



## Risks Associated with the Services provided

Version 12.1  
March 2023

### **IMPORTANT NOTICE**

The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC; and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

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## 1. Introduction

Pursuant to article 38(2) of EMIR<sup>1</sup> ICE Clear Netherlands B.V. ("ICNL") discloses to its Clearing Members and their clients the risks associated with the services provided. This document forms part of this broader disclosure. It refers to more exhaustive information which is publicly disclosed on the ICNL pages of the ICE website. Kindly note that only the Rules, being the Clearing Rules, together with the Procedures, as interpreted in accordance with Guidance and Circulars, set out the rights and obligations of ICNL and the Clearing Members, and that the present overview is provided for convenience only. Capitalised terms used in this document have the meaning ascribed to them in the Rules.

It is noted furthermore that the present disclosure focusses on the risk from the perspective of the Clearing Member. The extent to which *clients* of Clearing Members are exposed to the same risks depends largely on (i) the arrangements in place between the Clearing Members and the client concerned and (ii) the choices made pursuant to the account segregation options (under article 39 of EMIR).

Also, ICNL publishes its self-assessment against the internationally recognised "Principles for Financial Market Infrastructures", developed jointly by the Committee on Payments and Market Infrastructures and the International Organisation of Securities Commissions. This document provides insight in the way in which ICNL manages its functions as a central counterparty. This self-assessment can prove useful to help to assess the magnitude of the risks which are described in this document, since it comprehensively describes the ICNL risks and mitigating measures and refers to various publicly available resources for more information. It can be found at <https://www.ice.com/clear-netherlands>.

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<sup>1</sup> Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

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## 2. Risks to which Clearing Members are exposed

### 2.1 Guaranty Fund and other default handling exposure

ICNL operates its F&O Guaranty Fund pursuant to Part 11 of the Clearing Rules. The Clearing House will communicate to Clearing Members by Circular how their Guaranty Fund Contributions are calculated. The Guaranty Fund Contributions are determined based on criteria set out in the Finance Procedures, risk policies and Circulars, in accordance with the requirements of EMIR and other Applicable Laws.

Part 9 of the Clearing Rules, and in particular Rule 908, set out the use of the Guaranty Fund in the framework of default handling by ICNL. If the Margin, Guaranty Fund Contributions of the defaulter and the ICNL Clearing House Initial Contribution (the “skin in the game”) are insufficient to cover the default losses, ICNL can and will use the Guaranty Fund Contributions of the non-defaulting Clearing Members.

If after the usage of the Guaranty Fund Contributions of the non-defaulting Clearing Members the default losses are still not covered, the Clearing House Second Contribution (“second skin in the game”) will be applied. If there still remain uncovered default losses, the Clearing Members can be required to make additional Assessment Contributions, in accordance with Rule 909. These Assessment Contributions can equal up to twice the required Guaranty Fund Contributions immediately preceding the default. Furthermore, Clearing Members must make the required replenishment of Guaranty Fund Contributions to top-up any used Guaranty Fund Contributions in accordance with Rule 1102 (i).

ICNL may implement an auction process with participation of active Clearing Members to close Open Contract Positions of a defaulter. Failure to participate or to provide a competitive bid can lead to juniorisation of Guaranty Fund Contributions.

Part 9 of the Clearing Rules includes the possibility of a Reduced Gains Distribution under Rule 914. It is a loss allocation tool in case the financial resources available for default handling prove insufficient. This procedure is more widely known as variation margin haircutting. Similarly, Rule 915 provides for Partial Tear-Up of Open Contract Positions and Rule 916 provides for Contract termination. In the event of service closure, replacement costs could be incurred. Clients of a defaulting Clearing Member may also incur losses or disruption to their activities as a result of the default management process.

### 2.2 Other loss sharing

The use of various discretionary powers under its Rules may result in Clearing Member losses (see Part 1 of the Clearing Rules).

The Clearing Rules provide for the assessment to Clearing Members of certain Investment Losses, Custodial Losses, Pledged Collateral and (other) Non-Default Losses under Rule 919. Any such

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loss exceeding the own assets available to ICNL to cover such loss - which are the amounts which have been communicated by Circular in accordance with Rule 919(p) - will be distributed to the Clearing Members. Each Clearing Member will be held liable in proportion to the Original Margin and Guaranty Fund Contributions of each Clearing Member compared to the total margin and contributions of the collectivity of the Clearing Members.

### **2.3 Payment risks**

ICNL requires payments to be made to it and will make payments to its Clearing Members. The Clearing Rules provide that payments will be through Target 2 or via Approved Financial Institutions (each an “AFI”, together the “Assured Payment System” or “APS”).

The use of Target 2 for EUR payments is mandated insofar as it is available and practicable (as determined by ICNL). For payments made through the APS, ICNL’s Rules consider that the payment is made when the cash reaches an ICNL account with a Concentration Bank, a designated AFI. The Clearing Member has exposure on the AFI until the funds are at the disposal of ICNL in its account with the Concentration Bank. This risk allocation is more widely known as “extended member liability” (Rule 301(f)).

The handling of payments is arranged in Part 3 of the Clearing Rules and in the Finance Procedures.

### **2.4 Clearing House insolvency**

ICNL could become insolvent (a “Clearing House Event” as described in the Clearing Rules). Recovery and resolution plans have been established.

## **3. Disclaimer**

The above description is a non-exhaustive list of the financial losses to which Clearing Members and/or their clients may be exposed. Clearing Members and clients cannot rely on this disclosure and should undertake their own risk assessment and analysis of the Rules and associated documentation and processes.

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