



February 01, 2017

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

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6:
Amendments to Clearing Rules Regarding Resolution Proceedings

Dear Mr. Kirkpatrick:

ICE Clear Europe Limited (“ICE Clear Europe”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), for self-certification pursuant to Commission Rule 40.6, the rule amendments discussed herein. The amendments are to become effective on the business day following the tenth business day after submission, or such later date as ICE Clear Europe may determine.

Concise Explanation and Analysis

The purpose of the rule amendments is to modify the ICE Clear Europe Clearing Rules to clarify the application of certain default-related provisions in the context of resolution proceedings with respect to the Clearing House or a Clearing Member. Such proceedings can arise under so-called special resolution regimes that may apply under applicable law to the Clearing House or a Clearing Member in the event of its failure or insolvency, as an alternative to traditional bankruptcy or insolvency proceedings in the relevant jurisdiction. For purposes of the amendments, the relevant regimes are the UK Banking Act 2009 and the EU Bank Recovery and Resolution Directive (the “BRRD”).¹

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

In Rule 101, ICE Clear Europe proposes amendments to the definition of “Insolvency” and addition of new defined terms “Resolution Step” and “Unprotected Resolution Step.” These amendments are designed to distinguish between insolvency and resolution proceedings, and reflect and incorporate certain limitations on the termination of Contracts and exercise of default remedies that apply under the terms of an applicable special resolution regime. (Under the current Rules, an Insolvency in turn constitutes an Event of Default that permits the exercise of the default rights and remedies specified in the Rules.)

The definition of Insolvency has been amended to exclude certain resolution proceedings. Specifically, the amendment removes the existing provision that a Governmental Authority exercising one or more of its stabilization powers under the UK Banking Act 2009 will constitute an Insolvency. In addition, the appointment of an Insolvency Practitioner, which normally is an Insolvency, will not constitute an Insolvency if it is made in connection with a Resolution Step that is not an Unprotected Resolution Step, as defined below. A Resolution Step involving a Governmental Authority making an order to transfer a person’s securities, property, rights or liabilities (which may be a feature of a resolution proceeding) will also not constitute an Insolvency.

A new definition of “Resolution Step” has been added, which can apply to persons other than the Clearing House. A Resolution Step means a Governmental Authority exercising stabilization powers under the UK Banking Act 2009 or certain resolution authorities under national legislation implementing the BRRD. A resolution proceeding of this type involving the Clearing House itself will not constitute a Resolution Step. The amendments do not address other types of resolution proceedings (including resolution proceedings under laws other than the UK Banking Act 2009 or national laws implementing the BRRD).

A new definition of “Unprotected Resolution Step” has been added, which means a Resolution Step with respect to a person (other than the Clearing House) in which either (i) the substantive obligations of the person to the Clearing House under the Rules are not being performed or (ii) the Clearing House is not prohibited or otherwise prevented from declaring an event of default or exercising termination and close out rights under the Rules with respect to that person.

In Section 901(a)(vii), the definition of Event of Default has been modified to include an Unprotected Resolution Step with respect to a Clearing Member or any of its Group Companies.

As a result of these changes, a resolution proceeding under the UK Banking Act or national laws implementing the BRRD, with respect to either the Clearing House itself or a Clearing Member, will not constitute an Insolvency. Such a resolution proceeding that involves a Clearing Member will constitute a Resolution Step, but a Resolution Step will not itself constitute an Event of Default under the Rules unless it is an Unprotected Resolution Step. In light of the definition of Unprotected Resolution Step, this approach thus takes into account limitations imposed by the relevant resolution regime on the declaration of a default and exercise of default remedies in the context of a resolution proceeding.

A variety of other conforming and clarifying changes have been made throughout the Rules. In the definition of “Insolvency Practitioner” in Rule 101, a reference to a temporary administrator has been added. The definition of “Applicable Law” has been revised to use the defined term “Insolvency”. Rule 201(a)(xxi) has been revised to provide that in order to become or remain a Clearing Member, a person must not be subject to an Unprotected Resolution Step (in addition to the existing provision that a person must not be subject to an Insolvency). In Rule 202(b), reference to various types of insolvency laws have been replaced using the term Insolvency and Applicable Laws. Rule 201(a)(xxxv) has been revised to refer to applicable laws involving Resolution Steps as well as Insolvency. Similarly, Rule 204(a)(viii) requires a Clearing Member to notify the Clearing House of any Resolution Step involving it or its Group Companies. In Rule 405(a)(ii) and (f), references to various types of insolvency proceedings have been replaced with the defined term Insolvency.

Rule 903(d)(i), which addresses certain automatic termination events, has been revised to include a reference to an Unprotected Resolution Step, in addition to the current reference to Insolvency. In Rule 904(m), which requires the Clearing House to commit to trigger the procedures for transfer of customer positions following a Clearing Member default, a requirement has been added that the relevant customer is not subject to an Unprotected Resolution Step (in parallel to the existing requirement that the customer not be subject to an Insolvency). Similar changes are made in Rule 904(p) with respect to Sponsored Principals and Rule 904(u) with respect to Customers using Individually Segregated Margin-flow Co-mingled Accounts.

In Rule 1901(b)(x), a requirement that Sponsored Principals not be subject to an Unprotected Resolution Step has been added (similar to the requirement discussed above for Clearing Members in revised Rule 201(a)). Rule 1901(b)(xiv) has also been revised to refer to the defined term Insolvency. In addition, in each of the forms of Standard Terms Annex, paragraph 10 has been revised to use the defined term Insolvency in place of certain references to various types of insolvency proceedings.

Compliance with the Act and Commission Regulations

The rule amendments are potentially relevant to the following core principles: (G) Default Rules and Procedures and (R) Legal Risk and the applicable regulations of the Commission thereunder.

- *Default Rules and Procedures.* As described herein, the Clearing Rules amendments are designed to clarify the applicability of default rights and remedies under the Rules in the context of a resolution proceeding with respect to the Clearing House or a Clearing Member, in light of limitations that may exist under the UK Banking Act 2009 and BRRD (or relevant national implementing legislation) on the exercise of such rights and remedies. Specifically, the amendments distinguish between an Insolvency and a Resolution Step, and provide that the Clearing House may exercise default management remedies in the case of an Unprotected Resolution Step with respect to a Clearing Member, consistent with the UK and EU resolution regimes. In ICE Clear Europe’s view, the amendments thus facilitate default

management by the Clearing House within the limits of applicable law, and are consistent with the requirements of Core Principle G and Commission Rule 39.16.

- *Legal Risk.* As a clearing organization that provides services outside the United States, ICE Clear Europe is required under Core Principle R and Commission Rule 39.27 to identify and address any material conflict of law issues, and to be able to demonstrate that its rules and procedures are enforceable in all relevant jurisdictions. As discussed above, the amendments are designed to incorporate the limitations on the exercise of default remedies that may apply to the Clearing House or Clearing Members under the UK Banking Act 2009 and the BRRD. As such, the amendments will further the clearing house's compliance with the requirements of Core Principle R, as well as more generally support its operation pursuant to a well-founded legal framework in all relevant jurisdictions.

As set forth herein, the amendments consist of revisions to the Rules, a copy of which is attached hereto.


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

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

ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website concurrent with the filing of this submission.

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 patrick.davis@theice.com or +44 20 7065 7738, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Paul Swann, President & Managing Director, at paul.swann@theice.com or +44 20 7065 7700.

Very truly yours,



Patrick Davis
Head of Legal and Company Secretary