

**Maria Alarcon**  
Staff Attorney

January 30, 2020

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

**VIA ELECTRONIC PORTAL**

Mr. Christopher Kirkpatrick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC (“ICC”) hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), a self-certification of changes to the ICC Clearing Rules (the “Rules”)<sup>1</sup> to consider the possibility of ICC receiving proceeds from default insurance. ICC is registered with the Commission as a derivatives clearing organization (“DCO”). ICC intends to implement the changes no sooner than the tenth business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office.

ICC proposes amendments to Chapters 1 and 8 of the ICC Rules as they relate to default insurance that is intended to cover specified losses resulting from a Clearing Participant (“CP”) default. This submission includes a description of the changes to the ICC Rules. Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

The proposed amendments consider the possibility of ICC receiving proceeds from default insurance, which would be applied as part of the resources available to ICC in the event of a CP default. Such default insurance would provide additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. The proposed revisions are described in detail as follows.

ICC proposes to update ICC Rule 102 to reference “Insurance Proceeds” which would be defined in Rule 802(b)(i)(A)(4).

ICC proposes to amend ICC Rule 802(a), which addresses the application of General Guaranty Fund contributions of a defaulting CP, to incorporate a reference to any insurer, surety or guarantor of the obligations of the defaulting CP to reflect that certain recoveries from a defaulting CP may be owed to the insurance provider. ICC does not propose any changes to the order of priority set forth in ICC Rule 802(a).

ICC proposes changes to ICC Rule 802(b) to integrate default insurance into the default waterfall. ICC proposes to amend the default waterfall in Rule 802(b)(i) to include the proceeds of default insurance (if any) as a default resource, to be applied after the application of ICC’s own guaranty fund contributions of \$50 million and prior to the application of guaranty fund contributions of non-defaulting CPs. Under proposed ICC Rule 802(b)(i)(A)(4), ICC defines Insurance Proceeds and clarifies that ICC has no

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

obligation to obtain or maintain default insurance. ICC proposes to re-number the following clauses accordingly. Further, amended ICC Rule 802(b)(iii) provides that ICC may use the contributions of non-defaulting CPs to the guaranty fund (and assessments on such CPs) prior to the receipt of proceeds owed under the default insurance, provided that those CPs are reimbursed from the insurance proceeds when received.

ICC proposes changes to ICC Rule 802(c) to reflect that certain recoveries from or in respect of a defaulting CP may be owed to the insurance provider.

ICC proposes conforming changes to ICC Rule 808 that address Reduced Gains Distribution in order to permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy. Amended ICC Rule 808(b) clarifies that a claim under a default insurance policy will not preclude ICC from applying Reduced Gains Distribution after a CP default. Amended ICC Rule 808(m) provides that proceeds from a default insurance policy will be available as a potential resource to pay CPs that have been subject to Reduced Gains Distribution.

#### Core Principle Review:

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

**Financial Resources:** The revisions to the ICC Rules are consistent with the financial resources requirements of Core Principle B and the financial resource requirements set forth in Commission Regulation 39.33. As described above, the proposed amendments contemplate the possibility of ICC receiving proceeds from default insurance, which, in ICC’s view, represents a tool that strengthens ICC’s ability to manage its financial resources and withstand the pressures of defaults.

**Risk Management:** The amendments to the ICC Rules are consistent with the risk management requirements of Core Principle D. The proposed changes enhance ICC’s ability to manage the risk of defaults by providing additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs, thereby ensuring that ICC possesses the ability to manage the risks associated with discharging its responsibilities, consistent with the risk management requirements of Core Principle D.

**Treatment of Funds:** The amendments to the ICC Rules are consistent with the treatment of funds requirements of Core Principle F. The proposed changes amend the default waterfall in ICC Rule 802(b)(i)(A) to include the proceeds of default insurance, if any, as a default resource, to be applied after the application of ICC’s own guaranty fund contributions and prior to the application of guaranty fund contributions of non-defaulting CPs. Placing the proceeds from any default insurance that ICC may receive before the guaranty fund resources of non-defaulting CPs in the default waterfall is generally favorable to non-defaulting CPs and enhances ICC’s procedures that are designed to protect and ensure the safety of CP funds and assets. As such, the proposed amendments are consistent with the requirements of Core Principle F and Commission Regulation 39.15.

**Default Management:** The changes to the ICC Rules integrate default insurance into the default waterfall, providing additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. Amended ICC Rule 802(b)(iii) provides that ICC may use the contributions of non-defaulting CPs to the guaranty fund (and assessments on such CPs) prior to the receipt of proceeds owed under the default insurance, provided that those CPs are reimbursed from the insurance proceeds when received. Given that it can be relatively time consuming to make and process an insurance claim, this provision ensures that the existence of default insurance does not interfere with ICC’s default management and allows ICC to continue its default management process without having to wait for the payment of insurance proceeds. Moreover, the proposed changes to ICC Rule 808 permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy. The proposed amendments thus ensure that ICC can take timely action to contain losses and

liquidity pressures and to continue meeting its obligations in the event of a participant default and are thus consistent with the requirements of Core Principle G and Commission Regulations 39.16 and 39.35.

Amended Rules:

The proposed changes consist of changes to Chapters 1 and 8 of the ICC Rules to consider the possibility of ICC receiving proceeds from default insurance.

Annexed as an Exhibit hereto is the following:

- A. Proposed amendments to the ICC Rules

Certifications:

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

ICC further certifies that, concurrent with this filing, a copy of the submission was posted on ICC's website, and may be accessed at: <https://www.theice.com/clear-credit/regulation>

ICC would be pleased to respond to any questions the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6854.

Sincerely,



Maria Alarcon  
Staff Attorney