



March 7, 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 Rule 40.6
– Delivery Procedures 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, amendments to its Delivery Procedures (the “Delivery Procedures” or “Procedures”)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 Limited (“ICE Clear Europe” or the “Clearing House”) is amending its Delivery Procedures (“Delivery Procedures” or “Procedures”) to add a new Part N2 thereto (“Part N2”), which will apply to certain ICE Futures Europe Deliverable Carbon Credit Contracts (together the “Contracts”), for which delivery will be made through a registry account of the Clearing House.

¹ Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

ICE Clear Europe will announce by Circular the specific Contracts to which Part N2 of the Delivery Procedures will apply. ICE Clear Europe currently expects that Part N2 will apply to all ICE Futures Europe physically deliverable carbon credit contracts.

Pursuant to Part N2, delivery under the Contracts, in the case of the Seller, will be effected upon the transfer of the relevant Carbon Credits from the Registry Account of the Seller into the Registry Account of the Clearing House and acceptance of the Carbon Credits by the Clearing House. In the case of the Buyer, delivery will be effected upon transfer of the relevant Carbon Credits from the relevant Registry Account of the Clearing House to the relevant Registry Account of the Buyer, and there will not be a prerequisite for the Buyer to accept the Carbon Credits. Part N2 will set out the Clearing House's ability not to accept a transfer from the Seller in the event the transferred carbon credits are not in accordance with the contract specifications. Delivery will take place during the Delivery Period for the relevant Contracts in accordance with the contract specifications, and neither delivery by Seller nor receipt by Buyer will require performance by the other to occur simultaneously.

The amendments set out relevant definitions related to delivery under the contract, including as to the underlying deliverable Carbon Credits. The amendments provide that the Carbon Credits must conform to the specification described in the Contract and the specifications of the Registry to and from which delivery may be made under the relevant Contract. The amendments further specify certain details of the delivery process for the Contracts including quantity, settlement price, and timing of cessation of trading.

The amendments state that the Contracts will be based on Open Contract Positions after expiration of the relevant Contract Set and the delivery process will occur over a three consecutive Business Day period. In addition, the amendments include delivery timetables with detailed timeframes and descriptions of the processes for delivery under Contracts. Such timetables set out, among other processes, the time for cessation of trading, provision of Buyer's and Seller's security, submission of delivery intentions, confirmation reports, confirmations of delivery position/expiry, payment by the Buyer, payment and return of delivery margin, Seller's delivery to the Clearing House, payment to Seller, and Clearing House delivery to the Buyer.

The amendments also address the responsibilities of the Clearing House and relevant parties for delivery under Contracts, as well as certain limitations of liability for the Clearing House. Specifically, the Clearing House will not be responsible for the performance or non-performance of, or any delay or error in performance by any Registry or Registry Operator; the compliance or lack of compliance of any Seller or Buyer or their respective Transferors or Transferees with any rules of the relevant Registry or any laws applicable to it; any errors in the Registry Account details entered into the relevant Registry systems or provided to the Clearing House by a Seller, Transferor, Buyer or Transferee in respect of a delivery; closure of any Registry Accounts; or the compliance with the contractual obligations owed to the Registry in respect of any Clearing House Registry Accounts, among other matters. Additionally, neither the Buyer or Seller will have any claim against the Clearing House for any loss, cost, damage or expense incurred or suffered as a result of the condition or operation of any Registry Operator.

The amendments provide details related to delivery contract security, which is the delivery margin to be provided by Buyer and Seller, and which will take into account the Finance Procedures. The Clearing House will retain the Seller's security until the full contract value is released to the Seller following the delivery timetables.

The amendments outline the use of the relevant Registry. Clearing Members will have to ensure their Transferors/Transferees have established the appropriate Registry Accounts at the relevant Registry for the Contracts in question and provide necessary instructions or confirmations to the Registry. Furthermore, Clearing Members taking delivery of the Contracts for their own account will be required to have established Registry Accounts in the relevant Registry for the Contract in question. In addition, it will be the responsibility of the Clearing Members to comply, and ensure their Transferors/Transferees also comply, with the rules, regulations and laws applicable to the Registry. The Clearing Members will also have to provide, and ensure their respective Transferors/Transferees also provide, correct Registry account details at all times.

The amendments also provide for the use of an Alternative Delivery Procedure ("ADP") in the event of a failure to transfer carbon credits in the manner and on the terms specified in the Contract. In such case, a Clearing Member may request agreement of the Clearing House to enter into an ADP to provide for delivery outside the terms of the Contract. In such case, settlement of the Contract will be dealt with in the manner specified in the ADP, and the affected parties and the Clearing House will be released from their rights and obligations in respect of the existing Contract. Any Clearing Member that enters in an ADP agreement will be deemed to have agreed to indemnify the Clearing House in respect of all and any of the Clearing House's costs, losses, charges and expenses incurred by the Clearing House in connection with the ADP. If a Clearing Member and the Clearing House are unable to enter into an ADP Agreement or effect delivery under an ADP within a reasonable time period after the failed delivery, the Clearing House may refer the matter to ICE Futures Europe and it will consider in its discretion what other reasonable next steps it should take, if any, under applicable exchange rules.

Compliance with the Act and CFTC Regulations

The amendments to the Delivery Procedures are potentially relevant to the following core principles: (C) Product Eligibility and (E) Settlement Procedures, and the applicable regulations of the Commission thereunder.

- *Product Eligibility.* ICE Clear Europe is adopting a new Part N2 of the Delivery Procedures to facilitate clearing of the Contracts, under which delivery will be made through a Registry Account of the Clearing House. The amendments set out delivery specifications for the Contracts as set forth herein. The Contracts are similar to carbon credit futures contracts that have been settled bilaterally rather than through a Clearing House Registry Account, and therefore ICE Clear Europe believes that its existing financial resources, risk management, systems and operational arrangements are

sufficient to support clearing of the Contracts (and to address physical delivery under the Contracts) and to manage the risks associated with the Contracts. As such, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle C and Commission Rule 39.12(b).

- *Settlement Procedures.* As discussed above, the amendments establish a new set of procedures applicable to the delivery and settlement of the Contracts through a Clearing House Registry Account. The procedures address, among other matters, delivery specifications, the obligations and roles of Clearing Members and the Clearing House, certain limitations of liability for the Clearing House, and certain other documentation and timing matters. Clearance of the Contracts will otherwise be supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately set out the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle E and Commission Rule 39.14.

As set forth herein, the amendments consist of the amendments to the Delivery Procedures, 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 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,



George Milton
Head of Regulation & Compliance