



March 26, 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

ICUS Rule 204 sets forth certain reporting and notice obligations that ICUS Clearing Members are expected to adhere to. The Rule, for example, requires Clearing Members to provide ICUS with periodic financial reports and notifications regarding certain regulatory events. ICUS is proposing to refine these by making them more streamlined while also adding 2 new, more focused, reporting obligations.

2. Details of Rule Changes

At present, ICUS Rule 204(a)(ii) contains a stale reference to FINRA Rule 3070 which is no longer in effect. It has been replaced by FINRA Rule 4530. ICUS is proposing to remedy that stale reference. In addition, ICUS is proposing to streamline this reporting and notice obligation so that it captures categories of information that are truly relevant to ICUS while at the same time reducing the reporting burden on Clearing Members.

Among other things, ICUS Rule 204(a)(ii) requires Clearing Members to provide ICUS with “a copy of each financial statement, financial report, or notice” submitted to FINRA pursuant to

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



FINRA Rule 3070, now FINRA Rule 4530. FINRA Rule 4530, like its predecessor, is in some respect quite broad. For example, it requires Clearing Members to report to FINRA (and by extension to make a filing with ICUS) every time they are the subject of certain written customer complaints. Written customer complaints, in and of themselves, are not especially material to ICUS. The broad scope of this reporting obligation poses a challenge for Clearing Members. Moreover, if Clearing Members were literally adhering to ICUS Rule 204(a)(ii), as currently drafted, the volume of material being reported to ICUS could be overwhelming. Finally, there is precedent among peer industry participants for limiting FINRA Rule 4530 related reporting obligations in the manner proposed by ICUS.

In addition to some clean up changes, including the elimination of duplicate language, ICUS is also proposing to add new Clearing Member reporting obligations in new ICUS Rule 204(c)(iv). These new requirements are focused on incidents that would be of concern to ICUS in its on-going monitoring of its Clearing Members for compliance with ICUS's participation requirements. Furthermore, they address some important scenarios that ICUS would otherwise not be notified of when it limits the scope of Rule 204(a)(ii) to a sub-set of the FINRA Rule 4530 reporting obligations.

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 principle and the applicable regulations of the Commission thereunder:

Participant and Product Eligibility (Core Principle C): The proposed amendments refine the obligations that the ICUS Rules impose on Clearing Members to provide ICUS, in a timely manner, with information that concerns financial or business developments that may materially affect a Clearing Member's ability to continue to comply with ICUS's participation requirements. They eliminate reporting obligations that could be onerous and of little significance to ICUS while adding 2 focused reporting requirements that would enhance ICUS's ability to monitor and verify on an on-going basis each Clearing Member's compliance with ICUS's participation requirements. As a result, the amendments to ICUS Rule 204 are consistent with the requirements of Core Principle C and Commission Regulation 39.12

4. Certifications

ICUS certifies that the amendments to existing ICUS Rule 204 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>.



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@ice.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 204. Reporting and Notice Requirements

(a) Each Clearing Member shall file with the Corporation:

(i) monthly and fiscal year-end financial statements in the form and timeframes prescribed in paragraph (b) of this Rule; and

(ii) a copy of each financial statement, financial report, or notice pursuant to Commission Regulation 1.12, Securities and Exchange Commission Rule 17a-11, FINRA Rule 4530(a)(1)(A),(C),(E) and 4530(b) ~~3070~~ or similar rules, which it files with the Commission, any Self-Regulatory Organization, any national securities exchange or any clearing organization of which it is a member or member firm, or any other federal regulatory organization having jurisdiction over such Clearing Member, at the same time it files such statement or report with any such body, and if such statement or report is other than a routine periodic statement or report required under the by-laws, rules or regulations of such entity, such copy shall be accompanied by a written statement setting forth (to the extent known) the reasons why such Clearing Member is filing such statement or report.

(b) The financial statements required by subparagraph (a)(i) of this Rule shall be in the form adopted by the Commission for use by futures commission merchants (currently Commission Form 1-FR) or FOCUS Report Part II. Monthly financial statements must be filed within 17 Business Days after the end of each month. Fiscal year-end statements must be filed: (i) within 90 calendar days if submitting Form 1-FR; or (ii) within 60 calendar days if submitting a FOCUS Report Part II.

The financial statement for the fiscal year of a Clearing Member which is an Entity shall be certified by an independent public accountant, and the monthly financial statements shall be certified by the president, the chief financial officer or a general partner of the Clearing Member. The financial statements of a Clearing Member which is an individual shall be certified by such Person or Persons, in such manner, as the Board may prescribe.

A Clearing Member which elects to file a FOCUS Report Part II pursuant to this Rule or in response to a request pursuant to paragraph (d) of this Rule may not thereafter file a financial statement in the form adopted by the Commission for use by a futures commission merchant unless it obtains the prior consent of the Corporation.

A Clearing Member which elects to file a financial statement in the form adopted by the Commission for use by a futures commission merchant may subsequently elect to file a FOCUS Report Part II, provided that the first FOCUS Report Part II filed by such Clearing Member shall be accompanied by a statement reconciling the Clearing Member's adjusted net capital as shown on the FOCUS Report Part II with the adjusted net capital which would have been shown had it filed a financial statement for the same period in the form adopted by the Commission for use by a futures commission merchant.

(c) Each Clearing Member shall immediately notify the Corporation in writing:

(i) If not registered with the Securities and Exchange Commission as a Broker-Dealer, when

(A) its Capital declines from that shown on the latest financial statement filed by it with the Corporation for any reason by 20% or more, or by an amount which reduces its Permitted Position Risk. Such notification shall be given not later than two (2) Business Days following the event requiring such notification; and

(B) any payment, loan or distribution to, or redemption of any outstanding shares of stock or other equity interest held by, any shareholder, partner, member, beneficiary or other holder of any equity interest of the Clearing Member will have the effect of reducing the Capital of such Clearing Member by more than 30% from that shown on the latest financial statement filed by it with the Corporation for any reason. Such notification shall be given at least two (2) Business Days prior to any such payment, loan, distribution or redemption and shall include the amount thereof, a balance sheet of the Clearing Member as of the last Business Day of the month prior to the month in which the same is to be made (certified by the president, the chief financial officer or a general partner of the Clearing Member) and a description of the effect that the same will have on the Capital of the Clearing Member.

(ii) If registered with the Securities and Exchange Commission as a Broker-Dealer, when

(A) its tentative net capital (as defined in the rules of the Securities and Exchange Commission) declines from that shown on the latest financial statement filed by it with the Corporation for any reason by 20% or more, or by an amount which reduces its Permitted Position Risk. Such notification shall be given not later than two (2) Business Days following the event requiring such notification.

(B) any payment, loan or distribution to, or redemption of any outstanding shares of stock or other equity interest held by, any shareholder, partner, member, beneficiary or other holder of any equity interest of the Clearing Member will have the effect of reducing the tentative net capital (as defined in the rules of the Securities and Exchange Commission) of such Clearing Member by more than 30% from that shown on the latest financial statement filed by it with the Corporation for any reason. Such notification shall be given at least two (2) Business Days prior to any such payment, loan, distribution or redemption and shall include the amount thereof, a balance sheet of the Clearing Member as of the last Business Day of the month prior to the month in which the same is to be made (certified by the president, the chief financial officer or a general partner of the Clearing Member) and a description of the effect that the same will have on the Capital of the Clearing Member.

(iii) Upon the occurrence of any financial or business development that could materially affect the ability of the Clearing Member to comply with its obligations as a Clearing Member.

(iv) Without limiting the foregoing subpart (iii), of

(A) any suspension, expulsion, bar, fine, censure, denial of membership, refusal of admission, registration or license, cease and desist order, temporary or permanent injunction, denial of trading privileges, or, to the extent detrimental to the ability of the Clearing Member to fulfill its duties and obligations as a Clearing Member, any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by the Commission, or any other regulatory, self-regulatory or other entity or organization with regulatory authority, whether U.S. or non-U.S., governmental or otherwise, having jurisdiction over the Clearing Member, or the withdrawal of any application for membership of, registration with or admission to any such entity or organization.

(B) the imposition of any restriction or limitation on the business conducted by the Clearing Member on or with any securities, futures or swap clearing organization or exchange (including, without limitation, any contract market, securities exchange, swap execution facility, security-based swap execution facility or other trading facility), other than restrictions or limitations imposed generally on all members of or participants in such clearing organization or exchange.

(d) Each Clearing Member shall file with the Corporation such documents, financial and/or other information, in addition to what is explicitly required by this Rule, as may be requested by the Corporation from time to time.

(e) The qualifications and reports of accountants for Clearing Members must meet the requirements set forth in Commission Regulations and must be satisfactory to the Corporation.

(f) In the event that any Clearing Member (i) fails to meet any obligation to deposit or pay any margin or option premium when and as required by any clearing organization of which it is a member, (ii) fails to be in compliance with any applicable financial requirements of the Commission, any Self-Regulatory Organization, any securities exchange or clearing organization, (iii) becomes the subject of a bankruptcy petition, receivership proceeding or the equivalent, or (iv) becomes subject to statutory disqualification under Section 8a(2) or (3) of the Act or other applicable CFTC-Commission regulations ~~or is subject to a fine or other sanction imposed by the Commission or any Self-Regulatory Organization~~, such Clearing Member shall immediately so advise the Corporation both telephonically and in writing.

(g) Each Clearing Member shall provide the Corporation ample notice in writing prior to any change to the information provided under Rule 202(g).

(h) Each Clearing Member shall notify the Corporation promptly in writing of any change (other than a change subject to paragraph (g)) which would cause a statement furnished pursuant to these Rules to be inaccurate or incomplete.