ICE CLEAR EUROPE

April 23, 2020

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Self-Certification Pursuant to Commission Rule 40.6 – Amendments to ICE Clear Europe Clearing Rules and 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, the amendments to its Clearing Rules (the "Rules"),[1] the Standard Terms contained in the annexes to the Rules, the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, FX Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures and General Contract Terms (collectively, the "Amended Documents") discussed herein. The amendments are to 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 submitting amendments to the Amended Documents that are intended to make a variety of improvements and changes, including (1) to enhance the customer documentation framework for Non-FCM/BD Clearing Members to facilitate default management by the Clearing House, (2) to adopt an "externalised payments mechanism" to facilitate making certain payments to and from Clearing Members outside of the standard net settlement process, (3) to make certain amendments to the variation and mark-to-market margin settlement process (and related calculations) in order to facilitate treatment of such margin as a settlement payment rather than collateral for purposes of Clearing Member capital calculations, (4) to revise certain

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



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provisions relating to option settlement to enhance clarity and reflect operational procedures, (5) to revise certain disciplinary and complaints procedures, (6) to add certain provisions relating to compliance with applicable U.S. tax requirements, (7) to make certain other default management enhancement and clarifications, (8) to update and clarify various aspects of the Delivery Procedures and (9) to make certain other drafting improvements and clarifications, in each case as described in further detail herein.

The text of the Rule and Procedure amendments is attached as exhibits hereto, with additions underlined and deletions in strikethrough text. The Rule and Procedure amendments are described in detail as follows.

(i)Customer Documentation Framework

Changes have been made to strengthen the legal foundations for the Standard Terms, which form part of the ICE Clear Europe customer documentation framework for Non-FCM/BD Clearing Members.[2] The existing Standard Terms promote post-default porting in the case of a Non-FCM/BD Clearing Member default through contractual provisions that bind Customers and Clearing Members. These provisions are designed to limit interference with the porting process and give additional comfort that margin is transferred by Customers to Clearing Members on terms that allow usage and porting of margin and positions. Purported close-out actions by the Customer against a defaulting Clearing Member prior to porting are also restricted, so that all terminations and re-establishments of cleared contracts occur at the same time and at the same price, reducing the possibility of valuation disputes or other claims that might prevent or reduce the likelihood of porting.

In order to enhance the Standard Terms framework, and in particular ICE Clear Europe's ability to rely on the Standard Terms so as to carry out default management and use margin without interference from claims by Customers of defaulting Clearing Members, ICE Clear Europe is making the following amendments:

Under existing Rule 202(b), Non-FCM/BD Clearing Members are required to ensure that the Standard Terms are contractually binding as between themselves and their Customers. As a further protection to support this requirement, Rule 202(b) will be amended to add an additional provision that Customers and Non-FCM/BD Clearing Members will be deemed to be bound by the Standard Terms through acceptance by conduct as a result of their continued use of the Clearing House. The change will provide an additional basis for certainty that the Standard Terms will apply as between the Customer and Non-FCM/BD Clearing Member, notwithstanding that a Non-FCM/BD Clearing Member had otherwise failed to obtain its Customer's agreement to the Standard Terms. ICE Clear Europe believes that this additional protection is a reasonable approach, in light of the Customer's choice to clear its transaction through the Non-FCM/BD Clearing Member at ICE Clear Europe, and given that the provisions

[2] The Standard Terms do not apply to FCM/BD Clearing Members and their customers.



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in question are published and referred to in ICE Clear Europe's customer disclosures under the European Market Infrastructure Regulation ("EMIR").[3]

Amendments to Rule 504(c) will extend Clearing Member warranties with respect to Permitted Cover to expressly cover all transfers of Permitted Cover to ICE Clear Europe (rather than merely the usage of Permitted Cover in accordance with the Rules) as not violating applicable law or third party rights or contractual obligations. This change will further enhance ICE Clear Europe's assurance that it can accept Permitted Cover without risk of interference from third party claims.

A change in Rule 102(o) will clarify that the Rules, together with the applicable Clearing Membership Agreement, and other documents listed in Rule 102(f) that are given contractual force pursuant to these Rules (other than the Standard Terms and Settlement and Notices Terms) form a contract between the Clearing House and each Clearing Member. (By contrast, the Standard Terms and Settlement and Notice Terms apply as between the Non-FCM/BD Clearing Member and its Customer.) Pursuant to the Standard Terms themselves, ICE Clear Europe will also benefit from the Standard Terms as a third party beneficiary under the UK Contracts (Rights of Third Parties) Act 1999.

In Rule 401(n), the words "at the same time as the Contract" will be added after the words "an opposite Customer-CM F&O Transaction shall arise between such Customer and Non-FCM/BD Clearing Member". The additional words are intended to clarify that the opposite Customer-CM F&O Transaction arises at the same time as the F&O Contract arises. In ICE Clear Europe's view, this timing is implicit in the current Rule, and so the amendment will not result in an actual change in the timing at which the Customer-CM F&O Transaction arises. ICE Clear Europe believes that the amendment is a non-substantive drafting improvement that will nonetheless improve the clarity of the Rules on this point.

In section 2 of each of the Standard Terms (CDS, F&O and FX), added drafting will make it clear that attempts by Customers or Non-FCM/BD Clearing Members to modify or disapply the Standard Terms are of no effect and that the Standard Terms cannot be overridden. The amendment will also provide that ICE Clear Europe is a third party beneficiary of the Standard Terms and may enforce them. This provision is intended to assist in promoting the consistent implementation of the Standard Terms, without modification, to govern the contractual relationships between Non-FCM/BD Clearing Members and their Customers.

In Section 3(b) of each of the Standard Terms, the change will remove the reference to transactions arising (as between Non-FCM/BD Clearing Member and Customer) "at the Acceptance Time" and replaces this with a reference to CDS transactions arising (as between the Non-FCM/BD Clearing Member and Customer) "as set out in Part 4 of the Rules". This change is necessary as a drafting matter, since the term "Acceptance Time" is not defined in the Rules. In addition, the cross-reference to Part 4 of the Rules is appropriate because Part 4 contains various provisions dictating how contracts and

[3] 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.



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transactions arise pursuant to the Rules, rather than solely dictating the time at which a contract is deemed to be formed.

In Section 4(b) of each of the Standard Terms, the change is intended to: (a) clarify the Customer's consent for margin to be used by the Non-FCM/BD Clearing Member consistent with its obligations, representations and warranties under the Rules; (b) provide that the Customer makes substantially equivalent representations, warranties and acknowledgments with respect to collateral posted by the Non-FCM/BD Clearing Member to the Clearing House with respect to the relevant Customer Account; (c) provide further assurance that, if any perfection or other formalities are required for ICE Clear Europe to use the collateral originating with the Customer, as ICE Clear Europe is entitled to do so under the Rules, ICE Clear Europe is able to instruct the Customer to take such additional steps; and (d) limit Customer assertions that such collateral is subject to encumbrances in favor of the Customer. The amendments are collectively designed to provide additional clarity to the Clearing House as to its ability to use collateral ultimately provided by a Customer, including to cover default losses and to provide for porting of the Customer's positions in case of the relevant Non-FCM/BD Clearing Member's default, in each case to the extent permitted by the Rules, and mitigate the risk of any Customer or third party claims with respect to such collateral that may interfere with such uses.

In Section 5(c) of each of the Standard Terms (and related changes at Rule 202(b)(iii)), ICE Clear Europe is clarifying its approach to the use of automatic early termination in client clearing documentation of Non-FCM/BD Clearing Members. It has come to ICE Clear Europe's attention that some EU Non-FCM/BD Clearing Members may use automatic early termination provisions in their client clearing documentation even though Rule 202(b)(iii) (as currently in force) generally prohibits this. In that case, such Clearing Member-Customer clearing agreements may not adequately support porting to the extent legally possible. To reduce risks related to such situations, the prohibition on including automatic early termination provisions in Clearing Member-Customer documentation in Rule 202(b)(iii) will be removed and a new section 5(c) of the Standard Terms will be introduced instead. The new section 5(c)(ii) will disapply automatic termination provisions for contracts cleared at ICE Clear Europe (with an exception for parties incorporated in Switzerland[4] or other jurisdictions designated by the Clearing House) and new section 5(c)(i) will instead provide for the suspension of performance under the Customer-Clearing Member Transaction until the corresponding cleared Contract is terminated or the relevant payment date for the net sum owed between the Customer and Non-FCM/BD Clearing Member following termination has occurred. The suspension of performance provides similar economic protections for Customers as compared to automatic termination (as the Customer will not be obligated to make payments to a defaulting or insolvent Non-FCM/BD Clearing Member) but does not expose ICE Clear Europe to the risks of inconsistent timing or valuation between the Customer-Clearing Member Transaction or expose Customers to the risks of their positions being not portable due to automatic termination of the Customer-Clearing Member Transaction. Section 5(c)(iii) will provide that even if,

[4] The exception for Switzerland reflects the fact that such jurisdiction is the only Clearing Member jurisdiction for which automatic early termination is recommended for derivatives by the International Swaps and Derivatives Association, Inc. ("ISDA").

notwithstanding the other provisions of the Standard Terms, automatic early termination of the Customer-Clearing Member transaction occurred, the provisions of the Standard Terms relating to calculation of termination values and portability will apply with necessary modifications.

(ii)Externalised Payments Mechanism

A number of changes have been made to the Rules and Procedures to introduce a new "Externalised Payments Mechanism" alternative for certain cash flows. Under the Externalised Payments Mechanisms, mark-to-market or variation margin payment flows or certain other payment flows (including potentially, for example, clearing house and exchange fees), between ICE Clear Europe and the relevant Clearing Member can, at the option of the Clearing Member, not be netted in the same way as under the standard approach (referred to in the amended Rules as the "Standard Payments Mechanism"). The introduction of a payments mechanism under which such amounts exchangeable between ICE Clear Europe and a Clearing Member are not netted has been requested by CDS Clearing Members, some of which wish to align payment flows more closely with those in the OTC markets or under their Customer documentation. The various changes made to implement the Externalised Payments Mechanism are described in more detail as follows:

New defined terms "Standard Payments Mechanism" and "Externalised Payments Mechanism" is being added in Rule 101, which will cross-refer to the full definitions of these terms in Rule 302(a). Changes to Rule 302(a) will clarify that the current provisions regarding the calculation of a net amount payable by or to ICE Clear Europe in respect of each Account are part of the Standardised Payments Mechanism. In addition, new language is being added to confirm that the Standard Payments Mechanism will apply unless the Clearing House has agreed that the Externalised Payments Mechanism applies to a particular kind of cash payment, account and Clearing Member. The definition of Externalised Payments Mechanism is being added at the end of Rule 302(a). This definition provides that the Externalised Payments Mechanism is an alternative payments mechanism available to Clearing Members who elect to use it, provided that ICE Clear Europe agrees to such usage in relation to particular accounts. The definition also clarifies that the Externalised Payments Mechanism can only be used for certain Margin and other cash payments as specified in the Finance Procedures. The effect of using the Externalised Payments Mechanism in respect of cash payments is that payments will be settled pursuant to a separate cash flow process at a separate time from that under the Standard Payments Mechanism.

Various conforming changes are being made throughout the Rules and Procedures to reflect the introduction of the Externalised Payments Mechanism and the different processes applicable where payments are settled under the Externalised Payments Mechanism. In Rule 301(f), amendments clarify which provisions set out under that paragraph are only applicable to (a) payments made under the Standard Payments Mechanism or (b) payments made under the Externalised Payments Mechanism. Other amendments of a similar nature are being made to Rules 110(g), 303(a) and 1902(h)(i).

A number of changes are also being made to the Finance Procedures to implement the Externalised Payments Mechanism. Paragraph 6.1(b) is being amended to clarify that



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cash payments between ICE Clear Europe and a Clearing Member (including Margin) may only be set off and consolidated where the Standard Payments Mechanism is used.

In paragraphs 6.1(i)(i) and (ii), new language is being added to explain the effect of the Externalised Payments Mechanism on payment flows, namely that "cash payments will be settled through a separate cash flow and not included in a combined overnight call or return as would apply under the Standard Payments Mechanism". Paragraph 6.1(b) will provide that Clearing Members are able to elect for upfront fees, Mark-to-Market Margin, FX Mark-to-Market Margin, Variation Margin or other payments to be dealt with using the Externalised Payments Mechanism, subject to the written consent of ICE Clear Europe. It is expected that the process will principally be used for Mark-to-Market Margin. Further, in paragraph 6.1(i)(vii), a drafting change is being made to clarify that other amounts payable by a Clearing Member to ICE Clear Europe (or vice versa) will be included within an end-of-day or ad hoc payment under the Standard Payments Mechanism. Paragraph 6.1(i)(vii) is also expanded to reference certain other types of payments under the Rules and Procedures (including option premiums corporate action payments for delivered investments under certain Financials & Softs Contracts, amounts resulting from reduced gain distributions, product terminations and non-default losses) as includible in end-of-day or ad hoc payments under the Standard Payments Mechanism.

A new paragraph 6.1(i)(viii) will address the applicability of the Externalised Payments Mechanism in circumstances where certain payments are being made under Part 9 of the Rules (Default Rules), including Margin Adjustment Amounts in connection with reduced gain distribution under Rule 914, Product Termination Amounts in connection with product termination under Rule 916 and Collateral Offset Obligations under Rule 919. Specifically, where the Externalised Payments Mechanism applies to variation or mark-to-market margin payments, the Clearing House can net Margin Adjustment Amounts against payments under the Standard or Externalised Payments Mechanism, at the Clearing House's discretion. Similarly, the Clearing House may choose to net or aggregate Product Termination Amounts with payments under the Standard or Externalised Payment Mechanism, at its discretion. Payments of Collateral Offset Obligations, assessments and Guaranty Fund contributions and replenishments are being made under the Standard Payment Mechanism unless otherwise directed by the Clearing House. In addition, paragraph 6.1(i)(ix) (as renumbered) is being amended to clarify that additional original or initial margin requirements as a result of the payment of variation margin or mark-to-market margin in a different currency from the contractual currency (as a result of a currency holiday) is being collected via the Standard Payments Mechanism, regardless of whether the Externalised Payments Mechanism applies to the relevant variation or mark-to-market margin payment in question.

(iii) Clearing Member Capital Requirements and Settlement to Market Amendments

Certain changes are being made to the Rules and Procedures to reflect requirements under the EU Capital Requirements Regulation (the "CRR").[5] In Rule 101, the defined

[5] Regulation (EU) No 575/2013.



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term "Capital" will be revised to remove outdated references to the EU Banking Consolidation Directive, which is no longer in force. This directive, which set out the capital requirements framework for EU banks and broker-dealers, was replaced and superseded by the CRR and Capital Requirements Directive (together referred to as the "CRD IV" package). Related to this, new definitions of "Capital Requirements Directive" and "Capital Requirements Regulation" will be introduced to replace the outdated "Banking Consolidation Directive" definition (which will be deleted).

In addition, ICE Clear Europe is amending the Rules to provide more clearly for the characterization of Clearing Members' exposures for cleared derivatives under Article 274(2)(c) CRR as "settled to market" (as opposed to "collateralized to market"). For the Article 274(2)(c) treatment to be available, Variation Margin or Mark-to-Market margin must be characterized as a cash payment "to settle outstanding exposure following specific payment dates",[6] rather than as collateralizing the exposure. The amendments do not change the manner in which Variation Margin or Mark-to-Market Margin is calculated, or other current operational practices. Rather, the amendments consist of revisions to terminology and other drafting changes to clarify the legal characterization that payments of Variation Margin and Mark-to-Market Margin represent settlement payments rather than collateral payments for purposes of the CRR, as requested by Clearing Members.

With respect to settlement to market, changes have been made to the defined terms "Margin", "Mark-to-Market Margin" and "Variation Margin" to more accurately and certainly characterize such margin as settlement payments, so that the relevant exposures more clearly benefit from the settlement to market treatment under Article 274(2)(c) CRR. In the defined term "Margin", changes are to be made to the language in parentheses to confirm that Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin are all "provided to or by the Clearing House by outright transfer of cash as a settlement payment". The defined term "Mark-to-Market Margin" currently refers to such margin being provided "by way of title transfer pursuant to a Clearing Membership Agreement or Sponsored Principal Clearing Agreement or[…]by way of a pledge pursuant to a Pledged Collateral Addendum". This is being replaced with clear language denoting that such margin will be provided "by way of outright transfer of cash as a settlement payment". Similarly, the definition of "Variation Margin" is being updated to clarify that the cash required to be provided or actually provided by a Clearing Member is "by way of outright transfer of cash as a settlement payment".

The defined term "Original Margin" is being amended to move the words ", but excluding in any case Variation Margin" to the end of the definition. This is a drafting change to ensure that Variation Margin is excluded from the entirety of this definition, as the definition generally concerns Permitted Cover provided as collateral.

In various places throughout the Rules and Procedures, amendments will remove all references to the term "deposit" in the context of this being a word to describe the transfer of cash variation or mark-to-market margin. This, and similar terms, are being replaced with terms that are more consistent with a settlement payment characterization of margin, such as "transfer". The amendments will not reflect a change in actual

[6] CRR, Article 274(2)(c).



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operational practice. These changes also more accurately reflect ICE Clear Europe's role in receiving cash payments under title transfer and its regulatory status as a central counterparty ("CCP") which is not a bank or credit institution.[7] The changes fall into the following types and are being made in relation to the provisions of the Rules and Procedures noted below:

(a) Removal of the term "deposit" (or a derivation thereof) from existing drafting where a suitable alternative term (such as "transfer") is already present: Rules 101 (definition of "Monetary Default"); 110(b); 110(c); 110(e); 204(a)(vi); 208(b)(iii); 919(e) and paragraph 4.2 of the Membership Procedures (section B, row 1 of the table);

(b) Replacing the word "deposit" (or a derivation thereof) with the word "transfer" (or a derivation thereof): Rule 102(q); 1602(a); 1602(b); 1602(c); 1602(d); 1605(i); 1804(b); 1806(a); paragraphs 3.3(b), 3.7, 3.8, 3.32, 6.1(f), 6.1(g), 10.4, 10.5 and 10.12 of the Finance Procedures (in 3.3(b), 3.7 and 3.32 the words "[from/to] the Clearing House" are also added as a drafting improvement); and

(c) Similar drafting changes to achieve the same effect are made in Rule 202(a)(xi) (replacing the words "for the deposit of funds in Eligible Currencies and the deposit of securities required to be transferred to and from the Clearing House" with the words "for the purposes of cash transfers to and from the Clearing House in Eligible Currencies"; Rule 1103(b) (replacing the words "pledged to or deposited with" with "transferred to"); Paragraph 3.26 of the Finance Procedures (replacing the words "on deposit" with the words "upon completion of the relevant transfer to the Clearing House"); Paragraph 10.17 of the Finance Procedures (replacing the words "confirmation of deposit" with the words "confirmation of completion of the relevant transfer"); and Paragraph 11.1 of the Finance Procedures (replacing the words "All transactions to deposit or withdraw" with the words "All transactions including each transfer to or withdrawal").

In Rule 505, changes are made to clarify that settlement payments (including payments of Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin) are excluded from constituting financial collateral within the scope of the UK Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral (the "FCD")). These changes reflect feedback received by ICE Clear Europe from some Clearing Members and are to ensure consistency with the characterization of such payments as contractual payments settling derivatives liabilities and not as collateral, as described above. In addition, the word "collateral" in the last sentence is being replaced with the more general term "such assets". This links the clause back to statutory definitions more clearly, since only collateral of certain types (essentially "cash" and "financial instruments") are covered by the FCD and, for example, gold collateral accepted by ICE Clear Europe is not.

A new concept of "CDS Price Alignment Amount" is being added. Pursuant to Rule 1519(e), a daily payment in respect of CDS Price Alignment Amounts is being required

[7] In this regard, ICE Clear Europe does not keep payments it receives on deposit for its customers, nor does it engage in the regulated activity of deposit-taking in the UK, for which a banking license is required.



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on each Business Day. The CDS Price Alignment Amount will be economically equivalent to the price alignment "interest" that ICE Clear Europe currently pays or charges a CDS Clearing Member with respect to net Mark-to-Market Margin transferred between the parties. Since the term "interest" may be more typically associated with collateral, ICE Clear Europe will refer to such amounts as CDS Price Alignment Amounts to avoid confusion over the characterization of Mark-to-Market Margin as settlement payments. Correspondingly, references to interest on Mark-to-Market Margin are being removed in the CDS Procedures, as discussed below. The definition of CDS Price Alignment Amount is being added in Rule 1501(h), which cross-refers to the definition in the CDS Procedures as made to be amended (discussed below).

Although FX clearing has not yet been launched, similar changes are being made to relevant FX clearing provisions to maintain consistency throughout the Rules. The defined term "FX Mark-to-Market Margin" will be amended to clarify that Permitted Cover is being provided "by way of outright transfer as a settlement payment". This change is intended to support the characterization of mark-to-market margin as a settlement payment. There is also a small drafting tweak within this definition to clarify that the relevant Procedures are the FX Procedures. The defined term "FX Mark-to-Market Interest" will be deleted and replaced with a new defined term of "FX Price Alignment Amount". The deleted definition currently refers to "interest calculated by reference to the FX Mark-to-Market Margin Balance". The new definition of "FX Price Alignment Amount" instead refers to "a price alignment amount calculated by reference to the relevant FX Notional Margin Balance", which avoids any reference to interest (or a similar concept) for the reasons discussed above. Similarly, amendments to the defined term "FX Mark-to-Market Margin Balance" are being made so that references to FX Mark-to-Market Margin being "delivered" by a Clearing Member or ICE Clear Europe are replaced with references to such margin being "transferred" and it is clear that that FX Mark-to-Market Margin is a settlement payment. It is also intended that the definition be renamed "FX Notional Margin Balance", with the word "notional" being added within the definition, to ensure that the FX Price Alignment Amounts are regarded as using the mark-to-market margin merely as a notional sum to calculate the relevant amount, rather than such amounts constituting an interest or an interest-like return on deposited assets. The addition of the words "(notwithstanding that FX Mark-to-Market Margin is a settlement payment)" within the definition further supports a settlement payment characterization.

Rule 1703 will be amended to reflect the replacement of the current defined term "FX Mark-to-Market Interest" with the new defined term "FX Price Alignment Amounts", as discussed above. The heading of the rule will be updated to reflect the new defined term and the words "an amount in respect of FX Mark-to-Market Interest" are to be replaced with the term "FX Price Alignment Amount". Additional language to be added after this amendment will expressly confirm in the Rules that payment of the FX Price Alignment Amount must be made on each Business Day in accordance with the FX Procedures. In the FX Procedures themselves, amendments are being made to paragraph 7.2 to reflect the replacement of "FX Mark-to-Market Interest" with "FX Price Alignment Amounts" and the replacement of "FX Mark-to-Market Margin Balance" with "FX Notional Margin Balance". These include replacing the old defined term with the new defined term and adding additional language to remove any



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interpretative doubt that "FX Mark-to-Market Margin is a settlement payment". Headings and the table of contents are to be updated accordingly.

In the Finance Procedures, a new paragraph 2.3 is being added which confirms explicitly that Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin are transferred to and from ICE Clear Europe by way of outright cash transfer and that no such margin will be subject to any pledge under the Rules or Procedures, or the requirement in Rule 1603(c) for Margin provided by an FCM/BD Clearing Member in respect of a Customer Account to be in the form of Pledged Collateral. As with the various changes set out above, this clarification is being added to ensure that Margin provided by way of outright cash transfer is characterized as a settlement payment, so that the settlement to market treatment can be applied.

Changes are also being made in paragraph 6.1(i)(i) of the Finance Procedures to refer to the "resulting settlement payments" from Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin calls, to support the characterization discussed above. Additional language is being added to explain that once settlement payments resulting from daily margin calls have been paid in cleared funds, the valuation of the Contracts is reset to zero. This is consistent with the requirements of settlement to market treatment under Article 274(2)(c) CRR, which requires that contracts "are structured to settle outstanding exposure following specified payment dates and where the terms are reset so that the market value of the contract is zero on those specified dates ". A drafting change is also being made in this paragraph to clarify that the standard process will be for adjustments to margin requirements to be calculated, and payments to be executed, in the currency of the relevant Contracts, but leave it open for payments to be made in a different currency.

Similarly, paragraph 6.1(i)(iv) of the Finance Procedures is being amended so that it addresses the payment of price alignment amounts in relation to variation margin separately from interest payable on initial margin. Language that previously referred to interest being payable on variation margin is being deleted and new language is being inserted confirming that price alignment amounts instead fall payable as further detailed in the relevant Procedures for the Contract in question. The heading to this provision is being updated accordingly.

In the CDS Procedures, new defined terms of "CDS Price Alignment Amount" and "CDS Notional Margin Balance" are being added in paragraph 1, which are intended to replace the terms "Mark-to-Market Interest" and "Mark-to-Market Margin Balance" respectively. "CDS Price Alignment Amount" describes amounts paid with reference to Mark-to-Market Margin as price alignment amounts calculated daily "by applying the applicable overnight rate" to the CDS Notional Margin Balance. The CDS Notional Margin Balance is defined as a notional sum based on the aggregate amount of transferred Mark-to-Market Margin, to be consistent with the characterization of the Mark-to-Market Margin as a settlement payment.

Further to these changes, paragraph 1 of the CDS Procedures will be amended to replace the defined term "Daily Aggregate MTM Interest Amount", with a new defined term "Daily Aggregate CDS Price Alignment Amount". Instances of usage of the terms "Mark-to-Market Interest", "Mark-to-Market Margin Balance" and "Daily Aggregate



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MTM Interest Amount" will also be replaced with the new defined terms "CDS Price Alignment Amount ", "CDS Notional Margin Balance" and "Daily Aggregate CDS Price Alignment Amount" respectively. Similar changes are being made in paragraphs 3.1 and 3.3 of the CDS Procedures.

(iv)Enhancement of Settlement for Option and Futures

Various changes are being made to the Rules and Procedures to clarify certain provisions relating to Options cleared by ICE Clear Europe, including use of terminology and other drafting improvements, and to address more clearly the concept of "net liquidating value". As discussed herein, the changes are in the nature of drafting clarifications and improvements following an internal legal and operational review of the relevant provisions. The amendments are also intended to harmonize drafting of similar provisions across certain affiliated ICE futures clearing organizations.

A number of changes are being made to the definitions in Rule 101 with the aim of clarifying, improving and harmonising the drafting of terms used in the Rules to refer to concepts applicable to both Futures and Options. The definition of "Deliverable" will be updated to reflect the fact that the term is used not only in relation to property deliverable under F&O Contracts, but also in relation to the calculation of settlement amounts. The words "or with respect to which settlement amounts are calculated" are to be added at the end of the definition to clarify this point. The term "Reference Price" in relation to Options is being removed from the Rules and replaced with "Exchange Delivery Settlement Price". The definition of "Exchange Delivery Settlement Price" is being updated to clarify that it also applies to Options, through addition of a cross-reference to the option settlement price determination procedure under Rule 802. These changes, and conforming changes throughout the Rules, are intended to simplify and clarify the drafting of the Rules around option settlement (and are not intended to materially change the operational process for such settlement). Other non-substantive drafting clarifications are also being made to the definitions of "Put", "Set" and "Short".

A number of similar drafting clarifications and related changes have been made to Part 8 to ensure that provisions set out thereunder clearly and accurately describe relevant settlement processes in relation to Options. Rule 802 is being amended to reflect the replacement of the term "Reference Price" with the term "Exchange Delivery Settlement Price" to refer to the settlement price of an Option. Changes are also being made to Rule 802 to better describe the processes surrounding determination and publication of the Exchange Delivery Settlement Price in relation to Options on the basis of data provided or published by the relevant Market. The preamble to Part 8 is being amended to refer to F&O Contracts "that are Options", rather than F&O Contracts generally (which include Futures, which are outside the scope of Part 8).

Moreover, changes are being made to Rule 809(d) to provide flexibility for the Clearing House, in a scenario where it directs a Clearing Member to make delivery of a Deliverable in settlement of an option directly to another Clearing Member (rather than to the Clearing House) in accordance with that Rule, to also permit payments to be made directly between such parties rather than to and from the Clearing House.



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Changes are being made in Rule 810(d) to reflect the replacement of the term "Reference Price" with the term "Exchange Delivery Settlement Price" for Options, and to clarify the cash settlement price for an Option will be determined using the Exchange Delivery Settlement Price "on the day of settlement or exercise". In addition, the amendment provides that all outstanding premium payments must have been made in relation to the relevant set of Options (in addition to Margin payments) in order to receive cash settlement. This change is being made to more clearly describe relevant Clearing House operational practices and processes (and is not intended to alter those practices and processes).

Similar provisions related to Futures are also being updated for consistency. Rules 701 to 705 is being amended to ensure that the provisions relating to (a) the determination of the Exchange Delivery Settlement Price for Futures, (b) the processes for cash settlement and physical settlement, and (c) the number of Contracts by reference to which settlement and delivery obligations are calculated all reflect operational practice. As with the changes described above in Rule 802, the changes to Rule 701 more clearly describe the processes surrounding determination and publication of the Exchange Delivery Settlement Price in relation to Futures on the basis of data provided or published by the relevant Market (and are not intended to result in a change in those processes). While the existing Rules currently describe these processes, the amendments are intended as drafting improvements to better ensure that the description is clear. In Rules 702(b) and 705(a), the words "Without prejudice to any contractual netting under Rule 406 or the Clearing Procedures" are being added. Under Rule 406, contractual netting may be applied to offsetting positions in respect of one of a Clearing Member's Customer accounts even though such positions are ordinarily held gross. The additional language clarifies that while cash settlement and delivery amounts are determined for Customer Accounts based on gross positions under Part 7, this does not preclude contractual netting of positions where provided for under Rule 406 or the Clearing Procedures (including contractual netting within the positions of a particular Customer of a Clearing Member). The change is intended to avoid any potential questions as to whether there might otherwise be a conflict between Part 7 and Rule 406. In Rule 702(c), changes are being made to clarify the method of determining the amount payable for cash settlement of a Future. The amended language confirms that the relevant amount is based on the price at which Open Contract Positions were last recorded on ICE Clear Europe's books and the Exchange Delivery Settlement Price (and not necessarily the difference between these two prices), in any case as provided in the applicable Contract Terms. In addition, in Rule 703(a), a clarification is being added that a Market may administer matters or exercise rights on behalf of ICE Clear Europe pursuant to Rule 703 and the Delivery Procedures. This reflects the fact that Markets are typically involved in the delivery process for Futures and may carry out functions otherwise specified to be discharged by ICE Clear Europe pursuant to the Rules or Procedures.

In Rule 703(f), a parallel change for Futures is being made to that described above in Rule 809(d) for options, to provide flexibility for the Clearing House, in a scenario where it directs a Clearing Member to make delivery of a Deliverable in settlement of an option directly to another Clearing Member (rather than to the Clearing House) in accordance with that Rule, to also permit payments to be made directly between such parties rather than to and from the Clearing House. Changes are also being made to



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Rule 703(h) to provide that both legs (not just one side) of a Contract in delivery may be subject to mandatory cash settlement directions in the case of Clearing Member default. This will facilitate management of such a default by the Clearing House, and avoid need for the Clearing House itself to make or take delivery of the underlying asset. Finally, a new Rule 703(j) is being added to require Sellers to represent that they convey good title to products (free of encumbrances) when physical settlement takes place. This is consistent with market expectation around deliveries, consistent with any other deliveries made of such products in the relevant cash markets.

A change is being made to Rule 906(a) to refer to the "abandonment" of an Option in addition to the "exercise" of an Option in subparagraph (iii) under the description of "L", one of the variables in the net sum calculation. This change is being made because abandoning an Option could also affect the aggregate amount payable by or to a defaulting Clearing Member in respect of positions recorded in a given account and such impact should be taken into account in addition to the impact of any exercise of an Option.

Various changes have been made in the Clearing Procedures to reflect the use of the Exchange Delivery Settlement Price for Options (which replaces the "Reference Price") and provide greater detail on the calculation and application of net liquidating value for an Option ("NLV"). Paragraph 4.4(c) is being amended to clarify that NLV is being calculated on each Business Day based on relevant Exchange Delivery Settlement Prices. The new language also confirms that for long Option holders, a positive NLV amount is being applied against the requirement for Original Margin, and that for short Option holders, negative NLV contributes to the requirement for Original Margin. This approach reflects current practice for calculating margin requirements, but is not currently stated explicitly in the Procedures. Moreover, the amendments in paragraph 4.4(c) confirm that where a gross margin model is used for a particular account, NLV is being held on a gross basis without any setting off between different Customers interested in the account. Paragraphs 5.1, 5.5(a) and 5.6 of the Clearing Procedures are also to be amended to reflect the replacement of the Reference Price with the Exchange Delivery Settlement Price for Options.

Several other changes are also being made to the Clearing Procedures to better reflect the processes and terminology used in relation to Options. Paragraph 5.2(d) is being amended to specify that it only applies in relation to Options "whose Deliverable is a Future Contract". This provision specifies that where such Options are exercised a Contract at the Strike Price will arise in accordance with Rule 401, and such Contract will only arise if the Deliverable under the Option Contract is a Future (as opposed to a security). Changes are also being made to paragraph 5.7(a) to cross-reference the operation of automatic exercise (as applicable), as described in paragraph 5.5 of the Clearing Procedures, as relevant to determining whether elective exercise and/or abandonment of Options on the relevant expiry day is permitted.

In the General Contract Terms, paragraph 3.1(b) is being amended to reflect changes to defined terms and other relevant terms relating to settlement prices for Contracts (including replacement of "Market Delivery Settlement Price" and "Reference Price", with "Exchange Delivery Settlement Price").



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(v)Complaints and Disciplinary Processes

Various changes are being made to Part 10 of the Rules and to the Complaint Resolution Procedures to streamline and improve ICE Clear Europe's complaints and disciplinary processes. Many of the changes are drafting improvements and other enhancements following a detailed internal review at both ICE Futures Europe and ICE Clear Europe, based on lessons learned from the practice of previous complaint and disciplinary processes, especially at the exchange level where such processes occur more regularly.

Changes have been made to Rule 1001(d) to ensure that the scope of the Complaint Resolution Procedures extends to complaints against Directors, committees and any individual committee members of ICE Clear Europe. Current Rule 1001(d) currently only expressly applies to officers and employees of ICE Clear Europe. ICE Clear Europe did not intend to exclude directors and committees from the scope of the Complaints Resolution Procedures, and believes it is appropriate and beneficial for Clearing Members and other market participants to include such persons explicitly in the coverage of those procedures.

Drafting improvements are being made to Rule 1002 to improve the clarity of the provisions governing investigations into breaches of the Rules. These changes involve clearer language in certain places to aid readability and also inserting language in Rule 1002(c) to ensure that ICE Clear Europe's advisers treat not only information obtained in the course of the investigation as confidential, but also information that the advisers have been given access to. Changes have also been made to Rule 1002(d)(iv) to require a Clearing Member, as part of their cooperation with an investigation, to provide access to documents and materials in its possession at the direction of the Clearing House (in addition to the making such documents or materials available for inspection).

Rule 1002(e) will be amended to clarify that non-compliance with an investigation can lead to additional disciplinary action being brought against a Clearing Member. This provision currently specifies that failure to co-operate with an investigation would constitute a breach of the Rules, but the added language specifies that non-compliance is capable of giving rise to separate and/or additional disciplinary action in accordance with Part 10 of the Rules (including by amendment of the Notice of alleged breaches pursuant to Rule 1003(i)). Certain typographical corrections and clarifications are being made in Rule 1002(f) and (g), and Rule 1002(g) is also being amended to clarify that initial meetings following service of a Letter of Mindedness is being conducted in private.

Changes to Rule 1002(h), in the context of investigations, clarify that the initial findings to be communicated to the Clearing Member in writing must also be accompanied by an indication of the intended steps to be taken under Rule 1002(i) (for example, discontinuing the investigation or commencing disciplinary proceedings). The Clearing House will also be required to provide certain notices to the Clearing Member of the acts or practice which it has been found to taken, the relevant provisions breached and the sanctions to be taken. Similar changes have also been made to Rule 1003 in relation to different stages involved in disciplinary proceedings and to section 1 of the Complaint Resolution Procedures.



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Rule 1002(i) is being amended to better clarify certain of the steps that ICE Clear Europe may take following the communication of its initial findings to a Clearing Member, as set out in clauses (i)-(vii). In clause (v), the amendments specify that the Clearing House may refer a matter for further inquiry by the Clearing House, a Market or Governmental Authority, where the Clearing House considers it necessary that the matter be investigated further. Clause (vii) is being revised to add a reference to written comments that may be received from the Clearing Member following the service of the Letter of Mindedness under Rule 1002(g). Certain typographical corrections are also being made in Rule 1002(i). A new subclause (viii) is also being added to state expressly that ICE Clear Europe may take a combination of the actions listed.

Various amendments made to Rule 1003 enhance and clarify the process for disciplinary proceedings. The changes reduce unnecessarily complex drafting, describe the various steps involved in the disciplinary process in more detail (similar to those changes being made to Rule 1002(h) in the context of investigations) and specify further the timing by which certain actions must be taken. Specifically, in Rule 1003(b), the amendments require notice to the Clearing Member in writing that disciplinary proceedings are to be commenced and state explicitly that the Clearing House will appoint the chairman and members of a disciplinary panel. Revised Rule 1003(c) establishes that the Clearing Member subject to the proceeding be notified of the composition of the Disciplinary Panel within seven calendar days and then have ten further calendar days to object in writing to any particular appointment. Other changes include specifying, in further detail in Rule 1003(p), what information the Disciplinary Panel must communicate (to ICE Clear Europe and the relevant Clearing Member) once a decision has been made as to whether a breach of the Rules has been proven (following a hearing). This includes, for example, the rationale for the Disciplinary Panel's decision, details of the breach of the Rules and any sanctions to be imposed. The amendment further clarifies that sanctions will be suspended pending the determination of any appeal, unless the Clearing House determines that any order of suspension of the Clearing Member should be enforced during that period. In addition, Rule 1003(s) is being amended to clarify the Disciplinary Panel’s ability to order a party to pay costs of disciplinary proceedings, including specifically the fees and expenses of the members of the Disciplinary Panel. This amendment is meant to clarify current practice, currently governed by a broad discretion by the panel to give awards on costs, and not substantively change the Disciplinary Panel’s authority with respect to assessment of costs.

In Rule 1004, various amendments are being made to clarify certain conditions surrounding the use of the Summary Procedure and to improve the drafting of the provisions in this Rule more generally. The Summary Procedure is designed to be used in a scenario where a full disciplinary process would be disproportionate in terms of time or cost. Rule 1004(a) is being revised to clarify the timing for the use of the Summary Procedure, in order to facilitate prompt resolution of matters subject to the Summary Procedure. Rule 1004(b) is being amended to provide ICE Clear Europe with the express ability to refuse the use of the Summary Procedure for matters which are more serious or are "considered of particular significance or relevance to the market in general or in the public interest". The changes thus clarify the circumstances in which ICE Clear Europe may reject the inappropriate use of the Summary Procedure. Rule 1004(i) is also being amended to specify the information that the Summary Disciplinary



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Committee must communicate to the Clearing Member in greater detail (mirroring the changes to similar requirements imposed on the Disciplinary Panel under Rule 1003). Rule 1004(i) also clarifies that in keeping with the summary nature of the proceeding, the range of sanctions available to the Summary Disciplinary Committee will be limited to those set out in the Notice and any additional sanctions arising out of the conduct of the proceeding. Various other non-substantive drafting clarifications are being made in Rule 1004.

Rule 1005, addressing appeals in the context of disciplinary proceedings, is being revised to include a number of drafting clarifications and typographical corrections. Rule 1005(a)(ii) will clarify that the stated grounds in that provision are the only grounds for appeal. Rule 1005(d) is being amended to add a requirement that the lawyer appointed to the Appeal Panel has been in practice for more than ten years and to clarify that an expert assessor may not have a personal or financial interest in or have been involved in the investigation of or proceedings with respect to the matter under consideration.

A new Rule 1006 is being added to address the interaction between ICE Clear Europe's disciplinary procedures under the Rules and any similar procedures under Market Rules. Exchanges that ICE Clear Europe clears are likely to have their own disciplinary procedures, with the result that a single disciplinary issue may give rise to two different disciplinary procedures dealing with the same fundamental issues. For example, ICE Futures Europe has disciplinary procedures set out in Section E of its Regulations. The intention behind new Rule 1006 is to: (a) ensure that the existence of parallel disciplinary procedures under Market Rules does not preclude ICE Clear Europe's own disciplinary procedures; and (b) confirm that where an exchange is carrying out disciplinary proceedings at the same time as ICE Clear Europe in relation to an exchange member that is also a Clearing Member, such proceedings may be consolidated with those of ICE Clear Europe to avoid unnecessary duplication of efforts and resources. For example, it may be appropriate for the exchange and the Clearing House to rely on the same pieces of evidence and for combined interviews of witnesses to be conducted on behalf of both the exchange and the Clearing House in the investigative phase of the disciplinary process, to avoid unnecessary duplication of effort. Such coordinated proceedings may be appropriate in a range of circumstances, including alleged breaches of operational systems and controls, AML matters, market abuses and delivery failures.

Various changes have also been made to the Complaint Resolution Procedures to ensure that ICE Clear Europe's complaints procedures are consistent with the applicable requirements of UK law and are clear to follow and to improve the processes concerning the investigation and handling of complaints by ICE Clear Europe. Relevant changes include:

a) adding a clarification in paragraph 2.1 of the Complaint Resolution Procedures that Eligible Complaints are only those complaints relating to the manner in which the Clearing House has performed, or failed to perform, its regulatory functions as defined by section 291(3) of the Financial Services and Markets Act 2000 ("**FSMA**"). FSMA imposes various regulatory functions on markets and clearing houses such as ICE Clear Europe. The Complaint



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Resolution Procedures are intended specifically, and solely, to address complaints involving the regulatory functions specified in such section of the FSMA, in accordance with the requirements of FSMA.[8] Similar changes to include a reference to section 291(3) of FSMA have also made in paragraphs 4.4 and 7.4 of the Complaint Resolution Procedures. In addition, the scope of Eligible Complaints is being amended in Rule 2.2 to clarify that as with its relationship with employees, the Clearing House's relationship with directors, officers, committees and committee member will not be the subject of an Eligible Complaint (consistent with the clarifications discussed above as to the role of such persons in the context of the disciplinary procedures). The amendments also clarify the drafting of the exclusion for commercial disputes in paragraph 2.2(b);

b) adding a time-limited ability for ICE Clear Europe to apply alternative processes instead of an investigation (including mediation) to resolve an Eligible Complaint, under new paragraph 3.6 of the Complaint Resolution Procedures;

c) revising and clarifying stages of the Eligible Complaints investigation process under paragraph 4 of the Complaint Resolution Procedures – this includes new provisions dealing with the process for appointing of an investigator, procedures for delaying the complaints process where there are contemporaneous court or other proceedings dealing with the same or a related matter, timelines for complaints investigations, and procedures surrounding the referral of complaints to the independent Complaints Commissioner where they are not dealt with expeditiously by an investigation. The revisions also address the matters that the investigator must have regard to when deciding whether a complaint should be upheld, which are a failure to act fairly, a failure to perform the Clearing House's regulatory functions having regard to all of the circumstances, a lack of care or a mistake, or an act of fraud, bad faith or negligence (which factors are consistent with the requirements of FSMA);

d) in paragraph 5, clarifying the manner in which the investor will provide his conclusions and recommendations for remedial action, if any, to the Clearing House and complainant, and removing an unnecessary reference to referral of a complaint to the Commissioner (which is covered in paragraph 4 and 6);

e) confirming, in new section 6.3 of the Complaint Resolution Procedures, that the Commissioner's decision, if adopted by the Clearing House, would be in full and final resolution and settlement of a complaint, binding a Clearing Member and preventing the use of any other dispute resolution procedure in relation to the same complaint (for example arbitration). Similar language in existing section 1.4 of the Complaint Resolution Procedures is being removed as duplicative

[8] As provided in paragraph 1.3 of the Complaint Resolution Procedures, these procedures do not preclude the Clearing House from considering or addressing any other complaint pursuant to such procedures as it may determine, and in accordance with any applicable law.



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f) in paragraph 7, revising the timing for certain actions of the Commissioner upon referral of a complaint and making similar changes as discussed regarding paragraph 4 above to clarify the basis for uphold or rejecting complaint, consistent with the FSMA;

g) in paragraph 8, clarifying the procedures for the Commissioner to report on the results of the investigation and providing the Clearing House's discretion to make such report, in whole or in part, public; and

h) throughout the Complaint Resolution Procedures, including paragraphs 1, 9, 10 and 11, making a number of typographical and similar corrections, updates to cross-references, and similar non-substantive drafting corrections.

(vi)U.S. Tax Requirements

The amendments adopt a new Paragraph 6.1(k) of the Finance Procedures to address the application of Section 871(m) ("Section 871(m)") of the Internal Revenue Code of 1986, as amended (the "I.R.C.") and regulations thereunder to futures and option contracts that reference certain underlying equity securities or equity indexes and are cleared by ICE Clear Europe ("equity contracts"). Section 871(m) imposes a 30% withholding tax on "dividend equivalent" payments that are made or deemed to be made to non-U.S. persons with respect to certain derivatives that reference equity of a U.S. issuer. Under the regulations implementing Section 871(m), certain financial transactions entered into by a non-U.S. person are considered "Section 871(m) Transactions" and can potentially give rise to dividend equivalents subject to withholding tax. A dividend equivalent is deemed to arise if a dividend is paid on the underlying U.S. equity referenced by such Section 871(m) Transaction. Furthermore, under applicable regulations, ICE Clear Europe itself becomes a "Withholding Agent" whenever it enters into a Section 871(m) Transaction with a non-U.S. Clearing Member. Unless the non-U.S. Clearing Member enters into certain agreements with the Internal Revenue Service ("IRS"), ICE Clear Europe would be required to withhold on dividend equivalents with respect to any transactions with the non-U.S. Clearing Member that are Section 871(m) Transactions. However, a potential Withholding Agent, such as ICE Clear Europe, can avoid the burden of reporting, collecting, and remitting the withholding taxes imposed by Section 871(m) on certain payments (including dividend equivalent payments) made or deemed to be made to a non-U.S. Clearing Member if (i) with respect to transactions in which the non-U.S. Clearing Member acts as a principal, such non-U.S. Clearing Member has entered into a "qualified intermediary agreement" with the IRS as a "qualified derivatives dealer" whereby the non-U.S. Clearing Member essentially agrees to undertake the withholding responsibilities (a "QDD") and (ii) with respect to transactions in which the non-U.S. Clearing Member acts as an intermediary, such non-U.S. Clearing Member has entered into a qualified intermediary agreement with the IRS as a "qualified intermediary" and the non-U.S. Clearing Member assumes the primary obligation for withholding under relevant tax provisions (a "Withholding QI").



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For these reasons, ICE Clear Europe is adopting a new paragraph 6.1(k) of the Finance Procedures. Subparagraph (i) will require that, as a precondition for a non-U.S. Clearing Member to clear equity contracts with ICE Clear Europe, any such non-U.S. Clearing Member that is treated as a non-U.S. entity for U.S. federal income tax purposes must enter into appropriate agreements with the IRS and meet certain other specified qualifications under procedures of the IRS, such that ICE Clear Europe will not be responsible for withholding on dividend equivalents under Section 871(m). Subparagraph (ii) will require non-U.S. Clearing Members to certify annually to the clearing house that they satisfy these requirements. Subparagraph (iii) will require non-U.S. Clearing Members to provide, on an annual basis, certain information necessary for ICE Clear Europe to make required IRS filings. Subparagraph (iv) will require non-U.S. Clearing Members to notify the clearing house of relevant changes in their circumstances affecting compliance with paragraph 6.1(k). Subparagraph (v) will clarify that a Clearing Member's tax status as an "intermediary" or "dealer" for this purpose will not affect its status for regulatory or other purposes.

(vii)Other Default Management Changes

The amendments make a number of other changes related to default management. The definition of "Bankruptcy" in Rule 101 is being amended to include a scenario where a person is "granted suspension of payments". Insolvency laws may sometimes allow for a suspension of payments, which ICE Clear Europe would treat as a "Bankruptcy" under the Rules to ensure that it has the full range of default management powers available to address such a scenario. (The amendment does not affect the existing limitations on exercising default remedies in connection with a Resolution Step.)

The definition of "Failure to Pay" in Rule 101 is being amended to clarify the length of the cure period between the service of a failure to pay notice on ICE Clear Europe by a Clearing Member and the point at which a "Failure To Pay" occurs, in circumstances where ICE Clear Europe is granted an extension under Rule 110(b) or (c).

The definitions of "Insolvency" and "Insolvency Practitioner" in Rule 101 is being amended to ensure that all relevant insolvency scenarios and insolvency office-holders are covered by the definitions. The defined term "Insolvency" is being widened to also cover a suspension of payments or moratorium being granted, which reflects a similar change made to the "Bankruptcy" definition (described above). In addition, the changes bring the making of an "instrument or other measure" by a Governmental Authority pursuant to which a person's property is transferred within the definition, in addition to "orders" of a similar nature. These changes have been made following a legal review of relevant clearing member jurisdictions.

A change is being made to Rule 901(a)(viii) to expand the list of approvals and similar statuses, the revocation of which may constitute an Event of Default, to include loss of relevant "exemptions" by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility. The change is being made as the loss of such an exemption is effectively equivalent to the loss of a licence or regulatory authorization, and ICE Clear Europe accordingly believes that loss of an exemption should similarly be treated as an Event of Default under Rule 901(a)(viii).



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A new Rule 902(d) will be added, which provides that "Transfer Orders shall be legally enforceable, irrevocable and binding on third parties in accordance with Part 12, even on the occurrence of an Event of Default". This new provision refers to Part 12 of the Rules within the main default rules in Part 9, which is intended to provide comfort that the protections from the application of insolvency law under EMIR and the UK Companies Act 1989 for the default procedures of a central counterparty are available for Transfer Orders described under Part 12.

In Rule 904(b), changes are made to clarify the price at which positions are transferred ("ported") from a defaulting Clearing Member to a non-defaulting Clearing Member and the relevant time for the determination of such price, which is at the discretion of the Clearing House. The changes allow ICE Clear Europe to use the time of porting, the time of an Event of Default, Insolvency or Unprotected Resolution Step, or the end of the Business Day prior to porting, Event of Default, Insolvency or Unprotected Resolution Step as the time to determine the porting price. These changes are designed to facilitate ICE Clear Europe's ability to manage defaults efficiently and effectively, taking into account different insolvency regimes in Clearing Member jurisdictions. Similar changes are also made to Rule 905(b)(xiv) to provide that ICE Clear Europe will determine the price at which it ports positions to a transferee Clearing Member.

Rule 905(b)(vi), which addresses how ICE Clear Europe will determine the liquidation price for offsetting Contracts that are to be paired and cancelled as part of the default management process, are being revised to refer to a new Rule 905(g). Rule 905(g) provides that for purposes of liquidations, terminations and close-outs under Rule 905 ICE Clear Europe will have discretion to determine the relevant price of the Contract. ICE Clear Europe will be permitted to do so on the basis of the Exchange Delivery Settlement Price, Mark-to-Market Price, FX Market Price, Reference Price, Market-to-Market Value, current market value or any other price specified by ICE Clear Europe. The changes also clarify that ICE Clear Europe has discretion to determine the reference time for the purposes of the liquidation price calculation. A further change has been made to Rule 905(b)(vi) to insert the words "buy and sell or" before "Long and Short Positions" to reflect the terminology used throughout the Rules to refer to opposite positions in Futures. ("Long and Short" are typically used to refer to positions in Options rather than Futures.)

New Rule 905(b)(xix) is being added to clarify that ICE Clear Europe has authority to carry out default auctions and construct auction lots, which may include positions relating to multiple customer accounts of a Non-FCM/BD Clearing Member. (Consistent with US regulatory requirements, an auction lot relating to Contracts of a defaulting FCM/BD Clearing Member may only contain positions relating to a single account.) The new provision will not permit a single auction lot to consist of both proprietary and client positions. Further, the new provision provides ICE Clear Europe with the explicit power to use a single bid price received for a particular lot of auctioned positions to calculate liquidation values and net sums by apportioning this bid price across the various accounts in which the contracts in the auction lot are recorded. Although the existing Rules do not necessarily preclude ICE Clear Europe from constructing an auction lot consisting of contracts recorded in different accounts, the amendment provides an express authority to do so. The amendment will thus enhance transparency.



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In Rule 906(a), the definition of the "GFC" variable in the net sum calculation, which references guaranty fund contributions of the Defaulter, is being amended to provide that guaranty fund contributions must be applied for this purpose "in accordance with Rules 906(b) and (c)". The referenced provisions set out restrictions on the setting off or aggregation of assets attributable to different accounts of a defaulting Clearing Member for the purposes of the net sum calculation and require a separate net sum calculation to be carried out for each account. The reference in the "GFC" definition to these provisions is not intended to change current practice, but to clarify that these limitations apply to the use of the guaranty fund contributions in determining the net sum calculations. A similar change is being made to the final subparagraph of Rule 906(b), to clarify that guaranty fund contributions and other amounts may be used for the purpose of calculating any net sum on any account of the defaulting Clearing Member, subject to the restrictions in Rule 906(c) (the restrictions in Rule 906(b) are already referenced in the current version of this provision).

Rule 906(c) will be amended to provide that ICE Clear Europe "shall" aggregate, set off, or apply surplus assets in relation to a defaulting Clearing Member's Proprietary Account to meet a shortfall on one or more of its Customer Accounts (rather than "may"). This is not intended to change the Clearing House's default management practices (under which such application of the Proprietary Account is being made), but is intended to clarify the operation of the Rules and avoid potential questions regarding whether or not ICE Clear Europe has legitimately exercised its discretion to set off assets in this way.

A clarification is being made in Rule 912(b)(iv), which addresses liability of the Sponsor and Sponsored Principal on an Individually Segregated Sponsored Account, to add the words "and severally" after the word "jointly". The change was suggested by counsel to an industry association concerning the sponsored principal model, and is intended to fix a drafting error to ensure that the liabilities and assets on sponsored accounts have mutuality. The revised language is consistent with other provisions in Part 19 addressing joint and several liability for such accounts, and the "and severally" language in this provision was inadvertently omitted.

Rule 1202(b)(i) is being amended to include a new paragraph (B) stating an additional circumstance in which a Securities Transfer Order would be deemed to arise under the designated system operated by ICE Clear Europe for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999. In the event of one Clearing Member (or Sponsored Principal) allocating an F&O Contract to another Clearing Member (or Sponsored Principal) under Part 4 of the Rules, a new Securities Transfer Order would be deemed to arise under the Designated System under new Rule 1202(b)(i)(B). The intended result of this change is that such a transfer will be covered by the settlement finality provisions under the Settlement Finality Regulations (implementing the EU Settlement Finality Directive), and subject to section 20 of those Regulations, and benefit from the Regulations' protections against the application of national EU insolvency laws. Changes have also been made to Rule 1202(f) to implement this new Transfer Order for allocations by inserting the words "or allocated" after "transferred, assigned or novated".



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In Rule 1202(m)(iv)(A), changes are made to refer to rights, liabilities and obligations of Clearing Members being transferred or assigned, in addition to the current reference to these being novated. These changes ensure consistency with the terminology used elsewhere in the Rules (for example in Part 9) in relation to the transfer of positions from one Clearing Member to another Clearing Member (whether in a default scenario or otherwise) and that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another. Rule 1202(m)(vi)(B) will also be amended to add the words "or Customer" after the word "Affiliate" to correct an unintentional omission.

Rule 1205(i) is being amended to provide that New Contract Payments Transfer Orders shall also be satisfied if and at the point that the relevant F&O Transaction or Contract "has become subject to a Position Transfer Order that has itself become satisfied under Rule 1205(b)". This drafting change has been made to clarify that a New Contract Payment Transfer Order will terminate if the relevant transaction or contract to which it relates has become subject to a Position Transfer Order that has been satisfied, which will occur once the relevant contracts have been transferred, assigned or novated to the relevant transferee Clearing Member.

(viii)Delivery Procedures Changes

In the Delivery Procedures, various changes are being made to ensure that the procedures are consistent with the operational practices and systems of ICE Clear Europe and affiliated trading venues, including with respect to the processes set out in the delivery timetables. Paragraph 19 of the General Provisions, which describes the Guardian electronic grading and delivery system used by ICE Clear Europe, is being amended to reflect the fact that other deliverable products may be dealt with in the Guardian system in addition to those financials & softs commodities already specifically listed in that paragraph ".

In Parts A and C of the Delivery Procedures, a new paragraph is being added to clarify that all references to timings or times of day in that Part are references to London times. In addition, updates to several Parts of the Delivery Procedures is being made to reflect current operational practices whereby certain submissions (such as delivery intentions) are made electronically through the ECS system, rather than through submission of specified delivery forms, which in many cases are out of date (and accordingly references to such forms have been removed). Other changes to update deadlines and descriptions for particular delivery steps or, in some cases, to delete delivery steps that are no longer carried out are being made. Section 7, which addressed alternative delivery procedure for certain European emissions contracts, is being deleted as it is unnecessary in light of the provisions of Part A of the Delivery Procedures. The various changes have been made in the following parts of the Delivery Procedures: Part A, paragraphs 5.1, 5.2 and 5.3 (Delivery Timetables); Part B, paragraph 2 (Delivery Timetable) and paragraph 4 (Delivery Documentation Summary); Part C, paragraph 5 (Delivery Timetable) and paragraph 9 (Delivery Documentation Summary); Part D, paragraphs 5.1 and 5.2 (Delivery Timetables) and paragraphs 8.1 and 8.2 (Delivery Documentation Summaries); Part F, paragraphs 6.1 and 6.2 (Delivery Timetables) and paragraphs 9.1 and 9.2 (Delivery Documentation Summaries); Part G, paragraphs 5.1 (Delivery Timetable) and 8.1 (Delivery Documentation Summary); Part H, paragraphs



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5.1 (Delivery Timetable) and 8.1 (Delivery Documentation Summary); Part I, paragraphs 6.1 (Delivery Timetable) and 9.1 (Delivery Documentation Summary); Part K, paragraphs 4 (Delivery Timetable) and 8 (Delivery Documentation Summary); Part L, paragraphs 4 (Delivery Timetable) and 8 (Delivery Documentation Summary); Part N, paragraph 5 (Delivery Timetable); Part Q, paragraph 1 (Delivery Timetable); Part U, paragraphs 1.6 and 1.9 (Delivery Timetables); and Part AA, paragraphs 6.1 (Delivery Timetable) and 9.1 (Delivery Documentation Summary).

(ix)Other Changes

Various other miscellaneous changes and clarifications have been made to the Rules and Procedures.

Changes have been made to expand the definition of "Board" in Rule 101 so that it clearly includes, in the context of any power, discretion or authority of the board, other similar bodies and committees established by ICE Clear Europe thereunder. Similarly, in a number of places in the Rules, changes have been made to include "committees", "individual committee members" and similar terms in addition to existing terms referring to persons exercising governance or other functions for ICE Clear Europe or a Clearing Member, such as "directors" or "officers". These were previously omitted in various places or terms were used inconsistently to describe individuals or governance bodies in different provisions of the Rules. ICE Clear Europe has determined, following an internal review, to make these changes to more accurately describe the persons involved in governance in a consistent way in the Rules. The changes are contained in Rules 102(j)(B), 102(p), 109(c), 111(a), 114(a), 201(a)(xxvi), 905(f), 1001(d) and 1003(q). The definition of "Representative" has also been expanded so as to cover any persons who are employed or authorised by, or appointed to act on behalf of, another person and such term is being inserted in the Rules to refer to representatives of Clearing Members in Rule 102(j).

Certain changes have also been made to the Rules to improve the provisions concerning intellectual property ("IP") rights. The definition of "Intellectual Property" in Rule 101 is being revised to improve the international coverage of the definition, by expressly confirming that it covers IP rights in any part of the world and all IP rights "for the entire duration of such rights". This clarifies the provisions relating to IP under the Rules to ensure that all the standard IP rights are covered. In addition, a new Section 12(d) is being inserted in each of the Standard Terms, which will require Customers to agree to Rule 406(g), which concerns the Clearing House's intellectual property rights. As part of its review of the Standard Terms more generally, as discussed herein, ICE Clear Europe has determined that this change is appropriate to avoid any uncertainty as to the applicability of Rule 406(g) in the context of customer transactions. The representation in question supports the position in relation to IP rights provided for in the Rules. ICE Clear Europe has added this provision to ensure that it has the same contractual representation from Customers as regards IP rights as it does from Clearing Members.

Rule 106 is being amended to expand the provisions relating to confidentiality and the disclosure of information. For drafting clarity, redesignated paragraph (b) sets out the information to be held in confidence by the Clearing House, and redesignated paragraph



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(c) will specify disclosures of confidential information permitted to be made by the Clearing House. In terms of the scope of confidential information under Rule 106(b), clarifications are being made to provide that any information in relation to a Customer in connection with Margin payments is covered by the confidentiality obligation. Changes made to Rule 106(c) clarify and extend the circumstances in which ICE Clear Europe is being permitted, under the Rules, to disclose confidential information. Specifically, a clarification are being added at Rule 106(c)(i) to allow for confidential information to be disclosed where "lawful requests" are received from regulators (rather than only a formal statutory request with legal force or Court order) or if necessary for the making of a complaint or report for offences which may have been committed under Applicable Laws. This amendment follows an internal review of these provisions and is intended to avoid potential questions as to ICE Clear Europe's ability to disclose confidential information when ICE Clear Europe is subjected to regulatory requests for information or where the disclosure is advisable under Applicable Law but not necessarily required by formal exercise of statutory powers or an unequivocal court order or statutory mandate.

Rule 115(b), which addresses the sharing of information with Governmental Authorities or referrals of complaints to Exchanges, Clearing Organisations or Regulatory Authorities, is being amended to provide that such actions are subject to the requirements of Rule 106.

Various corrections and clarifications are being made to Rule 110(a), Rule 114(d) and paragraph 4.2 of the Business Continuity Procedures relating to ICE Clear Europe's ability to extend or waive requirements of the Rules. In Rule 110(a), a sentence is being added providing that waivers may be publicized at the discretion of ICE Clear Europe. (ICE Clear Europe does not believe that this amendment alters its existing authority, but believes it would be useful to clarify that it may make public information about any such waiver.) A new Rule 114(d) will provide expressly that ICE Clear Europe may take any measure that it deems reasonably necessary in relation to the organization and operation of the Clearing House. ICE Clear Europe is adding this provision to ensure that it is not prevented from taking action under a range of circumstances that may arise, including, but not limited to a default scenario, merely because there is no specific provision of the Rules explicitly empowering it to do so. This authority is subject to a proviso that ICE Clear Europe may not take any action in breach of any provision of the Rules or Procedures or that would modify the Rules or Procedures, and that any such action must be taken in accordance with the Clearing House's internal governance requirements. ICE Clear Europe does not believe that this amendment will alter its existing ability to take actions in such circumstances, but the amendment will provide greater clarity and legal certainty as to its permitted scope of action. ICE Clear Europe will rely on its internal controls and compliance function to ensure that any such actions are consistent with its Rules and Procedures. A related change at paragraph 4.2 of the Business Continuity Procedures clarifies that ICE Clear Europe's discretionary powers to amend or waive requirements or deadlines in the case of a Business Continuity Event affecting a Clearing Member only apply to the affected Clearing Member(s).

Rule 117(k) is being amended to clarify that Clearing Members with the ability to claim sovereign immunity will be deemed to have "irrevocably" waived such immunity for the purposes of dispute resolution processes under Rule 117, to the extent permitted by



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applicable law. This approach is consistent with typical practice for waivers of sovereign immunity and the documentation thereof in the derivatives markets. ICE Clear Europe is adopting this amendment, following an internal review, for clarity and to avoid any suggestion that a waiver of immunity in this context could be revoked.

Various enhancements to clearing membership requirements for Clearing Members have been made in Rule 201(a). For example, the need for representatives of Clearing Members to hold all authorizations, licences, consents and approvals required under applicable laws are being added in Rule 201(a)(vi). Additional detail on operational, managerial, back office, systems, controls, business continuity and banking requirements, among others, for Clearing Members has been made in Rules 201(a)(xi), (xiv), (xxv), (xxvi) and (xxvii). Similarly, changes to Rule 202(a)(xiv), (xxii) and (xxiii) will enhance the ongoing requirements for Clearing Members. These changes include additional detail on system and controls requirements and the addition of two new requirements to ensure that ICE Clear Europe has sufficient access rights in relation to its Clearing Members. New Rule 202(a)(xxii) requires Clearing Members to be accessible during and for two hours immediately after close of business on every business day. Further, new Rule 202(a)(xxiii) requires Clearing Members to provide such access as ICE Clear Europe requires to their premises, records and personnel for the purposes of, for example, carrying out investigations or audits. Following an internal review of relevant requirements, ICE Clear Europe has is making some of these changes to address identified commercial and operational risks for ICE Clear Europe and to ensure that Clearing Members meet appropriate and evolving standards concerning their systems and operations based on day-to-day operational experience with Clearing Members. The amendments also generally reflect improvements are further intended to better harmonize Rules and membership requirements across ICE clearinghouses.

A change in Rule 203(a)(xvi) clarifies that Clearing Members are prohibited from engaging in conduct that would render them unable to satisfy obligations on Clearing Members under Rule 202(a) (just as the current Rule prohibits conduct that would render the Clearing Member unable to satisfy the membership criteria under Rule 201(a)). The amendment is intended to avoid any potential gap in ongoing obligations under the Rule. New Rule 203(a)(xxii) explicitly limits the ability of Clearing Members or Affiliates to exercise set-off rights against ICE Clear Europe where such Clearing Members (or their Affiliates) have a relationship in another capacity, for example providing banking or custodial services to ICE Clear Europe. This change is intended to reduce the risks that other contractual agreements contain provisions that could interfere with default management or operational processes. The approach aims to provide a level playing field for all Clearing Members, regardless of any other commercial relationships with the ICE group.

Changes are being made to Rules 204(a)(xii) and 204(b)(i) to enhance certain notification requirements imposed on Clearing Members. The Clearing Members' notification requirement at Rule 204(a)(xii) is being extended to require notification of investigations or allegations of breaches of Applicable Laws by a Clearing Member (if they are non-frivolous and non-vexatious), in addition to actual breaches. ICE Clear Europe believes this is an appropriate extension of the Rule, to facilitate ongoing monitoring by the Clearing House of circumstances that may significantly affect



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Clearing Members. In Rule 204(b)(i), additional language will require that a Clearing Member notify the Clearing House of a change of control where that change of control is subject to the approval of the FCA or PRA, in addition to a change of control notifiable to the FCA or PRA (as required under the current version of Rule 204(b)(i)). In ICE Clear Europe's view, the amendment avoids a potential gap in notification requirements based on a distinction between regulatory notice and approval that is not relevant in this context.

Rules 206(a) and (b) are being amended to reflect the fact that Clearing Members are required to maintain other financial resources requirements (in addition to Capital) under the relevant CDS, Finance and Membership Procedures. (The amendment thus does not change requirements applicable to Clearing Members but is intended to correctly cross-refer to the existing requirements of various Procedures documents.) The amendments also require Clearing Members to provide documentation and statements supporting calculations of financial resources requirements, as well as details of the terms and conditions of any documentation relating to financial resources requirements, upon ICE Clear Europe's request.

Rule 301(f) is being revised to allow the Clearing House to grant an exception to the requirement for payments to be made by electronic transfer from an account at an Approved Financial Institution for any type of payment (and not merely application fees, as in the current Rules). This is intended to provide ICE Clear Europe with greater flexibility to allow payments to be made using a different method should this become necessary.

A clarification is made to Rule 404(a)(vii) that ICE Clear Europe must have requested additional Margin or Permitted Cover) "at the time of the Transaction" for a Contract to be voidable under this provision if such additional Margin or Permitted Cover is not provided by a specified time. The amendment is intended to provide greater legal certainty by ensuring that the Clearing House's ability to void the Contract is limited to the specific situation where additional margin is requested at the time of the transaction and is not provided. (A failure to provide margin requested at other times would be addressed by the default rules.)

In Rule 501(a), a change is being made such that Approved Financial Institutions may only act in another capacity if ICE Clear Europe has provided its approval "in writing". The amendment is intended to provide greater certainty for the Clearing House and Approved Financial Institutions as to the capacities in which such institutions may be acting.

At the beginning of Part 15 of the Rules and at paragraph 1.86 of the CDS Procedures, changes have been made to clarify that references to timings or times of day in connection with CDS Contracts are to Greenwich Mean Time (without taking into account daylight savings time (British Summer Time)). These changes are necessary to reflect applicable timings for the CDS market under standard CDS documentation, and to avoid application of Rule 102(h) (which specifies London time by default, including with daylight savings time adjustments). This change is intended to avoid 'basis risk' between cleared CDS Contracts and uncleared CDS contracts (which also follow standard CDS documentation using Greenwich Mean Time). The changes reflect



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current operational practices and remove an unintended inconsistency in the Rules and Procedures.

Various changes have been made in paragraphs 2.2, 2.4(c), 2.6-2.7, 6.1(a)(i) and 6.2(g) of the Clearing Procedures to update certain deadlines in order to conform to or reflect relevant Market Rules, conform to certain operational practices and specify the message format requirements for F&O Contracts to be validly accepted by ICE Clear Europe's systems. In paragraph 2.2(c)(ii) a reference to allocation of trades within one hour is being removed, as the timing of allocation may be a matter of the relevant Market Rules. Paragraph 2.6 makes explicit in the Clearing Procedures the Clearing House's position that Clearing Members bear the risk of late or incorrect instructions to the Clearing House. Paragraph 2.7 provides clarity as to specific reasons for rejection of F&O Contracts and procedures for resubmission.

The Finance Procedures is being amended to clarify references to certain operational practices involved in settling margin payments between ICE Clear Europe and its Clearing Members. Changes have been made in paragraphs 2.1 and 2.2 to reflect settlement requirements in relevant currencies, whether in whole or in part. The amendments also clarify the drafting of the existing provision providing for a "haircuts" to be applied to original margin provided in a currency other than the reference currency for a particular contract. Similarly, changes are to be made in paragraphs 5.6 (Table 1) and 6.1(i)(i) of the Finance Procedures to refer to the full range of currencies aside from EUR, USD and GBP that are currently available to be used for settlement. These amendments are intended to update the Finance Procedures to reflect current settlement practice.

Paragraph 6.1(b) of the Finance Procedures is being reorganized and a statement is being added (for clarification and reflecting the current requirements of the Rules) that payment requirements in respect of Margin adjustments will be subject to Part 3 of the Rules. In addition, drafting clarifications in paragraphs 6.1(e) and (f) confirm that instructions for withdrawals of cash must be received by the deadlines specified in the relevant table for cash to be withdrawn on the same day and to specify the conditions that must be satisfied for ICE Clear Europe to accept cash transfers entered into its systems after the instruction deadlines. The amendments are intended to state more clearly current operational practices of the Clearing House.

Paragraph 6.1(g) is being revised to provide explicitly that ICE Clear Europe has the ability to delay cash withdrawals by a Clearing Member under paragraph 6.1 if there are outstanding amounts payable by that Clearing Member (or any Affiliate of that Clearing Member) to ICE Clear Europe, and that such amounts withheld are being treated as additional required margin of the Clearing Member. This amendment codifies an existing operational practice of the Clearing House and will enhance the Clearing House's ability to manage the credit and liquidity risk of a potential default by a Clearing Member that has not completed its daily settlement obligations.

In paragraphs 6.1(i)(i) and 6.1(i)(ii) of the Finance Procedures, amendments have also been made to provide that ICE Clear Europe may publish circulars in relation to certain matters relating to intra-day margin calls affecting a significant number of Clearing Members but is not obligated to do so. The change is intended to provide the Clearing



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House flexibility to determine the best means of communicating with affected Clearing Members under the particular circumstances, which will not necessarily be a widely distributed circular to the entire market.

In paragraph 6.1(i)(iii) of the Finance Procedures, amendments provide that adjustments to guaranty fund contributions will be made 5 Business Days after the date of notification by circular for all guaranty fund segments (a change from two Business Days for the CDS and FX Guaranty Funds). ICE Clear Europe believes that it is appropriate to harmonize the guaranty fund contribution requirements across all product categories, and further that the five Business Day timeframe is sufficiently protective of the Clearing House in the case of ordinary course adjustments to the guaranty funds.

In paragraph 6.1(i)(vii), the list of types of payments that may be included in end-of-day or ad hoc net payments are being updated to include Option premiums, corporate action payments, and amounts resulting from reduce gain distributions, product terminations or non-default loss contributions under Part 9 of the Rule. The change is intended to reflect the full range of payments that may be made to and from the Clearing House, consistent with current practice.

Various changes have been made in paragraph 7.2 of the Finance Procedures in relation to non-cash assets provided as Permitted Cover. The changes are intended to update and improve the drafting of this provision and more clearly reflect the operational detail of how ICE Clear Europe deals with Permitted Cover, including the use of the ECS system to provide information in relation to non-cash Permitted Cover provided to the Clearing House. The amendments also reflect in the Rules the Clearing House's existing ability to generate liquidity from non-cash assets transferred to the Clearing House by title transfer pursuant to repurchase transactions, secured lending facilities or similar arrangements, subject to the requirement of the Clearing House to return unused Margin and Guaranty Fund contributions of the same kind as was provided. (The use of such transactions is not currently addressed in the Rules.) In paragraph 8.2, a clarification is being added that a request form to lodge new certificates of deposit is available on ICE Clear Europe's website.

In paragraphs 11.2 and 11.4 of the Finance Procedures, changes are made to remove a presumption that instructions relating to securities are for same-day settlement and to reflect that ICE Clear Europe accepts settlement instructions specifying a settlement date up to two business days after the relevant trade date, and to make certain other drafting improvements. This amendment is intended to reflect existing practice for the range of securities accepted by ICE Clear Europe, and the amendments are intended to provide improved clarity.

Various other typographical corrections and similar changes have been made elsewhere throughout the Finance Procedures.

A drafting change has been made to paragraph 3.1(m) of the General Contract Terms to make the general termination provision for all contracts more generic. Following the amendments, paragraph 3.1(m) simply states that contracts terminate automatically



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"only in accordance with and at the times specified in the Rules". This change ensures that this provision of the General Contract Terms does not need to be updated when termination provisions in the Rules are amended.

The Membership Procedures are being amended in various places to update the various requirements that Clearing Members must meet to attain and maintain membership (consistent with the amendments to the membership provisions of the Rules discussed above), and ensure that the Membership Procedures use terminology consistent with the Rules. Paragraph 1.1 is being amended to confirm that ICE Clear Europe requires evidence of authority of Clearing Member signatories to be provided, which is consistent with the Clearing House's current practices. In the table at paragraph 4.2, various updates are made to reflect the wording used in the current Rules (as amended by this and previous filings) and to ensure that accurate details of timing and other requirements for submission of notifications and documentation are specified. In parts C.4, D.5, D.7 and D.11 of the table, references to key personnel of a clearing member (or similar references) have been expanded to include the board of directors. Amendments to part C.11 also clarify that notices relating to changes in Eligible Persons (i.e. persons for which Clearing Members clear) include suspension of clearing arrangements for Eligible Persons, and are separate from any requirements under the Clearing Membership Agreement. In part E.2, the timeframe for certain notices relating to complaints has been revised to be consistent with amendments to the Complaint Resolution Procedures.

*Compliance with the Act and CFTC Regulations*

The amendments are potentially relevant to the following core principle: (B) Financial Resources, (C) Participant Eligibility, (D) Risk Management, (E) Settlement Procedures, (G) Default Rules and Procedures, (H) Rule Enforcement and (R) Legal Risk Considerations and the applicable regulations of the Commission thereunder.

- *Financial Resources.* As described above, the amendments to the Finance Procedures clarify ICE Clear Europe's approach to guaranty fund contributions. The amendments provide that the effective date for adjustments to guaranty fund contributions for all contract categories will be five Business Days after the date of notification by circular. ICE Clear Europe believes this is an appropriate period, and that having a harmonized approach for all guaranty fund segments will facilitate its ongoing maintenance of financial resources and ability to manage risk. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Core Principle B and Commission Rule 39.11 to maintain adequate financial resources.

- *Participant Eligibility*. The amendments include various enhancements to clearing membership requirements to ensure that Clearing Members meet appropriate initial and ongoing standards concerning their operational, managerial, back office, systems, controls, business continuity and banking arrangements. The amendments also clarify Clearing Members' obligations to maintain financial resources requirements (in addition to Capital) and provide documentation supporting calculations of financial resources requirements upon ICE Clear Europe's request. By further ensuring that the Clearing House



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has appropriate admission and continuing participation requirements and ensuring that Clearing Members have access to sufficient financial resources to meet their obligations to the Clearing House, the amendments are consistent with Core Principle C and CFTC Rule 39.12.

- *Risk Management*. As noted above, the amendments clarify certain margin calculations for Options, taking into account the calculation of NLV. As such, the amendments are consistent with the risk management requirements of Core Principle D and Commission Rule 39.13.

- *Settlement Procedures.* As discussed herein, multiple changes have been made to the Amended Documents to enhance settlement arrangements. The Amended Documents introduce a new "Externalised Payments Mechanism" to permit variation margin cash payments to be settled through separate cash flows, without being netted with other payment obligations, where Clearing Members so elect. The amendments facilitate the characterization of variation and mark-to-market margin as settlement payments (and not as collateral) for purposes of settlement to market treatment under Article 274(2)(c) of the CRR.[9] The Finance Procedures are also being amended to clarify certain provisions relating to settlement of margin payments in relevant currencies and haircuts for cross-currency payments.

  The amendments also clarify and update delivery arrangements and better align them with operational practice. Clarifications have been made to the Rules and Procedures relating to the determination of the Exchange Delivery Settlement Price for Futures, settlement of Futures and Options, representations and warranties as to title and other matters on physical settlement, the role of Markets in the settlement process and various other processes for physical settlement, including the delivery of securities, among others. The Delivery Procedures in particular have also been updated to reflect operational systems and practices, including as to delivery timetables and documentation. Through enhancing and clarifying ICE Clear Europe processes and arrangements with respect to margin settlement and physical deliveries, ICE Clear Europe believes the amendments are consistent with the settlement requirements of Core Principle E and CFTC Rule 39.14.

- *Default Rules and Procedures.* As discussed above, a number of changes to the customer clearing documentation in the Rules and Standard Terms are intended to promote the transfer of customer positions in the case of a Clearing Member default. Specifically, as described above, amendments to the Standard Terms are intended to, among other things, prevent possible Customer claims that could interfere with ICE Clear Europe's ability to offer porting. Additional changes further confirm the parameters around ICE Clear Europe's discretion to determine timing of the price at which positions are ported from a defaulting Clearing Member to a non-defaulting Clearing Member and the reference time for the determination of such price. Further changes address

[9] The approach to settlement to market is consistent with requirements applicable to a DCO, as interpreted by Commission staff. CFTC Interpretive Letter No. 17-51 (Oct. 12, 2017).

rights, liabilities and obligations of Clearing Members being transferred or assigned to ensure that the provisions in Part 12 relating to Position Transfer Orders capture the full range of mechanisms through which positions can be transferred from one Clearing Member to another.

In addition, amendments to Rule 905 clarify ICE Clear Europe's ability to determine Contract liquidation prices in the default management process and provide the Clearing House with additional flexibility in this regard. The amendments also clarify ICE Clear Europe's obligation to apply excess assets on the defaulter's Proprietary Account to meet a shortfall on one or more of its Customer Accounts. They further clarify concepts relating to guaranty fund contributions adjustments and the application of such contributions to the net sum payable calculation set out in Rule 906. ICE Clear Europe believes that these amendments strengthen the Clearing House's ability to efficiently and effectively manage extreme default events. As a result, in ICE Clear Europe's view, the amendments allow it to take timely action to contain losses and liquidity pressures consistent with the requirements of Core Principle G and CFTC Rule 39.16.

- *Rule Enforcement*. The amendments make various enhancements to streamline ICE Clear Europe's disciplinary and complaints procedures. Among other changes, the amendments clarify the scope of relevant procedures relating to investigations and the conduct of proceedings, including the availability and use of summary proceedings. Together, these amendments will strength the ability of the Clearing House to discipline a Clearing Member for violations of Clearing House Rules and Procedures, and thereby facilitate compliance with Core Principle H and CFTC Rule 39.17.

- *Legal Risk Considerations*. As discussed herein, ICE Clear Europe is making various amendments to strengthen the legal foundations for the customer documentation framework for Non-FCM/BD Clearing Members, through the updated Standard Terms in particular. The Rules are also being amended to improve the provisions relating to confidentiality and the disclosure of information by clarifying and extending the circumstances in which ICE Clear Europe will be permitted to disclose confidential information to allow it to facilitate compliance with regulatory requests. The amendments further generally update and clarify the drafting of various provisions of the Rules and Procedures, with the goal of enhancing the clarity of the overall legal and documentation framework.
  Other changes are being made to enhance legal certainty and settlement finality, such as the amendments to enhance representations as to transfer of Permitted Cover by noting it is not contrary to or in breach of a requirement of Applicable Law, third party right or other contractual obligation. A further Rule change enhances the enforceability of Transfer Orders in default scenarios and takes advantage of protections from the application of insolvency law under EMIR and the UK Companies Act 1989.
  Further changes also enhance compliance with U.S. tax requirements under Section 871(m), to facilitate the ability of ICE Clear Europe to make payments



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of dividend equivalents to Clearing Members free of US withholding taxes, in compliance with US tax laws.
The amendments are also designed to accurately reflect, and facilitate continued compliance with, applicable EU and UK law, including EMIR, REMIT, the UK Companies Act 1989, the Settlement Finality Directive and MiFID II. Taken together, these amendments will enhance the enforceability and transparency of the legal framework provided by the Rules and Procedures under which the Clearing House operates, and are therefore consistent with the requirements of Core Principle R and CFTC Rule 39.27.

As set forth herein, the amendments consist of changes to the Rules and 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 conducted a public consultation on amendments to its Rules that included the Rule changes set forth herein.[10] ICE Clear Europe received three detailed and written responses to the overall consultation, which included a number of comments relating to the amendments described in this filing. ICE Clear Europe discussed aspects of the Rule changes, as were presented in such consultation, with those interested Clearing Members who responded. Based on feedback received by ICE Clear Europe, those Clearing Members who responded supported the changes being made herein. Among other matters addressed in the amendments that are subject to this filing, two Clearing Members queried the breadth of amended Rule 114(d), which allows ICE Clear Europe to "take any measure it deems reasonably necessary in relation to the organization and the operation of the Clearing House taking all relevant circumstances into account, whether or not these measures are set out in these Rules". All three respondents provided comments on changes to the ongoing requirements for Clearing Members in Rule 202(a). All three Clearing Members also commented on changes to the methodology for determining the price of a Contract for porting and close-out purposes in Rule 904(b), 905(b) and 905(g). Two Clearing Members commented on amendments to paragraph 4(b) and new paragraph 5(c) of the CDS, F&O and FX Standard Terms. Certain other additional comments were made by individual commenters. In a small number of cases, ICE Clear Europe decided not to proceed with a proposed change at this time. In certain cases, ICE Clear Europe agreed to a drafting change in the Rules to address the concerns of the responding Clearing Member. In other cases, it discussed aspects of the Rule changes, as were presented in such consultation, with those interested Clearing Members who responded, and determined that the comments were adequately addressed by those discussions and that further changes to the amended Rules were not required.

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.

[10] ICE Clear Europe Circular C19/046 (March 8, 2019), available at https://www.theice.com/publicdocs/clear_europe/circulars/C19046.pdf.

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@theice.com or +44 (0)20 7429 7127.

Very truly yours,

Giulia Honorati
Manager, Regulation & Compliance