



April 28, 2016

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 Relating to Account Categories for Positions of Clearing
Member Affiliates

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, the amendments to its Clearing Procedures 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

ICE Clear Europe submits proposed amendments to its Clearing Procedures to clarify the account categories in which positions of affiliates of Clearing Members are to be maintained, in light of applicable US and EU regulatory requirements.

Under the Commission’s rules, the positions of an affiliate of a futures commission merchant (“FCM”) are considered “proprietary” for purposes of segregation requirements and thus cannot be held in a customer account carried by the FCM.¹ As a result, FCMs, including FCM/BD Clearing Members, carry such positions in their proprietary accounts. However, under the European Market Infrastructure Regulation

¹ See, e.g., 17 C.F.R. Sections 1.3(y), 1.20(e)(2).

("EMIR")², when applicable to ICE Clear Europe, a clearing member will be required to treat an affiliate as a client³ for various purposes, and accordingly positions of the affiliate should be held in a separate account from the proprietary positions of the clearing member.⁴

ICE Clear Europe proposes to establish new position-keeping accounts for use by FCM/BD Clearing Members for positions of their affiliates, which will be separate from the clearing member's own positions (and thus satisfy the EMIR requirement) but at the same time will not be customer accounts for purposes of applicable requirements under the Commission's regulations.

Specifically, ICE Clear Europe proposes to amend paragraph 2.3(b) of the Clearing Procedures to establish new position-keeping accounts, labeled the "F" and "R" accounts, which will be required to be used for all positions of affiliates of FCM/BD Clearing Members. The "F" account will use a gross margin model (for positions in contracts margined on a gross basis under the Rules and Procedures); the "R" account will use a net margin model (for positions in contracts margined on a net basis under the Rules and Procedures). Both accounts will be treated as separate Proprietary Accounts for purposes of the Rules (and accordingly the accounts will not constitute Customer Accounts of the FCM/BD Clearing Member). New paragraph 2.3(f) has been added to provide a definition of "affiliate" for this purpose, based on the relevant definitions of proprietary accounts under Commission regulations.

Paragraph 2.3 has also been revised to clarify the treatment of positions of affiliates of Non-FCM/BD Clearing Members. Paragraph 2.3(c) has been revised to clarify that the Clearing House may establish additional position-keeping accounts for a Clearing Member to facilitate separate tracking of positions for each exchange non-clearing member for which the Clearing Member provides services. The revisions also clarify the treatment of such position-keeping accounts for exchange members as customer or proprietary, consistent with the requirements of the Rules and Clearing Procedures and applicable law.

Amendments to paragraph 3.1(a) of the Clearing Procedures provide for the margining of the "F" and "R" accounts of FCM/BD Clearing members as separate Proprietary Accounts. The summary table following paragraph 3.2 of the Clearing Procedures has been amended to conform to the other changes made in the Clearing Procedures.

² Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as well as various implementing regulations and technical standards.

³ EMIR Article 2(15). EMIR defines "client" as "an undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP," which suggests that an affiliate can be a client of a clearing member. This understanding of a client is supported in other EU legislation such as MiFID (see Directive 2004/39/EC of the European Parliament and of the Council on 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC), and in UK case law where affiliates have consistently been treated as clients to whom regulatory obligations were owed. See *Re Lehman Brothers International (Europe) (in administration)* [2012] UKSC 6.

⁴ EMIR Article 39(4).

Compliance with the Act and Commission Regulations

The amendments to the Clearing Rules are potentially relevant to Core Principle F (Treatment of Funds), and the applicable regulations of the Commission thereunder.

- *Treatment of Funds.* The amendments are intended to update the Clearing House's Clearing Procedures to clarify the account categories to be used for positions of Clearing Member affiliates. Specifically, as a result of such changes, positions of affiliates of FCM/BD Clearing Members will be required to be held in a separate account from the Clearing Member's own positions, consistent with the EMIR requirements. Such separate account will, however, be treated as a Proprietary Account (and not a Customer Account) under the Rules and Procedures, consistent with the Commission's rules. In ICE Clear Europe's view, the amended Clearing Procedures are thus consistent with the requirements of Core Principle F and Commission Rule 39.15.

As described herein, the amendments consist of changes to the ICE Clear Europe Clearing Procedures. A copy of such revisions is attached hereto.

ICE Clear Europe hereby certifies that the changes 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