



September 18, 2012

Mr. David A. Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

By Email: [submissions@cftc.gov](mailto:submissions@cftc.gov)

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6

Dear Mr. Stawick:

ICE Clear Europe Limited (“ICE Clear Europe”), 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 attached amendments to its rules. The rule amendments are to become effective ten business days after submission, or such later date as ICE Clear Europe may determine.

ICE Clear Europe will act as the clearing organization for certain futures and options contracts to be listed on ICE Futures U.S. Inc. (“ICE Futures US”), a designated contract market. The rule amendments consist of various conforming and technical changes to existing ICE Clear Europe delivery procedures to reflect the clearing relationship for ICE Futures US. The rule amendments are potentially relevant to the following core principles: (C) Participant and Product Eligibility, (E) Settlement Procedures and (L) Public Information, and the applicable regulations of the Commission thereunder.

ICE Clear Europe hereby certifies that the proposed rule amendments comply with the Act and the Commission’s regulations thereunder.

ICE Clear Europe has received no 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 paul.swann@theice.com or +44 20 7065 7700, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Patrick Davis, Head of Legal and Company Secretary, at [patrick.davis@theice.com](mailto:patrick.davis@theice.com) or +44 20 7065 7738.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Paul Swann', with a small flourish at the end.

Paul Swann  
President & Chief Operating Officer

**(IV) DELIVERY PROCEDURES**

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**4. CLEARING MEMBER ACCOUNTS**

No offset is allowed for either physical delivery or financial settlement between Clearing Members' Proprietary Account and Customer Account. Separate delivery documentation is required for each such Account.

**5. TRANSFERORS AND TRANSFEREES**

5.1 Each ICE UK Natural Gas Futures Contract, ICE UK Base Electricity Futures Contract, ICE UK Peak Electricity Futures Contract and ICE ~~OTC~~ Deliverable US Emissions Contract subject to delivery obligations allows Sellers and Buyers to nominate Transferors and Transferees respectively. A Transferor or Transferee may be a Seller or Buyer, respectively, itself. Transferors and Transferees are permitted to make or take delivery of Natural Gas, Electricity or Allowances to or from the Clearing House by the prescribed delivery method. The Clearing House permits the nomination of Transferors or Transferees for reasons of convenience of Clearing Members only. Notwithstanding the appointment of a Transferor or Transferee, the relevant Clearing Member remains at all times fully responsible for meeting all of its obligations and liabilities to the Clearing House.

5.2 A person who is not the Buyer, Seller or the Clearing House shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of a Contract (including any requirement of these Procedures). As further described in Rule 111, the Clearing House is not liable to or for Transferors or Transferees.

5.3 Where separate procedures apply to a Transferor/Transferee who is not the Seller/Buyer, this is indicated in these Procedures. Any form to be completed and submitted to the Clearing House by a Transferor/Transferee shall be signed by an authorised signatory of the Transferor/Transferee. The Clearing House is entitled to rely upon the information specified in the form without making any enquiry, investigation or checks as to the accuracy of such information or whether the signatory on the form has been authorised by the Transferor/Transferee. Each Clearing Member acknowledges and agrees that it is responsible for ensuring the accuracy of the information on each form submitted by a Transferor/Transferee and that the form is signed by an authorised signatory.

**6. ALTERNATIVE DELIVERY PROCEDURE ("ADP"): ICE GASOIL FUTURES**

6.1 In respect of an ICE Gasoil Contracts or ICE Low Sulphur Gasoil Futures Contracts ("**ICE Gasoil Futures**"), if the Buyer agrees with the Seller to undertake delivery outside the ICE Futures Europe Rules, both parties must advise the Clearing House using the Form ICE Gasoil Futures: Confirmation of Agreed ADP (see Schedule of Forms and Reports).

6.2 Where an ADP is agreed, the Clearing House will settle the relevant Contracts at the settlement price agreed between the Buyer and Seller fulfilling its obligations under the Contract in respect of delivery. If the agreed price is not the one at which the positions were placed under Tender, the difference between the two prices will be debited or credited to the Clearing Members' accounts and an invoice or credit note will be issued.

6.3 ICE Gasoil Futures: Confirmation of Agreed ADP forms received by the Clearing House after 15:00 hours will be deemed to have been received on the next Business Day.

6.4 A reduced delivery fee is charged for ADPs agreed at least two days prior to the first day of the delivery range.

6.5 Where an ADP is agreed for ICE Gasoil Futures, then, as from the time that the Clearing Members' accounts are amended by the Clearing House as described in this paragraph 6, the affected Clearing Members and the Clearing House shall all automatically and immediately be released and discharged from all their rights, liabilities and obligations in respect of the affected Contract or Contracts and such

rights, liabilities and obligations shall be replaced by such amended obligations as are agreed between the parties.

**7. EMISSIONS ALTERNATIVE DELIVERY PROCEDURE ("EADP"): ICE ECX CFI EUA FUTURES AND ICE ECX CFI CER FUTURES**

In the event of a failed delivery in respect of ICE ECX CFI EUA Futures or ICE ECX CFI CER Futures, the relevant Clearing Member and the Clearing House may enter into a separate contract to make or take delivery beyond the point of failure in a manner and on terms pursuant to paragraph 6 of Part A below.

**8. EXCLUSION OF ALTERNATIVE DELIVERY PROCEDURES FOR OTHER CONTRACTS**

Clearing Members may not agree alternative delivery procedures for any ICE UK Natural Gas Futures Contract, ICE UK Base Electricity Futures Contract, ICE UK Peak Electricity Futures Contract or ~~ICE-OTC~~ Deliverable US Emissions Contract or any other Contract subject to a delivery from time to time for which no specific alternative delivery procedure applies, save where a Governmental Authority of competent jurisdiction orders or requires or Applicable Law so requires or the Clearing House provides its consent in writing.

**9. INTERIM PAYMENTS: GASOIL**

Where a Delivery Panel formed under ICE Futures Europe Rules directs that an interim payment or payments should be made pending a decision as to the price to be set for Invoicing Back, the Clearing House may make an interim payment to the affected Clearing Member of the amount specified in the direction of the Delivery Panel (or such other amount as the Clearing House, at its discretion, determines). If the Clearing House makes any such interim payment, an equivalent deduction from the Buyer's Security will be effected. Any amount to be paid as a result of the Delivery Panel's decision or direction shall be such amount due less any interim payment made or shall result in an obligation to repay all or part of any interim payment, as applicable, and further deduction to, or replenishment of, the Buyer's Security shall be effected by the Clearing House appropriately.

**10. ICE BRENT FUTURES: CASH SETTLEMENT**

ICE Brent Futures is a contract deliverable via EFP, with an option to cash settle. Where the Notice to Cash Settle ICE Brent Futures or the Standing Notice to Cash Settle ICE Brent Futures is completed and submitted to the Clearing House by the relevant time as applicable to each notice, then the Rules on cash settlement set out in the Rules shall apply.

**11. SIMILAR OBLIGATIONS UNDER DIFFERENT CONTRACTS**

Where a Seller or a Buyer has delivery obligations under one or more Contracts that are not of the same Set but which result in a delivery obligation in respect of the same Commodity at the same time, the Clearing House may notify the Seller (and its Transferor) and the Buyer (and its Transferee) of their aggregated delivery obligations under the affected Contracts and, upon such notification, the Seller and Buyer shall be required to make and take delivery in respect of such aggregated delivery obligations instead of such other obligations as may otherwise have been required.

**12. INTERPRETATION**

Words and phrases defined in the Rules or these Procedures bear the same meanings when used in any form or other document delivered pursuant to these Procedures.

**PART H: ICE ~~OTC~~ DELIVERABLE US EMISSIONS CONTRACTS**

**1. APPLICABILITY AND DEFINITIONS**

1.1 This Part H applies to all ICE OTC Contracts [and ICE Futures US Contracts](#) for which physical delivery is specified as being ‘Applicable’ in the relevant Contract Terms and which go to physical delivery on the expiry date. Such ICE OTC Contracts [and ICE Futures US Contracts](#) are referred to in this section as “ICE ~~OTC~~ Deliverable US Emissions Contracts”.

1.2 The following additional definitions apply to this part of the Delivery Procedures:

- (a) “**Allowance**” means an instrument, certificate, permit, asset, security, right, contract or allowance that is designated as a deliverable instrument for an ICE ~~OTC~~ Deliverable US Emissions Contract in the relevant Contract Terms.
- (b) “**Registry**” means a registry, custodian, depository or other system used for physical delivery of Allowances pursuant to an ICE ~~OTC~~ Deliverable US Emissions Contracts that is approved by the Clearing House for purposes of physical delivery for the particular ICE ~~OTC~~ Deliverable US Emissions Contract Set in question. The Registry for a particular ICE ~~OTC~~ Deliverable US Emissions Contract Set may be specified in the Contract Terms.
- (c) “**Registry Operator**” means the operator of a Registry.

**2. DELIVERY SPECIFICATION**

**2.1 Delivery**

Deliveries pursuant to ICE ~~OTC~~ Deliverable US Emissions Contracts are effected by the transfer of required Allowances directly from a Transferor (nominated by the Seller, which may be the Seller itself) to a Transferee (nominated by the Buyer, which may be the Buyer itself) through a Registry. Rule 703(d) applies to such deliveries.

**2.2 Quantity**

Quantities are as required under the relevant Contract Terms.

**2.3 Price**

The price at which the Contract is delivered is the relevant Market Delivery Settlement Price (MDSP) for the Contract Set on expiry.

**2.4 Cessation of Trading**

Contracts cease trading on the last trading day, as defined in the Contract Terms.

**2.5 Exchange for Physicals (EFPs) and Exchange for Swaps (EFSs)**

EFPs and EFSs may be made only in accordance with [either ICE OTC Participant Agreements and applicable procedures of the ICE OTC Operator or the ICE Futures US Rules \(as applicable\)](#).

**3. LIABILITY**

3.1 The provisions of this paragraph 3 are without prejudice to the generality of, and subject to, the provisions of the Rules relating to liability and apply in addition to the general requirements of these Delivery Procedures.

3.2 ~~Neither~~None of the Clearing House ~~nor~~, the ICE OTC Operator ~~nor~~ ICE Futures US is responsible for, and ~~neither~~none of them shall have any liability whatsoever as a result of, the performance or non-performance of any Registry or Registry Operator. Neither the Buyer nor the Seller, their Transferees or Transferors, shall have any claim against the Clearing House for any loss, cost, damage or expense incurred or suffered as a result of the condition or operation of any Registry or the performance or non-performance of any Registry Operator. This provision is without prejudice to the Clearing House’s liability under Contracts.

3.3 ~~Neither~~None of the Clearing House, ICE Futures US nor the ICE OTC Operator makes any representation regarding the authenticity, validity or accuracy of any delivery tender notice, description of a registry, market tracking system or any other registry instructions, confirmation of transfer or any other notice, document, file, record or instrument used or delivered pursuant to the Rules and Procedures or pursuant to the procedures of any Registry.

**4. DELIVERY CONTRACT SECURITY AND CONTRACT VALUE**

4.1 At end-of-day on the relevant Position Day for the Contract Set, the Clearing House will call for the full contract value of the Contract from the Buyer, such amount to be paid in accordance with the Finance Procedures.

4.2 At end-of-business on the last trading day, the Clearing House will call for delivery Margin (Seller’s Security) from the Seller, such amount to be paid in accordance with the Finance Procedures. The Clearing House will retain the Seller’s Security until such time as the full contract value is released to the Seller under the table in paragraph 5.

**5. DELIVERY TIMETABLE AND OBLIGATIONS**

Delivery under an ICE-~~OTC~~ Deliverable US Emissions Contract is based on Open Contract Positions after expiration of the relevant Contract Set. Delivery is a three Business Day process consisting of three consecutive days which must be Business Days: the Position Day, Notice Day and Delivery Day. However, payments may take place after the end of the Delivery Day, as provided in the table below and the Finance Procedures.

5.1 All times in this section are to U.S. Central Time.

**5.2 Use of relevant registry**

(a) Clearing Members and their Transferors or Transferees must have established accounts in the relevant Registry for the ICE-~~OTC~~ Deliverable US Emissions Contract in question.

		<b>First Business Day following expiration of the Contract Set</b>
<b>Position Day</b>	By 10:00	Clearing Members must report their Long Open Contract Positions and tender delivery notices to the Clearing House.
		Clearing Members must report to their Long futures positions and tender delivery notices to the Clearing House by sending a “Delivery Position Reporting” form.



**DELIVERY PROCEDURES: ICE ~~OTC~~ DELIVERABLE US EMISSIONS CONTRACTS**

	There after	<p>Following receipt of all such required forms from Clearing Members in respect of a particular Set, the Clearing House will make appropriate delivery assignments, matching Clearing Members that are Buyers to Clearing Members that are Sellers for the purposes of them making delivery to one another for purposes of Rule 703(d).</p> <p>Clearing House calls Buyer for full contract value.</p>
<b>Notice Day</b>	<b>Position Day +1 Business Day</b>	
	By 16:00	<p>The Seller must provide to the Buyer a description of the underlying Allowances to be delivered.</p> <p>The Buyer must provide the Seller with information of the account at the Registry to which Allowances are to be transferred, which may be an account of its Transferee.</p>
	By 17:00	<p>The Seller must ensure that appropriate Allowances (delivery of which would satisfy its delivery obligations) are in its designated account at the relevant Registry.</p>
<b>Delivery Day</b>	<b>Position Day + 2 Business Days</b>	
	By 12:00	<p>The Seller shall ensure that it or its Transferor has electronically submitted the transfer instructions in respect of all Allowances required to be transferred pursuant to the Contract to the relevant Registry.</p>
	Following delivery	<p>Buyer must deliver a “Receipt of Delivery Confirmation” form to the Clearing House, following receipt in its account at the relevant Registry of the Allowances. Such a form will constitute a representation and warranty from the Buyer to the Clearing House that the Buyer has received delivery of all required Allowances pursuant to the Contract under delivery, and that the Buyer is not aware of any dispute relating to the Allowances that have been delivered.</p>
<b>Payment</b>	<b>Delivery Day (if Receipt of Delivery Confirmation received before 13:00) or a following Business Day</b>	
	By 13:00	<p>Buyer must deliver the “Receipt of Delivery Confirmation” to the Clearing House on Delivery Day.</p>
	After receipt	<p>After receipt by the Clearing House of the “Receipt of Delivery Confirmation” from the Buyer, the Clearing House releases the delivery proceeds to the Seller.</p> <p>The delivery proceeds and Seller’s Security will be released to the Seller at the end-of-day on the same day as receipt by the Clearing House of the “Receipt of Delivery Confirmation” (for credit to the account of the Seller, this not being required prior to the morning of the Business Day after the Delivery Day), provided that the “Receipt of Delivery Confirmation” is received by the Clearing House at or before 1:00 p.m. U.S. Central Time on the Delivery Day.</p> <p>If the Clearing House receives a “Receipt of Delivery Confirmation” after such time on the Delivery Day or any subsequent day, it will be treated as if it were received on the next Business Day and payments to</p>

	the Seller shall be delayed accordingly.
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