



## Submission No. 16-006

December 5, 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 -  
Deliveries Involving Gold Daily Futures Contracts

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 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 adopting new Rule 605 in connection with the commencement of clearing of the Gold Daily Futures Contract (the "Gold Contract"), which will be listed for trading on ICE Futures US, Inc. (the "Exchange")<sup>1</sup> and cleared by ICE Clear US. New Rule 605 establishes certain rules and procedures relating to deliveries under the Gold Contract.

As discussed in the Exchange Rule Submission, the Gold Contract will be based on the London Bullion Market Association ("LBMA") Gold Price, which is the principal daily global benchmark for the spot price of physical gold deliverable in London vaults and is determined through an auction administered by ICE Benchmark Administration. The Gold Contract will be a physically settled contract that reflects a delivery of one hundred fine troy ounces of gold of a quality satisfying the LBMA Good Delivery Rules with a minimum price fluctuation of one cent (USD) increments per fine troy ounce.

In connection with the settlement of Gold Contracts, ICE Clear US is adopting Rule 605 attached as an exhibit hereto. The rule specifies the mechanism for delivery of unallocated gold

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<sup>1</sup> Please see ICE Futures U.S., Inc. Rule Submission No. 16-163 dated December 5, 2016 (the "Exchange Rule Submission").



under the applicable LBMA Good Delivery Rules in settlement of the Gold Contracts. Under Rule 605, ICE Clear US will take title to gold on a transitory basis as escrow agent for the delivering party, and the Rule specifies ICE Clear US's obligations with respect to delivery. Rule 605 also sets out certain consequences of a failure to deliver by a Clearing Member. The rule further limits the liability of the clearing house for failures by third party vaults or gold settlement systems.

In addition, Rule 605 provides that ICE Clear US may offer a facility where it will have the option (but will not be obligated) to provide or obtain gold on behalf of delivering clearing members (the "Gold Facility") to facilitate settlement. The Gold Facility will reduce the risks and operational and other costs of settlement failures by Clearing Members that may otherwise occur. If ICE Clear US extends the Gold Facility and provides gold on behalf of a delivering clearing member to settle a Gold Contract, that member will not be in default as a result thereof, but the member will be obligated to reimburse ICE Clear US for the gold (or the cost thereof) as well as any costs or expenses incurred by ICE Clear US in providing the facility or obtaining the gold.

#### *Compliance with the Act and Commission Regulations*

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

- **Risk Management.** ICE Clear US believes that it will be able to manage the risks associated with physical delivery under the Gold Contracts. In connection with the Gold Contracts, ICE Clear US will establish relevant arrangements for the delivery and receipt of unallocated gold in the London market. Through the use of the Gold Facility, ICE Clear US believes that it will further be able to reduce the risk of a settlement failure by a delivering clearing member. ICE Clear US believes that its existing risk management framework, together with these new arrangements, will be sufficient for purposes of risk management of the Gold Contracts and deliveries thereunder. As a result, in ICE Clear US's view, the rule is consistent with Core Principle D and Commission Rule 39.13.
- **Settlement Procedures.** Rule 605 establishes specific delivery procedures for the settlement of the Gold Contracts. The rule details the obligation of ICE Clear US and the Clearing Members with respect to the delivery and receipt of unallocated gold in physical settlement of Gold Contracts. The Rule also sets out the terms of the Gold Facility, which the clearing house may use to facilitate settlement and avoid settlement failures. In addition, Rule 605 sets out certain limitations on the liability of the clearing house in connection with the failure of any settlement system or any vault. This rule is thus consistent with Core Principle E and Commission Rule 39.14.

As described herein, the amendments consist of changes to the ICE Clear US Rules. A copy of such revisions is attached hereto.

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](mailto:Heidi.Rauh@theice.com) or (312) 836-6716.

Sincerely,

A handwritten signature in black ink that reads "Heidi M. Rauh".

Heidi M. Rauh  
General Counsel

## Exhibit

### **Rule 605. Deliveries Involving Gold Daily Futures Contracts**

(a) In connection with the ICE Futures US Gold Daily Futures Contracts, delivery of gold will be made by transfer of ownership of the right to receive the relevant amount of unallocated gold in LBMA Vaults satisfying the LBMA Good Delivery Rules (as such terms are defined in the relevant Exchange Rules) (“Gold Vault Interests”), through the AURUM electronic clearing system (or successor system) operated by London Precious Metals Clearing Limited (or its successor). Neither the Corporation nor the Listing Exchange will have any responsibility or liability to any person for the use of, or any failure, error, action or omission of, such system or any LBMA Vault. Settlement will occur in accordance with the procedures and timetables specified in the Exchange Rules, subject to the provisions of this Rule.

(b) For purposes of Rule 401(c), the Corporation shall issue Notices of Intention to Deliver involving the ICE Futures US Gold Daily Futures Contracts received from Clearing Members (each, a “Gold Delivering Clearing Member”) to specific Clearing Members that have delivered a Notice of Intention to Receive (each, a “Gold Receiving Clearing Member”) in accordance with its procedures.

(c) Each Gold Delivering Clearing Member shall provide to the Corporation, in the form and by the deadline specified by the Corporation, confirmation from the relevant LBMA Vault that its account contains sufficient Gold Vault Interests to satisfy its delivery obligation in full.

(d) Rule 604 shall apply to the transfer of Gold Vault Interests to the Corporation or its account under the Exchange Rules as though such Gold Vault Interests were EWRs.

(e) A failure by a Clearing Member to timely deliver or pay for Gold Vault Interests in whole or in part as required by the rules of the Corporation or Listing Exchange may be reported to the Vice President of Market Regulation of the Listing Exchange by a Clearing Member who has failed to receive full performance of its contract, which Clearing Member may also make formal application for arbitration of the matter pursuant to the Arbitration Rules of the Listing Exchange as then in effect. A Clearing Member that failed to receive full performance of its contract because of a failure by another Clearing Member to timely deliver or pay for Gold Vault Interests in whole or in part will not have any claim against the Corporation with respect thereto.

(f) The Corporation may, in its discretion, provide a service to Clearing Members (the “Gold Facility”) pursuant to which the Corporation may, upon request or upon its own initiative, obtain, procure or otherwise make gold available to or on behalf of a Clearing Member which has issued a Notice of Intention to Deliver, in order to settle such Clearing Member’s obligation to deliver Gold Vault Interests. A Clearing Member which seeks to use the Gold Facility shall make a written request to the Corporation in the form and by the deadline specified by the Corporation. The Corporation (i) shall have no obligation to provide the Gold Facility, whether in full or partial settlement of a Clearing Member’s delivery obligation, in response to a request from a Clearing Member or otherwise at any time, (ii) may determine to withdraw the Gold Facility at any time, and (iii) shall not have any liability to any Clearing Member or any other Person as a result of any unavailability of, or any decision not to make available, the Gold Facility.

(g) A Clearing Member to which the Corporation provides the Gold Facility shall on demand reimburse and indemnify the Corporation and the Listing Exchange for any and all losses, costs, liabilities or expenses incurred in connection therewith. Without limiting the foregoing, the Clearing Member shall, on demand by the Corporation, (i) deliver to the Corporation the gold that was the subject of the delivery obligation covered by the Gold Facility or, at the election of the Corporation, pay to the Corporation the value thereof as determined by the Corporation, and (ii) pay any costs and expenses incurred by the Corporation in connection with any borrowing or overdraft of gold by the Corporation in connection therewith. Failure by the Clearing Member to satisfy any obligation under this Rule 605(g) shall constitute a “Monetary Default” as such term is defined in the By-Laws.



(h) In the event that the Corporation, upon the request of a Clearing Member or upon its own determination, utilizes its Gold Facility to procure gold with respect to a Gold Daily Futures Contract for which a Clearing Member has issued a Notice of Intention to Deliver, the Clearing Member shall not be deemed in default with respect to its delivery obligations under Rule 801 or under the Exchange Rules on the basis of the Gold Facility having been utilized to satisfy the Clearing Member's gold delivery obligation.