



November 14, 2019

VIA CFTC PORTAL

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st 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 Rules¹ as they relate to default insurance that is intended to cover certain losses in the event of a Clearing Member default. ICUS intends to amend these 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

At present, ICUS Rule 302(c)(vii) contemplates the possibility of ICUS receiving proceeds from default insurance which would be applied as part of the resources available to ICUS in the event of a Clearing Member default. ICUS is proposing to amend existing ICUS Rules 302 and 807 in order to refine and clarify how the proceeds from any such default insurance policy would be used.

2. Details of Rule Changes

ICUS is proposing to move existing ICUS Rule 302(c)(vii), which contemplates the possibility of ICUS receiving default insurance proceeds to be used as part of the resources available to cover unsatisfied Defaulted Obligations resulting from a Clearing Member default, and reinsert it (with one clarification) as ICUS Rules 302(c)(vi). By reinserting this existing Rule as described, ICUS is placing the proceeds from any default insurance before the Guaranty Fund contributions of, and Assessments on, ICUS’s non-defaulting Clearing Members, essentially providing a potential extra layer of protection for the non-defaulting Clearing Members’ Guaranty Fund contributions and Assessments. In addition, ICUS is adding language to proposed ICUS Rule 302(c)(vi) to make it more explicit that ICUS has no obligation to obtain or maintain default insurance. This is not a substantive change. It is intended to spell out in more detail what is already inferred in

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



existing ICUS Rule 302(c)(vii). ICUS is also making some minor conforming amendments to some of the remaining subparts of ICUS Rule 302(c).

In addition, ICUS is proposing to amend the introductory paragraph to ICUS Rule 302(c). This amendment clarifies that, although the proceeds from any default insurance are placed before the Guaranty Fund contributions of, and Assessments on, ICUS's non-defaulting Clearing Members in the default resource waterfall, in the event of a Clearing Member Default, ICUS may use those Guaranty Fund contributions and Assessments before it receives the proceeds from any default insurance, provided that any default insurance proceeds that are subsequently received will be used to reimburse any Guaranty Fund contributions and Assessments that were used. This amended addresses the reality that it can be relatively time consuming to make and then process an insurance claim and ensures that the existence of default insurance will not interfere with ICUS's expeditious management of a Clearing Member default.

Finally, ICUS is proposing to make conforming amendments to ICUS Rule 807. That Rule addresses reduced gains distributions. Like the amendment ICUS is proposing to make to the introductory paragraph to ICUS Rule 302(c), ICUS is proposing to amend ICUS Rule 807(b)(ii) to clarify that the fact that ICUS has a claim under a default insurance policy shall not preclude ICUS from making reduced gains distributions after a Clearing Member default. ICUS is also proposing to amend ICUS Rule 807(m) to provide that the proceeds from any default insurance policy will be available as one of the potential resources to reimburse Clearing Members that have been subject to reduced gains distributions.

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 and determined that the amendments are potentially relevant to the following core principles and the applicable regulations of the Commission thereunder:

Treatment of Funds (Principle F): These proposed Rule amendments, by placing the proceeds from any default insurance that ICUS may receive before the Guaranty Fund contributions of, and Assessments on, ICUS's non-defaulting Clearing Members in the default resource waterfall, enhance ICUS's standards and procedures that are designed to protect and ensure the safety of ICUS's Clearing Members' funds and assets, as such the proposed amendments are consistent with the requirements of Core Principle F and Commission Regulation 39.15.

Default Rules and Procedures (Principle G): These proposed Rule amendments enhance ICUS's ability to efficiently, fairly and safely manage a Clearing Member default when ICUS is the beneficiary of default insurance, the proceeds of which are part of the resources available to ICUS to cover any resulting unsatisfied Defaulted Obligations, as such they are consistent with the requirements of Core Principle G and Commission Regulation 39.16.

4. Certifications

ICUS certifies that the amendments to existing IUCS Rules 302 and 807 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>.

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.

Sincerely,

A handwritten signature in black ink that reads "Eamonn Hahessy". The signature is written in a cursive, flowing style.

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) If, after the application of funds in accordance with paragraph (b) of this Rule 302, the Defaulted Obligation in respect of Standard Contracts and/or Digital Currency Contracts 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 (A) the sources identified in subparagraphs (i), (ii), (iii), (iv) and (v) shall be fully utilized before the sources identified in subparagraphs (vi), (vii) and (viii) may be utilized; ~~(B), and, provided further that~~ the sources identified in subparagraphs (vi), (vii) and (viii) must be applied in the order listed (each such source to be fully utilized before the next following source is applied); and (C) notwithstanding clause (B), that the Corporation may, in its discretion, use sources identified in subparagraph (vii) and (viii) (in such order) prior to receipt of proceeds due pursuant to subparagraph (vi), provided that any proceeds subsequently received pursuant to subparagraph (vi) will be used to reimburse the sources of such assets used under subparagraph (vii) and (viii) (in the reverse order in which such assets were 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)(i) hereof (which margin shall be allocated between the Defaulted Obligation in respect of Standard Contracts and Digital Currency Contract in accordance with the Corporation's procedures);

(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 \$35 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)

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

As used in this clause (v), 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)(v) 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;

(vi) insurance proceeds, if any, received by the Corporation in connection with the Monetary Default giving rise to the Defaulted Obligation (it being understood that the Corporation shall not be obligated to obtain or maintain any insurance policy with respect to Monetary Defaults by Clearing Members);

(vii) 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; and

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

(viii) 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.

The total amount to be assessed at any one time pursuant to clause (viii) of this paragraph (c) is hereinafter called an “**Assessment Amount.**” For the avoidance of doubt, the Corporation may at any time following the occurrence of a Monetary Default and in anticipation of any charge against the Guaranty Fund make Assessments upon Clearing Members to post Assessments, subject to the limitations set forth in these Rules in respect of such Assessments.

For the avoidance of doubt, the resources described in the above subparagraphs of this Rule 302(c) (other than subparagraph (iv)) will be applied to the Defaulted Obligation in respect of both Standard Contracts and Digital Currency Contracts.

(d) The amount of a Replenishment that each Clearing Member must deposit in the Guaranty Fund to satisfy its obligation, pursuant to subsection (g)(ii) of Rule 301, to restore the Guaranty Fund deficiency in the event of the application of some part or all of the Guaranty Fund pursuant to subsection (c)(vii) of this Rule 302 (the total Guaranty Fund amount so applied referred to herein as the “**Aggregate Guaranty Fund Deficiency**”), shall be determined by multiplying the Aggregate Guaranty Fund Deficiency by a fraction, the numerator of which shall be the amount of the Clearing Member’s Guaranty Fund Deposit Requirement as of the time immediately prior to the Monetary Default that resulted in the Replenishment, and the denominator of which shall be the total of the Guaranty Fund Deposit Requirements as of such time for all Clearing Members (other than defaulting Clearing Members). The resulting product shall constitute the amount of the Replenishment that each Clearing Member must restore to the Guaranty Fund pursuant to paragraph (g) of Rule 301 as a result of the application of the Guaranty Fund pursuant to subsection (c)(vii) of this Rule 302.

Rule 807. Reduced Gains Distribution

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(b) *RGD Determination.* This Rule 807 shall only apply if so determined by the Board, (any such determination, an “**RGD Determination**”), where the following conditions are all satisfied:

- (i) a Monetary Default or Monetary Defaults have occurred or been declared;
- (ii) the Corporation has exhausted all available default resources under Rule 302 in respect of such Monetary Default or Monetary Defaults (and for this purpose, amounts described in Rule 302(c)(vi) that have been claimed but not yet received shall not be deemed available);
- (iii) the Corporation determines that Reduced Gains Distribution under this Rule 807 is appropriate in connection with a Default Auction or Partial Tear-Up under Rule 808;
- (iv) no Termination Notice has been issued; and
- (v) there has been no Corporation Default.

....

(m) The Corporation shall pay to each Contributing Clearing Member an amount equal to the aggregate of Cash Gainer Adjustments made with respect to such Contributing Clearing Member during the Loss Distribution Period (“**Post-RGD Payments**”), on a pro rata basis to the extent of available funds remaining under Rule 302(b) or (c) (including any such funds obtained from recoveries pursuant to Rule 302(k) or any proceeds of insurance received under Rule 302(c)(vi)), promptly after settlement of all obligations with respect to the relevant Monetary Default (including any Default Auction or Partial Tear-Up). For such purpose, Post-RGD Payments will constitute a Defaulted Obligation for purposes of Rule 302.