Via Electronic Mail

September 19, 2019

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: FIA Response to ICE Clear Credit LLC's Advance Notice of Proposed Rule Change on Non-Default Losses

Dear Mr. Kirkpatrick:

ICE Clear Credit (ICC) filed an advance notice of proposed rule change on August 1, 2019, pursuant to Commission Rule 40.10, amending its Clearing Rules. ICC is proposing to adopt rules related to Non-Default Losses (NDLs). ICC is amending the rules to address treatment of the following NDLs: 1) Investment Losses; 2) Custodial Losses; and 3) other Non-Default Losses.

Investment Losses

In the case of Investment Losses, ICC proposes to contribute $20 million of ICC's own assets available for Investment Losses. In the event those resources are insufficient to cover the Investment Loss, ICC would have the right to allocate the shortfall to all participants. Regarding Investment Losses, 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. The investment policy is not in any way determined or approved by the clearing member participants that would bear the loss. The investment policy is in the control of ICC.

Generally speaking, the participants are provided with a specified return on collateral posted and do not directly receive the gain from ICC's investment of funds. However, under this proposed rule, they would be required to absorb the losses after ICC's own designated assets are used.

Custodial Losses

Similarly, in the case of custodial losses, ICC would designate $32 million of its own assets applied to custodial losses. In the event these resources were insufficient to cover Custodial Losses, ICC would have the right to allocate custodial losses to clearing member participants.

The clearing member participants do not select or have input regarding the custodian(s) that ICC uses. They are not in any way involved in the initial or on-going due diligence performed on the custodian by ICC and are not privy to the details of the safekeeping agreements entered into between ICC and its custodian(s). Should ICC agree to relieve (any of) its custodian(s) of their liability for assets/funds in certain events, there is no reason why such relieve should automatically result in participants bearing those losses. The proposed rule should not expect or even mandate that clearing member participants bear the cost of any Custodial losses beyond the designated amount of ICC's own assets.

If ICC uses a central bank as its custodian, ICC's proposed rule states that clearing member participants will bear 100% of the losses. It is unclear to FIA why ICC's own funds would not be used first.

<u>Non-Default Losses</u>

These are losses that are neither Investment Losses nor Custodial Losses that arise in connection with an event other than a participant default. ICC proposes that Non-Default Losses would not be covered from ICC contributions to default resources. Non-Default Losses would not be allocated to clearing member participants, or otherwise covered using Margin, General Guaranty Fund Contributions or Assessment Contributions of clearing member participants.

<u>Investment Losses and Custodial Losses should not be borne by participants</u>

FIA does not agree that clearing members participants should be responsible for ICC's Investment and Custodial Losses. In order to avoid a default, ICC must have sufficient capital and/or insurance to cover *all* non-default losses. The Investment Losses and Custodial Losses are non-default losses that are under the exclusive control and governance of ICC. ICC has a duty towards its members to ensure that its collateral is appropriately managed and re-invested. ICC has a duty of care to its clearing members participants and it should not be able to pass through losses that are within the sole control of ICC.

It is crucial that ICC consider and stress-test each potential non-default loss scenario to estimate expected loss and ensure adequate capitalization to address non-default losses. In the event that funding is insufficient, ICC's parent company and/or equity holders should be required to inject additional funding into ICC.

We appreciate the Commission's consideration of these comments. If the Commission has any questions regarding the matters discussed herein, do not hesitate to contact me at 202-773-3040 or jmesa@fia.org.

Sincerely,

Jacqueline Mesa
Chief Operating Officer & Senior Vice President of Global Policy

cc: Clark Hutchison, Director, Division of Clearing and Risk
Eileen Donavan, Deputy Director, Clearing Policy, Division of Clearing and Risk