



May 18, 2018

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 –
GDPR Clearing Rule Amendments

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 Rules (the “Rules”)¹ discussed herein. The amendments are 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

The purpose of the proposed changes is to amend the Rules to clarify the operation of certain provisions in light of requirements under the European Union General Data Protection Regulation (“GDPR”)² relating to personal data in the context of Clearing House activity. The GDPR takes effect on May 25, 2018.

Consistent with the GDPR, the amendments reflect that the Clearing House’s policies on use of personal data will now primarily be stated in a privacy notice made available to Clearing Members and other market participants, and accordingly certain

¹ Capitalized terms used but not defined herein have the meanings specified in the Rules.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

existing provisions in the Rules relating to personal data will be removed or modified, as discussed herein. Specifically, ICE Clear Europe is amending Rule 106, which sets out certain of its rights and obligations with respect to such personal data. Rule 106(c), which imposes certain requirements on Clearing Members and Sponsored Principals relating to “Personal Data” (as defined in the GDPR)³, is proposed to be updated to provide that such persons must ensure that they have a lawful basis for processing any Personal Data that they provide to the Clearing House. The provisions of subsections (d) and (e) have been removed (with the following subsections redesignated), as the relevant provisions describing the rights of the Clearing House to use Personal Data and the rights of Data Subjects will now be set out in a member/user privacy notice. Rule 106(d) (as redesignated) has been revised to update references to defined terms used in the GDPR. Rule 106(e) (as redesignated) has been amended to provide an acknowledgement that recording of telephone conversations with the Clearing House will take place to the extent permitted or required under applicable law (including the GDPR), removes references to consent (as other lawful bases apply to this processing) and makes certain other drafting clarifications.

Compliance with the Act and CFTC Regulations

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

- *Legal Risk.* As discussed herein, the amendments are designed to facilitate compliance by ICE Clear Europe and its Clearing Members and Sponsored Principals with the GDPR, and thereby facilitate continued clearing in Europe in accordance with the new EU regulations relating to data protection. This ensures that the Clearing House continues to have an enforceable legal framework with respect to its activities in all relevant jurisdictions. Moreover, ICE Clear Europe does not believe that ensuring that all Personal Data is provided and processed a manner consistent with data privacy regulations under the GDPR will adversely impact its ability to comply with any Core Principles or Commission regulations. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle R and CFTC Rule 39.27.

As set forth herein, the amendments consist of changes 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 proposed rule amendments.

³ In general, “Personal Data” is defined for this purpose in the GDPR as information relating to a natural person (referred to as a “Data Subject”) that would identify that person, in particular by reference to an identifier such as a name, identification number, location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social entity of that person.

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 or Rachel Pearson, Legal Counsel, at rachel.pearson@theice.com or +44 20 7429 3065.

Very truly yours,

Patrick Davis
Head of Legal and Company Secretary