



June 22, 2021

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

Re: Self-Certification Pursuant to Commission Rule 40.6 – Articles of Association

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 rule change 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 amendments is to update the Articles of Association (the “Articles”) to reflect certain changes in the composition of the ICE Clear Europe Board and the composition and structure of Board committees, to clarify certain director independence standards, to clarify certain super-quorum standards applicable to certain actions relating to CDS clearing, to revise certain provisions regarding directors and to reflect the use of gender-neutral language, as discussed in more detail herein.

In article 3,<sup>1</sup> definitions of certain specific committees have been deleted, including the Audit Committee, Board Risk Committee, Compensation Committee and Nomination Committee, and the definition of Committee has been revised to generally reference any committee constituted by the Board under the Articles. Although ICE Clear Europe is not changing its current committee structure at this time, it does not believe the committees need to be defined in the Articles. Since the

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<sup>1</sup> References herein to the numbering of particular articles will be to the articles as amended.

Board is authorized to create, modify or dissolve committees as it determines to be appropriate, the amendments will facilitate future changes to the committee structure by the Board without need to amend the Articles.

In addition, the amendments modify certain other definitions, including CDS Director, Committees, Independent Director, Risk Committee and Super-Quorum Matters. These definitions have been updated as follows:

- CDS Director – a sentence has been added to the definition to clarify that the CDS Director may also meet the criteria required of an Independent Director, however, for the avoidance of doubt they will continue to be classified only as a CDS Director.
- Independent Director – this definition has been updated such that instead of describing this person as independent of the Company and of the Clearing House (without further definition of independence), the definition requires the director to meet the independence criteria for a director, as defined under relevant applicable legislation.<sup>2</sup>
- Risk Committee – this definition has been renamed Product Risk Committee, and references to this committee have been updated throughout the Articles. This change reflects the correct current name and function of this committee (and distinguishes the Product Risk Committee from other existing risk committees). Further, the statement that it is composed of directors has been deleted as it does not reflect the current composition of the committee under its terms of reference (which includes clearing member representatives, among others).
- Super-Quorum Matters – this definition has been updated to clarify, as a matter of drafting, that such matters include the criteria for CDS Clearing Membership. A reference to the terms of reference for the CDS Risk Committee has been updated to the terms of reference for the Product Risk Committee with responsibility for CDS (which is the current name for the relevant committee). The amendments also resolve a drafting ambiguity by removing the subject and content of the Board Resolution as a Super-Quorum Matter as, by current practice, not all Board resolutions are Super-Quorum Matters.

A new article 11 provides that a member shall be deemed present at a general meeting if participating by telephone or other electronic means and all participating members can hear each other.

The amendments make certain revisions to the composition of the board and board committees. Amended article 26 provides that one third of directors appointed to the board should be classed as Independent Directors (instead of at least two and not more than four directors), and at least one CDS Director will be required to be appointed to serve in such a capacity at any one time (instead of two). The change to the required

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<sup>2</sup> Specifically, such legislation includes the definition of “independent member” pursuant to Article 2(28) of the European Market Infrastructure Regulation (EMIR), 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 incorporated into UK law under the European Union (Withdrawal) Act 2018 (UK EMIR).

number of CDS Directors follows the retirement of one of the previous CDS Directors and the determination by the Clearing House that it is not necessary to appoint a minimum of two CDS Directors to serve in such capacity in order to adequately address the interests of Clearing Members in Clearing House governance. In addition to the remaining CDS Director, Clearing Members will continue to be represented through the CDS Product Risk Committee which, other than the Chair, is composed entirely of representatives of Clearing Members. The change was approved by the CDS Product Risk Committee, and no Clearing Members objected to the change in the required number of CDS Directors.

In article 27, consistent with the changes to the definitions of Committees described above, the reference to the Nomination Committee has been deleted and replaced with language referring to a committee appointed by the board which will be responsible for appointing directors by ordinary resolution. Article 28 has been amended to reflect the change in article 26 to require only a single CDS Director.

Article 30A has been amended to delete certain language pertaining to a CDS Director's retirement date that is no longer necessary with a single CDS Director. In article 32, the reference to the Nomination Committee has been deleted and replaced with language referring to a committee of the board appointed to consider retirement of directors under the Articles. Likewise, article 33 has been amended to delete the reference to the Nomination Committee and replace such reference with language referring to a committee appointed by the board to consider the reappointment of an Independent Director.

Article 44, which discusses the delegation of directors' power to certain committees, has been amended to delete references to the specific committees that were deleted from article 3 (i.e., the Risk Committee(s), an Audit Committee, a Board Risk Committee, a Nominations Committee and a Compensation Committee).

Amended Article 49 clarifies that directors may be paid certain expenses that are reasonable and the amendments remove the requirement that this be subject to board approval as such expenses will be approved by the ICE Clear Europe President.

Amendments to article 59(a) clarify the operation of the super-quorum requirement for Super-Quorum Matters, which relate to CDS Contracts including to reflect the requirement to only have one CDS Director. For such matters, if a CDS Director has been appointed, such director must be present at the meeting, together with the normal quorum of a majority of the directors serving on the board at the time. The amendments add a defined term for "Super-Quorum" and make revisions throughout the Articles to use such term as appropriate. The amendments also clarify that the CDS director must be present at the present for a super-quorum meeting, but need not vote in favor of the resolution. Amendments to article 59(b) state explicitly that in order for a quorum to be met for non-super-quorum matters, the required directors must be present at the meeting. Article 59(c) has been amended to clarify that for super-quorum matters that need to be resolved in an emergency, the presence of a CDS Director is not necessary. The amendments also clarify that whether an emergency exists for this purpose is to be determined by the President or their delegate.

Similarly, article 59A, has been revised to clarify that where Super-Quorum matters have to be adjourned to a subsequent meeting because no CDS Director is present, the subsequent meeting must have a quorum present at the meeting but need not include a CDS Director.

Throughout the Articles, various provisions have been amended to use gender-neutral language. Certain non-substantive typographical and similar corrections have also been made. Various articles have been renumbered due to the changes discussed above.

#### *Compliance with the Act and CFTC Regulations*

The amendments are potentially relevant to the following core principles: (O) Governance and (Q) Composition of Governing Boards and the applicable regulations of the Commission thereunder.

- *Governance.* As discussed above, the amendments are designed to clarify and update certain aspects of the Articles. Specifically, the amendments to the Articles more clearly set out the composition of the board and board committees, delegation of directors' powers to committees and requirements relating to a quorum and super-quorum. The amendments will facilitate use of board committees, where appropriate, without need for further revision of the Articles. The amendments also reduce the required number of CDS Directors to one, which ICE Clear Europe believes is consistent with the representation of interests of CDS participants. ICE Clear Europe believes that the amendments to the Articles enhance and streamline the overall governance framework for the Clearing House, and are therefore consistent with the requirements of Core Principle O and CFTC Rule 39.24.
- *Composition of Governing Boards.* As discussed above, pursuant to the amendments, Clearing Members will continue to be represented on the Board by the existing CDS Director and the Articles will continue to require the appointment of at least one CDS Director to the Board. The amended articles also maintain and clarify director independence standards. As such, ICE Clear Europe believes its governance arrangements, as modified by the amendments to the Articles, will continue to ensure its governing board and board-level include market participants and individuals who are not executives, officers or employees of the Clearing House or its affiliates, consistent with the requirements of Core Principle Q and CFTC Rule 39.26.

As set forth herein, the amendments consist of changes to the Articles, 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.

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 robert.barlow@theice.com or +44 (0)20 7429 4575.

Sincerely,

A handwritten signature in black ink, appearing to be 'R Barlow', written over a light grey rectangular background.

Robert Barlow  
Compliance & Regulatory Analyst  
ICE Clear Europe Limited