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April 9, 2012

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *ICE Clear Credit LLC's Requests for Exemptive Relief to Commingle Customer Funds and Portfolio Margining (CFTC File No. IF 12-002; SEC File No. 4-641)*

Dear Mr. Stawick and Ms. Murphy:

The Investment Company Institute (“ICI”)¹ is writing in support of ICE Clear Credit LLC’s requests to the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) for exemptive relief to commingle customer funds for certain swaps and security-based swaps in a cleared swaps customer account subject to Section 4d(f) of the Commodity Exchange Act (“CEA”) and to calculate margin for the account pursuant to ICE Clear Credit’s proprietary portfolio margining methodology.² Our members – registered investment companies – use derivatives (including swaps) to pursue their stated investment objectives, policies and strategies. ICI supports

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.3 trillion and serve over 90 million shareholders.

² Letter from Michael M. Philipp, Winston & Strawn (as counsel to ICE Clear Credit LLC), to Elizabeth Murphy, Secretary, SEC, dated Nov. 7, 2011; Letter from Michael M. Philipp, Winston & Strawn (as counsel to ICE Clear Credit LLC), to David Stawick, Secretary, CFTC, dated Oct. 4, 2011.

efforts, such as this one, to promote efficient uses of capital: portfolio margining in a commingled account would reduce the required amount of margin and permit capital to be deployed more effectively for portfolio management purposes – the benefits of which would ultimately accrue to fund shareholders.

We request that the CFTC and SEC confirm their interpretation of the authority for permitting the commingling of swaps and security-based swaps accounts to promote certainty that in case of a bankruptcy of a dually-registered broker-dealer and futures commodity merchant (“BD/FCM”), these accounts would be treated as cleared swaps customer accounts for customers trading swaps and would be treated as such under the bankruptcy code. Moreover, we believe that other clearinghouses will likely request similar relief in the future to provide portfolio margining benefits to their market participants. To the extent that the CFTC and SEC grant relief to other clearinghouses, we urge the agencies to tailor any exemption to ICE Clear Credit (and any conditions for providing relief) so that relief could be granted in a consistent manner to other clearing organizations.

Benefits of Portfolio Margining

According to its applications, ICE Clear Credit requests exemptive relief under Section 4d(f)(3)(B) of the CEA to allow ICE Clear Credit, its clearing members that are dually-registered BDs/FCMs, and BDs/FCMs that clear on behalf of customers through the clearing members: (1) to hold customer positions in Credit Default Swaps (“CDS”), including broad-based index CDS (“Index CDS”) and narrow-based Index CDS and single-named CDS, and the eligible types, classes and categories of the CDS that are identified in the request and the customer funds to margin, secure or guarantee such products in a single customer omnibus account at ICE Clear Credit that is subject to Section 4d(f) of the CEA and (2) to calculate margin for the customer omnibus account of its clearing members on a portfolio margin basis pursuant to ICE Clear Credit’s portfolio margining methodology. ICE Clear Credit proposes to convert all current customer swaps accounts, which will hold both security-based swaps and swaps, to 4d(f) portfolio margining accounts to allow clearing members and their customers greater operational efficiencies, lower margining costs and greater comprehensive risk profile assessment.

We agree that there could be significant benefits to commingling in one account customer funds for swaps and security-based swaps to permit portfolio margining in such an account. Portfolio margining will allow netting of swaps and security-based swaps that are correlated on a risk management and economic basis in calculating margin requirements, which would permit our members to reduce the amount allocated to margin. Maintaining two separate accounts for swaps and security-based swaps would be more expensive because our members would have to post full margin for both accounts. The additional funds available as a result of portfolio margining could be put to more productive use to effectuate a fund’s investment strategy, which would benefit funds and their shareholders, particularly in situations where the extra margin is not necessary for risk management.

Moreover, ICE Clear Credit's proposal would permit swaps and security-based swaps that are correlated to be treated under the same margin requirements.

More generally, we recognize that the Dodd-Frank Act imposes a comprehensive new framework for the regulation of swaps and mandates the use of properly regulated central clearing to reduce counterparty risk and systemic risk. In doing so, the Act also divides regulatory authority over swaps and security-based swaps resulting in different types of accounts for swaps and security-based swaps, which limit the ability to net across products. Permitting commingling of those accounts and portfolio margining will allow netting, resulting in the benefits described above. Moreover, we believe reduction in the costs of clearing swaps (through the ability to reduce margin) would encourage market participants to clear more swaps voluntarily and further the goals of the Dodd-Frank Act to reduce risk, increase transparency, and promote market integrity.

Status of Commingled Accounts

In support of its applications, ICE Clear Credit takes the view that the Dodd-Frank Act authorizes the CFTC and SEC to permit commingling and portfolio margining of swaps and security-based swaps. In particular, ICE Clear Credit refers to Sections 713(a) of the Dodd-Frank Act, which requires the SEC to adopt rules that permit securities to be held in a portfolio margining account that is regulated as a futures account pursuant to a portfolio margining program approved by the CFTC. We understand that there is some potential uncertainty regarding whether the reference to a "futures" account could be interpreted to limit the ability of the SEC and CFTC to permit only commingling of futures and securities and prevent the extension of commingling to swaps and security-based swaps.

If the CFTC and SEC grant ICE Clear Credit's request for exemptive relief, we recommend that they clarify and confirm in any approval order or rule that the commingled account would be a cleared swaps customer account for customers trading swaps and that the account would be treated as such in a bankruptcy of a BD/FCM rather than as a securities account subject to the Securities Investor Protection Act of 1970. Doing so would alleviate any uncertainty regarding the protected status of customer accounts. We believe that, particularly in the case of bankruptcy, it is critical for the protection of customer assets to have clarity at the outset that these commingled accounts will be treated as cleared swaps customer accounts and therefore as customer property not subject to claims of the creditors of the BDs/FCMs.³

Approach to Commingled Accounts and Portfolio Margining

Finally, we believe it would be beneficial to market participants for the CFTC and SEC to harmonize their approach in permitting the commingling of customer funds for swaps and security-

³ See Section 4(d)(f) of CEA, Parts 22 and 190 of the CFTC's regulations, and subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code.

Letter to Mr. David A. Stawick and Ms. Elizabeth Murphy

April 9, 2012

Page 4 of 4

based swaps and for portfolio margining in such accounts. We expect other clearinghouses will likely submit exemptive requests to provide similar benefits to their clearing members and customers. In this regard, the CFTC and SEC should ensure that the approach taken with ICE Clear Credit could be taken for (and/or the conditions for the exemptive relief could be applied to) other clearinghouses that seek similar relief. We believe market participants will benefit from having a consistent approach to, and set of rules for, commingling of customer funds for swaps and security-based swaps and for portfolio margining regardless of the clearinghouse through which they choose to clear. Different standards may lead to regulatory arbitrage or inefficiencies because market participants may choose to clear at a particular clearinghouse based on regulatory standards rather than market efficiencies.

* * *

We appreciate the opportunity to submit comments to support ICE Clear Credit's requests for relief. If you have any questions, please feel free to contact me at (202) 218-3563, Sarah Bessin at (202) 326-5835, or Jennifer Choi at (202) 326-5876.

Sincerely,

/s/ Dorothy Donohue

Dorothy Donohue
Deputy General Counsel

cc: The Honorable Gary Gensler
The Honorable Jill E. Sommers
The Honorable Bart Chilton
The Honorable Scott D. O' Malia
The Honorable Mark Wetjen

The Honorable Mary L. Schapiro
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
The Honorable Daniel M. Gallagher