

**U.S. COMMODITY FUTURES TRADING COMMISSION**

Ensuring the Integrity of the Futures & Swaps Markets

DCO Rules**Submitter Information**Organization Name
ICE Clear Credit LLCOrganization Type
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maria.zyskind@theice.com**Cover Sheet**Submission Number
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40.10(a) SIDCO Advance Notice of Rule CertificationSubmission Description
ICE Clear Credit LLC ("ICC") proposes changes to the ICC Rulebook relating to non-default losses.

Request Confidential Treatment

Registered Entity Identifier Code

Rule Numbers
Chapters 1, 4, and 8 of the ICC RulebookDate of Intended Implementation
9/30/2019**Documents**NDL SIDCO Filing 2019 08 01.pdf
Exhibit A - ICC Rules.pdf**Request For Confidential Treatment - Detailed Written Justification**

N/A

Eric Nield
General Counsel

August 1, 2019

**Re: ICE Clear Credit LLC Advance Notice
of Proposed Rule Change Pursuant to
Commission Rule 40.10: Non-Default
Losses**

VIA CFTC PORTAL

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC (“ICE Clear Credit” or “ICC”), a registered derivatives clearing organization (“DCO”) under the Commodity Exchange Act, as amended (the “Act”), that has been designated by the Financial Stability Oversight Council as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rule 40.10 as an advance notice of a proposed rule change, the amendments to its Clearing Rules (the “Rules”) discussed herein.

Explanation and Analysis

ICE Clear Credit LLC is proposing amendments to its Rules to address the treatment of certain investment losses, custodial losses and other non-default losses (in each case, losses that do not arise from the default of a clearing participant (a “Participant”). As discussed below, the amendments are intended to satisfy the requirements of Commission Rule 39.39 applicable to ICC as a systemically important DCO that ICC have rules to facilitate recovery or orderly wind-down necessitated by general business risk, operational risk or any other risk that threatens its viability as a going concern. The amendments are also intended to be consistent with relevant international standards, including the Principles of Financial Market Infrastructure developed by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO). Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Rule 40.10 is also provided below.

The amendments would, among other matters:

- define three exclusive categories of relevant losses: (1) investment losses, (2) custodial losses and (3) non-default losses,
- specify the ICC resources that will be applied to cover each such category of losses,
- specify the responsibility of Participants, in appropriate circumstances, to make contributions with respect to investment losses and custodial losses, and
- address the treatment of recoveries by ICC with respect to such losses.

The proposed amendments are described in more detail below.

Definitions of Loss Categories

In Rule 102, new definitions of “Investment Losses” and “Non-Default Losses” would be added, and the definition of “Custodial Losses” would be revised.

Investment Losses

Investment Losses would be defined as losses incurred or suffered by ICC in connection with the default of the issuer of any investment of Margin or General Guaranty Fund assets by ICC or the default of the counterparty to any repurchase or reverse repurchase contract or similar transaction used to invest or reinvest such Margin or General Guaranty Fund assets. Investment Losses would also include other losses with respect to such investments, including from a change in value due to market movements. However, Investment Losses would not include Custodial Losses (as discussed below) or losses resulting directly from a failure by ICC to comply with its own investment policies.

Certain other circumstances would not constitute Investment Losses. For example, a negative yield or interest rate on an ICC investment will not be an Investment Loss. If a Participant posts securities or non-cash assets as Margin or General Guaranty Fund contributions, any gain or loss in such assets will not be an Investment Loss for purposes of the Rules.

Custodial Losses

Under the revised Rules, Custodial Losses would be defined as losses of Margin or General Guaranty Fund assets (including declines in the value thereof) as a result of (1) the insolvency or failure of a Custodian or (2) the embezzlement or theft of such assets by any person (other than ICC or its employees or representatives). A Custodian for this purpose would include a bank or trust company, central bank, central securities depository or other third party settlement system used by ICC for the deposit, holding, custody or transfer of cash or securities. Custodial Losses would not include Investment Losses.

Non-Default Losses

Non-Default Losses would be defined to cover losses incurred or suffered by ICC that are neither Investment Losses nor Custodial Losses and arise in connection with an event other than a Participant default. The definition thus captures losses from general business or operational risk that do not constitute custodial or investment losses.

Treatment of Losses

The amendments set out in new Rule 811 (and related additional definitions in Rule 102) the clearing house's approach to the treatment of Non-Default Losses, Investment Losses and Custodial Losses.

Non-Default Losses

Under new Rule 811(b), Non-Default Losses would be met from available ICC capital and other ICC assets (including available retained earnings). Non-Default Losses would not be covered from ICC contributions to default resources (the ICE Clear Credit Initial Contribution, ICE Clear Credit Continuing Contribution or Additional ICC Collateral Deposits). Non-Default Losses would not be allocated to Participants, or otherwise covered using Margin, General Guaranty Fund contributions or Assessment Contributions of Participants.

Investment Losses

New Rules 811(c)-(e) would set out the treatment of Investment Losses. Under Rule 811(c), in the case of an Investment Loss, ICC would first apply to the loss any available Investment Loss Resources held by ICC. Investment Loss Resources would be defined in Rule 102 to be \$20 million of ICC's own assets designated by ICC as available to be applied to Investment Losses. The ICC Board may modify the amount of Investment Loss Resources from time to time, and that determination would be risk-based in light of ICC's potential exposure to Investment Losses.

In the event the Investment Loss Resources were insufficient to cover the Investment Loss (an "Investment Loss Shortfall"), ICC would have the right, under Rule 811(d), to allocate the Investment Loss Shortfall to all Participants (including any Defaulting Participants). In that case, each Participant would be obligated to make a contribution (an "Investment Loss Contribution"), based on its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its aggregate Initial Margin (both house and customer) and General Guaranty Fund contributions (its "Participant IM/GF Contribution") as compared to the aggregate Participant IM/GF Contributions for all Participants. Under Rule 811(e), the maximum contribution of a Participant for an Investment Loss Contribution in respect of any event giving rise to an Investment Loss may not exceed its Participant IM/GF Contribution. Investment Loss Contributions could only be applied to Investment Loss Shortfalls (and not Custodial Loss Shortfalls).

Custodial Losses

New Rules 811(f)-(h) would set out the treatment of Custodial Losses. Similarly to the treatment of Investment Losses, under Rule 811(f), in the case of a Custodial Loss, ICC would first apply to the loss any available Custodial Loss Resources held by ICC. Custodial Loss Resources would be defined to be \$32 million of ICC's own assets designated by ICC as available to be applied to Custodial Losses. As with Investment Loss Resources, the ICC Board may modify the amount of Custodial Loss Resources from time to time, and such determination would be risk-based in light of ICC's potential exposure to Custodial Losses.

In the event the Custodial Loss Resources were insufficient to cover the Custodial Loss (a "Custodial Loss Shortfall"), ICC would have the right, under Rule 811(g), to allocate the Custodial Loss Shortfall to all Participants (including any Defaulting Participants). In that case, each Participant would be liable to make a contribution (a "Custodial Loss Contribution"), based on its pro rata share of the Custodial Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the aggregate Participant IM/GF Contributions for all Participants. Under Rule 811(h), the maximum contribution of a Participant for a Custodial Loss Contribution in respect of any event giving rise to an Investment Loss may not exceed its Participant IM/GF Contribution.

Custodial Loss Contributions could only be applied to Custodial Loss Shortfalls (and not Investment Loss Shortfalls).

Notwithstanding the foregoing, in the event of a Custodial Loss where the Custodian is a central bank, ICC is not obligated to apply Custodial Loss Resources, and the entire Custodial Loss would constitute a Custodial Loss Shortfall subject to allocation to Participants as described above.

Allocation of Recoveries

The amendments would address any recoveries that ICC is able to obtain in respect of an Investment Loss or Custodial Loss after Investment Loss Contributions or Custodial Loss Contributions (collectively, “Loss Contributions”) have been made. Rule 811(l) would provide a “reverse waterfall” for allocation of such recoveries, after deduction of expenses of ICC, to the parties that bore the loss (whether ICC, Participants or both) in the reverse order from which they were initially applied. The amendments would also set out ICC’s obligations to seek recoveries in respect of Investment Losses and Custodial Losses, generally using the same degree of care as it exercises with respect to its own assets that are not subject to allocation under Rule 811.

Additional Provisions

Rule 811(u) would contain a general disclaimer by ICC of losses resulting from the holding, deposit, custody, transfer or investment of Margin, General Guaranty Fund contributions and Assessment Contributions, except as otherwise provided in Rule 811, and provided that Rule 811(u) will not limit any liability of ICC for its own gross negligence or willful misconduct. Rule 406 would also be amended to remove an existing disclaimer for custodial losses, which would be superseded by the new provisions.

New Rule 402(k) would address investment of cash Initial Margin provided by a Participant in respect of its client origin account. The Participant would be required to instruct ICC whether or not ICC should invest such Initial Margin. If instructed to invest, ICC would invest the cash in accordance with its Rules and investment policies procedures and applicable law. If instructed not to invest, ICC would hold the cash in a deposit account with a Custodian in accordance with ICC’s policies and procedures. If a Participant does not provide an instruction, (1) for US dollar cash, the Participant would be deemed to have instructed ICC not to invest such cash, and (2) for cash in other currencies, the Participant would be deemed to have instructed ICC to invest such cash.

Rule 811 would also address certain procedures for notices to Participants of the use of Investment Loss Resources and Custodial Loss Resources and of required Loss Contributions in respect of Investment Losses and Custodial Losses. The Rule would also provide for timing and manner of collection of Loss Contributions (including through offset against obligations of ICC to return margin or other assets), and for currency conversions as necessary. The Rule would clarify that the requirement to make Loss Contributions does not reduce or otherwise affect other obligations of a Participant to make payments or deliveries to ICC under the Rules, or otherwise limit ICC’s netting, setoff and other rights under the Rules. In particular, obligations to make Loss Contributions would be separate from any obligation to make an Assessment Contribution, and the limitations on Assessments under the Rules would not apply to liabilities for Loss Contributions. Use of the Loss Contribution procedures under Rule 811 would also not be deemed to constitute an ICE Clear Credit Default under the Rules.

ICC would be required to disclose to Participants the amount of Custodial Loss Resources and Investment Loss Resources, and to notify Participants in advance of any changes in such amounts. If such loss resources are applied as a result of a loss event, any replenishment of such resources by ICC would not reduce the amount of any Custodian Loss Shortfall or Investment Loss Shortfall (or resulting Loss Contributions) for that loss event. ICC’s liability for Custodial Losses or

Investment Losses would not exceed the amount of designated Custodial Loss Resources or Investment Loss Resources, as applicable, from time to time.

Analysis of Expected Effect on Risks to ICC and Market Participants, and Plans to Manage Such Risks

The amendments are principally designed to address the risks posed to ICC by a significant loss event not resulting from a default by one or more Participants. These events may include investment losses and custodial losses with respect to margin and General Guaranty Fund contributions, as well as other losses resulting from general business risk, operational risk or other non-default scenarios. ICC, like all clearing organizations, faces the risk that such a loss event could affect its ability to continue orderly clearing operations or otherwise affect its viability as a going concern.

With respect to Investment Losses, ICC has designed its existing investment policies and procedures such that investments are limited to instruments with minimal credit, market and liquidity risks, consistent with the requirements of Commission regulations (including Commission Rule 39.15). Nonetheless, ICC faces the risk that the issuer of such an investment will default, the counterparty to an investment through a reverse repurchase agreement, repurchase agreement or similar transaction will default, or the value of an investment will be materially and adversely affected by changes in market conditions. In such cases, ICC may not have access to posted margin or guaranty fund contributions, and thus may not have its expected levels of financial resources that support normal clearing operations. ICC Participants, in turn, bear the risk of losing the margin or guaranty fund contributions they have posted to ICC as a result of such events.

The amendments are intended to balance these risks while ensuring that ICC can fully allocate the risks of investment losses with respect to investments of margin and guaranty fund contributions. As an initial matter, ICC would bear the risk of Investment Losses, up to the specified amount of Investment Loss Resources in the Rules. ICC has selected the level of Investment Loss Resources based on its assessment of its potential exposure to investment losses under its investment policies and procedures, and the ICC Board would periodically conduct a risk-based assessment of the appropriate level of Investment Loss Resources. As an initial measure of its potential exposure to investment losses, ICC has taken into account components of the European Union capital requirements applicable to central counterparties¹ (even though such requirements are not directly applicable to ICC), in particular the capital requirements for credit, counterparty and market risks and operational and legal risks. ICC would not be obligated under the amended Rules to use this methodology, and could in the future determine to adopt a different risk-based methodology based on its experience with investment losses or other market or regulatory developments.

In the remote scenario of an Investment Loss beyond the specified level of Investment Loss Resources, the excess loss would be shared among Participants, proportionally based on their respective aggregate initial margin and guaranty fund contributions. ICC believes that the balanced approach to allocation of losses is appropriate, and aligns incentives among ICC and its Participants to facilitate management of the risks of investment losses. Specifically, because of its “first loss” position for any Investment Loss, ICC is itself incentivized to avoid the risk of such losses through appropriate management of its investment practices. ICC would also be responsible for losses resulting from its failure to comply with its investment policies.

¹ Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and the Council with regard to regulatory technical standards on the capital requirements for central counterparties.

At the same time, an Investment Loss resulting from an investment made in accordance with its policies and procedures is ultimately outside the control of the clearing house. Furthermore, as a regulatory matter ICC is not obligated to, and is not commercially in a position to, guarantee investments against defaults by an investment issuer or counterparty. As a result, in ICC's view, it is appropriate for remote losses in excess of the Investment Loss Resources to be borne by its Participants. Absent an ability to allocate such losses to Participants, an extreme Investment Loss event, beyond the resources of the clearing house, could result in clearing house failure or interference with the clearing house's ability to continue operations.

Similarly, for Custodial Losses, ICC's existing policies are intended to mitigate the risk of custodial failure through appropriate selection and ongoing monitoring of Custodians and use of central bank custody where practical. These procedures are designed to permit the clearing house to hold assets in a manner that minimizes the risk of loss or delay in the access of ICC to such assets, consistent with the requirements of Commission Rules 39.15 and 39.36. Nonetheless, the risk of a Custodian failure or other custodial loss cannot be completely eliminated or controlled by ICC. In the event that there is a Custodial Loss, ICC has sought to appropriately balance its interests and responsibilities with those of its Participants. Under the amendments, with respect to Custodial Losses involving Custodians other than a central bank, ICC would be responsible for losses up to the amount of Custodial Loss Resources, which is established under the proposed Rule amendments and will be subject to risk-based adjustment by the ICC Board from time to time. As with the Investment Loss Resources, ICC has determined the initial level of Custodial Loss Resources taking into account components of the European Union capital requirements applicable to central counterparties, in particular the capital requirements for credit, counterparty and market risks and operational and legal risks. ICC would not be obligated under the amended Rules to use this methodology, and could in the future determine to adopt a different risk-based methodology based on its experience with custodial losses or other market or regulatory developments.

Losses in excess of the amount of Custodial Loss Resources would be shared among Participants, proportionally based on their respective aggregate initial margin and guaranty fund contributions. ICC believes this approach incentivizes ICC to appropriately manage the custodial risk for private Custodians, and thus aligns ICC's incentives with those of Participants.

However, a Custodial Loss from a custodial failure despite these measures is ultimately outside the control of ICC. ICC is not itself a depository but is rather an intermediary. ICC receives margin and guaranty fund assets from its Participants and is required by Commission regulations to place them with a depository that is in the business of accepting and holding such assets. ICC is ultimately not in a position to backstop or guarantee performance by third-party Custodians. If ICC were responsible for all Custodial Losses in excess of the defined resources, a custodial failure could lead to a clearing house failure or other interference with clearing operations. As a result, ICC believes it is appropriate for the Participants to share in Custodial Losses that exceed ICC's Custodial Loss Resources as set out in the proposed Rules.

With respect to Custodial Losses arising from a central bank custodial failure, ICC believes that such a scenario is extremely remote, and entirely outside of its control. ICC also notes the preference among regulators and Participants for the use of central bank custody. As a result, ICC believes it is appropriate in that case that Participants fully bear any such Custodial Losses.

ICC has determined that the allocation of Investment Losses or Custodial Losses, as the case may be, to Participants should be made proportionately based on the relative Participant IM/GF Contributions. The approach mutualizes both Investment Losses and Custodial Losses across all Participants, in these remote loss scenarios where such losses exceed applicable ICC resources allocated to such losses. Participants may be required to make Loss Contributions that are independent of the particular mix of cash and securities provided by the Participant as margin or guaranty fund assets, or any investment elections made by the Participant with respect to its

customer origin account. Nonetheless, ICC believes that the approach is appropriate in light of the remote nature of the potential losses, the fact that Participant margin and guaranty fund assets are invested and custodied collectively, and the practical and operational considerations that would be required for an approach that attempted to allocate losses based on a Participant's particular assets and elections. In this regard, in ICC's view, individual elections by a Participant with respect to its customer origin account are unlikely to affect the overall risk of Investment Loss and Custodial Loss (and indeed, investment elections by Participants will generally only shift the balances between investment assets (subject to Investment Losses) and custodial assets (subject to Custodial Losses)). Regardless of any elections, the balance of investments, and the particular investments made, may change on a daily (or more frequent) basis, as may the balance of assets (and types of assets) held with any individual Custodian, meaning that any attempt to allocate based on specific Participant positions would have to be done on a real-time basis. Furthermore, all Participant assets are held and invested on an aggregate basis (such that investments cannot be allocated to particular Participants), and all Participants receive a blended rate of return from aggregate clearing house investment activity. As a result, ICC does not believe it would be operationally feasible, or beneficial to Participants, to attempt to allocate Investment or Custodial Losses based on particular investment elections made or assets maintained by individual Participants with the clearing house on a real time basis. Instead, ICC believes it is more appropriate, in light of these operational and other considerations, to allocate Investment Losses and Custodial Losses, if any, to Participants based on their respective aggregate amount of Margin and General Guaranty Fund assets at the clearing house.

For Non-Default Losses, ICC would be solely responsible for covering such losses through ICC capital and other ICC resources. Participants would not be responsible for such losses, even if ICC assets were insufficient. ICC, and Participants, accordingly would bear the risk that a Non-Default Loss could occur which would exhaust clearing house capital, and render the clearing house unable to continue operations without a voluntary further infusion of capital or other resources. ICC believes that its capital and other resources at the clearing house are sufficient to permit it to cover its expected operating expenses, consistent with regulatory requirements. In light of the remote and unpredictable nature of such Non-Default Losses, ICC does not believe allocation of such Non-Default Losses to Participants is appropriate, even though the approach being taken may reduce the resources potentially available to the clearing house to withstand such losses.

For the foregoing reasons, in ICC's view, the risks presented by the amendments are appropriate in light of the goals and benefits of the amendments.

Compliance with the Act and Commission Regulations

The amendments are potentially relevant to the following core principles under the Act: (B) Financial Resources, (D) Risk Management, (F) Treatment of Funds, (O) Governance and (P) Conflicts of Interest, and the applicable regulations of the Commission thereunder.

Financial Resources. ICC does not propose in these amendments to change the amount or composition of financial resources required of Participants as Initial Margin or contributions to the General Guaranty Fund. ICC is also not proposing to change its own resources that it contributes to default resources. Under the amendments, ICC would designate clearly that ICC's own capital and other assets (other than its contributions to default resources) are available to cover Non-Default Losses (and that Participants are not responsible for such losses). In addition, ICC would designate specific amounts of its own assets to serve as Investment Loss Resources and Custodial Loss Resources, to provide risk-based, "first loss" coverage of Investment Losses and Custodial Losses incurred by ICC. The amendments would also provide for allocation of Investment Losses and Custodial Losses in excess of such resources to Participants, who would be obligated to pay Loss

Contributions to the extent of such excess. As a result, the amendments clarify the resources available to address Investment Losses, Custodial Losses and other losses not resulting from Participant default. The provisions relating to Investment and Custodial Losses also, in effect, provide protection against the loss of the financial resources provided by Participants to support the default waterfall. As such, in ICC's view, the amendments are consistent with Core Principle B and Commission Rules 39.11 and 39.33.

- Risk Management. The amendments are intended to enhance the ability of ICC to manage the risk of certain losses that do not arise from Participant default or defaults. The amendments provide a mechanism for fully allocating Investment Losses and Custodial Losses, first to resources provided by ICC in the first instance and thereafter to Participants. The amendments also clarify the responsibility of ICC for Non-Default Losses (and clarify that Participants are not responsible for such losses). The amendments thus enhance ICC's ability to address general business risk, operational risk and other risks that may otherwise threaten the viability of the clearing house as a going concern, within the meaning of Commission Rule 39.39. The amendments also enhance the ability of ICC to manage custody and investment risk and settlement bank risk, as required under Commission Rule 39.36, in the remote circumstances where its ordinary course procedures are insufficient and a Custodian, investment counterparty or settlement bank fails. Overall, the amendments will strengthen the ability of the clearing house to manage the risks of, and withstand and/or recover from, significant non-default loss events, and as such are consistent with the requirements of Core Principle D and Commission Rules 39.13, 39.36 and 39.39.
- Treatment of Funds. ICC's existing investment policies and procedures provide for the investment of cash provided by Participants as Margin or General Guaranty Fund contributions in investments with minimal credit, market and liquidity risks. Similarly, the policies provide for the use by ICC of custodians to hold cash and securities in a manner designed to minimize the risk of loss or delay in access to such assets. ICC does not propose to change such policies and procedures. The amendments address the remote scenario where, despite the protections under such procedures, there is a failure by an investment issuer or counterparty or custodian. Such a circumstance would be remote in ICC's view, and in any event, outside the control of ICC. In such circumstances, the amendments would allocate the loss as between ICC and Participants, with ICC being responsible for a first loss position up to the amount of defined resources (except in certain cases of a central bank failure) and with Participants being responsible for the remaining loss, in proportion to their margin and guaranty fund contributions. The amendments would thus enhance the protection of funds and assets provided to ICC as margin or guaranty fund contributions, and would be consistent with the requirements of Core Principle F and Commission Rules 39.13 and 39.36.
- Governance Arrangements and Conflicts of Interest. Commission Rule 39.32(a) requires that a systemically important DCO's rules place a high priority on the safety and efficiency of the DCO, explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, their customers and other relevant stakeholders, and appropriately reflect the legitimate interests of clearing members, their customers and other relevant stakeholders. ICE Clear Credit believes the amendments discussed herein satisfy these requirements. The amendments are designed to address extreme loss scenarios other than those resulting from Participant default, and provide an orderly means for recovery from such scenarios if necessary. The amendments set out the responsibilities of the ICE Clear Credit Board in connection with establishing the appropriate level of Investment Loss Resources and Custodial Loss Resources provided by ICC. In taking such decisions, the Rules, the ICC mission statement, and the relevant governance committee charters will require the Board to take into consideration both the

interests of Participants, customers and other stakeholders and the broader goal of providing safe and sound central counterparty services to reduce systemic risk in an efficient and compliant manner, consistent with the requirements of Commission Rule 39.32.

ICC also believes its existing policies and procedures will allow it to appropriately consider and balance potential conflicts of interest. ICC recognizes that potential conflicts of interest may arise among shareholders, Participants and their customers. These conflicts may be heightened in the case of decisions regarding extreme Investment Loss and Custodial Loss events, where ICC, Participants and/or their customers will likely face significant losses or potential losses. Under ICC's Code of Business Conduct and Ethics for Managers (including section III.A. thereof), among other governance policies, Board members are required to act in the best interests and safety and soundness of ICC, and not other relationships. This requirement not only addresses personal or individual conflicts of interest, but is also key to the management of broader potential conflicts among different stakeholders or categories of stakeholders. In ICC's view, it is appropriate and desirable, in the context of considering actions relating to Investment Losses and Custodial Losses, for decision makers to focus on the safety and soundness of the clearing house, rather than the interests of any particular stakeholder. This does not, of course, prevent any such decisionmaker from stating, describing, representing or considering the interests of a particular stakeholder or group of stakeholders in the decision-making process. Indeed, ICC's experience with its governance process demonstrates that decisionmakers can both represent and consider the interests of a particular group of stakeholders and make decisions that are in the best interests of the overall ICC clearing system. In the context of extreme Investment Losses and Custodial Losses, stakeholders may well have diverging interests, and it is to be expected that ICC may not be able to make a decision that will fully satisfy each particular stakeholder. Under these circumstances, ICC believes that requiring decisionmakers to focus on the overall interests of the clearing system, and not merely the narrower interests of a particular group, is the approach most likely to lead to decisions (and outcomes) that benefit the ICC overall clearing system and thus the legitimate interests of all relevant stakeholders. In ICC's view, it is proper for it to make decisions concerning the implementation of Loss Contributions in light of the overall interests of the clearing system and all relevant stakeholders, and not any particular stakeholder. ICC therefore believes that its governance policies and procedures explicitly support the stability of the broader financial system and other relevant public interest considerations of Participants, their customers and other stakeholders, within the meaning of Commission Rule 39.32(a)(1)(iv).

ICE Clear Credit believes that the amendments also reflect the legitimate interests of clearing participants, customers and other stakeholders, within the meaning of Commission Rule 39.32(a)(2). The amendments are designed to plan for remote and unprecedented, but potentially extreme, types of loss event, including Investment Losses, Custodial Losses and Non-Default Losses. In particular, Investment Losses and Custodial Losses, to the extent they exceed clearing house resources dedicated for such purposes, will necessarily and adversely affect some or all Participants, customers or other stakeholders. ICE Clear Credit believes that the amendments take a balanced approach that distributes potential losses to both ICC and Participants.

In light of discussions with Participants and others, ICE Clear Credit believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme non-default loss scenario. ICE Clear Credit further believes that the approach taken will facilitate the ability of the clearing house to allocate such losses so that it can continue clearing operations. In so doing, in light of the importance of clearing houses to the financial markets they serve, the Congressional and Commission policy in favor of

clearing of financial transactions, and the potential consequences of a clearing house failure, the amendments will support the stability of the broader financial system.

ICE Clear Credit also believes that the amendments further the interests of Participants in having greater certainty as to the consequences of such losses, their potential liability for them and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

The amendments have been reviewed by ICC's Risk Committee, which recommended that the ICE Clear Credit Board approve such amendments. The amendments have been approved by the ICE Clear Credit Board.

As described herein, the amendments consist of changes to the ICE Clear Credit Rules. A copy of the amendments is attached hereto.

ICE Clear Credit hereby certifies that the amendments comply with the Act and the Commission's regulations thereunder.

ICE Clear Credit has received no substantive opposing views in relation to the rule amendments.

ICE Clear Credit has posted a notice of pending certification and a copy of this submission on its website concurrent with the filing of this submission, which may be accessed at <https://www.theice.com/clear-credit/regulation>.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at eric.nield@theice.com or (312) 836-6742 or Maria Zyskind at maria.zyskind@theice.com or (312) 836-6854.

Very truly yours,



Eric Nield
General Counsel

Enclosures

cc: Board of Governors of the Federal Reserve System



Clearing Rules

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102. Definitions.

Account

The House Account or the Client Origin Account, as applicable.

Additional Amount

The meaning specified in Rule 613(b).

Additional ICC Collateral Deposits

The meaning specified in Rule 801(b)(vi).

Adjusted Net Capital

The meaning specified in Rule 201(b)(2).

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.

Approved Products

The meaning specified in Rule 502(a).

Assessment

The meaning specified in Rule 803(b).

Assessment Contribution

The meaning specified in Rule 803(b).

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.

Automatic Default

The meaning specified in Rule 20-605(a).

Backloaded Trade

A Trade submitted pursuant to Rule 301(c) 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 either (i) between two Participants for their own accounts or (ii) to which a Non-Participant Party is party, where the relevant Participant is acting for such Non-Participant Party (a **“Backloaded Client Trade”**).

Bankruptcy Code

The meaning specified in Rule 611(c).

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).

CDS Default Committee

The meaning specified in Rule 20-617(a).

CDS Default Committee Member

The meaning specified in Rule 20-617(a).

CDS Default Committee Participant

The meaning specified in Rule 20-617(a).

CDS Default Committee Participant List

The meaning specified in Rule 20-617(b).

CEA

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

CFTC

The U.S. Commodity Futures Trading Commission.

Change in Tax Law

The meaning specified in Rule 613(b).

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 posted by a Participant in respect of Client-Related Positions (including margin of Non-Participant Parties posted to that Participant in respect of such margin requirement or property of a Participant posted in lieu thereof in accordance with these Rules).

Client Origin Account

The Client-Related Positions and Client Omnibus Margin Account of a Participant, as the context may require.

Client-Related Initial Margin

Initial 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 Post-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.

Confidential Material

The meaning specified in Rule 20-617(h).

Conforming Trade

The meaning specified in Rule 309(g).

Contract

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

Contract Modification

The meaning specified in Rule 616(a).

Contract Modification Effective Date

The meaning specified in Rule 616(a).

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.

Cooling-off Period

The period commencing on and including the date of the Cooling-off Period Trigger Event and terminating 30 calendar days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 30 or fewer calendar days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling 30 calendar days after such subsequent Cooling-off Period Trigger Event.

Cooling-off Period Trigger Event

(i) Any call for an Assessment Contribution to be made pursuant to Rule 803(b) in respect of Remaining Reimbursement Obligations arising from a Default or Defaults for which amounts have been or are expected to be charged against the General Guaranty Fund; or (ii) the occurrence of a Sequential Guaranty Fund Depletion.

Cooling-off Termination Period

The period commencing on the date of each Cooling-off Period Trigger Event (including a Cooling-off Period Trigger Event occurring during a Cooling-off Period) and terminating 10 ICE Business Days thereafter.

Covered Party

The meaning specified in Rule 20-617(h).

Custodial Losses

The meaning specified in Rule 406(g). 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) with respect to cash or cash deposits in any currency, securities or other assets held or controlled by, on behalf of or for the benefit of ICE Clear Credit constituting contributions to the General Guaranty Fund, Assessment Contributions or Margin provided by Participants, including assets acquired with investments thereof and proceeds of the foregoing (collectively, “**Custodial Assets**”), including losses from declines in the value thereof, arising as a result of or in connection with (i) the insolvency, default, failure or similar event with respect to any Custodian, system failure with respect to any Custodian or breach of agreement or other terms by any Custodian relating to Custodial Assets or (ii) embezzlement, defalcation, theft, system intrusion, cyberattack or event similar to the foregoing with respect to Custodial Assets by any Person (other than ICE Clear Credit or its directors, officers, employees or representatives). Notwithstanding the foregoing, “Custodial Losses” shall not include Investment Losses.

Custodial Loss Contribution

A contribution by a Participant required under Rule 811(g).

Custodial Loss Resources

Assets of ICE Clear Credit in the amount of \$32 million, which may be modified by the Board from time to time, which are designated as available to be applied to Custodial Losses pursuant to Rule 811(s). The determination of such

Custodial Loss Resources by the Board will be risk based in light of ICE Clear Credit's potential exposure to Custodial Losses.

Custodian

Any commercial bank or trust company, securities broker or dealer, central bank, custodian, sub-custodian, depository, payment bank, concentration bank, nominee, agent, central securities depository or third party settlement system used by ICE Clear Credit with respect to the deposit, holding, custody or transfer of Custodial Assets.

Customer Account Agreement

The meaning specified in Rule 406(a).

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.

Default Auction

An auction that takes place in accordance with the Default Auction Procedures.

Default Auction Priority

The order of priority set forth in the applicable Default Auction Procedures.

Default Auction Procedures

The Default Auction Procedures adopted by ICE Clear Credit, as in effect from time to time.

Default Portability Rules

The provisions of Rule 20A-02.

Defaulting CDS Participant

The meaning specified in Rule 20-605(a)(ii).

Defaulting Participant Claims

The meaning specified in Rule 802(c)(iii).

Direct Auction Participant Deposit

A deposit provided by any non-Participant authorized to bid directly in a Default Auction in accordance with the Default Auction Procedures.

Direct Liquidation

The meaning specified in Rule 20-605(d)(v).

Eligibility Determination Period

The meaning specified in Rule 503(a)(vi).

Eligible Employee

The meaning specified in Rule 20-617(a).

Eligible Margin

The meaning specified in Rule 401(d).

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.

Eligible Participant Group

The meaning specified in Rule 503(a)(vi)(B).

Eligible Transfer Position

The meaning specified in Rule 20A-02(a).

Emergency

The meaning specified in Rule 601(e).

Emergency Resolution

The meaning specified in Rule 601(a).

Excess Net Capital

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.

Excluded Participant

With respect to the application of the General Guaranty Fund, a Participant whose Default or Obligation Failure results in such application.

FCM

A futures commission merchant registered with the CFTC.

FDIA

The meaning specified in Rule 611(b).

FDICIA

The meaning specified in Rule 611(a).

Final Phase Default Resources

Available Assessment Contributions and Additional ICC Collateral Deposits.

Final Phase Remaining Reimbursement Obligations

Those Remaining Reimbursement Obligations arising in connection with a Default Auction, Secondary Auction, Partial Tear-Up or Termination under Rule 810, and any Post-RGD Payments under Rule 808(m).

Final Possible Loss Distribution Day

The meaning specified in Rule 808(d).

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.

Guaranteed Obligations

The meaning specified in Rule 804(b)(i).

House Account

The House Positions and House Margin Account of a Participant, as the context requires.

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.

ICC Continuing Contribution Replenishment

The meaning specified in Rule 801(b)(ii).

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 Continuing Contribution

The meaning specified in Rule 801(b)(ii).

ICE Clear Credit Default

The meaning specified in Rule 805(a).

ICE Clear Credit Default Maximum

The meaning specified in Rule 802(b)(ii).

ICE Clear Credit Initial Contribution

The meaning specified in Rule 801(b)(i).

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.

ICE Parent

The meaning specified in Rule 503(a)(iii).

ICE Provisions

The meaning specified in Rule 502(a).

Independence Requirements

The meaning specified in Rule 503(a)(iii).

Independent Accounting Firm

The meaning specified in Rule 503(a)(xii).

Independent ICE Manager

The meaning specified in Rule 503(a)(iii).

Independent ICE Subcommittee Managers

The meaning specified in Rule 511(a)(iii).

Independent Risk Committee Appointees

The meaning specified in Rule 508(a).

Initial Cover Transactions

The meaning specified in Rule 20-605(d)(i).

Initial Margin

The meaning specified in Rule 403.

Initial Margin Categories

The meaning specified in Rule 403.

Initial Payment

The meaning specified in Rule 301(b).

Initial Phase Default Resources

The resources available for application to Reimbursement Obligations under Rules 802(a) and (b) other than Final Phase Default Resources.

Initial Phase Remaining Reimbursement Obligations

The Remaining Reimbursement Obligations other than Final Phase Remaining Reimbursement Obligations.

Investment Loss Contribution

A contribution by a Participant required under Rule 811(d).

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 the Corporation 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 to comply with its own investment policies.

Investment Loss Resources

Assets of ICE Clear Credit in the amount of \$20 million, which may be modified by the Board from time to time, which are designated as available to be applied to Investment Losses pursuant to Rule 811(s). The determination of such Investment Loss Resources by the Board will be risk based in light of ICE Clear Credit’s potential exposure to Investment Losses.

Loss Contributions

Investment Loss Contributions and/or Custodial Loss Contributions, as applicable.

Loss Resources

Investment Loss Resources and/or Custodial Loss Resources, as applicable.

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 Client Omnibus Margin Account.

Margin Category

The meaning specified in Rule 401(a).

Margin Requirement

The meaning specified in Rule 401(a).

Mark-to-Market Margin

The meaning specified in Rule 404(a).

Mark-to-Market Margin Category

The meaning specified in Rule 404(a).

Mark-to-Market Price

The meaning specified in Rule 404(b).

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.

Maximum Aggregate Cooling-off Period Contribution

The meaning specified in Rule 806(b).

Minimum Manager Approval

The meaning specified in Rule 20-605(l)(i)(B).

Modify

The meaning specified in Rule 502(a).

Net Client-Related Mark-to-Market Margin Requirement

The meaning specified in Rule 401(b)(ii).

Net House Margin Requirement

The meaning specified in Rule 401(a).

New General Guaranty Fund

The meaning specified in Rule 810(g).

Non-Default Losses

Losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by ICE Clear Credit that are neither Investment Losses nor Custodial Losses, arising in connection with any event other than an Event of Default.

Non-Participant Collateral

The meaning specified in Rule 406(b).

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 “cleared swaps customer” as defined in CFTC Rule 22.1 (other than a holder of a cleared swaps proprietary account as defined in such rule).

Non-Participant Party Portfolio

The portfolio of rights and obligations under Client-Related Positions allocated to a particular Non-Participant Party in the books and records of ICE Clear Credit for purposes of CFTC Rule 22.15.

Non-Participant Party Portfolio Initial Margin Requirement

The meaning specified in Rule 401(b)(i).

Novation Time

The meaning specified in Rule 309(a).

Obligation Failure

The meaning specified in Rule 802(a).

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(a)(v).

Offer to the Public

The meaning specified in Rule 407(a)(i).

Officer Emergency Action

The meaning specified in Rule 601(a).

Open Positions or Open CDS 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.

Partial Tear-Up

The meaning specified in Rule 20-605(f)(iii).

Partial Tear-Up Circular

The meaning specified in Rule 809(b).

Partial Tear-Up Price

The meaning specified in Rule 809(b)(iii).

Partial Tear-Up Time

The meaning specified in Rule 809(b)(iv).

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 Appointees

The meaning specified in Rule 503(a)(iv).

Participant Group

The meaning specified in Rule 503(a)(v).

Participant IM/GF Contribution

With respect to a Participant at any time, the aggregate of its contributions to the General Guaranty Fund and the Initial Margin provided by it (for both the House Account and Client Origin Account); provided that for a Defaulting Participant, the Participant IM/GF Contribution shall exclude any of such amounts that are applied by ICE Clear Credit under the Rules as a result of the relevant Default.

Participant Loss Exposure

The meaning specified in Rule 801(a)(i).

Person

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

Physical Settlement Margin

The meaning specified in Rule 403(b).

Pledged Guaranty Collateral

The meaning specified in Rule 804(b)(i).

Pledged Items

The meaning specified in Rule 402(b).

Portfolio Risk Margin

The meaning specified in Rule 403(a).

Post-RGD Payment

The meaning specified in Rule 808(m).

Potential Loss Distribution Day

The meaning specified in Rule 808(d).

President

The President of ICE Clear Credit.

Prepaid Contribution

The meaning specified in Rule 209.

Prohibited Conduct

The meaning specified in Rule 609(a).

Protected Person

The meaning specified in Rule 506.

Regulatory Body

The meaning specified in Rule 20-605(a)(i)(2).

Regulatory Requirement

The meaning specified in Rule 201(b)(i).

Reimbursement Obligations

The meaning specified in Rule 802(a)(ii).

Relevant CDS Default Committee Period

The meaning specified in Rule 20-617(c).

Relevant Member State

The meaning specified in Rule 407(a)(iv).

Relevant Persons

The meaning specified in Rule 407(f).

Remaining Aggregate Specific WWR Contribution

The meaning specified in Rule 802(b)(i)(A)(1).

Remaining Defaulted Positions

The meaning specified in Rule 809(b)(i).

Remaining Participant

With respect to the application of the General Guaranty Fund, each Participant other than the Excluded Participant and any Retiring Participant (in the case of a Retiring Participant, if the relevant Obligation Failure or Default occurred after such Retiring Participant's Termination Date).

Remaining Reimbursement Obligations

Those Reimbursement Obligations in respect of a Defaulting Participant that remain unsatisfied after application of available amounts pursuant to Rule 802(a).

Replenishment Contribution

The meaning specified in Rule 803(a).

Required Contribution

The meaning specified in Rule 801(a)(i).

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.

Reviewed Application

The meaning specified in Rule 20-605(i).

Risk Committee

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

Risk Committee Board Appointees

The meaning specified in Rule 508(a).

Risk Committee Provisions

The meaning specified in Rule 504.

Risk Committee Reconstruction Date

The meaning specified in Rule 503(a)(vi).

Risk Management Subcommittee

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

Risk Pool

The meaning specified in Rule 503(a)(xiii).

Rule

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

SDN List

The meaning specified in Rule 208(a)(v).

SEC

The U.S. Securities and Exchange Commission.

Secondary Auction

An auction that takes place in accordance with the Secondary Auction Procedures.

Secondary Auction Procedures

The Secondary Default Auction Procedures adopted by ICE Clear Credit, as in effect from time to time.

Secondary Default Management Action

The meaning specified in Rule 20-605(f).

Securities Exchange Act

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

Sequential Guaranty Fund Depletion

In respect of a particular Participant that is not a Defaulting Participant, the occurrence of circumstances in which: (i) there has been a Default in respect of two or more different Participants within a period of 30 or fewer calendar days; (ii) contributions to the General Guaranty Fund from non-Defaulting Participants have been applied in respect of at least two such Defaults; and (iii) the total amount of Replenishment Contributions that the Participant is as a result obligated to pay to ICE Clear Credit to replenish its contributions to the General Guaranty Fund exceeds its Required Contribution to the General Guaranty Fund prior to the first such Default.

Specific WWR CDS Participant

The meaning specified in Rule 801(a)(iii).

Specific WWR Guaranty Fund Contribution

The meaning specified in Rule 801(a)(iii).

Specified Actions

The meaning specified in Rule 502.

Standard Default Management Action

The meaning specified in Rule 20-605(d).

Statement of Open Positions

The meaning specified in Rule 307.

Subcommittee Specified Action

The meaning specified in Rule 510.

Super or Special Margin

The meaning specified in Rule 403(c).

Supervisor Authority

The meaning specified in Rule 407(m)(iii).

Swap Customer Segregation Requirements

The meaning specified in Rule 406(c).

Tax

The meaning specified in Rule 613(a).

Tear-Up Positions

The meaning specified in Rule 809(b)(ii).

Termination

In respect of a Contract means termination, liquidation, close-out, exercise, abandonment, or expiry pursuant to its terms and under the Rules.

Termination Circular

The meaning specified in Rule 810(c).

Termination Close-Out Deadline Date

(i) Unless clause (ii) applies, in respect of the termination of Participant status of a Participant under Rule 207, the date falling 30 Business Days after the Termination Notice Time (or, if ICE Clear Credit has terminated the Participant's status under Rule 207, the date so designated by ICE Clear Credit); (ii) in respect of termination of clearing membership during a Cooling-off Termination Period, the date falling 20+x ICE Business Days after the Termination Notice Time where x= the total number of unexpired ICE Business Days in the such Cooling-Off Termination Period; or (iii) in any case, such later date as the ICE Clear Credit may at its discretion permit and notify in writing to the affected Participant.

Termination Date

In respect of the termination of Participant status for a Retiring Participant, the later of (i) where applicable, the Termination Close-Out Deadline Date and (ii) the date as of which all of the Retiring Participant's Open Positions in respect of its House Account and Client Origin Account have been terminated or closed out in full and all obligations of the Retiring Participant in respect thereof have been satisfied and performed in full.

Termination Deposit

The meaning specified in Rule 807(f).

Termination Event

The meaning specified in Rule 207(b).

Termination Notice Time

The time of service by a Participant of a Termination Notice.

Termination Notice

A notice served by the Participant on ICE Clear Credit indicating that such Participant intends to withdraw from being a Participant (and thereby becomes a Retiring Participant).

Termination Price

The meaning specified in Rule 810(d)(i).

Termination Time

The meaning specified in Rule 810(b).

Top Six Incumbent Participant Group

The meaning specified in Rule 503(a)(vi)(A).

Total Participant IM/GF Contribution

At any time, the sum of the Participant IM/GF Contributions of all Participants (including Defaulting Participants).

Trade A

The meaning specified in Rule 301(c).

Trade B

The meaning specified in Rule 301(c).

Trades

Transactions in Contracts.

Trading Activity Limitation

The meaning specified in Rule 203(b).

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 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 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 Client Omnibus Margin Account in accordance with Rule 406, by making such property available for withdrawal in accordance with the ICE Clear Credit Procedures.

Transfer Confirmation

The meaning specified in Rule 20A-01(b)(iii).

Transfer Date

The meaning specified in Rule 20A-01(b)(iii)(B).

Transfer Time

The meaning specified in Rule 20A-01(b)(iv).

Transferred Transactions

The meaning specified in Rule 20A-01(b)(iii)(A).

Transferee Participants

The meaning specified in Rule 20A-01(a).

Transferor Participant

The meaning specified in Rule 20A-01(a).

Value

The meaning specified in Rule 401(e).

Violations

The meaning specified in Rule 701(a).

Wound-up Contracts

The meaning specified in Rule 810(e).

WWR Contract

The meaning specified in Rule 801(a)(iii).

402. Transfer of Title; Liens.

- (a) Each Participant (other than a Participant that is an FCM or a Broker-Dealer) agrees that all right, title and interest in and to any cash Transferred by such Participant to ICE Clear Credit under the terms of these Rules as Margin (other than Mark-to-Market Margin) or Collateral consisting of cash and all cash proceeds of any Margin or Collateral (collectively, “**Cash Margin**”) shall vest in ICE Clear Credit free and clear of any liens, claims charges or encumbrances. Upon the occurrence of a Default, ICE Clear Credit shall be entitled to apply such cash Transferred to ICE Clear Credit by such Defaulting Participant and any cash proceeds of the Margin and Collateral of such Defaulting Participant to the Obligations of such Defaulting Participant to ICE Clear Credit in accordance with the provisions herein; provided that cash Transferred in respect of Client-Related Positions and constituting Margin and cash proceeds of Margin provided in respect of Client-Related Positions may only be applied to Obligations in respect of Client-Related Positions as set forth herein and only subject to the limitation set forth in subsection (h) below. Prior to the completion of the requirements under these Rules for the occurrence of a Default, ICE Clear Credit shall also be entitled to apply such cash to the Obligations of a Participant (but subject to the proviso to the preceding sentence) if such Participant has defaulted with respect to making a payment or delivery when due under these Rules or a Contract.
- (b) Each Participant hereby grants to ICE Clear Credit a continuing lien and security interest in and to and right of set-off against all of the Participant’s right, title and interest, whether now owned or existing or hereafter acquired or arising, in and to (i) all securities, financial assets and other property (other than cash) Transferred by such Participant to ICE Clear Credit under the terms of these Rules as Margin (other than Mark-to-Market Margin) or Collateral not constituting cash, (ii) all non-cash proceeds of any of the foregoing and (iii) in the case of a Participant that is an FCM or a Broker-Dealer, any cash Transferred by such Participant to ICE Clear Credit under the terms of these Rules as Margin (other than Mark-to-Market Margin) or Collateral consisting of cash and all cash proceeds of any Margin or Collateral, in each case as security for the Obligations of such Participant to ICE Clear Credit (jointly, (i), (ii) and (iii), the “**Pledged Items**”); provided that Pledged Items Transferred in respect of Client-Related Positions and constituting Margin shall only secure Obligations of such Participant in respect of Client-Related Positions and shall be subject to the limitation set forth in subsection (h) below and applicable law. Upon the withdrawal of Pledged Items by a Participant from its House Margin Account or Client Omnibus Margin Account, as applicable, in accordance with these Rules and the ICE Clear Credit Procedures, the security interest and lien granted hereunder on such Pledged Items will be released immediately without any further action by either party. With respect to Pledged Items credited to the House Margin Account of a Participant constituting Initial Margin, ICE Clear Credit may use, invest or apply such Pledged Items as permitted by the Rules. With respect to Pledged Items credited to the Client Omnibus Margin Account of a Participant, ICE Clear Credit will only

have the right to use, invest or apply such Pledged Items as permitted by the Rules and applicable law.

- (c) Upon the occurrence of a Default, ICE Clear Credit may exercise all rights of a secured party under applicable law and under these Rules. ICE Clear Credit may, without being required to give any notice, except as may be required by law, sell or otherwise apply any Pledged Items Transferred to, or otherwise under the control of, ICE Clear Credit to satisfy the Participant's Obligations. Notwithstanding the foregoing, ICE Clear Credit may only exercise such rights with respect to, or otherwise dispose of or sell, Pledged Items Transferred in respect of Client-Related Positions and constituting Initial Margin (including Pledged Items Transferred to the Client Omnibus Margin Account) for the purposes of satisfying any outstanding Obligations of a Defaulting Participant in respect of Client-Related Positions and subject to the limitation set forth in subsection (h) below. Upon any such sale, ICE Clear Credit shall have the right to deliver, assign and transfer to the purchaser thereof the Pledged Items so sold. Each purchaser at any such sale shall hold the Pledged Items so sold to it absolutely and free from any claim or right of whatsoever kind, including any equity or right of redemption of the Participant which may be waived, and the Participant, to the extent permitted by law, hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted.
- (d) Each Participant represents that it is the sole owner of or otherwise has the right to Transfer to ICE Clear Credit the Pledged Items subject to the foregoing lien and security interest, free and clear of any security interest, lien, encumbrance or other restrictions in favor of any other person, and agrees not to create or permit to exist any such security interest, lien, encumbrance or other restrictions. The preceding sentence shall not preclude a Participant from Transferring to ICE Clear Credit Pledged Items that were provided to Participant by a Non-Participant Party and in which the Non-Participant Party has granted the Participant a security interest to secure the Non-Participant Party's obligations to the Participant in respect of Client-Related Positions; provided that Participant agrees that any such security interest in favor of Participant is in all respects subject to the rights of ICE Clear Credit in respect of such Pledged Items hereunder and Participant shall not, and shall not attempt to (i) exercise any rights or remedies or bring any proceeding or action with respect to such Pledged Items until such Pledged Items are released from the lien and security interest of ICE Clear Credit hereunder or (ii) otherwise interfere with, delay the exercise of or take any action to affect ICE Clear Credit's rights hereunder with respect to such Pledged Items. Each Participant agrees to take any action reasonably requested by ICE Clear Credit that may be necessary or desirable for ICE Clear Credit to create, preserve, perfect or validate the foregoing lien and security interest or to enable ICE Clear Credit to exercise or enforce its rights with respect thereto. With respect to any Pledged Items consisting of securities and other financial assets Transferred by ICE Clear Credit under the terms of these Rules, each Participant agrees it will accept securities and financial assets of the same

issuer, type, nominal value, description and amount as those securities and financial assets initially Transferred by such Participant to ICE Clear Credit.

- (e)
 - (i) Each Participant agrees that all right, title and interest in and to any cash Transferred by such Participant to ICE Clear Credit under the terms of these Rules as Mark-to-Market Margin shall vest in ICE Clear Credit free and clear of any liens, claims, charges or encumbrances, and shall constitute a settlement payment for all purposes under the Rules as provided in Rule 401(k) in respect of the relevant Contracts; provided that with respect to such cash Transferred in respect of Client-Related Positions, ICE Clear Credit shall only use such cash in accordance with applicable law.
 - (ii) Subject to subsection (f) below, ICE Clear Credit agrees that all right, title and interest in and to any cash Transferred by ICE Clear Credit to a Participant under the terms of these Rules and not used by or on behalf of the Participant to satisfy a Margin Requirement shall vest in such Participant free and clear of any liens, claims, charges or encumbrances.
- (f) With respect to Pledged Items Transferred to the Client Omnibus Margin Account of a Participant under Rule 406, ICE Clear Credit agrees that such Pledged Items, together with any proceeds thereof, shall constitute customer property held for the benefit of the Non-Participant Parties of Participant in accordance with applicable law and Rule 406, subject to the security interest and lien of ICE Clear Credit pursuant to subsection (b). For the avoidance of doubt, each Participant shall be obligated to Transfer Margin to ICE Clear Credit in respect of Client-Related Positions in accordance with these Rules notwithstanding any failure of a Non-Participant Party to provide such Participant with related margin in respect of such Client-Related Position.
- (g) Where a Participant makes a partial Transfer of the Margin required to be Transferred on any date to ICE Clear Credit in respect of both Client-Related Positions and House Positions, such Margin shall be applied first to the outstanding Margin Requirement in respect of the Client-Related Positions until satisfied and thereafter to the outstanding Margin Requirement in respect of the House Positions, notwithstanding any designation made by the Participant as to the application of such Margin.
- (h) Notwithstanding anything to the contrary herein, ICE Clear Credit shall only be permitted to use, apply or otherwise exercise rights pursuant to subsections (a), (b) and (c) above with respect to Cash Margin and Pledged Items (or the proceeds thereof) posted in respect of Client-Related Positions and constituting Initial Margin to the extent permitted under applicable law, including without limitation CFTC Rule 22.15 (and interpretations of the CFTC or its staff in respect thereof). For the avoidance of doubt, but subject to the foregoing sentence, ICE Clear Credit shall be permitted to select the specific assets so used or applied.
- (i) Intentionally omitted.

(j) ICE Clear Credit may (i) invest Initial Margin in the form of cash in accordance with its investment policies and applicable law and (ii) in connection with a Participant default, use any Participant's cash, securities or other property (whether or not such Participant is itself in default) constituting Initial Margin for its House Account from time to time to support liquidity arrangements (including borrowing, repurchase transactions, exchange of Initial Margin for other assets or similar transactions) of ICE Clear Credit relating to payment obligations of ICE Clear Credit, in a manner consistent with ICE Clear Credit's Procedures and applicable law, including by way of assignment, transfer, exchange, pledge, repledge or creation of a lien on or security interest in such Initial Margin, under which equivalent value is provided for such Initial Margin and such equivalent value will be held as Initial Margin and used or applied by ICE Clear Credit solely for the purposes for which Initial Margin in the House Account may be used pursuant to these Rules. Without limiting the foregoing, ICE Clear Credit may on a temporary basis and in connection with a Participant default (A) exchange any Participant's Initial Margin in its House Account held in the form of cash for securities of equivalent value, and/or (B) exchange a Participant's Initial Margin in its House Account held in the form of cash in one currency for cash of equivalent value in a different currency, in each case on such terms as ICE Clear Credit may determine in accordance with ICE Clear Credit Procedures. ICE Clear Credit will reverse any such exchange involving a Participant's Initial Margin in its House Account as soon as practicable following the conclusion of the event requiring the exchange of a Participant's Initial Margin for liquidity purposes. Prior to the occurrence of a Default with respect to a Participant, ICE Clear Credit may use, invest or apply the Initial Margin of such Participant only as set forth in this Rule 402(j) or the last sentence of Rule 402(a). This Rule 402(j) shall not be deemed to limit ICE Clear Credit's rights to use or apply a Participant's Initial Margin as permitted in the Rules, under applicable law or otherwise following the occurrence of a Default of that Participant.

(k) Solely with respect to Initial Margin in the form of cash that is provided by a Participant in respect of its Client Origin Account, such Participant will instruct ICE Clear Credit, in a manner to be specified by ICE Clear Credit (including by way of a standing instruction), whether or not ICE Clear Credit shall invest such cash Initial Margin. If ICE Clear Credit is instructed to invest such cash Initial Margin, ICE Clear Credit will invest such cash in accordance with these Rules and in the manner and to the extent provided in its investment policies and applicable law. If ICE Clear Credit is instructed not to invest such cash, such cash Initial Margin will be held in a deposit account with a Custodian in accordance with ICE Clear Credit's investment policies. If a Participant does not provide such instruction, (i) with respect to U.S. dollar cash Initial Margin, the Participant will be deemed to have instructed ICE Clear Credit not to invest such margin, and (ii) with respect to cash Initial Margin in any other currency, the Participant will be deemed to have instructed ICE Clear Credit to invest such margin to the extent permissible under applicable law and otherwise not to invest such margin.

406. Certain Requirements with Respect to Client-Related Positions of FCM Participants and Broker-Dealer Participants.

The provisions of this Rule 406 shall apply to Participants that are FCMs and/or Broker-Dealers in respect of Client-Related Positions. Without limiting Rule 312, ICE Clear Credit shall have no obligation or liability to any Non-Participant Party in respect of a Client-Related Position or any transaction, agreement or arrangement between a Participant and any Non-Participant Party. For the avoidance of doubt, Participants carrying Client-Related Positions that are swaps must be FCMs, and Participants carrying Client-Related Positions that are security-based swaps must be Broker-Dealers.

- (a) The relationship between a Non-Participant Party and a Participant in respect of Client-Related Positions for that Non-Participant Party shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties ("**Customer Account Agreement**"), subject to the applicable provisions of the Rules.
- (b) A Participant shall require each Non-Participant Party to provide margin or collateral ("**Non-Participant Collateral**") in an amount no less than the amount of Margin of each applicable Margin Category required on a gross basis by ICE Clear Credit with respect to the relevant Client-Related Position(s); provided that ICE Clear Credit may require additional margin with respect to Non-Participant Parties (or certain categories of Non-Participant Parties) as determined by ICE Clear Credit from time to time as required by applicable law. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any offset of such Client-Related Positions against Client-Related Positions relating to the same Non-Participant Party, but without any offset of such Client-Related Positions against Client-Related Positions relating to a different Non-Participant Party.
- (c)
 - (i) A Participant shall receive, hold and use all Non-Participant Collateral only as permitted under CEA Section 4d(f) and the rules thereunder (including Part 22 of the CFTC Regulations and any interpretations thereof by the CFTC or its staff) and Securities Exchange Act Sections 3E(b) and/or 15(c)(3) and the rules thereunder, as applicable, and to the extent not inconsistent with the foregoing, as set forth in these Rules and the ICE Clear Credit Procedures (the "**Swap Customer Segregation Requirements**"). All property Transferred to ICE Clear Credit by Participant on behalf of Non-Participant Parties as Initial Margin shall be held in the Client Omnibus Margin Account of such Participant as cleared swaps customer property in accordance with the Swap Customer Segregation Requirements. Pursuant to this Rule, Participant shall satisfy the requirement to obtain any segregation acknowledgement letter from ICE Clear Credit under the Swap Customer Segregation Requirements.
 - (ii) Without limiting subsection (c)(i) above, the Client-Related Positions (including, solely to the extent permitted by applicable rules, orders or

exemptions of the CFTC and SEC, Client-Related Positions that are security-based swaps) and related Non-Participant Collateral shall be part of the cleared swaps account class for purposes of Part 190 of the CFTC regulations.

- (d) Property held in the Client Omnibus Margin Account may only be applied in respect of Client-Related Positions as provided in these Rules and only to the extent permitted by the Swap Customer Segregation Requirements (including CFTC Rule 22.15).
- (e) ICE Clear Credit shall pass through to the relevant Participant the return on any assets in the Client Omnibus Margin Account (including any return provided by ICE Clear Credit on Cash therein), less administrative costs as determined by ICE Clear Credit.
- (f) In connection with any Client-Related Position and related Non-Participant Collateral, Participant shall keep and maintain written records required by the Swap Customer Segregation Requirements. Each Participant shall provide such reports to ICE Clear Credit with respect to Non-Participant Parties and their related Client-Related Positions and Non-Participant Collateral as and when required under the Swap Customer Segregation Requirements and otherwise upon request of ICE Clear Credit and upon such other basis, if any, as is provided in the ICE Clear Credit Procedures.
- (g) ~~Without limiting Rule 312, but subject to any contrary requirements of law: ICE Clear Credit shall not be liable to any Participant, Non-Participant Party or other Person for any losses, claims, liabilities, damages or expenses arising out of or relating to the holding, investment or use of the Client Omnibus Margin Account or assets credited thereto from time to time (“Custodial Losses”), except to the extent such Custodial Losses result from the gross negligence or willful misconduct of ICE Clear Credit or from the investment of such assets by ICE Clear Credit in its discretion within the meaning of CFTC Rule 1.29(b). No Participant shall be liable to any Non-Participant Party for any Custodial Losses, except to the extent such Custodial Losses result from the gross negligence or willful misconduct of the Participant.~~ ICE Clear Credit shall have no duties or responsibilities with respect to the Client Omnibus Margin Account except as expressly set forth in these Rules and applicable law. ICE Clear Credit shall have no responsibility for any investment decisions by a Participant (or any other Person) with respect to assets in the Client Omnibus Margin Account or for the results of any such investments and shall have no obligation to monitor the value of the assets in the Client Omnibus Margin Account or any requirements set forth in any applicable agreement between Participant and a Non-Participant Party. ICE Clear Credit shall have no responsibility for the compliance by any Participant or Non-Participant Party with its obligations under any such agreement. ICE Clear Credit shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to the Client Omnibus Margin Account or the assets therein or transferred thereto or

therefrom under these Rules received from a Person ICE Clear Credit believes to be authorized to act on behalf of the appropriate Participant. In no event shall a Non-Participant Party attempt to interfere with the ability of ICE Clear Credit to exercise its rights as set forth in the Rules.

- (h) Except with respect to Client-Related Positions resulting from transactions entered into on a designated contract market or national securities exchange, each Non-Participant Party for which a Participant clears a Client-Related Position must be an “eligible contract participant” as defined in the CEA.
- (i) Each Non-Participant Party consents to the disclosure by its Participant to ICE Clear Credit of such Non-Participant Party’s identity and information concerning the Client-Related Positions held by such Participant for such Non-Participant Party and related margin as set forth in the Rules.
- (j) Each Non-Participant Party consents and agrees that in the event a Default has occurred with respect to its Participant or in the event of the insolvency of the Participant, (i) the Participant (or its receiver, insolvency trustee or similar official) and/or ICE Clear Credit shall be entitled to attempt to transfer its Client-Related Positions in accordance with Part 190 of the CFTC regulations, other applicable law and the Default Portability Rules, (ii) such Non-Participant Party appoints ICE Clear Credit as its lawful agent and attorney-in-fact to take such actions on behalf of the Non-Participant Party as ICE Clear Credit determines necessary or appropriate in order to effectuate the Default Portability Rules with respect to the Client-Related Positions carried by the Participant for such Non-Participant Party, including executing any document or instrument with respect to the transfer of the Client-Related Positions and/or exercising rights and remedies to transfer such positions; (iii) the Non-Participant Party shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Participant, any receiver, insolvency trustee or similar official, or ICE Clear Credit to take action contemplated by its Rules, including, without limitation, the transfer of positions and the transfer of related margin or collateral; (iv) any determination made by ICE Clear Credit with respect to the termination value of a Client-Related Position under the Rules shall be conclusive and binding absent manifest error and (v) any amount payable by such Non-Participant Party in respect of the termination of a Client-Related Position held by the Defaulting Participant for such Non-Participant Party shall not be netted or offset against any amount owed by such Participant to such Non-Participant Party under any other agreement or instrument and shall be paid directly to or as directed by ICE Clear Credit.
- (k) Each Participant shall be required to obtain the agreement of each Non-Participant Party to the provisions of the Rules applicable to or otherwise referring to Non-Participant Parties (including Rule 312 and this Rule 406) and hereby represents and warrants to ICE Clear Credit that it has obtained such agreement.

- (l) ICE Clear Credit will not accept the deposit of Margin from a Participant in respect of Client-Related Positions in excess of the amount required by ICE Clear Credit, within the meaning of CFTC Rule 22.13(c). For the avoidance of doubt, any Margin deposited with ICE Clear Credit that subsequently exceeds the amount required by ICE Clear Credit as a result of a change in the amount required or a change in the Value of such Margin will become available for withdrawal in accordance with Rule 401.

811. Non-Default Losses.

- (a) This Rule 811 shall apply if ICE Clear Credit determines that a Non-Default Loss, Investment Loss or Custodial Loss has occurred.
- (b) Any Non-Default Loss shall be met solely from the capital and other assets of ICE Clear Credit available for such purpose at such time (including, if available, Custodial Loss Resources and Investment Loss Resources). Non-Default Losses shall not be met from contributions of Participants to the General Guaranty Fund, Assessment Contributions, Margin provided by Participants, the ICE Clear Credit Initial Contribution, the ICE Clear Credit Continuing Contribution or Additional ICC Collateral Deposits. Without limiting the foregoing, Participants shall not be responsible to ICE Clear Credit for Non-Default Losses.
- (c) If ICE Clear Credit determines that an Investment Loss has occurred, ICE Clear Credit will first apply to such Investment Loss any Investment Loss Resources that were available at the time of the event giving rise to the Investment Loss. To the extent such Investment Loss Resources are insufficient to cover such Investment Loss in full (the amount of such insufficiency, an “**Investment Loss Shortfall**”), ICE Clear Credit may determine that Rule 811(d) applies.

For the avoidance of doubt, (i) a negative yield or interest rate on an ICE Clear Credit investment or (ii) losses in the market value of any securities or other non-cash assets provided by a Participant in respect of its Margin requirements or contribution to the General Guaranty Fund shall not constitute Investment Losses or Non-Default Losses, and shall be for the account of the relevant Participant.
- (d) If this Rule 811(d) applies, all Participants (including any Defaulting Participant) shall indemnify ICE Clear Credit, and become liable to pay Investment Loss Contributions to ICE Clear Credit, in an aggregate amount equal to the Investment Loss Shortfall, allocated as follows: Each Participant shall be obligated to pay an Investment Loss Contribution equal to its pro rata share of the Investment Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the Total Participant IM/GF Contribution of all Participants.
- (e) Notwithstanding anything to the contrary herein, the Investment Loss Contribution for a Participant in respect of any event giving rise to an Investment Loss shall not exceed such Participant’s Participant IM/GF Contribution.
- (f) If ICE Clear Credit determines that a Custodial Loss has occurred, ICE Clear Credit will first apply to such Custodial Loss any Custodial Loss Resources that were available at the time of the event giving rise to the Custodial Loss. To the extent such Custodial Loss Resources are insufficient to cover such Custodial Loss in full (the amount of such insufficiency, a “**Custodial Loss Shortfall**”), ICE Clear Credit may determine that Rule 811(g) applies. Notwithstanding the foregoing, in the event of a Custodial Loss arising where the Custodian is a

central bank, (i) ICE Clear Credit shall not be obligated to apply Custodial Loss Resources to such Custodial Loss, (ii) the full amount of such Custodial Loss shall constitute a Custodial Loss Shortfall, and (iii) ICE Clear Credit may apply Rule 811(g) to such Custodial Loss Shortfall.

- (g) If this Rule 811(g) applies, all Participants (including any Defaulting Participant) shall indemnify ICE Clear Credit, and become liable to pay Custodial Loss Contributions to ICE Clear Credit, in an aggregate amount equal to the Custodial Loss Shortfall, allocated as follows: Each Participant shall be obligated to pay a Custodial Loss Contribution equal to its pro rata share of the Custodial Loss Shortfall, determined based on the proportion of its Participant IM/GF Contribution to the Total Participant IM/GF Contribution of all Participants.
- (h) Notwithstanding anything to the contrary herein, the Custodial Loss Contribution for a Participant in respect of any event giving rise to a Custodial Loss shall not exceed such Participant's Participant IM/GF Contribution.
- (i) For the avoidance of doubt, Investment Loss Contributions shall only be applied to meet an Investment Loss Shortfall, and Custodial Loss Contributions shall only be applied to meet a Custodial Loss Shortfall.
- (j) In the event that ICE Clear Credit determines to require Investment Loss Contributions under Rule 811(d) or Custodial Loss Contributions under Rule 811(g), it shall issue a Circular specifying (i) the nature and extent of the Investment Loss or Custodial Loss, as applicable, (ii) the aggregate amount of the Investment Loss Contributions or Custodial Loss Contributions, as applicable, and the date on which such contributions will become due, and (iii) such other matters as ICE Clear Credit considers to be relevant.
- (k) All Loss Contributions shall arise on the date specified in the notice under Rule 811(j). Any Loss Contributions falling due may, at the election of ICE Clear Credit, be offset against the obligation of ICE Clear Credit to return any House Account Initial Margin or return any General Guaranty Fund contributions owed to the Participant and may be collected pursuant to a call for additional cash margin from the House Account or cash Guaranty Fund Deposit Requirements, as applicable.
- (l) (i) With respect to an Investment Loss or Custodial Loss, as applicable, if, after any Loss Contributions have fallen due, the ICE Clear Credit collects or recovers amounts from an issuer, counterparty, Custodian or other Person ("**Loss Claims**") so as to reduce the Investment Loss or Custodial Loss, as applicable, ICE Clear Credit shall apply such amounts 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, (B) in the event ICE Clear Credit or other Persons paid any amounts (other than Loss Resources) to meet the Investment Loss or Custodial Loss following exhaustion of the Loss Contributions, to ICE Clear Credit or other Persons to the extent of

such amounts paid, (C) to the Participants that provided such Loss Contributions, pro rata in respect of their respective satisfied Loss Contributions relating to the event in question, up to the amount of such Loss Contributions; and (D) the remainder, to ICE Clear Credit in respect of Loss Resources applied pursuant to this Rule 811. 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.

(ii) ICE Clear Credit shall exercise the same degree of care in the administration, enforcement and collection of any Loss Claims as it exercises with respect to its own assets that are not subject to allocation pursuant to this Rule 811(l). 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 Loss 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 Loss 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 Loss Claim, in whole or in part, and such assignment shall satisfy in full ICE Clear Credit's obligations under this Rule 811(l) with respect to any such claim (or portion thereof) or recoveries therefrom.

(m) No Loss Contribution shall reduce or otherwise affect the liability of a Participant to provide Initial Margin or make contributions to the General Guaranty Fund, Replenishments, or Assessment Contributions. Notwithstanding any Loss Contributions, Participants shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, ICE Clear Credit in accordance with the Rules, including obligations to pay Initial Margin, contributions to the General Guaranty Fund, Replenishments and Assessment Contributions, and ICE Clear Credit will remain liable to pay or release margin to Participants in the usual way, subject to netting as applicable under Rule 811(k) as described above. All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the Loss Contributions) and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.

(n) If ICE Clear Credit determines that it has called for Loss Contributions in excess of that required or actually applied against an Investment Loss Shortfall or Custodial Loss Shortfall, as applicable, it shall promptly credit any excess amounts to the Participant's account.

(o) Liabilities of Participants in respect of Loss Contributions under this Rule 811 shall apply independently from any rights to call for Assessments under Rule 803 and give rise to a separate and additional payment obligation for Participants. For

the avoidance of doubt, none of the caps on Assessments arising pursuant to Rule 803 or 806 shall restrict or limit any liability of a Participant in respect of Loss Contributions under this Rule 811.

- (p) Action by ICE Clear Credit under and in accordance with this Rule 811 shall not constitute an ICE Clear Credit Default.
- (q) Except as expressly provided in this Rule 811, this Rule is without prejudice to ICE Clear Credit's rights to set off or net any amount owed by a Participant to ICE Clear Credit against any sum payable by ICE Clear Credit to a Participant or to any other powers of ICE Clear Credit under the Rules.
- (r) In carrying out any calculations or making any determinations pursuant to this Rule 811, ICE Clear Credit may convert any amounts denominated in one currency into another currency chosen by ICE Clear Credit in its discretion and at a prevailing market rate of exchange reasonably determined by ICE Clear Credit (using a third party source, if practicable).
- (s) ICE Clear Credit will determine from time to time of the amount of Custodial Loss Resources and Investment Loss Resources. ICE Clear Credit will notify Participants of such amount at least annually and promptly following any change therein.
- (t) ICE Clear Credit shall notify Participants by Circular of the total amount of Custodial Loss Resources applied in connection with any Custodial Loss or Investment Loss Resources applied in connection with any Investment Loss, promptly after the same being applied. No replenishment of ICE Clear Credit's assets (including any replenishment of Custodial Loss Resources or Investment Loss Resources) shall result in any obligation of any Participant to pay Loss Contributions being reduced nor the size of any Investment Loss Shortfall or Custodial Loss Shortfall being reduced. ICE Clear Credit may replenish Loss Resources through applying retained earnings, where these are available. To the extent that ICE Clear Credit replenishes Loss Resources or its capital in such or other circumstances, its liability for any further Custodial Losses or Investment Losses shall not exceed the amount specified in Rule 811(s).
- (u) Without limiting Rule 312 or Rule 406, but subject to any contrary requirements of applicable law, and except as provided in this Rule 811, ICE Clear Credit shall not be liable to any Participant, Non-Participant Party or other Person for any losses, liabilities, damages, costs, claims, shortfalls or expenses arising out of or relating to the holding, deposit, custody, transfer or investment of contributions to the General Guaranty Fund, Assessment Contributions, and/or Margin (whether for the House Account or Client Origin Account); provided that nothing in this Rule 811(u) will limit any liability of ICE Clear Credit for its own gross negligence or willful misconduct.