ICE CLEAR CREDIT™

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October 15, 2019

VIA EMAIL
Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE, Washington, DC 20549-1090

Re: SR-ICC-2019-010 (the "proposed rule change")

Dear Ms. Countryman:

ICE Clear Credit LLC ("ICC") appreciates the opportunity to provide this comment letter with respect to its proposal to amend the ICC Clearing Rules (the "Rules") to provide additional clarity and transparency regarding ICC's treatment of non-default losses.[1] ICC is aware of the comment letter submitted by the Futures Industry Association ("FIA" or the "FIA Letter")[2] related to such rule filing, and ICC is providing these comments in response to the FIA Letter.

As more fully described in the proposed rule change, ICC proposes to amend the Rules to provide clarity with respect to the treatment of non-default losses (i.e., losses at ICC that do not arise from the default of an ICC clearing member). In addition, the proposed rule amendments introduce a liability allocation mechanism with respect to certain types of non-default losses that are largely outside of ICC's control and where ICC executes effectively as an agent on behalf of its clearing members and the clearing members' clients - specifically custodial losses and investment losses.

The proposed Rule amendments clarify that, other than limited potential liability for custodial losses and investment losses, ICC clearing members are not responsible for non-default losses occurring at ICC.

Notwithstanding the FIA Letter, custodial losses and investment losses are not under the sole control of ICC. As a result, the proposed mechanism to allocate liability for such remote non-default custodial loss or investment loss scenarios is appropriate and equitable.

Applicable regulations significantly restrict how and where ICC is permitted to hold and invest its clearing members' assets. In general, ICC is required to hold clearing member assets in a manner that minimizes the risk of loss or delay in access, and ICC is required to ensure investments are limited to instruments and counterparties with minimal credit, market and liquidity risk. International standards encourage clearing houses to fully utilize central bank services to the extent such services are available.[3] Accordingly, as ICC has central bank depository access with respect to U.S. dollars and U.S. Treasury

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1 Securities Exchange Act Release No. 34-86729 (August 22, 2019), 84 FR 45191 (August 28, 2019).

2 Letter from Jacqueline Mesa, Chief Operating Officer & Senior Vice President of Global Policy, FIA, to Vanessa Countryman, Secretary, SEC, dated September 18, 2019.

3 See Principles for Financial Market Infrastructures, issued by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, April 2012 (in support of the use of central bank services where available and practical).

securities, ICC fully utilizes such services.[4] ICE clearing houses continue to advocate that central bank accounts are the safest and soundest homes for clearing member and clearing member client initial margin and guaranty fund deposits and that such accounts effectively eliminate the risk associated with custody and investments.

With respect to investments, ICC's preferred activity is limited to overnight reverse repurchase transactions collateralized with certain government securities with highly rated counterparties. Furthermore, ICC over-collateralizes its reverse repurchase transactions to protect the investment in the event that the counterparty defaults and fails to return the invested cash on the next day. Importantly, ICC does not rehypothicate any collateral it receives. Rather, as noted above, in the absence of central bank access to deposit cash, ICC simply invests its clearing members' and clearing member clients' cash overnight in highly safe and liquid government securities with highly rated counterparties.

ICC's investment and custodial policies have been designed to comply with such regulatory requirements and international standards. Furthermore, ICC's investment and custodial policies are reviewed and approved by (i) ICC's Risk Committee, which is made up predominantly by representatives of ICC clearing members; and (ii) ICC's Board of Managers which includes representatives of ICC clearing members. In addition to this internal governance review and approval process, the investment and custodial policies (and any modification to such polices) is subject to required SEC and CFTC regulatory filing and review.

It should be noted that, contrary to the FIA Letter, pursuant to ICC policies the majority of the investment yield and depository interest received related to such custodial and investment activity is credited to ICC clearing members. Again, ICC effectively acts as an agent for the clearing members and the clearing members' clients.

As a non-bank entity, ICC relies on large, reputable financial institutions to provide depository, custodial, counterparty and settlement services. It would be inconsistent with financial industry practice for ICC to provide a guarantee against the losses that may arise at such financial institutions. For example, it is not common industry practice for futures commission merchants or broker-dealers to guarantee custodial or settlement bank risk nor is it common industry practice for custodians to guarantee sub-custodians. ICC essentially is acting as a custodian that places its clearing members' and clearing member clients' funds in a sub-custodian. Such sub-custodians are some of the world's largest commercial institutions, many of which are owned and operated by ICC's clearing members.

With respect to the monitoring of ICC's financial services providers including custodians, investment counterparties and depositories, ICC's applicable procedures are subject to its internal governance review process including ICC's Risk Committee. Such procedures include periodic reporting requirements to ICC's Risk Committee on the results of such monitoring and internal rating procedures.

Section 17A(b)(3)(D) of the Act[5] requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. ICC believes that the amendments exceed the equitable standard in that ICC has determined for commercial reasons to assume first layer liability for custodial and investment losses which is better for ICC's clearing members and their clients than the financial industry standard of disclaiming liability outright. The amendments address

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4 By way of example, approximately 85% of aggregate guaranty fund and margin deposits (both house and customer) at ICC were held at ICC's accounts at the Federal Reserve Bank of Chicago. Looking at just customer origin margin deposits, approximately 92% of such assets were held at ICC's accounts at the Federal Reserve Bank of Chicago. (All data as of December 31, 2018).

5 15 U.S.C. 78q-1(b)(3)(D).

the remote scenario where, despite the aforementioned protections under ICC policies and procedures, there is a failure by an investment issuer or counterparty or custodian. Such a circumstance is remote in ICC's view, and in any event, outside the control of ICC. In fact, ICC never experienced a custodial or an investment related loss. In such unlikely circumstances, the amendments would more than equitably allocate liability for the loss as between ICC and clearing members, with ICC being responsible for a first loss position up to the amount of defined resources (except in the case of a central bank failure) and with clearing members being responsible for any remaining loss. For the foregoing reasons, ICC believes that the amendments provide an appropriate and equitable method to allocate liability for an extreme non-default loss scenario, consistent with Section 17A(b)(3)(D) of the Act.[6]

ICC appreciates the opportunity to provide these comments.

Sincerely,

Stanislav Ivanov
President, ICE Clear Credit

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6 15 U.S.C. 78q-1(b)(3)(D).