



February 16, 2023

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 –
Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures

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 its Counterparty Credit Risk Policy (the “CC Risk Policy”) and Counterparty Credit Risk Procedures (the “CC Risk Procedures”) to make certain updates and clarifications.

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 revising the CC Risk Policy in order to provide that the Clearing House’s policies for monitoring counterparty credit risk apply to certain linkages with other institutions. ICE Clear Europe is also revising the CC Risk Procedures to make conforming updates in respect of links and to make certain other clarifications and enhancements.

¹ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the CC Risk Policy and CC Risk Procedures, as applicable.

Counterparty Credit Risk Policy

The amendments to the CC Risk Policy include as part of the description of the Clearing House's counterparty credit risk the risk that a "link" defaults, leaving the Clearing House to fund material contractual or operational arrangements. A definition of "link", based on the definition under relevant Securities and Exchange Commission rules applicable to registered clearing agencies (including ICE Clear Europe)² has been added. Conforming references to links have been added in relevant portions of the CC Risk Policy: the amendments add that an objective of the CC Risk Policy is to minimize the risk of the Clearing House realizing a material loss due to a link defaulting, and that a means by which the Clearing House achieves this objective is to identify, monitor and manage risks from links. The amendments also clarify the credit scoring with respect to links (which may use credit criteria other than those used with respect to Clearing Members ("CMs")) and provide that for link counterparties whose credit scores are worse than a required threshold, a mitigating action that the Clearing House may take is to change its usage of links.

Non-substantive drafting and formatting updates have also been made.

Counterparty Credit Risk Procedures

The CC Risk Procedures, which supplement the CC Risk Policy, have been updated to make conforming changes to those discussed above with respect to links, including as to including the risk of a link default as a type of counterparty credit risk that Clearing House seeks to manage. The amendments provide that in order to minimize counterparty credit risk, the Clearing House identify, monitor and manage material risks from links as well as ensure that all counterparty risks are eliminated prior to off-boarding counterparties.

The amendments remove a specific statement that financial service providers ("FSPs") must be legal entities in approved jurisdictions. Consistent with other ICE Clear Europe policies and current practice, the Clearing House legal department separately reviews and determines approved jurisdictions, and accordingly a reference to this process in the CC Risk Procedures is unnecessary. The amendments also add a specific reference to Anti-Money Laundering and Know-Your-Customer screenings. These amendments also state that agreements with FSPs are subject to review by the legal team, including analysis of legal risk relating to governing law and in that context jurisdiction. These changes are intended to more clearly reflect current practice of the Clearing House.

Similar to the changes in the CC Policy, the amendments revise the discussion of credit scoring to reflect that the Clearing House may use related credit criteria (as opposed to credit scores) to evaluate credit quality of counterparties. The amendments reflect the fact that different criteria may be appropriate for evaluation of the credit risks of FSPs and links, as compared to CMs. Conforming changes to refer to such related criteria are made where applicable in the CC Risk Procedures. Such evaluations will continue to be made daily as set out in the counterparty risk reviews section of the CC Risk Procedures and the related Counterparty Credit Risk Parameters ("Parameters") (notwithstanding removal of certain duplicative language in the discussion of credit

² 17 C.F.R. 240.17Ad-22(a)(8).

scoring). A statement that the CRS may incorporate exposure information reflecting the risk of the CM's portfolio held with the Clearing House (specifically, loss given default) or analyze exposure with reference to financial metrics is removed, to be consistent with changes to the relevant credit risk model used in determining CRS scoring (which does not consider such exposures).

The amendments provide that late submissions of quarterly financial statements by counterparties are communicated and escalated as set out in the Parameters. In the discussion of risk classification, the amendments provide that CMs who reach the Watch List Criteria are added automatically to the Watch List, and that the Watch List Criteria are set out in the Parameters. These updates are to ensure alignment between the Clearing House's risk management framework documentation, including the CC Risk Procedures and the Parameters.

In the section describing the Clearing House's counterparty credit risk monitoring, the amendments add that such monitoring and review includes monitoring for cross-exposures of CMs' affiliates (defined in the relevant Parameters as uncollateralized stress loss for clearing members, unsecured exposure for FSPs and estimate loss for purposes of links). Such continuous monitoring will, in addition to other sources, be based on credit scores and public news. The continuous monitoring will facilitate production of daily, rather than weekly, risk reviews. Other reviews of monitoring activity will continue to be carried out monthly and quarterly. The amendments also provide that review frequency and criteria in addition to findings and recommendations from the counterparty risk reviews will be approved based on the Parameters.

The amendments add to the discussion of the Clearing House's practices for monitoring its exposures to CMs that the Clearing House also monitors at least monthly credit cross-exposures among counterparties and their affiliates in all their capacities. These amendments are intended to reflect the expansive nature of the Clearing House's current risk management practices.

With respect to exposure limits and related capital calculations for purposes of CMs that are part of a Systemically Important Institution, the amendments will use the more specific definition of Systemically Important Institutions in the Parameters as an institution with assets greater than 200 billion Euros that is treated as a Globally Systemically Important Institution by the European Banking Authority. This replaces the previous, more subjective standard. A reference to the institution being in a robust legal jurisdiction has been removed as unnecessary in light of the revised definition and approach to AML/KYC and governing law review discussed above.

Non-substantive drafting and formatting updates have also been made.

Compliance with the Act and CFTC Regulations

The amendments to the CC Risk Policy and the CC Risk Procedures are potentially relevant to the following core principles: (D) Risk Management, (E) Settlement Procedures and (F) Treatment of Funds, and the applicable regulations of the Commission thereunder.

- *Risk Management.* The amendments to the CC Risk Procedures and CC Risk Policy are designed to more clearly document certain of the Clearing House's practices with respect to the management of counterparty credit risk and explicitly include references to losses from defaulting links (in addition to the existing references to losses resulting from defaulting CMs and losses resulting from the default of other FSPs). The amendments also generally enhance the Clearing House's policies and practices for monitoring and reviewing counterparty credit risk and related exposures, provide clear descriptions of such policies and processes, as well as align with other documents in ICE Clear Europe's overall risk management framework. In ICE Clear Europe's view the amendments thus enhance the overall risk management of the Clearing House. As such, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle D and Commission Rule 39.13.
- *Settlement Procedures.* The amendments would address provisions of the CC Risk Policy and CC Risk Procedures relating to counterparty credit risk for FSPs and links, which may include settlement banks used by ICE Clear Europe. The amendments will thus help ICE Clear Europe manage the risks, including credit risks, arising from the use of settlement banks. The amendments also address policies and practices for monitoring and reviewing settlement bank credit risk on an ongoing basis. As a result, ICE believes the amendments are consistent with Core Principle E and Commission Rule 39.14.
- *Treatment of Funds.* As discussed above, certain aspects of the CC Risk Policy and CC Risk Procedures that relate to counterparty credit risk for FSPs and links. As such, the amendments are intended to help the Clearing House manage and mitigate the risks arising from the custody and investment of cash provided by CMs and their customers. The amendments thus ensure that custodied assets are held in a manner which minimizes the risk of loss or of delay in accessing such assets, and that funds are invested in instruments with minimal credit, market and liquidity risks. The amendments are therefore consistent with the requirements of Core Principle F and Commission Rule 39.15.

As set forth herein, the amendments consist of the amendments to the CC Risk Policy and the CC Risk Procedures. 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 giulia.honorati@ice.com or +44 20 7429 7127.

Very truly yours,

A handwritten signature in black ink that reads "Giulia Honorati". The script is cursive and fluid.

Giulia Honorati
Regulation & Compliance Senior Manager