



Via Electronic Mail
rule-comments@sec.gov

September 18, 2019

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File Number SR-ICC-2019-008 FIA Response to proposed changes to ICE Clear Credit LLC's Proposed Rule Change on Clearing Participant Default Management Procedures and ICC Risk Management

Dear Ms. Countryman:

We understand from ICE Clear Credit LLC's (ICC) rule filing SR.ICC 2019-010 dated 08/28/2019 that ICC is proposing to adopt rules related to Non-Default Losses (NDLs). ICC is amending the rules to address treatment of 1) investment losses, 2) custodial losses and 3) other non-default losses.

NDLs would not be covered from ICC contributions to default resources and would not be allocated to Participants, or otherwise covered using Margin, General Guaranty Fund contributions or Assessments Contributions of Participants.

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 all participants.

The participants do not selector 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 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 participants will bear 100% of the losses. It is unclear to FIA why ICC's own funds would not be used first.

Non-Default Losses

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 Participants, or otherwise covered using Margin, General Guaranty Fund contributions or Assessment Contributions of participants.

Investment Losses and Custodial Losses should not be borne by participants

FIA does not agree that clearing members 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 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,

A handwritten signature in black ink that reads 'Jacqueline Mesa'. The signature is written in a cursive, flowing style.

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

Cc: Jay Clayton, Chairman
Robert J. Jackson, Jr., Commissioner
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
Allison Herren Lee, Commissioner