



Submission No. 15-118

June 18, 2015

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

Re: ICE Clear US, Inc. Self-Certification Pursuant to Commission Rule 40.6 -
Adoption of New Rule 509 Regarding Foreign Currency Settlement

Dear Mr. Kirkpatrick:

ICE Clear US, Inc. (“ICE Clear US”), a registered derivatives clearing organization (“DCO”) under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), for self-certification pursuant to Commission Rule 40.6, the amendment to its Rules attached hereto and discussed herein. The amendment is to become effective on the first business day following the tenth business day after submission, or such later date as ICE Clear US may designate.

Explanation and Analysis

ICE Clear US proposes to adopt a Rule 509, which is intended to mitigate liquidity risks (and related liquidity management costs of the clearing house) in connection with foreign currency variation margin settlements. ICE Clear US clears a number of ICE Futures U.S. currency futures contracts. The clearing house calculates and settles variation margin in those contracts in a currency other than U.S. dollars. As a result, in the event of a failure by a clearing member in making a required non-U.S. dollar variation margin settlement to the clearing house, ICE Clear US may be required to convert margin or other assets into that currency in order to make corresponding variation margin settlements to other clearing members.

As a “subpart C” DCO, ICE Clear US is required under Commission Rule 39.33(c) to maintain liquidity resources that enable it to meet its intraday, same-day and multi-day obligations to perform settlements with a high degree of confidence under a wide range of stress scenarios, including a default of the clearing member creating the largest aggregate liquidity obligation for the clearing house in extreme but plausible market conditions. This obligation applies to each currency for which the clearing house has obligations to perform settlements. ICE Clear US, as part of its liquidity management program, has access to various sources of liquidity to meet its foreign currency payment obligations, including access to spot transactions in the FX markets and an uncommitted multicurrency payment facility. As a commercial matter, ICE Clear US has

a high degree of confidence that these resources are sufficient to meet its obligations. However, not all such resources technically constitute “qualifying liquidity resources” for purposes of Commission Rule 39.33(c)(3). Although ICE Clear US has also sought other qualifying liquidity resources, such as committed FX facilities, ICE Clear US has found that there is limited availability of such arrangements on commercially acceptable terms. Clearing member foreign currency deposits typically provide enough liquidity for ICE to meet its Commission Rule 39.33(c)(3) liquidity requirement in each currency. However, when clearing member deposits in those currencies are insufficient, ICE Clear US engages, at its own expense, in FX transactions in order to convert ICE Clear US funds in U.S. dollars into those other currencies to maintain the required balances. ICE Clear US purchases of foreign currency, in addition to deposits from clearing members, allow it to meet its liquidity requirement in the applicable currency.

ICE Clear US is adopting new Rule 509 in order to provide an alternative means of satisfying its liquidity obligations in extreme circumstances, consistent with the requirements of Commission Rule 39.33(c). The text of new Rule 509 is attached hereto.

Under Rule 509, if a clearing member fails to make a variation margin settlement in a foreign currency, the clearing house will be entitled (if it determines that other same-day resources in that currency are not available) to settle the corresponding variation margin amount owed by it to one or more other clearing members in that foreign currency through entering into an FX spot transaction with those clearing members. Under the FX transaction, the clearing member will be obligated to pay to the clearing house an amount equal to the foreign currency variation settlement amount, in exchange for payment by the clearing house of the U.S. dollar equivalent of that amount, calculated by reference to exchange rates in the relevant market, as determined by the clearing house. As a result, the clearing house’s foreign currency variation margin obligation will be netted against the clearing member’s foreign currency payment obligation under the FX transaction, and the clearing member will receive the U.S. dollar equivalent payment.

Rule 509 further provides that the clearing member and the clearing house will enter into a reversing FX transaction, unless the clearing member elects otherwise. At settlement of the reversing FX transaction, the clearing member will be obligated to pay the clearing house the U.S. dollar equivalent payment it received in the initial FX transaction, and the clearing house will be obligated to pay the clearing member the foreign currency amount under the initial FX transaction, adjusted appropriately to reflect relevant interest rates in the two currencies for the period until settlement of the reversing FX transaction. As a result, following completion of the reversing FX transaction, the clearing member will have received the foreign currency variation settlement amount that it was originally owed.

Settlement of a reversing FX transaction will occur on the third business day following the election to enter into the transaction. However, settlement will be delayed if there is a currency market disruption on that date. If such a disruption continues for ten business days, either party may cancel the reversing FX transaction. A currency market disruption for this purpose will include any event or circumstance as a result of which it is unlawful for ICE Clear US to convert the foreign currency into U.S. dollars (or vice versa) or to make a payment in the foreign currency through customary FX market transactions, unavailability of spot market transaction quotations in the relevant currency and certain government actions applying to the relevant foreign currency market.

Rule 509 also limits the liability of the clearing house for any loss or expense incurred by a clearing member or any other person as a result of the clearing house's use of Rule 509 to the clearing house's obligation to enter into a reversing FX transaction.

Rule 509 applies only in the context of variation margin settlement. The rule would not affect the obligations of clearing members to make variation margin settlements to the clearing house in the specified currency.

ICE Clear US expects that in the ordinary course, even following a clearing member default, it would be able to obtain any needed foreign currencies in the foreign exchange market in order to meet its variation margin settlement obligations in those currencies. Accordingly, ICE Clear US would expect to exercise the authority provided under Rule 509 to effect foreign currency settlements only under extreme market conditions. Nonetheless, ICE Clear US believes that having the flexibility provided by the rule would provide it an important alternative means of satisfying its obligations and avoiding any potential liquidity shortfall in a particular currency in the event of a clearing member default.

Significantly, Rule 509 would also allow the clearing house to reduce its need to maintain regular balances in each relevant foreign currency. Keeping such balances has required the clearing house to engage in regular FX trading, an activity that ICE Clear US does not believe is a necessary or core function for a DCO. Such trading activity has also resulted in significant ongoing costs and expenses for the clearing house. In ICE Clear US's view, the addition of the rule would permit it to reduce such FX trading activity and related expenses (i.e., by having the ability to use U.S. dollars to enter into an FX transaction in an amount sufficient to meet its foreign currency liquidity requirement in each relevant currency), thus providing a more cost-effective manner of meeting its liquidity obligations.

Compliance with the Act and Commission Regulations

The rule amendment is potentially relevant to Core Principles B (Financial Resources), D (Risk Management) and E (Settlement Procedures) under the Act, and the applicable regulations of the Commission thereunder.

- Financial Resources. As noted above, the amendment is intended to enhance the clearing house's liquidity resources and ability to meet its obligations to perform variation margin settlements, consistent with the requirements of Core Principle B and Commission Rule 39.33(c). The amendment in particular addresses an extreme stress scenario in which a clearing member defaults on a non-USD variation margin payment obligation and the clearing house is otherwise unable, as a result of FX market conditions, to obtain the necessary currency to meet its corresponding variation margin payment obligations in that currency. Under the Rule, ICE Clear US will be able to satisfy its daily foreign currency variation settlement obligation through the use of an FX transaction with the relevant clearing member. Thereafter, subject to FX market conditions, the clearing house will reverse the FX transaction such that the clearing member will receive the original foreign currency variation amount. The Commission has noted, in adopting the Rule 39.33 requirements, that although the clearing house must satisfy the liquidity requirements in each relevant currency, the liquidity arrangements can be tailored to the scope of the obligations in the particular currency, and the DCO has discretion to determine the most

efficient means of obtaining the relevant liquidity.¹ ICE Clear US believes that new Rule 509, as a supplement to its other liquidity resources (including direct FX transactions and its multicurrency payment facility), provides an efficient means of meeting its liquidity needs in light of the scope of its foreign currency obligations.²

- Risk Management. The amendment will facilitate ICE Clear US's management of certain liquidity risks in connection with its clearing activities, in particular in connection with non-USD variation margin settlement obligations, on an ongoing and cost-effective basis. Such risks arise most acutely in the case of failure by a clearing member to make a non-USD variation margin settlement at a time of FX market disruption. As a result, the amendment is consistent with the requirements of Core Principle D and Commission Rule 39.13.
- Settlement Procedures. The amendment provides the clearing house an alternative means of satisfying its non-USD variation margin settlement obligations. The amendment thus avoids the risk of a failure or delay in a variation margin settlement by the clearing house as a result of the failure of an incoming non-USD payment from a clearing member in circumstances where FX market conditions do not permit the clearing house to easily obtain the relevant currency from other sources. As such, in ICE Clear US's view, the amendment is consistent with the requirements of Core Principle E and Commission Rule 39.14.

ICE Clear US hereby certifies that the amendment complies with the Act and the Commission's regulations thereunder.

ICE Clear US has received no substantive opposing views in relation to the proposed rule amendment.

ICE Clear US has posted a notice of pending certification and a copy of this submission on its website concurrently with the filing of this submission.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at Heidi.Rauh@theice.com or (312) 836-6716.

Sincerely,



Heidi M. Rauh
General Counsel

¹ See Derivatives Clearing Organizations and International Standards, 78 Fed. Reg. 72476, 72488-72489 (Dec. 2, 2013) ("where an FMI's obligations in a particular currency are relatively small, the depth and complexity of the arrangements necessary to establish high reliability is likely proportionately less demanding").

² In this regard, ICE Clear US also notes that in its view, its liquidity program (including Rule 509) is consistent with the liquidity requirements of Principle 7 (Liquidity Risk) of the Committee on Payment and Settlement Systems ("CPSS") and Technical Committee of the International Organization of Securities Commissions ("IOSCO") Principles for Financial Market Infrastructures (February 2012).

Rule 509 Foreign Currency Exchange for Variation Settlement

(a) Notwithstanding anything to the contrary in By-Laws or Rules, if a Clearing Member fails to make a variation margin settlement, in whole or in part, on any date (the "Variation Settlement Date") that is denominated in a currency other than U.S. dollars (the "Foreign Currency"), the Corporation shall evaluate whether same-day liquidity sufficient to cover any corresponding variation margin payment(s) owed by the Corporation on such date in such currency to one or more other Clearing Members is available to the Corporation from FX market transactions and other resources. If the President or his delegate determines, in his sole discretion, that sufficient such resources may not be readily available, the Corporation will be entitled to enter into an FX Variation Settlement Transaction with each such other Clearing Member to the extent of the insufficiency (and each such other Clearing Member hereby agrees that it will be deemed to enter into such transaction upon such determination by the Corporation without further action by either party). The Corporation's variation margin settlement obligation in the Foreign Currency to a Clearing Member shall be netted against the Foreign Currency payment obligation of the Clearing Member pursuant to the FX Variation Settlement Transaction.

An "FX Variation Settlement Transaction" shall be a foreign exchange spot transaction pursuant to which, on the Variation Settlement Date, the Clearing Member shall be obligated to pay to the Corporation the amount of the insufficiency in the Foreign Currency (the "Foreign Currency Payment") and the Corporation shall be obligated to pay to the Clearing Member an equivalent amount in U.S. dollars (or in U.S. treasury securities), calculated by reference to exchange rates in the relevant market as determined by the Corporation (the "USD Equivalent Payment").

(b) Unless otherwise elected by the Clearing Member by written notice to the Corporation no later than the close of business on the business day following the Variation Settlement Date, the Corporation and the Clearing Member shall enter into a reversing foreign exchange spot transaction (the "Reversing FX Transaction") pursuant to which the Corporation shall pay to the Clearing Member an amount in the Foreign Currency equal to the Foreign Currency Payment and the Clearing Member shall pay to the Corporation an amount in U.S. dollars equal to the USD Equivalent Payment, adjusted appropriately by the Corporation to reflect relevant interest rates in the two currencies for the period between the FX Variation Settlement Transaction and the Reversing FX Transaction. Settlement of the Reversing FX Transaction (if entered into) shall occur on the third business day following Variation Settlement Date; provided that if there is a Currency Market Disruption on such date, settlement will be delayed until the Currency Market Disruption has ceased; provided, further, that if the Currency Market Disruption is still continuing after 10 business days, either party may cancel the Reversing FX Transaction, in which case neither party shall have any further obligation in respect thereof.

"Currency Market Disruption" means the occurrence or existence on any date, as determined by the Corporation, of (i) any event or circumstance that makes it unlawful for the Corporation to convert U.S. dollars into the Foreign Currency or vice versa through customary foreign exchange market transactions or to transfer the Foreign Currency through customary payment systems and channels; (ii) any event or circumstance as a result of which firm quotations for a spot FX transaction between USD and the Foreign Currency are unavailable on customary market terms; (iii) the imposition

by any relevant governmental authority of any sanctions, prohibition, transaction block, asset freeze, moratorium, standstill, repudiation, expropriation, requisition, nationalization or similar action applying to transactions in the relevant Foreign Currency or the relevant foreign exchange market, or (iv) any event or circumstance with similar effect to any of the foregoing.

(c) The Corporation's liability for any shortfall, loss, cost, liability, damage or expense incurred or suffered by any Clearing Member or any other person in converting any USD Equivalent Payment into another currency or otherwise resulting from the settlement of the Corporation's variation margin obligation through an FX Variation Settlement Transaction shall be limited to entering into a Reversing FX Transaction on the terms provided in this Rule 509, and the Corporation shall not otherwise be responsible for any such shortfall, loss, cost, liability, damage or expense.

(d) The Corporation's exercise of any powers under this Rule 509 shall be without prejudice to the exercise of any other rights or remedies of the Corporation with respect to the Clearing Member that failed to make a variation margin settlement.