

Maria Zyskind
Staff Attorney

July 11, 2018

**Re: Updates to ICC Rules Pursuant to
Section 5c(c)(1) of the Commodity Exchange
Act and Commission Regulation 40.6(a)**

VIA ELECTRONIC PORTAL

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”) hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), a self-certification of changes to the ICC Clearing Rules (the “Rules”) to more clearly characterize Mark-to-Market Margin payments as settlement payments (“settled-to-market”) rather than collateral (“collateralized-to-market”). ICC is registered with the Commission as a derivatives clearing organization (“DCO”). ICC intends to implement the changes no sooner than the tenth business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office.

ICC proposes revisions to Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settled-to-market rather than collateralized-to-market. This submission includes a description of the changes to the ICC Rules. Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

Under the settled-to-market model, the transfer of Mark-to-Market Margin constitutes a settlement of the contract’s outstanding exposure, with the receiving party taking outright title to the Mark-to-Market Margin and the transferring party retaining no rights to such margin. Under the collateralized-to-market model, the transfer of Mark-to-Market Margin constitutes a pledge of collateral, such that the transferring party has a right to reclaim the collateral and the receiving party has an obligation to return the collateral.¹

ICC previously revised the Rules in 2015 to clarify that Mark-to-Market Margin constituted a settlement payment. Such revisions did not result in a change in the manner in which Mark-to-Market Margin was calculated, paid or collected, and were intended to provide further clarity regarding the finality of ICC’s settlement cycle.² ICC is proposing additional clarifying changes to the Rules. As with the prior changes, the proposed amendments do not change the manner in which Mark-to-Market Margin is calculated, or other current ICC operational practices. Rather, such changes consist of additional revisions to

¹ Use of a settled-to-market model, rather than a collateralized-to-market model, is consistent with requirements applicable to a DCO, as interpreted by the Commission staff. Commission Interpretive Letter No. 17-51 (Oct. 12, 2017) (“Commission Letter”). Use of a settled-to-market model also may result in more favorable capital treatment for positions in cleared derivatives for market participants that are subject to regulations of U.S. banking supervisors implementing the Basel III capital framework. See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Regulatory Capital Treatment of Certain Centrally-cleared Derivative Contracts Under Regulatory Capital Rules (Aug. 14, 2017).

² ICC filing submitted to the Commission on April 16, 2015.

terminology to further clarify the legal characterization that payments of Mark-to-Market Margin represent settlement rather than collateral payments. These clarifying changes result from further legal analysis with respect to ICC's characterization of Mark-to-Market Margin payments as settlement rather than as posting of collateral, as requested by its Clearing Participants ("CPs"). The proposed revisions are described in detail as follows.

ICC proposes revising Rule 401 to reference Mark-to-Market Margin Balance, a new term that is defined in Rule 404 and refers to the aggregate amount of Mark-to-Market Margin paid or received. The term is used in several calculations, avoids the need to repeat the definition, and allows ICC to more clearly and fully describe specifics pertaining to its Mark-to-Market Margin calculation in a single section without combining it with other concepts. ICC proposes adding language to Rule 401(a), which governs House Margin, to state that ICC calculates a net amount of Mark-to-Market Margin by subtracting a CP's Mark-to-Market Margin Balance from a CP's Mark-to-Market Margin Requirement. ICC proposes corresponding changes referencing Mark-to-Market Margin Balance in Rule 401(b)(ii), which covers Client-Related Mark-to-Market Margin. Such changes are not intended to modify the current calculation of Mark-to-Market Margin, or other operational practices, but, instead, replace certain specifics relating to ICC's Mark-to-Market Margin calculation with the defined term. The amendments do not change the manner in which Initial Margin is calculated, posted and held.

Further, ICC proposes to specify that a CP's Mark-to-Market Margin Balance is adjusted by an amount called the price alignment amount in revised Rule 401(g). Specifically, ICC proposes to state that it will pay or charge a CP price alignment amounts on any Mark-to-Market Margin and interest on any cash Initial Margin at a rate that may be negative. A price alignment amount is economically equivalent to the "interest" that ICC pays or charges a CP for any net Mark-to-Market Margin transferred between the parties under current Rule 401(g). However, since the term interest may be more typically associated with collateral, ICC proposes to refer to such an amount as price alignment to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments.³ Such change will not affect operations, since ICC will continue to pay or charge a CP an amount, which serves the same purpose and is calculated identically, for any net Mark-to-Market Margin transferred between the parties. ICC also proposes separate clarifying language to note that the rate at which it pays or charges such an amount may be negative, to more clearly address the possibility of negative market rate environments.

ICC proposes to specifically reference the applicable category of margin to avoid confusion over the proper characterization of Mark-to-Market Margin under the ICC Rules. ICC proposes to update Rule 401(h) to refer to substitutions of Initial Margin, and Rule 401(l) to refer to settlement finality in relation to Mark-to-Market Margin. The proposed changes to Rule 402, which governs ICC's rights with respect to the use of margin, exclude Mark-to-Market Margin from subsections (a) and (b), remove details relating to Mark-to-Market Margin from subsection (b), and specify subsection (c)'s applicability to Initial Margin. ICC proposes adding language to Rule 402(e) to more clearly state that Mark-to-Market Margin payments constitute a settlement. Further, ICC proposes adding new subsection (c) to Rule 404 to define Mark-to-Market Margin Balance as a sum equal to the Mark-to-Market Margin value transferred by the CP to ICC minus the Mark-to-Market Margin value transferred by ICC to the CP. To avoid uncertainty, ICC also proposes to specifically reference the applicable category of margin in Rule 406(c). Namely, ICC proposes to clarify that the requirements set forth in Rule 406(c) regarding Client-Related Positions apply to Initial Margin.

ICC proposes clarifications and conforming changes to Chapters 8 and 20 of the ICC Rules. ICC proposes clarifying language in Rule 801(a)(i) to refer to the transfer of Mark-to-Market Margin to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments, since ICC considers the loss after the application of Initial Margin and taking into account settlement of Mark-to-Market Margin to be uncollateralized loss. Under the proposed updates, Rule 808 includes a conforming reference to Mark-to-Market Margin Balance. The proposed changes to Rule 810(e) replace terminology that is commonly used in conjunction with collateral to avoid confusion over the proper characterization of

³ See Commission Letter, *supra*, for a discussion of the use of price alignment amount instead of price alignment interest.

Mark-to-Market Margin as settlement payments. ICC proposes to clarify in Rule 20-605(c)(i)(B), which specifies the resources to be used to cover losses with respect to Client-Related Positions, that ICC will use the defaulting CP's Client-Related Mark-to-Market Margin, to the extent not previously applied to pay Mark-to-Market Margin to other CPs.

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 Principle as being impacted:

Settlement Procedures: The revisions to the ICC Rules are intended to provide additional clarity regarding ICC's settlement procedures and thus are consistent with the requirements of Core Principle E.

Amended Rules:

The proposed changes consist of changes to Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settled-to-market rather than as collateralized-to-market.

Annexed as an Exhibit hereto is the following:

- A. Proposed amendments to the ICC Rules

Certifications:

ICC hereby certifies that the changes comply with the Act and the regulations thereunder. There were no substantive opposing views to the changes.

ICC further certifies that, concurrent with this filing, a copy of the submission was posted on ICC's website, and 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) 836-6854.

Sincerely,



Maria Zyskind
Staff Attorney