



January 25, 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 – CDS Procedures and
CDS Default Management Policy amendments

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 its CDS Procedures (the “CDS Procedures”) and CDS Default Management Policy (the “Policy”), as discussed herein. 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 amending its CDS Procedures as to the following: (i) the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member, (ii) the courses of action for the Clearing House if a CDS Committee-Eligible Clearing Member is unable to take part in the CDS Default Committee for the Relevant CDS Default Committee Period for which it is due to take part, (iii) the confidentiality obligations of CDS Default Committee Members and CDS Default Committee Participants and the limitations on liability applicable to such persons, (iv) timing requirements with respect to the submission of CDS Trade Particulars and (v) various drafting clarifications and improvements. ICE Clear Europe is also updating the CDS Default Management Policy to provide further detail with respect to the requirements for a Clearing Member to be Committee-Eligible for purposes of serving on the CDS Default Committee, and to make various drafting clarifications and improvements, as consistent with the updates to the Procedures.

I. CDS Procedures

General Drafting Clarifications and Improvements

The amendments to the Procedures clarify that the term “CDS Committee-Eligible Clearing Members” must be approved in accordance with paragraph 5.2 of the Procedures and continue to meet the criteria of such Paragraph. As described below, paragraph 5.2, as amended, specifies in detail the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member.

Submission and Acceptance of CDS Contracts

The amendments revise paragraph 4.4 of the Procedures, which describes the timing requirements for submitting CDS Trade Particulars, to clarify that with respect to CDS Trade Particulars submitted after 6:00 p.m. on a Business Day or on a day that is not a Business Day, unless a revocation right exists and is exercised or unless otherwise stated in circular, among other existing exceptions, such CDS Trade Particulars will be deemed to have been submitted at 8:00 a.m. on the following Business Day. Furthermore, the Procedures provide that if the Trade Date specified in the CDS Trade Particulars is not a Business Day, then the relevant CDS Trade Particulars will be rejected. This reflects current Clearing House practice.

CDS Default Committee

The amendments to the Procedures in paragraph 5 update the requirements for a Clearing Member to be approved to be a CDS Committee-Eligible Clearing Member. Pursuant to paragraph 5.2, as amended, the Clearing Member needs to meet the following conditions in order to be eligible: (a) in the event that it has one or more Affiliates that are CDS Clearing Members, it has the longest period of membership of the Clearing House among such Affiliates; (b) it has a London-based CDS trading desk; and (c) it is deemed appropriate to be a CDS Default Committee Member by the Clearing House at its discretion. The Clearing House will maintain a list of all CDS Committee-Eligible Clearing Members. The procedure for maintaining the CDS Default Committee Participant List (including adding CDS Clearing Members to, removing CDS Clearing Members from or changing the order of Clearing Members on the CDS Default Committee Participant List) will be determined from time to time by the Clearing House at its discretion. (Certain such matters are addressed in further detail in the Policy, as discussed below.) CDS Clearing Members will be able to provide information of relevance to the Clearing House with respect to their own inclusion or omission or order on the list, but such information will not be binding on the Clearing House. Additionally, the Procedures will state that ICE Clear Europe may also share the CDS Default Committee Participant List with any other clearing organization.

Amendments to paragraph 5.3 add that if a CDS Committee-Eligible Clearing Member considers that it is unable to take part in the CDS Default Committee for the Relevant CDS Default Committee Period for which it is due to take part, it may request to postpone its participation for that period. ICE Clear Europe could, at its discretion, approve such request and, if so, the following events would take place: (a) that CDS Committee-Eligible Clearing Member would be listed so as to take part in

the CDS Default Committee for the next Relevant CDS Default Committee Period as one of the three CDS Default Committee Participants; and (b) one of the next three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List would be selected by the Clearing House at its discretion to take part in the CDS Default Committee during that Relevant CDS Default Committee Period. The CDS Default Committee Participant List would be amended accordingly. Certain other drafting clarifications are made to paragraph 5.3.

Paragraph 5.4 is being amended to add that if a CDS Clearing Member becomes a defaulter or is suspended or receives a termination notice with respect to its Clearing Membership, it will be removed from the CDS Default Committee Participant List. Paragraphs 5.4 and 5.5 are being revised to clarify that the CDS Default Committee Participant List will be amended to take into account any Clearing Member that becomes (or resumes being) a CDS Committee-Eligible Clearing Member or is removed from being a CDS Default Committee Participant because the Clearing House determines that such Clearing Member has a conflict or lacks impartiality.

The amendments in paragraph 5.6 also provide that the Clearing House will give notice that, since CDS Default Committee Members and CDS Default Committee Participants act as part of the governance of ICE Clear Europe, such CDS Default Committee Members and CDS Default Committee Participants will take the benefit of all exclusions and limitations of liability available to the Clearing House under the Rules or Applicable Laws. The change is intended to make the exclusions and limitations on liability for such persons consistent with those generally applicable to Clearing House governance process.

The amendments in paragraph 5.8 provide that CDS Clearing Members agree and acknowledge that each CDS Default Committee Members and CDS Default Committee Participant (each a “Covered Party”) will be subject to the provisions of Rule 106 (regarding confidentiality of information received and permitted disclosures) as if it were the Clearing House. Furthermore, each CDS Clearing Member will be required to ensure that each such Covered Party nominated by it will not use any Confidential Material for its own benefit or the benefit of any of its Affiliates and, if so requested by the Clearing House, will execute any documentation specified by the Clearing House acknowledging the same. The procedures that apply in the event a Covered Party is served with or otherwise subject to legal process have been removed as unnecessary in light of the referenced provisions of Rule 106. Paragraph 5.9 is being amended to clarify that each CDS Clearing Member agrees that each Covered Party will be responsible for its own costs associated with its service in such position.

II. CDS Default Management Policy

General Drafting Clarifications and Improvements

By way of general drafting clarifications and improvements, the amendments to the Policy remove Appendices A and B, which contain various forms of notice and examples, as well as references thereto. In ICE Clear Europe’s view, these appendices do not need to be included in the Policy and, to the extent they remain relevant, forms of notice can be maintained by the Clearing House separately.

Certain terminology is being updated throughout the Policy as follows: (i) the term, Employee, is being updated to Eligible Employee; and (ii) the terms, Defaulting Clearing Member or Defaulting Member, are being updated to defaulter in certain instances in order to avoid repetition and aid with readability. Certain provisions relating to the Clearing House ceasing to clear new trades for a Defaulting Clearing Member are being moved and reorganized.

CDS Default Committee Activation

Consistent with the changes described above to the CDS Procedures, the Policy is being amended to provide that a Clearing Member only be defined as Committee-Eligible, thereby permitting such Clearing Member to be a CDS Default Committee Participant, if such Clearing Member (i) is deemed appropriate by the Clearing House, (ii) is the primary clearing entity of an affiliate group, and (iii) has a London based trading desk. Clarifications to the Policy also require that the Clearing House maintain a list of all CDS Committee-Eligible Clearing Members and specify that the relevant term for the committee (“Relevant CDS Default Committee Period”) is six calendar months or until the end of any active Default event.

In addition, the amended Policy provides that in the event that a CDS Default Committee Participant is unable to fulfill its upcoming rotation obligation for any reason including serving in the CDS Default Committee of another clearing house, such CDS Default Committee Participant has the option to request to postpone their Relevant CDS Default Committee for a Relevant CDS Default Committee Period. If the Clearing House finds the reason for postponement satisfactory, the CDS Default Committee Participant will be substituted for a CDS Committee-Eligible Clearing Member from the next three members on the CDS Default Committee Participant List. Prior to commencement of a rotation, CDS Default Committee Members will be required to have signed all documentation required by the Clearing House (including but not limited to a Seconded Trader Agreement), and the Clearing House will use reasonable efforts to ensure that such requirement is enforced.

The amendments also clarify that CDS Default Committee Members will be responsible for assisting in executing any CDS transactions (with respect to Rules 902 or 903 in CDS only) on behalf of the Clearing House only if needed. Under the Committee Activation Procedures section, the procedure for use of an alternate CDS Default Committee Member contact is being revised to refer generally to a situation where the designated primary representative cannot be reached in a reasonable amount of time, and to remove specific examples of reasons a member could not be reached.

Secondment Facilities

The amendments clarify that upon arrival at the ICE Clear Europe offices, each CDS Default Committee Member will be assigned a PC with the ICE Clear Europe risk reports concerning the defaulter’s portfolio and a third-party data provider application. References to how the CDS Default Committee Member will be able to login to the PC and view certain information sent to ICE Clear Europe by the non-defaulting Clearing Members are being removed as unnecessary. The amendments

also clarify that CDS Default Committee Members will only execute the hedging and liquidating transactions that the Head of Clearing Risk and the team deem necessary.

Confidentiality

The amendments remove the requirement that seconded traders sign an additional confidentiality agreement pertaining to their role within a given member default (as ICE Clear Europe believes the existing single secondment agreement is sufficient). Instead, the Policy will provide that CDS Default Committee Members will be reminded of ongoing confidentiality obligations by the ICE Clear Europe Compliance department.

Auction Process and Results

The amendments provide that details of the auction and relevant position data will be made available through the ICE Default Management System, consistent with the ICE Clear Europe auction procedures. The amendments also clarify that following the close of an auction for sub-portfolio, the Clearing House will publish the new trades to be booked to the winning bidders through the ICE Default Management System. The Clearing House will no longer notify the point of contact for the winning bidders verbally. The change is intended to conform to the ICE Clear Europe auction procedures.

Default Management Testing

The amendments provide additional detail with respect to default management testing. Specifically, pursuant to the amendments, the Policy will state that the Clearing House will test and review its default procedures at least quarterly and perform simulation exercises at least annually. The default test will be conducted in coordination with Clearing Members by engaging all the internal and external stakeholders that will be involved in the default management process (for example, the Clearing Risk Department, ICE Clear Europe Senior Management Team, CDS Default Committee Members, regulators, etc.). Each default test will be planned in accordance with the ICE Clear Europe Multi-Years Default Plan, which will list several different default scenarios that need to be tested by the Clearing House on a regular basis. The ICE Clear Europe Senior Management Team will be responsible for approving the scope of the annual default test by choosing different scenarios outlined in the Plan. The Plan and changes to it will need to be approved by the Executive Risk Committee.

Compliance with the Act and CFTC Regulations

The amendments are potentially relevant to the following core principle: (D) Risk Management and (G) Default Rules and Procedures and the applicable regulations of the Commission thereunder.

- *Risk Management.* As discussed herein, the amendments to the CDS Procedures and Policy are intended to update and state more clearly the criteria for representation on the CDS Default Committee and provide for enhanced review and testing of the default management processes. The amendments thus strengthen the Clearing House's ability to manage default

risks, and risks of clearing CDS contracts more generally. ICE Clear Europe believes that the amendments thus serve to promote the soundness of ICE Clear Europe's overall risk management system, strengthening ICE Clear Europe's ability to manage the risks associated with discharging its responsibilities, consistent with the risk management requirements of Core Principle D and Commission Rule 39.13.

- *Default Rules and Procedures.* As discussed above, the amendments enhance ICE Clear Europe's default management capabilities for CDS Contracts. Specifically, ICE Clear Europe believes that the updated, and more clearly defined eligibility requirements for CDS Clearing Members to participate in the CDS Default Committee will better ensure that the committee is staffed with appropriate representatives. The other amendments better ensure that such members have appropriate resources for their role on the committee and that there is a process in place should a member need to delay the start of its tenure on the committee for permissible reasons. Amendments to the Policy also ensure that the Clearing House will review its default procedures at least quarterly and perform simulation exercises at least annually, and that such tests will be conducted in coordination with Clearing Members as well as the internal and external stakeholders involved in the default management process. The amendments overall strengthen ICE Clear Europe's ability to contain losses in the event of a Clearing Member default in a manner consistent with the requirements of Core Principle G and Commission Regulation 39.16.

As set forth herein, the amendments consist of changes to the CDS Procedures and the Policy. A copy of the changes to the CDS Procedures is attached hereto. ICE Clear Europe has requested confidential treatment with respect to the amendments to the Policy, which have been submitted concurrently with this self-certification submission.

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 giulia.honorati@theice.com or +44 20 7429 7127.

Very truly yours,



Giulia Honorati
Manager Compliance and Regulation