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Staff Attorney

July 16, 2019

Re: Formalization of ICC Clearing Participant Default Management Procedures and Updates to ICC Risk Management Framework 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 (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), a self-certification to formalize the ICC Clearing Participant (“CP”) Default Management Procedures (“Default Management Procedures”) and to amend the ICC Risk Management Framework. 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 to formalize the Default Management Procedures and to make related default management enhancements to the Risk Management Framework. This submission includes a description of the Default Management Procedures as well as the changes to the Risk Management Framework. Certification of the Default Management Procedures and the changes to the Risk Management Framework pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

Default Management Procedures

The Default Management Procedures set forth ICC’s default management process, including the actions taken by ICC to determine that a CP is in default as well as the actions taken by ICC in connection with such default to close-out the defaulter’s portfolio (the “Close-Out”). Currently, ICC’s default management rules and procedures, including the tools available to manage a default and return to a matched book, are in several ICC documents, including the ICC Rules, the Default Auction Procedures - Initial Default Auctions, and the Secondary Auction Procedures. The Default Management Procedures do not change ICC’s existing default management rules and procedures. Instead, the Default Management Procedures provide additional detail with respect to ICC’s existing default management rules and procedures, such as assigning responsibility for default management actions and adding instructions on how to perform default management actions. ICC’s default management process is comprised of the following sub-processes, each of which is detailed in a section in the document: monitoring CPs to identify those that are at risk of defaulting or are in default (“Default Risk CPs”); declaring a default; transferring a defaulter’s client portfolios (“Porting Portfolios”) to non-defaulting Futures Commission Merchants (“Potential Receiving FCMs”); consulting with the CDS Default Committee, which is comprised of representatives from no more

than three CDS Committee-Eligible Participants¹; performing Standard Default Management Actions and Secondary Default Management Actions to facilitate the Close-Out; and managing default resources.

The Default Management Procedures introduce ICC's default management process. The document contains a list of defined terms that are key for default management and an overview of ICC's default management process that consists of descriptions of the abovementioned sub-processes. Moreover, the Default Management Procedures describe how ICC and its CPs maintain operational readiness to execute the default management process. ICC maintains a CDS Default Committee whose members consist of experienced trading personnel at CDS Committee-Eligible Participants that serve on the CDS Default Committee on a six-month rotating basis and, upon the declaration of a CP default, are seconded to ICC to assist with default management. The Default Management Procedures set forth detailed procedures for performing tasks that are necessary to maintain operational readiness, including administering the CDS Default Committee rotation process, working with customers of CPs who want to directly participate in auctions ("Direct Participating Customers"), maintaining up-to-date contact information, and testing the default management process ("Default Test"). ICC annually conducts a Default Test, in coordination with its CPs, and reviews the results to identify any issues or lessons learned.

The Default Management Procedures describe the sub-process of monitoring CPs. As part of a counterparty monitoring program, ICC performs daily, weekly, and quarterly monitoring designed, in part, to identify Default Risk CPs. Upon identifying such CPs, the ICC President (the "President") may take no action or may activate the team responsible for overseeing the default management process, which is composed of ICC management, the ICC Risk Oversight Officer, and the most senior member of the Treasury Department ("Head of Treasury") (together, the "Close-Out Team"), to move forward with the process of declaring a default. The Default Management Procedures establish the general procedures for identifying Default Risk CPs and activating the Close-Out Team in addition to the procedures that are specific to certain types of defaults and circumstances, including where a CP fails to meet payment obligations to ICC; a CP has filed for bankruptcy or is likely to fail to meet obligations due to dissolution, insolvency, or bankruptcy related events; a CP has not complied, or is likely not to comply, with certain limitations, conditions, or restrictions imposed on it by ICC; and a CP or its guarantor has failed, or is likely to fail, to meet obligations of ICC membership.

ICC's activities immediately after the identification of a potential default comprise the default declaration sub-process. The Default Management Procedures list the actions that the Close-Out Team performs after activation but before a default declaration. The Close-Out Team holds an initial meeting to discuss, among other matters, the circumstances surrounding the Default Risk CP(s), ICC's strategy for the Close-Out, and ICC's plans for meeting upcoming payment obligations. When the ICC General Counsel ("General Counsel") is satisfied that all conditions for determining the Default Risk CP(s) to be in default are met and all required approvals are secured, the General Counsel confirms by email which Default Risk CP(s) are in default. ICC then communicates the default(s), including to ICC's CPs, regulators, Risk Committee chairman, and the public. The Default Management Procedures also set forth the procedures applicable to the Close-Out Team following a default declaration to prepare for the Close-Out.

The Default Management Procedures discuss the CDS Default Committee consultation sub-process. Certain matters are subject to consultation with the CDS Default Committee, including the unwinding of the defaulter's remaining portfolio and the structure and characteristics of an auction, and certain actions may be delegated to the CDS Default Committee, such as executing Initial Cover Transactions² on ICC's behalf. The Default Management Procedures establish procedures for convening and adjourning a CDS Default Committee meeting in addition to the actions taken at the initial CDS Default Committee meeting, which include reviewing the defaulter's cleared portfolio, the Close-Out strategy, the plan for transferring

¹ A CP that has been approved by the Board for participation in the CDS Default Committee.

² As part of the Close-Out, ICC may enter into transactions with CPs with respect to the defaulter's open positions to facilitate an orderly unwind of the defaulter's open positions and to mitigate damages to ICC and other CPs.

the Porting Portfolios to Potential Receiving FCMs, and a schedule for re-convening the CDS Default Committee over the period required to complete the Close-Out (the “Close-Out Period”).

To facilitate the Close-Out, ICC performs Standard Default Management Actions during the Close-Out Period. ICC allows customers of CPs who are not yet Direct Participating Customers to register as such during the Close-Out Period to take part in auctions run by ICC. The ICC Risk Department (“Risk Department”) and Close-Out Team work together, in consultation with the CDS Default Committee, to implement the Close-Out strategy through Standard Default Management Actions. Specifically, the Default Management Procedures incorporate instructions on executing Initial Cover Transactions by auction and bilaterally, conducting Initial Default Auctions (“Initial Auctions”),³ and executing bilateral direct liquidation transactions in the market to liquidate positions. The document further assigns responsibility for tracking the position changes that result from the movement of positions or the creation of new positions.

In addition to Standard Default Management Actions, ICC may take Secondary Default Management Actions to facilitate the Close-Out where default resources are significantly depleted or no default resources remain. ICC may call for assessment contributions, which CPs are obligated to meet by providing additional amounts to the Guaranty Fund (“GF”), in the event that the GF has been depleted or ICC anticipates the need for additional funds related to a default. The Default Management Procedures discuss the procedures for calling for assessment contributions and initiating a Cooling-Off Period.⁴ During the Cooling-Off Period, the Risk Department and Close-Out Team, in consultation with the CDS Default Committee, continue to try to liquidate the defaulter’s remaining portfolio through Secondary Auctions,⁵ which are subject to additional governance requirements. If available default resources are exhausted and ICC has not returned to a matched book, the Close-Out Team uses reasonable efforts to consult with the Risk Committee and then seeks the Board’s decision on whether to 1) enter a Loss Distribution Period,⁶ 2) execute a partial tear-up⁷, 3) or terminate clearing services. The Default Management Procedures detail the procedures for each of the abovementioned Secondary Default Management Actions, including notifying the public, CPs, and regulators; consulting with the Risk Committee; obtaining the requisite Board approvals; and executing the action.

The Default Management Procedures provide an overview of the post-default porting sub-process. The Risk Department, in consultation with the CDS Default Committee, determine which Porting Portfolios to try to transfer to Potential Receiving FCMs. To facilitate the transfers, ICC distributes the Porting Portfolios to Potential Receiving FCMs and asks them to indicate which portfolios they are willing to receive by a deadline (“Porting Response Deadline”). The Default Management Procedures also discuss specific procedures for post-default porting in the case of a bankruptcy-related default, which require ICC to communicate and coordinate with the defaulter’s trustee in bankruptcy. Following the Porting Response Deadline, ICC determines which Porting Portfolios to transfer to which Potential Receiving FCMs, communicates to each Potential Receiving FCM its assigned Porting Portfolios (if any), and executes the relevant transfers.

³ The Default Auction Procedures - Initial Default Auctions, which govern Initial Auctions are available at: https://www.theice.com/publicdocs/ICC_Default_Auction_Procedures.pdf.

⁴ During a Cooling-Off Period, the aggregate liability of CPs for replenishments of the GF and assessment contributions would be capped at “3x” their GF contribution for all defaults during that period.

⁵ The Secondary Auction Procedures, which govern Secondary Auctions are available at: https://www.theice.com/publicdocs/ICC_Secondary_Auction_Procedures.pdf.

⁶ A Loss Distribution Period commences from and includes the date specified by ICC in a notice following a reduced gains distribution (“RGD”) determination. RGD allows ICC to reduce payment of variation gains that would otherwise be owed to CPs as ICC attempts a Secondary Auction or conducts a partial tear-up.

⁷ In a partial tear-up, ICC terminates positions of non-defaulting CPs that exactly offset those in the defaulting CP’s remaining portfolio.

The Default Management Procedures set forth the default resource management sub-process. The document includes procedures for the identification and execution of collateral management activities that are necessary for ICC to meet upcoming payment obligations. The Close-Out Team meets daily during the Close-Out Period to review the available liquid resources and determine how to meet upcoming payment obligations. The Chief Operating Officer and Head of Treasury coordinate the execution of collateral management activities, including liquidating non-cash collateral in the defaulter's house and/or client accounts or utilizing ICC's committed FX or committed repo facilities. Further, the Default Management Procedures describe the maintenance of a Default Management Ledger, which serves as a record to facilitate decision making and implement ICC's default waterfall; the discussion points during the Close-Out Team's daily meeting during the Close-Out Period; and the application of any special payments during the Close-Out Period.

Risk Management Framework

ICC proposes related default management enhancements to the ICC Risk Management Framework. Specifically, ICC proposes to incorporate a reference to the Default Management Procedures in the 'Governance and Organization' section to specify that the Default Management Procedures contain details regarding default management roles and responsibilities of the Board, ICC management, and relevant committees. Additionally, ICC proposes changes to the 'Waterfall Level 6: GF Replenishment' sub-section to more clearly describe CPs' obligations with respect to replenishment and assessment contributions to the GF. The proposed edits provide additional detail regarding the aggregate liability of CPs for replenishment and assessment contributions. If the cap on the additional GF contributions is reached, ICC may apply additional Initial Margin ("IM") requirements if necessary to maintain compliance with regulatory financial resources requirements. The proposed changes further discuss how the additional IM requirements are computed and communicated to CPs. ICC also proposes to clarify the maximum contribution of a retiring CP that has given notice of its intent to terminate its CP status. Given the proposed formalization of the Default Management Procedures, ICC proposes replacing a reference to Appendix 3 of the Risk Management Framework ("Appendix 3"), which currently contains default management procedures, with a reference to the Default Management Procedures in the 'Default Treatment' sub-section and removing Appendix 3 from the Risk Management Framework.

Core Principle Review:

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

Financial Resources: The Default Management Procedures and the revisions to the Risk Management Framework are consistent with the financial resources requirements of Core Principle B and the financial resource requirements set forth in Commission Regulation 39.33. The Default Management Procedures provide detailed instructions regarding the process for managing a default and returning to a matched book, including conducting Standard and Secondary Default Management Actions, identifying and executing collateral management activities to meet payment obligations, and tracking default management resources. The proposed changes to the Risk Management Framework provide additional clarity regarding CPs' obligations regarding replenishment and assessment contributions as well as the computation of additional IM requirements that allow ICC to maintain compliance with regulatory financial resources requirements. ICC believes that such changes enhance ICC's ability to manage a default by providing additional detail, transparency and clarity with respect to ICC's default management rules and procedures, thereby ensuring that ICC maintains sufficient financial resources to withstand, at a minimum, the default of the two CP AGs to which it has the largest exposure in extreme but plausible market conditions, consistent with the requirements of Commission Regulation 39.33.

Risk Management: The Default Management Procedures and the revisions to the Risk Management Framework are consistent with the risk management requirements of Core Principle D and the risk management requirements set forth in Commission Regulation 39.36. The Default Management Procedures enhance ICC's ability to manage the risk of a default by describing the processes for declaring a default and facilitating the Close-Out and by providing additional details regarding the roles

and obligations of various stakeholders, such as the Board, Risk Committee, Close-Out Team, CPs, and the CDS Default Committee. The Default Management Procedures provide more detail with respect to ICC's existing default management rules and procedures, including assigning responsibility for default management actions and adding instructions on how to perform default management actions. The proposed changes to the Risk Management Framework incorporate reference to the proposed Default Management Procedures and more clearly describe CPs' obligations and aggregate liability with respect to replenishment and assessment contributions to the GF. ICC believes that the formalization of the Default Management Procedures and the amendments to the Risk Management Framework augment ICC's procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services. The proposed changes thus serve to promote the soundness of ICC's risk management system, thereby ensuring that ICC possesses the ability to manage the risks associated with discharging its responsibilities, consistent with the risk management requirements of Core Principle D.

Default Management: ICC's default management rules and procedures contained in the ICC Rules, the Default Auction Procedures - Initial Default Auctions, and the Secondary Auction Procedures are publically available on ICC's website. Additionally, the proposed Default Management Procedures clarify and augment ICC's existing rules and procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, including by assigning responsibility for default management actions and adding instructions on how to perform default management actions, to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. Moreover, the proposed Default Management Procedures clearly assign and document responsibility and accountability for default management actions and decisions. The governance procedures provide for consultation with the Risk Committee and the CDS Default Committee, approval from the Board, and notification to the public, CPs, and regulators. The proposed changes to the Risk Management Framework provide additional clarity regarding CPs' obligations regarding replenishment and assessment contributions as well as the computation of additional IM requirements that allow ICC to maintain compliance with regulatory financial resources requirements. In ICC's view, the Default Management Procedures and the revisions to the Risk Management Framework are thus consistent with the requirements of Core Principle G and Commission Regulations 39.16 and 39.35.

Amended Rules:

ICC proposes to formalize the Default Management Procedures and to amend the Risk Management Framework. ICC has respectfully requested confidential treatment for the Default Management Procedures and the Risk Management Framework, which were submitted concurrently with this self-certification submission.

Certifications:

ICC hereby certifies that the Default Management Procedures and the changes to the Risk Management Framework 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

Maria Zyskind
Staff Attorney