



October 25, 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 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, amendments to ICE Clear Europe’s (i) Clearing Procedures, (ii) Business Continuity Procedures, (iii) Finance Procedures, (iv) Membership Procedures, (v) Delivery Procedures, (vi) Complaint Resolution Procedures and (vii) Auction Terms for F&O Default Auctions (collectively, the “Procedures”)¹ to make various updates, clarifications and enhancements, including to conform to certain recent amendments to the ICE Clear Europe Clearing Rules (the “Rules”). 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

(i) Clearing Procedures

The amendments will update paragraph 1.7 of Clearing Procedures to clarify that the liability provisions of Rule 111 and the relevant statutory immunities of the Clearing House under applicable UK legislation are governed under English law.

In paragraph 2.3, the L account will be renamed the secondary house account to reflect the usage of the account. Additionally, certain proprietary position accounts that are no longer in use by Clearing Members will be removed. Conforming changes will be made throughout the Clearing Procedures. The amendments will also provide that affiliate positions of Non-FCM/BD Clearing Members must be held in the F and R accounts, unless otherwise approved by ICE Clear Europe. A cross-reference in this section to the applicable section of the Clearing Membership Agreement would be added (in place of a reference to a Clearing House Circular).

¹ Capitalized terms used but not defined herein have the meanings specified in the applicable Procedures or, if not defined therein, the Rules.

The amendments delete references to Default Portability Preferences in paragraph 6.4, as these no longer exist under the Rules.

(ii) Business Continuity Procedures

The amendments will make minor updates to reflect a change in a Clearing House e-mail and website address.

(iii) Finance Procedures

The amendments revise paragraph 1.6 to clarify that English law governs certain matters relating to liability and statutory immunity, consistent with the amendments discussed above to the Clearing Procedures.

Paragraphs 5.4 and 5.6 will be amended to reflect that certain SWIFT messages will be phased out.

The amendments will revise paragraph 6.1 to update certain practices in regard to intra-day margin calls. As revised, the Clearing House will not contact Clearing Members by phone when an intra-day call is anticipated, but rather will provide notice by email. The amendments will also clarify the process for out of hours intra-day Margin calls to ensure that an intra-day Margin call may be made overnight to be due at the open of business on the following Business Day.

The amendments will clarify in paragraph 11.4 that matching criteria for settlement instructions are set out in Circulars.

(iv) Membership Procedures

The amendments will make various changes throughout the Membership Procedures to be consistent with changes previously proposed to Rule 205(a) in respect to the timing for the delivery of annual and quarterly financial statements for Clearing Members.

The amendments will also make minor updates to reflect the change in certain email addresses.

(v) Delivery Procedures

The amendments revise paragraph 1.7 to clarify that English law governs certain matters relating to liability and statutory immunity, consistent with the amendments discussed above to the Clearing Procedures and Finance Procedures.

In paragraph 5.1, references to contracts that are now outdated will be removed. In paragraph 5.5, a reference to EMIR would be deleted as not applicable.

With respect to alternative delivery procedures for emission contracts in paragraph 7, the amendments will update the list of covered contracts. Furthermore, in paragraph 13,



the specific references to contracts excluded from the alternative delivery procedures will be replaced with a more general reference to all contracts not otherwise subject to a specific alternative delivery procedure.

Paragraph 17 will be amended to broaden the application of the Delivery Procedures to reference clearing arrangements with respect to markets in addition to ICE Futures Europe and all F&O contracts rather than just Financials & Softs.

The amendments will also add language to paragraph 19.5 to clarify that the Contract Terms are binding pursuant to Rule 102(e) and include certain provisions relating to deliveries.

Part BB of the Delivery Procedures would be removed as the relevant containerized white sugar contract is no longer traded.

A new Part JJ will be added to outline the delivery procedures for ICE Futures Europe CORSIA Eligible Emissions Units Contracts to support the launch of such contracts on ICE Futures Europe for which delivery will be made through a registry account of the Clearing House. Part JJ contemplates additional registries being added as Delivery Facilities for this purpose. Part JJ addresses the procedure for effecting delivery under the CORSIA contracts through transfer of eligible emissions units from the account of the seller to the account of the Clearing House, and from the account of the Clearing House to the account of the buyer. Part JJ sets out relevant definitions related to delivery under the contract, including as to the CORSIA eligible emissions unit, as well as details of the delivery process, including quantity, settlement price, timing of cessation of trading, and arrangement of EFPs and EFSs. Part JJ also addresses the responsibilities of the Clearing House and relevant parties for delivery, as well as certain limitations on liability for the Clearing House (including liability with respect to certain actions or failure by a registry). The amendments also include delivery timetables with detailed timeframes and descriptions of the operational processes for delivery. The amendments set out requirements for alternative delivery procedures for the CORSIA contracts.

Lastly, the amendments will make updates throughout the Delivery Procedures to make various typographical and similar corrections and updates to relevant system names.

(vi) Complaint Resolution Procedures

The Clearing House is making various amendments to the Complaint Resolution Procedures in order to reorganize certain sections and improve clarity and readability, particularly regarding the procedures for making and investigating complaints.

In paragraph 1.1, the amendments will clarify the status of ICE Clear Europe as a recognized central counterparty under EU EMIR. Certain provisions in paragraphs 2 will be moved to paragraph 3 to improve the organization of the procedures.



In renumbered paragraph 3.1, amendments will clarify that the Clearing House will acknowledge a complaint promptly (regardless of whether the alternative resolution process is used). The amendments also remove a requirement to specify the details of the Commissioner in the acknowledgment as they may not be known at this stage.

The amendments will revise paragraph 3.3(a) to extend the timeline for ICE Clear Europe to consider whether the complaint should be referred to another entity to 15 business days.

Paragraph 3.4 will also be amended to ensure that the Clearing House will first seek to determine whether a complaint is eligible before starting the four week alternative resolution process. Moreover, the amendments specify that ICE Clear Europe will appoint a Commissioner, if required by the complainant, to determine whether a complaint is an Eligible Complaint. Paragraphs 3.5 and 3.6 contain the definition of Eligible Complaint, which is unchanged from the current Procedures. The amendments will modify paragraph 3.8 to clarify the circumstances in which ICE Clear Europe may use its discretion to delay consideration of an Eligible Complaint as a result of other proceedings or disputes or an Event of Default. Changes will be made to paragraph 3.9 to clarify the point at which the four week alternative resolution process would start. The amendments will also revise paragraph 3.10 to describe in detail the specific triggers for the Clearing House's appointment of the investigator, and for notifying the appointment of an investigator.

The amendments in paragraph 4.1 contain the applicable standards, which has not changed from the current Procedures, for reviewing the Clearing House's conduct in investigating a complaint. Other amendments in paragraph 4 will simplify and consolidate the process for a complainant to request the referral of its complaint to a Commissioner where the investigation has not been resolved within the required period.

Amendments will be made to paragraph 6.1 specifying that the Clearing House will appoint a Commissioner (if not already appointed) in circumstances where the complainant rejects the investigator's report.

Changes will be made to paragraph 7.2 to clarify the timetable for completion of the Commissioner's investigation where a complaint is referred to the Commission. In cases where the Commissioner is unable to consider the complaint due to conflict of interest, illness or other unavoidable commitments, the amendments will provide that ICE Clear Europe (rather than the existing Commissioner) will appoint an alternate Commissioner.

Amendments will be made to paragraph 7.10 to specify that any Person appointed by the Commissioner to conduct any part of an investigation must observe confidentiality of the investigation.

The amendments will also reorganize various sections, make typographical and similar corrections and remove redundant references to improve the overall clarity of the Complaint Resolution Procedures.

(vii) Auction Terms for F&O Default Auctions

The amendments will revise paragraph 1.1 of the Auction Terms for F&O Default Auctions to specify that the Clearing House may run default actions with respect to Permitted Cover provided to the Clearing House by the defaulter, consistent with recent amendments to the Rules. Additionally, the amendments will clarify that hedges may be included in auction lots. In paragraph 1.2, the amendments will clarify that ICE Clear Europe may obtain competitive prices outside of the auction procedures from one or more persons.

The amendments revise paragraph 1.6 to clarify that English law governs certain matters relating to liability and statutory immunity, consistent with the amendments discussed above to the Clearing Procedures, Finance Procedures and Delivery Procedures.

The amendments will add in paragraph 2.2 that if the Minimum Bid Requirement for a Clearing Member would otherwise be below the minimum bid size set by the Clearing House, it may be set to the minimum bid size. The amendments also address adjustments to the Minimum Bid Requirement to avoid fractional allocations.

The amendments will make clear in paragraph 2.4 that in circumstances where a Clearing Member transfers its Minimum Bid Requirement to another Clearing Member, the order in which the F&O Guaranty Contributions of the transferor Clearing Member will be subject to application in the default resource waterfall (i.e., “juniorized”) will be adjusted in accordance with the competitiveness of the bid submitted by the transferee Clearing Member on the transferor’s Clearing Member’s behalf.

The amendments will make clear in paragraphs 2.8 and 3.2 that an F&O Auction Participant’s Bid Submission may comprise of multiple bids, subject to the Clearing House’s limits. The Clearing House may specify a maximum number of bids that may be submitted per lot. Furthermore, the amendments will clarify in paragraph 3.2 that if there are multiple All or Nothing Bids at the same price, then the Auction Lot will be allocated equally among the F&O Auction Participants that submitted such bids. Furthermore, the amendments will revise paragraph 3.4 to clarify that the Bidding Closing Time may be extended beyond one hour.

Clarifying changes will be made in paragraph 3.1 to specify that the bid competitiveness formula used in determining the order of application of guaranty fund contributions will use the weighted average price per unit with regards to a Clearing Member’s bid.

Numerous changes will be made to paragraph 4 to clarify the requirements and obligations under which Customers may participate directly in default auctions, including the participation criteria for such Customers.

Amendments in paragraph 6.1 address the allocation to the winning bidder of Permitted Cover that is included in an auction.

The amendments will add a new paragraph 7.9 to specify the Clearing House's ability to disclose any information relating to any F&O Default Auction or any related agreement or documentation to the extent permitted under Rule 106.

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

Compliance with the Act and CFTC Regulations

The amendments to the Procedures are potentially relevant to the following core principles: (B) Financial Resources, (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 here, the amendments will make numerous changes to the Finance Procedures to facilitate and streamline the sending and receiving of payments, including clarifying the intra-day Margin call process. The amendments thus support the Clearing House's ability to maintain adequate financial resources to discharge the obligations of the Clearing House. Thus, in ICE Clear Europe's view the amendments are consistent with Core Principle B and Commission Rule 39.11.
- *Settlement Procedures.* As explained herein, the amendments will make various changes to the Delivery Procedures including deleting references to delisted contracts, clarifying the application of alternative delivery procedures and adding a new section to address the delivery procedures for CORSIA Contracts (including the rights and obligations of the Clearing House and Clearing Members with respect thereto). Taken together, these amendments more clearly define the delivery requirements and process and are thus 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 Auction Terms for F&O Default Auctions. Under the amendments, the Clearing House will be able to run default auctions on collateral provided to ICE Clear Europe. Furthermore, the amendments will clarify various processes with respect to F&O Default Auctions, including the bidding process, the order of application of guaranty fund contributions and the direct participations by customers in auctions. The amendments thus facilitate ICE Clear Europe's ability to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default by a Clearing Member. The amendments are therefore consistent with the requirements of Core Principle G and Commission Rule 39.16.

- *Rule Enforcement.* The amendments make a number of clarifications, updates and improvements to the Complaint Resolution Procedures, which generally address the investigation and resolution of complaints relating to regulatory actions taken by the Clearing House. These changes support the ability of the Clearing House to effectively monitor and enforce compliance with the Rules and provide for the resolution of disputes, consistent with the requirements of Core Principle H and Rule 39.17.
- *Governance.* As discussed above, the amendments clarify certain governance requirements relating to the extension of payment deadlines and make updates to the roles and responsibilities of the Clearing House and the Commissioner in the Complaint Resolution Process. 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 the status of the Clearing House under UK EMIR and EU EMIR. The amendments also make various additions throughout the Procedures to clarify that certain provisions are governed by English law. 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 Procedures, 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,

George Milton

A handwritten signature in blue ink, appearing to read 'G. Milton', with a stylized flourish at the end.

Head of Regulation & Compliance