



October 07, 2024

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 Rule 40.6
– Amendments to ICE Clear Europe Clearing 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, amendments to the ICE Clear Europe Clearing Rules (the “Rules”)¹ to make various updates, clarifications 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 Rules that are intended to make a variety of updates, improvements and clarifications, which include (1) updating various definitions and including new defined terms, (2) updating references to laws and regulations in various provisions of the Rules, (3) updating certain notice and delivery provisions, (4) clarifying certain provisions relating to pledged collateral, (5) updating certain default related provisions, including those addressing porting of customer positions, liquidation of non-cash assets and other default management actions, (6) updating certain provisions related to Clearing Member terminations, (7) clarifying disciplinary processes, (8) expanding the application of transfer order protections under applicable settlement finality laws, (9) updating various provisions to reflect the replacement of the TARGET2 system with the new TARGET system and (10) making various other drafting clarifications, conforming changes and corrections, in each case as described in further detail herein.

(i) Definition Changes

Various updates to defined terms in Rule 101 are being made, including to conform to other amendments being made throughout the Rules. In addition, the definition of

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

“Delivery Facility” will be expanded to reference specifically certain environmental registries and central securities depositories, and make other conforming changes to the Delivery Procedures.

The definition of “Force Majeure Event” will be expanded to reference a broader list of financial service providers used by the Clearing House, to reference epidemics and pandemics as types of Force Majeure Events, and to add Illegality and Impossibility events as Force Majeure Events for all types of Contracts.

The definition of “Regulatory Authority” will be amended to clarify that Governmental Authorities of EEA member states are included in the definition to the extent that they supervise ICEU as a third country system.

The definition of “Resolution Step” will be amended to include resolution steps taken under relevant Singapore laws, in order to reflect that the Clearing House has a Clearing Member located in Singapore.

(ii) Amendments to invoicing back provisions

Rule 104 will be revised to make clear that invoicing back, when applicable under the Rules, may apply to any one or more Contracts and is not limited to a particular set of contracts.

(iii) Clarifying Payment Extension Periods

Rule 110(c) and (g) will be amended to provide that the maximum extension of time for making payments or other transfers will be 30 days. The amendments also remove references to governance procedures relating to extensions of payments as unnecessary, given that these are more appropriately covered under internal procedures.

(iv) Disclaimer with respect to ICE Clear Europe Data

In furtherance of certain previous rule amendments made with respect to confidentiality and liability provisions, the amendments will specify that ICE Clear Europe does not guarantee the timeliness, accuracy or completeness of any of its data or its Affiliate’s data.

(v) Amendments to the provision of financial statements to ICE Clear Europe

The amendments will update the requirements on Clearing Members to provide financial statements to ICE Clear Europe in Rule 205. The amendments remove a requirement that annual financial statements be provided within 90 days of the end of the entity’s fiscal year, which ICE Clear Europe views as unnecessary in practice. Instead, annual financial statements would be required at such times and in such manner as required by the Clearing House. For quarterly financial statements, the amendments

will provide that the Clearing House may agree to a different timeframe than the normal deadline of 45 days following the end of the fiscal quarter.

(vi) Amendments to Pledged Collateral Provisions and FCM/BD Provisions

Various amendments will be made throughout the Rules to clarify provisions relating to the use of Pledged Collateral (currently limited to the customer accounts of FCM/BD Clearing Members). For greater clarity, cross-references to relevant provisions of Rule 1603 have been added in various rules, including Rules 111, 303, 408, 502, 503 and 504. Related conforming amendments and corrections will also be made to the cross references in Rule 1603.

In addition, amendments will be made to the pledged collateral provisions in Rule 504, to reflect language currently in Rule 1603(i), that sets out permissible third party rights and interests in margin transferred to the Clearing House as Pledged Collateral. The further assurances provision in Rule 504(d) with respect to Pledged Collateral will also specify perfecting the legal title, pledge, charge or security interest.

The amendments will amend Rule 906 to make certain clarifications in the calculation of item M in the net sum relating to the treatment of Pledged Collateral, which may in certain circumstances be returned outside of the net sum under the existing Rules.

Rule 916 will be amended to clarify the manner in which Pledged Collateral is applied and returned by the Clearing House, in compliance with applicable law, in the context of the termination of contracts under that Rule.

Rule 502 will be amended to address the application or return of Pledged Collateral in the context of a termination of contracts under Rule 916.

A new Rule 1606(c) will be added to make clear that FCM/BD Clearing Members are required to make certain risk management information available to the Commission upon request.

(vii) Other Margin Clarifications

A new subsection will be added in Rule 502 to note that whether an Account is to be margined on a net or gross basis is set forth in the Clearing Procedures for each kind of Account. Other amendments in Rule 504 will ensure that representations as to margin provided by Clearing Members specify that such margin will be free of encumbrances.

(viii) Amendments to liability limitations

Clarifying changes will be made to Rule 111(c) to state that committees, panels and other persons given powers or rights under the Rules or Procedures (excluding Clearing Members, Sponsored Principals, Customer or Approved Financial Institutions) are

included within the scope of the existing limitations on liability. (Conforming changes will be made in Rule 1603(j) in the context of FCM/BD customer accounts, and a relevant cross-reference between the provisions will be added.) Other amendments exclude liability for acts, omissions or failures of Approved Financial Institutions, similar to the treatment of markets and delivery facilities, as well as make various drafting clarifications with respect to actions or omissions of Markets and other persons, and failures of Delivery Facilities. In addition, the amendments will clarify in Rule 111(g) that the requirement in certain situations for a Clearing Member to indemnify the Clearing House applies equally to a Clearing Member acting as Sponsor (although any liability would be the joint liability of the Sponsor and Sponsor Principal). A new Rule 111(i) will be added to provide for Clearing Members, Sponsored Principals and others bound by the Rules to acknowledge the Clearing House's statutory immunity under section 291 of the Financial Services and Markets Act 2000 and section 184(3) of the Companies Act 1989.

(ix) Amendments to address delivery errors

A new subsection (k) will be added in Rule 703 to provide a procedure for addressing certain delivery errors, through directions to deliver or return deliverable assets and/or through adjustment of payments.

(x) Amendments relating to hedging after default

Amendments to Rule 903(c) will clarify the scope of permissible hedging transactions that may be entered into by the Clearing House as part of management of a Clearing Member default, and address the attribution of gains or losses to relevant accounts of the defaulter at the discretion of ICE Clear Europe.

(xi) Amendments relating to porting

Rule 904 will be updated to clarify procedures relating to the porting of customer accounts following the default of a Clearing Member, including in the context of indirect client accounts and in cases where the transferee clearing member may hold the positions and margins through a different type of customer account or a different collateral arrangement. The amendments will clarify that ICE Clear Europe may port positions from and to an indirect client account and that porting may occur from a Defaulter's Pledged Collateral Account to a non-Pledged Collateral Account at a transferee clearing member. Additional wording in Rule 904 will also be added to clarify that the Clearing House will have rights to the Margin transferred whether transferred as Pledged Collateral or otherwise. New provisions will also be added with respect to porting applicable to Standard Omnibus Indirect Accounts or Segregated Gross Indirect Accounts. Certain provisions in Rule 905(b) relating to transfer of contracts of a defaulter will be deleted as no longer applicable.

(xii) Amendments relating to default auctions and liquidation of customer non-cash assets, and other default amendments

A new provision will be added to Rule 905(b) that would permit the Clearing House to run default auctions of non-cash collateral provided to the Clearing House. Furthermore, new Rule 905(h) will clarify the authority of the Clearing House, following an Event of Default, to liquidate or convert non-cash Permitted Collateral or convert cash Permitted Cover into a different eligible currency. Such a liquidation or conversion may, in the case of a customer account, occur prior to the end of a porting window. Any such liquidation or conversion will be taken into account in the applicable net sum calculation and may result in the Customer Account held by a transferee clearing member being credited with a different form of Permitted Cover than that held by the Defaulter's Customer Account prior to default.

With respect to Default Auctions of positions, the amendments would remove an unnecessary restriction, in the context of the default of a Non-FCM/BD Clearing Member, that a single auction lot not include both proprietary and customer positions.

Rule 901(a)(viii) will be amended to ensure that material regulatory actions taken regarding Group Companies of a Clearing Member would also constitute circumstances that may be declared as an Event of Default by the Clearing House.

(xiii) Amendments to cooling-off period provisions of the Default Rules

Certain changes will be made to Rule 917 with respect to the treatment of the cap on F&O Assessment Contributions and Guaranty Fund replenishments during a Cooling-Off Period in relation to the F&O Contract Category. The amendments clarify that certain Guaranty Fund contributions applied with respect to defaults that occurred prior to the start of the period would not be counted toward the cap. In addition, the amendments will provide that the cap on assessment and replenishment liabilities during a cooling off period will not apply following the end of the period to Clearing Members that have not served a termination notice during that period, including with respect to liabilities for previous defaults as well as future defaults if they remain a Clearing Member when the cooling-off period ends.

(xiv) Clarifications relating to Clearing Member termination

A new provision will be added in Rule 918(a)(vii) to state that there will be no downwards re-balancing or recalculation of Guaranty Fund Contributions following the delivery of a Termination Notice by a Clearing Member or Sponsored Principal, and that any increase in Guaranty Fund Contribution requirements would be met only from available Permitted Cover. Additional clarifying amendments will be made throughout the Rules to cross reference this new provision. In Rule 918(a)(viii), a reference to completion of realization of margin and Guaranty Fund Contributions or other assets would be removed as unnecessary. In Rule 918(b), a clarification will be added that a terminating Clearing Member remains liable for application of its Guaranty Fund Contribution until its open contract positions have been closed, the relevant termination date has passed and its Guaranty Fund Contributions have been returned.

A new Rule 209(f) will be added to clarify that certain provisions of the Rules will continue to apply to Clearing Members post-termination and that the Clearing House may retain Permitted Cover until disciplinary proceedings and arbitrations under the Rules are resolved. In addition, amendments to Rule 209 will make clear that amounts collected by the Clearing House from terminating Clearing Members may be applied as Assessment Contributions or Guaranty Fund Contributions to the extent permitted under Part 9 of the Clearing Rules.

(xv) Amendments to the Disciplinary Processes

The amendments will make various changes to the summary disciplinary process in Rule 1008, and in particular give further detail as to the process for appeals against sanctions that may be imposed pursuant to the summary process.

Certain other clarifying amendments relating to the operation of disciplinary panels, including as to their ability to recommend sanctions, as well as related notice requirements, would also be made.

(xvi) Amendments relating to settlement finality

Several amendments and updates are being made relating to the settlement finality provisions in Part 12 of the Rules. The amendments will update Rule 1202(m) to clarify that Position Transfer Orders will extend to persons to whom relevant rights and obligations are being allocated. Rule 1202(a)(v) is being revised to address outbound as well as inbound transfers.

The definition of “Settlement Finality Directive” will be amended to reflect that the UK is no longer a member state of the European Economic Area.

Amendments to Rules 1206 and 1207 will require non-Clearing Member participants in ICE Clear Europe’s designated system to provide notice upon the occurrence of an Insolvency or Unprotected Resolution Step.

(xvii) Amendments related to TARGET2 to TARGET migration

The amendments will make various changes throughout the Rules in light of the replacement of the TARGET2 payment system with the new generation system now known as TARGET. As a result, the relevant references will be updated throughout the Rules.

(xviii) *Minor Drafting Changes*

The amendments include a number of other minor, non-substantive drafting changes, updates to defined terms, typographical and similar corrections and other conforming changes.

Compliance with the Act and CFTC Regulations

The amendments to the Rules are potentially relevant to the following core principles: (B) Financial Resources, (D) Risk Management, (E) Settlement Procedures, (G) Default Rules and Procedures, (H) Rule Enforcement, (O) Governance, and (R) Legal Risk Considerations, and the applicable regulations of the Commission thereunder.

- *Financial Resources.*
 - As discussed herein, the amendments will clarify certain provisions relating to Pledged Collateral, including to ensure the Clearing House has sufficient rights, free of encumbrances, with respect thereto in the event of a Clearing Member default or other relevant event permitting the use of such assets. The amendments thus help ensure that margin funds will be available to the Clearing House when necessary to support clearing operations.
 - The amendments will also clarify the obligations of Clearing Members with respect to Guaranty Fund Contributions, replenishments thereof and assessments in the context of a cooling-off period and/or termination of clearing membership. These changes help ensure that the Guaranty Fund assets of the Clearing House will remain sufficient to support clearing operations, including in extreme default situations, while also providing Clearing Members with greater clarity and certainty as to their obligations.
 - As a result, in ICE Clear Europe's view the amendments are consistent with maintaining adequate financial resources to discharge the obligations of the Clearing House, as required by Core Principle B and Commission Rule 39.11.

- *Risk Management*

As discussed above, the amendments add a requirement for FCM/BD Clearing Members to make available certain information concerning risk management policies and procedures to the Commission upon request. This provision is consistent with the requirements of Core Principle D and Commission Rule 39.13(h).

- *Settlement Procedures.*
 - As explained herein, the amendments will add procedures to permit the Clearing House to address the process for errors in the delivery process. As such, the amendments help the Clearing House maintain transparent written standards associated with physical deliveries. Furthermore, the amendments will enhance certain provisions relating to extension of payment deadlines, including by establishing a maximum period of extension and addressing the governance around any extension. The amendments also update certain provisions relating to settlement finality under applicable UK law. Taken together, these

amendments are consistent with the settlement procedures requirements of Core Principle E and Commission Rule 39.14.

- *Default Rules and Procedures.* As discussed above, the amendments make a number of enhancements to the Clearing House's default management Rules. Under the amendments, the Clearing House will be able to run default auctions on collateral provided to ICE Clear Europe. Furthermore, the amendments will facilitate the liquidation of non-cash assets following a declaration of default. The amendments also clarify the process for porting customer accounts to transferee clearing members following a Clearing Member default. The amendments thus facilitate ICE Clear Europe in taking timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default by a Clearing Member and, therefore are consistent with the requirements of Core Principle G and Commission Rule 39.16.
- *Rule Enforcement.* As noted above, the amendments will update the Summary Disciplinary Rules to better detail the process for appeals against sanctions imposed pursuant to the Summary Disciplinary Process. Certain other clarifications relating to disciplinary procedures and suspension or termination of clearing membership would also be made. The amendments ensure the Clearing House has the authority and ability to discipline, limit, suspend, or terminate the activities of a clearing member due to a violation by the clearing member of any of ICE Clear Europe's rules, and therefore is consistent with the requirements of Core Principle H and Commission Rule 39.17.
- *Governance.* As discussed above, the amendments clarify certain governance requirements relating to extension of payment deadlines and make updates to the roles and responsibilities of the disciplinary panels and processes. In ICE Clear Europe's view, the amendments are therefore consistent with the governance requirements of Core Principle O and Commission Rule 39.24.
- *Legal Risk Considerations.*
 - The amendments include a number of updates designed to reflect legal requirements in various jurisdictions relevant to the Clearing House and its Clearing Members, including to reflect that following the withdrawal of the UK from the European Union, the Clearing House is supervised as a third country system under national laws of certain member states of the European Economic Area. The definition of Resolution Step will be amended to reflect the addition of a Singaporean Clearing Member and to comply with the relevant Singaporean insolvency laws. The amendments also make appropriate revisions to relevant references to applicable settlement finality regulations.
 - Overall, these changes 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 Commission Rule 39.27.

As set forth herein, the amendments consist of the amendments 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 received no substantive opposing views in relation to the 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@ice.com or +44 20 7429 4564.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'G. Milton', is written over a light blue horizontal line.

George Milton
Head of Regulation & Compliance