



February 18, 2021

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 –
Clearing Rule 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 Clearing Rules (the “Rules”)¹ discussed herein. 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 Part 12 of the Rules to implement certain account and settlement finality arrangements applicable to the settlement of Euro-denominated payments by the Clearing House through the European Union (“EU”) TARGET2 payment system.² Effective as of January 1, 2021, upon the exit of the United Kingdom from the EU, ICE Clear Europe has been recognized as a “tier 2” third-country central

¹ Capitalized terms used but not defined herein have the meanings specified in the Rules.

² TARGET2 is the real-time gross settlement system for Euro payments owned and operated by the Eurosystem (which consists of the European Central Bank and the national central banks of those countries that have adopted the Euro).

counterparty (“TC-CCP”)³ for purposes of the European Market Infrastructure Regulation (“EMIR”).⁴ Pursuant to Article 25(2b) of EMIR, a tier 2 TC-CCP is required, as a condition to such recognition, to open an overnight deposit account with the central bank of issue of the relevant currency. ICE Clear Europe currently has accounts with the Dutch component of TARGET2 (“TARGET2-NL”) operated by De Nederlandsche Bank (“DNB”), but will not be eligible to maintain such accounts after March 31, 2021. ICE Clear Europe therefore plans to establish an account with the European Central Bank (“ECB”) component of the TARGET2 system (“TARGET2-ECB”), which both ICE Clear Europe and the ECB wish to do in compliance with, and furtherance of, EMIR. The changes to Part 12 of the Rules facilitate the establishment and use of accounts with TARGET2 (including TARGET2-ECB)⁵ and address settlement finality with respect to payments made through such accounts in accordance with TARGET2 terms and conditions of operation.

Specifically, in Rule 1201, several new definitions are added. In addition to a definition for “TARGET2” (referencing the real-time gross settlement system owned and operated by the Eurosystem), new definitions are added for “TARGET2 Component System” (referencing the real-time gross settlement system of any central bank that is part of the TARGET2 system where the operator of such system is a Concentration Bank under the Rules), “TARGET2 Concentration Bank” (referencing a Concentration Bank under the Rules that is the operator of a TARGET2 Component System), “TARGET2 PM Account” (referencing a cash account of the Clearing House in TARGET2), and “TARGET2 Terms and Conditions” (referencing the terms and conditions that apply to participation in the relevant TARGET2 Component System). The definition of “Payment Transfer Order” is amended to add TARGET2 Payment Transfer Orders, as discussed below. Subsequent provisions of Rule 1201 are renumbered accordingly. It is contemplated that ICE Clear Europe’s account with TARGET2-ECB would constitute a TARGET2 PM Account and that the ECB would constitute a TARGET2 Concentration Bank for purposes of these Rules as amended.⁶ ICE Clear Europe intends to designate the ECB as a Concentration Bank under the Rules for these purposes.

In Rule 1202(a), a new clause (v) is added to provide that a Payment Transfer Order will arise and enter ICE Clear Europe’s designated system at the moment ICE Clear Europe’s TARGET2 PM Account is debited or credited with funds, pursuant to the

³ See European Securities and Markets Authority (ESMA) Public Statement of 28 September 2020, available at <https://www.esma.europa.eu/press-news/esma-news/esma-recognise-three-uk-ccps-1-january-2021>.

⁴ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; Commission Delegated Regulation (EU) 2020/1301 of 14 July 2020 Supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with respect to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States.

⁵ For such time as the TARGET2-NL accounts remain in operation, the changes to Part 12 will apply to such accounts as well.

⁶ Similarly, while they remain operational, ICE Clear Europe’s existing accounts with TARGET2-NL will constitute a TARGET2 PM Accounts and DNB will constitute a TARGET2 Concentration Bank. It is expected that after the TARGET2-ECB account has been opened, the TARGET2-NL account of ICE Clear Europe would be closed and DNB would cease to be a Concentration Bank.

Clearing House sending a SWIFT instruction to the TARGET2 Concentration Bank. Such a Payment Transfer Order would be defined as a “TARGET2 Payment Transfer Order.” Rule 1202(a)(iv), which addresses Payment Transfer Orders involving Clearing House bank accounts, is amended to exclude TARGET2 Concentration Banks (which is covered instead by the new clause (v)). Rule 1202(e)(ii), which addresses the amounts subject to a Payment Transfer Order, is amended to cover TARGET2 Payment Transfer Orders. Rule 1202(m), which specifies the parties subject to a Payment Transfer Order, is amended to add a new clause (iv) specifying that a TARGET2 Payment Transfer Order will have effect between the relevant TARGET2 Concentration Bank and the Clearing House. Subsequent provisions of Rule 1202(m) are renumbered accordingly.

In Rule 1203, a new paragraph (c) is added to provide that a TARGET2 Payment Transfer Order will become irrevocable at the earlier of (i) the moment the TARGET2 Payment Account is credited or debited or (ii) when or during the period in which any relevant payment settlement algorithm used in TARGET2 commences or is running. The approach is intended to be consistent with the point at which payment order becomes irrevocable under the TARGET2 Terms and Conditions. Subsequent provisions of Rule 1203 are renumbered accordingly.

Compliance with the Act and CFTC Regulations

The amendments to the Delivery Procedures are potentially relevant to the following core principles: (E) Settlement Procedures and (R) Legal Risk and the applicable regulations of the Commission thereunder.

- *Settlement Procedures.* As discussed above, the amendments accommodate ICE Clear Europe’s use of TARGET2-ECB accounts (and would also apply to the Clearing House’s use of TARGET2-NL accounts whilst they remain operational) for purposes of settling Euro payments through the TARGET2 system in central bank funds, consistent with the conditions of recognition for a tier 2 TC-CCP under EMIR. As such, ICE Clear Europe believes the amendments will facilitate settlement by the Clearing House of Euro payments and provide for settlement finality of such payments in accordance with the TARGET2 Terms and Conditions and are therefore consistent with the requirements of Core Principle E and Commission Rule 39.14.
- *Legal Risk.* As discussed above, the amendments permit ICE Clear Europe to have a central bank account for Euro payments in accordance with Article 25(2b) of EMIR, as applicable to ICE Clear Europe as a tier 2 TC-CCP. The amendments are, therefore, necessary and desirable to maintain ICE Clear Europe's status as a recognized TC-CCP under EMIR. The amendments also reduce the potential for conflicts between the settlement finality rules governing ICE Clear Europe's settlement system and those governing relevant TARGET2 components. The amendments will therefore further compliance with article 5(4) of EU Regulation 153/2013, as on-shored in the United Kingdom and as applicable in the EU, which requires a CCP to "identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risk resulting from such issues". As a result, the amendments

enhance the legal framework of the Clearing House in the UK and EU and address potential conflicts of law, and as such are consistent with the requirements of Core Principle R and Commission Rule 39.27.

As set forth herein, the amendments consist of the amendments to the Rules, a copy of which is attached hereto.

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 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 at the end.

George Milton
Head of Regulation & Compliance