July 01, 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 – Amendments to ICE Clear Europe Clearing Rules and Procedures

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 the ICE Clear Europe Clearing Rules (the "Rules")[1] (, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures and General Contract Terms (collectively, the "Amended Documents") to make various updates and enhancements. 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*

ICE Clear Europe is submitting amendments to the Amended Documents that are intended to make a variety of improvements and changes, including to (1) update various Rules and procedures to reflect current laws and regulations such as those relating to post-default porting, capital requirements, and anti-money laundering requirements, (2) update various defined terms, (3) update certain product and Clearing Member termination rules, (4) update certain notice provisions, (5) clarify membership criteria and obligations for Clearing Members, (6) clarify how open contract positions are aggregated and netted, (7) update certain systems references to reflect current systems and delete obsolete references, (8) amend and clarify the Complaint Resolution Procedures, (9) update various provisions of the Delivery Procedures, (10) introduce a summary disciplinary process and clarify disciplinary processes and (11) make various

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



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other drafting improvements, clarifications and updates, in each case as described in further detail herein.

(i) Removal of "Default Portability Preference"

Various amendments remove the process whereby Non-FCM/BD Clearing Members are able to deliver a "Default Portability Preference", with advance, pre-default, porting information to the Clearing House. This process and mechanism had been developed by ICE Clear Europe as part of its default planning processes prior to post-crisis legislation such as EMIR coming into force. EMIR requires post-default porting notices to be served as a pre-condition to porting, rendering the default portability preference structure to be of limited assistance. In addition, and in practice, ICE Clear Europe did not receive many notices of Default Portability Preferences. After EMIR, other clearing houses did not use or ceased to use such notices and potential transferee clearing members are often unwilling to commit to receive porting in advance. As part of default management planning and following default drills with industry participation, it was determined to remove this structure from the Rules.

Various changes are being made to the Rules to remove references to pre-default Porting Notice and, where appropriate, replace these references with post-default Porting Notices, as discussed herein. In Rule 101, the definition of "Default Portability Preference" definition is being deleted. The related concept of "Non-Transfer Positions" in Rule 101 is being deleted as this defined term is no longer be used following removal of the Default Portability Preference concept. A new definition of "Porting Notice" (which refers to a post-default indication of a porting preference) is being introduced in Rule 101, with a cross-reference to the existing definition of that term in the Standard Terms Annex.

In Rule 904, which addresses procedures for post-default transfer of contracts and margin, various changes implement the removal of Default Portability Preferences. Specifically, changes to Rules 904(g) and 904(j) remove the references to Default Portability Preference and instead refer to the process around the use of Porting Notices. Rule 904(g) is being amended to state that consent to become a Transferee Clearing Member can only be evidenced in a Porting Notice where that Clearing Member has countersigned the notice or otherwise agreed in writing. This clarifies that simply being named by a customer as a potential Transferee Clearing Member is insufficient. The changes to Rules 904(m), 904(p), 904(u) and 904(w) reflect the deletion of the definition of Default Portability Preference.

Related changes have been made to Rule 907(d), which relates to the Clearing House's ability to rely on certain information provided to it. References to Default Portability Preference and Non-Transfer Positions have been deleted. Instead, in connection with porting the Clearing House will be entitled to rely on any information provided to it by a defaulter prior to declaration of default in respect of Contracts, Customer-CM Transactions, Margin and the Accounts in which Contracts and Margin were recorded or which relate to particular Customers or particular groups of Customers. This allows the Clearing House to continue to be able to act efficiently in default scenarios, and be able to rely on more of the relevant information available to

it in relation to the Defaulter. Amendments also clarify that the Clearing House has no obligation to inquire of any person as to any Porting Notice.

The CDS Standard Terms (paragraph 6), F&O Standard Terms (paragraph 6) and FX Standard Terms (paragraph 6) annexed to the Rules are being amended to remove references to Default Portability Preferences and include reference to Porting Notices.

(ii) Introducing consistency to the definitions relating to Energy transactions

A series of amendments have been made to certain definitions relating to Energy transactions, simplifying and making such terms consistent with certain amendments previously made to definitions for other F&O Products.[2]

Consistent with such prior amendments, in Rule 101, the "Energy" definition is being shortened to refer to the term "Market" rather than naming all specific ICE markets. New definitions are being introduced for "Energy Matched Transaction" (referencing an energy transaction conducted on a Market) and a revised definition of "Energy Transaction" is being added (covering an Energy Matched Transaction or an Energy Block Transaction meeting specified criteria). The changes are consistent with the approach used in the definitions of Financials & Softs Matched Transaction and Financials & Softs Transactions.

The introduction to the General Contract Terms is similarly being amended to remove references to named ICE markets and instead use the more generic term "relevant Market".

(iii) EFRP (exchange for related position) definition amendments

Several changes to the Rules are being made to address more clearly exchange for related position transactions (referred to as EFRPs) under applicable Market rules, including to revise defined terms and clarify that such transactions are available on exchanges for products other than soft commodities.

In Rule 101, a new "EFRP" definition is being added, to be defined using a similar structure to that for EFP and EFS transactions. Also in Rule 101, in the "EFS" definition is being clarified to refer only to exchange for swaps or similar transactions under Market Rules and to remove an existing reference to exchange for related positions, which is now being covered by the EFRP definition. In the "Financials & Softs Block Transaction" definition, reference to "Soft Commodity EFRPs" is being widened to include all "EFRP"s under all Market Rules, as Soft Commodity EFRPs are specific to ICE Futures Europe. This is in line with the definitions for EFP and EFS transactions. Accordingly, the "Soft Commodity EFRP" definition (which is not otherwise used) is being deleted.

(iv) Amendments to product termination rules

[2] See Exchange Act Release No. 34-87275 (File No. SR-ICEEU-2019-020) (Oct. 10, 2019), 84 Fed. Reg. 55649 (Oct. 17, 2019) (changes to definitions using the term Market).

Rule 105 is being amended to shorten the termination period (generally from four months to one month) for a service withdrawal for a product in circumstances in which there is no open interest in the relevant Set. In such circumstances, in ICE Clear Europe's view, a longer termination period is unnecessary, since no action is required by Clearing Members to close out their positions. Amendments also clarify that where a product termination occurs following actions of the relevant exchange (e.g. a de-listing), the notice period required under the exchange's rules will instead apply and the exchange will be responsible for providing such notice.

(v) Amendments to the termination rules for Clearing Members

Amendments are being made to Rule 209(d) facilitate membership terminations in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member's Open Contract Positions. The amendment establishes an exception to the requirement for terminating Clearing Members to immediately upon service of a Termination Notice pay to the Clearing House Assessment Contributions equal to three times the required relevant guaranty fund contribution. In ICE Clear Europe's view, such an exception is warranted since all positions will be received by an affiliated Clearing Member in good standing that will remain liable with respect to any obligations arising from or related to the holding of such positions under the Rules (including as to future Assessment Contributions).

Rule 209(d) is being further amended to clarify that references in the Clearing Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, where the Clearing Member has provided Permitted Cover to the Clearing House (whether under Rule 209(d) or prior to the Clearing Member serving its termination notice or the Termination Date), will be interpreted as a reference to that Permitted Cover being applied. The new reference to Permitted Cover which has been provided prior to the serving of a termination notice or a Termination Date clarifies that, as is currently intended, the Cover provided at that earlier stage may also be included as part of, for example, any applications of Guaranty Fund by the Clearing House under Part 9 or Part 11.

Further amendments to Rule 209(d) clarify for the avoidance of doubt that the following obligations apply to a terminating Clearing Member until Open Contract Positions have been closed, the Termination Date has passed and all Guaranty Fund Contributions have been returned under Rule 1102(g): application of Guaranty Fund Contributions, application of Assessment Contributions (to the extent paid under Rule 209(d) or otherwise prior to the Termination Date), position limits under Part 6, disciplinary actions under Part 10 and the declaration and consequences of an Event of Default under Part 9 of the Rules. This amendment is not intended to change the current requirements under the Rules, but rather to state those requirements more clearly in a single provision and thereby facilitate the Clearing House's enforcing its rules during a termination period.

The amendments to Rule 209(d) overall reflect the Clearing House's experience with both default planning and recent Clearing Member terminations involving group reorganizations.

(vi) Notice provisions

These changes are designed to clarify and provide greater flexibility as to delivery of notices under the Rules. The changes have been informed by default simulation planning and in particular the requirements around default notices under Rule 901, but are not limited to that context. Rules 113(a) and 113(a)(i) are being amended to delete the references to telephone as a valid mode of service of notices (since this is not supported operationally) and to replace it with email. The email address last notified to the Clearing House by a Clearing Member will become an option for service of notices. The addition of new Rule 113(a)(ii) clarifies that the Clearing House may also validly deliver notices to a process agent nominated by the Clearing Member to act as its agent. Rule 113(e) already referred to such agents for service of process, and is being expanded to explicitly refer to service of other contractual notices and communications. A further change to Rule 113(a) clarifies that delivery in accordance with this section is being deemed made to the Clearing Member or Sponsored Principal (also if made to an agent appointed by the Clearing Member or Sponsored Principal).

Rule 113(c) and 113(d) are being amended to clarify the precise time when effective service is deemed to be made for communications by fax, email and courier, and that effective service and delivery can be achieved outside of opening hours on a business day, consistent with current operational practices.

Rule 1901(n) is similarly being amended to make clear that process agents for Sponsored Principals will act as agents for service of process of any notice, order or other communication under the Rules and the Sponsored Principal Agreement.

To conform to the Rules, amendments to paragraph 4.2E of the summary table at paragraph 4.2 of the Membership Procedures provide that termination of a Clearing Membership Agreement or membership as a Clearing Member will become effective no less than 30 Business Days after the date of the Termination Notice Time or pursuant to Rule 917(c) instead of no less than three months' advance notice if termination is not for cause and otherwise as specified in and allowed pursuant to the Rules.

Additionally, updates are being made throughout the summary table at paragraph 4.2 of the Membership Procedures to the email address to which Clearing Members should send certain notifications.

(vii) Clarifying Clearing Membership Criteria and Clearing Member Obligations

Rule 201(a)(ix) is being amended to reference that under existing Rule 201(b), the Clearing House may require that potential Clearing Members enter into additional annexes or agreements to the Clearing Membership Agreement in order to be, and remain, eligible for Clearing Membership. Some such annexes have had to be developed to cater for local law issues arising in certain EU member states as part of Clearing Members' post-Brexit group legal structuring. This change clarifies the basis

in the Rules for the Clearing House to require such additional documentation to be executed, where necessary.

Rule 202(a)(xxii) is being amended to extend the requirement for Clearing Members to have competent persons accessible to the Clearing House, to also include two hours prior to the start of the business day. This is consistent with current operational practice and is necessary to ensure that staff are available to process and deal with queries in relation to morning margin calls.

New Rule 301(o) allows the Clearing House to request information when needed on account balances of nominated accounts of the Clearing Member at financial institutions, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation or determining whether the Clearing Member is or is likely to be in default. This change addresses issues that have arisen in practice where payment banks have refused to provide such information to the Clearing House. This consent, as part of the Rules, should promote the sharing of this important information.

(viii) Greater flexibility in financial reporting by Clearing Members

Rule 205(a)(ii) is being amended to give the Clearing House greater flexibility to accept different kinds of financial statements (for example, semi-annual accounts) from Clearing Members as part of their financial reporting obligations, in circumstances where that Clearing Member does not produce a quarterly financial statement for its regulators. This amendment also results in a conforming change to the summary table at paragraph 4.2 of the Membership Procedures.

The amendment formalizes current operational practice for those Clearing Members who do not draw up regulatory quarterly financials and means that the basis for accepting such reporting is being set forth in the Rules rather than pursuant to a separate arrangement, increasing transparency.

In addition, Rule 205(a)(ii) as well as the summary table at paragraph 4.2 of the Membership Procedures are being amended to change the deadline for submitting financial statements from 30 to 45 days after the relevant period so that the deadline aligns with other regulatory reporting deadlines (for example, the FCA deadlines).

(ix) Clarifying CDS Contract formation

Rule 401(o) is being amended to make clear that where a CDS Contract of a Non-FCM/BD Clearing Member for a customer account arises pursuant to Rule 401, a Customer-CM CDS Transaction arises between the Customer and the Non-FCM/BD Clearing Member at the same time as the Contract. The current rule does not specify the timing of the Customer-CM CDS Transaction, and the amendment reflects the equivalent rule for F&O in Rule 401(n) and eliminates an unintended drafting distinction.

(x) Clarifying how open contract positions are aggregated and netted

The amendments at Rule 406(b) and (c) address contractual netting for F&O contracts. The changes align the provisions for F&O Contracts more closely with the corresponding rule on contractual netting for CDS contracts in Rule 406(d) et seq.

(xi) Clarifying how the Clearing House may amend Contract Terms

Rule 409(a) is being amended so that the Clearing House can evidence its consent to amendments, waivers and variations of the Contract Terms by way of Circular. This has been the usual way of issuing such amendments, waivers and variations, and conforms the Rules with operational practice.

(xii) Pledged collateral not for settlement payments

Rule 1603(c) is being amended to clarify that only "original" or "initial" Margin payments be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin, which is provided to or by the Clearing House by outright transfer of cash as a settlement payment. The change is intended to be consistent with amendments previously made to the Rules to clarify that such variation and mark-to-market margin are settlement payments rather than collateral, and was inadvertently omitted from such prior amendments.[3]

(xiii) Hedging following an Event of Default

Rule 903(c) is being amended to clarify that the Clearing House's right to authorize hedging transactions in a Default scenario includes transactions on a Market, any other Exchange or over the counter. The amendments also provide that such transactions taking place on an exchange which is not a Market, or where requested or directed otherwise by the Clearing House, need not themselves be cleared.

(xiv) Affiliate cross-defaults

Rule 901(a)(iv) is being amended to clarify that the declaration of an Event of Default in respect of one Clearing Member is a circumstance in which the Clearing House can declare an Event of Default in respect of another Clearing Member that is a Group Company. In the Clearing House's view, this is the effect of Rule 901(a) as it stands already, but the Clearing House has decided to clarify this expressly in light of questions raised in default planning exercises.

(xv) "Eligible contract participant" status

Rule 201(a)(xx) is being amended to provide that the requirement that a Clearing Member be an "eligible contract participant"[4] only applies if it is to be a CDS Clearing Member or an FX Clearing Member. Such status will not be required for a Clearing Member that is only an F&O Clearing Member. The amendment reflects

[3] ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6 – Amendments to ICE Clear Europe Clearing Rules and Procedures (April 23, 2020).
[4] Commodity Exchange Act Section 1a(18), 7 U.S.C. 1a(18).

that such status is required under applicable U.S. law for persons that trade swaps and security-based swaps (such as CDS), but not for futures.[5] Section 10 of the F&O Standard Terms is for similar reasons being amended to remove a requirement that an F&O Clearing Member and Customer be an eligible contract participant. Rule 1901(b)(xv) is also being amended to provide that the requirement that a Sponsored Principal be an eligible contract participant only applies in relation to CDS Contracts and FX Contracts.

(xvi) Corrected names of internal risk committees

Rule 916(d) is being amended to change the term "Risk Committee" to "relevant product risk committee". This reflects that there are different product risk committees addressing topics specific to F&O and CDS which take on this role. The Risk Committee established under EMIR has different competencies. The changes clarify and align the Rules to current Clearing House governance processes.

In the Finance Procedures paragraph 14(2) and 14(3), reference to the CDS Risk Committee and FX Risk Committee is being corrected to "CDS Product Risk Committee" and "FX Product Risk Committee" to reflect the correct committee names. The same change is being made throughout the CDS Procedures where "CDS Risk Committee" is currently used.

(xvii) Amendments to Complaint Resolution Procedures

Various clarifications and amendments are being made throughout the Complaint Resolution Procedures.

Paragraph 1.1 is being amended to reframe the Complaint Resolution Procedures based on ICE Clear Europe's obligations as a CCP under EMIR.[6]

Throughout the procedures, the term "Complaints Resolution Procedure" is being replaced with "Complaint Resolution Procedures" to correct a typographical error and for consistency with the term used in Rule 101.

Paragraph 1.1 is being amended to use the defined term "Person" (which is defined in Rule 101) rather than "person". This is reflected as a global change throughout the Complaint Resolution Procedures. Further amendments in paragraphs 1.1 and 1.2 are being made to provide for an independent "Commissioner," who is responsible for the investigation of complaints generally, and for the appointment of an "Investigator" to investigate a particular complaint. Minor drafting updates are being made in paragraph 1.3 to improve clarity.

[5] See Commodity Exchange Act Section 2(e), 7 U.S.C. 2(e); Securities Exchange Act of 1934 Section 6(l), 15 U.S.C. 78f(l);.

[6] As a result of ICE Clear Europe Circular C20/163, this reference to EMIR is to be interpreted as including a reference to EMIR as applicable in the United Kingdom under the European Union (Withdrawal) Act 2018.

Additional drafting changes throughout the procedures are being made to refer where appropriate to "Eligible Complaint" instead of complaint. This clarifies that only Eligible Complaints (and not other complaints) will be subject to this process. As a result, the defined term "Complaint" has been replaced globally by the undefined term "complaint", to allow a distinction between complaints generally speaking and those that qualify as "Eligible Complaints" within the scope of the procedures.

The definition of "Eligible Complaints" in paragraph 2.1 is being broadened to include complaints against any Directors, officers, employees or committees (or committee members) of the Clearing House, which ICE Clear Europe believes is the proper scope for the Complaint Resolution Procedures. The amendments also clarify that Eligible Complaints may relate to the manner in which the Clearing House has failed to perform applicable regulatory functions.

Minor drafting amendments are being made in paragraph 2.2 to correct typographical errors and use of defined terms.

Paragraph 3.6 is being amended to include "investigation of the" before "Eligible Complaint" for drafting clarity.

A drafting improvement is being made in paragraph 4.1 to clarify that acknowledgment of the complaint by the Clearing House is being made promptly, and in any case within 5 Business Days of receipt.

New paragraph 4.2 is being added to allow the Clearing House to refer complaints to another recognized body or authorized person where they consider that such entity is entirely or partly responsible for the subject matter of the complaint. For example, a complaint might better be administered by an exchange for which the Clearing House clears. New paragraph 4.3 is being added to set out the process whereby the Clearing House will be able to refer such a complaint. The amendments are intended to clarify existing procedures, and avoid a situation where the Clearing House is forced to address a duplicative complaint or a complaint better handled by another entity.

Paragraph 4.4 is being amended to correct minor typographical errors.

The amendments to paragraph 4.5 clarify that the Investigator must be an individual who has no personal interest or involvement in the matter of the Eligible Complaint. The amendments to that paragraph also make typographical corrections and similar drafting improvements.

Paragraph 4.7 is being amended to make clear that the Investigator will not be required to disclose any information about the Complainant's identity when drafting their report of the Eligible Complaint. This paragraph is also being amended to correct minor typographical errors and to update cross-references.

Paragraph 4.8 is being amended to include delivery disputes and appeals in the list of potential ongoing matters that may warrant delay in the consideration of an Eligible

Complaint. A similar change is also being made in paragraph 4.12. Certain typographical errors are also being corrected.

Paragraph 4.11 is being amended to clarify that where the Clearing House objects to the referral of a complaint to the Commissioner under specified circumstances (such that the Clearing House can conclude its own investigation), it must submit to the Commissioner the reasons for that determination. Several cross-references in the paragraph are also being updated.

Paragraph 4.12 is being amended to expand the list of ongoing matters that justify delay in the Commissioner's consideration of an Eligible Complaint to be consistent with the list at paragraph 4.8, and also reference other processes under Part 10 of the Rules.

Paragraph 4.14 is being amended with minor non-substantive drafting improvements.

Paragraph 5 is being amended to clarify that the Investigator recommends rather than takes remedial action himself.

Paragraph 6.3 is being amended to add "appeal process" to the list of dispute resolution procedures that a Complainant cannot use if it requires the referral of any Eligible Complaint to the Commissioner pursuant to the Complaint Resolution Procedures. Reference to "mediation" has also been deleted (as unnecessary in light of the other listed types of dispute resolution).

Paragraph 7.2 is being amended to clarify that the Commissioner does not have to continue investigating a complaint if the complaint is not an Eligible Complaint. Paragraph 7.3 is being amended to make clear that the Commissioner will only be required to produce a final response where the complaint is an Eligible Complaint.

Paragraph 7.6 is being amended to ensure that the Commissioner has access to all relevant personnel (including directors, officers and other persons to whom functions have been outsourced) that may be needed for the purposes of the Eligible Complaint.

Paragraph 7.8 is being amended to obligate the Clearing House to inform the Complainant of an alternative Commissioner, when one is appointed, within five Business Days of the date of appointment.

Paragraph 8.1 is being amended to state explicitly that the Clearing House is required to consider the Commissioner's report and recommendations, in addition to informing the Commissioner of any proposed steps it will take in response to the report and recommendations. Certain other non-substantive drafting clarifications are being made as well.

Paragraphs 8.2 and 8.3 are being amended to correct typographical errors.



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Paragraph 11 is being amended to include the Investigator as a person subject to the confidentiality obligations with respect to the complaint, and make certain drafting clarifications.

(xviii) Amendments to CDS Procedures Relating to List of Eligible Single Name Reference Entities

Paragraph 11.4 is being amended to require the Clearing House to update certain relevant information relating to CDS Contracts on its website after making certain updates relating to Permitted Single Name Fixed Rates and Eligible Single Name Reference Entities instead of giving notice by Circular of such actions.

(xix) Amendments to CDS Procedures to allow Clearing Members to nominate affiliates

Paragraph 4.4(f) of the CDS Procedures is being amended to clarify that CDS Clearing Members may designate an Affiliate that is also a CDS Clearing Member to accept CDS Contracts in lieu of it for CDS Contracts arising as a result of the existing CDS end-of-day pricing process pursuant to Rule 401(a)(xi).

A similar same change is being made at paragraph 11.5, to allow designation of an Affiliate to accept transactions arising out of the existing auction process to be used in the case of self-referencing CDS transactions. This reflects existing practice for CDS Clearing Members, as documented in certain arrangements between the Clearing House and certain CDS Clearing Members allowing this to take place, but was unintentionally omitted from the CDS Procedures.

(xx) Clarifications to CDS Clearing Member sign off of weekly cycles

New paragraph 3.5 is being added to the CDS Procedures to require CDS Clearing Members to provide sign off via email on weekly cycles by the time specified by the Clearing House. This change documents existing operational processes.

(xxi) Adjustments to Clearing Member capital requirements

Paragraph 3.5(a) of the Membership Procedures is being amended to lower, from 50% to 25%, the portion of a Clearing Member's Capital requirement that may be covered by subordinated loans before the Clearing House will require a written undertaking from the Clearing Member to not repay subordinated loans without the consent of the Clearing House. This change aligns the Clearing Member capital requirement more closely with Basel III requirements. The Basel II standard for "tier 2" instruments was set at 50% of total capital, i.e. Tier 2 capital including certain subordinated debt instruments could be of an amount equal to tier 1 (essentially share capital) (Section B, Annex 1a, Basel II). This was changed in Basel III (LEX 20.1) to involve greater restrictions on the usage of subordinated debt in general subject, where subordinated debt may be used, to an upper limit of 25%. This change in capital requirements promotes greater consistency with its existing operational implementation of capital requirements for Clearing Members, albeit remaining more liberal than Basel III. All

of the Clearing Members are located in countries which have implemented Basel III and this change is not considered to be material for any of them, whilst at the same time making the Clearing House's capital requirements more robust.

Further, paragraph 3.5 of the Membership Procedures is being amended to remove irrevocable letters of credit as a potential method that Clearing Members or Sponsored Principals may use to satisfy capital requirements. Instead, the Clearing House may, at its discretion, require a Clearing Member to post additional cash or collateral in addition to the normal margin requirements pursuant to the amendments.

(xxii) Replacement of Prospectus Directive

Amendments are being made to Part 1501 of the Rules to change the definition of "Prospectus Directive" to "Prospectus Regulation" as the EU Prospectus Directive has been repealed and replaced with the Prospectus Regulation. Conforming changes are being made to the definitions of "Offer to the Public", "Relevant Member State" and "Securities". The definition of "2010 PD Amending Directive" (and references thereto) are being deleted as this is also no longer in force. Conforming changes are being made in Rule 1503 to remove obsolete legislative references.

(xxiii) Changes to Clearing Member account requirements

Amendments to the Finance Procedures in paragraphs 4.1(a)(i) and (iv) and 4.4(a)(i) and (iv) are being made to the account requirements for members to reflect that ICE Clear Europe clears both EUR and USD denominated CDS contracts and as such all CDS Clearing Members are required to have both EUR and USD accounts (and need not have a GBP account).

(xxiv) Updates for changes to applicable anti-money laundering law

Amendments are being made in Rule 101 to update the definition of "Money Laundering Directive" to reflect the implementation of the fifth EU Anti-Money Laundering Directive. A definition of "Money Laundering Regulations" is also being added to the rules to reference the applicable UK regulations corresponding to that Directive (including after its exit from the European Union).

In Rule 201(a)(xxix) and 1901(d)(xi), the reference to 'simplified due diligence' is being removed. This reflects the repeal and restatement of the former U.K.'s Money Laundering Regulations 2007 pursuant to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which removed simplified due diligence as the default option for a defined list of entities and replaced this with a discretion on in-scope firms to apply risk-based levels of due diligence.

Rule 201(a)(xxxi) is being amended to include anti-money laundering laws to the list of applicable laws that are required to be acceptable to the Clearing House in a jurisdiction for Clearing Members.

New Rule 201(a)(xxxiii) is being added to require Clearing Members to have adequate policies, procedures, systems and controls relating to Applicable Laws, including relating to anti-money laundering and the prevention of financial crime.

Amendments are being made to Rules 202(a)(xii) and 1901(m) to update relevant references to relevant laws, clarify that the Clearing Member is required to make certain representations and warranties to the Clearing House with respect to the matters in those subsections, require the Clearing Member to have the necessary authority from customers and others to disclose the necessary information about beneficial owners in order to comply with requirements under Applicable Laws, and to retain copies of documents required to be retained under anti-money laundering laws.

A similar amendment is being made to Rule 1607(g) to require FCM/BD Customers to also obtain the authority from "beneficial owners" to disclose information to the Clearing Member and Clearing House necessary for anti-money laundering due diligence.

Similar amendments are also being made to the CDS Standard Terms 3(q), F&O Standard Terms 3(r) and FX Standard Terms 3(q) to require Customers to obtain the necessary authority from beneficial owners to make disclosure to the Clearing Member and Clearing House necessary for anti-money laundering due diligence.

A new paragraph 1.1(d) of the Delivery Procedures obligates Clearing Members to conduct appropriate AML due diligence for any transferors/transferees and provide relevant documentation to the Clearing House and/or Clearing Member. The amendments at paragraphs 5.4 and 5.5 of the Delivery Procedures clarify that transferors and transferees that are customers will be bound by the F&O Standard Terms, including with respect to delivery of information, and also clarify that transferors/transferees are not customers of the Clearing House for purposes of relevant anti-money laundering laws and other Applicable Law.

(xxv) Amendments to reflect updates to ICE Clear Europe systems

New definitions of "ECS", "MFT", "ICE FEC" and "MPFE", reflecting various existing ICE Clear Europe systems, are being added to the Delivery Procedures so that there is consistent usage across the Procedures.

An amendment is being made to Clearing Procedures paragraph 1.1(a) as the referenced PTMS/ACT systems are legacy systems no longer used by the Clearing House, and have been replaced with ICE FEC.

Amendments are being made to Clearing Procedures paragraphs 1.1(f) and 3.1(c) to remove the definitions of MFT and ECS as these terms are now defined in the Delivery Procedures.

Similar amendments are being made to Finance Procedures paragraphs 3.10, 3.11, 3.21 and 4.5 to ensure that the use of defined term "ECS" is consistent.

(xxvi) Clarifications relating to negative EDSP

The definition of "Exchange Delivery Settlement Price" in Rule 101 is being amended to clarify, for the avoidance of doubt, that the EDSP can be positive, negative or zero.

Rule 703(b) is being revised to clarify the process for payment obligations if the EDSP is a negative number.

(xxvii) Clarification to the Finance Procedures

Amendments are being made to paragraph 6.1(i)(ix) of the Finance Procedures to clarify that the additional margin requirement that applies where payment of variation or mark-to-market margin is made in a currency other than the contractual currency will apply on a Currency Holiday. This reflects current Clearing House practice.

(xxviii)Amendments to Delivery Procedures

Various changes are being made to the Delivery Procedures to update provisions to update various operational practices and make other drafting improvements.

A new paragraph 7 is being added to the Delivery Procedures to reference the alternative delivery procedure for Emission Contracts as set out in paragraph A.7 of the Delivery Procedures. Subsequent paragraphs are being renumbered and conforming amendments to cross-references are being be made.

Various changes are being made throughout to remove references to the legacy ICE System Crystal, and update this to refer to ECS, MFT and ICE FEC which are the systems now used by the Clearing House. Similarly, changes are being made to delete Delivery Documentation Summaries and form references where ECS has replaced the manual submission of forms to the Clearing House. These changes are made throughout the Delivery Procedures, including in relation to ICE Gasoil Futures (in Part B), and ICE Futures UK Natural Gas Contracts (in Part D), ICE Endex TTF Natural Gas Contracts (in Part F), ICE Endex Gaspool Natural Gas Contracts (in Part G), ICE Endex NCG Natural Gas (in Part H), ICE Endex ZTP Natural Gas Contracts (in Part I), ICE Deliverable US Emissions Contracts (in Part N), Financials & Softs White Sugar Contracts (in Part Q), Financials & Softs Gilt Contract (in Part U) and Equity Futures/Options (in Part Z).

In Part A (ICE Deliverables EU Emissions Contracts), references to "Account", which is no longer a defined term in the Delivery Procedures, are being corrected to reference the defined term, "Registry Account". The defined term, "Contract Date", is being amended such that it will no longer include a Business Day on which the Delivery Period commences for those trades executed on a Business Day. Section 9.3 is being deleted as unnecessary as Part A no longer references auction contracts.

Also in Part A, the procedures following the entry into an EADP Agreement by a Clearing Member and the Clearing House are being amended such that the existing Contract will no longer be liquidated, but instead dealt with in the manner specified in

the EADP. If the existing Contract were to be liquidated under the EADP, this will be done on the basis of the Exchange Delivery Settlement Price. Delivery under the EADP Agreement will be subject to the requirements set out in the entirety of paragraph 7 instead of just paragraph 7.3. The amendments provide that the Clearing Members and Clearing House have a reasonable period of time after the Failed Delivery to enter into an EADP Agreement or effect delivery under EADP instead of only until the close of business on the Business Day following the day of the Failed Delivery before the Clearing House refers the matter to the relevant exchange. Pursuant to the amendments, the Clearing House will also consider what reasonable next steps it should take. The Clearing House may decide to take one of the listed steps, but pursuant to the amendments will not be limited by the list and will not be required to Invoice Back affected Contracts.

Part M (ICE Endex German Power Futures) is being deleted as these contracts have been delisted from the relevant exchange.

In Part N, outdated references to ICE OTC Contracts are being deleted.

In Part U, new provisions relating to failed settlement and non-delivery of securities under a Financials & Softs Gilt Contract are being added, including as to the steps the Clearing House can take to promote settlement in accordance with the contract terms and the requirements of the CREST central securities depository and allocation of the costs of such steps to the Clearing Member that failed to make delivery. These changes are intended to reflect existing practices and provide consistency with provisions of the Delivery Procedures for other contracts, including Part Z.

In Part Z, relating to Equity Futures and Options, various updates are being made to reference the correct settlement facilities and relevant settlement details and settlement procedures. The treatment of corporate events relating to underlying securities is being clarified through reference to the relevant Exchange corporate action policy. Provisions dealing with failed deliveries and partial deliveries are also being clarified, including as to the steps the Clearing House may take to facilitate delivery, the rights and responsibilities of the buying clearing member with respect to onward deliveries under other contracts and the allocation of costs to clearing members. The buying-in timetable is also being clarified. Other typographical corrections and similar drafting clarifications are being made throughout Part Z.

In the first table in Part FF, with respect to the receipt of documents by the Clearing House, the statement that in the event of non-availability of any of the listed delivery documents, Seller may substitute a letter of indemnity in favor of the Buyer is being removed.

Various other typographical corrections and updates to use of defined terms and cross-references are made throughout the Delivery Procedures.

(xxix) Introduction of a Summary Disciplinary Process and Other Disciplinary Process Updates

Amendments are being made to the Rules to introduce a summary fining power for the Clearing House (in line with ICE exchanges for which ICE Clear Europe provides clearing services) and to make certain minor drafting improvements to the disciplinary process provisions of the Rules. The intention behind these provisions is to introduce a more streamlined sanctioning process for clear-cut and minor rules violations, examples of which are cited in the rule itself and discussed further below, rather than having these subject to the formal and more cumbersome proceedings of a disciplinary committee.

In Rule 101, the definition of "Appeal Panel" is being amended to include reference to the new Summary Disciplinary Process. Also in Rule 101, a new definition of "Summary Disciplinary Process" is being introduced.

A minor amendment is being made to Rule 102(j) to refer to new Rule 1008 in the context of disciplinary proceedings under the Rules. An amendment is being made to Rule 102(p) to clarify that Disciplinary Panels, Summary Disciplinary Committees and Appeal Panels are also able to exercise discretion in the same way as the Clearing House.

Amendments are being made to 1002(i) and 1003(b) to make reference to the new Summary Disciplinary Process. In 1005(c), the word "exclusive" is being deleted in relation to discretion, as Rule 102(p) now governs this matter.

New Rule 1005(g) is being added to make clear that Rule 1005 applies as the appeal process for the Summary Disciplinary Process.

New Rule 1008 is being introduced to set out the new summary disciplinary process against a Clearing Member, clarifying the situations in which these new Rules apply, the sanctioning power of the Summary Disciplinary Process and the process by which the Summary Disciplinary Process is being conducted. The Summary Disciplinary Process may be applied in relation to: the late filing or submission of any document, notice or information; the late making of any payment; any failure to record a Contract in the correct Account; the late making or taking of any delivery; any breach of Rule 202(a)(xix) (participation in default management simulations, new technology testing and other exercises); any breach of Rule 503(g) (the submission of end-of-day prices relating to Sets of CDS Contracts required of Clearing Members to aid in the establishment of Mark-to-Market Prices); any breach of a position limit under Part 6 of the Rules; any breach of any provision of the Rules or Procedures considered by the Clearing House to be of a factual nature where the Clearing House holds sufficient evidence of such facts; any breach of any provision of the Rules or Procedures considered by the Clearing House to be minor in nature; or any breach of the Rules or Procedures which the Clearing House considers appropriately addressed by the Summary Disciplinary Process.

Sanctions pursuant to new Rule 1008 are limited to the following: issuance of a private warning or reprimand naming the Clearing Member or a Clearing Member Customer, client or Representative; a fine of up to £50,000; or any combination of the foregoing.

New Rule 1008 also specifies the process of imposing any sanction, including the notice process by the Clearing House, the opportunity for a Clearing Member to appeal, the grounds for appeal and the actions the appeal panel may take (i.e., to affirm, vary or revoke a sanction). It also allows the Clearing House to provide further guidance by way of Circular in relation to the operation of the Summary Disciplinary Process.

(xxx) Other drafting enhancements and improvements

A number of other drafting enhancements, clarifications and improvements are being made.

This includes a number of amendments to the definitions in Rule 101. A new definition of "Acceptance Time" is being added. The definition is consistent with the definitions currently in the CDS Procedures and FX Procedures, and is being added to the Rules for clarity given that the term is used in the Rules, e.g. Rule 1204 and also in paragraph 10 of Standard Terms annexes.

In the definition of "Applicable Law", a reference to "the FSMA" is being added. This important piece of UK legislation for CCPs, such as ICE Clear Europe, was unintentionally omitted from the "Applicable Law" definition.

In the "Clearing Organisation" definition, a reference to "securities clearing agency" is being added, to ensure that the defined term includes securities clearing agencies regulated by the SEC.

In the "Defaulter" definition, amendments clarify that the defined term refers to a person in respect of whom an Event of Default has occurred, rather than a person in respect of whom a Default Notice has been issued.

A new definition of "FINRA" referencing the U.S. Financial Industry Regulatory Authority, the self-regulatory body of several US clearing members, is being added. The term is currently used but in the definition of Regulatory Authority, but is not defined.

The definition of "Original Margin" is being amended to clarify that buyer's security, seller's security and delivery margin are all included.

The "Regulatory Authority" definition is also being updated to include reference to "National Futures Association".

The definition of "Rule Change" is being amended expressly to include changes to the Contract Terms. Rule 109(b)(vii) and (viii) and 109(k) already assume that the definition "Rule Change" covers changes to Contract Terms, but the definition itself is inconsistently narrower. The cross reference to Rule 109 is being clarified to reflect that it is not the sole provision governing the process for Rule Changes.

In the definition of "Segregated Customer", typographical corrections are being made.



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The definitions of "Transferee" and "Transferor" are being revised to clarify that the subject of a transfer or delivery is a Deliverable (as defined in the Rules).

Rule 201(a)(v) are being amended to correct an erroneous use of the singular "Contract" when the plural "Contracts" should be used.

Rules 304(a)(ii)(A), 304(a)(ii)(B) and 1901(e) is being amended to correctly reference the term "Nominated Bank Account".

A clarification is being made to Rule 401(g) to reflect that under existing practice and as stated and assumed elsewhere in the Rules (e.g. Rule 906, Clearing Procedures), Clearing Members can have multiple Proprietary Position Accounts.

Rule 406(a) is being amended to remove an erroneous reference to the legacy term "Clearing Processing System" and replace it with the correct defined term "ICE System".

Rule 904(b) is being amended to correct the use of an incorrect term "Market-to-Market Value" to the correct definition "Mark-to-Market Price". A change is similarly being made at Rule 905(g) to delete a reference to "Market-to-Market Value" as well as the unused term Reference Price.

An amendment is being made to Rule 905(b)(ix) to reflect that there may be multiple Defaulters rather than just one.

Amendments to Rule 908(i) corrects typographical errors and an incorrect cross-reference.

Rule 908(ii) is being amended to reflect that the applicable modifications is being set out in the Default Auction Procedures as opposed to a Circular.

In the definition of "MTM/VM" in Rule 913(a)(xxxi), amendments are being made to reflect that MTM/VM is transferred to rather than held as a deposit by the Clearing House.

The definition of "Product Termination Amount" in Rule 913(a)(xxxviii) is being deleted as this term is already defined in Rule 916.

A minor amendment is being made to Rule 913(a)(lviii) to clarify for the avoidance of doubt that amounts payable in respect of transfers are included in the definition of "Transfer Cost".

A correction is being made to Rule 915(e) to refer to correctly reference all categories of mark-to-market or variation margin for all product categories.

Clarifications are being made to Rule 916(i) to be clear that Guaranty Fund and Assessment contributions due pursuant to Rule 916(i) are subject to the provisions of Rule 917 (including the limitations thereon during a Cooling-off Period).

Rule 918(d) is being clarified to refer to any Event of Default rather than multiple Events of Default.

References to Rules 916 and 918 are being incorporated into Rule 1102(g) to reflect that these Rules are also applicable in certain cases to determining the return of Guaranty Fund contributions.

Rule 1901(d)(vi) is being deleted because the Council Directive referenced by this provision has been repealed. Subsequent provisions are being renumbered and cross-references in other provisions updated.

A typographical error in the title of Part 23 is being corrected. Other typographical and similar corrections are being made in various provisions of the Rules, including 102(q), 202(a)(xxi), 203(a)(xx) and 504(c)(vi).

Part 3(b) of the F&O Standard Terms is being amended to more clearly state that Customer-CM F&O Transactions arise in accordance with Part 4 of the Rules. This change aligns with the drafting used in the other Standard Terms.

Clarifications are being made to Rule 1607(d)(iii), CDS Standard Terms 7(iii), F&O Standard Terms 7(iii) and FX Standard Terms 7(iii) to refer to "Personal Data" rather than "Personal Data of its Data Subjects". This change eliminates unnecessary language.

A minor change is being made to paragraph 15.4(b) of the Finance Procedures to delete an outdated reference to the Continuing CDS Rule Provisions, which are no longer in effect.

*Compliance with the Act and CFTC Regulations*

The amendments are potentially relevant to the following core principle: (C) Participant Eligibility, (D) Risk Management, (E) Settlement Procedures, (F) Treatment of Funds, (G) Default Rules and Procedures, (O) Governance and (R) Legal Risk Considerations and the applicable regulations of the Commission thereunder.

- *Participant Eligibility.* As discussed herein, the amendments clarify certain requirements as to member Capital, including to reference updated capital standards and to limit the use of certain subordinated debt as capital. These amendments are intended to be consistent with the requirements of the Basel III capital framework applicable to most Clearing Members. In ICE Clear Europe's view, the requirements of the Rules, as amended, set appropriate Capital requirements for Clearing Members, consistent with the requirements of Core Principle C and CFTC Rule 39.12 requiring clearing members to have access to sufficient financial resources.
- *Risk Management.* As discussed herein, the amendments to the notice provisions facilitate electronic notice, better ensuring appropriate and timely notices will be provided, reducing operational risks relating to timely receipt of notices. Further, the amendments to Rule 202(a)(xxii) extend the

requirement for Clearing Members to have competent persons accessible to the Clearing House to also include the two hours prior to the start of the business day, to ensure that staff are available to process and deal with questions in relation to morning margin calls. The amendment thus reduces the operational risks of not being able to address such calls in a timely manner. The changes to Rule 301(o) enhance the Clearing House's ability to request information when needed on account balances, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation, and are expected to reduce operational risks that may arise where the Clearing House may not otherwise have access to such information. The changes are thus consistent with the requirement to identify and manage the risks associated with its operations pursuant to Core Principle D and CFTC Rule 39.13.

- *Settlement Procedures.*
    - As discussed herein, Rule 1603(c) is being amended to clarify that only "original" or "initial" types of Margin payments will be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin which is provided to or by the Clearing House by outright transfer of cash as a settlement payment. This amendment is consistent with the treatment of variation and mark-to-market margin as settlement payments, as provided elsewhere in the Rules and Procedures, and in ICE Clear Europe's view is consistent with the treatment of payment and receipt of variation margin as settlements pursuant to the requirements of Core Principle E and CFTC Rule 39.14.
    - Further, the amendment to the definition of "Exchange Delivery Settlement Price" in the Rules clarifies that the EDSP can be positive, negative or zero. The amendments also clarify the procedure for payment of the EDSP in a physical settlement where the EDSP is negative. The amendments thus clarify and enhance the settlement process in such case, consistent with the requirements of Core Principle E and CFTC Rule 39.14.
    - Amendments to the Delivery Procedures also clarify other aspects of the physical settlement process. New paragraph 7 to the Delivery Procedures contemplates an alternative delivery procedure for certain Emission Contracts in the event of a failed delivery. In Part U, new provisions relating to failed settlement and non-delivery of securities under a Financials & Softs Gilt Contract are being added, including as to the steps the Clearing House can take to promote settlement in accordance with the contract terms and the requirements of the CREST central securities depository and allocation of the costs of such steps to the Clearing Member that failed to make delivery. Updates to Part Z are being made to reference the correct settlement facilities and relevant settlement details and settlement procedures. Part Z provisions dealing with failed deliveries and partial deliveries are also being clarified. Throughout the Delivery Procedures, the delivery documentation summaries, timetables and other relevant provisions are being updated and clarified to reflect current operational processes and Clearing House systems and to remove outdated references and

language. Taken together, these changes establish and update transparent written standards associated with physical deliveries, consistent with the requirements of Core Principle E and CFTC Rule 39.14.

- *Treatment of Funds.* As discussed herein, amendments to Rule 209(d) facilitate the process of porting positions, pre-default, in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member's Open Contract Positions. The amendments thus facilitate the transfer of customer positions in a manner consistent with the requirements of Core Principle F and CFTC Rule 39.15.
- *Default Rules and Procedures.* As noted above, the amendments clarify certain aspects of the Clearing House's default management procedures. The amendments remove the existing process whereby Non-FCM/BD Clearing Members may deliver a "Default Portability Preference", with advance porting information, to the Clearing House, an option that was rarely used and that has proven to be impractical and has been superseded by requirements under EMIR that post-default porting notices be served prior to porting. The amendments also clarify the process for providing post-default porting notices. The amendments clarify the ability of the Clearing House to use hedging post-default, and clarify certain aspects of the definition of Event of Default, particularly in connection with defaults of affiliated Clearing Members. A number of other drafting improvements are being made in the Part 9 of the Rules, as discussed above. In ICE Clear Europe's view, these amendments generally enhance the Clearing House's default management procedures and facilitate its ability to take timely action in the case of a default to contain losses and to promptly transfer, liquidate or hedge the positions of the defaulting member, consistent with the requirements of Core Principle G and CFTC Rule 39.16.
- *Governance.* The amendments to Rule 916(d) change "Risk Committee" to "relevant product risk committee" to reflect the different product risk committees addressing topics specific to F&O and CDS Contracts. Similar changes are being made to references to relevant risk committees in certain Procedures, as discussed above. In ICE Clear Europe's view, these amendments clarify governance descriptions in the Rules and Procedures to more clearly and accurately reflect established arrangements, and are thus consistent with the requirements of Core Principle O and CFTC Rule 39.24.
- *Legal Risk Considerations.*
    - As discussed herein, the amendments to Rule 201(a)(ix) clarify that the Clearing House may require that potential Clearing Members enter into additional annexes/agreements to the Clearing Membership Agreement in order to be, and remain, eligible for Clearing Membership. The Clearing House expects to impose such requirements where necessary to comply with or address post-Brexit local law group structuring issues, including as applicable to its Clearing Members located in certain EU member states. This change clarifies the legal basis under the Rules for the Clearing House to require additional documentation to be executed, where necessary.

- The amendments to Rule 1901(b)(xv), Rule 1901(d)(ix), Rule 201(a)(xx) and Section 10 of the F&O Standard Terms, which remove the requirement for Clearing Members, Customer and Sponsored Principals to be "eligible contract participants" if they are solely engaging in F&O Contracts, is intended to remove an unnecessary requirement for such Contracts while ensuring that the membership requirements remain compliant with the Act.
- The various amendments to address applicable anti-money laundering laws in the EU and UK, including to address requirements to provide necessary information for due diligence checks, are intended to facilitate compliance by the Clearing House, Clearing Members, Sponsored Principals and Customers with applicable anti-money laundering laws. Similarly, amendments to the Delivery Procedures obligate Clearing Members to conduct appropriate anti-money laundering AML due diligence for any transferors/transferees and provide relevant documentation to the Clearing House and/or Clearing Member. These requirements support the well-founded basis for the Clearing House's operation under applicable anti-money laundering laws.
- Overall, these changes, as well the numerous other changes to improve the drafting and clarity of the Rules and Procedures, are generally consistent with establishing a well-founded, transparent and enforceable legal framework for the Clearing House's operations in relevant jurisdictions, and are therefore consistent with the requirements of Core Principle R and CFTC Rule 39.27.

As set forth herein, the amendments consist of changes to the Amended Documents, copies of which are 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 george.milton@theice.com or +44 20 7429 4564.

Very truly yours,

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