

Maria Zyskind
Staff Attorney

August 20, 2018

Re: Updates to ICC Treasury Operations Policies and Procedures Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation 40.6(a)

VIA ELECTRONIC PORTAL

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

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC (“ICC”) hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), a self-certification of changes to the ICC Treasury Operations Policies and Procedures (“Treasury Policy”). ICC is registered with the Commission as a derivatives clearing organization (“DCO”). ICC intends to implement the changes no sooner than the tenth business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office.

ICC proposes revising the ICC Treasury Policy. This submission includes a description of the changes to the ICC Treasury Policy. Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

ICC proposes to update the ICC Treasury Policy in light of the exemptive order¹ (the “Order”) that was issued by the Commission permitting ICC to invest, subject to certain conditions, Euro-denominated customer funds in French and German sovereign debt. ICC was prohibited from investing customer funds in foreign sovereign debt by Commission Regulation 1.25,² which does not permit such investments. As such, ICC is proposing changes to its Treasury Policy to permit its Treasury Department to directly invest both US Dollar- (“USD”) and Euro-denominated Guaranty Fund (“GF”) and margin cash posted by Clearing Participants (“CPs”) (“house origin cash”); to invest Euro-denominated cash posted by CPs for their margin requirements related to client positions (“customer origin cash”) in French and German sovereign debt; to revise its Euro investment guidelines to limit investment to French and German sovereign debt; and to make additional clarification and clean-up changes throughout the document to enhance readability.

ICC proposes to revise the ‘Funds Management’ section. ICC proposes clarifying changes that move reference to its default position of holding USD-denominated house origin cash in its Federal Reserve Account from the ‘Investment Strategy’ subsection to the amended ‘ICC Investment of Guaranty Fund and Margin Cash’ subsection, which is separated into USD and Euro. ICC proposes clarifying language within the proposed ‘USD’ subsection to note that, if ICC is unable to deposit house origin cash in its Federal Reserve Account, ICC’s Treasury Department may hold or invest such USD cash as specified within the Treasury Policy. ICC also proposes a revision to correct a typographical error by adding the verb “has” to the phrase “ICE Clear Credit arrangements.”

¹ 83 FR 35241 (July 25, 2018).

² 17 CFR 1.25.

In the proposed 'Euro' subsection, ICC proposes to permit its Treasury Department to directly invest Euro-denominated house origin cash. Under the current ICC Treasury Policy, the ICC Treasury Department is only permitted to directly invest USD-denominated house origin cash. Specifically, ICC proposes to state that Euro-denominated house origin cash will be (i) held in bank deposits, (ii) allocated to outside investment managers, or (iii) directly held/invested by the ICC Treasury Department pursuant to the Euro investment guidelines in the appendix. Under the proposed changes, ICC's Treasury Department is permitted to directly execute the Euro investment guidelines.

In the 'Outside Investment Management of Guaranty Fund and Margin Cash' subsection, ICC proposes removing reference to a specific outside investment manager to reflect ICC's engagement of multiple outside investment managers. ICC also proposes to correct certain typographical errors in this section to improve readability, including removing the indefinite article "an" in the phrase "an alternative or additional outside investment managers", adding the definite article "the" to the phrase "Investment Manager's investment", and changing "Directory of Treasury" to "Director of Treasury" in a footnote.

ICC proposes removing language from the 'Treasury Management for Client Business' section that references the introduction of client trades to clarify that ICC has already commenced client clearing.

ICC proposes the new 'Investment of Client Margin Cash' subsection within the 'Treasury Management for Client Business' section, which specifically relates to ICC's investment of customer origin cash. Currently, the ICC Treasury Policy prohibits ICC from investing customer origin cash in foreign sovereign debt due to Commission Regulation 1.25,³ which does not permit such investments. In light of the Commission's Order,⁴ ICC proposes to state that it will invest customer origin cash in compliance with Commission Regulation 1.25,⁵ including any applicable exemptive orders and including, without limitation, the conditions in Commission Regulation 1.25⁶ related to the investment of customer origin cash in non-U.S. sovereign debt.

ICC proposes revisions to the Euro investment guidelines appendix. ICC proposes to include a footnote, for clarity, stating that its Treasury Department can directly execute the Euro investment guidelines. ICC also proposes to extend the Euro investment guidelines to ICC's segregated CFTC Cleared Swaps Customer initial margin portfolio. ICC's Euro investment guidelines provide for the investment of Euro cash in overnight reverse repurchase ("repo") transactions with high quality sovereign debt as collateral. If 100% of the allocated cash cannot be placed in overnight reverse repo, backup investments will be in term reverse repo and then direct investment in high quality sovereign debt. Under the current Euro investment guidelines, investment in reverse repo and foreign sovereign debt is utilized only with respect to house origin cash and not customer origin cash pursuant to Commission regulation. Given the Commission's Order⁷ that allows ICC to invest Euro-denominated customer funds in French and German sovereign debt, ICC proposes to make its investment policies for Euro-denominated cash applicable to both customer origin and house origin cash. ICC further proposes to make the Euro investment guidelines uniform for both customer origin and house origin cash. Specifically, ICC proposes to revise the Euro investment guidelines to limit permissible investment, both directly and through reverse repo, to French and German sovereign debt given the comparability of French and German sovereign debt to U.S. government securities in terms of creditworthiness, liquidity, and volatility.⁸ With respect to customer origin cash, the proposed changes require that investments comply with any applicable conditions or

³ Id.

⁴ 83 FR 35241 (July 25, 2018).

⁵ 17 CFR 1.25.

⁶ Id.

⁷ 83 FR 35241 (July 25, 2018).

⁸ See ICE Clearing House Application for Exemptive Order (June 22, 2017) for a discussion of the suitability of French and German sovereign debt, available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@requestsandactions/documents/ifdocs/icedcos4cappl6-22-17.pdf>.

restrictions set forth in Commission Regulation 1.25⁹ including any applicable exemptive orders and allow the use of term reverse repo subject to a certain restriction. Additionally, should conditions change so that the French or German sovereign debt no longer meets the conditions or restrictions of Commission Regulation 1.25,¹⁰ the outside investment manager shall discontinue making any additional investments in such sovereign debt issuers.

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 Treasury Policy are consistent with the financial resources requirements of Core Principle B and the financial resource requirements set forth in Commission Regulation 39.33. The proposed changes to the Euro investment guidelines that limit investment to French and German sovereign debt and apply to both house origin and customer origin cash serve to preserve principle and maintain liquidity of funds since such debt has credit, liquidity, and volatility characteristics that are comparable to U.S. government securities. The proposed changes are designed to further ensure the reliable investment of assets in ICC’s control with minimal risk, which will continue to ensure that ICC maintains sufficient financial resources to withstand, at a minimum, the default of the two CP Affiliate Groups to which it has the largest exposure in extreme but plausible market conditions, consistent with the requirements of Commission Regulation 39.33.

Risk Management: The revisions to the ICC Treasury Policy are consistent with the risk management requirements of Core Principle D. Euro-denominated customer fund balances must be held in unsecured bank demand deposits accounts, exposing ICC and its CPs and their customers to the credit risk of such banks. Investing Euro-denominated customer funds in French and German sovereign debt provides for an important alternative for the protection of customer funds, thereby ensuring that ICC possesses the ability to manage the risks associated with discharging its responsibilities.

Treatment of Funds: The revisions to the ICC Treasury Policy are consistent with the treatment of funds requirements of Core Principle F. The proposed changes to the Euro investment guidelines are designed to ensure the safety of CP and customer funds and assets by investing such funds and assets in instruments with minimal credit, market, and liquidity risks as evidenced by the comparability of French and German sovereign debt to U.S. government securities in terms of credit, liquidity, and volatility characteristics. Moreover, investing Euro-denominated customer funds in French and German sovereign debt rather than holding such funds in unsecured bank demand deposits accounts, which expose ICC and its CPs and their customers to the credit risk of such banks, ensures the safety of such funds and assets. Such investment allows ICC to hold these funds and assets in a manner by which to minimize the risk of loss or of delay in ICC’s access to the assets and funds.

Amended Rules:

The proposed changes consist of changes to the ICC Treasury Policy. ICC has respectfully requested confidential treatment for the ICC Treasury Policy, which was submitted concurrently with this self-certification submission.

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>

⁹ 17 CFR 1.25.

¹⁰ Id.

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

Sincerely,

A handwritten signature in cursive script that reads "Maria Zyskind". The signature is written in a dark ink and is positioned above the typed name.

Maria Zyskind
Staff Attorney