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By Commission Website

December 21, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549

**Re: ICE Clear Credit LLC Request to Permit Portfolio Margining
of Swaps and Security-Based Swaps**

Dear Mr. Stawick and Ms. Murphy:

The Futures Industry Association (“FIA”)¹ welcomes the opportunity to submit this letter in support of the petition that ICE Clear Credit LLC (“ICE Clear Credit”) has submitted to the Commodity Futures Trading Commission (“CFTC”) by letter dated October 4, 2011² and the Securities and Exchange Commission (“SEC” and, together with the CFTC, the “Commissions”) by letter dated November 7, 2011, (collectively, the “Petition”).³

¹ FIA is the leading trade organization for the futures, options and over the counter (“OTC”) cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world’s largest derivatives clearing firms as well as leading derivatives exchanges and clearing organizations from more than 20 countries. As the principal members of the derivatives clearing organizations, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions.

The majority of the futures commission merchants (“FCMs”) that comprise FIA’s core constituency are either registered with the SEC as broker-dealers or have affiliates that are registered as broker-dealers. Approximately one-half of FIA member firms are currently clearing members of ICE Clear Credit and we expect other FIA member firms will seek to become ICE Clear Credit clearing members as the regulatory regime for cleared swaps and security-based swaps is implemented. As such, FIA member firms have a significant interest in supporting the requested order.

² Letter from Michael M. Philipp, Winston & Strawn, on behalf of ICE Clear Credit LLC, to David A. Stawick, Secretary to the Commodity Futures Trading Commission, dated October 4, 2011, requesting an exemption pursuant to section 4d(f)(3)(B) of the Commodity Exchange Act (“Act”).

³ Letter from Michael M. Philipp, Winston & Strawn, on behalf of ICE Clear Credit LLC, to Elizabeth M. Murphy, Secretary to the Securities and Exchange Commission, dated November 7, 2011, requesting an exemption from the application of Securities Exchange Act section 15(c)(3), and Rule 15c3-3 thereunder, and allowing certain affiliates of clearing members to be excluded from the definition of “customer” for purposes of SEC Rules 8c-1 and 15c2-1 to allow such affiliates’ CDS positions to be commingled with proprietary assets of a clearing member in the house account of such clearing member.

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As explained in detail in the Petition, the requested order would allow ICE Clear Credit, its clearing members that are dually-registered FCM/broker-dealers, and FCM/broker-dealers that clear on behalf of customers through such clearing members to:

- Hold customer positions in Credit Default Swaps (“CDS”), including broad-based index CDS (“Index CDS”) and narrow-based index CDS and single-name CDS (together, “Security-Based CDS”), and the eligible types, classes and categories of all of the foregoing CDS (collectively, “Eligible Products”), and the customer funds used to margin, secure or guarantee such Eligible Products, in a single customer omnibus account at ICE Clear Credit that is subject to section 4d(f) of the Act and subject to Subchapter IV of Chapter 7 of the Bankruptcy Code and the rules and regulations thereunder;
- Calculate margin for the customer omnibus account of its clearing members on a portfolio margin basis pursuant to ICE Clear Credit’s portfolio margining methodology, under which ICE Clear Credit could offset Index CDS and Security-Based CDS contracts that are correlated on a risk management and economic basis when calculating margin requirements; and
- Provide similar commingling and portfolio margining relief for FCM/broker-dealers that are clearing members and that clear on behalf of swap customers through those clearing members in respect of the Eligible Products at ICE Clear Credit.

FIA has consistently supported the adoption of procedures to permit, in appropriate circumstances, both non-futures position margin and other property to be held in the customer segregated account and futures margin and other property deposited on behalf of qualified customers to be held outside of a segregated account.⁴ We have stressed that a comprehensive regulatory regime authorizing risk-based portfolio margining across markets, *i.e.*, securities, commodities and OTC derivatives on securities and commodities, should reduce systemic risk, while allowing for more efficient use of capital. FIA, therefore, has encouraged the Commissions to agree on a market-neutral regulatory regime that will permit portfolio margining across markets.

Our earlier comments acknowledged that differing provisions of the Bankruptcy Code governing the failure of an FCM and the failure of a broker-dealer made implementation of a comprehensive portfolio margining regime difficult. As ICE Clear Credit explains in its Petition, however, Congress resolved the legal uncertainty arising under the Bankruptcy Code

⁴ Letter from John M. Damgard, President, Futures Industry Association, to David A. Stawick, Secretary to the Commission, and Elizabeth M. Murphy, Secretary to the Securities and Exchange Commission, dated September 14, 2009; Letter from John M. Damgard, President, Futures Industry Association, to Jean A. Webb, Secretary to the CFTC, dated April 2, 2002; Letter from John M. Damgard, President, Futures Industry Association, to Jonathan G. Katz, Secretary to the SEC, dated March 2, 2005.

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in the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). As the Petition describes in greater detail, section 713 of the Dodd-Frank Act amends the Securities Exchange Act to provide that cash and securities, including Security-Based Swaps, that are carried in a segregated account in accordance with an approved portfolio margining program will be subject to the commodity broker liquidation provisions of Subchapter IV of Chapter 7 of title 11 of the Bankruptcy Code and the rules and regulations thereunder. With this amendment, a major impediment to implementation of portfolio margining has been removed.

FIA agrees with ICE Clear Credit that a commingled portfolio margining account will allow ICE Clear Credit to offer the greatest benefit to the market and market participants by providing its FCM/broker dealer clearing members and their customers with greater operational efficiencies, capital efficiency and a more comprehensive offering of products that can be cleared. In particular, because many market participants hedge Index CDS positions with a single-name CDS, in the absence of portfolio margining, a trader will have to post full margin for both assets, “which will require a significant capital outlay that will discourage participation in the US swap market and potentially add to systemic risk during times of stress.”⁵ Portfolio margining, therefore, “will provide participants in the CDS market with the incentive and capital efficiency necessary to make the central clearing of CDS, as contemplated in the Dodd-Frank Act, economically feasible.”⁶

For the above reasons and for the other reasons set forth in the Petition, FIA supports ICE Clear Credit’s request for an exemptive order as described therein. We urge the Commissions to take such action as the agencies deem appropriate to implement promptly the requested portfolio margining regime.⁷

⁵ CFTC Petition, p. 12.

⁶ CFTC Petition, p. 13.

⁷ We recognize that the CFTC recently adopted Rule 39.4(e), effective on January 9, 2012, setting the procedural requirements applicable to a DCO wishing to implement a portfolio margining program. 76 Fed.Reg. 69334 (November 8, 2011). In adopting this rule, the CFTC stated that it would not adopt substantive rules in this regard until it had consulted with the SEC and specifically noted that the Dodd-Frank Act “does not set a deadline for these actions.” *Id.*, at 69339. As described above, we believe that a portfolio margining program for swaps and security-based swaps on CDS is critical to the success of central clearing of CDS. We encourage the Commissions to approve the Petition prior to moving forward on consideration of comprehensive substantive rules.

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Conclusion

FIA appreciates the opportunity to submit these comments in support of the ICE Clear Credit Petition. If the Commissions have any questions concerning the matters discussed in this letter, please contact Barbara Wierzynski, FIA's Executive Vice President and General Counsel.

Sincerely,



John M. Damgard
President

cc: Honorable Gary Gensler, Chairman
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Honorable Mark Wetjen, Commissioner

Honorable Mary L. Schapiro, Chairman
Honorable Elisse B. Walter, Commissioner
Honorable Luis A. Aguilar, Commissioner
Honorable Troy A. Paredes, Commissioner
Honorable Daniel M. Gallagher, Commissioner