



Clearing Rules

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406. Certain Requirements with Respect to Client-Related Positions of FCM Participants and Broker-Dealer Participants.

The provisions of this Rule 406 shall apply to Participants that are FCMs and/or Broker-Dealers in respect of Client-Related Positions. Without limiting Rule 312, ICE Clear Credit shall have no obligation or liability to any Non-Participant Party in respect of a Client-Related Position or any transaction, agreement or arrangement between a Participant and any Non-Participant Party. For the avoidance of doubt, Participants carrying Client-Related Positions that are swaps must be FCMs, and Participants carrying Client-Related Positions that are security-based swaps must be Broker-Dealers.

- (a) The relationship between a Non-Participant Party and a Participant in respect of Client-Related Positions for that Non-Participant Party shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties (“**Customer Account Agreement**”), subject to the applicable provisions of the Rules.
- (b) A Participant shall require each Non-Participant Party to provide margin or collateral (“**Non-Participant Collateral**”) in an amount no less than the amount of Margin of each applicable Margin Category required on a gross basis by ICE Clear Credit with respect to the relevant Client-Related Position(s) and that is commensurate with the risk presented by such Non-Participant Party; provided that Participant shall identify ICE Clear Credit may require additional margin with respect to Non-Participant Parties (or certain categories of Non-Participant Parties) with heightened risk profiles and collect margin from each such Non-Participant Party (or category of Non-Participant Party) at a level that exceeds 100% of the amount of Margin of each applicable Margin Category required on a gross basis by ICE Clear Credit, by such amount as is commensurate with the risk presented by each such Non-Participant Party (or category of Non-Participant Party) as determined by ICE Clear Credit from time to time as required by applicable law. For this purpose, “gross basis” shall mean that the margin requirement will be determined giving effect to any offset of such Client-Related Positions against Client-Related Positions relating to the same Non-Participant Party, but without any offset of such Client-Related Positions against Client-Related Positions relating to a different Non-Participant Party.
- (c) (i) A Participant shall receive, hold and use all Non-Participant Collateral only as permitted under CEA Section 4d(f) and the rules thereunder (including Part 22 of the CFTC Regulations and any interpretations thereof by the CFTC or its staff) and Securities Exchange Act Sections 3E(b) and/or 15(c)(3) and the rules thereunder, as applicable, and to the extent not inconsistent with the foregoing, as set forth in these Rules and the ICE Clear Credit Procedures (the “**Swap Customer Segregation Requirements**”). All property Transferred to ICE Clear Credit by Participant on behalf of Non-Participant Parties as Initial Margin shall be held in the Client Omnibus Margin Account of such Participant as cleared swaps customer property in accordance with the Swap Customer Segregation

Requirements. Pursuant to this Rule, Participant shall satisfy the requirement to obtain any segregation acknowledgement letter from ICE Clear Credit under the Swap Customer Segregation Requirements.

- (ii) Without limiting subsection (c)(i) above, the Client-Related Positions (including, solely to the extent permitted by applicable rules, orders or exemptions of the CFTC and SEC, Client-Related Positions that are security-based swaps) and related Non-Participant Collateral shall be part of the cleared swaps account class for purposes of Part 190 of the CFTC regulations.
- (d) Property held in the Client Omnibus Margin Account may only be applied in respect of Client-Related Positions as provided in these Rules and only to the extent permitted by the Swap Customer Segregation Requirements (including CFTC Rule 22.15).
- (e) ICE Clear Credit shall pass through to the relevant Participant the return on any assets in the Client Omnibus Margin Account (including any return provided by ICE Clear Credit on Cash therein), less administrative costs as determined by ICE Clear Credit.
- (f) In connection with any Client-Related Position and related Non-Participant Collateral, Participant shall keep and maintain written records required by the Swap Customer Segregation Requirements. Each Participant shall provide such reports to ICE Clear Credit with respect to Non-Participant Parties and their related Client-Related Positions and Non-Participant Collateral as and when required under the Swap Customer Segregation Requirements and otherwise upon request of ICE Clear Credit and upon such other basis, if any, as is provided in the ICE Clear Credit Procedures.
- (g) ICE Clear Credit shall have no duties or responsibilities with respect to the Client Omnibus Margin Account except as expressly set forth in these Rules and applicable law. ICE Clear Credit shall have no responsibility for any investment decisions by a Participant (or any other Person) with respect to assets in the Client Omnibus Margin Account or for the results of any such investments and shall have no obligation to monitor the value of the assets in the Client Omnibus Margin Account or any requirements set forth in any applicable agreement between Participant and a Non-Participant Party. ICE Clear Credit shall have no responsibility for the compliance by any Participant or Non-Participant Party with its obligations under any such agreement. ICE Clear Credit shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to the Client Omnibus Margin Account or the assets therein or transferred thereto or therefrom under these Rules received from a Person ICE Clear Credit believes to be authorized to act on behalf of the appropriate Participant. In no event shall a Non-Participant Party attempt to interfere with the ability of ICE Clear Credit to exercise its rights as set forth in the Rules.

- (h) Except with respect to Client-Related Positions resulting from transactions entered into on a designated contract market or national securities exchange, each Non-Participant Party for which a Participant clears a Client-Related Position must be an “eligible contract participant” as defined in the CEA.
- (i) Each Non-Participant Party consents to the disclosure by its Participant to ICE Clear Credit of such Non-Participant Party’s identity and information concerning the Client-Related Positions held by such Participant for such Non-Participant Party and related margin as set forth in the Rules.
- (j) Each Non-Participant Party consents and agrees that in the event a Default has occurred with respect to its Participant or in the event of the insolvency of the Participant, (i) the Participant (or its receiver, insolvency trustee or similar official) and/or ICE Clear Credit shall be entitled to attempt to transfer its Client-Related Positions in accordance with Part 190 of the CFTC regulations, other applicable law and the Default Portability Rules, (ii) such Non-Participant Party appoints ICE Clear Credit as its lawful agent and attorney-in-fact to take such actions on behalf of the Non-Participant Party as ICE Clear Credit determines necessary or appropriate in order to effectuate the Default Portability Rules with respect to the Client-Related Positions carried by the Participant for such Non-Participant Party, including executing any document or instrument with respect to the transfer of the Client-Related Positions and/or exercising rights and remedies to transfer such positions; (iii) the Non-Participant Party shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Participant, any receiver, insolvency trustee or similar official, or ICE Clear Credit to take action contemplated by its Rules, including, without limitation, the transfer of positions and the transfer of related margin or collateral; (iv) any determination made by ICE Clear Credit with respect to the termination value of a Client-Related Position under the Rules shall be conclusive and binding absent manifest error and (v) any amount payable by such Non-Participant Party in respect of the termination of a Client-Related Position held by the Defaulting Participant for such Non-Participant Party shall not be netted or offset against any amount owed by such Participant to such Non-Participant Party under any other agreement or instrument and shall be paid directly to or as directed by ICE Clear Credit.
- (k) Each Participant shall be required to obtain the agreement of each Non-Participant Party to the provisions of the Rules applicable to or otherwise referring to Non-Participant Parties (including Rule 312 and this Rule 406) and hereby represents and warrants to ICE Clear Credit that it has obtained such agreement.
- (l) ICE Clear Credit will not accept the deposit of Margin from a Participant in respect of Client-Related Positions in excess of the amount required by ICE Clear Credit, within the meaning of CFTC Rule 22.13(c). For the avoidance of doubt, any Margin deposited with ICE Clear Credit that subsequently exceeds the amount required by ICE Clear Credit as a result of a change in the amount

required or a change in the Value of such Margin will become available for withdrawal in accordance with Rule 401.