By Electronic Mail

December 2, 2016

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: FIA Comments on SR-ICC-2016-013 - Notice of Filing of Proposed Rule Change to Amend the ICE Clear Credit Clearing Rules

On November 16, 2016, the Securities and Exchange Commission ("**Commission**") released a Notice of Filing of Proposed Rule Change to Amend the ICE Clear Credit (**"ICE"**) Clearing Rules (the "**Default Rules**") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder.

We would like to emphasize the close engagement that ICE has undertaken with members of FIA[1] over the last year to discuss these proposed amendments to its Default Rules. Many of the requests made by FIA members have been incorporated by ICE in its proposed changes to its Default Rules, and we thank ICE for the positive way it has engaged with our members.

We have reviewed and analyzed the proposed Default Rules and would like to bring to the Commission's attention a number of areas where we believe further work will be required by the industry together with ICE which is likely to require further changes to these Default Rules. We hope to have the opportunity to discuss these matters over the coming months with the Commission and ICE.

We have separated our response into 3 sections:

a) Variation Margin Gains Haircutting (VMGH) and Partial Tear-ups (PTU);
b) Compensation; and
c) Full Clearing Service Termination.

[1] FIA is a global organization with offices in the US, Europe and Asia. Its core members, many of which are banking organizations, are members of central counterparties. FIA's membership also consists of the major global futures exchanges, clearinghouses, trading platforms, and others that, together, make central clearing possible.

<u>Variation Margin Gains Haircutting (VMGH) and Partial Tear-ups (PTU)</u>

We recognize that the views of industry and regulators are still developing regarding the circumstances under which VMGH and PTU can be used. Some of the areas where these views are still developing in particular relate to the use of VMGH as a recovery tool used by the CCP during the default management process versus a resolution tool to be solely used by the resolution authority; and auction bids versus CCP end-of-day closing levels as PTU.

Use of VMGH

Our members' views on the use of VMGH were most recently represented in response to CPMI-IOSCO's Consultative Report "Resilience and recovery of central counterparties (CCPs): Further guidance on the PFMI" (**"CPMI-IOSCO Consultative Report"**). In a joint Trade Associations[2] response (**"Trade Associations' CPMI-IOSCO Response"**), we stated the following:

> *While some members support VMGH [Variation Margin Gains Haircutting] as a loss allocation tool in recovery with certain limitations others do not. Members who do not support the use of VMGH in recovery believe that "comprehensive loss allocation" beyond funded (i.e., default fund) and unfunded (i.e., capped assessments) mutualized resources would not be appropriate outside of resolution unless remaining resources come from the CCP or its parent. These members maintain that if a CCP exhausts all of its resources and cannot obtain additional resources from its parent, then the CCP is in principle unable to pay its obligations when they come due, and therefore should be placed into resolution. Other members who do not support VMGH in recovery believe that its use could have knock-on effects in an already distressed market, particularly if clearing members causing the four largest losses (assuming "Cover 2" plus one assessment), have already defaulted. One member does not support any use of VMGH in recovery or resolution. Members who support VMGH in recovery believe that it is an effective and efficient loss allocation tool that facilitates a CCP-led recovery, provided that it is subject to strict regulatory oversight and constraints (e.g., quantitative limits) determined on an ex ante basis. These members also believe that VMGH should be used only at the very end of the default "waterfall."*

The use of VMGH is also discussed in the Financial Stability Board's Discussion Note on Essential Aspects of CCP Resolution Planning (**"FSB Discussion Note"**). We understand the importance of CCPs' rulebooks addressing recovery issues but we would like to note that given authorities are still considering the use of tools such as gains haircutting, we believe further changes will need to be made to ICE's rules around the use of VMGH next year to reflect the international views on this topic once finalized. This further work with ICE will be critical to ensure that ICE's approach is consistent with international standards. We look forward to working with ICE next year to ensure changes are made to ICE's rules on the use of VMGH to ensure ICE's approach is consistency with such standards.

[2] Comprising FIA, the Global Financial Markets Association (GFMA), the International Institute of Finance (IIF), the International Swaps and Derivatives Association, Inc. (ISDA) and the Clearing House (TCH).

Price of Tear-ups

In a Joint Trade Associations[3] response to the FSB Discussion Note, we stated the following with respect to pricing of PTU:

> *The price for torn-up contracts should be as close to fair market value as possible so as not to negatively impact accounting or capital treatment for cleared transactions. We note that appropriate pricing may differ across product classes and urge the FSB and national regulators to work with CCPs and their clearing participants to establish globally-appropriate procedures for pricing torn-up positions on an ex ante basis.*

Given the need for additional work on this issue, as well as the overall scope of and general approach to PTUs, we appreciate ICE's commitment to working with FIA members on establishing globally-appropriate procedures on this issue as and when international standards emerge.

Governance

Given the substantial impact to clearing members from the use of VMGH and PTU, we believe it is vital that there be appropriate safeguards in place to ensure these tools are used appropriately. When invoking tools that impact loss distributions after the exhaustion of funded and unfunded resources, ICE should be required to consult not only the Risk Committee but also all members.

Compensation

Industry is unifying behind the concept of compensation for losses beyond mutualized resources. While no provision for such compensation is made in the submitted rule, ICE has agreed to revisit this idea again and we look forward to discussing this topic in more detail with ICE.

We believe that it is imperative for ICE to be consistent with the best practice outlined in the October 2014 CPMI-IOSCO Report on Recovery of financial market infrastructures (**"Recovery Report"**). This report contemplates compensation for clearing members and clients of clearing members who incur losses in recovery. Paragraph 3.4.7 of the Recovery Report, provides that a CCP could provide an instrument that has a degree of seniority in terms of being paid back from future profits of the CCP and money recovered from the defaulting clearing member. The point has been discussed further in the Trade Associations' CPMI-IOSCO Response.

[3] Comprising FIA, the Global Financial Markets Association (GFMA), the International Institute of Finance (IIF), the International Swaps and Derivatives Association, Inc. (ISDA) and the Clearing House (TCH).

Full Clearing Service Termination

Full clearing service termination was envisaged as a requirement at CCPs that clear multiple products to prevent contagion and ensure that a default in one service does not lead to CCP insolvency. However, given ICE only clears CDS and does not clear any other assets, we do not see the rationale for ICE to terminate all the trades without providing for recourse to ICE capital/ including it in the net sum calculation at the end of the waterfall when it reaches the point of service termination[4].

* * * *

We appreciate the Commission's consideration of these comments. If the Commission has any questions regarding the matters discussed herein, please contact Jacqueline Mesa, Senior Vice President of Global Policy, at +1[redacted] or [redacted].

Sincerely,

Jacqueline H. Mesa
Senior Vice President of Global Policy

[4] One large U.S. bank continues to support limited recourse clearing and therefore does not support such recourse to ICE capital as described.