



**FOIA CONFIDENTIAL TREATMENT REQUESTED**

March 1, 2021

**VIA CFTC PORTAL**

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> 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,<sup>1</sup> specifically ICUS’s Default Auction Procedures (“Auction Procedures”). ICUS intends to revise the Auction Procedures 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**

ICUS’s Auction Procedures are designed to facilitate the liquidation of a defaulting Clearing Member’s portfolio through a modified Dutch auction with multiple Lots, when appropriate. The proposed amendments are designed to incorporate the functionality of Intercontinental Exchange, Inc.’s proprietary, automated Default Management System (“DMS”), as well as All or Nothing Bidding, into the Auction Procedures and, in addition, to make some clarifying and clean-up changes. With respect to the DMS, the amendments reflect the fact that the DMS will replace certain tasks in the auction process that are currently performed manually. With respect to All or Nothing Bidding, currently, should a bid for 100% of a Lot (“100% Bid”) be a winning bid, the portion of that Lot awarded to the 100% Bid is shared with any more competitively priced bids, in which case the award related to the 100% Bid is for less than 100% of the Lot. Under the revised procedures, in addition to the submission of what are now defined as “Standard Bids,” participants will have the option to submit an All or Nothing Bid, in addition to, or in lieu of, one or more Standard Bids. Should an All or Nothing Bid for a Lot be a winning bid, 100% of that Lot will be awarded to the All or Nothing Bidder, without the award being split among any more competitively priced Standard Bids.

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



## 2. Details of Rule Changes

ICUS proposes to amend the Auction Procedures in order to incorporate the automated functionality of the DMS and make clarifying edits regarding the auction process. Participants currently have an obligation to bid for each Lot in a minimum amount determined by ICUS (“Minimum Bid Requirement”). ICUS proposes to reflect the use of the DMS to communicate the Minimum Bid Requirement and to remove Annex B which contains a template for communicating the Minimum Bid Requirement. ICUS also proposes clarifying language regarding a Clearing Member that has outsourced its Minimum Bid Requirement to an affiliated Clearing Member. In addition, under the revised procedures, Auction Specifications (i.e., information on contracts to be auctioned, timing for the bidding process, etc.) are communicated to Clearing Members through the DMS and Annex A, which contains a template for communicating Auction Specifications, is being removed. ICUS also proposes to specify that bids must be submitted through the DMS, only during a specified time window and prior to the “Bidding Close Time,” and make corresponding changes throughout the document. ICUS further proposes updates on the submission of bids through the DMS, including preventing the submission of bids below the minimum bid size.

ICUS is also proposing changes to the Auction Procedures in order to allow for All or Nothing Bidding. In addition, with respect to a given auction participant and a Lot, ICUS proposes to define “BP” as the more competitive of (1) the weighted average bid price of all valid Standard Bids made by such auction participant for such Lot and (2) the price of any valid All or Nothing Bid made by such auction participant for such Lot, both proportionately scaled to a size representing 100% of the relevant Lot, or in the case of (1), the applicable fill percentage of such Lot. If an auction participant submits only an All or Nothing Bid, or submits an All or Nothing Bid and Standard Bids but the Standard Bids do not meet the Minimum Bid Requirement, then the average price is the price of the All or Nothing Bid. If an auction participant submits only Standard Bids, then the average bid price calculation is unchanged from the current procedures. ICUS proposes further revisions that distinguish All or Nothing Bids from Standard Bids. Furthermore, in order to satisfy the Minimum Bid Requirement, ICUS is proposing that any individual bid must be equal to or larger than any applicable minimum bid size.

ICUS is also proposing updates related to sorting the submitted bids and determining the auction clearing price. In this regard, ICUS is proposing revisions to Examples 1-3, which demonstrate the calculation of the auction clearing price, in order to incorporate All or Nothing Bidding. In addition, ICUS proposes to add a new Example 4, to show the calculation of the auction clearing price with an All or Nothing Bid. ICUS also proposes explanatory language relating to All or Nothing Bidding. Specifically, if an All or Nothing Bid sets the auction clearing price, no Standard Bids will receive a share of the relevant Lot even if their bid prices are higher than or equal to the auction clearing price. If there are multiple All or Nothing Bids at the auction clearing price, the Lot will be allocated equally among the auction participants submitting such All or Nothing Bids. Where ICUS determines the auction clearing price for less than 100% of a Lot, ICUS proposes clarifications regarding All or Nothing Bidding under those circumstances. ICUS has respectfully requested confidential treatment for these amendments to the Auction Procedures which were submitted concurrently with this submission.

Finally, in addition, to some clarifying and clean-up changes, ICUS proposes some further amendments, such as an explicit reference to the role the ICUS Risk Committee will play in



providing prior guidance on the prudent allocation or classification of product classes for the purposes of conducting mandatory auctions and specifying that the DMS will be used to notify a bidder of a winning bid.

### **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:

**Financial Resources (Core Principle B):** The proposed changes introduce All or Nothing Bidding to ICUS’s existing auction methodology. This new bid type rewards auction participants for bidding competitively on both size and price, rather than just price, and has the potential to increase the willingness and ability of Clearing Members and their customers to participate in an auction and absorb the defaulting Clearing Member’s positions as part of the default management process. If an All or Nothing Bid sets the auction clearing price for a Lot, the revised Auction Procedures award 100% of the Lot to that bid, rather than splitting the award with auction participants bidding more competitively on price but in smaller sizes. These changes incentivize competitive bidding by rewarding auction participants for bidding competitively on both price and size and are designed to promote effective and efficient auctions to facilitate the close-out of a defaulting Clearing Member’s portfolio. Furthermore, the proposed changes that are designed to incorporate the automated functionality of DMS, replacing certain manual tasks in the auction process, promote ICUS’s ability to efficiently and safely manage its auction process should a Clearing Member be declared in default. In ICUS’s view, these enhancements will strengthen ICUS’s ability to manage its financial resources and manage a Clearing Member default, as such they are consistent with the requirements of Core Principle B and Commission Regulations 39.11 and 39.33.

**Risk Management (Core Principle D):** As described above, the optional All or Nothing Bid incentivizes competitive bidding, promoting the goal of reaching an efficient auction clearing price that permits ICUS to close out the defaulting Clearing Member’s portfolio and return ICUS to a matched book. In addition, the proposed changes reflect the fact that certain manual tasks in the auction process, including communicating Minimum Bid Requirements and Auction Specifications, submitting bids, and notifying winning bidders, will be replaced by the automated functionality of the DMS. These changes promote ICUS’s ability to efficiently and safely manage its auction process by reducing the risk of error. ICUS believes that the proposed amendments augment ICUS’s procedures relating to default management and enhance ICUS’s ability to manage a Clearing Member default. The proposed changes thus serve to promote the soundness of ICUS’s risk management tools and procedures, thereby enhancing ICUS’s ability to manage the risks associated with discharging its responsibilities, as such they are consistent with the requirements of Core Principle D and Commission Regulations 39.13 and 39.36.

**Default Rules and Procedures (Core Principle G):** The proposed addition of All or Nothing Bidding, and the automated functionality of the DMS, enhance ICUS’s ability to manage a Clearing Member default, by incentivizing competitive bidding to promote effective and efficient auctions and enhancing ICUS’s ability to efficiently and safely manage its auction process by



reducing the risk of errors through the elimination of manual processes, as such they are consistent with the requirements of Core Principle G and Commission Regulation 39.16.

#### **4. Certifications**

ICUS certifies that the proposed amendments to its Auction Procedures discussed in this submission comply with the Act and the rules and regulations promulgated by the Commission thereunder. 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>.

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](mailto: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, sweeping underline.

Eamonn Hahessy  
General Counsel and Chief Compliance Officer