



April 8, 2019

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 –
Interpretation of Certain Rules

Dear Mr. Kirkpatrick:

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rule 40.6 for self-certification, a Circular to be published titled ICE Clear Europe: Interpretation of References to EU Legislation in the Clearing Rules Post-Brexit (the “Circular”). The Circular is to become effective on the first business day following the tenth business day after submission, or such later date as ICE Clear Europe may determine.

Concise Explanation and Analysis

ICE Clear Europe is publishing the Circular to provide guidance as to the interpretation of references to European Union (“EU”) directives and regulations in the ICE Clear Europe Clearing Rules and Procedures¹ in the event that the United Kingdom (“UK”) ceases to be a European Union (“EU”) member state, which is currently scheduled to occur on April 12, 2019, in circumstances where no withdrawal agreement stipulating that EU laws will continue to apply in the UK has been agreed between the UK and the EU-27. The interpretation contained in the Circular will only apply under such circumstances. The Circular may be issued at a later date, if the

¹ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

UK's withdrawal is further delayed but it ceases to be a member of the EU in similar circumstances.

In such circumstances, directly applicable EU directives and regulations will be incorporated into UK law with modifications on “exit day” through the European Union (Withdrawal) Act 2018 (the “EUWA”), which would result in there being two versions of a directly applicable EU legislative act which may be applicable to the Rules: (1) the version as enacted in the EU, directly applicable throughout the EU (and, in certain cases, the EEA); and (2) the version incorporated into UK law (referred to as “on-shored”).

There are various references to EU directives and regulations in the Rules and Procedures. ICE Clear Europe is publishing the Circular to provide guidance as to the proper interpretation of such references in the event of the UK leaving the EU without withdrawal agreement that provides for continued applicability of EU law in the UK. The guidance is intended to be consistent with the views of legal practitioners in the UK with respect to references to EU directives and regulations in English law contracts generally, but applied to the particular definitions and situations that arise under the Rules and Procedures.

The Circular sets out several principles that will be applied by ICE Clear Europe when interpreting references to an EU regulation or directive in its Rules:

1. Where the reference concerns an obligation on, or otherwise applies to, the Clearing House or a UK Clearing Member:
 - Where the reference is to an EU regulation, it should be interpreted as the regulation as it forms part of UK domestic law through section 3 of the EUWA, and as amended by UK law from time to time; and
 - Where the reference is to an EU directive, it should be interpreted as the UK domestic law corresponding to the directive or provision thereof.
2. Where the reference concerns an obligation on, or otherwise applies to, an EU Clearing Member:
 - Where the reference is to an EU regulation, it should be interpreted as the regulation as it applies in the EU, and as amended by EU law from time to time; and
 - Where the reference is to an EU directive, it should be interpreted as the EU directive, as amended by EU law from time to time and as implemented in the relevant member state of the EU Clearing Member.

The Circular also addresses situations where both sets of laws apply, for example for entities established in the UK with an EU branch (or vice versa) or which continue to be regulated in both systems under cross-border licenses, the UK temporary permissions regime or other grandfathering arrangements.

The Circular further sets out certain exceptions to these general principles relating to the following:

- A reference to an EU law relating to emission allowance units issued under the EU Emissions Trading Scheme should be interpreted to continue to refer to the EU law since the UK no longer participates in the scheme;
- References to EU member state laws transposing or implementing an EU directive will be read to include UK laws corresponding to that EU directive;
- Certain references relating to the European Market Infrastructure Regulation (Regulation (EU) No 648/2012) and related EU authorities will be read to continue to refer to relevant EU law and authorities, for example in the context of ICE Clear Europe's status as a third country central counterparty thereunder; and
- References relating to EU data protection legislation are excluded, since these are addressed separately in ICE Clear Europe Circular C19/053 dated March 15, 2019.

Compliance with the Act and CFTC Regulations

The interpretation is potentially relevant to the following core principle: (R) Legal Risk, and the applicable regulations of the Commission thereunder.

- *Legal Risk.* As discussed herein, the interpretation is designed to ensure that references to EU directives and regulations in the Rules and Procedures are properly interpreted should the UK cease to be an EU member state. The guidance set out in the Circular would facilitate continued clearing in light of the requirements of UK and EU law in those circumstances, minimize the potential for disputes and legal uncertainty and generally addressing conflicts of law issues. As a result, ICE Clear Europe believes that the interpretation is consistent with the requirements of Core Principle R and CFTC Rule 39.27.

As set forth herein, the rule change consists of the interpretive guidance set out in the Circular, a copy of which is attached hereto.

ICE Clear Europe hereby certifies that the rule change complies with the Act and the Commission's regulations thereunder.

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

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 robert.barlow@theice.com or +44 (0)203 429 4575.

Very truly yours,

A handwritten signature in black ink, appearing to be 'R Barlow', written over a faint horizontal line.

Robert Barlow
Compliance & Regulatory Analyst