

# Clearing Rules

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## 102. Definitions.

### Investment Losses

Losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by ICE Clear Credit (to the extent the same are not otherwise subject to Assessment or Replenishment under the Rules) arising in connection with (i) the default of the issuer of any instrument and/or the counterparty to any repurchase or reverse repurchase contract or similar transaction in respect of any investment(s) or re-investment(s) by ~~ICE Clear Credit~~ICE Clear Credit of assets constituting contributions to the General Guaranty Fund, Assessment Contributions or Margin provided by Participants (including any such assets transferred by a Defaulting Participant) or the proceeds thereof (collectively, “Investments”); and (ii) any other losses with respect to Investments including, but not limited to, those caused by a change in value of investments due to general market movements (but for the avoidance of doubt, shall not include a negative yield or interest rate on an ICE Clear Credit investment). Notwithstanding the foregoing, “Investment Losses” shall not include: (a) Custodial Losses; or (b) losses, liabilities, damages, costs, claims, shortfalls or expenses resulting directly from a failure by ~~the Corporation~~ICE Clear Credit to comply with its own investment policies. Investment Losses shall be determined separately for the House Account and Client Origin Account.

## 802. Use or Application of General Guaranty Fund; Loss Allocation.

### (c) Liability of Defaulting Participant; Loss Allocation.

- (i) Any deficiency in respect of Obligations shall remain a liability of the Defaulting Participant and any related guarantor to ICE Clear Credit, which ICE Clear Credit may collect from any Margin (to the extent permitted to be used under these Rules), Collateral or other assets of such Defaulting Participant or such guarantor or by legal process.
- (ii) Any such collection or recovery by ICE Clear Credit from or otherwise in respect of the Defaulting Participant shall be applied in the following order: (A) to the costs and expenses of ICE Clear Credit or its agents, including, without limitation, fees and expenses of counsel, of obtaining such collection or recovery, including with respect to pursuing any Defaulting Participant Claims pursuant to Rule 802(c)(iii) below, (B) to any unreimbursed costs and expenses referred to in Rule 802(a)(i), (C) to any deficiencies owed to Participants under Wound-up Contracts described in Rule 810, (D) to pay to Participants Post-RGD Payments under Rule 808(m), on a pro rata basis, in each case to the extent not previously paid under such rule; (E) to the Participants and/or ICE Clear Credit whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to Rule 802(b) (whether or not such Participant remains a Participant at the time of the collection), and/or to

the provider of any Insurance Proceeds applied for such deficiency pursuant to Rule 802(b) to the extent such provider is entitled to any recovery in respect thereof, in each case in the reverse order from the order in which such charge or application was made under Rule 802(b), and in proportion to the amount each was charged and applied in accordance with Rule 802(b), up to the amount of such charge or application; (F) to the Client Omnibus Margin Account to the extent the Participant's Margin in respect of Client-Related Positions was applied to such deficiency; and (G) to the payment of any other Obligations. To the extent necessary for this purpose, each Participant authorizes and appoints [ICE Clear Credit](#) to pursue any such collections or recoveries on its own behalf and on behalf of the Participants.

- (iii) ICE Clear Credit shall exercise the same degree of care in the administration, enforcement and collection of any claims against the Defaulting Participant, any related guarantor, or its or their insolvency estate with respect to any remaining deficiency of the Defaulting Participant to ICE Clear Credit with respect to any Obligations (such claims, "**Defaulting Participant Claims**") as it exercises with respect to its own assets that are not subject to allocation pursuant to this Rule 802(c). In furtherance of the foregoing, ICE Clear Credit may determine, in its reasonable discretion, whether or not to commence, continue, maintain, sell, dispose of or settle or compromise any litigation, arbitration or other action with respect to any Defaulting Participant Claim, without the consent of any Participant or other Person. Without limiting Rule 312, ICE Clear Credit shall not be liable for losses arising from any error in judgment or for any action taken or omitted to be taken by it with respect to Defaulting Participant Claims, except for such losses that result from ICE Clear Credit's gross negligence or willful misconduct. ICE Clear Credit may, in its discretion, assign to Participants any Defaulting Participant Claim, in whole or in part, and such assignment shall satisfy in full ICE Clear Credit's obligations under this Rule 802(c) with respect to any such claim (or portion thereof) or recoveries therefrom.