

**Kevin R. McClear**  
*General Counsel*

March 23, 2012

**Re: Membership Qualifications Rule  
Submission Pursuant to Section 5c(c)(1)  
of the Commodity Exchange Act and  
Commission Regulation 40.5**

**VIA E-MAIL**

Mr. David Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581

Dear Mr. Stawick:

ICE Clear Credit ("ICC") hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commodity Futures Trading Commission ("Commission") Regulation 40.5, a voluntary submission of rules for Commission review and approval of the amended Rules of ICC to conform the ICC membership qualifications to be in compliance with Commission Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii). ICC is registered with the Commission as a derivatives clearing organization. ICC intends to make the Amended Rules effective no sooner than after approval by the Commission and no later than the May 7, 2012 effective date of Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii).

The Board of Managers approved the amendments on March 22, 2012 after receiving recommendations to approve from the ICE Clear Credit Risk Committee on March 21, 2012 and the ICE Clear Credit Risk Management Subcommittee on March 7, 2012. However, the ICE Clear Credit Board, Risk Committee and Risk Management Subcommittee expressed concern with respect the Amended Rules relating to 39.12(a)(2)(iii) and only recommended approval or approved the same in order for ICC to be in compliance with the law. The ICE Clear Credit Board, Risk Committee and Risk Management Subcommittee discussed with concern the extreme reduction in the minimum capital requirement from the current ICC requirement of \$5,000,000,000 for non-FCM or Broker Dealer Clearing Participants to the minimum capital requirement of \$50,000,000 mandated by Commission Regulation 39.12(a)(2)(iii). Similarly, the ICE Clear Credit Board, Risk Committee and Risk Management Subcommittee discussed the

IntercontinentalExchange  
353 North Clark, Suite 3100  
Chicago, IL 60654

very significant reduction in the minimum capital requirement initially established by ICC for its FCM or Broker Dealer Clearing Participants of \$500,000,000 (subsequently reduced to \$100,000,000) to the minimum capital requirement of \$50,000,000 mandated by Commission Regulation 39.12(a)(2)(iii).

This submission includes the Amended Rules. A description of the principal changes contained in the Amended Rules follows. Certification of the Amended Rules pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.5 is also provided below.

Amended Rules:

The proposed rule change consists of amendments to Chapters 1 and 2 of the Rules of ICE Clear Credit to amend the membership qualifications to be in compliance with Commission Regulations 39.12(a)(2)(iii) and 39.12(a)(2)(iii).

*Commission Regulation 39.12(a)(2)(ii) provides that "the participant requirements shall set forth capital requirements that are based on objective, transparent, and commonly accepted standards that appropriately match capital to risk. Capital requirements shall be scalable to the risks posed by clearing members."*

Accordingly, ICC revised Rule 209 (Risk-Based Capital Requirement) to provide that if at any time and for so long as a Clearing Participant has a required contribution to the ICC General Guaranty Fund that exceeds 25% of its "excess net capital", ICC may (in addition to imposing the trading activity limitations provided for in ICC Rule 203(b)) require such Clearing Participant to prepay and maintain with ICE Clear Credit an amount up to the Clearing Participant's assessment obligation. ICC Rule 102, the definitional section of the Rules, has been amended to define "excess net capital" as the amount reported on Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12. For a Participant that is not an FCM or a Broker-Dealer, there is no standard equivalent to "excess net capital" which can be utilized across all types of Clearing Participant entities. Therefore, the Rule 102 places the burden on the Clearing Participant to demonstrate that its capital exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICE Clear Credit.

*Commission Regulation 39.12(a)(2)(iii) provides that CFTC Final Rule 39.12(a)(2)(iii) provides that "a derivatives clearing organization **shall not set a minimum capital requirement of more than \$50 million for any person** that seeks to become a clearing member in order to clear swaps". [Emphasis added.]*

Accordingly, ICC revised Rule 201(b)(ii) to incorporate the CFTC mandated \$50,000,000 minimum capital requirement for all ICC Clearing Participants. In addition, in order to promote compliance with the capital adequacy requirements, Rule 201(b)(i) has been amended to provide that a Clearing Participant must be regulated for capital adequacy by a competent authority such as the CFTC, SEC, Federal Reserve Board, Office of the Comptroller of the Currency, U.K. Financial Services Authority or any other regulatory body ICC designates from

time to time for this purpose, or is an affiliate of an entity that satisfies the capital adequacy regulatory requirement and is subject to consolidated holding company group supervision.

Annexed as Exhibits hereto are the following:

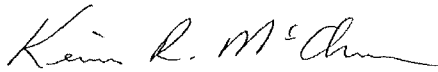
A. Amendments to Chapters 1 and 2 of the ICE Clear Credit Rules

Certification:

ICE Clear Credit hereby certifies that, concurrent with this filing, a copy of the submission was posted on ICE Clear Credit's website, which may be accessed at [https://www.theice.com/publicdocs/regulatory\\_filings/ICEClearCredit\\_CFTC\\_032312.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_CFTC_032312.pdf).

ICE Clear Credit would be pleased to respond to any questions the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6833.

Sincerely,



Kevin R. McClear  
General Counsel

cc: John C. Lawton (by email)  
Phyllis Dietz (by email)  
Steve Greska (by email)  
Heidi M. Rauh (by email)



## Clearing Rules

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# Rules of ICE Clear Credit LLC

## PREAMBLE

The Board shall have sole responsibility for the control and management of the operations of ICE Clear Credit, subject only to the prior consultation rights of the Risk Committee and the Risk Management Subcommittee as described in Chapter 5 of, and elsewhere in, these Rules.

Participants shall explicitly contract to be bound by these Rules, and ICE Clear Credit will retain the right to modify these Rules and the ICE Clear Credit Procedures (as defined herein) from time to time in its sole discretion, subject to the prior consultation with the Risk Committee and the Risk Management Subcommittee with respect to only those modifications for which such consultation is prescribed in Chapter 5 of, and elsewhere in, these Rules.

Prior to modifying these Rules or materially modifying the ICE Clear Credit Procedures with respect to matters for which prior consultation with the Risk Committee or the Risk Management Subcommittee is not required, ICE Clear Credit will inform and may consult with the Risk Committee or the Risk Management Subcommittee and, taking into account the legal requirements of the Participants, will use good faith efforts to ensure that such modifications would not result in any Participant failing to be in compliance with laws or regulations applicable to such Participant.

## 1. INTERPRETATION

### 101. Scope and Interpretation.

- (a) The Rules set forth herein are applicable to Trades and related obligations arising out of Contracts. In the event of a conflict between these Rules generally and the Rules adopted by ICE Clear Credit specifically governing Trades and related obligations made on a particular Market or with respect to particular Contracts, the Rules specifically governing such Market or Contracts will prevail. More particularly:
- (i) The Rules in Chapters 1 – 8 are supplemented for specific Markets and Contracts by the Rules in Chapters 20 *et seq.* (Thus, for example, the definitions in Rule 102 are supplemented, for purposes of Chapter 20, by the additional definitions in Rule 20-102.) The Rules in Chapters 20 *et seq.* shall apply only to the Market or Contracts specified in the caption to such Chapter.
  - (ii) Where the numbering of a Rule in Chapters 20 *et seq.* corresponds to that of a Rule in Chapters 1 – 8, the Rule in Chapters 1 – 8 is superseded to the extent applicable by the correspondingly numbered Rule in Chapter 20 *et seq.* (Thus, for example, references in Chapter 20 to the term “Default” mean a Default established in accordance with Rule 20-605.)
  - (iii) Where a Rule in Chapter 20 *et seq.* is “[Reserved],” the correspondingly numbered Rule in Chapters 1 – 8 is made expressly inapplicable to the Market or Contracts that are the subject of such Chapter.
- (b) In these Rules, unless a clear contrary intention appears, (i) the singular number includes the plural number and vice versa, (ii) reference to the masculine, feminine or neuter gender includes each other gender, (iii) any reference to a number of days shall mean calendar days unless ICE Business Days or other business days are specified, (iv) any reference to a time shall mean the time in New York, New York and (v) any reference to “dollars” or “\$” shall mean U.S. dollars. Except as otherwise specifically provided in these Rules, an act that otherwise would be required or permitted by these Rules to be performed on a day that is not an ICE Business Day may be performed on the next day that is an ICE Business Day.

## **102. Definitions.**

### **Affiliate**

With respect to a particular entity, any entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, that particular entity.

### **Authorized Trade Execution/Processing Platform**

A designated contract market, swap execution facility, national securities exchange, security-based swap execution facility, trade processing facility or other similar service or platform authorized by ICE Clear Credit in accordance with Rule 314 to submit Trades (whether executed on such an execution facility, market or exchange, executed bilaterally or executed in another manner permitted by law) to ICE Clear Credit for clearing.

### **Backloaded Client Trade**

A Trade submitted pursuant to Rule 301(e) and identified as such in a manner to be specified by ICE Clear Credit that is intended to replace and backload an existing agreement on terms equivalent to a Contract to which a Non-Participant Party is party, where the relevant Participant is acting for such Non-Participant Party.

### **Board**

The Board of Managers of ICE Clear Credit.

### **Broker-Dealer**

A broker or dealer registered with the SEC.

### **Business Conduct Committee**

The Business Conduct Committee of ICE Clear Credit whose composition, rights and responsibilities are described in Chapter 7 of these Rules.

### **Cash Margin**

The meaning specified in Rule 402(a)

### **CEA**

The U.S. Commodity Exchange Act, as amended.

### **CFTC**

The U.S. Commodity Futures Trading Commission.

### **Chief Executive Officer**

The Chief Executive Officer of ICE Clear Credit.

### **Client-Related Initial Margin**

Initial Margin (other than Physical Settlement Margin) with respect to Client-Related Positions.

### **Client-Related Position**

An Open Position identified as such at the time the related Trade is submitted by an FCM Participant (in the case of a swap) or a Broker-Dealer Participant (in the case of a security-based swap) to ICE Clear Credit in accordance with Rules 301 and 302, where such related Trade, at the time established, is entered into by the Participant for a Non-Participant Party. ICE Clear Credit will rely on a Participant's designation of an Open Position as a Client-Related Position for purposes of these Rules. To the extent permitted by law, a Client-Related Position will include such an Open Position entered into by an FCM Participant or a Broker-Dealer Participant for another Person (which Person may, but need not, be an Affiliate of that Participant or of another Participant) that is itself acting for one or more Non-Participant Parties with respect to such Open Position (such Person in such case, a "Client-Carrying Broker").

### **Closing-out Process**

In connection with the Default of a Participant, the process of termination of Open Positions, determination of amounts owing with respect thereto, netting of such amounts, liquidation and application of any Margin and/or Collateral and application of Default Portability Rules pursuant to Rule 20A-02, if applicable, in each case as contemplated by these Rules.

### **Collateral**

At any time, such funds or other property Transferred by a Participant to ICE Clear Credit for the General Guaranty Fund pursuant to title transfer or pledge (and not released by ICE Clear Credit), in accordance with these Rules and the ICE Clear Credit Procedures.

### **Conforming Trade**

The meaning specified in Rule 309.



## **Contracts**

An agreement, contract, or transaction that is specifically identified in these Rules as a Contract.

## **Control**

With respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

## **Custodial Asset Policies**

Policies or procedures adopted from time to time by ICE Clear Credit with respect to the investment of assets in the Custodial Client Omnibus Margin Account and the assets permitted to be transferred to the Custodial Client Omnibus Margin Account.

## **Custodial Client Omnibus Margin Account**

Any account or accounts maintained by or on behalf of ICE Clear Credit with respect to a Participant for the purposes of holding on an omnibus basis margin of Non-Participant Parties posted to that Participant in respect of their respective Minimum ICE Clear Credit Required Initial Margin (as defined in Rule 406, as applicable) and Participant Excess Margin requirements, as applicable, or property of a Participant posted in lieu thereof in accordance with these Rules. For the avoidance of doubt, ICE Clear Credit may establish a separate account or subaccount with respect to a portion of the Custodial Client Omnibus Margin Account corresponding to the Net Client Omnibus Margin Amount.

## **DCO/SCA Conversion Date**

July 16, 2011 or such later date as is announced as such by ICE Clear Credit consistent with applicable legal requirements.

## **Default**

Any event that would constitute a Default under Rule 20-605 or the corresponding Rule in any Market or Contract-specific Chapter of these Rules.

## **Eligible Custodial Assets**

Instruments permitted to be transferred to the Custodial Client Omnibus Margin Account under the Custodial Asset Policies from time to time.

## **Eligible Margin**

The meaning specified in Rule 401(c).

## **Eligible Officer**

Any officer of ICE Clear Credit designated by the Board from time to time for purposes of the applicable determination, decision or other action contemplated by these Rules.

## **Emergency**

The meaning specified in Rule 601.

## **Excess Margin**

With respect to a Non-Participant Party of a Participant, (i) the amount of initial margin held in the Custodial Client Omnibus Margin Account in respect of the Minimum ICE Clear Credit Required Initial Margin for Client-Related Positions of that Participant with respect to that Non-Participant Party, as reduced by the applicable Non-Participant Pro Rata Share of the Net Client Omnibus Margin Amount, plus (ii) the amount of any initial margin held in the Custodial Client Omnibus Margin Account in excess of the current Minimum ICE Clear Credit Required Initial Margin for such Non-Participant Party that has not been withdrawn, plus (iii) (without duplication) the amount of such Participant Excess Margin, if any, collected from such Non-Participant Party as the Participant may Transfer from time to time to the Custodial Client Omnibus Margin Account to be held as Excess Margin.

## **Excess Net Capital**

The meaning specified in Rule 201.

For a Participant that is an FCM or a Broker-Dealer, its "excess net capital" as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12. For a Participant that is not an FCM or a Broker-Dealer, the amount, if any, by which its Adjusted Net Capital exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICE Clear Credit.

## **FCM**

A futures commission merchant registered with the CFTC.

### **General Guaranty Fund**

At any time, funds or other property set aside and recorded on the books of ICE Clear Credit in support of the Obligations of Participants in respect of all Contracts.

### **House Margin Account**

Any account or accounts maintained by or on behalf of ICE Clear Credit with respect to a Participant for the purposes of holding Margin for House Positions of that Participant.

### **House Position**

An Open Position of a Participant that is not a Client-Related Position. For the avoidance of doubt, Open Positions resulting from Trades submitted for the account of an Affiliate of a Participant shall be House Positions.

### **ICE Business Day**

Any day (other than Saturdays, Sundays and holidays observed by ICE Clear Credit) on which ICE Clear Credit is open for business. References in these Rules to a "day" or "ICE Business Day" shall, unless the context otherwise requires, mean the "ICE Business Day" corresponding to the trading day declared by the relevant Market, if applicable.

**ICE Clear Credit**

ICE Clear Credit LLC, a Delaware limited liability company (formerly ICE Trust U.S. LLC).

**ICE Clear Credit Procedures**

The policies, procedures and other provisions established by ICE Clear Credit relating to clearing of Contracts, as amended from time to time.

**Initial Payment**

The meaning specified in Rule 301(b).

**Margin**

Initial Margin (including Portfolio Risk Margin, Physical Settlement Margin and Super and Special Margin) and Mark-to-Market Margin (each as defined in Rule 403 or 404) Transferred or Transferable by or to a Participant to or by ICE Clear Credit.

**Margin Accounts**

Each Participant's House Margin Account and Custodial Client Omnibus Margin Account.

**Margin Category**

The meaning specified in Rule 401(a).

**Margin Requirement**

The meaning specified in Rule 401(a).

**Net Margin Requirement**

The meaning specified in Rule 401(a).

**Markets**

A market that is party to an agreement with ICE Clear Credit for the provision of clearing services and that is specifically identified in these Rules as a Market.

## **Net Client Omnibus Margin Amount**

As of any relevant time for a Participant, the aggregate amount of Client-Related Initial Margin with respect to the Client-Related Positions of that Participant (determined on a net basis across all such Client-Related Positions).

## **Net Margin Requirement**

The meaning specified in Rule 401(a).

## **Non-Participant Party**

A Person that is not ICE Clear Credit, a Participant or an Affiliate of a Participant (provided that a Client-Carrying Broker (including a Client Carrying Broker that is an Affiliate of a Participant) acting in its capacity as such will be deemed a Non-Participant Party for purposes of the Rules). Non-Participant Parties include, without limitation, a "customer" as defined in CFTC Rule 1.3 (other than a holder of a proprietary account as defined in such rule).

## **Non-Participant Pro Rata Share**

For each Non-Participant Party of a Participant, a percentage equal to (i) the Minimum ICE Clear Credit Required Initial Margin for such Non-Participant Party with respect to Client-Related Positions with that Participant divided by (ii) the aggregate Minimum ICE Clear Credit Required Initial Margin for all Non-Participant Parties with respect to Client-Related Positions with that Participant.

## **Novation Time**

The meaning specified in Rule 309.

## **Obligations**

All obligations of a Participant arising under these Rules or any agreements between such Participant and ICE Clear Credit, in each case however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

## **OFAC**

The meaning specified in Rule 208.

## **Open Positions**

A Participant's open positions in Contracts with ICE Clear Credit created pursuant to Rule 301 or as otherwise provided in these Rules and not offset

pursuant to Rule 304 or closed pursuant to the Closing-out Process. Both Client-Related Positions and House Positions shall constitute Open Positions for the purposes of these Rules.

**Parent**

The meaning specified in Rule 205.

**Participant**

A person that has been approved by ICE Clear Credit for the submission of Contracts and that is party to an agreement with ICE Clear Credit specifically relating to transactions in Contracts (a “Participant Agreement”).

**Participant Excess Margin**

Any initial margin required by a Participant from a Non-Participant Party in respect of a Client-Related Position in excess of the Minimum ICE Clear Credit Required Initial Margin.

**Participant’s Required Segregated Customer Funds**

The meaning specified in Rule 201.

**Person**

An individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

**President**

The President of ICE Clear Credit.

**Retiring Participant**

A Participant who has notified ICE Clear Credit pursuant to the terms of its Participant Agreement of its intention to terminate its status as a Participant or who has been notified by ICE Clear Credit pursuant to the terms of its Participant Agreement or these Rules of ICE Clear Credit’s intention to terminate its status as a Participant.

**Risk Committee**

The Risk Committee of ICE Clear Credit whose composition, rights and responsibilities are described in Chapter 5 of these Rules.

## **Risk Management Subcommittee**

The Risk Management Subcommittee of the Risk Committee whose composition, rights and responsibilities are described in Chapter 5 of these Rules.

## **Rule**

References to a “Rule” or “Rules” are references to the Rules of ICE Clear Credit.

## **SDN List**

The meaning specified in Rule 208.

## **SEC**

The U.S. Securities and Exchange Commission.

## **Securities Exchange Act**

The U.S. Securities Exchange Act of 1934, as amended.

## **Termination Event**

The meaning specified in Rule 207.

## **Trades**

Transactions in Contracts.

## Trading Activity Limitation

The meaning specified in Rule 203.

## Transfer

- (a) With respect to any Margin, Collateral or other assets required to be delivered by a Participant to ICE Clear Credit (i) in the case of cash, payment or delivery by wire transfer into one or more bank accounts specified by ICE Clear Credit (which may be a relevant Margin Account), (ii) in the case of securities or other financial assets that can be paid or delivered by book-entry, the crediting of such securities or other financial assets to a securities account specified by ICE Clear Credit (which may be a Margin Account), and (iii) in the case of neither cash nor securities or other financial assets that can be paid or delivered by book-entry, in accordance with the instructions of ICE Clear Credit; and
- (b) With respect to any Margin, Collateral or other assets required to be delivered by ICE Clear Credit to a Participant, in any manner specified herein including, without limitation, (i) in the case of Mark-to-Market Margin, by crediting such Margin to such Participant's House Margin Account or Custodial Client Omnibus Margin Account, as applicable, deeming such Margin as having been Transferred by such Participant to ICE Clear Credit and making such Margin available for withdrawal by the Participant, in accordance with the ICE Clear Credit Procedures, (ii) in the case of Initial Margin, making such Margin in such Participant's House Margin Account or Custodial Client Omnibus Margin Account, as applicable, at ICE Clear Credit available for withdrawal by the Participant, in accordance with the ICE Clear Credit Procedures, and (iii) in the case of other property to be returned to a Participant from a Custodial Client Omnibus Margin Account in accordance with Rule 406, by making such property available for withdrawal in accordance with the ICE Clear Credit Procedures.

## Value

The meaning specified in Rule 401(d).



## 2. MEMBERSHIP

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### 201. Qualifications of Participants.

- (a) ICE Clear Credit shall determine whether any applicant for status as a Participant, or any existing Participant, satisfies the qualifications established by ICE Clear Credit. Only Persons found by ICE Clear Credit to be so qualified shall be permitted to become or remain, as applicable, Participants. For the purpose of determining whether any applicant or Participant is thus qualified, ICE Clear Credit may establish minimum capital and other financial requirements for Participants, examine the books and records of any applicant or Participant (on the site of such applicant or Participant, during normal business hours, with reasonable advance notice, and, in the case of a Participant, not more frequently than annually unless ICE Clear Credit determines that a more frequent examination of the Participant is appropriate for the protection of the clearing system operated by ICE Clear Credit pursuant to these Rules), and take such other steps as it may deem necessary to ascertain the facts bearing upon the question of qualification. The Risk Management Subcommittee will have certain consultation rights over any Modification (as defined in Rule 502) to the qualifications for Participants contemplated by this Rule 201.
- (b) Participants must meet and maintain such standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as may be established by ICE Clear Credit from time to time. Without limitation of the foregoing, no applicant shall be admitted or permitted to remain, as applicable, as a Participant unless, in ICE Clear Credit's sole determination:
- (i) ~~Intentionally omitted~~ It is regulated for capital adequacy (the "Regulatory Requirement") by a competent authority such as the CFTC, SEC, Federal Reserve Board, Office of the Comptroller of the Currency, U.K. Financial Services Authority or any other regulatory body ICE Clear Credit designates from time to time for this purpose, or it is an Affiliate of an entity that satisfies the Regulatory Requirement and is subject to consolidated holding company group supervision;
- (ii) (1) if it is ~~an FCM or a Broker-Dealer~~, (A) it has a minimum of \$4050 million of Adjusted Net Capital and (B) it has ~~Excess Net Capital that is greater than 5% of the Participant's Required Segregated Customer Funds;~~ or (2) if it is not an FCM or a Broker-Dealer, it has a minimum of \$5 billion in Tangible Net Equity ~~(provided that in the case of (1) or (2),~~ (provided that this requirement may, at the discretion of ICE Clear Credit, be met by a Parent if such Parent provides a guarantee pursuant to Rule 205);

For purposes of this clause (ii):

“Adjusted Net Capital” (A) for a Participant that is an FCM, shall be as defined in CFTC Rule 1.17 and as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12, and (B) for a Participant that is not an FCM but is a Broker-Dealer, shall be its “net capital” as defined in SEC Rule 15c3-1 and as reported on its FOCUS Report;

~~“Excess Net Capital”, and (C) for a Participant that is neither an FCM or nor a Broker-Dealer, shall equal~~ be the amount of its “excess net capital” as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12, as determined pursuant to a similar risk adjusted capital calculation methodology acceptable to ICE Clear Credit;

~~“Participant’s Required Segregated Customer Funds” shall equal (i) the total amount required to be maintained by such Participant on deposit in segregated accounts for the benefit of customers pursuant to Sections 4d(a) and 4d(f) of the CEA and the regulations thereunder and (without duplication) pursuant to the rules of relevant clearing organizations for positions carried on behalf of customers in the cleared OTC derivative account class plus (ii) the total amount required to be set aside for customers trading on non-United States markets pursuant to CFTC Rule 30.7;~~

~~“Tangible Net Equity” shall be computed in accordance with the Federal Reserve Board’s definition of “Tier 1 capital” as contained in Federal Reserve Regulation Y Part 225 Appendix A (or any successor regulation thereto), in the case of a bank or other Participant subject to such regulation, or otherwise shall be the Participant’s equity less goodwill and other intangible assets, as computed under generally accepted accounting principles.~~

- (iii) At the time of admission, it demonstrates to the Board, upon recommendation by ICE Clear Credit senior management after consultation with the Risk Management Subcommittee, that it (or, if a Parent has provided a guarantee of its obligations pursuant to Rule 205, its Parent) satisfies the internal stringent credit criteria established by the Board in its discretion, such satisfaction to be confirmed by an examination of its books and records;
- (iv) At no time after admission does it (or, if applicable, its Parent) cease to

satisfy the internal credit criteria established by the Board under clause (iii) above, after consultation with the Risk Management Subcommittee, upon its admission;

- (v) It demonstrates that it has sufficient financial ability to make its anticipated General Guaranty Fund contributions and provide Margin as required by these Rules, and it makes and maintains, so long as it is a Participant, a deposit or deposits of Collateral in the General Guaranty Fund as required by these Rules;
- (vi) It (on its own or through an arrangement acceptable to ICE Clear Credit) demonstrates operational capacity with respect to agreements (whether or not cleared) substantially similar (as determined by ICE Clear Credit) to Contracts, including (A) having the ability to process the expected volumes and values of Contracts within the required time frames (including at peak times and on peak days), (B) having the ability to submit required pricing data within the required time frames and (C) maintaining back-office facilities (or entering into a facilities management agreement in form and substance acceptable to ICE Clear Credit):
  - (1) remote from both the exchange floor and/or trading desks;
  - (2) with adequate systems (including but not limited to computer and communication systems) and records;
  - (3) with adequate number of competent personnel with sufficient operational background and experience with procedures for the management and clearance of business transacted in the Markets and Contracts in which the Participant will participate; and
  - (4) with such equipment (including computer software and hardware) as may be required by ICE Clear Credit.
- (vii) It (on its own or through an arrangement acceptable to ICE Clear Credit) demonstrates risk management competence in such agreements and Contracts;
- (viii) [Intentionally omitted.]
- (ix) It has established relationships with, and has designated to ICE Clear Credit, an approved settlement bank for confirmation and payment or delivery, as applicable, of all Margin and any other payments or deliveries required to be made by it to or from ICE Clear Credit, or has made alternate arrangements to facilitate such payments and deliveries in a timely manner and in accordance with these Rules and the ICE Clear

Credit Procedures;

- (x) It has established relationships with one or more swap data repositories and/or security-based swap data repositories as necessary for reporting its cleared Contracts in accordance with applicable law;
  - (xi) It provides in a timely manner all reports and information relating to the Participant, Persons controlling the Participant, and related or affiliated organizations as required by these Rules or otherwise required by ICE Clear Credit, and upon becoming aware that any such report or information was at the time provided false or misleading in any material respect, it promptly provides ICE Clear Credit a correcting amendment of or supplement to such report or information; and
  - (xii) It is (and, if its Parent provides a guarantee pursuant to Rule 205, its Parent is) organized in a jurisdiction whose insolvency laws are acceptable to ICE Clear Credit.
  - (xiii) It is not subject to statutory disqualification under Section 8a(2) of the CEA or Section 3(a)(39) of the Securities Exchange Act, or otherwise applicable CFTC or SEC regulations.
- (c) For the avoidance of doubt, and without limiting Section 201(b), the following categories of persons may be approved by ICE Clear Credit as Participants; provided that such applicant meets and maintains the ICE Clear Credit participation standards set forth in Rule 201(b) above:
- (i) registered broker-dealer;
  - (ii) registered investment company;
  - (iii) bank;
  - (iv) insurance company;
  - (v) registered futures commission merchant; or
  - (vi) such other person or class of persons that the SEC may designate as appropriate.

## 202. Application for Participant Status.

- (a) Persons desiring to clear Trades through ICE Clear Credit shall make application in such form as shall be prescribed by ICE Clear Credit. Each applicant must execute the Participant Agreement and agree to abide by the Rules and related interpretations and the ICE Clear Credit Procedures as in effect from time to time. Decisions with respect to an application to be a Participant shall be made by the Board on the advice of ICE Clear Credit management and the Risk Management Subcommittee. An applicant for Participant status shall be conclusively deemed to have agreed to have no recourse against ICE Clear Credit, the Board or any member of the Risk Management Subcommittee in the event that its application to become a Participant is rejected. In the event that an applicant for Participant status is denied participation in or is granted limited access to ICE Clear Credit, ICE Clear Credit shall provide to such applicant and to the CFTC and SEC a statement setting forth the specific grounds on which the applicant was denied or the Participant's access was limited.
- (b) Notwithstanding the termination of Participant status, a Person admitted as a Participant agrees to be responsible for any Violation (as defined in Rule 701) committed by such Person while a Participant and agrees to have any disputes that arise while a Participant and that relate to or arise out of any transaction with ICE Clear Credit or status of a Participant in ICE Clear Credit resolved in accordance with the Rules.

## 203. Restriction on Activity.

- (a) In the event a Participant fails to comply with these Rules or the ICE Clear Credit Procedures, ICE Clear Credit may, subject to the requirements of Rule 615(b), suspend or revoke such Participant's clearing privileges. In such case, ICE Clear Credit shall provide to the Participant and to the CFTC and SEC a statement setting forth specific grounds on which the Participant's clearing privileges were suspended or revoked.
- (b) In addition to any other rights granted to ICE Clear Credit under these Rules, for the protection of ICE Clear Credit and the Participants, ICE Clear Credit shall be authorized: (i) to impose such additional capital, Margin or other requirements on a Participant; (ii) to allow such Participant to submit Trades for liquidation only; (iii) to limit or restrict the type of Contracts that may be cleared by such Participant in any of its accounts with ICE Clear Credit; or (iv) to limit or restrict the aggregate notional or other reference amount of positions in Contracts that are permitted to be maintained by such Participant in any of its accounts with ICE Clear Credit (any limitation imposed under clauses (ii) through (iv), a "**Trading Activity Limitation**").

#### **204. Financial Statements of Participants.**

Each Participant (and, if a Parent has provided a guarantee of its obligations pursuant to Rule 205, its Parent) shall submit statements of its financial condition at such times and in such manner as shall be prescribed by ICE Clear Credit from time to time. Without limiting the foregoing, each Participant that is an FCM shall provide to ICE Clear Credit a copy of its Forms 1-FR-FCM or FOCUS Reports, as applicable, as and when filed with the National Futures Association or Financial Institution Regulatory Authority, as applicable (and any Participant that is not an FCM or a Broker-Dealer shall provide to ICE Clear Credit a copy of such forms as ICE Clear Credit may determine to be necessary on a comparable schedule to that which an FCM would be required to follow in filing such forms with the National Futures Association).

#### **205. Parent Guarantee.**

A Participant shall be approved for the clearing of Contracts only if it meets the capital, regulatory and other requirements as specified by ICE Clear Credit from time to time, or, if it fails to meet such requirements itself, it has a direct or indirect parent that is acceptable to ICE Clear Credit (a "**Parent**") that meets such requirements (including without limitation under Rules 201(b)(ii)-(iv) and (xi)) as determined by ICE Clear Credit and that unconditionally guarantees the Participant's obligations relating to Contracts. The form, substance and amount of any such guarantee must be acceptable to ICE Clear Credit and ICE Clear Credit must be satisfied that the guarantee is enforceable against the Parent under applicable law (including relevant insolvency law), and in connection therewith ICE Clear Credit may require Participant or Parent to procure an opinion of counsel in form and substance acceptable to ICE Clear Credit to such effect. ICE Clear Credit will not accept a Parent guarantee pursuant to this Rule 205 unless ICE Clear Credit is satisfied that the Parent will be able to meet its financial obligations under the guarantee, based upon such financial or other information as is reasonably requested by ICE Clear Credit.

#### **206. Notices Required of Participants.**

- (a) Each Participant shall immediately notify ICE Clear Credit, orally and in writing, of:
  - (i) Any material adverse change in the Participant's financial condition including, but not limited to, a decline in Adjusted Net Capital or ~~Tangible Net Equity, as applicable (each (as defined in Rule 201(b)(ii))~~ equal to 20% or more from such amount determined as of the end of the previous calendar month, or if such Participant knows or has reason to believe that its Adjusted Net Capital or ~~Tangible Net Equity~~ has fallen below ICE Clear Credit's capital requirement in Rule 201(b)(ii);

- (ii) Any proposed material reduction (and, in all cases, if the reduction is 30% or more from such amount determined as of the end of the previous calendar month) in the Participant's operating capital or Adjusted Net Capital or ~~Tangible Net Equity~~, including the incurrence of a contingent liability that would materially affect the Participant's capital or other representations contained in the latest financial statement submitted to ICE Clear Credit should such liability become fixed;
- (iii) With respect to the Participant, any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges, or, to the extent detrimental to the ability of the Participant (or of any Parent that has provided a guarantee for such Participant pursuant to Rule 205) to fulfill its duties and obligations hereunder, any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by the U.S. Commodity Futures Trading Commission, the U.S. Securities and Exchange Commission, the U.K. Financial Services Authority, any commodity, securities or swap exchange or trading facility, clearing organization, the National Futures Association, the Financial Industry Regulatory Authority, any other regulatory, self-regulatory or other entity or organization with regulatory authority, whether U.S. or non-U.S. and governmental or otherwise, having jurisdiction over the Participant, or other business or professional association;
- (iv) The imposition of any restriction or limitation on the business conducted by the Participant 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 Participants of or participants in such clearing organization or exchange;
- (v) Any failure by the Participant to perform any of its material contracts, obligations or agreements, unless such failure is the result of a good faith dispute by such Participant;
- (vi) Any determination that the Participant will be unable to perform any of its material contracts, obligations or agreements;
- (vii) The Participant becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

- (viii) The institution of any proceeding by or against the Participant or any Affiliate of the Participant, under any provision of the bankruptcy laws of the United States, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Securities Investor Protection Act of 1970, the Federal Deposit Insurance Corporation Improvement Act of 1991, the Federal Deposit Insurance Act or any other statute or equitable power of a court of like nature or purpose, whether domestic or foreign, in which such Participant or Person is designated as the bankrupt, debtor or equivalent, or a receiver, conservator, trustee or similar official is appointed for the Participant, such Affiliate, or its or their property;
  - (ix) The receipt by the Participant, or the filing by the Participant with a self-regulatory organization, of a notice of material inadequacy; and
  - (x) The receipt by the Participant from its independent auditors of an audit opinion that is not unqualified.
- (b) Each Participant shall provide prior written notice to ICE Clear Credit of:
- (i) Any changes in the Participant's name, business address, its telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with ICE Clear Credit; and
  - (ii) Any proposed material change in the organizational or ownership structure or senior management of the Participant (and the Participant shall promptly furnish to ICE Clear Credit such documents related to such events as ICE Clear Credit may from time to time request), including:
    - (A) the merger, combination or consolidation between the Participant and another Person;
    - (B) the assumption or guarantee by the Participant of all or substantially all of the liabilities of another Person in connection with the direct or indirect acquisition of all or substantially all of the assets of such Person;
    - (C) the sale of a significant part of the Participant's business or assets to another Person; and
    - (D) a change in the direct or indirect beneficial ownership of 10% or more of the equity of the Participant.



- (c) Each Participant that is an FCM shall notify ICE Clear Credit of any matter required to be notified to the CFTC under CFTC Rule 1.12, within the time and in the manner specified in that rule. Each Participant that is a Broker-Dealer shall notify ICE Clear Credit of any matter required to be notified to the SEC under Rule 17a-11 or to FINRA under FINRA Rule 3070, within the time and in the manner specified in those rules. (Any Participant that is not an FCM or a Broker-Dealer shall provide notices to ICE Clear Credit pursuant to the second preceding sentence as though it were an FCM.)
- (d) Each Participant shall promptly notify ICE Clear Credit in writing if it becomes subject to statutory disqualification under Section 8a(2) of the CEA or Section 3(a)(39) of the Securities Exchange Act, or otherwise applicable CFTC or SEC regulations.

... **Interpretations and Policies:**

- .01 As used in this Rule, the term "Participant" shall be deemed to include any Parent of the Participant providing a guarantee pursuant to Rule 205 and the Participant and such Parent shall be jointly obligated to deliver all notices required by this Rule relating to events occurring with respect to the Participant or such Parent.

## 207. Termination of Participant Status.

- (a) Upon the occurrence of a Termination Event (as defined herein), ICE Clear Credit may, in its sole discretion, impose limitations, conditions and restrictions upon a Participant or, subject to the requirements of Rule 615(b), terminate the status of the Participant. In such circumstances, ICE Clear Credit may, in its sole discretion, (i) decline to accept new Trades in the case of Termination Events described in subparagraphs (b)(i), (b)(ii) (provided such Retiring Participant has no remaining Open Positions) or (b)(v) of this Rule, (ii) cause Open Positions to be transferred to another clearing organization designated by the Market, if applicable, or that provides clearing services for agreements equivalent to Contracts, with such security against claims and liabilities as ICE Clear Credit shall deem necessary for its protection, (iii) impose a Trading Activity Limitation (as defined in Rule 203), (iv) prior to the occurrence of a Default, require the Participant to cause all Open Positions to be closed out (or, in the case of Client-Related Positions, transferred to another Participant in accordance with Chapter 20A-01 of these Rules by a date specified by ICE Clear Credit (which, in the case of a Retiring Participant, shall be no later than such Retiring Participant's Scheduled Return Date (as defined in Rule 803)), with the failure of the Participant to do so constituting a default under the Participant's Contracts with ICE Clear Credit, and (v) otherwise take or omit to take such actions, or any combination thereof, as it deems necessary or appropriate in the circumstances; *provided* that nothing in this paragraph (a) shall limit the rights granted to ICE Clear Credit upon the Default of a Participant.
- (b) As used herein, "**Termination Event**" shall mean the occurrence of any of the following:
- (i) The expiration or termination of the agreement for clearing services between ICE Clear Credit and the relevant Market;
  - (ii) The Participant becomes a Retiring Participant;
  - (iii) (A) A representation or warranty made by the Participant (or any Parent of Participant providing a guarantee pursuant to Rule 205) to ICE Clear Credit under or in connection with any agreement between ICE Clear Credit and the Participant (or such Parent) shall be false or misleading in any material respect as of the date on which made;
  - (B) an Eligible Officer determines that the Participant (or, if applicable, such Parent) has failed to satisfy the ongoing requirements to retain its status as a Participant under Rule 201(b)(i), (ii), (iv), (v), (viii), (ix), (x) or (xi); or

- (C) the Board determines, by a two-thirds majority of those voting, in a vote excluding members of the Board who are employees of such Participant or any Affiliate and with a quorum of at least fifty percent of the remaining members of the Board, that (1) the Participant (or, if applicable, such Parent) has failed to satisfy any other ongoing requirements to retain its status as a Participant, including under Rule 201(b)(vi) or (vii), or (2) it appears, in the Board's judgment, that the Participant (or, if applicable, such Parent) is likely to fail to satisfy any ongoing requirements to retain its status as a Participant if any proposed material change in the organizational or ownership structure or senior management of the Participant (or, if applicable, such Parent) referred to in Rule 206(b)(ii) were effected;
- (iv) The material breach by the Participant of the Rules or any of the terms or provisions of any agreement between ICE Clear Credit and the Participant which is not remedied promptly after notice from ICE Clear Credit; or
- (v) The Participant is in Default.
- (vi) The Participant becomes subject to statutory disqualification under Section 8a(2) of the CEA or Section 3(a)(39) of the Securities Exchange Act, or otherwise applicable CFTC or SEC regulations.
- (c) A Retiring Participant's status as a Participant hereunder shall be terminated no later than the Retiring Participant's Retirement Date determined pursuant to Rule 803.

## 208. AML Compliance.

- (a) **Anti-Money Laundering and Customer Identification Program.** As of each ICE Business Day, regardless of whether Participant submits Contracts to be cleared by ICE Clear Credit, each Participant that is subject to the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), the USA PATRIOT Act, and the regulations promulgated thereunder hereby represents and warrants that it has developed and implemented a written anti-money laundering program, which has been approved in writing by senior management of Participant, and is reasonably designed to promote and monitor Participant's compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), the USA PATRIOT Act, and the regulations promulgated thereunder. Such anti-money laundering program shall, at a minimum:

- (i) establish and implement policies, procedures and internal controls reasonably designed to promote compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;
  - (ii) establish policies, procedures and internal controls reasonably designed to detect and report circumstances where Participant may be used as a vehicle for money laundering, including the monitoring of Participant's customers for suspicious activity;
  - (iii) require Participant to take appropriate action once suspicious activity is detected and make reports to government authorities in accordance with applicable laws;
  - (iv) require the performance of due diligence on Participant's customers and, where appropriate, performance of enhanced due diligence on customers using a risk-based approach;
  - (v) require screening of customers for compliance with U.S. sanctions administered by the U.S. Treasury's Office of Foreign Assets Control ("**OFAC**"), including screening customer names against OFAC's List of Specially Designated Nationals and Blocked Persons ("**SDN List**");
  - (vi) designate an anti-money-laundering compliance officer;
  - (vii) provide for independent testing for compliance to be conducted by the Participant's personnel or by a qualified outside party; and
  - (viii) provide periodic training for appropriate personnel.
- (b) If Participant becomes aware that Participant's customer and/or the beneficial owner of a Trade, is prohibited pursuant to an economic or trade sanctions program administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury or is listed on the SDN List, Participant will notify the ICE Clear Credit Legal and/or Compliance Department as soon as is reasonably practicable or as may otherwise be required by law.

**209. ~~Capital Risk-Based Additional Margin~~ Capital Requirement.**

If at any time and for so long as a Participant that is an FCM or Broker-Dealer has a Required Contribution to the General Guaranty Fund that exceeds 2025% of its Excess Net Capital, ICE Clear Credit may impose ~~additional Initial Margin requirements for such Participant for risk management purposes pursuant to Chapter 4 of the Rules. (in addition to imposing the Trading Activity Limitations provided for in Rule 203(b))~~ require such Participant to prepay and maintain with ICE Clear Credit an additional contribution (the "Prepaid Contribution") to the General Guaranty Fund equal to the amount of the

Additional Assessment Limit that would be applicable to it at such time if it were a Retiring Participant. Payment of the Prepaid Contribution shall not limit such Participant's obligations to make additional contributions to the General Guaranty Fund as otherwise required by the Rules, provided that if such a Participant becomes a Retiring Participant it may apply the Prepaid Contribution to its obligation to make additional contributions to the General Guaranty Fund up to its Additional Assessment Limit. Notwithstanding anything to the contrary herein, except in the case of a Default with respect to such Participant, the Prepaid Contribution will not be deemed to be part of the General Guaranty Fund for purposes of Rule 802(b) until such time as it is applied to the Participant's obligations to make additional contributions to the General Guaranty Fund as provided in the preceding sentence.