



May 20, 2013

Ms. Melissa Jurgens
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

By Email: submissions@cftc.gov

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

Dear Ms. Jurgens:

ICE Clear Europe Limited (“ICE Clear Europe”), a registered derivatives clearing organization (“DCO”) 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 amendment to its CDS Procedures. The amendment will become effective on June 10, 2013, or such later date as ICE Clear Europe may determine.

The proposed amendment serves to clarify the scope of the obligation of ICE Clear Europe CDS clearing members to pay additional amounts to (or otherwise indemnify) ICE Clear Europe for any tax imposed or collected as a result of Sections 1471 through 1474 of the U.S. Internal Revenue Code and U.S. Treasury regulations and other guidance thereunder (commonly known as the Foreign Account Tax Compliance Act, or “FATCA”). The amendment to the CDS Procedures would require an ICE Clear Europe CDS clearing member to pay additional amounts to (or otherwise indemnify) ICE Clear Europe for any tax imposed or collected pursuant to FATCA in connection with CDS clearing. ICE Clear Europe CDS clearing members will not face this payment or indemnification burden to the extent that any withholding tax applied to a payment to ICE Clear Europe would not have been imposed but for the failure of ICE Clear Europe to satisfy the applicable requirements to establish such payment’s exempt status with respect to withholding under FATCA.

Although the amendment is potentially relevant to the following DCO core principles: (C) Participant and Product Eligibility and (E) Settlement Procedures, ICE Clear Europe has determined that the amendment will not affect its compliance with those

principles and the Commission's regulations thereunder. Specifically, the amendment is not expected to alter the operation of ICE Clear Europe's daily settlement process or the finality of the settlement process. The amendment's limited purpose is to clarify the obligations of ICE Clear Europe and its clearing members in the event certain taxes are imposed under FATCA in respect of cleared CDS contracts. ICE Clear Europe believes the amendment is appropriate to address FATCA compliance and will not otherwise affect its obligations under the Act and the Commission's regulations.

ICE Clear Europe hereby certifies that the amendment complies with the Act and the Commission's regulations thereunder.

There were no opposing views expressed to ICE Clear Europe by governing board or committee members, members of ICE Clear Europe or market participants that were not incorporated into the amendment.

Concurrent with the filing of this submission, ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

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 patrick.davis@theice.com or +44 20 7065 7738, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Paul Swann, President & Chief Operating Officer, at paul.swann@theice.com or +44 20 7065 7700.

Very truly yours,



Patrick Davis
Head of Legal and Company Secretary

(VIII) CDS PROCEDURES**INDEX****Customer clearing version: 18 March 2013**

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deduction or withholding is required or receiving notice that such amount has been assessed against the Clearing House;

- (3) promptly forward to the Clearing House an official receipt (or a certified copy), or other documentation reasonably acceptable to the Clearing House, evidencing such payment to such authorities; and
 - (4) subject to paragraph 9.2(a)(ii)(C), pay to the Clearing House, in addition to the payment to which the Clearing House is otherwise entitled pursuant to the relevant CDS Contract, such additional amount as is necessary to ensure that the net amount actually received by the Clearing House (free and clear of any Tax, whether assessed against the Clearing Member or the Clearing House) will equal the full amount the Clearing House would have received had no such deduction or withholding been required.
- (C) *Gross-Up by the Clearing Member; exception.* A Clearing Member will not be required to pay any additional amount to the Clearing House pursuant to paragraph 9.2(a)(ii)(B) to the extent that it would not be required to be paid but for (1) a present or former connection between the jurisdiction of the taxing authority imposing such Tax and the Clearing House, (2) any failure by the Clearing House to provide to the relevant Clearing Member such forms and documents as are required to be provided under paragraph 9.2(d)(i), provided this sub-paragraph (2) shall only apply if the relevant Clearing Member has notified the Clearing House in writing of such failure and the Clearing House has failed to provide such forms or documents within 5 Business Days after the receipt of such notice or (3) the failure of a representation made by the Clearing House pursuant to paragraph 9.2(c)(ii) to be accurate and true (unless the failure under this sub-paragraph (3) would not have occurred but for (a) any action taken by a taxing authority, or brought in a court of competent jurisdiction (regardless of whether such action is taken or brought with respect to a Party to the relevant CDS Contract) or (b) a Change in Tax Law, that in each case occurs after the Clearing House and the Clearing Member enter into the relevant CDS Contract (or, if applicable, the date that the Clearing House amends the relevant CDS Contract in accordance with the Rules to account for such Change in Tax Law)).

In the event that the failure under sub-paragraph (3) of the preceding paragraph would not have occurred but for the reasons described under subclause (a) or (b) thereof, the Clearing House shall use reasonable endeavours to provide to the Clearing Member a new representation (to the extent that it is appropriate) for the purpose of paragraph 9.2(c)(ii), promptly after learning of such failure (so long as the provision of such representation would not, in the Clearing House's judgment, materially prejudice the legal or commercial position of the Clearing House).

Notwithstanding any other provision under the Rules or these Procedures, a Clearing Member will be required to pay additional amounts to (or otherwise indemnify) the Clearing House pursuant to paragraph 9.2 for any Tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any

intergovernmental agreement entered into in connection with the implementation of such Sections of the Code ("FATCA"), except to the extent that such Tax would not have been imposed on the payment to the Clearing House but for the failure of the Clearing House to satisfy the applicable requirements to establish that such payment is exempt from withholding under FATCA.

For the purpose of this paragraph 9.2(a)(ii)(C) only, Change in Tax Law shall have the following meaning:

"**Change in Tax Law**" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law).

- (D) *No Gross-Up by the Clearing House.* If the Clearing House is so required to deduct or withhold, then the Clearing House will, in each case to the extent that it is reasonably able to do so:
- (1) promptly notify the Clearing Member of such requirement;
 - (2) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the Clearing Member; and
 - (3) promptly forward to the Clearing Member an official receipt (or a certified copy) evidencing such payment to such authorities.

In no circumstances shall the Clearing House be required to pay any amount in addition to the payment to which the Clearing Member is otherwise entitled pursuant to the CDS Contract in respect of any such deduction or withholding. However, the Clearing House will, at the Clearing Member's expense, use reasonable endeavours to cooperate with the Clearing Member to seek any credit or remission or other relief available with respect to any such Tax so deducted or withheld (so long as such cooperation would not, in the Clearing House's judgment, materially prejudice the legal or commercial position of the Clearing House).

- (E) *Liability of the Clearing House.* If:
- (1) the Clearing House is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, to make any such deduction or withholding;
 - (2) the Clearing House does not so deduct or withhold; and
 - (3) a liability resulting from such Tax is assessed directly against the Clearing House,

then, except to the extent the Clearing Member has satisfied or then satisfies the liability resulting from such Tax, the Clearing Member will promptly pay to the Clearing House the amount of such liability (including any related liability for interest or penalties).

- (F) *Liability of the Clearing Member.* If: