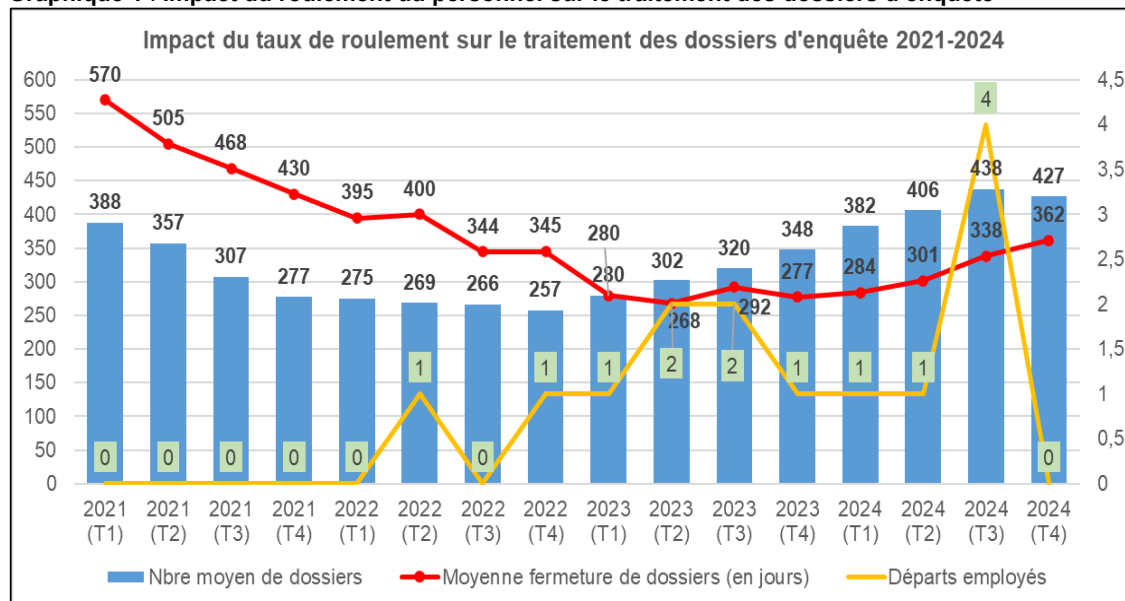
La mise en œuvre du plan d'action qui avait découlé de l'inspection 2021 jumelée à la stabilité du personnel de la DDEP entre 2021 et 2022 avait porté fruit. Des améliorations notables avaient été observées autant en ce qui concerne l'encaisse des dossiers que le délai moyen de traitement. Notamment, la CSF avait concentré ses efforts sur les dossiers les plus anciens, dont certains étaient en cours depuis plus de deux ans, ce qui a eu un impact significatif à la hausse sur le délai moyen de traitement des dossiers.

Cependant, à partir du premier ou du second trimestre 2023, une augmentation des demandes d'enquêtes combinée à une réduction du nombre d'effectifs ont contribué à une augmentation progressive de l'encaisse de dossiers

#### 3.1 Enjeux de personnel

Comme l'illustre le graphique 1, l'encaisse de dossiers au premier trimestre 2024 est revenue au niveau du premier trimestre 2021 pour ensuite le dépasser dans les trois trimestres suivants. Les données révèlent une corrélation significative entre le roulement de personnel et l'encaisse des dossiers d'enquête.

Graphique 1 : Impact du roulement du personnel sur le traitement des dossiers d'enquête



En avril 2024, la CSF a entrepris des démarches afin de mieux répondre à l'enjeu de délai de traitement des plaintes. Quant au roulement de personnel, des actions concrètes ont été prises suivant la parution de cette problématique dans les médias en septembre 2024.

Dans la foulée des révélations, et à la demande de l'AMF, la CSF a octroyé en octobre 2024 un contrat à un consultant externe pour réaliser un diagnostic organisationnel complet. Dans la même période, la CSF a octroyé des contrats à des firmes externes pour obtenir les services d'enquêteurs externes. Ces contrats ont été octroyés sans appel d'offres en utilisant l'une des mesures d'exception prévue par la *Politique d'acquisition des biens et services*. Pour l'un de ces contrats, l'objectif était d'assurer la continuité des services en obtenant, au printemps 2024, les services d'enquêteurs externes afin de réduire le nombre de dossiers d'enquête en attente.

La persistance des enjeux de personnel impacte la capacité de la CSF à réaliser adéquatement une partie de sa mission, ce qui pourrait affecter sa crédibilité à long terme. Le CA et la direction de la CSF doivent accroître leur vigilance et leur proactivité à cet égard.

### 3.2 Traitement des dossiers d'enquête

L'AMF a sélectionné et analysé un échantillon de 129 dossiers d'enquête réalisés dans la période. L'AMF a également analysé les données extraites du CRM<sup>9</sup> pour l'ensemble des dossiers d'enquête de la période.

Le *Manuel des procédures de la DDEP* (Manuel), mis à jour en 2024, prévoit des délais pour certaines étapes du processus d'enquête. L'analyse des données, présentée dans le tableau suivant, démontre que certains délais cibles sont fréquemment dépassés.

<sup>9</sup> Customer Relationship Management

Tableau 3 : Délai de traitement des dossiers d'enquête

Délais moyens (en jour)	Ouverture de dossier	Demande à décider (dossiers fermés sans enquête)	Demande à décider (dossiers avec enquête)	Conduite de l'enquête	Décision du Syndic
Délais moyens (période)	1	46	13	265	38
Délais moyens 2021	4	58	28	255	42
Délais cibles prévus au Manuel 2024	2	10	10	210	45
Délais cibles prévus au Manuel antérieur	2	5	5	180	30
Ecart par rapport aux cibles (Manuel 2024)	-1	+36	+3	+55	-7

Les données présentées sont basées sur de l'extraction du système de gestion des dossiers d'enquête de la CSF.

Le délai pour la conduite d'enquête est en hausse par rapport à l'inspection précédente (2021). Cependant, une réduction des délais est constatée pour certaines étapes du processus d'enquêtes.

Bien que la majorité des délais cibles ont été revus à la hausse en 2023, les dépassements de cibles restent importants pour deux étapes du processus.

Comme constaté lors de la précédente inspection du volet déontologique, les dépassements de cibles ne sont pas documentés, ce qui rend difficile d'établir un mécanisme de suivi et de révision de ces dernières. De plus, le tableau de bord présenté au CA ne réfère toujours pas aux cibles établies.

Par ailleurs, sur la base de l'échantillon de dossiers sélectionnés, plusieurs sont demeurés sans intervention d'un enquêteur pendant de longues périodes (jusqu'à 300 jours). Entre autres, les délais de traitement de certains dossiers plus complexes ont particulièrement été affectés.

À l'automne 2024, dans le cadre d'échanges entourant les enjeux de personnel à la DDEP, l'AMF a demandé à la CSF de lui fournir un état de l'encaisse des dossiers d'enquête avec une catégorisation du niveau de risque et de priorisation des dossiers. L'analyse de cette liste a permis de constater qu'au moment où la CSF a produit cette liste des 30 dossiers avec la cote de priorisation la plus élevée 9 dossiers n'étaient plus assignés à un enquêteur en raison d'un départ, ce qui témoigne de l'impact du roulement élevé du personnel.

Que la CSF prenne des mesures concrètes pour favoriser l'embauche et la rétention de son personnel notamment en appliquant les recommandations formulées par le consultant dans le cadre du diagnostic organisationnel.

### 3.2.1 Priorisation des dossiers

En avril 2024, la CSF a mis en place un outil/processus de priorisation des dossiers d'enquête basé sur des facteurs de pondération tels que l'âge du dossier, l'âge ou l'état de santé du plaignant, etc. Les dossiers sont ensuite priorisés en fonction du pointage accordé. Une procédure sommaire a été développée dans la foulée.

Cet outil a été développé en milieu utilisateur. Il est utilisé de façon décloisonnée à savoir que chaque enquêteur est responsable d'appliquer les facteurs de pondération à ses dossiers et de les prioriser en fonction du résultat obtenu. Pour ce faire, l'enquêteur extrait du CRM son encaisse de dossier sur un

tableur, applique les facteurs de pondération et trie ses dossiers. Cette façon de faire offre une vision parcellaire de l'état de l'encaisse global en plus de comporter un risque d'erreur et de manque d'uniformité.

De plus, la définition de certains facteurs de pondération est imprécise. Notamment, la définition du facteur de vulnérabilité est réduite à trois critères (le niveau de littératie financière, l'âge et les compétences à s'exprimer et à comprendre le français ou l'anglais), ce qui diffère de la définition publiée sur le site WEB de la CSF.

Quoique l'AMF convienne que l'utilisation de ce genre d'outil comporte une part de subjectivité, sur la base de son échantillon, elle dénote certaines erreurs ou incohérences dans l'application des facteurs. Entre autres, certains dossiers de l'échantillon vérifié exposaient des personnes en situation de vulnérabilité alors que la priorisation ne le reflétait pas.

La CSF a créé un tableur qui consolide les données de priorisation des enquêteurs auquel ont été ajoutées certaines informations pour répondre au besoin de l'AMF. L'analyse de l'outil a démontré certaines faiblesses, ce qui rend l'outil perfectible.

Que la CSF rehausse sa capacité à identifier et suivre les enquêtes prioritaires.

### 3.2.2 Traitement des dossiers liés

Dans le cadre des activités de la DDEP, il n'est pas rare que des dossiers d'enquête soient liés, souvent parce qu'ils visent le même représentant, mais plusieurs autres motifs peuvent justifier de lier des dossiers. Pour limiter le nombre d'interlocuteurs et pour favoriser l'efficacité, la CSF s'efforce d'assigner les dossiers liés au même enquêteur.

L'AMF constate que la tenue des dossiers liés n'est pas uniforme ni encadrée. Par exemple, dans certains dossiers d'enquête le rapport d'enquête était absent, dans d'autres, les pièces probantes manquantes. De surcroît, le Manuel est muet sur la façon de traiter et de tenir ces dossiers.

Dans le cadre des entrevues, le Syndic a mentionné qu'il était d'usage, dans la pratique, de déposer la documentation et le rapport d'enquête dans le plus ancien des dossiers liés, mais cette façon de faire n'est pas documentée.

L'AMF comprend que le traitement de dossiers liés comporte des spécificités, mais dénote des risques pour la conservation et la pérennité de l'historique de certains dossiers en l'absence d'une procédure claire notamment dans un contexte de roulement de personnel élevé.

Que la CSF formalise la façon de tenir les dossiers liés notamment pour la consignation du rapport d'enquête, des documents probants et de l'historique.

### 3.2.3 Procédure d'enquête

Le processus d'enquête est bien défini et comprend plusieurs étapes. Lorsque l'enquêteur estime que son enquête est terminée et après avoir obtenu l'assentiment du syndic adjoint responsable, l'enquêteur doit faire passer son dossier de l'état « enquête en cours » à « enquête à décider ».

Cependant, dans certains cas, il arrive que le Syndic requière un complément d'enquête. Dans ces cas, le traitement du dossier au CRM n'est pas uniforme à savoir que parfois le dossier est remis à l'état « enquête en cours » et d'en d'autres cas, il demeure à l'état « enquête à décider ».

Le Manuel est d'ailleurs vague sur la marche à suivre :

*« Selon les circonstances, notamment l'ampleur du travail d'enquête à compléter, le syndic peut remettre le dossier à l'état 6 – enquête en cours dans Pivotal. ».*

Dans le cadre des entrevues, le Syndic a convenu que l'application d'une pratique claire et uniforme serait préférable et qu'elle privilégierait la remise à l'état « enquête en cours ».

L'AMF partage cette position puisque le fait de laisser le dossier à l'état « enquête à décider » pourrait biaiser les statistiques/données/informations de gestion en plus de « retirer » le dossier de l'encaisse en cours de l'enquêteur, ce qui pourrait comporter des risques de suivis.

Que la CSF assure un traitement uniforme de gestion des états du processus d'enquête et qu'elle clarifie la marche à suivre à son procédurier.

### 3.2.4 Accompagnement des parties prenantes

Dans le cadre de l'inspection, l'AMF a porté une attention particulière à la qualité de l'information fournie par la CSF aux plaignants ainsi qu'aux représentants concernés par une enquête déontologique.

Le Manuel prévoit que les éléments suivants devraient être abordés lors d'une première communication avec le plaignant et/ou le co-plaignant :

- ✓ Distinguer le rôle de l'AMF de l'encadrement déontologique de la CSF ;
- ✓ Expliquer le rôle du Syndic ;
- ✓ Préciser que l'intervention du Syndic n'a pas pour but de dédommager les pertes financières encourues ;
- ✓ Informer le consommateur du recours au fonds d'indemnisation de l'AMF ou du service de médiation par l'entremise de l'AMF ;
- ✓ Confirmer les coordonnées pour le joindre incluant une adresse électronique.

Sur la base de l'échantillon analysé, l'AMF constate que l'information partagée aux plaignants est inégale. Certains enquêteurs sont très rigoureux sur ce point et d'autres moins. Ces informations semblent être partagées uniquement de façon verbale puisqu'aucun document écrit (officiel/uniforme) n'a été retracé dans les dossiers vérifiés.

Cependant, selon le processus de préanalyse des dossiers, la responsable du processus réalise parfois une pré-entrevue avec le plaignant. Puisque ces communications ne sont généralement pas enregistrées, il n'a pas été possible de déterminer quelles informations étaient partagées à ce moment.

En terminant, le Manuel reste muet en ce qui concerne l'information à être partagée au représentant visé par une enquête déontologique. Malgré cela, l'AMF constate que les enquêteurs offrent généralement un certain nombre d'informations au représentant, mais pas de façon uniforme et systématique.

L'AMF est d'avis que le représentant visé par une enquête devrait minimalement et de manière systématique être informé du rôle du Syndic, du processus d'enquête (de façon assez détaillée) et des résultats/conséquences possibles au terme du processus.

Que la CSF formalise l'information à partager au plaignant et au représentant visé par une enquête déontologique et qu'elle s'assure de la partager de façon uniforme et de la consigner au dossier.

## 4. FINANCES

### CONTEXTE

Le département des finances est composé de quatre ressources. Cet effectif est resté stable durant la période d'inspection.

Un changement de présentation comptable a été observé entre les états financiers audités de 2021 et 2022, en particulier pour l'état des résultats. Plusieurs comptes de charges ont été regroupés.

Entre 2021 et 2024, la CSF a dégagé des excédents budgétaires chaque année. Cette situation s'est traduite par une augmentation de 49 %<sup>10</sup> ses bénéfices non affectés, passant de 7 746 842 \$ en 2021 à 11 572 422 \$.<sup>11</sup>

Ces excédents ont permis à la CSF, d'accroître la valeur combinée de la trésorerie des placements de 5 041 716 \$. En 2022, 9 200 000 \$ ont transféré de la trésorerie vers un compte de placement lesquels s'établissaient à 11 500 000 \$ au 31 décembre 2024.

Comme l'indique le tableau suivant, cette augmentation des bénéfices non affectés est attribuable à :

- une croissance de 23 % des revenus de cotisation des membres qui découle de l'indexation des tarifs à l'indice des prix à la consommation (IPC);
- une hausse de 4 % du nombre de membres ;
- une augmentation marquée de 1 413 % des revenus d'intérêt ;
- des dépenses budgétées non réalisées.

**Tableau 4 : catégorie de revenus de la CSF de 2021 à 2024**

Produits	2021	2022	2023	2024	Variation en % de 2021 à 2024
Cotisations	11 366 419 \$	12 287 415 \$	13 430 315 \$	13 980 921 \$	23 %
Formation	2 130 774 \$	1 179 275 \$	3 373 047 \$	1 117 409 \$	-48 %
Discipline	293 582 \$	130 071 \$	165 759 \$	58 802 \$	-80 %
Intérêts	73 094 \$	293 973 \$	939 258 \$	1 105 973 \$	1413 %
Nombre de membres	32 742	33 428	34 072	33 936	4 %

Sources : états financiers de la Chambre et rapports annuels de gestion

#### 4.1 Gestion de l'actif non affecté

Conformément au plan de supervision de la CSF, la cotisation et les frais imposés aux membres doivent être justes et équitables. Ils doivent ainsi être établis en fonction des coûts totaux engendrés pour fournir des services.

De 2021 à 2024 et comme présenté au graphique 2 la CSF a enregistré des excédents budgétaires avec et sans les revenus d'intérêt. En 2024, bien qu'un excédent global soit observé, un déficit de 292 298 \$ aurait été constaté sans les revenus d'intérêt. Cela s'explique principalement par le début d'un nouveau cycle de formation

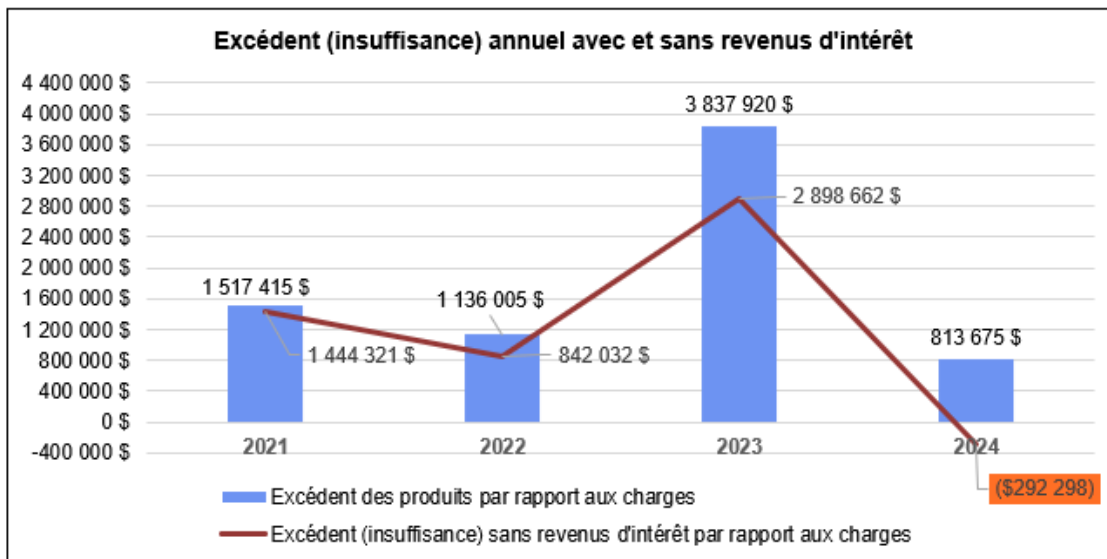
<sup>10</sup> La variation en pourcentage est de 39 % en considérant les ajustements à l'actif net qui reflètent le financement de l'actif immobilisé par les avantages incitatifs relatifs au bail.

<sup>11</sup> Afin de refléter le financement de l'actif immobilisé par les avantages incitatifs relatifs au bail le montant de l'actif net ajusté est 10 411 389 \$.

continue, générant des revenus nettement inférieurs à ceux de 2023, année marquant une fin de cycle de formation (1 117 409 \$ en 2024 contre 3 373 049 \$ en 2023).

Le tableau 6 à l'annexe III présente la tarification annuelle ainsi que la hausse du nombre de membres sur la période d'inspection et leur impact financier.

**Graphique 2 : Excédent annuel avec et sans revenus d'intérêt de 2021 à 2024**



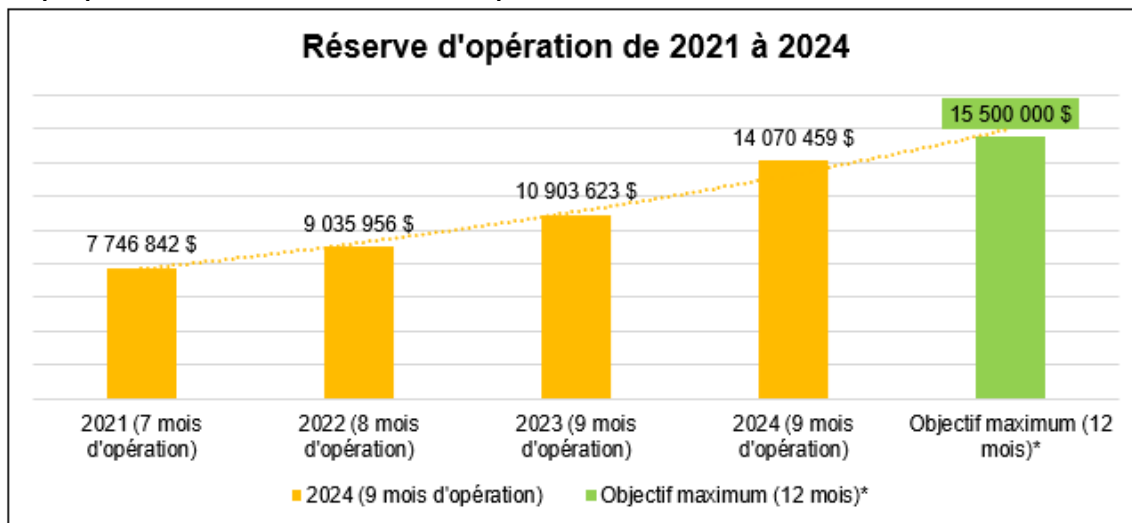
\* Données tirées des états financiers de la CSF

Bien qu'elle ait accumulé des excédents et généré des revenus d'intérêts substantiels, la CSF n'a pas défini de plan précis pour l'utilisation de ces fonds. Ce manque de stratégie de gestion des ressources soulève des interrogations sur leur utilisation optimale, sur l'amélioration des services aux membres ou sur le mode de fixation de la cotisation.

Au 31 décembre 2024, le bénéfice accumulé non affecté est de 11 572 422 \$, soit l'équivalent de neuf mois de réserves opérationnelles, une amélioration par rapport aux sept mois (7 746 842 \$) constatée en 2021.

Par ailleurs, puisque les revenus principaux de la CSF (cotisation des membres), sont prévisibles, l'AMF s'interroge sur la nécessité de cumuler un fonds de réserve aussi important.

Graphique 3 : Évolution de la réservation d'opération de 2021 à 2024



\* Projection établie à partir de l'état des résultats au 31 décembre 2024

Que la CSF :

- Se dote d'objectifs clairement définis en matière d'accumulation de surplus et de constitution de réserve d'opération afin d'optimiser l'utilisation de ses ressources financières au bénéfice de ses membres ;
- Évalue si le mode d'indexation annuelle de la cotisation est adéquat et suffisamment flexible pour répondre à ses besoins réels.

#### 4.1.1 Reddition de comptes

Une analyse des états financiers de la CSF a été effectuée afin d'évaluer sa santé financière, de comprendre la structure de ses revenus et de ses coûts, et d'identifier tout enjeu financier susceptible de compromettre la réalisation de sa mission. Comme illustré aux points ci-dessus, la CSF est en bonne santé financière, mais gagnerait à bonifier l'information financière présentée dans son rapport annuel.

À titre d'exemple, l'état des résultats publié au rapport annuel de gestion présente, comme attendu, un sommaire des revenus et des charges pour chaque année financière. Cependant et à l'instar d'organismes comparables, il serait pertinent que la CSF ajoute en annexe aux états financiers, de l'information sur la répartition des produits et des charges par activités (information financière non audité). Cela permettrait aux membres et aux parties prenantes de mieux comprendre, entre autres, le lien entre la cotisation et le coût des services qui leur sont offerts.

Que la CSF bonifie l'information financière qu'elle publie notamment pour permettre le rapprochement entre ses sources de revenus et ses activités (services offerts).

## 4.2 Gestion contractuelle

Pour évaluer dans quelle mesure la CSF respecte ses politiques et procédures en matière de gestion contractuelle, l'AMF a réalisé les démarches suivantes :

- Analyse des politiques et procédures de la CSF traitant de la gestion contractuelle ;
- Analyse de la liste des contrats et ententes avec différents fournisseurs ;
- Échantillonnage de certains contrats pour réaliser une analyse détaillée.

#### 4.2.1 Politique d'acquisition des biens et services

La Politique d'acquisition des biens et services (Politique) prévoit que tout contrat dont le montant estimé est supérieur à 50 000 \$ doit faire l'objet d'un processus d'appel d'offres.

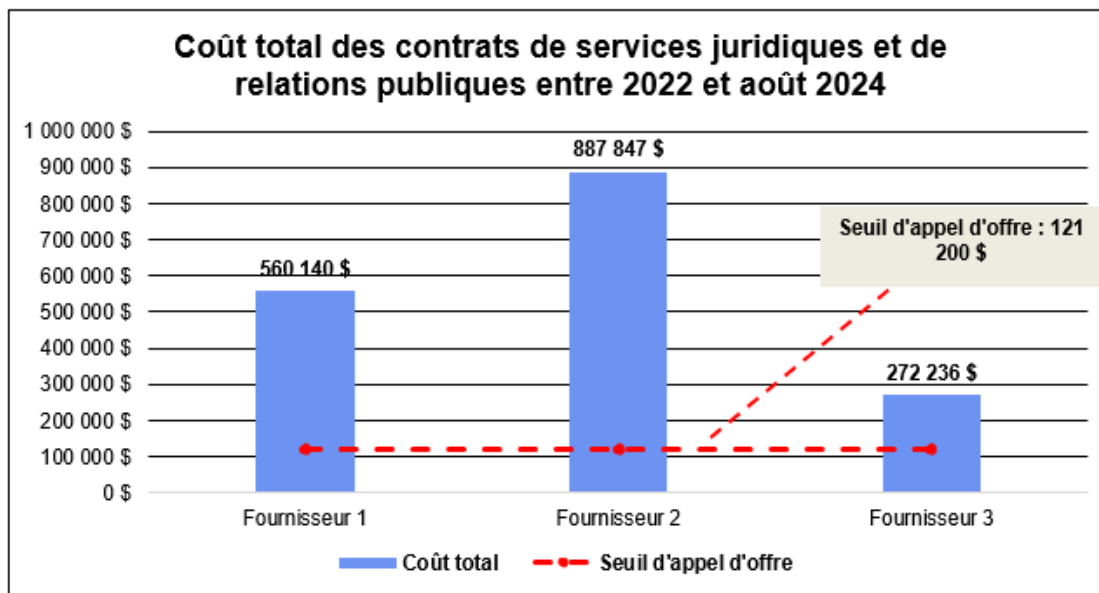
Malgré les seuils ci-dessus, la Politique prévoit des exceptions au processus d'appel d'offres tel que pour une situation majeure impactant la continuité des services ou lorsque l'expertise requise du prestataire de services ou du fournisseur est suffisamment spécifique, unique et justifiable.

La Politique exclut également certains types de services professionnels du processus d'appel d'offres notamment les contrats de service professionnels juridiques ou pour un contrat de services financiers ou bancaires. Bien qu'il soit compréhensible de ne pas aller en appel d'offres pour ce type de services, il semble pertinent de faire un appel d'offres de qualification pour offrir à la CSF un bassin de fournisseurs reconnus. Ceci lui permettrait lors de la situation d'urgence de faire un appel d'offres sur invitation et ainsi réaliser des économies et avoir un processus mieux documenté.

Une analyse des dépenses cumulées entre 2022 et août 2024 indique que certains contrats octroyés de gré à gré à trois fournisseurs de services juridiques auraient pu être adjugés par appels d'offres. Pour ces contrats, le motif justifiant de ne pas solliciter d'appel d'offres n'était pas documenté.

Selon les pratiques en place, la CSF peut conclure des ententes avec des cabinets juridiques permettant l'attribution de plusieurs mandats sans égard au montant ou au coût total cumulés. Cependant, considérant l'importance des montants cumulés engagés dans le cadre de ces ententes, cette pratique prive la CSF d'économies potentielles en évitant de solliciter des appels d'offres.

**Graphique 4 :**  
Cumul des dépenses en services juridiques pour un même cabinet de 2022 et août 2024.



Par ailleurs, aucun contrat n'a été signé avec l'un ou l'autre des prestataires de services juridiques.

Le coût annuel des services juridiques fournis par ces fournisseurs est présenté dans le tableau 7 de l'annexe III, pour la période s'étendant de 2022 jusqu'au mois d'août 2024.

Que la CSF révisé les mesures d'exception prévues à sa politique d'attribution des contrats afin de :

- S'efforcer à solliciter un appel d'offres pour tout contrat ou entente dont le montant estimé dépasse les seuils établis;
- Documenter systématiquement les motifs justifiant de ne pas aller en appel d'offres lors de circonstances exceptionnelles ou lorsqu'une mesure d'exception est requise.

#### 4.2.2 Suivi des contrats récurrents

À la suite du départ du responsable des technologies de l'information (TI), la CSF a conclu un contrat de gré à gré avec une firme informatique en juillet 2020. Ce contrat visait à fournir des ressources TI, dont un directeur TI intérimaire, pour une période de 4 à 6 semaines, au tarif horaire de 190 \$.

Cependant, la durée du contrat a été prolongée jusqu'au 15 décembre 2023, soit 170 semaines au-delà de la période initiale prévue. Cette prolongation a entraîné des coûts cumulés de 644 220 \$ pour la période allant du 1<sup>er</sup> janvier 2022 au 15 décembre 2023. Ce montant est sous-estimé, car il n'inclut pas les dépenses engagées entre juillet 2020 et décembre 2021.

Considérant les coûts totaux au 31 août 2024 et de la Politique, ce contrat aurait dû faire l'objet d'un appel d'offres. En effet, la Politique précise qu'un appel d'offres doit avoir lieu auprès d'un minimum de 3 fournisseurs ou prestataires de services lorsque le montant estimé est de plus de 50 000 \$.

Par ailleurs, le contrat stipulait que la CSF pouvait embaucher le directeur TI intérimaire après un accord avec la firme externe. Cette clause a été activée le 15 décembre 2023, lorsque la ressource a été embauchée en tant que conseiller principal – opérations et sécurité TI à un tarif horaire de 116,60 \$. Si cette option avait été exercée à la fin de la période contractuelle initiale ou si le poste avait été affiché en recrutement, la CSF aurait pu économiser jusqu'à 400 000 \$<sup>12</sup>.

En terminant, toujours selon la Politique tout contrat doit être octroyé sur une base annuelle et peut prévoir une option de renouvellement pour un maximum de deux années. Cependant, la CSF a renouvelé le contrat de l'auditeur indépendant sans appel d'offres. Le contrat de trois ans de ce dernier arrivait à expiration après la production des états financiers audités 2023.

Que la CSF mette en place des mécanismes de suivi adéquat des contrats et qu'elle applique sa Politique relativement au renouvellement de contrats récurrents (rotation de fournisseurs).

## 5. FORMATION CONTINUE

### CONTEXTE

Afin de respecter le cycle d'inspection, l'AMF a récemment procédé à l'inspection du volet formation continue obligatoire pour la période comprise entre octobre 2021 et décembre 2023. Le rapport d'inspection a été publié le 29 juillet 2024.

À l'automne 2024, la CSF a déployé un nouvel Espace Partenaire de formation en vue de rendre le processus de reconnaissance plus fluide, de diminuer les délais de traitement et d'éliminer certaines opérations manuelles.

Dans ce contexte de changements importants, une portion des travaux d'inspection avait été réalisée par l'entremise d'un processus d'autoévaluation.

En conséquence, les présents travaux d'inspection relatifs à ce volet ont été limités. Ils ont été axés sur le processus de dispenses de FCO et sur la conformité des dossiers de demande de reconnaissance de formation.

<sup>12</sup> (157 semaines \* 35 heures) \*(190 \$-116,6 \$)

## 5.1 Dispenses de formation continue

Chaque année, la CSF traite en moyenne entre 1000 et 1600 demandes de dispense relatives à l'obligation de formation continue des représentants. Elle le fait en vertu de l'article 7 du *Règlement sur la formation continue obligatoire de la Chambre de la sécurité financière* (Règlement) qui réfère à la *Loi sur les normes du travail* (LNT) pour l'application du présent article.

L'AMF a obtenu une liste de toutes les dispenses en cours durant la période d'inspection. De cette liste, l'AMF a fait une analyse des périodes d'absences et des causes ayant donné lieu à ces dispenses. L'AMF a constaté que la CSF accordait des dispenses pour cause d'invalidité permanente alors que ce n'est pas une cause d'absence en vertu de la LNT. De plus, la CSF accorde à ses représentants des dispenses pour la durée et aux conditions indiquées au certificat médical transmis au soutien de leur demande sans tenir compte des périodes d'absences maximales prescrites à la LNT.

L'analyse des dispenses avec une période d'absence de plus de 12 mois a révélé que 696 dossiers, dont 217 pour cause d'invalidité, sur les 821 dossiers de cet échantillon (85 %) dépassaient les délais maximums prévus au Règlement, dont 30 depuis plus de 5 ans.

La CSF n'a pas discrétion pour accorder des périodes supplémentaires à ce qui est prévu à la LNT. La référence au 3<sup>e</sup> alinéa de l'article 7 et donc à « la durée prévue au document justificatif ou au certificat médical » vise à préciser la durée que la CSF doit accorder à l'intérieur des périodes maximales prévues à la LNT.

Le traitement des demandes de dispense pose certains enjeux juridiques et de protection du public. En effet, l'interprétation proposée par la CSF :

- Permet à une personne qui n'a pas exercé depuis plusieurs cycles de formation de conserver ses droits et de reprendre ses activités alors qu'elle n'aurait pas pu le faire, n'eût été cette dispense.
- Fait en sorte que le traitement des demandes de dispense est inéquitable par rapport aux autres disciplines visées par la même loi où la formation continue relève de l'AMF ou de la Chambre de l'assurance de dommages en accordant des périodes de dispense plus longues que celles prévues à la LNT.

Aussi, la gestion des demandes de dispenses, lors de chevauchement entre deux périodes de référence FCO, présente un enjeu.

Lorsqu'un représentant souhaite reprendre ses activités à la fin de sa dispense qui chevauche deux périodes de référence FCO, ce dernier n'a pas à compléter ses unités de formation continue obligatoires (UFC) manquantes de la période précédente dans un court délai. Ces UFC sont simplement ajoutés au nombre d'UFC qu'il a à faire lors de la période en cours.

L'AMF considère que cette pratique représente un risque pour la protection du public puisqu'un représentant peut reprendre ses activités avant d'avoir mis à jour sa formation.

Que la CSF prenne les mesures nécessaires pour s'assurer que les dispenses soient octroyées conformément au *Règlement sur la formation continue obligatoire de la Chambre de la sécurité financière*.

## ANNEXE I - CONTEXTE

La CSF est un organisme d'autoréglementation reconnu (OAR) institué par la *Loi sur la distribution de produits et services financiers* (Loi sur la distribution).

Sa mission est édictée à l'article 312 de la Loi sur la distribution :

« **312.** Une chambre a pour mission d'assurer la protection du public en maintenant la discipline et en veillant à la formation et à la déontologie de ses membres ».

Les chambres exercent les fonctions et pouvoirs prévus au présent chapitre, au chapitre III du présent titre et aux chapitres I et II du titre VI de la présente loi à titre d'organisme d'autoréglementation reconnu auquel s'appliquent les dispositions du titre III de la *Loi sur l'Autorité des marchés financiers* (chapitre A-33.2), compte tenu des adaptations nécessaires.

Conformément à la *Loi sur l'encadrement du secteur financier*, l'AMF a notamment comme mission de superviser les OAR reconnus au Québec. L'AMF a conclu avec la CSF un [plan de supervision](#) dans lequel il est précisé la façon dont elle effectue sa supervision. Ce plan de supervision prévoit notamment que l'AMF « réalise, au moins tous les trois ans, une inspection complète des activités de la [Chambre] à son siège [...] ».

## ANNEXE II - MÉTHODOLOGIE

### Période et portée d'inspection

La dernière inspection de la CSF par l'AMF a été réalisée au printemps 2024. Elle portait sur la formation continue obligatoire et couvrait la période du 1<sup>er</sup> octobre 2021 au 31 décembre 2023. La précédente inspection de l'AMF visait la déontologie et les finances. Elle couvrait la période comprise entre le 1<sup>er</sup> juin 2018 et le 30 avril 2021.

La présente inspection vise l'ensemble des volets : la gouvernance, la déontologie, les finances et la formation continue obligatoire.

Puisque dans le passé, l'AMF avait procédé à des inspections par bloc d'un ou de deux volets, la période couverte par la présente inspection varie d'un volet à l'autre :

- ✓ Gouvernance – 1<sup>er</sup> décembre 2022 au 31 août 2024
- ✓ Finances – 1<sup>er</sup> mai 2021 au 31 août 2024
- ✓ Déontologie – 1<sup>er</sup> mai 2021 au 31 août 2024
- ✓ FCO – 1<sup>er</sup> janvier 2023 au 31 août 2024

Les travaux d'inspection ont également porté sur l'application des recommandations des inspections précédentes.

L'AMF a considéré les modifications qui ont été apportées et soumises à son attention par la CSF (le cas échéant) entre la fin de la période d'inspection et la date d'émission du rapport préliminaire.

### Méthodologie

Pour conduire ses travaux, l'AMF a employé différentes méthodes pour brosser un portrait juste et complet en regard des objectifs de l'inspection. Voici la synthèse des principales méthodes :

- Entrevues avec la direction et certains membres du conseil d'administration
- Consultation et analyse de la documentation interne et externe (règlements, politiques, procédures, guides, manuel, publications, outils, etc.)
- Consultation et analyse des données (comptables, CRM « Customer Relationship Management », etc.)
- Tests de conformités des processus et des procédures
- Balisage d'organismes comparables à la CSF

### Objectifs de l'inspection

Les vérifications effectuées concernent les quatre volets ci-dessous :

#### 1. Gouvernance :

- Maintenir en tout temps la structure administrative, les ressources financières et autres pour exercer, de manière objective, équitable et efficace, les fonctions et pouvoirs d'un OAR, conformément à la loi et en fonction des saines pratiques de gouvernance ;
- Assurer le respect des politiques et procédures et directives établies ;
- Identifier, traiter et régler de façon efficace toute irrégularité dans les activités ou toute situation de conflit d'intérêts susceptible d'entraver le bon fonctionnement de l'OAR ;
- Vérifier que les processus de sécurité et de confidentialité de l'information sont efficaces et adéquats eu égard aux bonnes pratiques, à la taille de l'organisation et au niveau de sensibilité de l'information.

**2. Finances :**

- Assurer la saine gestion des ressources financières en fonction de la mission et du respect des politiques et procédures établies ;
- Assurer le traitement efficace de toute irrégularité dans ses activités ou toute situation de conflit d'intérêts susceptible d'entraver son bon fonctionnement ;
- Imposer une cotisation aux membres qui soit juste, équitable et qui ne soit pas un obstacle à l'accès, mais qui permet à la CSF de disposer de revenus suffisants pour remplir adéquatement ses fonctions et activités d'OAR.

**3. Déontologie :**

- Assurer, à l'intérieur d'un délai raisonnable, le traitement adéquat des plaintes reçues par le syndic ;
- Assurer, à l'intérieur d'un délai raisonnable, la réalisation des enquêtes du syndic de façon adéquate ;
- Veiller, à l'intérieur d'un délai raisonnable, à ce que les dossiers de plaintes déposés devant le comité de discipline soient traités adéquatement.

**4. Formation continue :**

- Maintenir un système adéquat de gestion de la formation continue obligatoire et tenir les dossiers des membres conformément au règlement applicable ;
- Reconnaître les formations pertinentes, accorder un nombre d'unités de formation continue adéquate et s'assurer de la qualité des formations dispensées.

**Priorité des recommandations**

Les recommandations émises dans le cadre de cette inspection sont classées par niveau de priorité, soit élevé, moyen ou faible, en fonction des critères suivants :

**Niveau élevé :** La recommandation réfère à des constats importants, répétitifs ou qui sont en lien avec le cadre législatif applicable. Ces constats peuvent revêtir une incidence significative du point de vue du public ou des membres de la CSF. Des **mesures correctives doivent être prises immédiatement** et l'**implantation doit s'effectuer selon un échéancier approuvé par l'AMF**, mais **dans un délai maximal de six mois**. Au besoin, elle devrait mettre en œuvre des contrôles compensatoires avant de prendre des mesures correctives. La CSF doit faire auprès de l'AMF un suivi régulier de l'avancement des travaux.

**Niveau moyen :** La recommandation réfère à des constats qui relèvent de l'application des règles ou politiques internes. Ces constats peuvent revêtir une incidence du point de vue du public ou des membres de la CSF. Des **mesures correctives doivent être prises dans un délai maximal de 12 mois**. Au besoin, elle devrait mettre en œuvre des contrôles compensatoires avant de prendre des mesures correctives. La CSF doit faire auprès de l'AMF un suivi régulier de l'avancement des travaux.

**Niveau faible :** La recommandation réfère à des constats qui relèvent du fonctionnement administratif de la CSF. Ces constats revêtent peu ou pas d'incidence pour le public ou les membres de la CSF. Des **mesures correctives doivent être prises dans un délai maximal de 18 mois**. L'AMF procédera à un suivi ponctuel des recommandations lors des prochaines inspections.

Conformément au plan de supervision établi entre l'AMF et la CSF, celle-ci devra transmettre à l'AMF dans un délai de 30 jours de la réception du rapport final, un plan d'action faisant état des mesures qui seront prises afin de donner suite à toutes les recommandations émises par l'AMF ainsi qu'un échéancier pour leur implantation. Le plan d'action devra par ailleurs contenir l'identité du ou des responsables du suivi des recommandations.

## ANNEXE III – Renseignements additionnels

### Gouvernance – technologies et Sécurité de l'information

Délai de fermeture des accès lors du départ d'un employé entre mars 2023 et septembre 2024

**Tableau 5 : Délai de fermeture des accès lors du départ d'un employé de mars 2023 à septembre 2024**

Numéro du billet	Direction	Date de départ	Date d'exécution	Délai de fermeture
14 316	Syndic	2023-03-13	2023-03-13	0
14 475	Syndic	2023-04-05	2023-04-20	15
14 608	Syndic	2023-05-19	2023-05-23	4
14 836	Syndic	2023-07-14	2023-07-07	-7
15 070	Syndic	2023-08-28	2023-08-28	0
15 421	Syndic	2023-11-21	2023-11-23	2
15 608	Syndic	2024-01-19	2023-01-18	-366
16 250	Syndic	2024-06-07	2024-06-08	1
16 379	Syndic	2024-07-05	2024-07-05	0
16 396	Syndic	2024-07-12	2024-07-05	-7
16 662	Syndic	2024-08-30	2024-07-15	-46
13 476	Finance	2023-01-12	2023-01-12	0
14 442	Développement professionnel et qualité des pratiques	2023-03-30	2023-03-30	0
14 782	Affaires corporatives et juridiques	2023-06-29	2023-06-30	1
15 010	Développement professionnel et qualité des pratiques	2023-08-18	2023-07-31	-18
15 074	Intelligence d'affaires et solutions numériques	2023-08-31	2023-09-01	1
15 426	Affaires corporatives et juridiques	2023-12-01	2023-12-01	0
14 624	Information et services aux membres	2023-12-31	2023-05-12	-233
15 610	Développement professionnel et qualité des pratiques	2024-01-12	2024-03-15	63
16 168	Affaires corporatives et juridiques	2024-05-20	2024-05-20	0
16 435	Développement professionnel et qualité des pratiques	2024-07-11	2024-07-11	0
16 659	Intelligence d'affaires et solutions numériques	2024-08-27	2024-08-07	-20
16 659	Intelligence d'affaires et solutions numériques	2024-08-27	2024-08-27	0
<b>Total des dossiers</b>				<b>23</b>

À partir des données de la CSF

## Finances

Le tableau ci-après, présente l'IPC utilisé pour fixer la cotisation annuelle, le montant de la cotisation annuelle ainsi que l'excédent constaté.

**Tableau 6 : tarification sur la période d'inspection et informations financières pertinentes**

Années financières	2021	2022	2023	2024	Variation en % de 2021 à 2024
IPC	0,3 %	5,1 %	6,50 %	1,30 %	13 %
Cotisation	327 \$	344 \$	384 \$	389 \$	19 %
Nombre de membres	32 742	33 428	34 072	33 936	4 %
Revenu de cotisations	11 366 419 \$	12 287 415 \$	13 430 315 \$	13 980 921 \$	23 %
Revenu de Formation	2 130 663 \$	1 179 275 \$	3 373 047 \$	1 117 409 \$	-48 %
Revenu de Discipline	293 582 \$	130 071 \$	165 759 \$	58 802 \$	-80 %
Revenu d'intérêts	73 094 \$	293 973 \$	939 258 \$	1 105 973 \$	1413 %
<b>Total des revenus</b>	<b>13 863 758 \$</b>	<b>13 890 734 \$</b>	<b>17 908 379 \$</b>	<b>16 263 105 \$</b>	<b>17 %</b>
<b>Total des charges</b>	<b>12 346 454 \$</b>	<b>12 754 729 \$</b>	<b>14 070 459 \$</b>	<b>15 449 430 \$</b>	<b>25 %</b>
Excédent (insuffisance) avec revenu d'intérêt	1 517 415 \$	1 136 005 \$	3 837 920 \$	813 675 \$	-46 %
Excédent (insuffisance) sans revenu d'intérêt	1 444 321 \$	842 032 \$	2 898 662 \$	(292 298) \$	-120 %
Pourcentage des charges sur les revenus (avec intérêt)	89,1 %	91,8 %	78,6 %	95,0 %	7 %
Pourcentage des charges sur les revenus (sans intérêt)	90,0 %	95,9 %	87,8 %	110,0 %	22 %

**Tableau 7 : Cumul de dépenses de services juridiques pour un même fournisseur (2022- août 2024)**

Contrats services juridiques	2022	2023	2024	Total général
Fournisseur 1	252 228,31 \$	238 540,04 \$	69 371,41 \$	560 139,76 \$
Fournisseur 2	276 585,54 \$	426 910,58 \$	184 350,66 \$	887 846,78 \$
Fournisseur 3	165 261,86 \$	70 057,97 \$	36 916,18 \$	272 236,01 \$

## 7.2 RÉGLEMENTATION DE L'AUTORITÉ

Aucune information.

### 7.3. RÉGLEMENTATION DES BOURSES, DES CHAMBRES DE COMPENSATION, DES OAR ET D'AUTRES ENTITÉS RÉGLEMENTÉES

#### 7.3.1 Consultation

##### **ICE Clear Credit LLC – Demande de dispense de reconnaissance à titre de chambre de compensation et des obligations du Règlement 24-102**

L'Autorité des marchés financiers publie la demande de dispense (i) de reconnaissance à titre de chambre de compensation en vertu de la *Loi sur les instruments dérivés*, RLRQ, c. I-14.01 et (ii) des obligations prévues au *Règlement 24-102 sur les obligations relatives aux chambres de compensation*, RLRQ, c. V-1.1, r. 8.01, déposée par ICE Clear Credit LLC. Les textes sont reproduits ci-après.

##### **Commentaires**

Les personnes intéressées à soumettre des commentaires peuvent en transmettre une copie, au plus tard le 22 décembre 2025, à :

Me Philippe Lebel  
Secrétaire et directeur général des affaires juridiques  
Autorité des marchés financiers  
Place de la Cité, tour PwC  
2640, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1  
Télécopieur : (514) 864-6381  
Courrier électronique : [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)



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**Application to the Autorité des marchés financiers  
for Exemption from Recognition as a Clearing House in the province of Québec**

**ICE Clear Credit LLC**

**May 13, 2025**

**Responses to Criteria for Recognition and Exemption from Recognition as a Clearing House**

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May 5, 2025  
Autorité des marchés financiers  
800, rue du Square-Victoria,  
bureau 2200  
Montréal (Québec) H3C 0B4

Dear Sir/Madam:

**Re: ICE Clear Credit LLC-- Application for Exemption from Recognition as a clearing house in the province of Québec**

ICE Clear Credit LLC (“ICC”) submits this application to the Autorité des marchés financiers (the “Autorité”) seeking an order pursuant to Section 86 of the *Derivatives Act* (Québec) (CQLR, c. I-14.01) (the “QDA”) exempting ICC from recognition as a clearing house under section 12 of the QDA and seeking an order pursuant to Regulation 24-102 respecting Clearing Agency Requirements (V-1.1, r. 8.01) (“Regulation 24-102”) exempting ICC from recognition as a clearing house. ICC is a global clearing house registered as a covered clearing agency with the U.S. Securities and Exchange Commission and as a Derivatives Clearing Organization with the U.S. Commodities Futures Trading Commission. ICC seeks to provide clearing services for credit default swaps on indices, single names and sovereigns to market participants headquartered in the province of Quebec. Accordingly, ICC seeks an exemption from recognition as a clearing house in Quebec in order to allow ICC to offer the benefits of clearing, including the risk control measures and layers of protection, to such market participants.



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## Part I: Introduction

### 1.1 Key Terms & Abbreviations

<b>Abbreviation or Term</b>	<b>Full Title</b>
Board	ICE Clear Credit LLC Board of Managers
CEA	United States Commodity Exchange Act
CCA	Covered Clearing Agency
CCP	Central Counterparty
CDS	Credit Default Swaps
CFTC	United States Commodity Futures Trading Commission
Clearing Participant	Clearing participant of ICC
DCO	Derivatives Clearing Organization
FCM	Futures Commission Merchant
GF	ICC Guaranty Fund
ICC	ICE Clear Credit LLC
ICE	Intercontinental Exchange, Inc.
IM	Initial Margin
PFMI	Principles for Financial Market Infrastructures
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

### 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. (“ICE Holding”) which is owned by Intercontinental Exchange Holdings, Inc. and ultimately by ICE, a publicly traded company listed on the New York Stock Exchange. ICE operates eight derivatives exchanges and, in addition to ICC, ICE owns and operates five other clearing houses: ICE NGX, a recognized clearing house located in Calgary, Alberta; ICE Clear U.S., a CFTC-regulated DCO located in New York; ICE Clear Europe, a recognized clearing house located in London; ICE Clear Netherlands located in Amsterdam; and ICE Clear Singapore, regulated by the Monetary Authority of Singapore and located in Singapore.

### 1.3 Regulatory Status

ICC is registered as a DCO with the CFTC, and as a SCA with the SEC. Furthermore, ICC is regulated as a CCA by the SEC and is therefore subject to the enhanced requirements of the SEA which includes, without limitation, enhanced risk management, governance, and recovery planning.

ICC has been designated as a systemically important financial market utility by the U.S. Department of Treasury’s Financial Stability Oversight Counsel (“FSOC”) under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).



While ICC is regulated by both the CFTC and the SEC in the United States, the CFTC serves as ICC's designated supervisory agency as determined by FSO. Furthermore, ICC adheres to CFTC and SEC rules designed to meet the international standards set forth in the PFMIs. ICC also is compliant with regulatory requirements in other relevant jurisdictions. Specifically, ICC is recognized by the European Securities and Markets Authority as a Tier 1 third-country CCP under Article 25 of the European Market Infrastructure Regulation to provide its clearing services in the European Union. ICC is a Clearing Agency Exempt from Recognition in Ontario, Canada; a Recognized Clearing House in Singapore under the Securities and Futures Act; and a foreign CCP in Switzerland under the Financial Market Infrastructure Act. ICC also is a third-country CCP that is deemed recognized to provide clearing services in the United Kingdom by virtue of the United Kingdom's Temporary Recognition Regime.

#### **1.4 ICC's Clearing Initiatives**

ICC does not maintain offices or other physical installations in Québec or any other Canadian province or territory and does not intend to open an office or to establish any physical installations in Québec or elsewhere in Canada, at this time. As noted above, ICE operates ICE NGX, a wholly-owned subsidiary in Calgary, Alberta. ICE NGX is recognized as an exchange and a clearing agency by the Alberta Securities Commission pursuant to the Securities Act (Alberta). ICE NGX has received exemption orders in Québec. 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. At this time, ICC Clearing Participants include two Canadian banks, the Bank of Nova Scotia, headquartered in Toronto, Ontario; and the Royal Bank of Canada, headquartered in Toronto, Ontario with a head office in Montréal, Québec.

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: [ICE Clear Credit](#)

#### **1.5 Description of Products and Services ICC Intends to Offer in Québec**

ICC intends to offer clearing services for CDS contracts, specifically CDS single name contracts and sovereigns, CDS indices and CDS index options, to market participants domiciled in Québec. A more detailed list of clearing eligible products can be found here: [ICE Clear Credit Clearing Eligible Products](#).

#### **1.6 Description of Insolvency and Resolution Plans**

The ICC limited liability company operating agreement and the ICC Rules provide for recovery and wind-down following the insolvency or bankruptcy of ICC.

Pursuant to ICC Rule 805(a), in the event that ICC is (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) institutes a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or presents a petition for its winding-up or liquidation; (c) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, in each case, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or (d) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets, i.e. ICC in default, all open positions with all Participants shall be terminated without further action of any Person and cash settled in accordance with Rule 810.



A resolution plan of ICC is prepared by the Federal Deposit Insurance Corporation (“FDIC”), which is the designated resolution authority of all U.S. systemically important derivatives clearing organizations (“SIDCO”), including ICC, pursuant to its authority under the Dodd-Frank Act. Under the Dodd-Frank Act, a resolution of a SIDCO under Title II can only occur if the SIDCO could not proceed under applicable state or federal law, including the U.S. Bankruptcy Code, without causing serious adverse effects on the financial stability of the United States. Pursuant to CFTC Regulation 39.39(c)(2), ICC is required to have procedures for providing the CFTC and the FDIC with information needed for the purposes of resolution planning. ICC’s Recovery Plan and its Wind-Down Plan provide critical information that the FDIC may use in developing its resolution plan. Additionally, ICC makes quarterly resolution planning filings to the FDIC through the CFTC that consists of additional information that the FDIC may use in developing its resolution plan.

### **1.7 ICC’s Clearing Rules**

ICC’s Clearing Rules can be found here: [ICE Clear Credit Rulebook](#).

### **1.8 Description of Ownership, Corporate Structure and Governance Structure**

ICC is a Delaware limited liability company. The ICC limited liability company operating agreement (“Operating Agreement”) and the rules set forth ICC’s governance structure and provide for the Board and governance committees. ICC is wholly owned by ICE US Holding Company L.P. which is owned by Intercontinental Exchange Holdings, Inc. and ultimately by ICE. ICE operates regulated exchanges, clearing houses and listed venues for financial and commodity markets in the United States, the United Kingdom, Continental Europe, Asia, Israel and Canada.

ICC’s Officers, including the Chief Operating Officer, Chief Risk Officer, Chief Compliance Officer, and General Counsel and Corporate Secretary, report to the ICC President. The ICC Chief Compliance Officer has an additional reporting line to the Board. The ICC Chief Risk Officer has an additional reporting line to the Chairperson of the ICC Risk Committee (who also is a non-executive manager on the Board).

ICC has governance arrangements that are clear and transparent, promote its safety and efficiency and support the stability of the broader financial system, other relevant public interest considerations and the objectives of relevant stakeholders. The safety and efficiency of ICC are its highest priorities as communicated in ICC’s Board-determined Mission Statement: Provide safe and sound central counterparty services to reduce systemic risk in an efficient and compliant manner while generating positive returns for shareholders.

ICC has a clearly documented, robust governance structure including the ICC Board, committees and management. The ICC Board has sole responsibility for the control and management of ICC’s operations, subject only to prior consultation rights of the ICC Risk Committee as provided in Chapter 5 of the ICC Rules. The ICC Board may delegate authority to ICC management or to others to act on its behalf. Furthermore, if the ICC Board deems necessary to fulfill its duties, it may engage subject matter experts to provide pertinent information and advice.

## **Part II: Criteria for Exemption from Recognition as Clearing House**

### **2.1 Application**



ICC submits this application to the Autorité seeking an order pursuant to Section 86 of the QDA exempting ICC from recognition as a clearing house under section 12 of the QDA and Regulation 24-102.

## **2.2 ICC's Most Recent PFMI Disclosure Framework**

Please see ICC's PFMI Disclosure Framework at the following link: [ICEClearCredit DisclosureFramework.pdf](#) dated July 31, 2023. No disclosure is provided with respect to Principles 11 and 24 as they do not apply to CCPs. In accordance with CFTC Regulation 39.37(a) and SEC Rule 17Ad-22(e)(23), ICC maintains a comprehensive public Disclosure Framework that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework. The ICC legal department maintains the Disclosure Framework and determines when changes are necessary. At a minimum the Disclosure Framework is updated every two years or more frequently following material changes to ICC's system or environment in which it operates pursuant to CFTC Regulation 39.37(b)(1) and SEC Rule 17Ad-22(e)(23)(v). A material change to ICC's system or environment in which it operates is a change that would significantly change the accuracy and usefulness of the existing responses (see CFTC Regulation 39.37(b)(1)). It is expected that major board decisions with a broad market impact would result in updates to the Disclosure Framework. Furthermore, updates required by CFTC Regulation 39.37(b)(1), including material changes to the Disclosure Framework, will be reported to the CFTC no later than ten business days after the changes are made in accordance with the requirements of CFTC Regulation 39.37(b)(2).

## **2.3 Sufficient Information to Demonstrate ICC is Subject to and in Compliance with the Regulatory Requirements of a Foreign Jurisdiction**

Each applicable requirement set out in Regulation 24-102 is set out below in italics, followed by a description of how the requirement is met by CFTC and SEC regulations, as applicable, and ICC's compliance with CFTC and SEC regulations, as applicable (sections 2.3.1 C-M).

### **2.3.1 Comparability of Foreign Jurisdiction**

#### **A. Description of CFTC Regulatory Regime**

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. As noted above, ICC has been designated by FSOC as a systemically important financial market utility and FSOC has designated the CFTC as ICC's primary regulator. As a systemically important DCO, ICC is subject to heightened regulatory standards set out in Subpart C of the CFTC DCO regulations (Part 39). 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. Division staff develop regulations, orders, and guidance on issues pertaining to DCOs; review DCO applications and rule submissions and make recommendations to the CFTC commissioners; make determinations and



recommendations to the CFTC commissioners 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 CFTC 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. 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 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.

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.

The eighteen DCO Core Principles are as follows:

I. Core Principle A (Compliance): 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 Principles, establish written policies and procedures designed to prevent violations of the CEA and prepare a written report for submission to the CFTC regarding the DCO's compliance with the Core Principles. CFTC Regulation 39.10 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 have adequate financial, operational, and managerially resources, as determined by the CFTC, to discharge each responsibility of the DCO. CFTC Regulation 39.33 requires ICC to possess, at a minimum, financial resources that exceed the total amount that would enable ICC to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest financial exposure for ICC in extreme but plausible market conditions (i.e., "cover two"). Furthermore, ICC is required to have financial resources that, at a minimum, cover its operating costs for a period of one year, as calculated on a rolling basis.

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 in the DCO. 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. CFTC Regulation 39.12 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. CFTC Regulations 39.13 and 39.36 establish 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. CFTC Regulation 39.14 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. CFTC Regulation 39.15 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. CFTC Regulations 39.16 and 39.35 established 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. CFTC Regulation 39.17 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. Among the system safeguard requirements codified in CFTC regulations, is that a systemically important DCO must have the physical, technological, and personnel resources sufficient to enable the DCO to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption. CFTC Regulations 39.18 and 39.34 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 CFTC with all information that the CFTC determines to be necessary to conduct oversight of the DCO including daily, quarterly and annual reporting. CFTC Regulation 39.19 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. CFTC Regulation 39.20 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. CFTC Regulation 39.21 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. CFTC Regulation 39.22 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. CFTC Regulation 39.23 codifies the requirements of DCO Core Principle N.

XV. Core Principle O (Governance Fitness Standards): A 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. CFTC Regulation 39.24 codifies the requirements of DCO Core Principle O.

XVI. Core Principle P (Conflicts of Interest): A DCO is required 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. CFTC Regulation 39.25 codifies 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. CFTC Regulation 39.26 codifies the requirements of DCO Core Principle Q.

XVIII. Core Principle R (Legal Risk): A DCO is required to have a well-founded, transparent, and enforceable legal framework for each aspect of the DCO's activities. CFTC Regulation 39.27 sets forth the required elements of such a legal framework.

## B. Description of SEC Regulatory Regime

While the CFTC has been designated by FSOC as ICC's primary regulator, ICC is also registered with the SEC as a SCA and interacts directly with the SEC's Division of Trading and Markets. 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 and the requirements under SEC Rule 17Ad-22. As a systemically important clearing agency, ICC is subject to SEC's heightened regulatory requirements applicable to CCAs and covered in Rule 17Ad-22(e). 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 periodic 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.

The SEC's minimum standards for clearing agencies applicable to ICC are covered under Rules 17Ad-22(b), (c), and (e). 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 independent 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(e) include requirements that ICC: (1) provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions; (2) have governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the CCA, support public interest requirements, establish that the board of directors and senior management have appropriate experience and skills to discharge their responsibilities, specify clear and direct lines of responsibility, and consider the interests' of the CCA's customer, securities issuers and holders, and other relevant stakeholders; (3) maintain sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or borne by the CCA; (4) effectively identify, measure, monitor, and manage credit exposures to participants and those arising from its payment, clearing, and settlement processes; (5) limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits; (6) cover its credit exposures to its participants by establishing a risk-based margin system; (7) effectively measure, monitor, and manage the liquidity risk that arise in or is borne by the CCA; (8) define the point at which settlement is final to no later than the end of the day on which payment or obligation is due and, where necessary or appropriate, intraday or in real time; (9) conduct its money settlements in central bank money (where available); (10) establish and maintain transparent written standards that state the obligations with respect to the delivery of physical instruments; (11) eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other; (12) ensure that the CCA has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the CCA's participants and, where practicable, other stakeholders to participate in the testing and review of its default procedures; (13) enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCA with respect to those positions and related collateral from the default and insolvency of that participant; (14) identify, monitor, and manage a CCA's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses; (15) safeguard the CCA's own and its participants' assets; (16) manage the CCA's operational risks; (17) establish objective, risk-based, and publicly disclosed criteria for participation; and (18) provide for the public disclosure of all rules and material procedures.

### **C. Board of Directors (section 4.1)**

*(1) A recognised clearing agency must have a board of directors.*

*(2) The board of directors must include appropriate representation by individuals who are*

*(a) independent of the clearing agency, and*

*(b) neither employees nor officers of a participant nor their immediate family members.*

*(3) For the purposes of paragraph (2) (a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.*

*(4) For the purposes of subsection (3), a "material relationship" is a relationship that could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.*

#### Comparable CFTC and SEC Requirements

The CFTC has comparable governance requirements in Core Principle O. CFTC Core Principle O 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 directors. In addition, CFTC Regulation 39.24 and CFTC Regulation 39.25 require a DCO to have governance arrangements that: support the stability of the broader financial system; describe procedures for managing conflicts of interest; and provide for a board that consists of suitable individuals having appropriate skills and incentives. Furthermore, CFTC Regulation 39.26 requires that a DCO board of directors include market participants and individuals who are not executives, officers or employees of the DCO or an affiliate thereof.

The SEC also has governance requirements applicable to ICC. Specifically, SEC Rule 17Ad-22(e)(2)(i-iii) requires that:

- (e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:
- (2) Provide for governance arrangements that:
    - (i) Are clear and transparent;
    - (ii) Clearly prioritize the safety and efficiency of the covered clearing agency;
    - (iii) Support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants;

Additionally, SEC Rule § 240.17ad-25 addresses the governance of clearing agency boards and conflicts of interest and requires the establishment of a nominating committee that shall evaluate nominees for serving as directors and the independence of nominees and directors. SEC Rule § 240.17ad-25(b) provides that a majority of the members of the Board must be independent directors and SEC Rule § 240.17ad-25(f) provides detailed circumstances that could preclude a director from serving as an independent director.

#### Compliance by ICC with CFTC & SEC Requirements

Pursuant to ICC's Operating Agreement, ICC has a Board which has sole responsibility for the control and management of ICC's operations (subject only to the prior consultation rights of the ICC Risk Committee as described in Chapter 5 of the Rules). The Board consists of nine members (each a "Manager") comprised of the following:

- Three Independent Managers elected by ICE Holding
- Two Non-Independent Managers elected by ICE Holding
- Two Independent Managers nominated by the ICC Risk Committee and elected by ICE Holding
- Two Non-Independent Managers nominated by the ICC Risk Committee and elected by ICE Holding

Whether a Manager qualifies as independent is determined by applying the Independence Standards which are defined and described in detail below.

The identity of ICC's Board is publicly disclosed here:

[https://www.ice.com/publicdocs/clear\\_credit/ICE\\_Clear\\_Credit\\_Regulation\\_and\\_Governance.pdf](https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Regulation_and_Governance.pdf)

ICE Clear Credit Board Members:

- Terrence Martell (Chairperson) - Director of the Weissman Center for International Business at Baruch College/CUNY, director at VVC Exploration Corporation, and also serves on the board of several other ICE subsidiaries. (Independent, elected by the Parent)
- Amy Hong - Managing Director at Goldman Sachs. (Non-independent, nominated by the Risk Committee and elected by the Parent)
- Stan Ivanov - President of ICE Clear Credit. (Non-independent, elected by the Parent)



- Elizabeth King - Global Head of Clearing & Chief Regulatory Officer, ICE. (Non-independent, elected by the Parent)
- Sumit Roy - Former Senior Portfolio Manager at Magnetar Capital. (Independent, nominated by the Risk Committee and elected by the Parent)
- Ritesh Shah - Strategic initiatives at Jump Trading. (Independent, nominated by the Risk Committee and elected by the Parent)
- Judith Sprieser - Independent director of ICE. (Independent, elected by the Parent)
- Marti Tirinnanzi - Independent director of ICE. (Independent, elected by the Parent)
- Viktor Vadasz- Executive Director at Morgan Stanley. (Non-Independent, nominated by the Risk Committee and elected by Parent)

As noted above, and as required pursuant to ICC's Operating Agreement, five of the nine Managers are required to be independent in accordance with the New York Stock Exchange listing standards, the U.S. Securities Exchange Act of 1934 and the ICE Board of Director Governance Principles (collectively, the "Independence Standards"). The Independence Standards require that Board members will be deemed independent only if the Board determines that the member does not have any material relationships with ICC and its affiliates that could reasonably be expected to interfere with the exercise of a Manager's independent judgement. Pursuant to the ICE Clear Credit Governance Playbook, "material relationships" include, but are not limited to, certain relationships with "family members" and "immediate family members". The phrase "family member" with respect to any Manager has the meaning set forth in SEC Rule 17Ad-25(a). The phrase "immediate family member" with respect to any Manager has the meaning set forth in the NYSE Listed Company Manual (i.e., commentary to Section 303A.02(b) provides that an "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such a person's home). The Board shall make an independence determination with respect to each Manager required to be independent upon the Manager's nomination or appointment to the Board and thereafter at such times as the Board considers advisable in light of the Manager's circumstances, but in no event less frequently than annually. It shall be the responsibility of each Manager to inform the Chairperson of the Board promptly of the existence of such relationships and interests which might reasonably be considered to bear on the Manager's independence. Pursuant to the ICC Code of Business Conduct and Ethics for Managers, Managers are required to disclose to the Chairman of the Board and the ICC Chief Compliance Officer any situation that may be, or appears to be, a conflict of interest. Potential conflict of interest situations conceived of at or near the time of a Committee Meeting must be disclosed to the responsible Committee Chairman. A Committee Chairman may not grant a waiver but may determine in his/her sole discretion whether a material conflict of interest exists or is likely to arise during the deliberation of the matter(s) at hand, or may refer the question of whether there is, or is likely to be, a conflict of interest to the Chief Compliance Officer. If it is decided that a material conflict of interest exists or is likely to arise, the subject Manager must recuse him or herself from deliberations and abstain from voting.

ICE Holding must ensure that the Board is composed of suitable members, and a suitable mix of members, to enable the Board to effectively discharge its duties, including the ability to provide a credible challenge to ICC management if and when necessary. Qualified Managers are those, who in the judgement of ICE Holding, possess an appropriate mix of skills (including strategic and relevant technical skills) and experience and knowledge of ICC (including an understanding of ICC's interconnectedness with other parts of the financial system). All Managers must, in the judgment of ICE Holding, possess strong personal attributes and relevant business experience to assure effective service on the Board including, without limitation, the ability to provide a credible challenge to ICC management if necessary. Personal attributes considered by ICE Holding (and ICC management in its consultation role) include leadership, integrity, high ethical standards, contributing nature, independence, sound judgment, interpersonal skills and effectiveness. Relevant experience considered by ICE Holding (and ICC in its consultation role) includes



risk management knowledge, financial acumen (including financial, accounting and auditing experience), general business experience, industry knowledge (including clearing house operations), diversity of viewpoints, special business experience, knowledge of business systems and information technology, and expertise in an area relevant to ICC (including CDS markets and products).

#### **D. Risk Spill-overs (section 4.2)**

*(1) The board of directors and management of a recognized clearing agency must have documented procedures to manage possible risk spill over where the clearing agency provides services with a different risk profile than its depository, clearing and settlement services.*

#### **ICC Compliance**

Providing central counterparty services is ICC's sole business line and ICC does not provide any other services with a different risk profile. As a result, this provision is not applicable to ICC.

#### **E. Chief Risk Officer & Chief Compliance Officer (section 4.3)**

*(1) A recognized clearing agency must designate a chief risk officer and a chief compliance officer, who must report directly to the board of directors of the clearing agency.*

*(2) The chief risk officer must*

*(a) have responsibility and authority to maintain, implement and enforce the risk management framework established by the clearing agency,*

*(b) make recommendations to the clearing agency's board of directors regarding the clearing agency's risk management framework,*

*(c) monitor the effectiveness of the clearing agency's risk management framework, and*

*(d) report to the clearing agency's board of directors on a timely basis upon becoming aware of any significant deficiency with the risk management framework.*

*(3) The chief compliance officer must*

*(a) establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and ensure that the clearing agency complies with securities legislation,*

*(b) monitor compliance with the policies and procedures described in paragraph (a),*

*(c) report to the board of directors of the clearing agency as soon as practicable upon becoming aware of any circumstance indicating that the clearing agency, or any individual acting on its behalf, is not in compliance with securities legislation and one or more of the following apply:*

*(i) the non-compliance creates a risk of harm to a participant,*

*(ii) the non-compliance creates a risk of harm to the broader financial system,*

*(iii) the non-compliance is part of a pattern of non-compliance, or*



*(iv) the non-compliance may have an impact on the ability of the clearing agency to carry on business in compliance with securities legislation,*

*(d) prepare and certify an annual report assessing compliance by the clearing agency, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors,*

*(e) report to the clearing agency's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a participant or to the capital markets, and*

*(f) concurrently with submitting a report under paragraphs (c), (d) or (e), file a copy of such report with the securities regulatory authority.*

#### Comparable CFTC and SEC Requirements

CFTC Regulation 39.13(c) requires that a DCO have a chief risk officer ("CRO") who shall be responsible for implementing the risk management framework, including the procedures, policies and controls, and for making appropriate recommendations to the DCO's risk management committee or board of directors, as applicable, regarding the DCO's risk management functions. CFTC Regulation 39.13(b) requires a DCO to have and implement written policies, procedures, and controls, approved by its board of directors, that establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework is required to be regularly reviewed and updated as necessary. Furthermore, pursuant to CFTC Regulation 39.24(b)(7), DCOs are required to have procedures pursuant to which the board of directors oversees the CRO, risk management committee, and material risk decisions.

CFTC Regulation 39.10(c)(1) requires that a DCO shall establish the position of chief compliance officer ("CCO"), designate an individual to serve as CCO, and provide the CCO with the full responsibility and authority to develop and enforce, in consultation with the DCO's board of directors or senior officer, appropriate compliance policies and procedures, to fulfill the duties set forth in the CEA and the CFTC's regulations. Pursuant to CFTC Regulation 39.10(c)(1)(ii) the CCO shall report to the DCO's board of directors or a senior officer of the DCO. CFTC Regulation 30.10(c)(1)(iii) requires that the CCO meet with the DCO's board of directors at least once per year.

Pursuant to CFTC Regulation 39.10(c)(2), a CCO's duties shall include, but are not limited to:

- (i) Reviewing the DCO's compliance with the DCO core principles set forth in Section 5b of the CEA;
- (ii) In consultation with the DCO's board of directors, resolving any conflicts of interest that may arise;
- (iii) Establishing and administering written policies and procedures reasonably designed to prevent violation of the CEA;
- (iv) Taking reasonable steps to ensure compliance with the CEA and CFTC regulations relating to agreements, contracts, or transactions, and with CFTC regulations prescribed under Section 5b of the CEA;



(v) Establishing procedures for the remediation of noncompliance issues identified by the CCO through any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; and

(vi) Establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

Additionally, in accordance with CFTC Regulation 39.10(c)(3), the CCO is required to prepare and sign an annual report that covers the most recently completed fiscal year of the DCO. At a minimum, the annual report shall include the following:

(i) A description of the DCO's written policies and procedures, including the code of ethics and conflict of interest policies;

(ii) Review each CFTC DCO Core Principle and applicable CFTC regulation, and with respect to each:

(A). Identify the compliance policies and procedures that are designed to ensure compliance with each Core Principle;

(B). Provide an assessment as to the effectiveness of these policies and procedures;

(C). Discuss areas for improvement, and recommend potential or prospective changes or improvements to the DCO's compliance program and resources allocated to compliance;

(iii) List any material changes to compliance policies and procedures since the last annual report;

(iv) Describe the financial, managerial, and operational resources set aside for compliance with the CEA and CFTC regulations; and

(v) Describe any material compliance matters, including incidents of noncompliance, since the last annual report, and describe the corresponding action taken.

Pursuant to CFTC Regulation 39.10(4), the CCO must submit the annual report to the CFTC after presenting the annual report to the DCO's board of directors or senior officer.

Furthermore, CFTC regulation 39.25 requires that a DCO to (a) establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO; (b) establish a process for resolving such conflicts of interest; and (c) have procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

The SEC also has requirements regarding conflicts of interest. SEC Rule 17Ad-25(g) requires SEC registered clearing agencies ("SCA") to establish, implement, maintain, and enforce written policies and procedures reasonably designed to: (1) identify and document existing or potential conflicts of interest in the decision making process of the SCA, involving directors or senior managers of the SCA; and (2) mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.

#### Compliance by ICC of CFTC and SEC Requirements



ICC's officers, which are designated by the Board, include both a CRO and a CCO. The Board's designation of officers follows their determination that the individuals possess the requisite experience and skills to discharge their respective responsibilities. The CRO and CCO roles are described in detail below.

#### The Chief Risk Officer

As set forth in ICC's Risk Management Framework, the ICC CRO is directly responsible for risk management and in this capacity, is directly accountable to the ICC President and has an additional reporting line to the Chairperson of the ICC Risk Committee, who is also a non-executive manager on the Board. This direct reporting line to the Board allows the CRO to bring any issues or concerns directly to the Board's attention without intermediation by other ICC personnel. The direct management of risk is balanced by a committee structure that provides (1) oversight and accountability, (2) advisory input and, when necessary, (3) specialized execution. These responsibilities are addressed across the committees that support and advise the Board with regards to its responsibilities for overseeing ICC's risk and risk management.

The ICC Risk Management Department is responsible to establish the practices and procedures to implement ICC risk management policies. The Risk Management Department is overseen by the CRO. The objective of the Risk Management Department is to ensure that the financial integrity of ICC is not compromised due to the financial condition of, or risks assumed by, Clearing Participants, their clients/customers or their methods of collateralizing risk. To accomplish this objective, the Risk Management Department is guided by the principles outlined in ICC's Risk Management Framework and is informed by the ICC Risk Working Group and overseen by the ICC Risk Committee. The CRO periodically reports to both the Risk Committee and the Board regarding risk management. Any proposed change to ICC's risk management policies and procedures will first be presented by the CRO to the Risk Committee for their review and recommendation to the Board. Thereafter, such proposed changes to ICC's risk management policies and procedures will be presented by the CRO to the Board for their review and approval.

#### Chief Compliance Officer

The CCO maintains the responsibility and authority to develop and enforce, in consultation with the Board and/or ICC Senior Management, appropriate compliance policies and procedures to fulfill ICC's statutory and regulatory obligations. As set forth in the ICC Compliance Policy, the CCO reports directly to the Board and has a dotted reporting line to the ICC President. The CCO attends all Board meetings (generally held at least quarterly) and reports to the Board as appropriate. The CCO also reports to the Audit Committee of the Board at its quarterly meetings on key compliance risks and performance metrics including, risk assessment status, status of regulatory examinations, and finding remediations.

The CCO oversees the ICC Compliance Department which is responsible for establishing and overseeing a firm-wide risk-based Compliance Risk Management Program which includes, amongst other objectives, the establishment and administration of written policies and procedures that are reasonably designed to prevent violations of all regulatory requirements under applicable regulations. All ICC employees must abide by the applicable policies and procedures which include policies and procedures at the parent, ICE, level (for example, the ICE Employee Handbook). For purposes of this application and ease of reference, all policies are referred to herein as "ICC" policies and procedures.

The Compliance Policy provides an overview of ICC Compliance's Risk Management Program and other roles/responsibilities which includes the Risk Assessment Methodology. Per the Risk Assessment Methodology, the Compliance Department assesses ICC's compliance with applicable regulations and the CCO reviews the final risk assessments as part of the validation process at least annually. In addition, the CCO produces the CFTC annual CCO report which outlines compliance with CFTC Core Principles for DCOs and the CFTC's underlying DCO regulations.



The ICC Regulatory Communications and Issue Management Framework governs the process by which the Compliance Department identifies, collects, tracks, reports and remediates self-reported issues and issues identified in regulatory exams, audits, and first- and second-line control monitoring.

The Compliance department prepares an annual CCO report based on review and analysis performed throughout the year including any significant compliance-related issues identified by internal audit, operational risk reviews, enterprise risk reviews, and regulatory examinations. The Compliance Department further assesses adherence to each CFTC DCO Core Principle by reviewing the current compliance environment, identifying potential improvements, collaborating with legal, senior management, and other ICC department heads as appropriate to agree on proposed solutions and confirm with the appropriate department managers that the overall assessment of compliance with each Core Principle is accurate. The CCO presents the annual CCO report to the ICC internal Compliance Committee and the Board for review. Thereafter, the annual CCO report is filed with the CFTC.

The management of any potential conflict of interest is governed by four policies: The Code of Business Conduct and Ethics for Managers, Code of Business Conduct and Ethics for Committee Members, ICE Global Code of Business Conduct and the ICE Global Reporting and Anti-Fraud Policy. Such policies cover the identification and mitigation of conflicts of interest and potential conflicts of interest of Managers, committee members and ICC employees including senior management. In accordance with such policies, decisions by the Board and ICC Committees, must be based on the best interests of ICC, and must not be motivated by personal considerations and relationships. Managers and ICC Committee members are required to disclose to the CCO any situation that may be, or appears to be, a conflict of interest. The CCO, in coordination with the Chairman of the Board for potential conflicts of interest of Managers, will determine whether a material conflict of interest exists or is likely to arise during the deliberation of the matter(s) at hand. If it is decided that a material conflict of interest exists or is likely to arise, the subject individual must recuse themselves from deliberations and abstain from voting. The minutes of the proceedings shall reflect the names of any individual(s) who does not participate in deliberations and voting due to voluntary or required recusal, including the reason for recusal. Likewise, ICC employees are required to disclose the existence of possible conflicts of interest and must complete a Conflict of Interests questionnaire upon hire and annually thereafter.

#### **F. Board or Advisory Committees (section 4.4)**

*(1) The board of directors of a recognized clearing agency must, at a minimum, establish and maintain committees on risk management, finance and audit.*

*(2) If a committee is a board committee, it must be chaired by a sufficiently knowledgeable individual who is independent of the clearing agency.*

*(3) Subject to subsection (4), a committee must have an appropriate representation by individuals who are independent of the clearing agency.*

*(4) An audit or risk committee must have an appropriate representation by individuals who are:*

*(a) independent of the clearing agency, and*

*(b) neither employees nor officers of a participant or their immediate family members.*



*(5) For the purpose of this section, an individual is independent of a clearing agency if the individual has no relationship with the agency that could, in the reasonable opinion of the clearing agency's board of directors, be expected to interfere with the exercise of the individual's independent judgement.*

#### Comparable CFTC and SEC Requirements

CFTC regulation 39.24(b)(11) requires DCOs to establish one or more risk management committees and requires the DCO's board of directors to consult with, and consider and respond to input from, the risk management committee(s) on all matters that could materially affect the risk profile of the DCO, including any material change to the DCOs margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products that could materially affect the risk profile of the DCO. In addition, CFTC Regulation 39.24(b)(8) requires DCOs to have governance arrangements that provide risk management and internal control personnel with sufficient independent authority, resources, and access to the board of directors so that the operations of the DCO are consistent with the risk management framework established by the board of directors. Furthermore, CFTC Regulation 39.26 requires that the DCO board of directors and board-level committees include individuals who are not executives, officers, or employees of the DCO or an affiliate thereof.

SEC Rule 17Ad-25(d) requires SCAs to establish a risk management committee (or committees) of the board to assist the board of directors in overseeing the risk management of the SCA. In addition, such Rule requires that the risk management committee, in the performance of its duties, must be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management and efficiency of the SCA. SEC regulations also require that CCAs have an independent audit committee. Specifically, SEC Rule 17Ad-22(e)(3)(v) requires a CCA to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the CCA, which (among other requirements) provides for an independent audit committee.

#### Compliance by ICC with CFTC & SEC Requirements

Pursuant to the ICC Operating Agreement, ICC is required to have a Risk Committee. Chapter 5 of the Rules sets forth the role and composition of the Risk Committee. Each member of the Risk Committee is required to have risk management experience and expertise and are subject to approval by the Board. The Risk Committee includes representatives of Clearing Participants, ICC's CRO and President, as well as three members that are independent from ICC in accordance with the Independence Requirements. The Risk Committee is chaired by an independent Manager of the Board.

Pursuant to Rule 502, ICC is not permitted to take certain Specified Actions without prior consultation with the Risk Committee. Such Specified Actions are defined in Rule 502, but in summary are actions with respect to: (i) changes to the contract specifications of cleared contracts, and the acceptance of new products for clearing; (ii) determination of the standards and requirements for initial and continuing Clearing Participant eligibility; (iii) approval or denial of Clearing Participant applications; (iv) modifications of provisions relating to margin; (v) modification of provisions related to the ICC guaranty fund; (vi) modification of processes in place in the event of default; (vii) modification of provisions that relate to open access; (viii) modification of provisions that relate to ICC consulting with or delegating responsibilities to third parties; and (ix) modifications of Chapter 5 of the Rules related to authorities of the Risk Committee.

The ICC Operating Agreement requires ICC to have a Board level Audit Committee. The Audit Committee has three members, all of which are independent Managers of the Board. The Audit Committee is responsible for oversight of: (i) the performance of the internal controls, internal audit function, external



auditors and annual financial reporting; (ii) the integrity of ICC's financial statements; (iii) ICC's compliance with legal and regulatory requirements; (iv) the external auditors' qualifications and independence; and (v) such 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 to the Audit Committee from time to time.

#### **G. Use of Own Capital (Section 4.5)**

*(1) A recognized clearing agency that operates as a central counterparty must dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults.*

##### Comparable CFTC and SEC Requirements

ICC is not aware of either CFTC or SEC requirements requiring the use of a central counterparty's own capital analogous to section 4.5 of Regulation 24-102, however Principle 4 of the Principles for Financial Market Infrastructures calls for central counterparties with a more-complex risk profile or that are systemically important in multiple jurisdictions to maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the clearing agency in extreme but plausible market conditions, *which may include a central counterparty's own capital*. Additionally, Key Consideration 1 of Principle 13 calls for a central counterparty to have default rules and procedures that enable the Financial Market Infrastructure to continue to meet its obligations in the event of a participant default and that address the replenishment of resources following a default, *which may include using a central counterparty's own capital*.

##### ICC Compliance

While not required by ICC's local regulatory regime, ICC Rule 801(b) requires ICC to contribute and maintain deposits of capital in the ICC Guaranty Fund (i.e. skin-in-the-game). Pursuant to such Rules, ICC's aggregate capital contribution to the Guaranty Fund is \$50 million. ICC's participation represents ICC's commitment to ensure that ICC's economic interest is aligned with the Clearing Participants.

In addition, ICC has obtained Clearing Participant Default Insurance that will potentially cover up to \$75 million in losses from a Clearing Participant default to the extent that the defaulting Clearing Participant's obligations to ICC exceed the sum of: (1) the defaulting Clearing Participant's available margin and Guaranty Fund contributions; and (2) ICC's \$50 million contribution to the Guaranty Fund. This supplements, and does not result in a reduction or otherwise replace, the other resources available to ICC in the event of a Clearing Participant default.

#### **H. Systems Requirements (section 4.6)**

*(1) For each system operated by or on behalf of a recognized clearing agency that supports the clearing agency's clearing, settlement and depository functions, the clearing agency must*

*(a) develop and maintain*

*(i) an adequate system of internal controls over that system, and*



*(ii) adequate cyber resilience and information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support,*

*(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually*

*(i) make reasonable current and future capacity estimates, and*

*(ii) conduct capacity stress tests to determine the ability of that system to process transactions in an accurate, timely and efficient manner, and*

*(c) promptly notify the regulator or, in Québec, the securities regulatory authority of systems failure, malfunction, delay or security incident that is material, and provide timely updates to the regulator, or in Québec, the securities regulatory regarding the following:*

*(i) any change in the status of the failure, malfunction, delay or security incident;*

*(ii) the resumption of service, if applicable;*

*(iii) the results of any internal review, by the clearing agency, of the failure, malfunction, delay or security incident; and*

*(d) keep a record of any systems failure, malfunction, delay or security incident and whether or not it is material.*

#### Comparable CFTC and SEC Requirements

The CFTC has comparable system safeguard requirements in Core Principle I. Core Principle I provides that each DCO shall (i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity; (ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for (I) the timely recovery and resumption of operations of the DCO; and (II) the fulfillment of each obligation and responsibility of the DCO; and (iii) periodically conduct tests to verify that the backup resources of the DCO are sufficient to ensure daily processing, clearing, and settlement. In addition, CFTC Regulation 39.18(b) requires a DCO to establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of operational risk through:

(i) The development of appropriate controls and procedures; and (ii) The development of automated systems that are reliable, secure, and have adequate scalable capacity.

Pursuant to CFTC Regulation 39.18(b)(2), the DCO's program of risk analysis and oversight with respect to its operations and automated systems must include the following elements: (i) Information security, (ii) Business continuity and disaster recovery planning and resources; (iii) Capacity and performance planning, including, but not limited to, controls for monitoring the DCO's systems to ensure adequate scalable capacity (including, testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices; (iv) Systems operations, including, but not limited to, system maintenance; (v) Systems development and quality assurance; and (vi) Physical security and environmental controls. CFTC Regulation 39.18(b)(3) further provides that in addressing the foregoing elements, a DCO shall follow generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems.



With respect to regulatory notification requirements, CFTC Regulation 39.18(g) provides a DCO shall notify CFTC staff promptly of: (1) any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or (2) any activation of the DCO's business continuity and disaster recovery plan.

The SEC also has comparable systems requirements referred to as Systems Compliance and Integrity ("SCI"). For purposes of SEC regulations, ICC is a "SCI entity". SEC Rule 242.1001 requires ICC to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. Pursuant to SEC Rule 242.1001(1)(2) such policies and procedures must include:

- (i) the establishment of reasonable current and future technological infrastructure capacity planning estimates;
- (ii) periodic capacity stress tests of such systems to determine their ability to process transactions in an accurate, timely, and efficient manner;
- (iii) a program to review and keep current systems development and testing methodology for such systems;
- (iv) regular reviews and testing, as applicable, of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters;
- (v) business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption;
- (vi) standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data; and
- (vii) monitoring of such systems to identify potential SCI events.

In SEC Rule 242.1000, the SEC defines "SCI systems" to mean all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.

With respect to regulatory incident notification requirements, SEC Rule 242.1002 requires ICC to notify the Commission immediately of any SCI events. SCI events are defined as a systems disruption; a systems compliance issue; or a systems intrusion. After providing such immediate notice, ICC must submit within 24 hours a written notification pertaining to such SCI event to the SEC, which shall include:

- (i) A description of the SCI event, including the system(s) affected; and
- (ii) To the extent available as of the time of the notification: The SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; the potential impact of the SCI event on the market; a description of the steps the SCI entity has taken, is taking, or plans to take, with respect to the SCI event; the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; and any other pertinent information known by the SCI entity about the SCI event;



(3) Until such time as the SCI event is resolved and the SCI entity's investigation of the SCI event is closed, provide updates pertaining to such SCI event to the SEC on a regular basis, or at such frequency as reasonably requested by a representative of the SEC, to correct any materially incorrect information previously provided, or when new material information is discovered. Further, if an SCI event is resolved and the SCI entity's investigation of the SCI event is closed within 30 calendar days of the occurrence of the SCI event, then within five business days after the resolution of the SCI event and closure of the investigation regarding the SCI event, ICC must submit a final written notification pertaining to such SCI event to the SEC.

If an SCI event is not resolved or the SCI entity's investigation of the SCI event is not closed within 30 calendar days of the occurrence of the SCI event, then ICC must submit interim written notifications pertaining to such SCI event to the SEC and must submit a final written notification to the SEC within five business days after resolution of the SCI event and closure of the investigation regarding such SCI event.

#### Compliance by ICC with CFTC & SEC Requirements

Pursuant to the Technology Planning and Governance Policy, ICC maintains certain Key Policies as well as underlying procedures to support ICC's clearing systems platform. In particular, the Key Policies include the following: Capacity Planning Policy; Change Management Policy; Corporate Business Continuity Policy; Corporate Information Security Policy; Corporate Information Technology Policy; Corporate Physical Security Policy; Disaster Recovery Policy; Enterprise Risk Management Policy; Incident Management Policy; Information Technology Asset Management Policy; Infrastructure Observability Policy; Software Development Lifecycle Policy; and Third Party Risk Management Policy. The purpose of the Capacity Planning Policy is to develop, execute, and maintain an effective capacity planning program to ensure consistent system uptime and proactively address potential issues.

In addition, ICC maintains CFTC System Safeguards and SEC Reg SCI procedures which establish the framework for the communication and reporting of systems incidents, systems changes, system safeguards testing and assessment results, and annual compliance reporting, in line with ICC's regulatory requirements.

Last, ICC's Record Retention Policy sets forth recordkeeping responsibilities and procedures to be followed which include compliance with all applicable regulatory recordkeeping requirements.

#### *Auxiliary Systems (section 4.6.1)*

- (1) *In this section, "auxiliary system" means a system, other than a system referred to in section 4.6, operated by or on behalf of a recognized clearing agency that, if breached, poses a security threat to another system operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement or depository functions.*
- (2) *For each auxiliary system, a recognized clearing agency must*
  - (a) *develop and maintain adequate information security controls that address the security threats posed by the auxiliary system to the system that supports the clearing, settlement or depository functions,*
  - (b) *promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates to the regulator or, in Québec, the securities regulatory authority on*
    - (i) *any change in the status of the incident,*



- (ii) *the resumption of service, if applicable, and*
  - (iii) *the results of any internal review, by the clearing agency, of the security incident, and*
- (c) *keep a record of any security incident and whether or not it is material.*

#### Comparable CFTC and SEC Requirements

The CFTC has comparable system safeguard requirements in Core Principle I. Core Principle I provides that each DCO shall (i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity; (ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for (I) the timely recovery and resumption of operations of the DCO; and (II) the fulfillment of each obligation and responsibility of the DCO; and (iii) periodically conduct tests to verify that the backup resources of the DCO are sufficient to ensure daily processing, clearing, and settlement. In addition, CFTC Regulation 39.18(b) requires a DCO to establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of operational risk through:

- (i) The development of appropriate controls and procedures; and
- (ii) The development of automated systems that are reliable, secure, and have adequate scalable capacity.

Pursuant to CFTC Regulation 39.18(b)(2), the DCO's program of risk analysis and oversight with respect to its operations and automated systems must include information security elements, including, but not limited to, controls relating to: Access to systems and data (including, least privilege, separation of duties, account monitoring and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including, network port control, boundary defenses, encryption); system and information integrity (including, malware defenses, software integrity monitoring); vulnerability management; penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices.

With respect to regulatory notification requirements, CFTC Regulation 39.18(g) provides a DCO shall notify CFTC staff promptly of: (1) Any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or (2) any activation of the DCO's business continuity and disaster recovery plan.

CFTC Core Principle K provides that a DCO shall maintain records of all activities related to the business of the DCO as a DCO (i) in a form and manner that is acceptable to the CFTC; and (ii) for a period of not less than 5 years. CFTC Regulation 39.20 establishes the requirements for a DCO to meet in order to comply with Core Principle K. In addition, CFTC Regulation 39.18(f) provides a DCO shall maintain and provide to the CFTC promptly upon request, pursuant to CFTC Regulation 1.31,

(1) Current copies of the DCO's business continuity and disaster recovery plan and other emergency procedures. Such plan and procedures shall be updated at a frequency determined by an appropriate risk analysis, but no less frequently than annually; (2) All assessments of the DCO's operational risks or system safeguards-related controls; (3) All reports concerning testing and assessment, whether conducted by independent contractors or by employees of the DCO; and (4) All other documents requested by staff of the CFTC in connection with CFTC oversight of system safeguards.



The SEC also has comparable systems requirements. SEC Rule 242.1001 requires ICC to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, *for purposes of security standards, indirect SCI systems*, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets (emphasis added). In SEC Rule 242.1000, the SEC defines “Indirect SCI systems” to mean any systems of, or operated by or on behalf of, an SCI entity that, if breached, would be reasonably likely to pose a security threat to SCI systems.

Pursuant to SEC Rule 242.1001(1)(2) such policies and procedures must include:

- (i) the establishment of reasonable current and future technological infrastructure capacity planning estimates;
- (ii) periodic capacity stress tests of such systems to determine their ability to process transactions in an accurate, timely, and efficient manner;
- (iii) a program to review and keep current systems development and testing methodology for such systems;
- (iv) regular reviews and testing, as applicable, of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters;
- (v) business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption;
- (vi) standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data; and
- (vii) monitoring of such systems to identify potential SCI events.

With respect to regulatory incident notification requirements, SEC Rule 242.1002 requires ICC to notify the Commission immediately of any SCI events.. SCI events are defined as a systems disruption; a systems compliance issue; or a systems intrusion. See ICC response to Section 4.6 of R24-102 above for more details around regulatory notice requirements.

Last SEC Rule 242.1005 requires ICC to make, keep, and preserve all documents relating to its compliance with Regulation SCI for a period of 5 years.

#### Compliance by ICC with CFTC & SEC Requirements

See ICC’s responses above to 4.6 section. In addition, ICC has a robust information security program and maintains effective and current policies and procedures to ensure employee compliance. ICC’s information security program includes: asset management; physical and environmental security; authorization, authentication and access control management; internet, e-mail and data policy management, record retention management; and accountability, compliance and auditability. ICC performs network scans and penetration tests regularly to ensure the information security systems are performing as designed.

Last, ICC’s Record Retention Policy sets forth recordkeeping responsibilities and procedures to be followed which include compliance with all applicable regulatory recordkeeping requirements.

### **I. Systems Reviews (section 4.7)**

- (1) *A recognized clearing agency must*



- (a) *on a reasonably frequent basis and, in any event, at least annually, engage a qualified external auditor to conduct an independent systems review and prepare a report, in accordance with established audit standards and best industry practices, that assesses the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a) and section 4.9, and*
  - (b) *on a reasonably frequent basis and, in any event, at least annually, engage a qualified party to perform assessments and testing to identify any security vulnerability and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a).*
- (2) *The clearing agency must provide the report resulting from the review conducted under paragraph (1)(a) to*
- (a) *its board of directors, or audit committee, promptly upon the report's completion, and*
  - (b) *the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.*

#### Comparable CFTC and SEC Requirements

CFTC Regulation 39.18(e) requires a DCO to conduct regular, periodic, and objective testing and review its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. In particular, CFTC Regulation 39.18(e)(2) requires vulnerability testing at a frequency determined by an appropriate risk analysis, but no less frequently than quarterly. In addition, such testing must include automated vulnerability scanning, which shall follow generally accepted best practices. Further, the DCO must conduct the vulnerability testing by engaging independent contractors or by using employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested.

CFTC Regulation 39.18(e)(3) requires a DCO to conduct external penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually. The DCO must engage independent contractors to conduct the required annual external penetration test. A DCO may conduct other external penetration testing by using employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested.

CFTC Regulation 39.18(e)(4) requires a DCO to conduct internal penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually. The DCO must conduct internal penetration testing by engaging independent contractors, or by using employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested.

CFTC Regulation 39.18(e)(5) requires a DCO to conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis, but shall test and assess key controls no less frequently than every three years. A DCO may conduct such testing on a rolling basis over the course of the required period. The DCO must engage independent contractors to test and assess the key controls included in the DCO's program of risk analysis and oversight no less frequently than every three years. A DCO may conduct any other controls testing required by this section by using independent contractors or employees of the DCO who are not responsible for development or operation of the systems or capabilities being tested.

CFTC Regulation 39.18(e)(6) requires a DCO to conduct security incident response plan testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually. The DCO's



security incident response plan shall include, without limitation, the DCO's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process. The DCO may conduct security incident response plan testing by engaging independent contractors or by using employees of the DCO.

CFTC Regulation 39.18(e)(7) requires a DCO to conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis, but no less frequently than annually. The DCO may conduct enterprise technology risk assessments by using independent contractors or employees of the DCO who are not responsible for development or operation of the systems or capabilities being assessed.

Pursuant to CFTC Regulation 39.18(e)(8) the scope of the foregoing testing must be broad enough to include the testing of automated systems and controls that a DCO's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

- (i) Interfere with the DCO's operations or with fulfillment of its statutory and regulatory responsibilities;
- (ii) Impair or degrade the reliability, security, or capacity of the DCO's automated systems;
- (iii) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the DCO's regulated activities; or
- (iv) Undertake any other unauthorized action affecting the DCO's regulated activities or the hardware or software used in connection with those activities.

CFTC Regulation 39.18(e)(9) provides that both the senior management and the board of directors of the DCO shall receive and review reports setting forth the results of the foregoing testing and assessments. The DCO shall establish and follow appropriate procedures for the remediation of issues identified through such review and for evaluation of the effectiveness of testing and assessment protocols.

SEC Rule 242.1003(b)(1) requires ICC to conduct an annual review, following established procedures and standards, that is performed by objective personnel having appropriate experience to conduct reviews of SCI systems and indirect SCI systems, and which review contains: (1) A risk assessment with respect to such systems of an SCI entity; and (2) An assessment of internal control design and effectiveness of its SCI systems and indirect SCI systems to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards. In addition, SEC Rule 242.1003(b)(1) provides that penetration test reviews of the network, firewalls, and production systems shall be conducted at a frequency of not less than once every three years.

SEC Rule 242.1003(b)(2) and (3) requires that the foregoing SCI reviews are submitted to ICC senior management within 30 calendar days after the completion of the SCI review. Further, such SCI reviews must be submitted to the SEC and the ICC Board within 60 calendar days after its submission to senior management.

#### Compliance by ICC with CFTC & SEC Requirements

ICC maintains CFTC System Safeguards and SEC Reg SCI procedures which establish the framework for the communication and reporting of system safeguards testing and assessment results including the required annual report. The frequency of testing and assessment is determined by the Enterprise Risk Management



("ERM") Department's risk analysis program but is performed no less frequently than as required by the regulations. The results of such ongoing testing and assessments are provided on a quarterly basis to ICC's Board of Managers. On an annual basis, the ICE Inc. Internal Audit Department conducts a review of ICC's compliance with system safeguards/Reg SCI by evaluating ICC's effectiveness of logical and physical security controls, development processes and information technology governance. The Internal Audit department is responsible for submitting the annual report to ICC senior management within 30 calendar days after the completion of the SCI review. The Compliance Department is responsible for submitting the annual report to ICC's Board and to the SEC within 60 calendar days after its submission to senior management.

#### **J. Clearing Agency Technology Requirements and Testing Facilities (section 4.8)**

*(1) A recognized clearing agency must make available to participants, in their final form, all technology requirements regarding interfacing with or accessing the clearing agency*

*(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and*

*(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.*

*(2) After complying with subsection (1), the clearing agency must make available testing facilities for interfacing with or accessing the clearing agency*

*(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and*

*(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.*

*(3) The clearing agency must not begin operations before*

*(a) it has complied with paragraphs (1)(a) and (2)(a), and*

*(b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that all information technology systems used by the clearing agency have been tested according to prudent business practices and are operating as designed.*

*(4) The clearing agency must not implement a material change to the systems referred to in section 4.6 before*

*(a) it has complied with paragraphs (1)(b) and (2)(b), and*

*(b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.*



*(5) Subsection (4) does not apply to the clearing agency if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if*

*(a) the clearing agency immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and*

*(b) the clearing agency discloses to its participants the changed technology requirements as soon as practicable.*

#### Comparable CFTC and SEC Requirements

CFTC Regulation 39.38 provides as a general matter that, “[i]n order to meet the needs of clearing members and markets, [ICC] should efficiently and effectively design its (1) Clearing and settlement arrangements; (2) Operating structure and procedures; (3) Scope of products cleared; and (4) *Use of technology.*” Emphasis added.

CFTC Regulation 39.18(h) requires ICC to provide to the CFTC timely advance notice of all material planned changes to the DCO's automated systems that may impact the reliability, security, or capacity of such systems.

SEC Rule 242.1003 requires ICC to within 30 calendar days after the end of each calendar quarter, submit to the SEC a report describing completed, ongoing, and planned material changes to its SCI systems and the security of indirect SCI systems, during the prior, current, and subsequent calendar quarters, including the dates or the expected dates of commencement and completion.

#### Compliance by ICC with CFTC & SEC Requirements

ICC has well established processes in place to communicate with clearing participants upcoming systems changes, testing and implementation schedules and to provide for the efficient and effective use of its technology. Before launching ICC in March 2009, all clearing participants had been provided with required specifications and access to test systems so that clearing participants could verify that their systems worked properly with those of ICC. In addition, ICC maintains new clearing participant onboarding procedures which set forth detailed testing and production readiness requirements. Clearing participant applicants are required to engage in operational testing, which includes trade flow testing, price submission testing and testing of bank authorizations/payments. In order to become and remain a clearing participant, clearing participants must demonstrate their operational capacity as set forth in ICC Rule 201(b)(vi).

Further, with respect to systems development and changes, ICC follows its Software Development Lifecycle Policy (SDLC). Pursuant to the SDLC, development work is done in the non-production instance, reviewed and tested. Upon successful testing and acceptance, development work is promoted to the production environment following ICC's standard change management processes. Changes are performed in a production change maintenance window which includes ICC's external UAT (User Acceptance Testing) environment. Change testing is performed with clearing participants in this environment when applicable.

Last, ICC's CFTC System Safeguards and Reg SCI procedures provide that ICC will file with the CFTC and SEC notice of planned material systems changes. With respect to the CFTC submissions, this notice is filed in advance of implementation and includes a brief high-level description of the functionality and configuration of the affected system and its relationship to other systems, a description of ICC's systems development process, the schedule for implementing the system change, any capacity effects of the change,



an outline and description of test plans (includes testing with clearing participants as applicable) and results, contingency (fallback) protocols, vulnerability assessments and security measures.

#### **K. Testing of Business Continuity Plans (section 4.9)**

*(1) A recognized clearing agency must*

*(a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and*

*(b) test its business continuity plans, including its disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually.*

#### Comparable CFTC and SEC Requirements

CFTC Regulation 39.18(b)(2)(ii) requires that a DCO's program of risk analysis and oversight with respect to its operations and automated systems includes business continuity and disaster recovery planning and resources, including, but not limited to the controls and capabilities described in CFTC Regulation 39.18(c); and any other elements of business continuity and disaster recovery planning and resources included in generally accepted best practices.

CFTC Regulation 39.18(c)(1) requires a DCO to establish and maintain a business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel resources sufficient to enable the timely recovery and resumption of operations and the fulfillment of each obligation and responsibility of the DCO, including, but not limited to, the daily processing, clearing, and settlement of transactions, following any disruption of its operations.

CFTC Regulation 39.34(a) and (b) requires that ICC's business continuity and disaster recovery plans shall have the objective of enabling, and the physical, technological, and personnel resources sufficient to enable ICC to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

CFTC Regulation 39.34(c) requires ICC to conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption.

CFTC Regulation 39.18(c)(3) requires ICC, to the extent practicable, to (i) coordinate its business continuity and disaster recovery plan with those of its clearing members, in a manner adequate to enable effective resumption of daily processing, clearing, and settlement of transactions following a disruption; (ii) initiate and coordinate periodic, synchronized testing of its business continuity and disaster recovery plan with those of its clearing members; and (iii) ensure that its business continuity and disaster recovery plan takes into account the plans of its providers of essential services, including telecommunications, power, and water.

CFTC Regulation 39.18(e) requires a DCO to conduct regular, periodic, and objective testing and review of its business continuity and disaster recovery capabilities, using testing protocols adequate to ensure that the DCO's backup resources are sufficient to meet the foregoing requirements. In addition, this regulation requires both the senior management and the board of directors of the DCO to receive and review reports setting forth the results of this testing.

SEC Rule 242.1001(a)(2)(iv) and (v) requires ICC to establish, maintain, and enforce written policies and procedures that include, (iv) regular reviews and testing, as applicable, of systems, including backup



systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters; and (v) business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.

SEC Rule 242.1004 requires that with respect to ICC's business continuity and disaster recovery plans, including its backup systems, ICC shall (a) establish standards for the designation of those members or participants that ICC reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans; (b) designate members or participants pursuant to such standards and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by ICC, provided that such frequency shall not be less than once every 12 months; and (c) coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

#### Compliance by ICC with CFTC & SEC Requirements

ICC maintains detailed Business Continuity and Disaster Recovery Plans as required by the CFTC and SEC regulations. ICC also maintains a Business Continuity and Disaster Recovery Testing and Reporting Framework that sets forth an annual testing plan that is designed to meet the requirements of the foregoing regulations. ICC prepares quarterly reports of its Business Continuity and Disaster Recovery testing and results that go to its senior management and Board of managers.

#### **L. Outsourcing (section 4.10 of Regulation 24-102)**

*(1) If a recognized clearing agency outsources a critical service or system to a service provider, including to an affiliated entity of the clearing agency, the clearing agency must do all of the following:*

*(a) establish, implement, maintain and enforce written policies and procedures to conduct suitable due diligence for selecting service providers to which a critical service and system may be outsourced and for the evaluation and approval of those outsourcing arrangements;*

*(b) identify any conflicts of interest between the clearing agency and the service provider to which a critical service and system is outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest;*

*(c) enter into a written contract with the service provider to which a critical service or system is outsourced that*

- (i) is appropriate for the materiality and nature of the outsourced activities,*
- (ii) includes service level provisions, and*
- (iii) provides for adequate termination procedures;*

*(d) maintain access to the books and records of the service provider relating to the outsourced activities;*



*(e) ensure that the securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the clearing agency that it would have absent the outsourcing arrangements;*

*(f) ensure that all persons conducting audits or independent reviews of the clearing agency under this Regulation have appropriate access to all data, information and systems maintained by the service provider on behalf of the clearing agency that such persons would have absent the outsourcing arrangements;*

*(g) take appropriate measures to determine that the service provider to which a critical service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan;*

*(h) take appropriate measures to ensure that the service provider protects the clearing agency's proprietary information and participants' confidential information, including taking measures to protect information from loss, thefts, vulnerabilities, threats, unauthorized access, copying, use and modification, and discloses it only in circumstances where legislation or an order of a court or tribunal of competent jurisdiction requires the disclosure of such information;*

*(i) establish, implement, maintain and enforce written policies and procedures to monitor the ongoing performance of the service provider's contractual obligations under the outsourcing arrangements.*

#### Comparable CFTC and SEC Requirements

Pursuant to CFTC Regulation 39.18(b)(4) and (c)(1) a DCO must maintain resources that allow for the fulfillment of each obligation and responsibility of the DCO, including the daily processing, clearing, and settlement of transactions, in light of any risk to its operations and automated systems, as well as resources to support its Business Continuity and Disaster Recovery plans. Further, the DCO must periodically verify the adequacy of such resources.

CFTC Regulation 39.18(d) allows the DCO to fulfill its resources requirement through written contractual arrangements with another DCO or other service provider provided that the DCO that enters into a contractual outsourcing arrangement must retain complete responsibility for any failure to meet requirements and must employ personnel with the expertise necessary to enable it to supervise the service provider's delivery of the services. CFTC Regulation 39.18(d)(3) further provides that if a DCO uses outsourced resources for any of the testing requirements in CFTC Regulation 39.18(e), then the DCO must verify that all such resources (whether outsourced or internal) will work together effectively. Where testing is required to be conducted by an independent contractor, the DCO must engage a contractor that is independent from both the DCO and any outside service provider used to design, develop, or maintain the resources being tested.

SEC Rule 240.17Ad-25(i)<sup>1</sup> provides that ICC must establish, implement, maintain, and enforce written policies and procedures reasonably designed to:

- (1) Require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework;

<sup>1</sup> Note SEC Rule 240.17Ad-25(i) is a new rule that is applicable to ICC effective December 5, 2024.



- (2) Require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation required in (1) above;
- (3) Require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and
- (4) Require senior management to perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.

#### Compliance by ICC with CFTC & SEC Requirements

ICC does not outsource the operation of its clearing systems to any external service providers. ICC does use the services of its parent, ICE, pursuant to a Clearing Settlement and Services Agreement. This agreement allows ICC to ensure that appropriate resources are available for the fulfillment of each obligation and responsibility of ICC, including the daily processing, clearing, and settlement of transactions, in light of any risk to its operations and automated systems, as well as resources to support its Business Continuity and Disaster Recovery plans. Further, ICC's Operational Risk Management Framework ("ORMF") is being amended to provide that the following requirements apply to ICC:

- (1) Senior management is required to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with this ORMF;
- (2) Senior management is required to submit to the Board for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation required in Section II.B.(1) above of this ORMF;
- (3) Senior management is required to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the Board to be responsible for reviewing and approving such policies and procedures; and
- (4) Senior management is required to perform ongoing monitoring of the relationship, and report to the Board for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the Board.

ICC identifies and manages its core service providers using a two-pronged assessment approach broken down between internal and external service providers. With respect to external service providers, ICC utilizes ICE's Third Party Risk Management ("TPRM") program as well as a supplemental risk assessment and rating program specific to ICC. The TPRM establishes a comprehensive and structured approach for assessing, managing, monitoring and governance of third-party risks at ICE and its subsidiaries including ICC. The TPRM requires completion of initial on-boarding assessments and monitoring of the associated risks on an ongoing basis. In particular, the TPRM program requires an assessment of operations and



resiliency. Further, TPRM will conduct an initial review and assessment of the third party's viability and capability to meet expected deliverables, business objectives as well as comply with contractual obligations.

#### **M. Access Requirements and Due Process (section 4.11)**

##### *(1) A recognized clearing agency must not*

*(a) unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency,*

*(b) unreasonably discriminate among its participants or indirect participants,*

*(c) impose any burden on competition that is not reasonably necessary and appropriate,*

*(d) unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency's services offered by it, and*

*(e) impose fees or other material costs on its participants that are unfairly or inequitably allocated among the participants.*

*(2) For any decision made by the clearing agency that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant, the clearing agency must ensure that*

*(a) the participant or applicant is given an opportunity to be heard or make representations, and*

*(b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting access or for denying or limiting access to the applicant, as the case may be.*

*(3) Nothing in subsection (2) limits or prevents the clearing agency from taking timely action in accordance with its rules and procedures to manage the default of one or more participants or in connection with the clearing agency's recovery or orderly wind-down, whether or not such action adversely affects a participant.*

#### Comparable CFTC and SEC Requirements

The CFTC requirements that are comparable to the Section 4.11 of Regulation 24-102 requirements relate to Core Principle C which provides guidelines for participant and product eligibility and CFTC regulations that describe criteria for fair and open access for participants. Core Principle C provides that each DCO shall (1) establish appropriate admission and continuing eligibility standards for participants, including sufficient financial resources and operational capacity to meet the obligations arising from participation, and standards that are objective and permit fair & open access, (2) establish appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing and (3) establish and implement procedures to verify, on an ongoing basis, the compliance of each participants and membership requirement of the DCO.

In addition, CFTC Regulation 39.12 further details the requirements for participant eligibility such as requiring fair and open access for participation, requiring clearing members to have access to sufficient financial resources to meet their obligations and requiring clearing members to have adequate operational capacity. The regulation also requires the DCO to have rules requiring clearing members to provide the



DCO information that may materially affect the clearing members' ability to comply with participation requirements, to have procedures to monitor, on an ongoing basis, the compliance of each clearing member with each participation requirement, have the ability to enforce compliance with its participation requirements and shall have procedures for the suspension and orderly removal of clearing members that no longer meet the requirements.

Further, CFTC regulations prohibit the excluding or limiting clearing membership of certain types of market participants unless the DCO can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members.

SEC Rule 17Ad-22(b)(6) requires SCAs to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide membership standards that do not require that participants maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume. Furthermore, SEC Rule 17Ad-22(e)(18) requires CCAs to establish, risk-based, and publicly disclosed criteria for participation, which:

- (i) Permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities;
- (ii) Require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; and
- (iii) Monitor compliance with such participation requirements on an ongoing basis

#### Compliance by ICC with CFTC & SEC Requirements

ICC Rules provide for fair and open access participation. ICC Rulebook Chapter 2 outlines membership qualifications and Clearing Participant rules. ICC doesn't require that Clearing Participants are swap dealers or maintain a swap portfolio of a particular size or volume. Rule 201(c) specifies a few categories of registrants that are allowed to be members in compliance with regulatory guidelines. However, the categories do not limit the general membership requirements within Rule 201(b). ICC does not require any of the prohibited items outlined within the CFTC regulations. See Rule 201(b)(v) requiring Clearing Participants to show sufficient financial ability to make anticipated General Guaranty Fund contributions and provide Margin as required by the ICC Rules. See also Rule 209, Risk-based capital requirements. Rule 201 includes various specific requirements that cover CFTC Rule 39.12(a)(3). The requirements include satisfying the stringent credit criteria, sufficient financial ability to make anticipated GF contributions/margin, operational capacity, risk management competence, a relationship with an approved settlement bank, a relationship with a swaps data repository, timely reports regarding the Clearing Participant and its parent entity if there is a parent guaranty in place, proper insolvency laws and no statutory disqualifications under the SEA or CEA. ICC monitors Clearing Participant compliance with the member eligibility requirements in accordance with its Clearing Counterparty Monitoring Procedures, the intraday risk monitoring procedures, and the Applicant Review & Monitoring Procedures. ICC Rule 206 states that Clearing Participants are required to notify ICC of any material adverse change in the Clearing Participant's financial condition, material reduction in operating capital, sanction/disciplinary action by regulatory organizations, or business restrictions by clearing organizations/exchanges. Any determinations to suspend or revoke clearing privileges, as provided under Rules 203(a), 207(a) or 609(a), requires the consent of the Board pursuant to Rule 615. ICC Compliance issues a Compliance Alert at least once year to Clearing Participant's reminding them of their operational and notice obligations to ICC.



Though not required by the CFTC or SEC, pursuant to Rule 615, prior to suspension, revocation or termination of a Clearing Participant, the subject Clearing Participant shall, except where such suspension, revocation or termination was recommended by a Hearing Panel or where such termination was based on such Clearing Participant being in default, have the right to deliver notice to ICE Clear Credit contesting such suspension, revocation or termination, in which case such suspension, revocation or termination shall not become effective and the matter shall be deemed to have been referred to a Hearing Panel, whereupon the Hearing Panel shall adjudicate the matter and impose sanctions as provided in Chapter 7 of ICC's Rules. ICE Clear Credit shall provide notice to all Clearing Participants as much in advance as reasonably practicable (but in any event at least two hours) prior to any suspension or revocation of clearing privileges or termination of Clearing Participant status becoming effective, whether by the Board or a Hearing Panel pursuant to Rule 710.

#### **2.4 Additional Information Regarding the Public Interest for AMF Granting the Requested Exemption**

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 broader financial system. ICC's rules, policies, procedures and activities are designed to and provide a reliable clearing framework for market participants.

ICC submits that it would be appropriate and would not be contrary or prejudicial to the public interest for the AMF to exempt ICC from recognition as a clearing agency due to the fact that it is already subject to appropriate direct regulatory oversight by the CFTC and SEC as described above, namely CFTC Regulation 39.24, which provides that each DCO must establish governance arrangements that explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders, and Section 17A(b)(3)(F) of SEA, which requires that rules of the clearing agency are designed to, in general, protect the public interest.

Clearing plays an essential risk management role in the financial system and, as a result, is central to financial stability. The risk reducing benefits of central clearing have long been recognized and were the foundation of the financial reforms put forward over the past decade for OTC derivatives. Clearing, when provided by a well-run and a well-supervised clearing house, has historically proven to be a fundamentally safe and sound process for reducing systemic risk. Importantly, ICC has never suffered a loss to its capital (a/k/a Skin-In-The-Game) or the mutualized guaranty fund resources of the clearing members as a result of a clearing member default. Nor has ICC experienced a material non-default loss (NDL).

ICC is highly transparent and inclusive with respect to all of its operations. ICC is subject to extensive regulatory oversight (by multiple regulators around the world) and strong corporate governance requirements, exercised largely through risk and advisory committees and independent boards. Risk committees include representatives from ICC clearing member firms and end clients. ICC regularly conducts margin back-testing, default fund stress testing, and liquidity stress testing, the results of which are reviewed by clearing members and regulators and are publicly available as part of the Public Quantitative Disclosures. In addition, ICC's counterparty credit, collateral assets, financial resources and liquidity methodologies are independently validated on a routine basis.

ICC's rules, practices and procedures are fully transparent and are publicly disclosed in a consistent manner, as set out within the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs) and various regulatory requirements. Any material changes to ICC's clearing processes are subject to risk committee review and board approval as well as applicable regulatory review and approval.



## **2.5 Certification Regarding Access to Books and Records & Onsite Inspections**

Provided that the AMF grants exemption from recognition as a clearing agency to ICC, ICC will provide certification that ICC will assist the AMF in accessing ICC's books, records and other documents and in undertaking an onsite inspection and examination at the ICC's premises.

## **2.6 Certification Regarding Providing Legal Opinion (if requested)**

Provided that the AMF grants exemption from recognition as a clearing agency to ICC, ICC will provide certification that ICC will provide the AMF, if requested by the AMF, with an opinion of legal counsel that ICC has, as a matter of law, the power and authority to (i) provide the AMF with prompt access to ICC's books, records and other documents, and (ii) submit to onsite inspection and examination by the AMF.

## **2.7 Form 24-102A1**

ICC submits a draft Form 24-102A1 as a part of this application for exemption. Provided that the AMF grants exemption from recognition as a clearing agency to ICC, ICC will file a fully executed Form 24-102A1.

## **2.8 Material Change to Information Provided in this Application for Exemption**

Pursuant to subsection 2.1(4) of Regulation 24-102, ICC will inform the AMF in writing of any change to the information provided in this application for exemption that is material, or if any of the information in this application for exemption becomes materially inaccurate for any reason as soon as the change occurs, or ICC becomes aware of any inaccuracy. Further, pursuant to subsection 2.2(5) of Regulation 24-102, ICC will notify the AMF in writing of any material change to the information provided in ICC's PFMI Disclosure Framework Document and related application materials, or if the any of the information becomes materially inaccurate for any reason as soon as the change occurs, or ICC becomes aware of any inaccuracy.

## **2.9 Ceasing to Carry on Business Notification**

Pursuant to subsections 2.3(1) and 2.3(2) of Regulation 24-102, ICC will file a report on Form 24 102A2 with the AMF if ICC intends to cease carrying out business, or involuntarily ceases to carry out business, in its local jurisdiction.

## **2.10 Audited Financial Statements**

ICC will file annual audited financial statements that comply with the requirements set out in subsections 2.4(2) and 2.4(3) of Regulation 24-102 within the timeframe specified in subsection 2.5(1) of Regulation 24-102 and ICC will file interim financial statements that comply with the requirements set out in subsections 2.4(2)(a) and 2.4(2)(b) of Regulation 24-102 within the timeframe specified in subsection 2.5(2) of NI 24-102. Pursuant to subsection 2.4(1) of Regulation 24-102, ICC's audited financial statements for the most recently completed financial year can be found here: [ICE Clear Credit Financial Statements 2022-2023](#).

## **2.10 Legal Entity Identifier (LEI)**

Pursuant to subsection 5.2 of Regulation 24-102, the LEI of ICC is T33OE4AS4QXXS2TT7X50. Pursuant to subsection 5.2 of Regulation 24-102, ICC will identify itself using its LEI for the purposes of any recordkeeping and reporting requirements and will maintain and renew such LEI.



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Yours Sincerely,

Eric Nield  
General Counsel  
ICE Clear Credit LLC

### 7.3.2 Publication

#### Organisme canadien de réglementation des investissements (l'« OCRI »)

##### Approbation

Vu la demande complétée le 27 février 2025 par l'Organisme canadien de réglementation des investissements (l'« OCRI »), afin d'obtenir l'approbation par l'Autorité des marchés financiers (l'« AMF ») du projet de modification concernant les ordres conditionnels à une transaction sur dérivé (le « projet de modification »);

Vu la démarche consultative suivie par l'OCRI pour le projet de modification;

Vu l'objectif principal du projet de modification visant à favoriser l'équité et l'efficacité des marchés des capitaux en modifiant les RUIM de manière à inclure un type d'ordre particulier qui facilite l'exécution d'un ordre qui est conditionnel à l'exécution d'une ou de plusieurs transactions visant un dérivé connexe;

Vu la résolution du conseil d'administration de l'OCRI selon laquelle le projet de modification a été dûment approuvé le 20 décembre 2024;

Vu l'article 74 de la *Loi sur l'encadrement du secteur financier*, RLRQ, c. E-6.1 (la « Loi »);

Vu l'acte d'autorisation de signature de certains actes, documents ou écrits pris en vertu de l'article 24.1 de la Loi et les pouvoirs délégués conformément à l'article 24 de cette même loi;

Vu l'analyse effectuée par la Direction de l'encadrement des activités de négociation et sa recommandation d'approuver le projet de modification du fait qu'il favorise l'efficacité des marchés et qu'il n'est pas contraire à l'intérêt public;

En conséquence, l'AMF approuve le projet de modification.

Fait le 16 septembre 2025.

Dominique Martin  
Directeur principal de l'encadrement des activités de marché et des dérivés

Décision n° : 2025-DPEMD-0012

## 7.4 AUTRES CONSULTATIONS

Aucune information.

## 7.5 AUTRES DÉCISIONS

Aucune information.