

Eric J. Nield
General Counsel

January 29, 2014

Re: Addition of Rule 802(f)(iv) to Provide Additional Clarity and Transparency Regarding ICC's Use of Guaranty Fund Assets Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation 40.6(a)

VIA E-MAIL

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Dear Ms. Jurgens:

ICE Clear Credit LLC ("ICC") hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act (the "Act") and Commodity Futures Trading Commission ("Commission") Regulation 40.6(a), a self-certification of amended ICC Rules (the "Amended Rules") to provide additional clarity and transparency regarding ICC's use of guaranty fund assets. Specifically, ICC proposes adding Rule 802(f)(iv). ICC previously submitted proposed Rule 802(f)(iv) to the Commission as part of its larger clearinghouse resolution and recovery rule changes under 40.10(a), which currently are pending with the Commission. The Division of Clearing and Risk of the Commission has notified ICC that adoption of Rule 802(f)(iv) is important for clarity and transparency and should not be contingent upon ICC's other pending rule changes. As a result, ICC is submitting this self-certification of Rule 802(f)(iv) on a stand-alone basis, independent of its larger clearinghouse resolution and recovery rule changes.

ICC is registered with the Commission as a derivatives clearing organization ("DCO"). ICC intends to make the Amended Rules effective no sooner than the tenth business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office. This submission includes the Amended Rules. A description of the principal changes contained in the Amended Rules follows. Certification of the Amended Rules pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

The purpose of the proposed rule change is to add Rule 802(f)(iv) to provide additional clarity and transparency regarding ICC's use of guaranty fund assets. As ICC currently has broad rights to use guaranty fund assets under Chapter 8 of the ICC Rulebook (specifically Rules 801 & 802), proposed Rule 802(f)(iv) is a clarification of existing clearing house authority. Rule 802(f)(iv) will provide additional clarity and transparency regarding ICC's authority to pledge assets in the guaranty fund to secure loans made to the clearing house for purposes of default management or to transfer such assets to counterparties under economically similar repurchase transactions. Under Rule 802(f)(iv), the proceeds of such borrowings could be used for the same purposes for which guaranty fund assets are authorized to be used under current ICC Rules.

Core Principle Review:

ICC reviewed the DCO core principles ("Core Principles") as set forth in the Act. During this review, ICC identified the following Core Principles as being impacted:

Financial Resources: Rule 802(f)(iv) further assures that ICC possesses adequate financial resources for default management purposes.

Treatment of Funds: Rule 802(f)(iv) clarifies ICC's ability to hold clearing participant guaranty fund assets in a manner which minimizes the risk of loss or of delay in ICC's access to the assets and funds.

Amended Rules:

The proposed rule change consists of the addition of Rule 802(f)(iv) to provide additional transparency and clarity regarding ICC's use of guaranty fund assets.

Annexed as an Exhibit hereto is the following:

A. Proposed ICC Rule 802(f)(iv)

Certifications:

ICC hereby certifies that the Amended Rules comply with the Act and the regulations thereunder. There were no substantive opposing views to the Amended Rules.

ICC hereby certifies that, concurrent with this filing, a copy of the submission was posted on ICC's website, which may be accessed at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

ICC would be pleased to respond to any questions the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6742.

Sincerely,



Eric J. Nield
General Counsel

Enclosures

cc: Laura Astrada, Commodity Futures Trading Commission (by email)
Tad Polley, Commodity Futures Trading Commission (by email)
Brian O'Keefe, Commodity Futures Trading Commission (by email)
Michelle Weiler, ICE Clear Credit (by email)
Sarah Williams, ICE Clear Credit (by email)



Clearing Rules

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Contribution (as defined below)) shall be separated from time to time into two tranches as follows:

- (i) **“Tranche 1”** shall consist of (A) the ICE Clear Credit Pro Rata Contribution (as adjusted, if applicable, by the proviso below) and (B) a portion of the Required Contribution of each Participant other than the Excluded Participant and any Retiring Participant if the relevant Obligation Failure or Default occurred after such Retiring Participant’s Scheduled Return Date (as defined in Rule 803) (each, a **“Remaining Participant”**) equal to such Remaining Participant’s Required Contribution *divided by* the sum of all Remaining Participants’ Required Contributions *multiplied by* the number of Remaining Participants *multiplied by* the ICE Clear Credit Pro Rata Contribution (as adjusted, if applicable, by the proviso below); *provided* that if the sum of all Remaining Participants’ Required Contributions *divided by* the number of Remaining Participants (the **“Average Contribution”**) is less than the ICE Clear Credit Pro Rata Contribution, for the purposes of determining Tranche 1, the ICE Clear Credit Pro Rata Contribution shall be deemed to be the Average Contribution and the remainder of the ICE Clear Credit Pro Rata Contribution shall be applied, if at all, in accordance with Rule 802(b)(iv).
- (ii) **“Tranche 2”** shall consist of the excess of each Remaining Participant’s Required Contributions over the amounts thereof included in Tranche 1.

802. General Guaranty Fund Application.

- (a) If a Participant is in Default and, as a result thereof, ICE Clear Credit suffers any loss or expense in effecting the Closing-out Process, or a Participant shall fail to make any other payment or render any other performance required under these Rules or a Contract (such failure, an **“Obligation Failure”**), then ICE Clear Credit shall, after appropriate application of such Participant’s Margin (including, with respect to losses or expenses arising out of Client-Related Positions, Margin provided by such Participant in the Client Omnibus Margin Account solely to the extent such Margin is permitted to be used under the Rules and applicable law) and other funds in or payable to the accounts of such Participant and any amounts collected from any guarantor of such Participant, or may, prior to such application, charge to and apply against the Participant’s contributions to the General Guaranty Fund (including any Specific WWR Guaranty Fund Contribution of such Participant), in the manner and in the order of priority set forth below:
 - (i) **FIRST:** To the payment of the costs and expenses of any sale, collection or other realization of such Margin or Collateral or amounts

deposited by others in the General Guaranty Fund, including, without limitation, fees and expenses of counsel, and all reasonable expenses, liabilities and advances made or incurred by ICE Clear Credit in connection therewith;

- (ii) SECOND: To the payment of any Obligations relating to Open Positions or the Closing-out Process or any obligations of ICE Clear Credit, in either case, arising out of or in any way relating to such Participant's Default or Obligation Failure (such obligations, together with the costs and expenses described in subparagraph (i), the **"Reimbursement Obligations"**);
- (iii) THIRD: To the extent any amount has been charged to or applied against the General Guaranty Fund pursuant to subparagraph (b)(vi) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants whose contribution to the General Guaranty Fund was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(vi) of this Rule, up to the amount of such charge and application;
- (iv) FOURTH: To the extent any amount has been charged to or applied against the General Guaranty Fund pursuant to subparagraph (b)(v) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants and ICE Clear Credit whose contribution to the General Guaranty Fund was charged and applied (whether or not such Participant remains a Participant at the time of the collection), first to the Participants charged to the extent they were charged after the ICE Clear Credit Default Maximum was reached and thereafter to the Participants and ICE Clear Credit, in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(v) of this Rule, up to the amount of such charge and application;
- (v) FIFTH: To the extent any amount has been charged to or applied against Tranche 2 pursuant to subparagraph (b)(iv) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants whose contribution to Tranche 2 was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iv) of this Rule, up to the amount of such charge and application;

- (vi) SIXTH: To the extent any amount has been charged to or applied against Tranche 1 pursuant to subparagraph (b)(iii) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants and ICE Clear Credit whose contribution to Tranche 1 was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iii) of this Rule, up to the amount of such charge and application;
- (vii) SEVENTH: To the extent any amount has been charged to or applied against the ICE Clear Credit Priority Contribution pursuant to subparagraph (b)(ii) of this Rule on account of such Participant's Default or Obligation Failure, to ICE Clear Credit up to the amount of such charge and application; *provided* that ICE Clear Credit shall contribute any amount recovered in respect of this subparagraph to the General Guaranty Fund for credit to the ICE Clear Credit Priority Contribution;
- (viii) EIGHTH: To the extent any amount has been charged to or applied against the Remaining Aggregate Specific WWR Contribution pursuant to subparagraph (b)(i) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants whose contribution to the Remaining Aggregate Specific WWR Contribution was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(i) of this Rule, up to the amount of such charge and application; and
- (ix) NINTH: To ICE Clear Credit or to whomsoever may be lawfully entitled to receive any surplus then remaining from such proceeds (including, without limitation, any insurer, surety or guarantor of the obligations of ICE Clear Credit) or as a court of competent jurisdiction may direct, of any such surplus or, if neither ICE Clear Credit nor any other Person is lawfully entitled to receive any such surplus, to or upon the order of the relevant Participant; *provided* that, if such Participant is a Defaulting Participant, then until such Defaulting Participant's Retirement Date determined pursuant to Rule 803, no such surplus shall be available for distribution under this subparagraph (vii) and any such surplus shall remain in the General Guaranty Fund and be subject to charge and application under paragraph (b) of this Rule.

Reimbursement Obligations shall include obligations in respect of a Defaulting Participant's House Positions and Client-Related Positions. To the extent such Reimbursement Obligations cannot be satisfied in full pursuant to this

subsection (a), amounts available pursuant to this subsection (a) shall be applied to Reimbursement Obligations in respect of House Positions and Client-Related Positions in proportion to the respective Initial Margin requirements of the Defaulting Participant in respect of such positions immediately prior to the Default, until the Reimbursement Obligations in respect of House Positions or Client-Related Positions are reduced to zero.

- (b) Following the occurrence of an Obligation Failure, the determination by ICE Clear Credit that a Participant is in Default or the occurrence of an Automatic Default with respect to a Participant, ICE Clear Credit shall be entitled, from time to time, to charge to and apply against the General Guaranty Fund with respect to any of such Participant's Remaining Reimbursement Obligations, in the following order:
- (i) where the Defaulting Participant is a Specific WWR CDS Participant, the aggregate remaining Specific WWR Guaranty Fund Contributions of all other Specific WWR CDS Participants (the "**Remaining Aggregate Specific WWR Contribution**");
 - (ii) the ICE Clear Credit Priority Contribution;
 - (iii) Tranche 1, pro rata from the contributions thereto of the Remaining Participants and ICE Clear Credit, based on the relative size of such contributions;
 - (iv) Tranche 2, pro rata from the contributions thereto of the Remaining Participants, based on the relative size of such contributions;
 - (v) any additional assets deposited in the General Guaranty Fund pursuant to paragraph (d) of this Rule (other than any such assets deposited in respect of a Participant's Specific WWR Guaranty Fund Contribution), pro rata from each Remaining Participant's contributions, based on the relative size of such contributions; *provided* that, for the purposes of this subparagraph, if the entire ICE Clear Credit Pro Rata Contribution was not included in Tranche 1 pursuant to the proviso in Rule 801(c)(i), the excess of the ICE Clear Credit Pro Rata Contribution over the amount thereof included in Tranche 1 shall be applied pursuant to this subparagraph (v), along with additional amounts deposited in the General Guaranty Fund by Participants pursuant to paragraph (d) of this Rule at the same proportionate rate of application as in Tranche 1 until the ICE Clear Credit Default Maximum is reached; and
 - (vi) (A) the Remaining Aggregate Specific WWR Contribution (where the

Defaulting Participant is not a Specific WWR CDS Participant); and (B) in any case any additional assets deposited in the General Guaranty Fund pursuant to paragraph (d) of this Rule in respect of a Participant's Specific WWR Guaranty Fund Contribution.

Notwithstanding anything to the contrary in these Rules, in no event shall more than the ICE Clear Credit Default Maximum be applied in the aggregate to the ICE Clear Credit Pro Rata Contribution in the case of a single Participant Default and any Obligation Failure resulting in such Default. "**ICE Clear Credit Default Maximum**" means, at any time of determination, the lesser of (A) twenty-five million dollars and (B) the amount of the ICE Clear Credit Pro Rata Contribution that has been applied at the time all additional assets that Remaining Participants may be required to deposit in the General Guaranty Fund pursuant to paragraph (d) of this Rule have been applied.

As used herein, "**Remaining Reimbursement Obligations**" means those Reimbursement Obligations in respect of a Defaulting Participant that remain unsatisfied after application of available amounts pursuant to subsection (a). Available amounts pursuant to this subsection must be applied to Remaining Reimbursement Obligations in respect of Client-Related Positions and House Positions in proportion to the respective Initial Margin requirements of the Defaulting Participant in respect of such positions immediately prior to the Default, until the Remaining Reimbursement Obligations in respect of Client-Related Positions or House Positions are reduced to zero.

- (c) Any deficiency in respect of Obligations shall remain a liability of the Participant and any related guarantor to ICE Clear Credit, which ICE Clear Credit may collect from any Margin (to the extent permitted to be used under these Rules), Collateral or other assets of such Participant or such guarantor or by legal process. Any such collection by ICE Clear Credit shall be applied in the following order: (i) to the costs and expenses, including, without limitation, fees and expenses of counsel, of obtaining such collection, (ii) to any unreimbursed costs and expenses referred to in subparagraph (a)(i) of this Rule, (iii) to any deficiencies owed to Participants under Wound-up Contracts described in Rule 804, (iv) to the Participants whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to subparagraph (b)(v) of this Rule (whether or not such Participant remains a Participant at the time of the collection), first to the Participants charged to the extent they were charged after the ICE Clear Credit Default Maximum was reached and thereafter to the Participants and ICE Clear Credit, in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(v) of this Rule, up to the amount of such charge and application, (vi) to the Participants whose contribution to Tranche 2 was charged and applied for such deficiency (whether or not such Participant remains a Participant at the time of

the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iv) of this Rule, up to the amount of such charge and application, (vii) to the Participants and ICE Clear Credit whose contribution to Tranche 1 was charged and applied for such deficiency (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iii) of this Rule, up to the amount of such charge and application, (viii) to ICE Clear Credit in respect of the charge and application against the ICE Clear Credit Priority Contribution, up to the amount of such charge and application; *provided* that ICE Clear Credit shall contribute any amount recovered in respect of this clause to the General Guaranty Fund for credit to the ICE Clear Credit Priority Contribution; (ix) to the Participants whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to subparagraph (b)(i) of this Rule (whether or not such Participant remains a Participant at the time of the collection), in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(i) of this Rule, up to the amount of such charge or application; (x) to the Client Omnibus Margin Account to the extent the Participant's Margin in respect of Client-Related Positions was applied to such deficiency; and (xi) to the payment of any other Obligations.

- (d) ***Additional Collateral Deposit.*** ICE Clear Credit shall notify Participants whenever an amount is charged to and applied against the General Guaranty Fund as provided in paragraphs (a) or (b) of this Rule (which notice will state the reason for such charge or application). If Reimbursement Obligations are charged to and applied against Collateral in the General Guaranty Fund pursuant to paragraph (a) or (b) of this Rule and, as a result, the amount of Collateral credited to a Participant is less than the amount it was required to maintain pursuant to Rule 801 immediately prior to such charge and application, the Participant shall Transfer to ICE Clear Credit additional Collateral for deposit into the General Guaranty Fund in an amount at least sufficient to restore that Participant's Required Contribution and any Specific WWR Guaranty Fund Contribution; *provided* that, if a Participant is a Retiring Participant or provides notice that causes it to become a Retiring Participant prior to the time such deposit is due, the Participant's additional Transfer required pursuant to this sentence shall be limited to the excess, if any, of (i) such Participant's Required Contribution and any Specific WWR Guaranty Fund Contribution on the date of the most recent application of Collateral from the General Guaranty Fund pursuant to paragraph (b) of this Rule over (ii) the aggregate Transfers of Collateral to ICE Clear Credit for deposit in the General Guaranty Fund made by such Participant after it became a Retiring Participant (other than in respect of increases to its Required Contribution or Specific WWR Guaranty Fund Contribution for periodic adjustments permitted under Rule 801) and any contributions of the Participant to the General Guaranty

Fund in excess (as determined by ICE Clear Credit) of its Required Contribution and Specific WWR Guaranty Fund Contribution (with respect to such Participant, such excess of clause (i) over clause (ii) from time to time, the “**Additional Assessment Limit**”); *provided* that, if a Participant was not obligated to make a Transfer to ICE Clear Credit of additional Collateral for deposit in the General Guaranty Fund because its Additional Assessment Limit was reduced to zero and, thereafter, its Required Contribution or Specific WWR Guaranty Fund Contribution increases, the Participant shall Transfer to ICE Clear Credit such additional Collateral for deposit in the General Guaranty Fund to the extent of its Additional Assessment Limit (determined using such increased Required Contribution or Specific WWR Guaranty Fund Contribution, as applicable) on the ICE Business Day following the effectiveness of such increase. All such additional Collateral shall be Transferred to ICE Clear Credit prior to ICE Clear Credit’s opening of business on the first ICE Business Day following such notice or such later time as ICE Clear Credit shall determine in its sole discretion. A Participant that fails to Transfer the full amount of such additional Collateral, shall be in Default, and ICE Clear Credit may, in addition to any other remedies it may have, debit such Participant’s House Margin Account for any or all of such unpaid amount and assess fines and charges against such Participant as provided in Rule 606.

- (e) Each Participant agrees that all right, title and interest in and to any cash Collateral Transferred by such Participant to ICE Clear Credit for deposit in the General Guaranty Fund and any cash proceeds of such Participant’s Collateral on deposit in the General Guaranty Fund shall vest in ICE Clear Credit free and clear of any liens, claims, charges or encumbrances in accordance with Rule 402(a). Upon the occurrence of a Default or an ICE Clear Credit Default, or as otherwise provided in these Rules, ICE Clear Credit shall be entitled to apply such cash Collateral and cash proceeds in the General Guaranty Fund, regardless of the source, and any interest payable with respect thereto (i) to the Reimbursement Obligations of any Participant or (ii) to the obligations of ICE Clear Credit to any Participant under any Wound-up Contracts.
- (f) (i) Each Participant hereby grants to ICE Clear Credit, acting on behalf of itself and each Participant, a continuing lien and security interest in and to and right of set-off against all of Participant’s right, title and interest, whether now owned or existing or hereafter acquired or arising, in and to all Collateral consisting of (A) all securities, financial assets and other property (other than cash) Transferred by such Participant to ICE Clear Credit for credit to the General Guaranty Fund and (B) all non-cash proceeds of any of the foregoing (jointly, (A) and (B), the “**Pledged Guaranty Collateral**”) as security for any and all Reimbursement Obligations of any and all Participants to ICE Clear Credit and for ICE Clear Credit’s obligations to any and all Participants under Wound-up

Contracts in the event of an ICE Clear Credit Default (collectively, the “**Guaranteed Obligations**”). Upon the return of Pledged Guaranty Collateral by ICE Clear Credit to a Participant in accordance with these Rules and the ICE Clear Credit Procedures, the security interest and lien granted hereunder on such Pledged Guaranty Collateral will be released immediately without any further action by either party.

- (ii) Upon the occurrence of a Default or an ICE Clear Credit Default, or as otherwise provided in these Rules, ICE Clear Credit, on behalf of itself or any Participant, may exercise all rights of a secured party under applicable law and all rights under these Rules. ICE Clear Credit may, without being required to give any notice, except as may be required by law, sell or otherwise apply any Pledged Guaranty Collateral Transferred to, or otherwise under the control of, ICE Clear Credit to satisfy the Guaranteed Obligations. Upon any such sale, ICE Clear Credit shall have the right to deliver, assign and transfer to the purchaser thereof the Pledged Guaranty Collateral so sold. Each purchaser at any such sale shall hold the Pledged Guaranty Collateral so sold to it absolutely and free from any claim or right of whatsoever kind, including any equity or right of redemption of the Participant which may be waived, and the Participant, to the extent permitted by law, hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted.
- (iii) Each Participant represents that it is the sole owner of or otherwise has the right to Transfer to ICE Clear Credit the Pledged Guaranty Collateral subject to the foregoing lien and security interest, free and clear of any other security interest, lien, encumbrance or other restrictions, and agrees not to create or permit to exist any such security interest, lien, encumbrance or other restrictions. Each Participant agrees to take any action reasonably requested by ICE Clear Credit that may be necessary or desirable for ICE Clear Credit to create, preserve, perfect or validate the foregoing lien and security interest or to enable ICE Clear Credit to exercise or enforce its rights with respect thereto. With respect to any Pledged Guaranty Collateral consisting of securities and other financial assets Transferred by ICE Clear Credit in accordance with these Rules, each Participant agrees it will accept securities and financial assets of the same issuer, type, nominal value, description and amount as those securities and financial assets initially Transferred by such Participant to ICE Clear Credit.

(iv) Each Participant agrees that ICE Clear Credit may at any time and from time to time assign, transfer, pledge, repledge or otherwise create a lien

on or security interest in, the General Guaranty Fund and/or the cash, securities and other property held in the General Guaranty Fund to secure the repayment of funds borrowed by ICE Clear Credit (plus interest, fees and other amounts payable in connection therewith) or pursuant to a repurchase agreement or similar transaction. Any such borrowing or repurchase transaction shall be on terms and conditions deemed necessary or advisable by ICE Clear Credit (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Participant to ICE Clear Credit for which such cash, securities or other property was pledged to or deposited with the ICE Clear Credit. Any funds so borrowed or obtained in repurchase agreements or similar transactions shall be used and applied by ICE Clear Credit solely for the purposes for which cash, securities and other property held in the General Guaranty Fund are authorized to be used pursuant to these Rules; provided that the failure of ICE Clear Credit to use such funds in accordance with this subsection shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest or repurchase transaction counterparty. Cash, securities and other property held in the General Guaranty Fund, subject to the rights and powers of ICE Clear Credit with respect thereto as set forth in these Rules and any agreements between any Participant and ICE Clear Credit, and subject to the rights and powers of any person to which the General Guaranty Fund or any cash, securities or other property held therein shall have been assigned, transferred, pledged, repledged or otherwise subjected to a lien or security interest, shall remain the property of the respective Participants depositing such cash securities and other property.

- (g) A Participant shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of ICE Clear Credit (i) to take any action contemplated by this Rule, including, without limitation, to liquidate, set off and/or apply such Participant's Open Positions, Collateral or other assets, pursuant to these Rules or (ii) to set off amounts owed to such Participant against such Participant's Obligations or any other Participant's Reimbursement Obligations.

803. Return of General Guaranty Fund Contributions.

ICE Clear Credit shall return a Retiring Participant's contributions to the General Guaranty Fund, to the extent not charged to or applied against pursuant to Rule 802 or Rule 804, no later than the later of (i) the Retiring Participant's Scheduled Return Date and (ii) the earlier of (A) the date that ICE Clear Credit determines that any Default that occurred on or prior to such Scheduled Return Date will not result in a charge against