



May 11, 2020

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 Rules¹ in order to facilitate a planned change to the way in which ICUS facilitates the delivery of physically settled currency contracts where one of the currencies is not supported by the CLS Bank International (“Non-CLS Currency Contracts”).² 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.³

1. Overview

At present, when Non-CLS Currency Contracts go to delivery, Clearing Members are responsible for transferring, as applicable, the base or quoted currency to an ICUS designated bank account. These accounts are not used by ICUS for any other purpose. Thereafter, ICUS disburses the applicable currency to accounts designated by the relevant Clearing Members. All transfers of the base and quoted currency into the ICUS accounts are made by either interbank or book transfer, and ICUS staff must closely monitor the status of these transfers in order to ensure that the delivery obligations are being met on a timely basis. This process is operationally burdensome and inefficient. Following consultation with its Clearing Members, ICUS has determined to implement a more efficient mechanism for effecting these physical settlements.

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

² The following are the Non-CLS Currency Contracts cleared by ICUS: (i) Euro / Czech Koruna; (ii) Euro / Hungarian Forint; (iii) Turkish Lira / Euro; (iv) Polish Zloty / Euro; (v) US Dollar / Czech Koruna; (vi) US Dollar / Hungarian Forint; (vii) Turkish Lira / US Dollar; and (viii) Polish Zloty / US Dollar.

³ ICE Futures U.S., Inc. (“IFUS”) has submitted (or is in the process of doing so) its own rule changes to govern the new way of effecting physical deliveries of Non-CLS Currency Contracts. See IFUS Submission No. 20-43 (May 11, 2020).



2. Details of Rule Changes

When ICUS matches Clearing Members (“Matched Clearing Members”) for the purposes of effecting deliveries on its physically settled futures contracts, those futures contracts (“Matched Futures Contracts”) become bilateral as between the Matched Clearing Members, referred to in the ICUS Rules as the Deliverer (the holder of a short position) and the Receiver (the holder of a long position).⁴ Thus, ICUS Rule 601(c)(ii) provides that ICUS “shall have no further rights or obligations under any such [Matched Futures Contracts]” and Matched Futures Contracts cease to be counted as part of ICUS’s open interest.⁵ Pursuant to IFUS’s Rules governing Non-CLS Currency Contracts, however, at the election of the matched Clearing Members,⁶ ICUS undertakes to facilitate, in part, the physical delivery between the Deliverer and the Receiver and ICUS is proposing to change how it currently facilitates these physical deliveries.

In the new delivery process for Non-CLS Currency Contracts, for each currency, ICUS will make direct debits from (and subsequent credits to) the same Clearing Member bank accounts that ICUS currently debits (or credits) when it collects or pays house margin in that currency. The debits will be received into, and the credits paid from, ICUS’s existing house margin accounts. In doing so, however, ICUS is acting solely as escrow agent for the convenience of its Clearing Members. Consistent with its current practice, for each pair of Matched Clearing Members, and separately for each contract or currency pair, the debit (and subsequent credit) will be for the net amount of the base or quoted currency due.⁷ This netting is for operational convenience, it does not relieve Matched Clearing Members of their obligation to perform on their Matched Futures Contracts. Matched Clearing Members are still obligated to make the required gross payment to their underlying customers, in the case of futures commission merchants. In order to facilitate the direct debit of these currencies, ICUS determined that it should make some technical, clarifying amendments to the ICUS Rules, specifically Rules 503, 601 and 604.

⁴ See ICUS Rule 602(c)(i): “[S]uch futures contracts shall be combined into a single contract between the Deliverer and the Receiver, whereby the Deliverer agrees to sell such commodity to the Receiver and the Receiver agrees to buy such commodity from the Deliverer[.]” ICUS Rule 101 defines “Deliverer” and “Receiver” as, respectively: (i) “The Clearing Member, whether acting for itself or for any other Person, that is the seller under any futures contract;” and (ii) “The Clearing Member, whether acting for itself or for any other Person, that is the buyer under any futures contract.”

⁵ As a convenience to the Matched Clearing Members and their customers, however, and in order to mitigate the risk to them from these now bilateral contracts, under its Rules, ICUS undertakes to continue to hold initial margin for the benefit of, and collect variation margin from, and deliver variation margin to, the Matched Clearing Members’ house and customer accounts, in the same manner as it would if the Matched Futures Contracts were open futures contracts. See ICUS Rule 602(c).

⁶ For Non-CLS Currency Contracts (as well as physically settled currency futures contracts that are supported by the CLS Bank International), the IFUS Rules offer Matched Clearing Members the flexibility not to use the ICUS facilitated delivery process and to mutually agree on an alternative way to settle their bilateral delivery obligations, either physically or financially. See IFUS Rules 16.04(f)(v) and 16.04(g)(iii).

⁷ The IFUS Rules previously provided Clearing Members with some discretion to determine if or how this netting would be effected. For quite some time now, ICUS and its Clearing Members have netted these payment obligations as described.



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:

Settlement Procedures (Core Principle E): For Matched Clearing Members that do not elect to make their own bilateral arrangements to settle Non-CLS Currency Contracts, these amendments will enhance the robustness of ICUS’s role in facilitating, in part, the required deliveries. ICUS’s Rules, which incorporate by reference IFUS’s Rules with respect to physical deliveries,⁸ continue to clearly state each of its obligations with respect to physical deliveries, and these amendments will help ICUS to better manage the risk associated with the way in which, as a convenience, it assists in the physical settlement of Non-CLS Currency Contracts. As a result these amendments are consistent with the requirements of Core Principle E and Commission Regulation 39.14.

Treatment of Funds (Core Principle F): With these amendments, ICUS will no longer rely on ICUS accounts that are used 4 times a year and will not be dependent on receiving transfers from (and sending transfers to) Clearing Member accounts that can change unexpectedly from time to time. By relying on the existing infrastructure for transferring house initial margin, an infrastructure that is tested every business day, ICUS will establish more robust procedures to protect and ensure the safety of the funds and assets belonging to its Clearing Members. As a result these amendments are consistent with the requirements of Core Principle F and Commission Regulation 39.15.

4. Certifications

ICUS certifies that the amendments to existing ICUS Rules 503, 601 and 604 comply with the Act and the rules and regulations promulgated by the Commission thereunder. A copy of the amendments is attached to this submission. 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Eamonn Hahessy", written over a horizontal line.

Eamonn Hahessy
General Counsel and Chief Compliance Officer

⁸ See ICUS Rule 601.

Part 5
Margins, ~~and~~ Premiums and Other Payments

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Rule 503. Cash Margin Deposits and Other Payments

Each Clearing Member shall establish and maintain ~~initial~~ margin accounts (which shall include separate house and customer accounts) at an Approved Financial Institution of its choice with which the Corporation has entered into a cash settlement agreement containing bank holiday settlement procedures. A Clearing Member may use such accounts for the payment of variation margin, initial margin, ~~and~~ option premiums and other payments due to the Corporation. With the exception of payments governed by Rule 205(b), ~~the~~ Corporation shall have the right to instruct each Approved Financial Institution to debit each margin account maintained by a Clearing Member for any deposits of ~~initial variation~~ margin, ~~or payments of variation~~ initial margin, ~~or~~ option premiums or any other payments due to the Corporation pursuant to these Rules or the rules of any Exchange.

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Part 6
Deliveries

Rule 601. Delivery Rules

Any delivery of commodities under any Contract shall be made in accordance with these Rules and the rules of the Listing Exchange for such Contract. Each Clearing Member ~~which is, or which that~~ carries an account which is required to make, ~~or~~ accept or otherwise facilitate the physical delivery of a commodity pursuant to a futures contract shall notify the Corporation if and when delivery or payment has been made, as applicable, at such time and as otherwise required by the rules of the Listing Exchange.

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Rule 604. Deliveries Involving Electronic Warehouse Receipts or Foreign Exchange

WHEN, UNDER THE RULES OF THE LISTING EXCHANGE, THE CORPORATION BECOMES THE TITLE HOLDER OF AN ELECTRONIC WAREHOUSE RECEIPT (“EWR”) OR HOLDER OF CURRENCIES IN THE CORPORATION’S BANK ACCOUNT IN CONNECTION WITH THE DELIVERY OF COMMODITIES OR CURRENCIES UNDER A CONTRACT, THE CORPORATION SHALL HOLD TITLE TO SUCH EWR OR CURRENCIES SOLELY AS AN ESCROW AGENT ON BEHALF OF THE CLEARING MEMBER WHICH ISSUED THE DELIVERY NOTICE OR DEPOSITED THE CURRENCIES INTO, OR OTHERWISE MADE THE CURRENCY AVAILABLE FOR TRANSFER TO, THE CORPORATION’S BANK ACCOUNT WITH RESPECT TO THE COMMODITIES OR CURRENCIES. AS ESCROW AGENT, THE CORPORATION SHALL ACT SOLELY AS A STAKEHOLDER FOR THE CONVENIENCE OF THE CLEARING MEMBER. NEITHER THE CORPORATION, NOR ANY DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT

OR EMPLOYEE OF THE CORPORATION (“**OFFICIALS**”) SHALL BE LIABLE TO ANY PARTY FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY ACT OR OMISSION WITH RESPECT TO THE EWR OR CURRENCIES DURING THE PERIOD THE CORPORATION IS THE TITLE HOLDER, EXCEPT TO THE EXTENT THE DAMAGE IS THE RESULT OF WILLFUL OR WANTON CONDUCT OR BAD FAITH. THE CLEARING MEMBER ON BEHALF OF WHICH THE CORPORATION IS HOLDING TITLE TO THE EWR OR CURRENCIES AS ESCROW AGENT SHALL INDEMNIFY AND HOLD HARMLESS THE CORPORATION AND ITS OFFICIALS AGAINST ANY CLAIMS, DAMAGES, LOSSES, COSTS, FEES, TAXES, OR EXPENSES RELATING IN ANY WAY TO THE EWR, THE CURRENCIES OR THE DISPOSITION THEREOF (INCLUDING WITHOUT LIMITATION, ATTORNEYS’ FEES, EXPENSES OF INVESTIGATION, JUDGMENTS AND AMOUNTS PAID IN SETTLEMENT), EXCEPT TO THE EXTENT OF CLAIMS, DAMAGES OR LOSSES ARISING SOLELY FROM THE CORPORATION’S WILLFUL OR WANTON CONDUCT OR BAD FAITH.



**UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
OF ICE CLEAR U.S., INC.**

The undersigned members of the Board of Directors of ICE Clear U.S., Inc. (the “Corporation”) acting pursuant to Section 3.13 (Written Consent in Lieu of Meeting) of the Corporation’s By-Laws, do hereby unanimously consent and agree to the adoption of the following resolutions without a meeting, namely:

WHEREAS, the ICE Clear U.S., Inc. (the “Corporation”) Board approves amendments to the ICE Clear U.S. Rules; and

WHEREAS, in order to improve the efficiency of the physically settlement of certain currency futures contracts, where one of the currencies is not supported by the CLS Bank International (“Non-CLS Currency Contracts”), the Corporation is proposing to do so using direct debits on a net basis, across the house and customer positions, from Clearing Members’ bank accounts into the house accounts maintained by ICE Clear U.S.; and

WHEREAS, in implementing this change, the Corporation has determined that it would be prudent to make some technical, clarifying amendments to ICE Clear U.S. Rules 503, 601 and 604.; and

NOW, THEREFORE, IT IS HEREBY:

RESOLVED, that the Board approves the proposed amendments to ICE Clear U.S. Rules 503, 601 and 604.

IN WITNESS WHEREOF, the undersigned members of the Board of Directors have caused this Unanimous Written Consent to be executed as of this ____ day of April, 2020.

Trabue Bland

Thomas Butler

Chris Edmonds

Terrence Martell

Kevin McGrory

Viet Nguyen

Hester Serafini

Ira Polk