



March 15, 2018

Mr. Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Re: Adoption of New Rule 107 and Amendment to Rule 302(c)--  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6

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Dear Mr. Kirkpatrick:

ICE Clear US, Inc. ("ICE Clear US") hereby submits by certification pursuant to Regulation 40.6, certain amendments to the ICE Clear US Rules as discussed herein and attached as Exhibit A.<sup>1</sup> The amendments are to become effective on the first business day following the tenth business day after submission, or such later date as ICE Clear US may determine.

ICE Clear US is amending the Rules to provide for contributions from Listing Exchanges as additional default resources. Such contributions, known as Listing Exchange Default Contributions, will be applied on a pro rata basis with the existing Corporation Priority Contribution made by ICE Clear US itself under the Rules. Accordingly, Listing Exchange Default Contributions will be applied to cover losses arising from the default of a Clearing Member following the use of the defaulter's own margin and guaranty fund contributions, and prior to the application of guaranty fund contributions of non-defaulting Clearing Members. In ICE Clear US's view, the Listing Exchange contributions will enhance the risk practices of, and the risk sharing between, the exchanges, the Clearing Members, and ICE Clear US itself, and create an incentive for exchanges to operate fair and orderly markets and to build liquidity in stressed market conditions.

Specifically, ICE Clear US is implementing a new Rule 107, which will require Listing Exchanges to provide and maintain a Listing Exchange Default Contribution (plus an additional 1% buffer amount). The Listing Exchange Default Contribution will be calculated pursuant to a formula based on the average guaranty fund contribution of Clearing Members, subject to a minimum of \$10 million per exchange. Rule 107 also requires replenishment of Listing Exchange Default Contributions if applied to default losses. The Rule also provides for return of the contribution following termination of clearing services for a Listing Exchange, and addresses the holding of such contributions by ICE Clear US, in a manner generally similar to the treatment of guaranty fund contributions of Clearing Members. Rule 107 also requires that each Listing Exchange have a clearing services agreement with ICE Clear US that requires the exchange to be bound by these requirements, among other relevant provisions of

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

the Rules. The clearing services agreement between ICE Clear US and ICE Futures U.S., Inc., currently the only Listing Exchange, will be modified accordingly.

Rule 302(c), which sets out the resources to be applied to default losses, is amended in clause (iv) to include Listing Exchange Default Contributions, on a pro rata basis with the existing Corporation Priority Contribution. The Corporation Priority Contribution itself is not being changed. Conforming changes have been made to internal default management procedures to incorporate Listing Exchange Default Contributions.

The amendments are potentially relevant to the following core principles and the applicable regulations of the Commission thereunder.

- *(B)Financial Resources.* The addition of Listing Exchange Default Contributions is designed to enhance ICE Clear US's overall financial resources. Specifically, the approach will increase available default resources to be applied after the exhaustion of the defaulter's margin and guaranty fund contributions, and prior to the use of guaranty fund contributions of non-defaulting Clearing Members. The amendments thus will also enhance the protection of guaranty fund contributions made by non-defaulting Clearing Members, by reducing the likelihood that ICE Clear US would need to use such contributions in the event of a Clearing Member default. As a result, in ICE Clear US's view, the amendments are consistent with the requirements of Core Principle B and Commission Regulations 39.11 and 39.33.
- *(D)Risk Management.* As noted above, the amendments are designed to enhance the risk management of the clearing house by aligning the risk objectives of the exchanges that submit Contracts for clearing with those of the clearing house. The amendments provide for risk sharing in the default waterfall between ICE Clear US and the Listing Exchanges. In addition, by requiring a contribution from such exchanges, ICE Clear US will create an incentive for those exchanges to operate fair and orderly markets and to build liquidity in stressed market conditions. As a result, ICE Clear US believes the amendments are consistent with the risk management requirements of Core Principle D and Commission Regulations 39.13 and 39.36.

ICE Clear US has received no substantive opposing views in relation to the proposed amendments and certifies that the amendments comply with the Act and the Commission's regulations thereunder. ICE Clear US further certifies that a copy of this submission has been posted on its website concurrent with this filing.

If you or your staff have any questions or require further information regarding this submission, please do not hesitate to contact the undersigned at [audrey.hirschfeld@theice.com](mailto:audrey.hirschfeld@theice.com) or (212) 748-4083.

Very truly yours,



Audrey R. Hirschfeld  
SVP and General Counsel  
ICE Futures U.S., Inc.

## EXHIBIT A

(additions underscored)

### Rule 107. Listing Exchanges

(a) Each Listing Exchange for which the Corporation determines to provide clearing services shall enter into a clearing services agreement in the form approved by the Corporation, which shall, among other matters, require the Listing Exchange to comply with the provisions of the By-Laws and Rules applicable to Listing Exchanges. The Corporation shall have no obligation to accept, or to provide clearing services to, any particular exchange or trading facility as a Listing Exchange, subject to any requirements of applicable law.

(b) Each Listing Exchange shall provide to the Corporation, and maintain with the Corporation for so long as it is a Listing Exchange, a cash contribution of default resources to be applied pursuant to Rule 302(c)(iv) (each, a “**Listing Exchange Default Contribution**”), plus an additional amount equal to 1% of the Listing Exchange Default Contribution (such additional amount, together with the Listing Exchange Default Contribution, the “**Listing Exchange Contribution**”). The Listing Exchange Default Contribution shall initially be in an amount equal to the greater of (i) \$10 million and (ii) the arithmetic average of the Guaranty Fund Deposit Requirements of all Clearing Members as of the end of the most recent calendar year. The Corporation will recalculate the required Listing Exchange Default Contribution using the formula in the preceding sentence for each Listing Exchange as of the end of each calendar year, provided that the Listing Exchange Default Contribution will not be reduced as a result of any such recalculation. In the event of an increase in its required Listing Exchange Default Contribution as of any calendar year-end, the Listing Exchange shall be required to increase its Listing Exchange Contribution to the required level, within the timeframe and in the manner specified in the policies and procedures of the Corporation as in effect from time to time. The Corporation shall not be obligated to return the Listing Exchange Contribution (or any part thereof), except pursuant to Rule 107(d).

(c) In the event of any application of its Listing Exchange Default Contribution pursuant to Rule 302(c)(iv), the Listing Exchange shall restore its contribution to the required level on demand of the Corporation (a “**Listing Exchange Replenishment**”); provided that (i) a Listing Exchange Replenishment required as a result of the application of a Listing Exchange Default Contribution with respect to a particular Monetary Default shall not be applied to further losses from that Monetary Default; and (ii) the Listing Exchange shall not be required to restore its Listing Exchange Default Contribution following the return of its Listing Exchange Contribution in accordance with Rule 107(d)).

(d) If an exchange or trading facility ceases to be a Listing Exchange in accordance with its clearing services agreement, the Corporation shall return its Listing Exchange Contribution on the date that is 60 days following the expiration or termination of all Contacts resulting from transactions submitted by such Listing Exchange to the Corporation for clearing; provided that the Corporation will be entitled to retain and apply such Listing Exchange Contribution in accordance with the Rules with respect to any Monetary Default occurring prior to or upon such expiration or termination.

(e) Listing Exchange Contributions will be held in a bank approved for the purpose by the Corporation. The Corporation shall have the sole right to withdraw cash from such account or accounts. The Corporation may invest any Listing Exchange Contributions in securities which are Government Securities and other securities, and

sell or dispose of any such investments, in accordance with the Corporation's investment policies and applicable law, and may engage in repurchase transactions with any cash or securities on deposit. Any interest, capital gain or other income earned on any such investments in securities shall belong and be credited to the Corporation (but without prejudice to any rate of return paid by the Corporation on cash deposited as a Listing Exchange Contribution). Rules 301(j), (l), (m) and (n) shall apply to Listing Exchange Contributions as though they were contributions to the Guaranty Fund (with references therein to Clearing Members being deemed to refer to Listing Exchanges).

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

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(c) If, after the application of funds in accordance with paragraph (b) of this Rule 302, the Defaulted Obligation has not been satisfied, and if the Defaulting Clearing Member fails to pay the Corporation the amount of the deficiency on demand, such Defaulting Clearing Member shall continue to be liable therefor, but the amount of the deficiency, until collected from the Defaulting Clearing Member, shall be met from the following sources of funds, provided, however, that the sources identified in subparagraphs (i), (ii), (iii), and (iv) shall be fully utilized before the sources identified in subparagraphs (v), (vi) and (vii) may be utilized, and, provided further that the sources identified in subparagraphs (v), (vi) and (vii) must be applied in the order listed (each such source to be fully utilized before the next following source is applied):

(i) such portion, if any, of the surplus of the Corporation as the Board determines to be available for such purpose;

(ii) if the President, with the concurrence of the Chairman, or, in the absence of the Chairman, any Director, so determines, a loan or repurchase agreement or similar transaction on such terms and conditions as they may determine to be necessary or appropriate (including without limitation granting an assignment, pledge or other lien on or security interest in the Guaranty Fund or the cash, securities and other property held in the Guaranty Fund or transferring such cash, securities or other property as provided in paragraph (f) of Rule 301);

(iii) if, and to the extent that, a Monetary Default relates to any Contract carried in any customer account carried by the Corporation for the Defaulting Clearing Member, the initial margin on deposit with the Corporation in all such customer accounts of the Defaulting Clearing Member to the extent that such deposits have not been applied pursuant to paragraph (b) hereof;

(iv) on a pro rata basis, the Corporation Priority Contribution and all Listing Exchange Default Contributions.

As used herein, the **"Corporation Priority Contribution"** shall be a commitment of the Corporation to provide \$50 million in the aggregate as resources to be applied pursuant to this subsection (c)(iv) of Rule 302. If the Corporation Priority Contribution is applied, the Corporation will have no obligation to provide additional funds to replenish such contribution or otherwise provide additional funds in respect thereof;

(v) subject to subsection (g)(ii) of Rule 301, paragraph (d) of Rule 302 and any applicable default auction priority set forth in any Default Auction Procedures adopted under these Rules (**"Default Auction Priority"**), the Guaranty Fund;

(vi) insurance proceeds, if any, received by the Corporation in connection with the Monetary Default giving rise to the Defaulted Obligation; and

(vii) assessments levied by the Corporation upon all the Clearing Members (other than the Defaulting Clearing Member) as hereafter provided in this Rule 302 (“**Assessments**”), subject to any applicable Default Auction Priority.

[Remainder of Rule Unchanged]