

**Eric Nield**  
*General Counsel*

January 20, 2020

**Re: ICE Clear Credit LLC Advance Notice  
of Proposed Rule Change Pursuant to  
Commission Rule 40.10: Non-Default  
Losses**

**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”) discussed herein.

*Explanation and Analysis*

ICE Clear Credit LLC is proposing amendments to its Rules to address the treatment of certain investment losses, custodial losses and other non-default losses (in each case, losses that do not arise from the default of a clearing participant (a “Participant”). As discussed below, the amendments are intended to satisfy the requirements of Commission Rule 39.39 applicable to ICC as a systemically important DCO that ICC have rules to facilitate recovery or orderly wind-down necessitated by general business risk, operational risk or any other risk that threatens its viability as a going concern. The amendments are also intended 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). Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Rule 40.10 is also provided below.

The amendments would, among other matters:

- define three exclusive categories of relevant losses: (1) investment losses, (2) custodial losses and (3) non-default losses,
- specify the ICC resources that will be applied to cover each such category of losses,
- specify the responsibility of Participants, in appropriate circumstances, to make contributions with respect to investment losses and custodial losses, and
- address the treatment of recoveries by ICC with respect to such losses.

The proposed amendments are described in more detail below.

### **Definitions of Loss Categories**

In Rule 102, new definitions of “Investment Losses” and “Non-Default Losses” would be added, and the definition of “Custodial Losses” would be revised.

#### **Investment Losses**

Investment Losses would be defined as losses incurred or suffered by ICC in connection with the default of the issuer of any investment of Margin or General Guaranty Fund assets by ICC or the default of the counterparty to any repurchase or reverse repurchase contract or similar transaction used to invest or reinvest such Margin or General Guaranty Fund assets. Investment Losses would also include other losses with respect to such investments, including from a change in value due to market movements. However, Investment Losses would not include Custodial Losses (as discussed below) or losses resulting directly from a failure by ICC to comply with its own investment policies. Investment Losses would be determined separately for the house account and client origin account.

Certain other circumstances would not constitute Investment Losses. For example, a negative yield or interest rate on an ICC investment will not be an Investment Loss. If a Participant posts securities or non-cash assets as Margin or General Guaranty Fund contributions, any gain or loss in such assets will not be an Investment Loss for purposes of the Rules.

#### **Custodial Losses**

Under the revised Rules, Custodial Losses would be defined as losses of Margin or General Guaranty Fund assets (including declines in the value thereof) as a result of (1) the insolvency or failure of a Custodian or (2) the embezzlement or theft of such assets by any person (other than ICC or its employees or representatives). A Custodian for this purpose would include a bank or trust company, central bank, central securities depository or other third party settlement system used by ICC for the deposit, holding, custody or transfer of cash or securities. Custodial Losses would not include Investment Losses.

#### **Non-Default Losses**

Non-Default Losses would be defined to cover losses incurred or suffered by ICC that are neither Investment Losses nor Custodial Losses and arise in connection with an event other than a Participant default. The definition thus captures losses from general business or operational risk that do not constitute custodial or investment losses.

## **Treatment of Losses**

The amendments set out in new Rule 811 (and related additional definitions in Rule 102) describe the clearing house's approach to the treatment of Non-Default Losses, Investment Losses and Custodial Losses.

### *Non-Default Losses*

Under new Rule 811(b), Non-Default Losses would be met from available ICC capital and other ICC assets (including available retained earnings). Non-Default Losses would not be covered from ICC contributions to default resources (the ICE Clear Credit Initial Contribution, ICE Clear Credit Continuing Contribution or Additional ICC Collateral Deposits). Non-Default Losses would not be allocated to Participants, or otherwise covered using Margin, General Guaranty Fund contributions or Assessment Contributions of Participants.

### *Investment Losses*

New Rules 811(c)-(e) would set out the treatment of Investment Losses. Under Rule 811(c), in the case of an Investment Loss, ICC would first apply to the loss any available Investment Loss Resources held by ICC. Investment Loss Resources would be defined in Rule 102 to be \$20 million of ICC's own assets designated by ICC as available to be applied to Investment Losses. The ICC Board may modify the amount of Investment Loss Resources from time to time, and that determination would be risk-based in light of ICC's potential exposure to Investment Losses. In the case of simultaneous Investment Losses for the house account and client origin account, available Investment Loss Resources would be applied pro rata based on the amount of such Investment Losses.

In the event the Investment Loss Resources were insufficient to cover the Investment Loss (an "Investment Loss Shortfall"), ICC would have the right, under Rule 811(d), to allocate the Investment Loss Shortfall to Participants (including any Defaulting Participants). In the case of an Investment Loss in the house account, each Participant would be obligated to make a contribution (an "Investment Loss Contribution"), based on its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its aggregate Initial Margin (both house and customer) and General Guaranty Fund contributions (its "Participant IM/GF Contribution") as compared to the aggregate Participant IM/GF Contributions for all Participants. In the case of an Investment Loss in the client origin account, each Investing Participant (i.e., a Participant that has instructed ICC to invest cash Initial Margin provided by it in respect of its client origin account) would be obligated to pay an Investment Loss Contribution equal to its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the aggregate Participant IM/GF Contributions of all Investing Participants. Under Rule 811(e), the maximum contribution of a Participant for an Investment Loss Contribution in respect of any event giving rise to an Investment Loss may not exceed its Participant IM/GF Contribution. Investment Loss Contributions could only be applied to Investment Loss Shortfalls (and not Custodial Loss Shortfalls).

### *Custodial Losses*

New Rules 811(f)-(h) would set out the treatment of Custodial Losses. Similarly to the treatment of Investment Losses, under Rule 811(f), in the case of a Custodial Loss, ICC would first apply to the loss any available Custodial Loss Resources held by ICC. Custodial Loss Resources would be defined to be \$32 million of ICC's own assets designated by ICC as available to be applied to Custodial Losses. As with Investment Loss Resources, the ICC Board may modify the amount of Custodial Loss Resources from time to time, and such determination would be risk-based in light of ICC's potential exposure to Custodial Losses.

In the event the Custodial Loss Resources were insufficient to cover the Custodial Loss (a “Custodial Loss Shortfall”), ICC would have the right, under Rule 811(g), to allocate the Custodial Loss Shortfall to all Participants (including any Defaulting Participants). In that case, each Participant would be liable to make a contribution (a “Custodial Loss Contribution”), based on its pro rata share of the Custodial Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the aggregate Participant IM/GF Contributions for all Participants. Under Rule 811(h), the maximum contribution of a Participant for a Custodial Loss Contribution in respect of any event giving rise to an Investment Loss may not exceed its Participant IM/GF Contribution. Custodial Loss Contributions could only be applied to Custodial Loss Shortfalls (and not Investment Loss Shortfalls).

Notwithstanding the foregoing, in the event of a Custodial Loss where the Custodian is a central bank, ICC is not obligated to apply Custodial Loss Resources, and the entire Custodial Loss would constitute a Custodial Loss Shortfall subject to allocation to Participants as described above.

#### *Allocation of Recoveries*

The amendments would address any recoveries that ICC is able to obtain in respect of an Investment Loss or Custodial Loss after Investment Loss Contributions or Custodial Loss Contributions (collectively, “Loss Contributions”) have been made. Rule 811(l) would provide a “reverse waterfall” for allocation of such recoveries, after deduction of expenses of ICC, to the parties that bore the loss (whether ICC, Participants or both) in the reverse order from which they were initially applied. The amendments would also set out ICC’s obligations to seek recoveries in respect of Investment Losses and Custodial Losses, generally using the same degree of care as it exercises with respect to its own assets that are not subject to allocation under Rule 811.

#### *Additional Provisions*

Rule 811(u) would contain a general disclaimer by ICC of losses resulting from the holding, deposit, custody, transfer or investment of Margin, General Guaranty Fund contributions and Assessment Contributions, except as otherwise provided in Rule 811, and provided that Rule 811(u) will not limit any liability of ICC for its own gross negligence or willful misconduct. Rule 406 would also be amended to remove an existing disclaimer for custodial losses, which would be superseded by the new provisions.

New Rule 402(k) would address investment of cash Initial Margin provided by a Participant in respect of its client origin account. The Participant would be required to instruct ICC whether or not ICC should invest such Initial Margin. If instructed to invest, ICC would invest the cash in accordance with its Rules and investment policies procedures and applicable law. If instructed not to invest, ICC would hold the cash in a deposit account with a Custodian in accordance with ICC’s policies and procedures. If a Participant does not provide an instruction, (1) for US dollar cash, the Participant would be deemed to have instructed ICC not to invest such cash, and (2) for cash in other currencies, the Participant would be deemed to have instructed ICC to invest such cash.

Rule 811 would also address certain procedures for notices to Participants of the use of Investment Loss Resources and Custodial Loss Resources and of required Loss Contributions in respect of Investment Losses and Custodial Losses. The Rule would also provide for timing and manner of collection of Loss Contributions (including through offset against obligations of ICC to return margin or other assets), and for currency conversions as necessary. The Rule would clarify that the requirement to make Loss Contributions does not reduce or otherwise affect other obligations of a Participant to make payments or deliveries to ICC under the Rules, or otherwise limit ICC’s netting, setoff and other rights under the Rules. In particular, obligations to make Loss Contributions would be separate from any obligation to make an Assessment Contribution, and the limitations on Assessments under the Rules would not apply to liabilities for Loss Contributions.

Use of the Loss Contribution procedures under Rule 811 would also not be deemed to constitute an ICE Clear Credit Default under the Rules.

ICC would be required to disclose to Participants the amount of Custodial Loss Resources and Investment Loss Resources, and to notify Participants in advance of any changes in such amounts. If such loss resources are applied as a result of a loss event, any replenishment of such resources by ICC would not reduce the amount of any Custodian Loss Shortfall or Investment Loss Shortfall (or resulting Loss Contributions) for that loss event. ICC's liability for Custodial Losses or Investment Losses would not exceed the amount of designated Custodial Loss Resources or Investment Loss Resources, as applicable, from time to time.

#### *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 loss event not resulting from a default by one or more Participants. These events may include investment losses and custodial losses with respect to margin and General Guaranty Fund contributions, as well as other losses resulting from general business risk, operational risk or other non-default scenarios. ICC, like all clearing organizations, faces the risk that such a loss event could affect its ability to continue orderly clearing operations or otherwise affect its viability as a going concern.

With respect to Investment Losses, ICC has designed its existing investment policies and procedures such that investments are limited to instruments with minimal credit, market and liquidity risks, consistent with the requirements of Commission regulations (including Commission Rule 39.15). Nonetheless, ICC faces the risk that the issuer of such an investment will default, the counterparty to an investment through a reverse repurchase agreement, repurchase agreement or similar transaction will default, or the value of an investment will be materially and adversely affected by changes in market conditions. In such cases, ICC may not have access to posted margin or guaranty fund contributions, and thus may not have its expected levels of financial resources that support normal clearing operations. ICC Participants, in turn, bear the risk of losing the margin or guaranty fund contributions they have posted to ICC as a result of such events.

The amendments are intended to balance these risks while ensuring that ICC can fully allocate the risks of investment losses with respect to investments of margin and guaranty fund contributions. As an initial matter, ICC would bear the risk of Investment Losses, up to the specified amount of Investment Loss Resources in the Rules. ICC has selected the level of Investment Loss Resources based on its assessment of its potential exposure to investment losses under its investment policies and procedures, and the ICC Board would periodically conduct a risk-based assessment of the appropriate level of Investment Loss Resources. As an initial measure of its potential exposure to investment losses, ICC has taken into account components of the European Union capital requirements applicable to central counterparties<sup>1</sup> (even though such requirements are not directly applicable to ICC), in particular the capital requirements for credit, counterparty and market risks and operational and legal risks. ICC would not be obligated under the amended Rules to use this methodology, and could in the future determine to adopt a different risk-based methodology based on its experience with investment losses or other market or regulatory developments.

In the remote scenario of an Investment Loss beyond the specified level of Investment Loss Resources, the excess loss would be shared among Participants as set forth in Rule 811(d). ICC

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<sup>1</sup> Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and the Council with regard to regulatory technical standards on the capital requirements for central counterparties.

believes that the balanced approach to allocation of losses is appropriate, and aligns incentives among ICC and its Participants to facilitate management of the risks of investment losses. Specifically, because of its “first loss” position for any Investment Loss, ICC is itself incentivized to avoid the risk of such losses through appropriate management of its investment practices. ICC would also be responsible for losses resulting from its failure to comply with its investment policies.

At the same time, an Investment Loss resulting from an investment made in accordance with its policies and procedures is ultimately outside the control of the clearing house. Furthermore, as a regulatory matter ICC is not obligated to, and is not commercially in a position to, guarantee investments against defaults by an investment issuer or counterparty. As a result, in ICC’s view, it is appropriate for remote losses in excess of the Investment Loss Resources to be borne by its Participants. Absent an ability to allocate such losses to Participants, an extreme Investment Loss event, beyond the resources of the clearing house, could result in clearing house failure or interference with the clearing house’s ability to continue operations.

Similarly, for Custodial Losses, ICC’s existing policies are intended to mitigate the risk of custodial failure through appropriate selection and ongoing monitoring of Custodians and use of central bank custody where practical. These procedures are designed to permit the clearing house to hold assets in a manner that minimizes the risk of loss or delay in the access of ICC to such assets, consistent with the requirements of Commission Rules 39.15 and 39.36. Nonetheless, the risk of a Custodian failure or other custodial loss cannot be completely eliminated or controlled by ICC. In the event that there is a Custodial Loss, ICC has sought to appropriately balance its interests and responsibilities with those of its Participants. Under the amendments, with respect to Custodial Losses involving Custodians other than a central bank, ICC would be responsible for losses up to the amount of Custodial Loss Resources, which is established under the proposed Rule amendments and will be subject to risk-based adjustment by the ICC Board from time to time. As with the Investment Loss Resources, ICC has determined the initial level of Custodial Loss Resources taking into account components of the European Union capital requirements applicable to central counterparties, in particular the capital requirements for credit, counterparty and market risks and operational and legal risks. ICC would not be obligated under the amended Rules to use this methodology, and could in the future determine to adopt a different risk-based methodology based on its experience with custodial losses or other market or regulatory developments.

Losses in excess of the amount of Custodial Loss Resources would be shared among Participants, proportionally based on their respective aggregate initial margin and guaranty fund contributions. ICC believes this approach incentivizes ICC to appropriately manage the custodial risk for private Custodians, and thus aligns ICC’s incentives with those of Participants.

However, a Custodial Loss from a custodial failure despite these measures is ultimately outside the control of ICC. ICC is not itself a depository but is rather an intermediary. ICC receives margin and guaranty fund assets from its Participants and is required by Commission regulations to place them with a depository that is in the business of accepting and holding such assets. ICC is ultimately not in a position to backstop or guarantee performance by third-party Custodians. If ICC were responsible for all Custodial Losses in excess of the defined resources, a custodial failure could lead to a clearing house failure or other interference with clearing operations. As a result, ICC believes it is appropriate for the Participants to share in Custodial Losses that exceed ICC’s Custodial Loss Resources as set out in the proposed Rules.

With respect to Custodial Losses arising from a central bank custodial failure, ICC believes that such a scenario is extremely remote, and entirely outside of its control. ICC also notes the preference among regulators and Participants for the use of central bank custody. As a result, ICC believes it is appropriate in that case that Participants fully bear any such Custodial Losses.

ICC has determined that the allocation of Investment Losses or Custodial Losses, as the case may be, to Participants (which are limited to Investing Participants in the case of Investment Losses in the client origin account) should be made proportionately based on the relative Participant IM/GF Contributions. The approach mutualizes both Investment Losses and Custodial Losses across Participants, in these remote loss scenarios where such losses exceed applicable ICC resources allocated to such losses. The approach also ensures that, with respect to the client origin account, the obligation to pay an Investment Loss Contribution is in respect of Investing Participants. Participants may be required to make Loss Contributions that are independent of the particular mix of cash and securities provided by the Participant as margin or guaranty fund assets. Nonetheless, ICC believes that the approach is appropriate in light of the remote nature of the potential losses, the fact that Participant margin and guaranty fund assets are invested and custodied collectively, and the practical and operational considerations that would be required for an approach that attempted to allocate losses based on a Participant's particular assets. The balance of investments, and the particular investments made, may change on a daily (or more frequent) basis, as may the balance of assets (and types of assets) held with any individual Custodian, meaning that any attempt to allocate based on specific Participant positions would have to be done on a real-time basis. Furthermore, Participant assets are held and invested on an aggregate basis (excluding Participants that have instructed ICC not to invest cash Initial Margin provided by it in respect of its client origin account) such that investments cannot be allocated to particular Participants, and all such Participants receive a blended rate of return from aggregate clearing house investment activity. ICC does not believe it would be operationally feasible, or beneficial to Participants, to attempt to allocate Investment or Custodial Losses based on assets maintained by individual Participants with the clearing house on a real time basis. Instead, ICC believes it is more appropriate, in light of these operational and other considerations, to allocate Investment Losses and Custodial Losses, if any, to Participants (which are limited to Investing Participants in the case of Investment Losses in the client origin account) based on their respective aggregate amount of Margin and General Guaranty Fund assets at the clearing house.

For Non-Default Losses, ICC would be solely responsible for covering such losses through ICC capital and other ICC resources. Participants would not be responsible for such losses, even if ICC assets were insufficient. ICC, and Participants, accordingly would bear the risk that a Non-Default Loss could occur which would exhaust clearing house capital, and render the clearing house unable to continue operations without a voluntary further infusion of capital or other resources. ICC believes that its capital and other resources at the clearing house are sufficient to permit it to cover its expected operating expenses, consistent with regulatory requirements. In light of the remote and unpredictable nature of such Non-Default Losses, ICC does not believe allocation of such Non-Default Losses to Participants is appropriate, even though the approach being taken may reduce the resources potentially available to the clearing house to withstand such losses.

For the foregoing reasons, in ICC's view, the risks presented by the amendments are appropriate in light of the goals and benefits of the amendments.

#### *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, (F) Treatment of Funds, (O) Governance and (P) Conflicts of Interest, and the applicable regulations of the Commission thereunder.

Financial Resources. ICC does not propose in these amendments to change the amount or composition of financial resources required of Participants as Initial Margin or contributions to the General Guaranty Fund. ICC is also not proposing to change its own resources that it contributes to default resources. Under the amendments, ICC would designate clearly that ICC's own capital and other assets (other than its contributions to default resources)

are available to cover Non-Default Losses (and that Participants are not responsible for such losses). In addition, ICC would designate specific amounts of its own assets to serve as Investment Loss Resources and Custodial Loss Resources, to provide risk-based, “first loss” coverage of Investment Losses and Custodial Losses incurred by ICC. The amendments would also provide for allocation of Investment Losses and Custodial Losses in excess of such resources to Participants, who would be obligated to pay Loss Contributions to the extent of such excess. As a result, the amendments clarify the resources available to address Investment Losses, Custodial Losses and other losses not resulting from Participant default. The provisions relating to Investment and Custodial Losses also, in effect, provide protection against the loss of the financial resources provided by Participants to support the default waterfall. As such, in ICC’s view, the amendments are consistent with Core Principle B and Commission Rules 39.11 and 39.33.

- Risk Management. The amendments are intended to enhance the ability of ICC to manage the risk of certain losses that do not arise from Participant default or defaults. The amendments provide a mechanism for fully allocating Investment Losses and Custodial Losses, first to resources provided by ICC in the first instance and thereafter to Participants. The amendments also clarify the responsibility of ICC for Non-Default Losses (and clarify that Participants are not responsible for such losses). The amendments thus enhance ICC’s ability to address 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. The amendments also enhance the ability of ICC to manage custody and investment risk and settlement bank risk, as required under Commission Rule 39.36, in the remote circumstances where its ordinary course procedures are insufficient and a Custodian, investment counterparty or settlement bank fails. Overall, the amendments will strengthen the ability of the clearing house to manage the risks of, and withstand and/or recover from, significant non-default loss events, and as such are consistent with the requirements of Core Principle D and Commission Rules 39.13, 39.36 and 39.39.
- Treatment of Funds. ICC’s existing investment policies and procedures provide for the investment of cash provided by Participants as Margin or General Guaranty Fund contributions in investments with minimal credit, market and liquidity risks. Similarly, the policies provide for the use by ICC of custodians to hold cash and securities in a manner designed to minimize the risk of loss or delay in access to such assets. ICC does not propose to change such policies and procedures. The amendments address the remote scenario where, despite the protections under such procedures, there is a failure by an investment issuer or counterparty or custodian. Such a circumstance would be remote in ICC’s view, and in any event, outside the control of ICC. In such circumstances, the amendments would allocate the loss as between ICC and Participants, with ICC being responsible for a first loss position up to the amount of defined resources (except in certain cases of a central bank failure) and with Participants being responsible for the remaining loss, in proportion to their margin and guaranty fund contributions. In the case of an Investment Loss in the client origin account, the obligation to pay an Investment Loss Contribution is in respect of Investing Participants under the proposed approach. The amendments would thus enhance the protection of funds and assets provided to ICC as margin or guaranty fund contributions, and would be consistent with the requirements of Core Principle F and Commission Rules 39.13 and 39.36.
- Governance Arrangements and Conflicts of Interest. 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 other than those resulting from Participant default, and provide an orderly means for recovery from such scenarios if necessary. The amendments set out the responsibilities of the ICE Clear Credit Board in connection with establishing the appropriate level of Investment Loss Resources and Custodial Loss Resources provided by ICC. In taking such decisions, 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.

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 extreme Investment Loss and Custodial Loss events, 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 Managers (including section III.A. thereof), among other governance policies, Board members 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 actions relating to Investment Losses and Custodial Losses, for decision makers 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 extreme Investment Losses and Custodial Losses, 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. In ICC's view, it is proper for it to make decisions concerning the implementation of Loss Contributions 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).

ICE Clear Credit believes that the amendments also reflect the legitimate interests of clearing participants, customers and other stakeholders, within the meaning of Commission Rule 39.32(a)(2). The amendments are designed to plan for remote and unprecedented, but potentially extreme, types of loss event, including Investment Losses, Custodial Losses and Non-Default Losses. In particular, Investment Losses and Custodial Losses, to the extent they exceed clearing house resources dedicated for such purposes, will necessarily and adversely affect some or all Participants, customers or other stakeholders. ICE Clear

Credit believes that the amendments take a balanced approach that distributes potential losses to both ICC and Participants.

In light of discussions with Participants and others, ICE Clear Credit believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme non-default loss scenario. ICE Clear Credit further believes that the approach taken will facilitate the ability of the clearing house to allocate such losses 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 Participants in having greater certainty as to the consequences of such losses, their potential liability for them and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

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. A copy of the amendments is attached hereto.

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

ICE Clear Credit has received no substantive opposing views in relation to the rule amendments.

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, which may be accessed at <https://www.theice.com/clear-credit/regulation>.

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](mailto:eric.nield@theice.com) or (312) 836-6742 or Maria Alarcon at [maria.alarcon@theice.com](mailto:maria.alarcon@theice.com) or (312) 836-6854.

Very truly yours,



Eric Nield  
General Counsel

Enclosures

cc: Board of Governors of the Federal Reserve System