



October 26, 2018

**BY ELECTRONIC TRANSMISSION**

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 US, 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 US, Inc. ("ICUS") is submitting this self-certification to amend the ICUS Rules in order to allow ICUS, under certain circumstances, to settle payment obligations denominated in a currency other than U.S. dollars ("Foreign Currency") in U.S. dollars.<sup>1</sup> ICUS intends to implement the amended rules 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**

ICUS intends to amend existing ICUS Rule 509, and introduce a new Rule 510, in order to address circumstances where it is not feasible to settle obligations denominated in a Foreign Currency. Should that occur, upon notice from ICUS, obligations denominated in the affected Foreign Currency would be settled in U.S. dollars. ICUS needs to have a mechanism in place in case, for example, governmental action, such as the imposition of capital controls, were to preclude a variation margin, final settlement, or other payment obligation denominated in a Foreign Currency from being settled. While ICUS's main focus is on governmental action, ICUS is also addressing situations where other events, such as a systemic failure affecting the Foreign Currency settlement infrastructure, including settlement banks, could prevent ICUS or its Clearing Members from settling a Foreign Currency obligation in the stated currency.

**2. Details of Rule Changes**

ICUS is amending the defined term, "Currency Market Disruption," which is used in existing ICUS Rule 509, in order to implement these changes.<sup>2</sup> In addition, ICUS is introducing new ICUS Rule 510 in order to give ICUS the authority, upon the occurrence of a Currency Market Disruption, to issue a notice requiring that obligations denominated in the affected Foreign Currency are to be settled in U.S. dollars. The U.S. dollar equivalent settlement amount will be

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

<sup>2</sup> ICUS Rule 509 addresses a narrower situation involving disruptions in Foreign Currency markets; namely, the reversal of the settlement by ICUS, using U.S. dollars, of a Foreign Currency denominated variation margin payment to a Clearing Member where the U.S. dollar settlement was required because of liquidity constraints caused by another Clearing Member's failure to make a variation margin payment in that Foreign Currency.

calculated using a rate determined by ICUS. In addition to providing ICUS with the flexibility to convert settlement obligations from a Foreign Currency to U.S. dollars, Rule 510 also provides that settlement in U.S. dollars fully discharges the corresponding Foreign Currency denominated obligation. All ICUS Clearing Members have the ability to meet their settlement obligations in U.S. dollars. In the event that Rule 510 is invoked, all U.S. dollars used to settle obligations will continue to be segregated in accordance with the Act and applicable CFTC regulations.

ICUS notes that while existing ICUS Rule 708, entitled “Emergencies,” is broad enough to address this issue, it is more cumbersome to implement. Because ICUS is addressing a specific, known risk where timely action may be critical, a specific rule that can be implemented quickly is appropriate.

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

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 (“DCO”) Core Principles and determined that these amendments are potentially relevant to the following Core Principles and the applicable regulations of the Commission thereunder:

**Risk Management (Principle D):** The proposed amendments will provide ICUS with an appropriate tool to manage risk when events outside of ICUS’s and/or ICUS’s Clearing Member’s control prevent the settlement of obligations denominated in a Foreign Currency. Without this tool, for example, in-the-money Clearing Members and their customers would be exposed to greater risk because they could have potentially on-going unsecured exposures. The same issues could arise upon final settlement of a Foreign Currency denominated obligation. All of ICUS’s Clearing Members are required to maintain the on-going ability to settle obligations owing to or from ICUS in U.S. dollars and they routinely do so. As a result, the operational infrastructure is already in place and the new rule can be implemented quickly, should the need arise.

**Settlement Procedures (Principle E):** The proposed amendments will allow ICUS, consistent with DCO Core Principle E, to use U.S. dollars to effect money settlements denominated in a given Foreign Currency on a timely basis, and no less frequently than each day, under circumstances where it would not be possible to do so in the Foreign Currency itself. In addition, the amendments provide for settlement finality with respect to the underlying obligation, once the U.S. dollar payment is effected.

**Treatment of Funds (Principle F):** Consistent with DCO Core Principle F, U.S. dollars used to settle obligations as a result of the implementation of Rule 510 will be segregated in accordance with the Act and applicable CFTC regulations.

ICUS certifies that the amendments to existing Rule 509, and new Rule 510, comply with the Act and the rules and regulations promulgated by the Commission thereunder. A copy of the amendments is attached to this submission. 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>.



AMSTERDAM ATLANTA CALGARY CHICAGO HOUSTON LONDON NEW YORK SINGAPORE WINNIPEG

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, appearing to read "Eamonn Hahessy", written over a faint, illegible background.

Eamonn Hahessy  
General Counsel and Chief Compliance Officer



## Rule 509. Foreign Currency Exchange for Variation Settlement

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“**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 or infeasible for the Corporation or its Clearing Members 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 actual or anticipated 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.

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## Rule 510. Currency Market Disruption

If a Currency Market Disruption occurs, the Corporation, in its discretion, may require all variation margin, delivery, final settlement, and any other obligations denominated in the applicable Foreign Currency (“**Impacted Obligations**”) to be settled, by the Corporation and each Clearing Member, in U.S. dollars. The foregoing requirement to settle Impacted Obligations in U.S. dollars shall be effective, and terminate, upon notice from the Corporation. Settlement in U.S. dollars pursuant to this Rule 510 shall fully discharge the applicable Impacted Obligation. The U.S. dollar equivalent settlement amount for an Impacted Obligation shall be calculated by reference to exchange rates in the relevant market, as determined by the Corporation. The exchange rate shall be published on the Corporation’s website. Nothing in this Rule 510 shall in any way limit Rule 708.

For the purposes of this Rule 510, the terms “**Currency Market Disruption**” and “**Foreign Currency**” shall have the meanings provided in Rule 509.<sup>3</sup>

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<sup>3</sup> Rule 509 defines “Foreign Currency” as a currency other than U.S. dollars.