



February 5, 2020

By Electronic Filing

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: **Self-Certification Pursuant to CFTC Regulation 40.6 – Member Delivery Obligations and Alternative Delivery Procedures (Eris Clearing, LLC Submission 2020-01C)**

Dear Mr. Kirkpatrick:

Eris Clearing, LL (“Eris Clearing” or the “Clearinghouse”), a registered derivatives clearing organization (“DCO”) under the Commodity Exchange Act, as amended (the “Act”), hereby notifies the Commodity Futures Trading Commission (the “Commission”), that pursuant to Commission Regulation 40.6 it is self-certifying revisions to the Eris Clearing Rulebook (the “Rulebook”) so as to make clear an FCM Clearing Member’s obligations as to open positions in expiring contracts, to provide for alternative delivery procedures, and to prohibit FCM Members from permitting the withdrawal of funds from an account of customer that would result in the account being lower than relevant initial margin requirement.¹ The Rules shall become effective on or following February 21, 2020.

Concise Explanation and Analysis

1. *Overview*
 - a. *Delivery*

Currently, all contracts cleared by the Clearinghouse are physically delivered. In order to assure that delivery occurs in an orderly manner, the Clearinghouse is adopting two amendments related to delivery. First, Rule 303(b)(ix) is being adopted to make clear an FCM Clearing Members obligation to assure that account owners holding positions at expiry have the ability to make or take delivery. Second, Rule 410(b) is being adopted to provide that where an account carries a deliverable position into expiry by error, the Clearing Member carrying the account may, with the agreement of the relevant account owners or controllers transfer the position to the account of a different beneficial owner.

¹ Capitalized terms used in this filing, but not defined herein, have the same meaning as specified in Eris Clearing Rules.

b. Withdrawals from Customer Accounts

The Clearinghouse is also adopting Rule 403(a)(ii) to make clear that an FCM Clearing Member may not permit a customer account to withdraw funds if it will result in the account being undermargined. As a practical matter, all contracts currently cleared by the Clearinghouse are fully-funded so Customer Accounts held at an FCM must always have the full amount of the contract.

c. FCM Financial Filings

Finally, the Clearinghouse is adopting an amendment to Rule 306(b) to make clear that an FCM Clearing Member must provide notice to the Clearinghouse when it has a reduction in adjusted net capital of 20 percent or more from the filing of its most recent Form 1-FR or FOCUS Report. The intention of the rule was to require FCMs to require notification to the Clearinghouse consistent with the notification requirements under CFTC Rule 1.12(g)(1). As currently written, the rule could be read to require notification of any reduction in adjusted net capital, however.

2. Discussion of Rules

Exhibit A contains all rule amendments showing all additions and deletions. The below is a discussion of the substantive rule amendments being certified:

Rule 303(b)(ix): This Rule is being adopted to make clear an FCM Clearing Member, absent receiving satisfactory information from an account owner that it is able to make or take delivery in a physically settled contract, is obligated to ensure that positions in physically delivered contracts are properly are liquidated in an orderly manner prior to the expiration of trading.

Rule 410(b): This Rule provides that in the event that an account carries a physically settled position past the expiry of the contract in error, the Clearing Member may still transfer the position to another account owner, so long as all relevant account owners, or persons that control those accounts, agree to the transfer and the transfer occurs between accounts with different beneficial owners. The Rule further makes clear that this does not relieve the obligations of a Clearing Member under Rule 303(b)(ix).

Rule 403(a)(ii): This Rule provides that an FCM Clearing member may not permit a Customer Account to withdraw funds or collateral if such withdrawal would place the account in a situation in which it is not meeting the relevant margin requirements.

Rule 306(b): The amendment to this Rule makes clear that an FCM Clearing Member must submit written notice to the Clearinghouse in the event of a reduction of adjusted net capital of 20 percent or more, consistent with CFTC requirements.

Compliance with the Act and Commission Regulations

Eris Clearing reviewed the DCO Core Principles and determined that the following Core Principles and the relevant Commission regulations may be pertinent to these Rule amendments.

1. Core Principle C - Participant and Product Eligibility

Recognizing the unique position that FCM's have within the futures industry and regulatory scheme, because of their role as intermediary for those wishing to trade futures contracts and in particular they're ongoing financial viability and the broad impact on the markets that a failure of an FCM would have, the Rules will, consistent with CFTC rules, have the practical impact of prohibiting FCMs from allowing customer accounts to become undermargined through the withdrawal of the customer's assets. Additionally, the rule amendments will provide the Clearinghouse with information about an FCM that may be experiencing financial stress through early warning notification consistent with CFTC rules.

2. Core Principle E - Settlement Procedures

As discussed above, the Rules are intended to provide greater certainty that physically settled contracts result in the intended physical settlement. Specifically, the rules make clear that an FCM Clearing Member is responsible for assuring that accounts carried on its books that hold positions that may result in delivery are able to make or take delivery. If the FCM Clearing Member does not have satisfactory information to believe that is the case, they must close out the position in an orderly manner prior to expiration. Moreover, in the event that a position is held past expiry in error, rather than risk of default, the Clearing Member will have an opportunity to find an account that is willing and able to make or take delivery.

Certification, Opposing Views and Posting on Website

These amendments were driven by discussions with potential FCM Clearing Members regarding delivery, their obligations around delivery and what occurs if someone were to accidentally hold a position through expiry. The amendments are consistent with similar rules of other derivatives clearing organizations. Eris Clearing has not received any substantive opposing views regarding these Rules.

Eris Clearing certifies that these Rules comply with the Act and the rules and regulations promulgated thereunder.

Eris Clearing has posted this submission concurrently on Eris Clearing's website at <https://www.erisx.com/regulation/exchange-notices/>.

In the event that you have questions or require further information regarding this submission, please do not hesitate to contact the undersigned at michael.piracci@erisx.com or 646-961-4486.

Very truly yours,

/S/

Michael A. Piracci
Chief Compliance Officer
Eris Clearing, LLC

Exhibit A

SEE ATTACHMENT