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Staff Attorney

December 11, 2019

Re: Updates to ICC Default Auction Procedures—Initial Default Auctions and ICC Secondary Auction Procedures 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 of changes to ICC’s Default Auction Procedures—Initial Default Auctions (“Initial Default Auction Procedures”) and Secondary Auction Procedures (collectively, “the Auction Procedures”).¹ 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 revising the Auction Procedures. This submission includes a description of the changes to the Initial Default Auction Procedures and the Secondary Auction Procedures. Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

ICC proposes to revise its Initial Default Auction Procedures and to make analogous changes to its Secondary Auction Procedures. The Initial Default Auction Procedures are designed to facilitate liquidation of the defaulter’s portfolio through a multi-lot modified Dutch auction. The Secondary Auction Procedures, which also use a modified Dutch auction format, are intended to provide for an effective final auction of the entire remaining portfolio. The proposed revisions are described in detail as follows.

The purpose of the proposed amendments is to incorporate the automated Default Management System (“DMS”) and All or Nothing Bidding into the Auction Procedures and make additional clarification and clean-up changes. ICC proposes revisions that reflect the use of the automated DMS to replace certain manual tasks in the auction process. ICC also proposes to allow for All or Nothing Bidding in the Auction Procedures. Currently, should a bid (“Standard Bid”) for 100% of the portfolio be a winning bid, the portion of the auction portfolio awarded to the 100% Standard Bid is shared with any more competitively priced Standard Bids, in which case the award related to the 100% Standard Bid is for less than 100%. Under the revised procedures, in addition to the submission of Standard Bids, participants will be allowed to optionally submit an All or Nothing Bid, in addition to, or in lieu of, one or more Standard Bids. Should an All or Nothing Bid be a winning bid, 100% of the auction portfolio will be awarded to the All or Nothing Bidder, without the award being split amongst any more competitively priced Standard Bids.

¹ Capitalized terms used but not defined herein have the meanings specified in the Rules.

Initial Default Auction Procedures

ICC proposes to amend 'The Auction Process' section to incorporate the DMS and make clarifying edits regarding the auction process. Participants currently have an obligation to bid for each lot in a minimum amount determined by ICC ("Minimum Bid Requirement"). ICC proposes to reflect the use of the DMS to communicate the Minimum Bid Requirement and to remove Annex B that contains a template for communicating the Minimum Bid Requirement. ICC also proposes clarifying language regarding the case where a Participant has outsourced its Minimum Bid Requirement to an affiliated Participant. Moreover, under the revised procedures, Auction Specifications (i.e., information on contracts to be auctioned, timing for the bidding process, etc.) are communicated through the DMS and Annex A, which contains a template for communicating Auction Specifications, is removed. ICC proposes to specify that bids must be submitted through the DMS ("Bid Submission"), only during a specified time window and prior to the "Bidding Close Time", and make corresponding changes throughout the document. ICC further proposes updates relating to the submission of bids through the DMS, including preventing the submission of bids below the minimum bid size.

ICC proposes changes to 'The Bidding Process' section to allow for All or Nothing Bidding. ICC proposes to define "AP" as the auction clearing price for a lot, proportionally scaled to a portfolio size representing 100% of the relevant lot. ICC proposes to define "BP" as the more competitive of (1) the weighted average bid price of all valid Standard Bids made by such auction participant and (2) the price of any valid All or Nothing Bid made by such auction participant, both proportionately scaled to a portfolio size representing 100% of the relevant lot. If an auction participant submits only an All or Nothing Bid, or submits an All or Nothing Bid and Standard Bids but the Standard Bids do not meet the Minimum Bid Requirement, then the average price is the price of the All or Nothing Bid. If an auction participant submits only Standard Bids, then the average bid price calculation is unchanged from the current procedures. ICC proposes further revisions that distinguish All or Nothing Bids from Standard Bids. Additionally, to satisfy the Minimum Bid Requirement, ICC proposes to note that any individual bid must be equal to or larger than any applicable minimum bid size.

ICC proposes to update the 'Participation by Customers in the Auction' section, stating that a Participant may make separate bids in respect of its customers and adding a reference to the Auction Specifications.

ICC proposes to amend the 'Selection of the Winning Bid' section. ICC proposes updates related to sorting the submitted bids and determining the auction clearing price. ICC proposes revisions to Examples 1-3, which show the calculation of the auction clearing price, to be more descriptive and incorporate All or Nothing Bidding. The proposed amendments change the first column heading from "Ranking" to "Price Rank"; change the second column heading from "Cash Bid" to "Size x Price" and move this column second from last; add a column titled "Is All or Nothing Bid" directly after the first column; change the third column heading from "% of Portfolio" to "Bid Size (% of Auction Portfolio)"; change the fourth column heading from "Cash/1%" to "Bid Price (Payment per 100%)" and update the numbers in the column accordingly; and update the auction clearing price to be per 100%. ICC proposes to add a new Example 4, to show the calculation of the auction clearing price with an All or Nothing Bid. ICC also proposes explanatory language relating to All or Nothing Bidding. Specifically, if an All or Nothing Bid sets the auction clearing price, no Standard Bids will receive a share of the auction portfolio even if their bid prices are higher than or equal to the auction clearing price. If there are multiple All or Nothing Bids at the auction clearing price, the portfolio will be allocated equally among the auction participants submitting such All or Nothing Bids. For the case where ICC determines the auction clearing price for less than 100% of the portfolio, ICC proposes clarifications regarding All or Nothing Bidding and updates to such example calculation to conform with Examples 1-3. ICC proposes additional amendments, including publishing an Auction Specification to the DMS for a second auction; making minor grammatical edits, such as replacing definite article "the" with indefinite article "a" in the phrase "the Winning Bidder" and replacing the phrase "relevant Participant" with "relevant Participant(s)"; and using the DMS to notify a bidder of a winning bid.

Secondary Auction Procedures

ICC proposes analogous changes to the Secondary Auction Procedures. ICC proposes to revise 'The Auction Process' section to be consistent with the Initial Default Auction Procedures. ICC proposes to reflect the use of the DMS to communicate the Minimum Bid Requirement and to add clarifying language regarding the case where a Participant has outsourced its Minimum Bid Requirement to an affiliated Participant. The revised procedures use the DMS to communicate Secondary Auction Specifications, clarify that Bid Submission occurs through the DMS until the "Bidding Close Time" and make conforming changes throughout the document, and include updates relating to the submission of bids using the DMS.

ICC proposes revisions to 'The Bidding Process' section to allow for All or Nothing Bidding to maintain uniformity with the Initial Default Auction Procedures. ICC proposes to similarly define "BP" as the more competitive of (1) the weighted average bid price of all valid Standard Bids made by such secondary auction participant and (2) the price of any valid All or Nothing Bid made by such auction participant, both proportionately scaled to a portfolio size representing 100% of the relevant lot. If a secondary auction participant submits only an All or Nothing Bid, or submits an All or Nothing Bid and Standard Bids but the Standard Bids do not meet the Minimum Bid Requirement, then the average price is the price of the All or Nothing Bid. If a secondary auction participant submits only Standard Bids, then the average bid price calculation is unchanged from the current procedures. ICC proposes further revisions that distinguish All or Nothing Bids from Standard Bids. To satisfy the Minimum Bid Requirement, ICC also proposes to note that any individual bid must be equal to or larger than any applicable minimum bid size.

ICC similarly proposes to update the 'Participation by Customers in the Auction' section, stating that a Participant may make separate bids in respect of its customers and adding a reference to the Auction Specifications.

ICC proposes amendments to the 'Selection of the Winning Bid' section to be consistent with the Initial Default Auction Procedures. ICC proposes updates related to sorting the submitted bids and determining the auction clearing price. With respect to Examples 1-3 and new Example 4, ICC proposes parallel updates to those described in the Initial Default Auction Procedures. Similarly, under the revised procedures, if an All or Nothing Bid sets the secondary auction clearing price, no Standard Bids will receive a share of the auction portfolio even if their bid prices are higher than or equal to the secondary auction clearing price. If there are multiple All or Nothing Bids at the secondary auction clearing price, the portfolio will be allocated equally among the secondary auction participants submitting such All or Nothing Bids. ICC proposes additional changes, including making minor grammatical edits, such as replacing definite article "the" with indefinite article "a" in the phrase "the 'Winning Bidder'" and replacing the phrase "relevant Participant" with "relevant Participant(s)" and using the DMS to notify a bidder of a winning bid.

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 revisions to the Auction Procedures are consistent with the financial resources requirements of Core Principle B and the financial resource requirements set forth in Commission Regulation 39.33. The proposed changes introduce All or Nothing Bidding to ICC's existing auction methodology. This new bid type rewards auction participants for bidding competitively on both size and price, rather than just price, and may increase the willingness and ability of Participants and their customers to participate in an auction and absorb the defaulter's positions through the default management process. If an All or Nothing Bid sets the auction clearing price, the revised Auction Procedures award 100% to that bid, rather than splitting the award with participants bidding more competitively on price but with smaller size. Such changes incentivize competitive bidding by rewarding auction participants for bidding competitively on both price and size and are designed to promote effective and efficient auctions to facilitate the close-out of the defaulter's portfolio. Moreover, the proposed changes that reflect the use of the automated DMS to replace certain manual tasks in the auction process promote ICC's ability to efficiently and safely manage its auction process in a default event. In ICC's view,

these enhancements represent tools that strengthen ICC's ability to manage its financial resources and withstand the pressures of defaults.

Risk Management: The revisions to the Auction Procedures are consistent with the risk management requirements of Core Principle D and the risk management requirements set forth in Commission Regulation 39.36. As described above, the optional All or Nothing Bid incentivizes competitive bidding, promoting the goal of reaching an efficient auction clearing price that permits ICC to close out the defaulter's portfolio and return ICC to a matched book. Additionally, the proposed changes reflect the use of the automated DMS to replace certain manual tasks in the auction process, including communicating the Minimum Bid Requirement and Auction Specifications, submitting bids, and notifying winning bidders. Such changes allow ICC to more efficiently and safely manage its auction process and reduce the risk of error. ICC believes that the proposed amendments 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 Initial Default Auction Procedures, and the Secondary Auction Procedures are publically available on ICC's website. The proposed clarification and clean-up changes described above provide further specificity and transparency and thus enhance readability of the publically available Auction Procedures. Moreover, the proposed addition of All or Nothing Bidding and the automated DMS enhance ICC's ability to withstand defaults and continue providing clearing services, including by incentivizing competitive bidding to promote effective and efficient auctions that facilitate the close-out of the defaulter's portfolio and maximizing ICC's ability to efficiently and safely manage its auction process in default events, 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. Further, under the Auction Procedures, ICC will consult with the ICC CDS Default Committee (consisting of trading personnel seconded from Participants to assist with default management) for key decisions relating to initial default auctions and secondary auctions. In ICC's view, the revisions to the Auction Procedures are thus consistent with the requirements of Core Principle G and Commission Regulation 39.16.

Amended Rules:

The proposed changes consist of changes to the ICC Initial Default Auction Procedures and the ICC Secondary Auction Procedures.

Annexed as Exhibits hereto are the following:

- A. Proposed amendments to the ICC Initial Default Auction Procedures
- B. Proposed amendments to the ICC Secondary Auction Procedures

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,

A handwritten signature in cursive script that reads "Maria Alarcon".

Maria Alarcon
Staff Attorney