ICE CLEAR CREDIT™

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General Counsel

December 13, 2016

Re: ICE Clear Credit LLC Advance Notice of Proposed Rule Change Pursuant to Commission Rule 40.10; Default Management, Recovery and Wind-Down Rule Amendments

VIA CFTC PORTAL

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC ("ICE Clear Credit" or "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 Rule 40.10 as an advance notice of a proposed rule change, the amendments to its Clearing Rules (the "Rules") and the adoption of the default auction procedures discussed herein. This submission amends and restates in its entirety the Rule 40.10 submission by ICC dated November 4, 2016.

Explanation and Analysis

ICE Clear Credit LLC is proposing amendments to its Rules (and adoption of related procedures) involving clearing house default management, recovery and wind-down to address the risk of uncovered losses from a clearing participant ("Participant") default or series of Participant defaults, among other risks. As discussed below, the amendments are designed principally to satisfy the requirements of Commission Rules 39.35 and 39.39 applicable to ICC as a systemically important DCO, and to be consistent with relevant international standards, including the Principles of Financial Market Infrastructure developed by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO).

The amendments would, among other matters:

(i) enhance existing tools and establish new tools and procedures (and an order of priority for using such tools and procedures) to manage a Participant default or series of defaults and return to a matched book, specifically:

    (A) initial default auctions, to be conducted in accordance with a defined set of default auction procedures;

    (B) if such initial default auctions are not fully successful, conducting a secondary auction of all remaining positions, to be conducted in accordance with a defined set of secondary auction procedures; and

    (C) if a secondary auction is unsuccessful, partial tear-up of positions of non-defaulting Participants corresponding to the defaulter's remaining portfolio; (Rules 20-605(d)-(f), 809)

(ii) in connection with the new default management steps described in (i) above, eliminate forced allocation as a default management tool; (Rule 20-605(c))

(iii) in connection with these default management steps, provide the ability to implement reduced gains distributions (a.k.a., variation margin haircutting) following exhaustion of other financial resources for up to five business days; (Rule 808)

(iv) adopt new governance and consultation requirements for the use of these default tools and procedures; (Rule 20-605(l))

(v) clarify in the Rules the distinction between the obligation of a Participant to "replenish" its guaranty fund contribution and its obligation to meet additional "assessments" that may be levied in respect of a Participant default. Consistent with the existing Rules, a Participant's liability for assessment contributions will remain capped at "1x" its guaranty fund contribution in respect of any single default; (Rule 803)

(vi) establish a "cooling-off period" triggered by certain Participant defaults that result in guaranty fund depletion, in which case the aggregate liability of Participants for replenishments of the guaranty fund and assessments would be capped at "3x" its guaranty fund contribution for all defaults during that period; (Rule 806)

(vii) establish a new process under which a Participant may withdraw from the clearing house, both in the ordinary course of business and during a cooling-off period, and related procedures for unwinding all positions of such a Participant and capping its continuing liability to ICC; (Rule 807)

(viii) move ICC's current "pro rata" contribution to the guaranty fund higher in the priority waterfall of default resources; and (Rule 802(b))

(ix) clarify the procedures for full clearing service termination, where that is determined to be appropriate by ICC. (Rule 810)

The proposed amendments are described in more detail as follows.

Default Management Tools and Steps

Rule 20-605, which specifies ICC's remedies upon a Participant default, has been substantially revised, both to implement the additional recovery tools discussed herein and to improve overall clarity. ICC's existing default remedies (as modified as discussed herein), such as initial default

auctions, are referred to in the revised rule as “Standard Default Management Actions”. The additional default management tools being adopted, such as secondary auctions, partial tear-up and reduced gain distributions, are referred to in the revised rule as “Secondary Default Management Actions”. As discussed herein, additional governance and other requirements apply to Secondary Default Management Actions.

1. Overall Structure of Revised Rule 20-605

Rule 20-605 has been restructured to reflect the distinction between Standard Default Management Actions and Secondary Default Management Actions, and to make certain drafting improvements. In the revised rule:

- Rules 20-605(a) and (b) set out the definition of Default and ICC's ability to declare a Participant in Default, which are substantially the same as in the current Rule.
- Rule 20-605(c) specifies the Defaulting Participant's resources that may be used to cover losses (and the order in which those resources may be applied). In substance, it is consistent with the current Rule.
- Rule 20-605(d) and (e) provide for Standard Default Management Actions, which are largely consistent with the current Rules but include the improvements to initial default auctions discussed below.
- Rule 20-605(f) provides for the Secondary Default Management Actions, as discussed below.
- Rule 20-605(l) has been revised to impose enhanced governance procedures for Secondary Default Management Actions and certain other matters, as discussed below.

2. <u>Initial Default Auctions</u>

As revised, Rule 20-605(d)(v) provides for ICC to run one or more default auctions with respect to the remaining portfolio of the defaulting Participant.

Default auctions are to be conducted in accordance with a new defined set of default auction procedures. Under those procedures, ICC may break the portfolio into one or more lots, each of which will be auctioned separately. Participants will have an obligation to bid for each lot in a minimum amount determined by ICC. Non-Participants may bid indirectly through a Participant. In addition, Non-Participants have the option to bid directly in the auction, provided that (i) a Participant has confirmed that it will clear any resulting transactions of the Non-Participant; (ii) the Non-Participant makes a minimum deposit of US$10 million which may be applied by ICC in the same manner as Participants' guaranty fund contributions (e.g., subject to “juniorization” as described below); and (iii) the Non-Participant has entered into an agreement with ICC pursuant to which it agrees to the auction terms and confidentiality requirement in the same manner as they apply to Participants. If an auction for any lot or lots fails, as determined in accordance with the default auction procedures, ICC may determine to have a subsequent default auction or auctions under these auction procedures.

The auction for each lot will be conducted as a modified Dutch auction, with all winning bidders paying or receiving the auction clearing price.

All available default resources (both pre-funded guaranty fund contributions and assessment contributions) may be used to pay the cost of an initial default auction. Guaranty fund and assessment contributions of non-defaulting Participants are subject to “juniorization” and will be

applied using a defined default auction priority based on the competitiveness of their bids. A portion of each Participant's guaranty fund contributions is allocated to the auction cost of each lot, and is further divided into three tranches. The lowest (and first-used) tranche consists of contributions of Participants that failed to bid in the required amount in the relevant auction. The second, or subordinate, tranche includes contributions of Participants whose bids were less competitive than a defined threshold based on the auction clearing price. The final, or senior, tranche includes contributions of Participants whose bids were more competitive than a second threshold. (For Participants who bid in the band between the two thresholds, their contributions will be allocated between the senior and subordinate tranches based on a formula.) Thus, contributions of Participants who fail to bid will be used before those who bid, and contributions of those who bid uncompetitively will be used before those who bid competitively. A parallel juniorization approach applies to the use of assessment contributions. With this design, ICC believes that the default auction procedures give Participants a strong incentive to bid competitively, with the goal of reaching an efficient auction clearing price that permits the clearing house to close out the defaulter's portfolio within the resources of the clearing house.

3. *Secondary Auction*

If the initial default auctions are not fully successful in closing out the defaulting Participant's portfolio, ICC will proceed to use Secondary Default Management Actions with respect to the remaining portfolio. The first such step would be to conduct a secondary auction with respect to the defaulter's remaining portfolio under Rule 20-605(f)(ii). (As discussed below, ICC may in certain circumstances invoke reduced gains distributions in connection with such an auction.)

The secondary auction will be conducted pursuant to a separate set of secondary auction procedures. The secondary auction will also use a modified Dutch auction format, with all winning bidders paying or receiving the auction clearing price. ICC will endeavor to auction off the remaining portfolio in a single lot, although it may break the portfolio into separate lots if certain Participants are not able to bid on particular contracts or it otherwise determines that doing so would facilitate the auction process. A secondary auction for a lot will be deemed successful if it results in a price for the lot that is within ICC's remaining default resources, which will be allocated to each lot for this purpose based on the initial margin requirements for the lot. The secondary auction procedures contemplate that non-Participants may bid directly in the secondary auction (without need for a minimum deposit, but provided that a Participant has confirmed that it will clear any resulting transactions of the Non-Participant), or may bid through a Participant.

Under the Rules, in the case of a secondary auction, ICC will apply all remaining clearing house default resources. Guaranty fund and assessment contributions of non-defaulting Participants, to the extent remaining, will be subject to "juniorization" in a secondary auction, similar to that described above for initial auctions.

If a secondary auction is unsuccessful for any lot, ICC may run another secondary auction for that lot on a subsequent business day. ICC may repeat this process as necessary. However, if ICC has invoked reduced gains distributions, the last attempt at a secondary auction (if needed) will occur on the last day of the five-business-day reduced gain distribution period. On that last day, the secondary auction for each lot will be successful if it results in a price that is within the default resources for such lot. ICC may also determine, for a secondary auction on that last day, that an auction for a lot will be partially filled. With respect to any lot that is not successfully auctioned, in whole or in part, ICC will proceed to partial tear-up as described below.

4. *Partial Tear-Up*

If the secondary auction does not result in the close out of all of the defaulter's remaining portfolio within the clearing house's remaining resources, then ICC will proceed to a partial tear-up of the

remaining positions under Rules 20-605(f)(iii) and 809. ICC will be permitted to use partial tear-up only after it has attempted one or more initial default or secondary auctions.

In a partial tear-up, ICC will terminate positions of non-defaulting Participants that exactly offset those in the defaulting Participant's remaining portfolio (i.e., positions in the identical contracts and in the same aggregate notional amount) ("Tear-Up Positions"). ICC will terminate Tear-Up Positions across both the house and customer origin accounts of all non-defaulting Participants that have such positions, on a pro rata basis. Within the customer origin account of a non-defaulting Participant, Tear-Up Positions of customers will be terminated on a pro rata basis.

ICC will determine a termination price for all Tear-Up Positions, in accordance with Rule 809 based on the last established mark-to-market price. Tear-up will occur contemporaneously with the determination of such price, such that the termination price will equal the current mark-to-market value as determined pursuant to the ICC end-of-day settlement price process, and accordingly no additional amount will be owed by ICC in connection with the tear-up.

Reduced Gains Distributions

As an additional Secondary Default Management Action, where ICC has exhausted its remaining available default resources (including assessment contributions), ICC may also invoke reduced gain distributions under new Rule 808 for up to five consecutive business days. Reduced gain distribution will allow ICC to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to Participants, as it attempts a secondary auction or conducts a partial tear-up.

At the end of each day in the period, ICC must determine whether it expects that there will be favorable conditions for completing a successful secondary auction. If so, ICC may continue the reduced gain distribution for that day.

If ICC conducts a successful secondary auction on any day, any reduced gain distribution period that is in effect will end. If ICC has been unable to conduct a successful secondary auction by the end of the five business day reduced gain distribution period, ICC will proceed to conduct a partial tear-up as of the close of business on such fifth business day.

ICC will only use incoming variation margin payments to pay variation margin gains during the reduced gain distribution period. Reduced gain distribution will not be used to provide additional funds for a secondary auction. Furthermore, expected or potential auction costs will not be factored into the determination of the haircut used for reduced gain distributions.

If reduced gain distribution applies on any day, the net amount owed on such day to each Participant that is deemed to be a "cash gainer" in respect of its house or customer origin account (i.e., a Participant that would otherwise be entitled to receive mark-to-market margin or other payments in respect of such account) will be subject to a percentage haircut. Haircuts are determined independently on each day of reduced gain distribution. Haircuts are applied separately for the house and customer origin accounts. Within the customer origin account, haircuts are applied on a gross basis across the different customer portfolios, such that each customer portfolio receives the same haircut percentage. For each day of reduced gain distribution, ICC will notify Participants and the market more generally of the amount of the reduction, through a circular made available in the ordinary course on its website and through electronic distribution, promptly following the close of business on such day and completion of the relevant calculations as of the close of business (which is expected to be at approximately 7:30 p.m. New York time).

Following the conclusion of the closing-out process for a default, ICC will apply any recoveries from the defaulting Participant to make payments to non-defaulting Participants in an amount equal to the aggregate net amount of haircuts made during the period of reduced gain distributions.

Removal of Forced Allocation as a Default Tool

Former Rule 20-605(c)(vii), which allowed ICC to make a forced allocation of positions in the defaulter's portfolio, has been removed in light of the new default management tools described above.

Governance

The proposed amendments add new governance requirements around the ICC's use of the revised default management tools.

Under new Rule 20-605(l)(iii), ICC will consult with its CDS Default Committee, to the extent practicable, with respect to establishing the terms for default auctions and secondary auctions, including defining different lots for default auctions. In the context of an initial auction, ICC will also consult with the CDS Default Committee as to whether to hold additional such auctions and/or to accept a partial fill of any lot in such an auction. CDS Default Committee members consist of experienced trading personnel at Participants that serve on the CDS Default Committee on a rotating basis and who are seconded to ICC to assist with default management. Under the revised Rules, and consistent with current practice, seconded committee members are required to act in the best interests of ICE Clear Credit (rather than in the interests of their Participant firm). In that capacity, seconded committee members are provided with detailed information in ICC's possession concerning the defaulter's portfolio, as well as information concerning potential and actual liquidation transactions and bids provided during auctions (in the same way as ICC risk personnel would be provided such information). Such members are subject to confidentiality obligations with respect to such information. Members of the CDS Default Committee are expected to work together with, and under the supervision of, the ICC risk department, and are also supported by legal, compliance and other relevant ICC personnel. Ultimate decisions as to matters subject to consultation with the CDS Default Committee will be made by ICC management.

Under new Rule 20-605(l)(iv), ICC will consult with its Risk Committee, to the extent practicable, with respect to key decisions involving Secondary Default Management Actions, including whether to hold a secondary auction, invoke reduced gains distribution, implement a partial tear-up and/or terminate the clearing service. The amendments also establish notice and similar procedures for Risk Committee consultation in this context, and address circumstances in which such consultation is impracticable (in which case ICC may act without prior consultation but must generally consult as soon as is practicable). In particular, under the ICC Code of Business Conduct and Business Ethics for Committee Members (see section III.A. thereof), the Risk Committee is charged with acting in the interests of the clearing house, rather than the interests of individual members (or the Participants they may represent). Consistent with its current practice, the Risk Committee would be provided with detailed, confidential information concerning the proposed actions to be taken. Under the Rules (see ICC Rulebook Chapter 5) and Risk Committee charter (see section V thereof), the committee is to have the resources and authority appropriate to discharge its function. Committee meetings are to take place in person or by telephonic or similar communication pursuant to which all members can participate. In addition, the Risk Committee and its members are free to consult (and historically have consulted on a range of matters) with their own advisors, including counsel, with respect to such actions, in addition to internal ICC resources. Under the Rules, the role of the Risk Committee is advisory, and accordingly, the final decision with respect to Secondary Default Management Actions (like other actions) will rest with the ICC Board as discussed below. In practice, ICC management and the ICC Board have worked collaboratively with the Risk Committee, and there is no history of the ICC Board acting over the objection of the Risk Committee. As discussed below, Participants and their interests are also significantly represented on the ICC Board.

In addition, new Rule 20-605(l)(v) provides that certain key decisions involving Secondary Default Management Actions must be made by majority vote of the ICC Board (and may not be delegated to an officer). These include whether to hold a secondary auction, invoke reduced gains distribution, implement a partial tear-up and/or terminate the clearing service. Under the existing constitutive documents of the clearing house, including the Board charter (see section II thereof) and Governance Playbook (see section III.A. thereof), a majority of the ICC Board is required to be independent of ICC management. In addition, four of the eleven members of the Board are designated by the Risk Committee (two of which are independent of Participants and two of which need not be so independent (and thus may be representatives of Participants)).

Clarifications of Guaranty Fund Requirements and Uses

Various clarifications and conforming changes have been made to the provisions of Rules 801 and 802, which address the contributions to and uses of the guaranty fund. Provisions in Rules 803 and 804 have also been moved and reorganized. These changes include the following:

- The changes clarify the distinction between the obligation of a Participant to "replenish" its guaranty fund contribution (Rule 803(a)) and its obligation to make "assessment contributions" (Rule 803(b)). These clarifications do not change the substance of existing requirements.
- Rule 803(b) also permits assessments to be called in anticipation of any charge against the guaranty fund following a default, rather than only after such a charge.
- A parallel distinction has been made with respect to ICC's contribution to the guaranty fund between required replenishments and additional contributions where assessments have been levied on Participants (subject to a similar 1x limit per default, and an aggregate 3x limit for replenishments and assessments in a cooling-off period). (Rule 801(b)).
- ICC's current "pro rata" contribution to the guaranty fund has been moved higher in the priority waterfall, such that it will be used prior to the application of guaranty fund contributions of non-defaulting Participants. Similarly, additional ICC contributions to the guaranty fund where assessments have been levied on Participants will be applied before such assessments. (Rule 801(b))
- Rules 802(a) and (c), which address the allocation of recoveries from a defaulting Participant, have been simplified and revised to conform to the other changes in the default waterfall.
- Rule 802(c) has also been revised to state ICC's obligations with respect to seeking recoveries from a defaulting Participant.

Cooling-Off Period

New Rule 806 implements the "cooling-off period" concept. A "cooling-off period" is triggered by certain calls for assessments or by sequential guaranty fund depletion within a 30 calendar day period. Liability of Participants for assessments as a result of the default or defaults that triggered the cooling-off period or that occur during the cooling-off period remains capped at "1x" the required guaranty fund contribution per default. In addition, the total amount of replenishments and assessment contributions during the cooling-off period cannot exceed three times the required guaranty fund contribution, regardless of the number of defaults during the period. The foregoing caps are based on a Participant's individual guaranty fund contribution immediately prior to the default that triggered the cooling-off period. Participants may also be required to provide additional initial margin during the period, which will facilitate ICC's ability to continue to satisfy its regulatory minimum financial resources requirements.

Participant Withdrawal

New procedures for the withdrawal of Participants are added in revisions to Rules 207 and new Rule 807. These apply both to ordinary course terminations outside of a default scenario and termination during a cooling-off period. Participants may withdraw from ICC during a cooling-off period by providing an irrevocable notice of withdrawal in the first 10 business days of the period (subject to extension in certain cases if the cooling-off period is extended). Participants may withdraw from ICC at other times by notice to ICC. In either case, Participants must close out all outstanding positions by a specified deadline, generally within 20 to 30 business days following notice of withdrawal. Withdrawal is not effective until the Participant has closed out all outstanding positions and satisfied any related obligations, and a withdrawing Participant remains liable with respect to charges and assessments resulting from defaults that occur before such time. A Participant that seeks to withdraw other than during the first 10 business days of a cooling-off period may be required to make a deposit of up to three times its required guaranty fund contribution. Rule 807 also specifies the timing for the return of guaranty fund contributions to a withdrawing Participant.

Clearing Service Termination

Revised Rule 810 clarifies the procedures for full clearing service termination, where that is determined to be appropriate by the ICC Board in consultation with the Risk Committee. Rule 810 also applies in the case of a specified ICC default as defined in Rule 805. In either case, ICC will determine a termination price for all positions (based on the last established mark-to-market price, if available, a final price submission process, or certain other specified objective sources) and determine a net amount owed to or by each Participant in respect thereof separately in respect of its house and customer origin accounts (taking into account all margin payments). ICC will use all available default resources and net payments owed by Participants to make net payments owed to Participants, and in the event of a shortfall, available amounts will be applied on a pro rata basis.

Additional Amendments

ICC is making certain additional changes to the Rules that are generally in the nature of drafting improvements, clarifications and conforming changes. In particular, ICC has revised Rule 102 to include, for clarity, additional cross-references to various defined terms that are defined in other parts of the Rules. Similarly, updated definitions and cross-references have been added in new Rule 700 for Chapter 7 of the Rules, in Rule 901 for Chapter 9 of the Rules, in new Rule 2100 for Chapter 21 of the Rules, in Rule 2201 for Chapter 22 of the Rules, and in Rule 26E-102 for Chapter 26E of the Rules. Rule 102 has also been revised to add new defined terms that are used in the rule changes discussed above, such as those relating to cooling-off period and the distinction between initial phase default resources (generally available for standard default management actions) and final phase default resources (generally available for secondary default management actions).

Certain other clarifying and conforming changes have been made throughout the Rules to reflect the new default management tools and provisions discussed above, including in Rules 209 and 502. In Rule 312, ICC has clarified the existing limitation on liability for certain actions in the closing-out process following a Participant default to reflect the consultation obligations on ICC under the amended Rules. In Rule 406(g), ICC has clarified its liability for certain investments of customer funds, consistent with Commission regulations. In Rule 601, ICC has clarified that its emergency authority does not override the limitations on Participant liability in amended Chapter 8 of the Rules, or permit partial tear-up of positions except as otherwise provided in the Rules. Certain other typographical and cross-reference corrections have been made throughout the Rules.

Analysis of Expected Effect on Risks to ICC and Market Participants, and Plans to Manage Such Risks

The amendments are principally designed to address the risks posed to ICC by a significant default by one or more Participants, as well as certain other loss events. ICC, like all clearing organizations, faces the risk that its financial resources will be insufficient to cover all losses resulting from such a default. Although ICC has established the level of its required financial resources in order to cover defaults in extreme but plausible market conditions, consistent with regulatory requirements, ICC nonetheless faces the risk of a loss scenario (however implausible) that exceeds such conditions (as a result of which its financial resources may not be sufficient to cover the loss in full). Non-defaulting Participants also face risks relating to the financial resources that they have contributed (or may be required to contribute) to ICC as a result of such a default. Specifically, non-defaulting Participants face the risk that their contributions to the guaranty fund will be partially or fully used as a result of such a default. In addition, if such resources are fully used but are insufficient to cover the loss in full, non-defaulting Participants may be required to make additional assessment contributions to the guaranty fund, which may themselves be partially or fully used by ICC to cover the loss. Non-defaulting Participants will also be required to replenish any guaranty fund contributions in order for the clearing house to continue operations following resolution of the default.

Under its existing Rules, ICC has certain rights and tools that may be used to manage a default and allocate such losses to Participants and others. The amendments are designed to provide additional or modified default management tools, to enhance the ability of ICC to manage such risks, resolve the default or defaults and continue normal clearing operations. The amendments also more clearly allocate certain risks of default and loss as among ICC, Participants and their customers. ICC recognizes that the amendments may pose certain additional risks, or affect the risks currently faced by it and its Participants and their customers. As discussed herein, the amendments have been designed with features that will enable ICC to mitigate and manage such risks. ICC believes that the amendments have been designed to take into account the legitimate interests of Participants, customers of Participants and other relevant stakeholders, and to support the stability of the broader financial system and other relevant public interest considerations of such parties. In addition, in ICC's view, the risks presented are appropriate in light of the goals and benefits of the enhanced default management tools.

- *Auction Procedures*. The amendments include a two new sets of detailed auction procedures: an initial set of auction procedures intended to be used in most defaults, and a secondary set of auction procedures where the initial auction or auctions are unsuccessful. In using such procedures, ICC faces the risk that it will be unable to conduct a successful auction of the entire portfolio of the defaulter, including because of a lack of bids or because the price obtained in the auction exceeds available resources. (In that case, ICC may have to re-run the auction, or proceed to additional recovery tools, such as partial tear-up and/or reduce gains distribution, which may adversely affect Participants and their customers. In general, based on discussions with Participants and others, ICC views it as preferable to be able to fully resolve a default through an auction in which market participants are able to submit their own bids, as opposed to having to resort to such additional recovery tools.) ICC has incorporated various design features in the auction procedures to mitigate these risks, including requiring Participants to submit bids, having the ability to divide the defaulter's portfolio into multiple lots and having the ability to re-run all or a portion of an auction in the event of an unsuccessful auction.

  ICC also believes that the use of a modified Dutch auction structure is the approach most likely to result in a competitive and successful auction. Although there is a risk in such an auction of a so-called "cliff effect", in which an individual outlying bid can have a significant effect on the auction clearing price, ICC has the ability to mitigate that risk through

accepting bids for only part of a lot, and re-auctioning the remainder. ICC also retains additional default tools, such as partial tear-up, in the event than a portfolio cannot be successfully auctioned. As discussed in further detail below, partial tear-up and such other tools are designed to allow ICC to restore a matched book, and fully allocate default losses, where it is unable to otherwise auction or dispose of the portfolio.

- *Removal of Forced Allocation*. The amendments eliminate the current default management tool of forced allocation. As discussed above, the change reflects concern expressed by Participants about the potential use of this tool. Forced allocation places certain risks of loss or liability only on Participants, in a way that is unpredictable and difficult to quantify in advance, by requiring them to take on new positions involuntarily. In particular, forced allocation may require Participants to take positions in contracts that they do not typically trade, and for which they may not have appropriate risk management in place. This is likely to be exacerbated by the fact that the clearing house was unable to otherwise liquidate the positions, which suggests that there is a significant disruption in the market for those positions. There is also no limit on the size of a new position that may be imposed through forced allocation. (By contrast, partial tear-up operates by reducing existing positions of market participants that have already chosen to trade in a particular instrument, and thus are likely to be better prepared to manage the risk of such positions. While this may expose the market participant to risk from the loss of an existing position, Participants have indicated that they view this risk as more manageable than the risk of a forced allocation.) The change may, however, limit the flexibility of ICC in responding to a serious default or defaults. ICC believes that this risk will be mitigated by the adoption of other default management tools, including the revised auction procedures and partial tear-up. In ICC's view, these tools are sufficient to replace forced allocation as a default management tool.

- *Partial Tear-Up*. The use, or potential use, of partial tear-up poses certain risks to ICC and market participants. In particular, Participants (and their customers) face the potential risk of losing positions that are opposite from those in the defaulter's portfolio. This may adversely affect hedging or trading strategies of such Participants or their customers. Participants or their customers that are subject to partial tear-up may not be able to replace these positions, or may incur losses or costs in doing so. ICC will mitigate these risks by causing any such tear-up to be effected on a pro rata basis, across all Participants (and their customers) that have such positions. ICC believes that this approach is an equitable means of allocating the risk. In addition, ICC will effect any partial tear-up at the close of business on the relevant business day, at the settlement price for the relevant contract determined at such time using ICC's standard end-of-day price determination process. This is, in ICC's view, the most accurate price that can be obtained in situations where ICC has not been able to auction off the portfolio. Moreover, using this price will avoid any additional loss to ICC or market participants from the partial tear-up beyond the daily mark-to-market margin settlement.

- *Cooling-Off Periods; Limitations on Assessments*. The amendments incorporate a concept of a cooling-off period, during which ICC's ability to call for assessments and/or replenishments of the guaranty fund from a Participant is limited to three times the Participant's required guaranty fund contribution, regardless of the number of defaults during the period. The amendment is intended to provide greater certainty, and a maximum liability, for Participants as to their guaranty fund exposure. This greater certainty in turn is intended to help stabilize the clearing house during a period of significant stress, including where there are multiple defaults. In particular, a cooling-off period may reduce the risk of cascading defaults, where the financial demands placed on non-defaulting Participants for repeated assessments or replenishments could cause such Participants to themselves experience financial stress or even default, which could make the default management process more difficult. The period thus reduces the potential procyclical effect of requiring

additional mutualized guaranty fund contributions in times of stress. The period is designed to give the clearing house time to work out the default without exacerbating these stresses, while also allowing the clearing house and Participants time to assess whether the defaults will be able to be resolved and normal clearing will be able to resume. However, the "3X" cap for a cooling-off period may exacerbate the risk for ICC that it may not have sufficient resources to resolve a series of defaults or continue operations. ICC believes that nonetheless the approach appropriately balances the risks to the clearing house against the risk of unlimited liability for Participants. ICC believes that taken together with the other default management tools being adopted, it will be able to manage any incremental risk from the cooling-off period limitations.

In addition, the amendments provide ICC the ability, if the 3X cap on replenishments and assessments to the guaranty is reached, to call for additional initial margin in order to ensure that it maintains sufficient resources to continue operations in compliance with applicable minimum regulatory financial resources requirements (i.e., the "cover 2" requirement under Commission Rules 39.11(a)(1) and 39.33(a)). ICC recognizes that the ability to call for such additional initial margin, particularly in times of stress, may have a potential procyclical impact on Participants, as well as potential liquidity impacts on Participants. Although the additional initial margin will be assessed on the house account, rather than the customer account, consistent with regulatory requirements, it may also have a potential procyclical or liquidity impact on customers of Participants, to the extent Participants may pass on the cost of the additional margin to their customers. In the absence of the 3X cap, of course, the ability to call for additional replenishments or assessments to the guaranty fund could also have a potential procyclical and liquidity impact. It is possible that the amount of initial margin required in this circumstance may differ from, and could exceed, the amount of guaranty fund replenishment that would be required in the absence of the 3X cap, because initial margin is not subject to mutualization. In such case, the use of margin in this remote scenario may have a more procyclical effect than guaranty fund replenishment. It also may have a potentially greater liquidity impact on Participants (and, to the extent Participants may pass on the cost of additional margin to their customers, on such customers). At the same time, ICC believes the procyclicality and liquidity risks are limited to a particular remote scenario in which the 3X cap has been reached and ICC needs additional resources to comply with applicable minimum regulatory financial requirements. While the amount of additional initial margin required of a particular Participant will depend on a number of factors, including the composition of the portfolio carried by the Participant, ICC believes that the additional initial margin will likely not exceed the amount of initial margin otherwise on deposit, and will be commensurate with the range of initial margin variation experienced in the ordinary course. In this regard, ICC notes that it expects to limit the additional margin to the amount necessary to maintain minimum regulatory financial resources compliance, which will generally be less than the amount ICC would otherwise require under its guaranty fund methodology. In addition, such additional amount with respect to the customer account of a Participant will be determined on a net basis across customers (and, as noted above, such additional margin in respect of the risk in the customer account will be charged to the house account of the Participant). This may further reduce the procyclical effect. ICC also expects that over the course of a cooling-off period, aggregate potential stress losses, and thus the need for additional financial resources, will generally decrease. In particular, Participants (and their customers) have the opportunity during the cooling-off period to reduce or rebalance the risk in their own portfolios, and thus mitigate potential stress loss and exposure to initial margin increases. Participants and their customers can also participate in default management (through participation in auctions), which will help them reduce their own risk profile. Greater involvement in default management may enhance competitive bidding, which in turn may reduce the likelihood that the 3X cap will be reached. Furthermore, and most importantly, additional initial margin posted by Participants is not subject to

mutualization and cannot be used to cover defaults of other Participants. Accordingly, while Participants may be required to post more funds as additional initial margin in this context than in a replenishment of the mutualized guaranty fund, the risk of loss to Participants of those additional initial margin funds is substantially less than for guaranty fund replenishment. Based on discussions with its Participants, ICC understands that for these reasons Participants prefer the use of additional initial margin in this remote, but potentially highly stressed, scenario, notwithstanding the potentially higher procyclical or liquidity effect. In addition, ICC believes that the potential use of additional initial margin as a resource in this scenario provides an incentive for Participants (and their customers) to manage their own risk profiles, through auction participation and other transactions. From ICC's own perspective, ICC does not believe its liquidity position will be materially affected by the use of additional margin rather than guaranty fund replenishment in this scenario, in light of the authority under its Rules and other relevant liquidity resources.

ICC also considered certain risks in determining the appropriate length of the cooling-off period. ICC has selected a 30 calendar day cooling off period. This period is consistent with the timeframe for the normal, periodic recalculation of ICC's guaranty fund under Rule 801 (which is done on a monthly basis), a period that ICC has found appropriately balances stable guaranty fund requirements with the ability to make changes as necessary. ICC also believes, based on its analysis of the OTC derivatives markets and historical default scenarios involving a large OTC market participant, that 30 days has historically been an adequate period for the market to stabilize following a significant default event. (This was, for example, observed in the interest rate swap market following the Lehman insolvency.) ICC similarly believes that in the context of a cooling-off period, 30 calendar days is an appropriate time horizon to seek to stabilize the clearing house, in light of the products cleared by ICC, and reduce stress on non-defaulting Participants (and their customers) as the clearing house conducts its default management. It provides a minimum period for Participants (and their customers) to reduce or rebalance their positions in an orderly manner to facilitate continued clearing operations once the cooling-off period ends. The 30-day cooling-off period will thus help provide stability for the market and predictability for Participants and their customers as they seek to manage their own risks. In ICC's view, this may increase the willingness and ability of Participants and their customers to participate in a default auction and absorb the defaulter's positions through the default management process.

A shorter cooling-off period, in ICC's view, may result in greater potential assessment and replenishment liability for Participants, which in turn may increase the risk of a default (or series of defaults) caused by an inability of Participants to meet such liabilities on a timely basis. A shorter period may also give non-defaulting Participants an incentive to withdraw quickly from the clearing house following a default. That may destabilize the clearing house, make it more difficult to resolve the default and achieve recovery following default, and reduce confidence in the ability of the clearing house to resume non-distressed clearing operations going forward. A longer cooling-off period may thus help stabilize the clearing system during the default management process. On the other hand, a longer cooling-off period may make it more likely that the 3X cap will be reached, which could in turn increase the stress on clearing house resources and make it more likely that ICC would need to call additional margin from Participants in order to meet ICC's regulatory financial resources requirements, which can itself adversely affect Participant. In setting the length of the cooling-off period at 30 calendar days, in consultation with its Participants, ICC believes that it has appropriately balanced these risks.

- *Reduced Gain Distributions*. As set forth herein, ICC has the ability, where it has exhausted all other financial resources, to implement reduced gain distributions. In that case, ICC will reduce outbound mark-to-market margin and other contractual payments

below the levels that would otherwise apply. This tool will impose a risk of loss on those Participants (and their customers) that would otherwise be entitled to receive such amounts. ICC believes that this is an appropriate loss allocation methodology in an extreme scenario. Specifically, ICC believes that reduced gain distribution, in circumstances where ICC has used its other financial resources, will enable it to allocate the remaining loss in an equitable fashion across all Participants (and their customers) that have gain positions. (In this regard, the result would be similar to the result that would apply in an insolvency proceeding.) Following consultation with its Participants, ICC has determined that reduced gain distribution is appropriately used only where ICC has exhausted its other financial resources (including guaranty fund and assessment contributions). (Prior to this point, in the view of ICC and Participants, available resources should be used to pay mark-to-market margin and other contractual payments that are owed by ICC to Participants.) Although this approach will somewhat limit ICC's flexibility in using this default tool, it will mitigate the potential adverse impact of reduced gain distribution on Participants (and their customers). In addition, the amended rules provide that to the extent ICC obtains any recoveries following resolution of the default, it will repay the amount of reduced gains distributions, mitigating the potential loss.

ICC itself also bears the risk that imposition of reduced gain distributions will disrupt the normal operation of its clearing services, and may cause Participants to reduce clearing activity, withdraw from the clearing house, default in obligations to ICC or to others, or take other actions that may adversely affect ongoing clearing. ICC believes it has mitigated such risks by limiting the use of reduced gain distributions to extreme default scenarios where ICC has exhausted all of its other financial resources, limiting the period of reduction to five consecutive business days and providing for the repayment of such reductions from recoveries as described above.

- *Participation Risks.* ICC's revised default management tools depend, to some extent, on involvement by Participants and others. This is particularly true of default auctions, and ICC therefore bears the risk of a failure of participation. Various features of the amended rules are intended to incentivize such participation. Participants are required to participate in auctions, and are subject to potential juniorization of their guaranty fund contributions and assessment contributions to the extent they do not so (or bid uncompetitively). In addition, ICC may permit non-Participants (i.e., customers) to bid directly in default auctions, to help expand the range of potential bidders. ICC also relies on Participants to act on the CDS Default Committee and Risk Committee, which play enhanced roles in the default management process under the new rules. ICC believes that such reliance is appropriate, in light of the importance of Participant involvement in the governance process and the advisory nature of such committees. ICC also believes that Participants have strong incentives to participate in default management, given the risk to their guaranty fund contributions and potential assessment contributions.

- *Additional Operational Risk.* The amended default rules and tools, including the auction methodologies, partial tear-up, reduced gain distribution and cooling-off periods, will involve new procedures for the clearing house and thus may present certain additional operational risks. ICC contemplates testing of the use of the new tools and procedures as part of its regular default management exercises, in order to identify and manage any related operational risks. Such testing will be done on the same periodic basis (at least annually), and using the same personnel, as other default management procedure testing currently conducted by ICC.[1] ICC has developed various automated systems relating to the default management process, and has done significant preparatory work to incorporate the new

[1] See ICC Risk Management Framework, Appendix III, Section III.

recovery tools and procedures in those systems. Once the rule amendments are effective, ICC will complete the incorporation of those tools into its systems, and test such systems as part of its regular system testing process. The results of such testing will be shared with appropriate ICC risk and governance committees and regulators, consistent with the treatment of the results of other default management testing.[2]

Compliance with the Act and Commission Regulations

The amendments are potentially relevant to the following core principles under the Act: (B) Financial Resources, (D) Risk Management, (E) Settlement Procedures, (G) Default Rules and Procedures, (O) Governance and (P) Conflicts of Interest, and the applicable regulations of the Commission thereunder.

- Financial Resources. Core Principle B and Commission Rules 39.11 and 39.33 require, among other matters, that a systemically important DCO maintain financial resources sufficient to meet its financial obligations to clearing members notwithstanding a default by the two clearing members creating the largest combined loss, in extreme but plausible market conditions. ICC's funded margin and guaranty fund resources are currently designed to meet this standard, and ICC does not propose to reduce such funded resources. The amendments are intended to enhance and provide greater certainty as to the additional resources, beyond the funded margin and guaranty fund resources, that will be available to support clearing operations in more extreme Participant default scenarios. ICC also proposes to maintain the current level of its own contributions to default resources, but to move those resources higher in the default waterfall (so that they are used prior to the guaranty fund contributions of non-defaulting Participants) and thus provide additional protection for the contributions of non-defaulting Participants.

  As set forth above, the amendments would maintain the existing "1x" limitation on assessments per default, and impose a new limitation on guaranty fund replenishments and assessments during a cooling-off period resulting from guaranty fund depletion. The amendments will require that Participants continue to replenish and meet assessment obligations during the cooling-off period, subject to a 3x limit. In addition, in the event the 3x limit is reached, the amended rules require that Participants provide additional initial margin. In ICC's view, these changes provide an appropriate balance between several competing interests of the clearing house and Participants: First, the changes will provide greater certainty for Participants as to their maximum liability with respect to the guaranty fund in the event of defaults (and thus their maximum amount of mutualized risk), in order to facilitate their own risk management, regulatory and capital considerations. Second, they will ensure that ICC maintains sufficient resources to continue operations in compliance with regulatory financial resources requirements, either through replenishment of the guaranty fund in the normal course, or in an extreme situation where the 3x cap is reached, by providing ICC the ability to call for additional initial margin. Third, the clearing house has set the length of the cooling-off period at a finite duration of 30 calendar days, which is intended to be long enough to provide the clearing house and Participants with a measure of stability and predictability as to the use of guaranty fund resources and avoid incentivizing Participants to withdraw from the clearing house following a default. At the same time, the cooling-off period is short enough to avoid a prolonged situation in which there may be uncertainty as to the continued viability of the clearing house or as to its ability to return to normal operations. A limited cooling-off period also reduces the likely need for additional initial margin as a result of the 3x cap, which in turn limits the potential procyclical effects of requiring such margin. In ICC's view, there is no single appropriate length for a

[2] Id.

cooling-off period. However, the chosen duration appropriately balances the legitimate interests of both the clearing house and Participants and enhances the likelihood that the clearing house can withstand a default. The cooling-off period thus will support the stability of the broader financial system.

As a result, ICC believes that the proposed amendments are consistent with the requirements of Core Principle B and the rules thereunder.

- Risk Management. The amendments are intended to enhance the ability of ICC to manage the risk of a default (or multiple defaults) by Participants, among other risks. ICC does not propose to change its existing risk methodology or margin framework, which are its initial lines of defense against losses from Participant default. However, as discussed herein, the amendments provide additional default tools and procedures, including initial and secondary auction procedures and partial tear-up, that are designed to permit ICC to restore a matched book and limit its exposure to potential losses from a Participant default in extreme scenarios that may not be able to be addressed by standard risk management and default procedures. The enhanced procedures for full termination also serve as a means of addressing general business risk, operational risk and other risks that may otherwise threaten the viability of the clearing house as a going concern, within the meaning of Commission Rule 39.39. Moreover, the amendments clarify the ability of Participants to withdraw from the clearing house (and specify the responsibilities and liabilities of the clearing house and the Participant in such situations.) Overall, the amendments will strengthen the ability of the clearing house to manage the risks of, and withstand and/or recover from, significant default or other loss events, and as such are consistent with the requirements of Core Principle D and Commission Rules 39.13, 39.36 and 39.39.

- Settlement Procedures. The amendments contemplate that as a Secondary Default Management Action, in extreme cases, ICC may implement reduced gains distributions for up to five business days in order to conserve its remaining default resources (i.e., assessment contributions) in preparation for a secondary auction. In such case, ICC will continue to collect mark-to-market margin owed to it from all non-defaulting Participants, but will reduce outbound payments of mark-to-market margin owed to Participants to reflect available resources. ICC will calculate the haircut amount on a daily basis for each day of reduced gain distribution, without consideration of reductions on prior days. As a result, settlement on any day of reduced gain distributions will be final within the meaning of Rule 39.14, as ICC does not have any ability to reverse or unwind the settlement. As a result, in ICC's view, the amendments are consistent with the requirements of Core Principle E and Commission Rule 39.14.

- Default Rules and Procedures. The amendments clarify and augment the Rules and procedures relating to default management, with the goal of enhancing the ability of the clearing house to withstand extreme default events. The amendments more clearly distinguish between standard default management events, largely covered by its existing default rules and procedures, and more extreme default management scenarios, for which recovery tools may be appropriate. The amendments include a new set of initial auction procedures, designed to facilitate liquidation of the defaulter's portfolio through a multi-lot modified Dutch auction. The auction procedures require participation of all Participants (unless outsourced to another Participant in accordance with the Rules), and permit direct participation in the auction by customers as well as Participants. The procedures also provide incentives for competitive bidding through juniorization of guaranty fund and assessment contributions, as discussed above. The amendments further include a set of secondary auction procedures, intended to provide for an effective final auction of the entire remaining portfolio, prior to the exercise of recovery tools such as tear-up.

Following extensive consultation with Participants, ICE Clear Credit is proposing to remove the existing tool of forced allocation, which may result in unpredictable and unquantifiable liability for Participants. Instead, ICE Clear Credit will have the option to invoke a partial tear-up of positions to restore a matched book in the event that it is unable to auction the defaulter's remaining portfolio. Partial tear-up, if used, will occur at the most recent mark-to-market settlement price determined by ICC, contemporaneously with such determination. As a result, partial tear-up will not result in additional loss to Participants as compared to the most recent mark to market settlement (and if reduced gain distribution is invoked, partial tear-up will not entail additional loss beyond that resulting from such reduced gain distribution). ICE Clear Credit believes that this revised set of tools will thus maximize the clearing house's ability to efficiently, fairly and safely manage extreme default events.

The amendments further provide for the allocation of losses that exceed funded resources, through assessments and replenishments to the guaranty fund, as described herein, and the use of reduced gains distributions when necessary following the exhaustion of all other resources. The amendments thus are designed to permit ICC to fully allocate losses arising from default by one or more Participants, with the goal of permitting the clearing house to resume normal operations. As discussed in further detail below, the amendments also set out clearly the responsibilities of ICE Clear Credit management, the Board, the Risk Committee and the CDS Default Committee in taking default management steps.

As a result, in ICE Clear Credit's view, the amendments are consistent with the requirements of Core Principle G and Commission Rules 39.16 and 39.35.

- Governance Arrangements. Commission Rule 39.32(a) requires that a systemically important DCO's rules place a high priority on the safety and efficiency of the DCO, explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, their customers and other relevant stakeholders, and appropriately reflect the legitimate interests of clearing members, their customers and other relevant stakeholders. ICE Clear Credit believes the amendments discussed herein satisfy these requirements. The amendments are designed to address extreme loss scenarios resulting from Participant default, and provide an orderly means for recovery or wind-down of clearing operations if necessary. The amendments set out in detail the responsibilities of ICE Clear Credit management, the ICE Clear Credit Board, the ICC Risk Committee (consisting of representatives of Participants) and the ICC CDS Default Committee (consisting of trading personnel seconded from Participants to assist with default management) for key decisions relating to the use of recovery and wind-down tools. As discussed above, the revised Rules build on the existing procedures (and historical practice) for consultation with the Risk Committee and CDS Default Committee, and provide adequate resources for those committees to perform their functions. They also reflect the collaborative relationship between the Board and Risk Committee, and the independence of the Board and the significant participation of Participants on the Board. In taking decisions concerning Secondary Default Management Actions, the Rules, the ICC mission statement, and the relevant governance committee charters will require the Board to take into consideration both the interests of Participants, customers and other stakeholders and the broader goal of providing safe and sound central counterparty services to reduce systemic risk in an efficient and compliant manner, consistent with the requirements of Commission Rule 39.32. These governance procedures have been tailored to provide for meaningful consultation with relevant stakeholders while preserving the ability of the clearing house to act decisively in the exigent and likely unpredictable circumstances of a major Participant default or defaults.

ICC also believes its existing policies and procedures will allow it to appropriately consider and balance potential conflicts of interest. ICC recognizes that potential conflicts of interest may arise among shareholders, Participants and their customers. These conflicts may be heightened in the case of decisions regarding Secondary Default Management Actions, where ICC, Participants and/or their customers will likely face significant losses or potential losses. Under ICC's Code of Business Conduct and Ethics for Committee Members (including section III.A. thereof), among other governance policies, committee members (both of the Board and the Risk Committee) are required to act in the best interests and safety and soundness of ICC, and not other relationships. This requirement not only addresses personal or individual conflicts of interest, but is also key to the management of broader potential conflicts among different stakeholders or categories of stakeholders. In ICC's view, it is appropriate and desirable, in the context of considering Secondary Default Management Actions, for decisionmakers (whether they are appointed to represent shareholders, Participants or other stakeholders) to focus on the safety and soundness of the clearing house, rather than the interests of any particular stakeholder. This does not, of course, prevent any such decisionmaker from stating, describing, representing or considering the interests of a particular stakeholder or group of stakeholders in the decision-making process. Indeed, ICC's experience with its governance process demonstrates that decisionmakers can both represent and consider the interests of a particular group of stakeholders and make decisions that are in the best interests of the overall ICC clearing system. In the context of Secondary Default Management Actions, stakeholders may well have diverging interests, and it is to be expected that ICC may not be able to make a decision that will fully satisfy each particular stakeholder. Under these circumstances, ICC believes that requiring decisionmakers to focus on the overall interests of the clearing system, and not merely the narrower interests of a particular group, is the approach most likely to lead to decisions (and outcomes) that benefit the ICC overall clearing system and thus the legitimate interests of all relevant stakeholders. ICC does not believe that alternative possible governance arrangements, such as creating and consulting with additional groups of stakeholders that are not required to consider the safety and soundness of the clearing house, or giving particular stakeholders or groups of stakeholders the right to force or block decisions, are either required by Commission regulations or beneficial to the default management process. ICC generally believes that adding such complication to the governance process may impede decision-making and make it more difficult to implement recovery procedures, and as a result is unlikely actually to further the interests of stakeholders sought to be protected by such arrangements. The governance process must strike a balance between the need to consider the views and interests of relevant stakeholders, and the ability of the clearing house to act decisively and in a timely way in difficult circumstances. Ultimately, while the legitimate interests of all relevant stakeholders need to be considered, it is the clearing house's responsibility to make a decision as to how it implements the default management process. In ICC's view, it is proper for it to make that decision in light of the overall interests of the clearing system and all relevant stakeholders, and not any particular stakeholder. ICC therefore believes that its governance policies and procedures explicitly support the stability of the broader financial system and other relevant public interest considerations of Participants, their customers and other stakeholders, within the meaning of Commission Rule 39.32(a)(1)(iv). Under these policies and procedures, the decisions of the Board and Risk Committee are also designed to appropriately reflect the legitimate interests of Participants, their customers and other relevant stakeholders, within the meaning of Commission Rule 39.32(a)(2).

As noted above, Secondary Default Management decisions are subject to additional governance requirements that they are to be made by the Board, a majority of the members of which are independent of ICE management and the ICE parent. The interests of Participants are clearly taken into consideration, through both the recommendations of the

Risk Committee and the participation of Participant representatives on the Board itself. ICC regularly also takes into account the feedback of customers of Participants, both through its buy-side advisory committee and otherwise. Although ICC does not provide for direct customer participation in governance (unlike in the case of Participants), ICC believes that approach is appropriate in light of the particular risks faced by Participants (in light of their financial responsibilities to the clearing house) and the role Participants are required to play in the default management process. In ICC's view, its policies and procedures to address conflicts of interest are thus consistent with the requirements of Core Principle P and Commission Rule 39.32.

The recovery and wind-down tools themselves have also been designed to take into account the interests of both Participants and customers of Participants. For example, the new default auction procedures contemplate that customers may participate directly in default auctions at their election (subject to making the required clearing deposit), or alternatively may participate through a Participant (without the need for such a deposit). ICE Clear Credit believes that such participation will lead to more effective and efficient auctions, and give customers of Participants the opportunity to protect against the possibility of partial tear-up (to the extent the consequences thereof are adverse to them) and reduced gain distribution through bidding competitively in the auction. The amendments also provide that in the event of a partial tear-up, all market participants (both Participants and customers) holding the relevant positions would be affected on a pro rata basis. Similarly, losses arising from reduced gain distribution would be shared on a pro rata basis by both Participants and customers with gain positions. In the event of a full termination, any shortfall in resources would similarly be shared on a pro rata basis across all Participants and their customers.

ICE Clear Credit believes that the amendments thus reflect the legitimate interests of clearing participants, customers and other stakeholders. The amendments are designed to plan for a remote and unprecedented, but potentially extreme, type of loss event—a loss from one or more Participant defaults that exhausts funded resources and requires additional recovery or wind-down steps. Such losses will necessarily and adversely affect some or all Participants, customers or other stakeholders. In ICE Clear Credit's view, its current rules, with the possibility of forced allocation, could force certain risks of loss only on Participants, in a way that is unpredictable and difficult to quantify in advance, and that Participants have strongly stated is undesirable from their perspective. ICE Clear Credit believes that the amendments take a more balanced approach that distributes potential losses more broadly, to both Participants and customers that would otherwise have potential gains.

In light of extensive discussions with Participants, customers and others, and the views expressed by industry groups and others, ICE Clear Credit believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme default scenario to both Participants and their customers on the basis of their positions. ICE Clear Credit further believes that the approach taken will facilitate the ability of the clearing house to fully allocate the loss so that it can continue clearing operations. In so doing, in light of the importance of clearing houses to the financial markets they serve, the Congressional and Commission policy in favor of clearing of financial transactions, and the potential consequences of a clearing house failure, the amendments will support the stability of the broader financial system.

ICE Clear Credit also believes that the amendments further the interests of stakeholders in having greater certainty as to the consequences of default and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

ICE Clear Credit also notes as a governance matter that the amendments have been discussed at length with Participants (individually and as a group). The amendments have been developed over the course of several years, and throughout that time ICC has regularly consulted with Participants on both the overall design and the detailed drafting of the amendments. Several aspects of the amendments reflect specific requests of Participants and concerns identified by Participants, as discussed above, including the removal of forced allocation, introduction of a cooling-off period and establishment of aggregate limitations on assessments and replenishments. The introduction of partial tear-up and reduced gain distributions as recovery tools have also been discussed in detail with Participants, and have been drafted to take into account issues and suggestions raised by Participants, including to define the circumstances in which those tools may be used and to limit the adverse impact of such tools on netting, regulatory capital and other matters. Certain Participants have expressed concern in particular with the potential use of reduced gain distribution as a recovery tool. While ICC believes reduced gain distribution is an important tool for ensuring its ability to fully allocate losses, ICC has, in light of such concerns, limited reduced gain distribution to scenarios where all other financial resources of the clearing house have been exhausted. ICC has also consulted with Participants on the details of the initial and secondary auction procedures, and took into account comments and suggestions concerning such matters as minimum bid requirements, use of a Dutch versus other auction methodologies, degree and triggers for juniorization and participation by customers. Certain of the proposed governance arrangements in the amendments also reflect feedback from Participants, including with respect to the role of Risk Committee in major decisions. Throughout the process, ICC has regularly shared drafts of the amendments with Participants, and sought (and received) comment from Participants and Participants' internal and external counsel on such drafts, which ICC has taken into consideration in the drafting of the amendments.

ICC has also discussed the amendments individually with members of its buy-side advisory committee, which consists of customers of Participants. ICC also considered the views of industry groups representing customers of Participants, both through discussions with members of such groups and through the public statements and positions of such groups. Certain buy-side customers have expressed concern with aspects of the amendments, particularly the application of partial tear-up and reduced gain distributions to customer positions. As discussed above, ICC believes the use of these recovery tools, for customer as well as proprietary positions of Participants, reflects an appropriate balancing of the legitimate interests of the clearing house, Participants and customers in extreme default scenarios. ICC also believes that the risks of such recovery tools are mitigated by the expanded opportunity for customers to participate, either directly or indirectly, in default auctions, as noted above. Other buy-side customers have expressed concern with the potential use of reduced gain distribution before the exhaustion of all other potential clearing house resources. As discussed above, in light of such concerns, ICC has limited reduced gain distribution to scenarios where all other financial resources of the clearing house have been exhausted. Certain customers have also suggested that the clearing house increase the amount of its own contribution to the guaranty fund, and place such contribution higher in the priority waterfall of default resources. As discussed above, ICC has increased the priority of its contributions in the waterfall, to a position prior to the guaranty fund contributions of non-defaulting Participants (although ICC has not proposed to change the aggregate amount of its contribution).

The amendments have been reviewed by ICC's Risk Committee, which recommended that the ICE Clear Credit Board approve such amendments. The amendments have been approved by the ICE Clear Credit Board.

As described herein, the amendments consist of changes to the ICE Clear Credit Rules and adoption of initial default auction procedures and secondary default auction procedures. A copy of the amendments is attached hereto. ICC has respectfully requested confidential treatment for the default auction procedures and secondary default auction procedures which were submitted concurrently with this submission. ICC has also attached hereto certain of its existing internal governance policies that are referenced herein. ICC has requested confidential treatment with respect to such policies.

ICE Clear Credit hereby certifies that the amendments comply with the Act and the Commission's regulations thereunder.

ICE Clear Credit has summarized above certain substantive opposing views received from Participants and customers of Participants in relation to the rule amendments. ICE Clear Credit acknowledges receipt of a comment letter from FIA dated December 2, 2016, the substance of which we believe we have addressed in this submission.

ICE Clear Credit has posted a notice of pending certification and a copy of this submission on its website concurrent with the filing of this submission.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at eric.nield@theice.com or (312) 836-6742 or Sarah Williams at sarah.williams@theice.com or (312) 836-6883.

Very truly yours,

Eric Nield
General Counsel

Enclosures

cc: Board of Governors of the Federal Reserve System