



**Submission No. 15-84**

March 20, 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 Bylaw 5.10 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 Bylaws 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 new Bylaw 5.10, 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. Under the terms of those contracts and clearing house rules, variation margin is required to be calculated and settled in a currency other than U.S. dollars. As a result, in the event of a default 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 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 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 the proposed bylaw in order to provide an alternative means of satisfying its liquidity obligations in extreme circumstances, consistent with the requirements of Rule 39.33(c). Under the new bylaw, if the clearing house determines that it is advisable in light of liquidity, operational or other conditions in the relevant currency or FX market, the clearing house will be entitled to settle any variation margin amount owed by it in a foreign currency through making an equivalent value payment in U.S. dollars. The clearing house would calculate the equivalent U.S. dollar payment by reference to exchange rates in the relevant market, as determined by the clearing house. Once the U.S. dollar payment is made, the clearing house’s obligations in respect of the foreign currency variation settlement will be deemed fully satisfied. The bylaw also provides that the clearing house will not be responsible for any loss or expense incurred by a clearing member or any other person as a result of the clearing house’s making payment in U.S. dollars as opposed to the foreign currency.

The text of new Bylaw 5.10 is as follows:

#### **5.10 Foreign Currency Settlement**

Notwithstanding anything to the contrary herein or in the Rules, the Corporation shall be entitled, to the extent the President, or in his absence his delegate, determines it to be advisable in light of liquidity, operational or other conditions in the relevant currency or foreign exchange market, to make any variation margin settlement owed by it that is denominated in any currency other than U.S. dollars (a “Foreign Currency Payment”) in whole or in part by payment of an equivalent amount in U.S. dollars, calculated by reference to exchange rates in the relevant market as determined by the Corporation (a “USD Equivalent Payment”). Payment by the Corporation of any USD Equivalent Payment shall fully satisfy and discharge the obligations of the Corporation in respect of the related Foreign Currency Payment, and the Corporation shall not be responsible 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 payment of a USD Equivalent Payment in lieu of a Foreign Currency Payment.

Bylaw 5.10 applies only in the context of variation margin settlement, under which clearing members are required to meet any non-USD variation margin payment obligation in the currency of the obligation, and the clearing house has a corresponding obligation to make a variation margin payment in the same currency. The bylaw would not affect the obligations of clearing members to make variation margin settlements to the clearing house in the specified

currency, but would permit the clearing house to make its corresponding settlement in USD if the President or his delegate determines it to be advisable under the circumstances in accordance with the bylaw.

The bylaw would not apply to settlement of original margin obligations (for which the existing ICE Clear US rules and procedures provide a tiered approach for the use of cover in different currencies, depending on the currency of the product). The bylaw also would not apply in the case of physical delivery under a contract at final settlement. The clearing house does not guarantee physical delivery under currency futures transactions under its Rules, and as a result the clearing house does not have an obligation to obtain the relevant foreign currency in the case of a default by a clearing member in physical settlement.

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 the bylaw to make U.S. dollar settlements in lieu of foreign currency settlements only under extreme market conditions. Nonetheless, ICE Clear US believes that having the flexibility provided by the bylaw 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, the bylaw 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 DCO 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 bylaw would permit it to reduce such FX trading activity and related expenses (i.e., by maintaining instead U.S. dollars 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. 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.<sup>1</sup> ICE Clear US believes that new Bylaw 5.10, 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.<sup>2</sup>

- 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 (through payment in an equivalent amount of USD). 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.

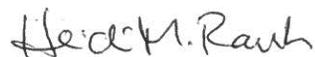
ICE Clear US hereby certifies that the amendment complies with the Act and the Commission's regulations thereunder.

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

Sincerely,



Heidi M. Rauh  
General Counsel

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<sup>1</sup> 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").

<sup>2</sup> In this regard, ICE Clear US also notes that in its view, its liquidity program (including the Bylaw 5.10) 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).