



September 8, 2017

BY ELECTRONIC TRANSMISSION

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 US, Inc. Rules 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 Commodities Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Clear US, Inc. (“ICUS”) hereby submits a self-certification to amend the ICUS Rules. ICUS intends to revise the 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. Certification of the ICUS Rules pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

ICUS proposes to adopt amendments to its Rules relating to default management, recovery and wind-down following a clearing member default. The amendments, among other matters:

- (i) establish new tools and procedures to manage a clearing member default or series of defaults and return to a matched book, specifically:
 - (A) default auctions, to be conducted in accordance with a defined set of default auction procedures;
 - (B) provide the ability to implement reduced gains distributions (i.e., variation margin haircutting) following exhaustion of other financial resources for up to five business days; and
 - (C) if an auction or other default management tools are unsuccessful, partial tear-up of positions of non-defaulting clearing members;
- (ii) clarify the operation of “cooling-off period” triggered by certain clearing member defaults that result in guaranty fund depletion. Under the revisions, clearing members would be obligated to replenish the guaranty fund during a cooling-off period, but the aggregate liability of a clearing member for both replenishments and assessments would be capped at the same level as under the current Rules for all defaults during that period.

ICUS believes that the proposed amendments will enhance its ability to withstand and manage the consequences of a default of one or more clearing members and will significantly reduce the risk of a failure or insolvency of ICUS. The amendments also provide clearer limitations on the liability of non-defaulting clearing members and ICUS following defaults and greater clarity as to the financial resources available to ICUS in case of default. The amendments are designed to be consistent with the requirements under CFTC Rules 39.35 and 39.39 applicable to ICUS as a “subpart C” derivatives clearing organization (“DCO”), the Principles of Financial Market

Infrastructure developed by the Committee on Payments and Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”). The proposed amendments are described in more detail as follows.

1. Default Auctions

New Rule 803(c) allows ICUS to run one or more default auctions with respect to the remaining portfolio of the defaulting clearing member (where ICUS determines that it is not practicable or advisable to liquidate the positions on the exchange).

Default auctions are to be conducted in accordance with a new defined set of default auction procedures. Under those procedures, ICUS may break the portfolio into one or more lots, each of which will be auctioned separately. Each clearing member will be required to bid for all lots. Non-clearing members may bid indirectly through a clearing member. ICUS may permit customers of clearing members to bid directly in the auction and may require such a customer to make a deposit which may be applied by ICUS in the same manner as clearing members’ guaranty fund contributions (e.g., subject to “juniorization” as described below). If an auction for any lot or lots fails, as determined in accordance with the default auction procedures, ICUS may determine to have a subsequent default auction or auctions under these auction procedures. The auction for each lot will be conducted as a modified Dutch auction, with all winning bidders paying or receiving the auction clearing price.

All available default resources (both pre-funded guaranty fund and assessment contributions) may be used to pay the cost of a default auction. Guaranty fund and assessment contributions of non-defaulting clearing members are subject to “juniorization” and will be applied using a defined default auction priority based on the competitiveness of their bids. The guaranty fund is divided into three tranches, based on bidding. The lowest (or subordinate) tranche consists of contributions of clearing members that failed to bid in the required amount in any one or more lots of the relevant auction and contributions of clearing members whose bids in all lots of the auction were less competitive than a defined threshold. The second, or mezzanine, tranche includes contributions of clearing members whose bids were less competitive than a defined threshold for some lots and more competitive than a defined threshold for at least one lot. The final, or senior, tranche includes contributions of clearing members whose bids in all lots in the auction were more competitive than the defined threshold. Thus, contributions of clearing members who fail to bid will generally be used before those who bid, and contributions of those who bid uncompetitively will be used before those who bid competitively. A parallel juniorization approach applies to the use of assessment contributions.

New Rule 803(d) also allows ICUS to conduct other types of auctions in which participation is voluntary and that do not involve juniorization of guaranty fund and assessment resources, on terms to be determined by ICUS.

2. Reduced Gain Distributions

As an additional default management tool, where ICUS has exhausted its remaining available default resources (including assessments), ICUS may also invoke reduced gain distributions under new Rule 807 (a.k.a. “variation margin haircutting”) for up to five consecutive business days. Reduced gain distribution will allow ICUS to reduce payment of variation gains that would otherwise be owed to clearing members, as it attempts a default auction or conducts a partial tear-up.

At the end of each day in the period, ICUS must determine whether it expects that there will be favorable conditions for completing a successful auction. If so, ICUS may continue the reduced gain distribution for that day.

If ICUS conducts a successful auction on any day, any reduced gain distribution period that is in effect will end. If ICUS has been unable to conduct a successful auction by the end of the five business day reduced gain distribution period, ICUS will proceed to conduct a partial tear-up as of the close of business on such fifth business day.

ICUS will only use incoming variation margin and contractual payments to pay variation margin gains and contractual payments during the reduced gain distribution period. Reduced gain distribution will not be used to provide additional funds for an auction. Furthermore, expected or potential auction costs will not be factored into the determination of the haircut used for reduced gain distributions.

If reduced gain distribution applies on any day, the net amount owed on such day to each clearing member that is deemed to be a “cash gainer” in respect of its house or customer origin account (i.e., a clearing member that would otherwise be entitled to receive mark-to-market margin or other payments in respect of such account) will be subject to a percentage haircut. Haircuts are determined independently on each day of reduced gain distribution. Haircuts are applied separately for the house and customer origin accounts. Within the customer origin account, haircuts are applied on a net basis across all customer positions in the account.

Following the conclusion of the closing-out process for a default, ICUS will apply any recoveries from the defaulting clearing member to make payments to non-defaulting clearing members, on a pro rata basis, in an amount equal to the aggregate net amount of haircuts made during the period of reduced gain distributions.

3. Partial Tear-Up

If the defaulter’s remaining portfolio cannot be closed out, through auction or otherwise, within ICUS’s remaining resources, then ICUS will proceed to a partial tear-up of the remaining positions under new Rule 808. ICUS will be permitted to use partial tear-up only after it has attempted one or more default auctions.

In a partial tear-up, ICUS will terminate positions of non-defaulting clearing members that exactly offset those in the defaulting clearing member’s remaining portfolio (i.e., positions in the identical contracts and in the same aggregate notional amount) (“Tear-Up Positions”). ICUS will terminate Tear-Up Positions across both the house and customer origin accounts of all non-defaulting clearing members that have such positions, on a pro rata basis.

The termination price for all Tear-Up Positions will be the last established mark-to-market price. Tear-up will occur contemporaneously with the determination of such price, such that the termination price will equal the current mark-to-market value as determined pursuant to the ICUS end-of-day settlement price process. Accordingly, no additional amount will be owed by ICUS in connection with the tear-up.

4. Cooling-Off Period Amendments

Certain amendments have been made to the provisions of Rule 303 relating to cooling-off periods.

The principal change is to require that clearing members replenish their contributions to the guaranty fund during a cooling-off period. ICUS is also permitted to rebalance and recalculate the guaranty fund during the period. However, the aggregate amount of both replenishments and assessments during a cooling-off period will be capped at the same level as under the current Rules. The amendments will facilitate ICUS’s continued ability to meet financial

resources requirements (by requiring replenishment of the guaranty fund), while maintaining an aggregate limit to mutualized liability for clearing members during the cooling-off period.

The amendments also provide that if the replenishment/assessment cap is hit, ICUS can call for additional initial margin as necessary to meet minimum regulatory financial resources requirements for the remainder of the cooling-off period.

5. Additional Default Management and Recovery Changes

Various other clarifications and conforming changes have been made, including the following:

- Rule 302(c), which provides the waterfall for the use of default resources, has been revised to take into account the default auction priorities used for juniorization in a default auction.
- New Rule 302(l) has been added to provide that ICUS has an obligation to seek recoveries from a defaulting clearing member (using the same degree of care that it exercises with respect to its own assets, and with reasonable discretion as to the steps to be taken).
- The procedures for full clearing service termination in Rule 806 have been revised to more clearly specify the timing of termination and the manner of determination of the termination price.
- The amendments provide that decisions to invoke reduced gain distribution or partial tear-up must be made by the ICUS Board.

Core Principle Review:

ICUS reviewed the DCO core principles (“Core Principles”) as set forth in the Act. During this review, ICUS identified the following Core Principles as potentially relevant: (B) Financial Resources, (D) Risk Management, (E) Settlement Procedures and (G) Default Rules and Procedures and the applicable regulations of the Commission thereunder.

Financial Resources. Core Principle B and Commission Rules 39.11 and 39.33 require, among other matters, that a “subpart C” DCO maintain financial resources sufficient to meet its financial obligations to clearing members notwithstanding a default by the two clearing members creating the largest combined loss, in extreme but plausible market conditions. ICUS’s funded margin and guaranty fund resources are currently designed to meet this standard, and ICUS does not propose to reduce such funded resources. The amendments are intended to enhance and provide greater certainty as to the additional resources, beyond the funded margin and guaranty fund resources, that will be available to support clearing operations in more extreme clearing member default scenarios. ICUS also proposes to maintain the current level of its own contributions to default resources. As a result, ICUS believes that the proposed amendments are consistent with the requirements of Core Principle B and the rules thereunder.

Risk Management. The amendments are intended to enhance the ability of ICUS to manage the risk of clearing member default (or multiple defaults), among other risks. ICUS does not propose to change its existing risk methodology or margin framework, which are its initial lines of defense against losses from clearing member default. However, as discussed herein, the amendments provide additional default tools and procedures, including auction procedures and partial tear-up, that are designed to permit ICUS to restore a matched book and limit its exposure to potential losses from a clearing member default in extreme scenarios that may not be able to be addressed by standard risk management and default procedures. Moreover, the amendments clarify the responsibilities and liabilities related to clearing members withdrawing from ICUS. Overall, the amendments will strengthen ICUS’s ability to manage the risks of, and withstand and/or recover from, significant default or other loss events, and as such are

consistent with the requirements of Core Principle D and Commission Rules 39.13, 39.36 and 39.39.

Settlement Procedures. The amendments contemplate that, in extreme cases, ICUS may implement reduced gains distributions for up to five business days in order to conserve remaining default resources (i.e., assessment contributions). In such case, ICUS will continue to collect variation margin owed to it from all non-defaulting clearing members, but will reduce outbound payments owed to clearing members to reflect available resources. ICUS will calculate the haircut amount on a daily basis for each day of reduced gain distribution, without consideration of reductions on prior days. As a result, settlement on any day of reduced gain distributions will be final within the meaning of Rule 39.14, as ICUS does not have any ability to reverse or unwind the settlement. As a result, in ICUS's view, the amendments are consistent with the requirements of Core Principle E and Commission Rule 39.14.

Default Rules and Procedures. The amendments clarify and augment the Rules and procedures relating to default management, with the goal of enhancing ICUS's ability to withstand extreme default events. The amendments include auction procedures, designed to facilitate liquidation of the defaulter's portfolio through a multi-lot modified Dutch auction. The auction procedures require participation of all clearing members (unless outsourced to another clearing member in accordance with the Rules), and permit direct participation in the auction by customers as well as clearing members. The procedures also provide incentives for competitive bidding through juniorization of guaranty fund and assessment contributions, as discussed above.

ICUS will have the option to invoke a partial tear-up of positions to restore a matched book in the event that it is unable to auction the defaulter's remaining portfolio. Partial tear-up, if used, will occur at the most recent settlement price. ICUS believes that this revised set of tools will maximize ICUS's ability to efficiently, fairly and safely manage extreme default events.

The amendments further provide for the allocation of losses that exceed funded resources, through assessments and replenishments to the guaranty fund, as described herein, and the use of reduced gains distributions when necessary following the exhaustion of all other resources. The amendments are designed to permit ICUS to fully allocate losses arising from a default by one or more clearing members, with the goal of permitting ICUS to resume normal operations. As a result, in ICUS's view, the amendments are consistent with the requirements of Core Principle G and Commission Rules 39.16 and 39.35.

Amended Rules:

As described herein, the amendments consist of changes to the ICUS Rules and adoption of default auction procedures. ICUS has respectfully requested confidential treatment for the default auction procedures which were submitted concurrently with this submission.

Annexed as an Exhibit hereto is the following:

- A. Proposed amendments to the ICUS Rules

Certifications:

ICUS hereby certifies that the ICUS Rules comply with the Act and the regulations thereunder. There were no substantive opposing views to the revisions.

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>.



ICUS would be pleased to respond to any questions the Commission or staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6884 or michelle.weiler@theice.com.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Weiler". The signature is fluid and cursive, written in a professional style.

Michelle Weiler
General Counsel and Chief Compliance Officer