www.theice.com

Sarah Williams
Staff Attorney

April 28, 2015

Re: ICE Clear Credit LLC Advance Notice of Proposed Rule Change Pursuant to Commission Rule 40.10

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

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC ("ICC"), a registered derivatives clearing organization ("DCO") under the Commodity Exchange Act, as amended (the "Act") that has been designated by the Financial Stability Oversight Council as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, hereby submits to the Commodity Futures Trading Commission (the "Commission"), pursuant to Commission Regulation 40.10, the attached amendments to its rules. ICE Clear Credit intends to implement these rule amendments following completion of the review period under Commission Regulation 40.10.

The principal purpose of the proposed changes is to amend the ICC Clearing Rules ("ICC Rules") to modify the terms and conditions for physical settlement of cleared CDS Contracts, and to adopt certain new delivery procedures relating to physical settlement. Certification of the changes to the ICC Rules, the ICC Delivery Procedures, the ICC Physical Settlement and Notice Terms, and the ICC Risk Management Framework pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.10 is also provided below.

ICC submits proposed amendments to the ICC Rules relating to physical settlement of CDS Contracts. Upon the occurrence of a credit event under a cleared CDS Contract, the contract is typically settled in cash in accordance with the terms of the ICC Rules, which incorporate the applicable ISDA Credit Derivatives Definitions (the "ISDA Definitions") and the market-standard credit default swap auction methodology for determining the cash settlement price. However, in certain circumstances, such as where the Credit Derivatives Determinations Committee decides not to hold a cash settlement auction for a particular credit event, or such an auction is cancelled under the terms of the auction methodology (including because of a failure to determine the auction settlement price), the CDS Contracts provide for a fallback settlement method of physical settlement. Under physical settlement of a CDS contract generally, the protection buyer will be entitled to deliver one more qualifying deliverable obligations to the protection seller, in which case the protection seller will be required to pay the protection buyer a defined physical settlement amount. Under the current ICC Rules, if physical settlement applies,[1] the clearinghouse will match ICC clearing participants ("Participants") that are protection buyers with Participants that are protection sellers in the relevant contract, and the two Participants will be responsible for effecting physical settlement between them. ICC does not itself perform or guarantee performance of physical

[1] ICC notes that to date, physical settlement has not been necessary for any of the CDS Contracts cleared by ICC.

settlement between the matched Participants. Once matching occurs, the contract is purely a bilateral contract between the matched Participants, and the clearinghouse has no further rights or obligations with respect to the contract. ICC does, however, collect and hold physical settlement margin as collateral agent on behalf of the protection buyer to secure the protection seller's obligations to the protection buyer under physical settlement.

At the request of its Participants, and following extensive consultation with them, ICC proposes to amend the ICC Rules relating to physical settlement such that the clearinghouse will be responsible for financial performance of physical settlement. ICC understands that Participants and other market participants view the current approach, in which cash settlement of credit events is guaranteed by the clearinghouse but physical settlement is not, as creating a potentially anomalous result in the unlikely case that physical settlement may apply. The application of physical settlement would be a circumstance that is generally not within any Participant's control, and under the current rules may expose Participants to a significantly different credit risk profile than under cash settlement (where the Participant is exposed to the credit of the clearinghouse). In light of these discussions, ICC has determined that it is appropriate to extend the clearing guarantee to the financial performance of physical settlement. ICC notes that under the amended approach, it would still require payments and deliveries in the ordinary course under physical settlement to be made directly between the matched buying Participant and selling Participant, with the clearinghouse only being obligated to make direct payments in the case of certain defined settlement failure scenarios. ICC believes that this change will further the general policy goals of central clearing for CDS transactions, and is consistent with the clearinghouse's financial resources, risk management procedures and operational capabilities.[2]

ICC proposes to make certain amendments to Chapters 1, 4, 5, 21 and 22 of the ICC Rules. ICC also proposes to adopt a related set of Delivery Procedures and Physical Settlement and Notices Terms. ICC also proposes to make certain related and conforming changes to its Risk Management Framework. The text of the proposed rule and procedural amendments is attached, with additions underlined and deletions in strikethrough text. All capitalized terms not defined herein are defined in the ICC Rules.

In Chapter 1 of the ICC Rules, the definition of "Client-Related Initial Margin" has been amended so that it now includes Physical Settlement Margin collected with respect to Client-Related Positions. As discussed below, such Physical Settlement Margin will now secure the obligations of a Participant to ICC in connection with physical settlement. Similarly, in Rule 403, the definition of "Physical Settlement Margin" has been amended to refer to such obligations to ICC (as opposed to the obligations to the matched Participant under the current ICC Rules). In Rule 502(b), a conforming reference to Physical Settlement Margin has been updated. A conforming changes is also made in Rule 2101-02(a)(iv).

In Chapter 22 (which covers physical settlement), a new Rule 2200 is added with definitions relating to the revised physical settlement provisions, including "Matched Delivery Buyer" and "Matched Delivery Seller," and the related terms "Matched Delivery Contract," "Matched Delivery Buyer Contract," "Matched Delivery Seller Contract" and "MP Delivery Amount." As discussed below, these terms are used in connection with the matching of buying Participants and selling Participants in the revised settlement procedures. A new definition of "Asset Package Delivery Notice" has also been added to address notices in connection with Asset Package delivery under the 2014 ISDA Credit Derivatives Definitions (the "2014 ISDA Definitions").

Rule 2201(a), which provides for matching of buying Participants and selling Participants into a Matched Delivery Pair in the case of physical settlement, has been revised to address scenarios where a Participant's CDS contracts must be split and matched with multiple other Participants for purposes of physical settlement. Conforming changes to use applicable defined terms (such as Relevant Restructuring Credit Event) have also been made. Rule 2201(b), which addresses delivery of certain notices between a Matched Delivery Pair, has been revised to include references to Asset Package Delivery Notices. Rule 2201(c) has been deleted at the request of Participants as being inconsistent with the terms of uncleared CDS and unnecessary in light of the provisions of the ISDA Definitions and Rule 2202.

[2] ICC notes that a substantially similar approach to physical settlement is used in the ICE Clear Europe Limited CDS clearing service.

Rule 2202, which addresses resolution of disputes related to permissible deliverable obligations, has been revised to incorporate the concept of Asset Package Delivery under the 2014 ISDA Definitions, as well as related concepts of Prior Deliverable Obligations, Package Observable Bonds and Asset Package Delivery Notices. Rules 2202(b) and (c) have also been revised to address the consequences of a selling Participant's refusal to accept delivery of a particular obligation, including for the offsetting transaction between ICC and the buying Participant.

Rule 2203 has been replaced with new provisions addressing the clearinghouse's role in physical settlement. When a Matched Delivery Pair is established, the CDS Contract between the Matched Delivery Buyer and ICC is referred to as the Matched Delivery Buyer Contract, and the corresponding CDS Contract between ICC and the Matched Delivery Seller is referred to as the Matched Delivery Seller Contract. Under the revised physical settlement approach, ICC remains party to each such contract, but requires certain notices, payments and deliveries to take place directly between the Matched Delivery Buyer and Matched Delivery Seller. Accordingly, under Rule 2203(a), for each Matched Delivery Buyer Contract, ICC designates the Matched Delivery Seller to receive on ICC's behalf notices and deliveries from the Matched Delivery Buyer and to make payments on ICC's behalf to the Matched Delivery Buyer. Similarly, under Rule 2203(b), for each Matched Delivery Seller Contract, ICC designates the Matched Delivery Buyer to deliver on ICC's behalf notices and deliveries to the Matched Delivery Seller, and to receive on ICC's behalf payments from the Matched Delivery Seller. The result is that notices, payments and deliveries will be made directly between the Matched Delivery Buyer and Matched Delivery Seller, in satisfaction of the parties and ICC's respective obligations under both the Matched Delivery Buyer Contract and Matched Delivery Seller Contract. Rule 2203(c) further clarifies that the exercise of rights by Matched Delivery Buyer against ICC will be deemed the exercise by ICC of the corresponding rights against Matched Delivery Seller, and vice versa. Rules 2203(d) and (e) provide for copies of relevant notices to be provided to ICC, as well as notice of the completion of settlement between the Matched Delivery Buyer and Matched Delivery Seller. Rule 2203(f) clarifies the obligations of the respective parties to a Matched Delivery Contract, and addresses a scenario where an Asset Package being delivered is deemed to have a value of zero under the 2014 ISDA Definitions. Rule 2203(g) allocates costs and expenses that may be incurred by ICC in connection with physical settlement.

Rule 2204, as revised, addresses physical settlement of certain deliverable obligations that do not settle in the ordinary course on a delivery-versus-payment basis ("Non-DVP Obligations"). The rule establishes a procedure under which the Matched Delivery Seller pays the physical settlement amount owed to ICC, which in turn will not pay such amount to the Matched Delivery Buyer until ICC receives notice that the obligation has been received by the Matched Delivery Seller from the Matched Delivery Buyer. If the obligation is not delivered, the physical settlement amount is returned to the Matched Delivery Seller.

Rule 2205 addresses settlement failures by the Matched Delivery Seller or Matched Delivery Buyer. Under subsection (a), if the Matched Delivery Seller fails to pay the physical settlement amount when due, the Matched Delivery Buyer Contract will be cash settled as between the Matched Delivery Buyer and ICC. ICC thus will not be obligated to take delivery of the relevant deliverable obligations (and dispose of them in a situation where the Matched Delivery Seller has failed to perform), but will compensate the Matched Delivery Buyer for the value of the Matched Delivery Buyer Contract through the cash settlement process. Pursuant to subsection (b), ICC may, in addition to its other default remedies, terminate the Matched Delivery Seller Contract, in which case the Matched Delivery Seller will owe ICC an amount equal to the cash settlement amount ICC paid the Matched Delivery Buyer, together with other losses and expenses incurred by ICC as a result of the failure. Rule 2205(c) provides that, consistent with the terms of the ISDA Definitions applicable to a protection buyer generally, any failure by ICC to deliver any deliverable obligations to the Matched Delivery Seller (including as a result of a failure by the Matched Delivery Buyer to make a delivery) will not constitute a default by ICC, and the Matched Delivery Seller's sole remedy will be as set forth in the Matched Delivery Seller Contract (which may include, for example, buy-in remedies of the Matched Delivery Seller). ICC will not have any obligation to purchase or acquire deliverable obligations (other than in settlement of the Matched Delivery Buyer Contract) in order to settle the Matched Delivery Seller Contract. This is consistent with the clearinghouse's guarantee of finance performance, but not actual delivery. In the event of a delivery failure by a Matched Delivery Buyer, such party will be liable to ICC for any costs incurred by ICC in settling the corresponding Matched Delivery Seller Contract (in addition to ICC's other remedies for a default).

Rule 2206 covers certain other, non-default scenarios in which physical settlement fails to occur. Under Rule 2206(a) and (b), if physical settlement of the Matched Buyer Delivery Contract does not occur because the deliverable obligation is in less than the relevant minimum denomination or the Matched Delivery Seller is not a permitted transferee of the obligation, the failure will be treated as an illegality or impossibility outside of the parties' control, which will result in cash settlement[3] under the ISDA Definitions. In this and other scenarios where a cash settlement fallback applies, the same cash settlement amount will apply to both the Matched Delivery Buyer Contract and Matched Delivery Seller Contract under Rule 2206(c). Similarly, in the case of a buy-in, the same buy-in price will apply to both contracts. Rule 2206(d) provides for cash settlement of both the Matched Delivery Buyer Contract and Matched Delivery Seller Contract in certain cases where delivery does not occur between the Matched Delivery Buyer and the customer for which it is acting. Rule 2206(e) specifies the date of any cash settlement and provides for notice of the relevant amount owed.

Rule 2207(a) provides for certain standard representations and related provisions for physical settlement in the ISDA Definitions to apply as between the Matched Delivery Buyer and Matched Delivery Seller, and clarifies ICC's authority to designate a Participant to make or receive physical settlement on its behalf as provided in Rules 2203 and 2204 for purposes of Section 9.2(c)(iv) of the 2003 Definitions or Section 11.2(c)(iv) of the 2014 Definitions, even though the Participant is not its Affiliate. Rule 2207(b) clarifies certain procedures for obtaining price quotations for the relevant deliverable obligations in the event that a cash settlement fallback applies.

Rule 2208 allows the Matched Delivery Buyer and Matched Delivery Seller to settle their rights and obligations as to physical settlement through an alternative arrangement agreed between them (referred to as a "CADP"), in lieu of settlement pursuant to Chapter 22 of the Rules. If they so agree, ICC will have no obligation in respect of such alternative arrangement.

Rule 2209(a) and (c) provide that margin (including physical settlement margin) will continue to be called and held through settlement. Rule 2209(b) provides that ICC will apply physical settlement margin to satisfy the Matched Delivery Seller's obligation to pay the physical settlement amount, and call such seller for any shortfall.

ICC also proposes to adopt Delivery Procedures that further specify certain operational and other details for the physical settlement process. Paragraph 1 provides certain definitions used in the Delivery Procedures. Paragraph 3.2 sets out certain requirements for providing notices in connection with physical settlement. Paragraphs 3.3(a)-(e) establish the procedures and timetable for ICC to allocate Matched Delivery Pairs and notify Participants accordingly. Paragraph 3.3(g) addresses additional procedures concerning delivery of notices by Participants in connection with physical settlement, including as to relevant notice deadlines, requirements for providing copies of notices to the clearinghouse, treatment of late notices and procedures for disputes involving notices. Paragraph 4 of the Delivery Procedures specifies certain deadlines in connection with the physical settlement of Non-DVP Obligations under Rule 2204. Paragraph 5 specifies the deadline for notices that parties have elected a CADP.

ICC also proposes to adopt a set of Physical Settlement and Notices Terms ("Notices Terms") with respect to physical settlement. The Notices Terms are intended to set forth in a uniform way certain matters between a Participant and its customer in connection with physical settlement, including delivery of physical settlement notices and delivery and receipt of deliverable obligations as between the Participant and its customer. The Notices Terms also address the operation of certain cash settlement and other fallbacks as between the Participant and its customer. The Notices Terms do not bind ICC and do not form part of the ICC Rules or ICC Procedures. The Notices Terms are published for the convenience and use of Participants and their customers, and are designed to be incorporated by

[3] Cash settlement in this context is different from the auction cash settlement that normally applies to CDS contracts under the ISDA Definitions, and is based on price quotations obtained by the relevant party to the contract for the obligation or obligations that cannot be delivered.

reference in customer clearing documentation. However, a Participant and its customer may agree to vary the Notices Terms as between them.

ICC also proposes to make certain changes to its Risk Management Framework to accommodate the changes relating to physical settlement that are being made to the Rules and procedures as set forth herein. As revised, the Risk Management Framework reflects the clearinghouse's obligations in respect of physical settlement as provided in the amended Rules and procedures. It sets out the steps in the physical settlement process to be taken by the clearinghouse if physical settlement applies, including the matching of Participants into Matched Delivery Pairs, consistent with the Rules and procedures. The revisions also address the calculation, collection and use of margin (including physical settlement margin) where physical settlement applies.

Core Principle Review:

ICC reviewed the DCO core principles ("Core Principles") as set forth in the Commodity Exchange Act. During this review, ICC identified the following Core Principles as being impacted:

Risk Management: The proposed amendments to the ICC rules relating to physical settlement of CDS Contracts are consistent with the risk management requirements of Core Principle D. The revised rules establish the clearinghouse's responsibility for financial performance of physically settled contracts, while establishing the procedures for settlement in the ordinary course to take place directly between the buying Participant and the selling Participant. The rules also establish the procedures to be followed in the case of a settlement failure and the responsibilities of the relevant Participants and ICC with respect thereto, and provide a mechanism for ICC to effect settlement in cash without having to acquire or dispose of the underlying deliverable obligations. In ICC's view, these arrangements permit it to appropriately manage the risks to the clearinghouse from the physical settlement obligations it would undertake under the proposed amendments.

Settlement Procedures: The proposed amendments to the ICC rules relating to physical settlement of CDS Contracts are consistent with the settlement procedures requirements of Core Principle E. Specifically, ICC believes that the proposed amendments will enhance the clearance and settlement of CDS transactions in circumstances where physical settlement applies. Although physical settlement acts as a fallback to the normal procedure for auction cash settlement, ICC and its Participants believe that the amendments will benefit the CDS market generally by making the physical settlement process more robust and providing greater certainty around the physical settlement process. ICC proposes to extend its clearing guarantee to the financial performance of physical settlement, which eliminates the existing gap in coverage where contracts go to physical settlement and avoids exposing Participants to the direct credit of other Participants in the case of physical settlement. At the same time, ICC has designed the revised procedures so that it is not itself required to make or take delivery of underlying deliverable obligations. In the ordinary course, payments and deliveries (and related notices) will be made directly between the matched buying and selling Participants. In the case of a settlement failure, the clearinghouse's obligations will be settled in cash, avoiding the need for the clearinghouse to obtain or dispose of deliverable obligations. In ICC's view, this allows it to appropriately limit and manage its risks with respect to physical settlement of cleared CDS contracts.

Amended Rules:

The proposed change consists of amendments to the ICC Rules, the ICC Delivery Procedures, the ICC Physical Settlement and Notice Terms, and the ICC Risk Management Framework to modify the terms and conditions for physical settlement of cleared CDS Contracts, and to adopt certain new delivery procedures relating to physical settlement. ICC has respectfully requested confidential treatment for the ICC Risk Management Framework which was submitted concurrently with this submission.

Annexed as an Exhibit hereto is the following:

A. Proposed amendments to the ICC Rules
B. ICC Delivery Procedures
C. ICC Physical Settlement and Notice Terms

Certifications:

ICC hereby certifies that the proposed changes to the ICC Rules, the ICC Delivery Procedures, the ICC Physical Settlement and Notice Terms, and the ICC Risk Management Framework to modify the terms and conditions for physical settlement of cleared CDS Contracts, and to adopt certain new delivery procedures relating to physical settlement comply with the Act and the regulations thereunder. There were no substantive opposing views to the rules.

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

ICC would be pleased to respond to any questions the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6883.

Sincerely,

Sarah Williams

Sarah Williams
Staff Attorney

Enclosures

cc: Board of Governors of the Federal Reserve System (by email)
Stuart E. Sperry, Board of Governors (by email)
Jeff Walker, Board of Governors (by email)
Sarah Josephson, CFTC (by email)
John C. Lawton, CFTC (by email)
Phyllis Dietz, CFTC (by email)
Steve Greska, CFTC (by email)
Julie Mohr, CFTC (by email)
Kate Meyer, CFTC (by email)
Tad Polley, CFTC (by email)
Eric Nield, ICE Clear Credit (by email)
Michelle Weiler, ICE Clear Credit (by email)