



Submission No. 16-005

November 2, 2016

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 -
Rule Amendments Relating to EU Equivalence Determination

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” or the “CFTC”), for self-certification pursuant to Commission Rule 40.6, the amendments to its By-Laws and Rules attached as an exhibit hereto and discussed herein. 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 designate.

Explanation and Analysis

ICE Clear US is making certain amendments to its By-laws and Rules in light of the equivalence determination adopted by the European Commission with respect to central counterparties regulated by the CFTC (the “Equivalence Determination”).¹ Under the European Market Infrastructure Regulation (“EMIR”),² ICE Clear US, as a clearing organization organized outside the European Union, has been required to apply for recognition under Article 25 of EMIR in order to continue to provide clearing services to persons located in the EU.

¹ Commission Implementing Decision (EU) 2016/377 of 15 March 2016 on the equivalence of the regulatory framework of the United States of America for central counterparties that are authorized and supervised by the Commodity Futures Trading Commission to the requirements of Regulation (EU) No. 648/2012 of the European Parliament and of the Council. The Equivalence Determination follows the common approach agreed between the CFTC and the European Commission regarding supervision of clearing organizations. See Joint Statement of the United States Commodity Futures Trading Commission and the European Commission: Common Approach for Transatlantic CCPs (10 February 2016).

² Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

Under the Equivalence Determination, a DCO that has elected to become subject to the additional requirements in subpart C of Part 39 of the CFTC regulations (a “Subpart C DCO”), such as ICE Clear US, must satisfy certain conditions in order to obtain EMIR recognition. The conditions, in relevant part, require that the US DCO have rules and procedures providing that (1) original margin for exchange-traded contracts for the proprietary account must be calculated using a minimum two-day liquidation period, on a net basis, (2) the original margin methodology must include measures to limit procyclicality of margin requirements at least equivalent to one of several specified approaches, and (3) the DCO must have financial resources sufficient to cover the loss from the default of the two clearing members (and their affiliated clearing members) presenting the largest loss to the clearing organization in extreme but plausible market conditions. The margin requirements in (1) and (2) above need not apply to certain agricultural contracts, however.

ICE Clear US is modifying its By-Laws and Rules to satisfy these conditions.

New Rule 502(d) has been added to address the first two conditions under the Equivalence Determination. The rule provides that original margin for Contracts in the proprietary account will be determined using a minimum two-day horizon for the liquidation period, calculated on a net basis. The rule also provides that the original margin calculation for all Contracts will include measures designed to limit procyclicality that are equivalent to at least one of three specified measures set forth in the rule. However, consistent with the Equivalence Determination, Rule 502(d) will not apply to agricultural contracts cleared by ICE Clear US that meet the requirements for exemption under Article 2 of the Equivalence Determination.

ICE Clear US currently satisfies the requirement that it have financial resources sufficient to cover the loss from the default of the two clearing members (and their affiliated clearing members) presenting the largest loss in extreme but plausible market conditions, consistent with the requirements of CFTC Rules 39.11 and 39.33. ICE Clear US is modifying By-Law 5.4(b) to explicitly state this requirement in the ICE Clear US rules in order to comply with the Equivalence Determination.

Compliance with the Act and Commission Regulations

The rule amendments are potentially relevant to Core Principles B (Financial Resources) and D (Risk Management) under the Act, and the applicable regulations of the Commission thereunder.

- **Financial Resources.** Although ICE Clear US currently maintains financial resources sufficient to withstand the default of the two clearing members (including affiliated clearing members) to which it has the largest exposures under extreme but plausible market conditions, it is adding an explicit requirement to this effect to the By-Laws. This change is thus expressly consistent with Commission Rules 39.11 and 39.33, and as such is consistent with Core Principle B.
- **Risk Management.** ICE Clear US is adopting two additional requirements with respect to original margin, specifically that (1) original margin with respect to Contracts in the proprietary account be calculated using a two-day time horizon for the liquidation period,



and (2) measures to limit margin procyclicality be implemented. These requirements will not apply to specified agricultural contracts, in accordance with the Equivalence Determination. Although not specifically required under the Commission's rules, such changes are nonetheless consistent with the risk management requirements of Core Principle D.

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



Exhibit

By-Law 5.4(b) (add at end)

The Corporation shall establish the Base Guaranty Fund Amount such that at a minimum the Corporation will maintain pre-funded financial resources sufficient to enable it to meet its financial obligations to Clearing Members notwithstanding a default by the two Clearing Members (including any of their affiliated Clearing Members) creating the largest combined loss to the Corporation in extreme but plausible market conditions, consistent with the requirements of CFTC Rules 39.11 and 39.33.

New Rule 502(d) (renumber existing 502(d) as 502(e))

(d) The methodology for determining original margin shall incorporate, among other relevant factors, and as more fully specified by the Corporation from time to time:

(i) a minimum 2-day time horizon for the liquidation period with respect to the proprietary account of each Clearing Member, calculated on a net basis, and

(ii) one or more measures designed to limit procyclicality, including by mitigating when possible disruptive or big step changes in margin requirements and by establishing procedures for computing margin requirements that include measures designed to limit procyclicality, as more fully specified by the Corporation from time to time. These will include measures that are equivalent to at least one of the following: (A) measures applying a margin buffer at least equal to 25% of the calculated margins, which the Corporation allows to be temporarily exhausted in periods where calculated margin requirements are rising significantly; (B) measures assigning at least 25% weight to stressed observations in the look-back period; or (C) measures ensuring that margin requirements are not lower than those that would be calculated using volatility estimated over a 10-year historical look-back period. Further, the Corporation's procyclicality measures shall be designed to deliver forward looking, stable and prudent margin requirements that limit procyclicality to the extent that the soundness and financial security of the Corporation is not negatively affected.

This Rule 502(d) shall not apply to original margin with respect to Contracts that are qualifying futures contracts (or options) on agricultural commodities as designated by the Corporation from time to time.