



**FOIA CONFIDENTIAL TREATMENT REQUESTED**

January 19, 2021

**VIA CFTC PORTAL**

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: Amendment to ICE Clear U.S., Inc. Rules - Submission Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Clear U.S., Inc. (“ICUS”) is submitting this self-certification to amend the ICUS Rules,<sup>1</sup> specifically the ICUS Rules and the ICUS Risk Management Framework. ICUS intends to revise its Rules and Risk Management Framework no sooner than the tenth business day following the filing of this submission with the Commission, or such later date as ICUS may determine.

**1. Overview**

The ICUS Rules and Risk Management Framework specify, respectively, the DC ICUS Contribution (or skin in the game that applies solely with respect to a Clearing Member default involving contracts that reference Digital Currencies as the underlying asset, specifically, in the case of ICUS, monthly futures on Bitcoin and monthly options on those futures) and how the shortfall margin that is specific to those Bitcoin contracts is determined.<sup>2</sup> ICUS is proposing to reduce the DC ICUS Contribution from USD 35 million to USD 15 million and make a related

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<sup>1</sup> Capitalized terms used and not defined in this submission have the meaning set forth in the ICUS Rules.

<sup>2</sup> While, ICUS currently lists monthly futures that reference Bitcoin and options on futures that reference that monthly contract, it previously (from the inception) also listed (but has since delisted) a daily Bitcoin futures contract. The amendments to the ICUS Rules would apply to all Digital Currency Contracts cleared by ICUS, ICUS, however, currently only clears 2 such contracts, namely the monthly futures (and options referencing those futures) on Bitcoin, referred to in the previous sentence, and it has committed that “before seeking approval or certification of Digital Currency Contracts referencing other digital currencies, [it] will coordinate with Commission staff in the Division of Clearing and Risk and Division of Market Oversight[.]” See ICUS’s Self-Certification Pursuant to Commission Rule 40.6 – Physically Settled Digital Currency Contracts, dated May 23, 2019. For simplicity, the shorthand “Bitcoin contracts” is used in this filing.



change to the method of calculating the Bitcoin specific short fall margin. The DC ICUS Contribution can only be used to the extent that there are unsatisfied Defaulted Obligation in respect of Bitcoin contracts and it sits in the waterfall after the defaulting Clearing Member's margin, Guaranty Fund contribution, and other assets, and before, in this order, ICUS's Corporation Priority Contribution and all Listing Exchange Default Contributions (respectively these currently amount to USD 50 million and USD 18 million and they can potentially be used to cover losses stemming from all contracts cleared by ICUS), Clearing Member default insurance secured and financed by ICUS (which ICUS is not under an obligation to maintain but currently amounts to USD 25 million), and the Guaranty Fund contributions of non-defaulting Clearing Members. As a result of: (1) the delisting of the daily Bitcoin contract; (2) the current low average daily volume and open interest on the remaining Bitcoin contracts; and (3) the historical and projected risk analysis involving the remaining Bitcoin contracts, ICUS believes that reducing the DC ICUS Contribution, from USD 35 million to USD 15 million, and the related changes to the Bitcoin specific shortfall margin, are appropriate.

## **2. Details of Rule Changes**

These proposed amendments require simple changes to the ICUS Rule 302(c)(iv) and ICUS's Risk Management Framework. A copy of the proposed amendments to ICUS Rule 302(c)(iv) is attached to this submission as Exhibit A. ICUS has respectfully requested confidential treatment for the proposed amendments to its Risk Management Framework which are being submitted concurrently herewith.

## **3. Compliance with the Act and Regulations**

ICUS reviewed the foregoing amendments and determined that they comply with the requirements of the Act and the rules and regulations promulgated by the Commission in implementing the Act. In this regard, ICUS reviewed the derivatives clearing organizations core principles ("Core Principles") and determined that the amendments are potentially relevant to the following Core Principles and the applicable regulations of the Commission thereunder:

Financial Resources (Core Principle B): Clearing Bitcoin contracts had the potential to increase ICUS's financial obligation to its Clearing Members. The existing, DC ICUS Contribution of USD 35 million was sized solely with commercial considerations in mind, rather than pure risk, and there is no requirement for ICUS to have any skin in the game. It is not, for example, factored in when determining ICUS's required "Cover 2" resources. It's nice to have but not required. The current DC ICUS Contribution of USD 35 million would, moreover, cover a multiple of the historical Bitcoin-related Cover 2 stress amount. In addition, ICUS will continue to use its ICE Risk Model to determine initial margin requirements for Bitcoin contracts, and it is amending the specific shortfall margin requirement for Bitcoin contracts, in a more conservative manner by lowering the Bitcoin shortfall allowance amount from USD 35 million to USD 15 million. Bitcoin contracts will also continue to be supported by ICUS's Corporation Priority Contribution, all Listing Exchange Default Contributions, ICUS's existing Guaranty Fund and Assessment rights. ICUS believes that these resources and related arrangements will be sufficient to cover the potential risk of loss to it from Bitcoin contracts in the event of a Clearing Member default, and that, overall, these amendments continue to provide ICUS with potent tools to assist in monitoring and managing potential risks, with financial resources that are appropriately sized, as such they are consistent with the requirements of Core Principle D and Commission Regulations 39.11 and 39.33.



Risk Management (Core Principle D): Clearing Bitcoin Contracts had the potential to present risk management issues for ICUS which it has addressed using appropriate tools and procedures which it is now proposing to modify slightly having experience clearing the contracts for more than 1 year while adding one contract (an option on its monthly Bitcoin contract) and delisting another contract (the daily Bitcoin futures contract). The additional DC ICUS Contribution that is reserved for Bitcoin contracts (while being reduced) is still amply sized given the risk that has been presented by the contracts historically and it will continue to reduce the potential loss to non-defaulting Clearing Members from a default involving Bitcoin contracts. In addition, ICUS will continue to use its ICE Risk Model to determine initial margin requirements for Bitcoin contracts, and it is amending the specific shortfall margin requirement for Bitcoin contracts in a more conservative manner by lowering the Bitcoin shortfall allowance amount from USD 35 million to USD 15 million, resulting in a defaulter pays model that will protect ICUS and non-defaulting Clearing Members against losses resulting from a default involving Bitcoin contracts. Both of these changes are consistent with the requirements of Core Principle D and Commission Regulations 39.13 and 39.36.

#### 4. Certifications

ICUS certifies that the proposed amendments to its Rules and to its Risk Management Framework discussed in this submission comply with the Act and the rules and regulations promulgated by the Commission thereunder. ICUS consulted with Clearing Members and other market participants in order to get feedback on these proposed amendments. ICUS is not aware of any substantive opposing views expressed regarding the amendments. ICUS further certifies that, concurrent with this filing, a copy of the submission was posted on ICUS's website, and may be accessed at <https://www.theice.com/clear-us/regulation>.

If you or your staff have any questions or require further information regarding this submission, please do not hesitate to contact the undersigned at (212) 748-3964 or [Eamonn.Hahessy@theice.com](mailto:Eamonn.Hahessy@theice.com).

Sincerely,

A handwritten signature in black ink that reads "Eamonn Hahessy". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Eamonn Hahessy  
General Counsel and Chief Compliance Officer

**EXHIBIT A**

(In the text of the amendment(s), below, additions are underlined and deletions are lined out)

**Rule 302. Monetary Defaults; Use of Guaranty Fund; Assessments**

...

(c)

...

(iv) only if, after the application of assets available for such purpose in accordance with subparagraphs (i)-(iii), the Defaulted Obligation in respect of Digital Currency Contracts has not been satisfied, the DC ICUS Contribution (but only to the extent of the unsatisfied Defaulted Obligation in respect of Digital Currency Contracts).

As used in this clause (iv), the “**DC ICUS Contribution**” shall be a commitment of the Corporation to provide \$~~1535~~ million in the aggregate as resources to be applied in respect of the Defaulted Obligation for Digital Currency Contracts pursuant to Rule 302(c)(iv). If the DC ICUS Contribution is so applied, the Corporation may in its discretion replenish the DC ICUS Contribution (but will have no obligation to do so)