



26 January, 2022

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 40.6 –
Futures & Options Default Management Policy

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 Clearing House’s Futures & Options Default Management Policy (the “F&O Default Management Policy” or “Policy”) to make certain clarifications and updates.¹ The amendments will 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 F&O Default Management Policy to (i) further describe certain aspects of the background UK legal framework applicable to default management, (ii) update the composition of the Clearing House’s default management committee, (iii) remove as unnecessary certain operational steps ICE Clear Europe will take in order to suspend a Defaulter’s trading access, (iv) update and clarify the procedures related to hedging or liquidation of a Defaulter’s positions, (v) remove certain details around the auction process that are set out in other Clearing House

¹ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the F&O Default Management Policy.

documentation; (vi) clarify certain procedures for intra-group information sharing, (vii) revise the description of the Clearing House's default testing, (viii) revise and remove certain appendices in accordance with the other changes made in the Policy, and (ix) make other various drafting clarifications and improvements.

The background discussion of points of law applicable to default management is being revised to provide certain clarification and simplifications. Specifically, the amendments clarify the ability of the Clearing House to transfer client positions and collateral in an omnibus client account to a single solvent Clearing Member provided that all clients in the omnibus account agree to such transfer. The amendments also clarify the benefits of legal certainty provided to actions taken by the Clearing House in accordance with its default rules under Part VII of the UK Companies Act. Other non-substantive drafting clarifications and grammatical updates are being made to improve readability.² These amendments do not reflect a change in law but are intended to further clarify state the existing background UK legal principles.

The section of the Policy addressing the actions to be taken by the Clearing House immediately following declaration of an Event of Default is being updated to bifurcate the composition of the Clearing House's internal default management committee to personnel that are always required to be present and personnel (or deputies) that may attend if required. Specifically, the default management committee will, at minimum, consist of the President, Head of Clearing Risk and Chief Risk Officer. The Chief Operating Officer or Head of Operations, Head of Treasury, Head of Legal and Head of Compliance may attend if required. Additionally, the amendments provide that legal advisors or counsel to the Clearing House may also be present where required. Conforming changes are being made in other sections of the policy. The amendments also remove from a statement regarding the segmenting of F&O Guaranty Fund resources in the waterfall by asset class, and related information. The construction and composition of the F&O Guaranty Fund is set out in the Rules and Procedures and existing F&O Guaranty Fund Policy, and the Clearing House does not believe it needs to be set out in the Policy.

Amendments also remove provisions relating to an interest rate swap default management committee, which are not used as the Clearing House does not clear interest rate swaps.

Procedures for suspending the trading access of a defaulting Clearing Member are also being clarified. The amendments provide that the Clearing House may (but is not obligated to) instruct the relevant market surveillance department and helpdesk to disable trading accesses of the defaulter. The amendments also remove certain operational details as to the business hours of the ICE helpdesk and the scope of denial of trading access that the Clearing House believes are unnecessary for the Policy. The amendments are not intended to reflect a change in practice but further describe and document existing practice.

² The amendments to this discussion do not affect the existing statement, consistent with the Rules, that with respect to FCM/BD Clearing Members in default, the customer accounts are intended to be treated in accordance with applicable U.S. law.

In the section relating to identifying and hedging market exposure from the defaulter's positions, the amendments add that the Clearing House may seek to delta hedge the positions through its Exchanges, in addition to conducting such hedging through brokers (as referenced in the current Policy). The amendments also remove a statement that priority should be giving to hedging products contributing the greatest original margin requirement. ICE Clear Europe does not believe the limitation is necessary, as the hedging strategy should take into account the particular circumstances and market conditions at the time. Additionally, information describing the processes for entering positions into the ICE Clear Europe internal risk database are being removed as unnecessary operational detail.

Provisions addressing the treatment of physically deliverable positions nearing expiry are being updated to clarify that once a default has been declared, the Operations Department will be responsible for taking control and may suspend delivery settlements due back to the Defaulter, to implement the Clearing House's existing rights under the Rules. Amendments also clarify that while the Clearing House may need to close out positions prior to the commencement of the delivery process, it will not necessarily be obligated to do so. In the Clearing House's view, this change provides appropriate flexibility in managing such positions of a defaulter.

The section relating to liquidation of remaining positions is being amended to reference all positions (not merely house positions), to remove certain details about specific hedging strategies and to remove a statement as to the order of preference of different options. ICE Clear Europe believes that it is appropriate in default management to have flexibility as to the particular type of hedging or liquidation actions to be taken, in light of the nature of the positions and market conditions at the time, and accordingly it is not desirable to state in advance which default management option is preferable. Similarly, the Clearing House does not believe it is necessary to specify particular hedging strategies in the Policy; the appropriate strategy in a particular default scenario should be selected at the time.

Amendments also provide that the Clearing House default management committee may seek advice from third party traders, in addition to traders of non-defaulting Clearing Members, with respect to liquidating the positions in a complex trading book. The amendments remove as unnecessary a requirement that the senior management team first approach representatives of Clearing Members on the F&O product risk committee for assistance.

Certain clarifications to the Policy relating to the conduct of a default auction and related auction portfolio disclosures are being made, including to be consistent with the existing published F&O Auction Terms. In particular, statements that the portfolio will be hedged before commencing the auction is being removed, as it is not necessary in all cases under the Rules or Procedures that a portfolio be hedged before being auctioned. References to Clearing Members are being replaced with more general references to auction participants, as the F&O Auction Terms permit participation by non-Clearing Members in certain circumstances. In line with the changes described above to remove references to the IRS Default Committee, information relating to the IRS Default Committee's role in directing the auction process is being removed. A detailed

description and example of bidding mechanics is being removed as such details are addressed in the published F&O Auction Terms.

The section of the Policy relating to intra-group information sharing is being amended to remove certain details about coordination between ICE Group entities that ICE Clear Europe believes are unnecessary under the Policy. As proposed to be revised, the ICE Clear Europe President will remain responsible for notifying counterparts at other ICE Group entities where the defaulter is active in other relevant markets. Specific details about the persons to be notified, and relevant backup personnel, are being removed as unnecessary for the Policy.

The section of the Policy relating to F&O default testing is being revised to further describe current testing purposes and practices and make other enhancements. As revised, the Clearing House will conduct testing on an annual basis with compulsory participation of Clearing Members, with the goal of testing the responsibilities of each Clearing House department, the systems and tools in the default management process and external parties' preparation and understanding of default procedures. The amendments also revise and clarify certain elements that comprise a default management test plan. As a result, Former Appendix A—Default Test Plan (Summary) is being removed as unnecessary given the updated description of default testing in the Policy. The subsequent appendices are being renumbered accordingly.

Appendix B (Trade Procedure) (formerly Appendix C) is being updated in respect of the description of the frequency of certain trade tests. Specifically, the amendments provide that test trades will take place according to the Multi-Year Default Management Plan, instead of monthly or quarterly. Additionally, the amendments remove an incorrect reference to CDS Clearing Members (which are not as such subject to an F&O policy).

Appendix C (formerly Appendix D) relating to regulatory reporting is being replaced with a new schedule of default management information to be shared with the Bank of England under applicable regulations, including information as to actions taken prior to and following the default, summary of positions and relevant margin and guaranty fund contributions, and certain other exposures.

Other drafting clarifications and other changes are being made throughout the Policy to make non-substantive typographical and other corrections, including replacing “Original Margin” with “Initial Margin” (and related abbreviations throughout), to conform to the terminology used in the Rules and Procedures.

Compliance with the Act and CFTC Regulations

The amendments to the Collateral and Haircut Procedures are potentially relevant to the following core principles: (D) Risk Management, (G) Default Rules and Procedures and (O) Governance, and the applicable regulations of the Commission thereunder.

- *Risk Management.* The amendments to the F&O Default Management Policy are intended to enhance the Clearing House's policies and practices relating to

the risk of Clearing Member default. The amendments contain a number of improvements and clarifications to the overall default management process, including those relating to hedging and liquidation of defaulters' positions. Through better managing risks in Clearing Member default scenarios in this manner, the proposed amendments to the F&O Default Management Policy promote the stability of the Clearing House and its ability to manage the risks associated with discharging its responsibilities as a Clearing House. As such, ICE Clear Europe believes the amendments further its overall risk management consistent with the requirements of Core Principle D and Commission Rule 39.13.

- *Default Rules and Procedures.* As noted above, the amendments to the F&O Default Management Policy are designed to clarify and strengthen ICE Clear Europe's procedures for management of Clearing Member default. managing the risk of default losses. The amendments update, among other matters, the composition of the default management committee, clarify certain matters relating to the background UK legal framework for default management, clarify and update certain procedures around hedging and liquidation of the risk of a defaulter's positions, clarify testing procedures, and ensure consistency with Clearing House Rules and Procedures, including those relating to auctions. The amendments thus, among other matters, further delineate the roles and responsibilities of Clearing House management and other relevant persons in the default management process. As such, ICE Clear Europe believes the amendments are consistent with the default management requirements of Core Principle G and Commission Rule 39.16.
- *Governance.* The amendments to the F&O Default Management Policy clarify certain responsibilities of the Clearing House's committees and personnel in relation to default management. The amendments also remove unused provisions related to the IRS Default Management Committee. ICE Clear Credit believes that the amendments are therefore consistent with the requirements of Core Principle O and CFTC Rule 39.24.

As set forth herein, the amendments consist of the amendments to the F&O Default Management Policy. ICE Clear Europe has requested confidential treatment with respect to the amendments, 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 received no substantive opposing views in relation to the proposed 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 iceu.compliance@ice.com or +44 20 7429 4564.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'G. Milton', with a long horizontal flourish extending to the right.

George Milton
Head of Regulation & Compliance