



February 03, 2023

Mr. Christopher J. Kirkpatrick  
Office of the Secretariat  
U.S. Commodity Futures Trading Commission  
77 West Jackson Blvd Suite 800  
Chicago, IL 60604

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule Rule 40.6  
– Capital Replenishment Plan

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 Capital Replenishment Plan discussed herein.<sup>1</sup> 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 adopting a new Capital Replenishment Plan (the “Plan”) to document certain tools, procedures and arrangements that the Clearing House may use to replenish its capital, when necessary. The Plan<sup>2</sup> addresses replenishment of both ICE Clear Europe’s own resources contribution to its guaranty funds and capital required under applicable law, including the capital requirement under EMIR as incorporated into UK law following the Brexit transition (the “EMIR capital requirement”).<sup>3</sup> The

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings specified in the Capital Replenishment Plan or, if not defined therein, the ICE Clear Europe Clearing Rules.

<sup>2</sup> The Plan consolidates and replaces a pre-existing capital requirement framework and related practices.

<sup>3</sup> Commission Delegated Regulation (EU) No. 152/2013 of 19 December 2012 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory

Plan recognizes that a need to replenish capital may arise because of a Clearing Member default, the occurrence of sudden extraordinary one-off losses, net losses resulting from custody or investment risks, or from recurring losses which may arise from general business risks.<sup>4</sup>

The Plan sets out the overall purposes of the Plan and the Clearing House's overall approach to capital management and maintaining capital resources. The Plan is intended, among other purposes, to set out for senior management, the audit committee and the Board actions they may consider to replenish capital and to identify stakeholders and their respective responsibilities with respect to ICE Clear Europe's continued compliance with relevant laws and regulations covering regulatory capital. This Plan takes into account both the minimum legal capital requirements, including under the EMIR capital requirement, as well as a higher target capital requirement (which includes a voluntary capital contribution as well as a notification buffer). The replenishment tools and actions under the Plan have been developed so as to prioritize replenishing the legal capital requirement first. Replenishment of additional capital to the target amount can be addressed once the legal requirement has been restored, (or at the same time at the discretion of the Board, resources permitting).

The Plan outlines the general steps the Clearing House expects to take to replenish capital, including (1) first assessing and using available accumulated financial resources, (2) then looking to use reasonably calculated forecasts as to future profits, (3) if those resources are insufficient to restore capital to the legal requirement, by seeking resources from its parent company in the ICE group, and (4) thereafter, with the approval of its parent and subject to the rights of existing shareholders, by seeking additional capital from third parties. ICE Clear Europe may also bypass the first two steps outlined above and immediately request capital from its parent company.

The Plan also states that overall accountability for the plan lies with the Finance Director, President, and the Board. The Plan is subject to annual review, and capital replenishment will be included in the annual default management test schedule. The Plan identifies specific internal control and governance responsibilities for the Finance Director, President, the Board and Board Risk Committee relating to monitoring capital compliance and replenishment. The Finance Director is responsible for monitoring ICE Clear Europe's compliance with the applicable regulatory capital requirements, reporting capital adequacy internally and to regulators, escalating matters relating to capital adequacy to the President where appropriate, and contributing to the development of plans to increase and/or replenish Eligible Capital as required for ICE Clear Europe to continue to meet its regulatory capital requirements. The President is responsible for ensuring ICE Clear Europe meets its capital adequacy obligations under relevant laws and regulations. The Board Risk Committee is responsible for reviewing and recommending to the Board the principles underlying the capital planning process, as well as the Plan, itself, and the Board itself is responsible for approving the principles and the Plan. The Board is also responsible for holding the President accountable for

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technical standards on capital requirements for central counterparties, as on-shored into UK law following the end of the Brexit transition period.

<sup>4</sup> The Plan also serves as a recovery tool and would be part of ICE Clear Europe's overall recovery plan.

demonstrating adherence to ICE Clear Europe's capital policies and for reviewing and approving any capital transactions.

The Plan addresses the determination of the target capital amount in excess of the legal minimum capital requirement. ICE Clear Europe seeks to maintain excess capital above the threshold at which notification would be required to the Bank of England (which is generally 10% above the required capital level). In addition, ICE Clear Europe endeavors to maintain additional capital, on a voluntary basis, approximately equal to an additional 10% of the required capital level plus the 10% buffer referenced above.

The Plan also provides further detail as to the use of the capital replenishment tools referenced above in different default loss and non-default loss scenarios and related actions to be taken for each tool, including as to the key individuals and departments involved and approvals required, the estimated timing for various actions, relevant documentation requirements, the procedure for determination of the relevant amount of additional resources to be sought or applied from the relevant sources, and the process for consultation with Clearing Members and regulators, among other matters. Annexes to the Plan also set out relevant templates for documentation.

#### *Compliance with the Act and CFTC Regulations*

The Capital Replenishment Plan is potentially relevant to the following core principles: (B) Financial Resources and (O) Governance, and the applicable regulations of the Commission thereunder.

- *Financial Resources.* As set forth above, the Plan is designed to document procedures for replenishing capital, for both the Clearing House's own resources contribution to the guaranty funds and the EMIR capital requirements for the Clearing House. The Plan is intended to facilitate the continued operation of the Clearing House following a significant loss from one or more Clearing Member defaults or a non-default loss by replenishing needed financial resources. The Plan address replenishment to both the minimum legal capital requirements and the higher target level intended to provide additional resources as an operation buffer. The Plan thus supports maintenance of adequate financial resources to discharge the obligations of the Clearing House, both to cover its exposures with a high degree of confidence and to have sufficient resources to cover its operating costs, consistent with the requirements of Core Principle B and Commission Rule 39.11.
- *Governance.* The Plan identifies responsibilities of key ICE Clear Europe personnel, the Board and other stakeholders with respect to ongoing compliance with capital requirements and for capital replenishment when necessary. The Plan also provides for annual review by ICE Clear Europe's President, Finance Director, and Board to ensure that it remains up-to-date and is reviewed in accordance with the Clearing House's internal governance processes. ICE Clear Europe believes that the amendments are therefore consistent with the governance requirements of Core Principle O and CFTC Rule 39.24.

As set forth herein, the amendments consist of the Capital Replenishment Plan. 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 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@theice.com](mailto:George.milton@theice.com) or +44 20 7429 4564.

Very truly yours,

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

George Milton  
Head of Regulation & Compliance