



DCO Rules

Submitter Information	
Organization Name ICE Clear Credit LLC	
Organization Type DCO	Organization Acronym ICECC
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Cover Sheet	
Submission Number 1805-2417-3643-17	Submission Date 5/24/2018 5:36:43 PM
Submission Type 40.6(a) Rule Certification	
<input type="checkbox"/>	Request Confidential Treatment
Registered Entity Identifier Code	
Submission Description ICC proposes amendments to its Clearing Rules to comply with certain requirements of the European Union General Data Protection Regulation.	
Rule Numbers ICC Rule 407.	
Date of Intended Implementation 6/8/2018	
Documents	
GDPR CFTC Cert 2018 05 24.pdf Exhibit A.pdf	
Request For Confidential Treatment - Detailed Written Justification	
N/A	

Maria Zyskind
Staff Attorney

May 24, 2018

Re: Updates to ICC Rules Relating to EU General Data Protection Regulation Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation 40.6(a)

VIA ELECTRONIC PORTAL

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC (“ICC”) hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), a self-certification of changes to the ICC Clearing Rules (the “Rules”) to comply with certain requirements of the European Union (“EU”) General Data Protection Regulation (“GDPR”).¹ ICC is registered with the Commission as a derivatives clearing organization (“DCO”). ICC intends to implement the changes no sooner than the tenth business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office.

ICC proposes revisions to Rule 407 in order to update its policies on data protection to facilitate compliance with the GDPR, which takes effect on May 25, 2018. This submission includes a description of the changes to the ICC Rules. Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

The amendments reflect that ICC’s policies on use of personal data will now primarily be stated in a privacy notice made available to Clearing Participants (“CPs”) and other market participants, and accordingly certain existing provisions in the Rules relating to personal data will be removed or modified. ICC proposes minor changes to terminology in Rule 407(a)(iv) to replace the term Data Protection Directive with Data Protection Regulation which will refer to the GDPR. ICC proposes corresponding changes throughout the document. Under the proposed revisions, Rule 407(i) states that subsections (i) through (m) apply to the extent that ICC is within scope of the GDPR, and notes ICC’s right to process “Personal Data” (as defined in the GDPR)² for purposes permitted under the GDPR. The proposed amendments also remove existing subsections (j) and (k) as the relevant provisions containing ICC’s obligations with respect to Personal Data will now be set out in a privacy notice, and, instead, include ICC’s commitment to keeping Personal Data confidential in a new subsection (j) and intentionally omit subsection (k). The proposed updates to Rule 407(l) specify that CPs must ensure they have a lawful basis for processing Personal Data provided to ICC. ICC also proposes including references to defined

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016.

² Personal Data is defined in the GDPR as information related to a natural person that would identify that person, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

terms used in the GDPR in Rule 407(m). The proposed new Rule 407(n) states that recording telephone conversations with ICC will take place to the extent permitted or required under applicable law.

Core Principle Review:

ICC reviewed the DCO core principles ("Core Principles") as set forth in the Act. During this review, ICC identified the following Core Principle as being impacted:

Legal Risk: The revisions to the ICC Rules are consistent with the requirements of Core Principle R and Commission Rule 39.27. The amendments facilitate compliance by ICC and its CPs with the requirements of the GDPR by updating ICC's Rules on data protection. The amended Rules also provide additional clarity and transparency regarding the obligations of ICC and its CPs regarding Personal Data. ICC does not believe that the amendments will adversely impact its ability to comply with any Core Principles or Commission regulations.

Amended Rules:

The proposed changes consist of changes to Rule 407 to comply with certain requirements of the GDPR.

Annexed as an Exhibit hereto is the following:

- A. Proposed amendments to the ICC Rules

Certifications:

ICC hereby certifies that the changes comply with the Act and the regulations thereunder. There were no substantive opposing views to the changes.

ICC further certifies that, concurrent with this filing, a copy of the submission was posted on ICC's website, and may be accessed at: <https://www.theice.com/clear-credit/regulation>

ICC would be pleased to respond to any questions the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6854.

Sincerely,



Maria Zyskind
Staff Attorney



Clearing Rules

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407. UK and European Issues

- (a) For the purposes of this Rule 407 only:
- (i) **“Offer to the Public”** in relation to any Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any Securities to be offered so as to enable an investor to decide to purchase or subscribe for those Securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State;
 - (ii) **“PD Contract”** means any contract that is a Security and which is (A) a contract cleared or proposed to be cleared by ICE Clear Credit; or (B) a contract in relation to which ICE Clear Credit provides or proposes to provide services as collateral agent; or (C) a contract on terms identical or similar to a contract falling under (A) or (B);
 - (iii) **“Prospectus Directive”** means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State and any reference to a particular article of the Prospectus Directive shall be deemed to also be a reference to the relevant provision of the relevant implementing measure in each Relevant Member State;
 - (iv) **“Relevant Member State”** means, in relation to paragraph (b) of this Rule or any of the other definitions in this paragraph (a), any member state of the European Economic Area which has implemented the Prospectus Directive or, in relation to paragraphs (i), (j), (k), (l) and (m) of this Rule, means any member state of the European Economic Area which has implemented the Data Protection [DirectiveRegulation](#); and
 - (v) **“Securities”** means ‘securities’ within the meaning of article 2(1)(a) of the Prospectus Directive as the same may be varied in any Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State.
- (b) ICE Clear Credit has not authorized, nor does it authorize, the making of any Offer to the Public of any PD Contract in circumstances in which an obligation arises for ICE Clear Credit, a Participant or any other person to publish or supplement a prospectus for any such offer. Accordingly, Participants shall not make any such Offer to the Public in relation to PD Contracts. Without prejudice to the generality of the foregoing, no Participant shall enter into a PD Contract: (i) with ICE Clear Credit; or (ii) with another Participant pursuant to these Rules; or (iii) with any of its customers on a back-to-back basis with a contract falling under (i) or (ii), unless one or more of the following conditions is satisfied:

- (A) in the case of any PD Contract to which ICE Clear Credit is a party, the Participant is a “qualified investor” (as defined article 2(1)(e) of the Prospectus Directive);
 - (B) in the case of any PD Contract to which ICE Clear Credit is not a party, the Participant and its counterparty are both “qualified investors” (as defined in article 2(1)(e) of the Prospectus Directive);
 - (C) the minimum total consideration is at least €50,000; or
 - (D) the requirement to publish or supplement a prospectus under the Prospectus Directive otherwise does not apply.
- (c) Each Participant shall be deemed to represent and warrant to ICE Clear Credit that it has complied and will comply with all applicable provisions of the Financial Services and Markets Act 2000 (as amended, “**FSMA**”) with respect to anything done by it in connection with the clearing services provided, and contracts offered, by ICE Clear Credit in, from or otherwise involving the United Kingdom.
 - (d) Paragraphs (e), (f), (g) and (h) of this Rule shall cease to apply on such date that ICE Clear Credit becomes a recognized overseas clearing house in the United Kingdom.
 - (e) Participants and other persons are hereby given notice that ICE Clear Credit is not a recognized clearing house or recognized overseas clearing house (“**ROCH**”) in the United Kingdom.
 - (f) These Rules and any other document or material produced by ICE Clear Credit may be distributed only to persons who: (i) are “investment professionals” as defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the “**Financial Promotion Order**”); (ii) are persons falling within Article 49(2)(a) to (d) (“high net worth companies, unincorporated associations etc”) of the Financial Promotion Order; (iii) are outside the United Kingdom in circumstances in which Article 12 of the Financial Promotion Order (“communications to overseas recipients”) applies; or (iv) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of the FSMA) in connection with the clearing services provided, and contracts offered, by ICE Clear Credit may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as “**Relevant Persons**”). These Rules and such other documents and materials are directed only at Relevant Persons and must not be acted on or relied on by persons who are not Relevant Persons. Any investment or investment activity to which these Rules or such other documents or materials relate is available only to Relevant Persons and will be engaged in only with Relevant Persons.

- (g) Each Participant shall be deemed to represent and warrant to ICE Clear Credit that it has only communicated or caused to be communicated, and will only communicate or cause to be communicated, any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA), received by it in connection with the clearing services provided, or contracts offered, by ICE Clear Credit, in circumstances in which Section 21(1) of the FSMA would not be breached by ICE Clear Credit.
- (h) Without prejudice to the generality of paragraphs (f) and (g) of this Rule, Participants shall not enter into any contract with any person that is not a Relevant Person on a back-to-back basis either: (i) with a contract to which ICE Clear Credit is counterparty; or (ii) with a contract to which another Participant is counterparty in circumstances in which ICE Clear Credit provides services as collateral agent.
- (i) [The provisions of paragraphs \(i\)-\(m\) of this Rule shall apply to the extent ICE Clear Credit is a Controller or Processor in respect of Personal Data to which the Data Protection Regulation applies.](#) ICE Clear Credit shall be entitled to Process any Personal Data provided to it by Participants for the purpose of exercising any rights ICE Clear Credit has under these Rules or the Participant Agreement, including Processing required to comply with ICE Clear Credit's legal and regulatory obligations as a clearing house ~~or bank~~[among other legal bases permitted under the Data Protection Regulation](#).
- ~~(j) ICE Clear Credit agrees that it will:~~
- ~~(i) ICE Clear Credit agrees that it will~~ keep all Personal Data confidential only insofar as this is required under the Participant Agreement; [and applicable law](#).
- ~~(ii) ensure that access to Personal Data shall only be provided to those of its employees or service providers who need access to such data for the performance of their duties for the purposes set out in Rule 407(i). ICE Clear Credit will ensure that any such transfers of Personal Data to third party service providers will be subject to contractual requirements to safeguard Personal Data equivalent to those set out in this Rule 407(j);~~
- (k) [Intentionally omitted.](#)
- ~~(iii) take adequate technical and organizational security measures to safeguard Personal Data against unauthorized access, destruction, disclosure, transfer, or other improper use;~~
- ~~(iv) provide access to any Participant to the Personal Data which have been provided by that Participant, to enable that Participant to provide relevant Data Subjects with access to such Personal Data. ICE Clear Credit shall refer Data Subjects requesting access to their Personal Data to the relevant Participant and shall also, at the request of any Participant, amend, correct, delete or add to Personal Data that have~~

- been supplied by that Participant to ensure that such Personal Data are accurate and complete;
- ~~(v) as soon as reasonably practical cease processing any Personal Data where it receives notice from any Participant that consent to Processing has been revoked by a Data Subject;~~
 - ~~(vi) promptly notify any Participant of any accidental or unauthorized access, destruction, disclosure, transfer or other improper use of Personal Data that have been supplied by such Participant, after ICE Clear Credit becomes aware of any such access, destruction, disclosure, transfer or other improper use, or of any complaints by individuals or third parties that involve or pertain to such Personal Data;~~
 - ~~(vii) co-operate with any Participant in responding to any inquiry, complaint, or claim from a Supervisory Authority or any Data Subject relating to the Processing of Personal Data provided by that Participant;~~
 - ~~(viii) comply with all reasonable instructions of Participants to ensure ICE Clear Credit's compliance with its obligations under this Rule 407(j); and~~
 - ~~(ix) make reasonable periodic inquiries into its compliance with its obligations under this Rule 407(j).~~
- ~~(k) To the extent that ICE Clear Credit is a Processor in respect of such Personal Data, ICE Clear Credit shall Process such Personal Data provided to it by any Participant in accordance with any reasonable instructions of the relevant Participant, which instructions shall permit the Processing of such Personal Data for the purposes set out in Rule 407(i).~~
- (l) Each Participant, shall ensure that in relation to all Personal Data provided by it to ICE Clear Credit it has a lawful basis for processing the relevant Personal Data in this manner.
~~Credit, shall ensure that:~~
- ~~(i) where consent is required, all relevant Data Subjects have consented to their Personal Data being disclosed to ICE Clear Credit for Processing in accordance with these Rules, including any onward transfer to a jurisdiction outside the European Economic Area by either ICE Clear Credit or any relevant third party;~~
 - ~~(ii) the disclosure of Personal Data by the Participant to ICE Clear Credit will be in each case and in all respects lawful; and~~
 - ~~(iii) notice of the disclosure of their Personal Data to ICE Clear Credit for Processing in accordance with these Rules will be provided to all relevant Data Subjects prior to any such disclosure.~~
- (m) For the purposes of Rules 407(i), ~~(j), (k), (l) and~~ (m) only:
- (i) the terms **“Processor,” “Process(ing)”** “Control”, “Controller”, “Data Subject” and **“Personal Data”** each have

the meaning given to such terms in the Data Protection ~~Directive~~Regulation;

~~(ii) the term “Data Subject(s)” shall mean an individual who is the subject of~~

~~Personal Data;~~

~~(iii) the term “Supervisory Authority” shall mean the data protection authority in the applicable European state; and~~

~~(iv) the term “Data Protection Directive Regulation” shall mean Directive 95/46 EC and includes Regulation (EU) 2016/679 (General Data Protection Regulation) (including any relevant implementing measure in each Relevant Member State or successor legislation thereto).~~

(n) Each Participant and ICE Clear Credit acknowledges that any recording of telephone conversations between the trading, clearing and other relevant personnel of the Participant and ICE Clear Credit or their affiliates in connection with the Rules and the Participant Agreement any Contract or Transaction will take place to the extent permitted or required under applicable law.