



FOIA CONFIDENTIAL TREATMENT REQUESTED

January 8, 2021

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 Rules.¹ ICUS intends to revise its 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

On January 27, 2020, the Commission published final rules, entitled Derivatives Clearing Organization General Provisions and Core Principles,² which amended certain regulations applicable to registered derivatives clearing organizations, such as ICUS (the “DCO Regulation Amendments”).³ Specifically, the DCO Regulation Amendments modify, among others, CFTC Regulation 39.13(g)(8)(ii). ICUS Rule 502(b) was put in place in order to implement CFTC Regulation 39.13(g)(8)(ii), as originally drafted. That ICUS Rule must be amended in order to conform with Regulation 39.13(g)(8)(ii), as amended by the DCO Regulation Amendments. In addition, ICUS is proposing to make related amendments to ICUS Rule 202(k).

2. Details of Rule Changes

The DCO Regulation Amendments to CFTC Regulation 39.13(g)(8)(ii) require conforming changes to ICUS Rules 502(b) and 202(k).

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

² 85 Fed. Reg. 4800 (January 27, 2020) (RIN 3038-AE66).

³ The DCO Regulation Amendments had an effective date of February 26, 2020, and a compliance date of January 27, 2021.



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 (“Core Principles”) and determined that the amendments are potentially relevant to the following core principles and the applicable regulations of the Commission thereunder:

Risk Management (Core Principle D): Prior to the implementation of the DCO Regulation Amendments, CFTC Regulation 39.13(g)(8)(ii) stipulated that derivatives clearing organizations require their clearing members to collect initial margin from their customers for non-hedge positions at a level that is greater than 100 percent of the derivatives clearing organization’s initial margin requirements. CFTC Regulation 39.13(g)(8)(ii) was the subject of an interpretative letter from the Commission,⁴ the substance of which the DCO Regulation Amendments are intended to codify. As amended, CFTC Regulation 39.13(g)(8)(ii), stipulates that clearing members shall be required “to collect customer initial margin at a level that is not less than 100 percent of the derivatives clearing organization's clearing initial margin requirements with respect to each product and portfolio and commensurate with the risk presented by each customer account.” In addition, amended CFTC Regulation 39.13(g)(8)(ii) provides that derivatives clearing organizations shall “have reasonable discretion in determining whether and by how much customer initial margin requirements shall, at a minimum, exceed clearing initial margin requirements for categories of customers determined by the clearing member to have heightened risk profiles.” ICUS is proposing to amend ICUS Rule 502(b) to reflect these amendments to CFTC Regulation 39.13(g)(8)(ii), as a result the amendments to ICUS Rule 502(b) are consistent with the requirements of Core Principle D and Commission Regulation 39.13.

Rule Enforcement (Core Principle H): ICUS is also proposing to amend ICUS Rule 202(k) to explicitly reflect the requirements established by ICUS Rule 502(b), thereby requiring that the relevant policies, procedures and practices shall be made available to ICUS upon request, for periodic review, as a result the amendments to ICUS Rule 202(k) are consistent with the requirements of Core Principle H and Commission Regulation 39.17.

4. Certifications

ICUS certifies that the amendments to existing ICUS Rules 502(b) and 202(k) comply with the Act and the rules and regulations promulgated by the Commission thereunder. A copy of the amendments is attached to this submission in Exhibit A. 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>.

⁴ CFTC Letter No. 12–08 (Sept. 14, 2012).



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 style with a long horizontal stroke extending to the right.

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 202. Eligibility Requirements

To become and remain a Clearing Member and to have the privilege of clearing Contracts effected on or subject to the rules of one or more Exchanges, a Person must:

....

(k) Maintain as appropriate for the nature of its business, risk management policies, procedures, practices and systems reasonably sufficient in the judgment of the Corporation to monitor and control financial and operational risks from accounts cleared by it. Without limiting the foregoing, in order to comply with CFTC Regulation 39.13(g)(8)(ii), the risk management policies, procedures and practices shall identify categories of customers with heightened risk profiles and collect initial margin for each account, at a level that exceeds the clearing initial margin requirement determined by the Corporation, by an amount commensurate with the risk presented by each account. Such written risk management policies, procedures, practices and systems shall be made available to the Corporation upon request.

Rule 502. Margin and Premium Requirement; Additional Margin

....

(b) Clearing initial ~~initial~~ margin requirements shall be as determined by the staff of the Corporation from time to time. In order to comply with CFTC Regulation 39.13(g)(8)(ii), Clearing Members shall identify categories of customers with heightened risk profiles and collect initial margin ~~from their customers, for non-hedge positions,~~ for each account, at a level that exceeds the clearing initial margin ~~rate requirement~~ determined by the Corporation, by such an amount ~~as the Corporation shall specify from time to time~~ time commensurate with the risk presented by each account. Unless otherwise determined by the Board at any time, initial margin requirements shall be determined in accordance with the applicable margin policies of the Corporation as implemented from time to time.