



April 30, 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 – Auction Terms for
F&O Default Auctions and F&O Default Management Framework
amendments

Dear Mr. Kirkpatrick:

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rule 40.6 for self-certification, the amendments to its Auction Terms for F&O Default Auctions (the “Auction Terms”) and F&O Default Management Policy (the “Policy”), formerly the F&O Default Management Framework, as 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 amending its Auction Terms. The amendments (1) add a new “all or nothing” bidding type, (2) provide for determination of minimum bid requirements based on the relative margin requirements of Clearing Members, (3) provide for the use of ICEU’s default management system, in lieu of email or other manual forms of communication, for submission of bids and provision of certain notices to auction participants by the Clearing House, (4) clarify certain regulatory and compliance obligations of auction participants, and (5) generally update and clarify certain terms and provisions and correct certain typographical errors. The amendments to the Policy make corresponding changes to reference the new “all or nothing” bidding type, the minimum bid requirement and the default management system and to make general updates and clarifications.

I. Auction Terms

1. All or Nothing Bid Type

The amendments allow auction participants to submit a new type of bid for an Auction Lot, an “All or Nothing Bid.” As provided in amendments to paragraph 3.2 of the Auction Terms, an All or Nothing Bid constitute a bid for the entire Auction Lot which, if it is the winning bid, provide for the bidder to receive 100% of the Auction Lot without that award being split among more competitively priced bids (as may occur with bids under the current bidding process (referred to as “Standard Bids”). Use of All or Nothing Bids is optional, and auction participants may continue to use Standard Bids as under the current process. An auction participant may also submit both Standard Bids and an All or Nothing Bid. Revised paragraph 3.2 also addresses the manner in which an All or Nothing Bid may satisfy the Minimum Bid Requirement for an Auction Lot and the requirement to identify an All or Nothing Bid as such.

Paragraph 3.1 is being amended to provide for determining the competitiveness of an All or Nothing Bid for purposes of the “juniorization” provisions in that paragraph relating to the application of F&O Guaranty Fund Contributions and F&O Assessment Contributions under the Rules, based on an appropriate scale factor to calculate a deemed price per unit.

Paragraph 5.3 is being amended to provide for the determination of whether an All or Nothing Bid is a winning bid. As under the current process, the auction clearing price (to be defined as the “F&O Auction Clearing Price”) will be the price of the bid at which the sum of the notional amount of F&O Contracts with equal or higher bid prices equals or is greater than the notional amount of F&O Contracts being auctioned. If an All or Nothing Bid is not accepted, the Auction Lot will be allocated in full to bids at or above the F&O Auction Clearing Price, but at the F&O Auction Clearing Price. If, however, an All or Nothing Bid is included in the group of bids with equal or higher bid prices, then the All or Nothing Bid will be accepted for the entire Auction Lot, and the F&O Auction Clearing Price will be price of the All or Nothing Bid. The examples in Paragraph 5.3 are being modified to take into account All or Nothing Bids, including to show information regarding a “price rank”, whether it is an All or Nothing Bid, the bid size (as a percentage of auction lot), bid price (payment per 100%), size multiplied by price and the allocation percentage of the auction lot.

Paragraph 5.4 clarifies that All or Nothing Bids are given precedence over Standard Bids, in the sense that if an All or Nothing Bid is accepted, a Standard Bid will not be accepted even if it had a higher price than the F&O Auction Clearing Price. It also provides that if multiple All or Nothing Bids are received at the F&O Auction Clearing Price, the Auction Lot will be allocated equally among those bidders.

Paragraph 5.5 is being amended to clarify that in the scenario where the Clearing House elects to determine the F&O Auction Clearing Price for less than 100% of the contracts in the lot and hold a Second F&O Auction for the remainder, any All or Nothing Bids will be disregarded. Related examples in paragraph 5.5 have been amended accordingly.

2. Minimum Bid Requirement.

The amendments revise paragraph 2.2 to provide that each F&O Clearing Member's Minimum Bid Requirement for a lot will be determined separately for each category of F&O Contract and will be determined pro rata based on the Original Margin requirement applicable to the Open Contract Positions of such F&O Clearing Member as compared to the total Original Margin requirements for all the Open Contract Positions of all non-defaulting F&O Clearing Members. Further, setting Minimum Bid Requirements will no longer require consultation with the F&O Default Committee. ICE Clear Europe believes that this approach (as opposed to the current minimum bid requirement, which is the same for all F&O Clearing Members) is more appropriately tied to each Clearing Member's relative risk position in the relevant contract, as demonstrated by original margin levels. A further conforming change is being made in paragraph 2.2 to reflect that a Clearing Member could have a zero Minimum Bid Requirement (in which case it will not be required to bid for the relevant lot).

Amendments to paragraph 2.3 clarify what is counted to toward the Minimum Bid Requirement. Specifically, a Clearing Member's bid for one of its Proprietary Accounts or Customer Accounts, including Individually Segregated Sponsored Accounts for the account of any Sponsored Principal for which it acts as Sponsor, will count towards its Minimum Bid Requirement.

Paragraph 2.4 is being amended such that an F&O Clearing Member's Minimum Bid Requirement will be communicated to it through the DMS (or via such other means as specified by the Clearing House), as discussed below, as soon as practicable prior to the relevant F&O Auction instead of through the template notification set out in an annex to the Auction Terms (which is accordingly being removed). The amendments also clarify the procedures for the Clearing House to determine that a Minimum Bid Requirement is inappropriate for a particular F&O Clearing Member in particular circumstances. An F&O Clearing Member will be required to notify the Clearing House promptly, but in any event within one hour of the Clearing House publishing details of the F&O Contracts comprising the relevant Auction Lot (instead of 12 hours prior to the opening of the auction), in writing, if it reasonably considers that the Minimum Bid Requirement does not apply to it. The amendments also clarify that F&O Clearing Members could outsource the operational processing of any of their auction obligations under Rule 102(w) (regarding outsourcing). F&O Clearing Members may also transfer their Minimum Bid Requirements to an Affiliate that is also an F&O Clearing Member, provided that the Affiliate agrees and subject to notification to the Clearing House prior to an auction and execution of an agreement in an approved format.

3. Default Management System

The amendments provide for the use of the Clearing House's electronic default management system ("DMS") for a number of communications between the Clearing House and auction participants, in lieu of the current manual notice process. Pursuant to amended paragraph 2.1, the Clearing House will notify F&O Clearing Members electronically through the DMS (or other means specified by the Clearing House) of

an auction taking place instead of by Circular. Conforming changes will be made throughout the Auction Terms to make reference to communication through the DMS instead of through existing means. For example, as noted above, the Clearing House will notify Clearing Members of Minimum Bid Requirements through the DMS, pursuant to revised paragraph 2.4. Paragraph 2.6 is being amended to state that F&O Auction Specifications will be provided through the DMS instead of in the template format currently attached to the Auction Terms. Paragraphs 2.8 and 2.9 are being amended to state that all bids must be submitted via DMS (or other means specified by the Clearing House) instead of through the existing bid form. Certain provisions such as paragraph 2.10 have been correspondingly removed as no longer relevant with electronic submission through DMS. Paragraph 3.7 is being amended to provide that modified or amended bids may be submitted through DMS (or another format specified by the Clearing House). Pursuant to revised paragraph 5.8, winning bidders may also be notified through the DMS.

4. Clarification of Certain Regulatory and Compliance Obligations.

Paragraph 7.7 is being amended to clarify and state explicitly certain obligations for auction participants in respect of information they may receive in connection with an auction, including the contents of the portfolio or the outcome or timing of an auction. Specifically, the auction participant will acknowledge that such information may constitute inside information for the purposes of the EU Market Abuse Regulation (Regulation (EU) No 596/2014) (“MAR”) or fall within the definition of any similar term under Applicable Law (“Market Abuse Laws”) in respect of any Contracts cleared by the Clearing House or in respect of securities of a Defaulter. Under the revisions, each such participant will be required to assess whether such information is inside information and, if so, agree to: (a) comply with applicable Market Abuse Laws; (b) generally not disclose such information to persons outside of its organization; (c) prevent persons engaged in client trading at such organization from possessing such information; (d) prevent those in possession of such information from trading on such information until it ceases to be inside information; and (e) where such information constitutes inside information under Regulation (EU) No. 596/2014, maintain an insider list of persons with access to this information.

5. Other Clarifications and Updates.

The amendments make a number of other clarifications, drafting improvements and corrections to the Auction Terms. Certain changes to defined terms are being made throughout the Auction Terms, including the use of the term “F&O Default Auction Terms” instead of F&O Auction Terms, the new defined term “Bidding Close Time” instead of “Closing Time”, and the defined term “Auction Lot” instead of the undefined “lot”. Amendments to paragraph 1.1 clarify that references to F&O Contracts, for purposes of the Auction Terms, include (i) where automatic early termination has taken place under Part 9 of the Rules or Contract Terms, a reference to the terminated F&O Contracts or notional amounts representing such terminated F&O Contracts and (ii) where contracts have arisen from hedging transactions pursuant to Rule 903(c), a reference to any such hedging contracts executed by the Clearing House. These amendments thus clarify that such contracts may be auctioned for purposes of determining the Clearing House’s loss with respect to the defaulter for

purposes of the Rules. In paragraph 1.2, the amendments clarify that nothing in the Auction Terms prevents the Clearing House from administering a sale or entering into offsetting transactions without holding an auction to which the Auction Terms apply. This reflects the Clearing House's existing authority under the Rules, and is intended to avoid any potential confusion as to the scope of the Auction Terms. New paragraph 1.11 cross-references defined terms in the Rules, F&O Procedures, Finance Procedures or F&O Standard Terms as applicable, and in the order of priority specified in Rule 102(f).

Paragraph 2.3 is being amended to remove an unnecessary statement that F&O Clearing Members are deemed to have confirmed their intention to bid in a particular auction prior to the time window for bidding and the Auction closing time. In this regard, the Auction Terms (in paragraph 2.2) already impose a requirement on F&O Clearing Members to bid in the auction.

Paragraph 2.10 (former paragraph 2.11) is being amended to clarify that after the Bidding Close Time, the Clearing House will notify participants of the fact that the F&O Auction took place, in addition to the outcome.

Paragraph 3.1 is being amended to provide that where, in respect of a particular F&O auction, the portfolio of a Defaulter is split into multiple auction lots, the process for determining the competitiveness of bids described (which is used for determining the priority of application of Clearing Members' F&O Guaranty Fund Contribution and F&O Assessment Contributions) will be carried out separately for each Auction Lot. In such case, the weighted average price per unit for each auction lot will be scaled based on the proportion that the Original Margin requirement applicable to the Open Contract Positions comprising such Auction Lot represents in relation to the total Original Margin requirements for all the Open Contract Positions of the Defaulter in relation to auctioned F&O Contracts. Paragraph 3.1 only applies to bids indicated or deemed related to Minimum Bid Requirements.

An additional clarification is being made in Paragraph 3.2 that the Minimum Bid Requirement could be satisfied by submitting multiple bids provided that any individual bid is *equal to* (and not merely larger than) any applicable minimum bid size.

Under revised Paragraph 3.7, following the bidding close time, upon request of an F&O Auction Participant stating that a mistake was made in the bid submission, the Clearing House may invalidate the bid and the participant will be treated as if it had not made such a bid. The Clearing House will no longer be required to permit the participant to submit a corrected bid.

The amendments to Part 4 remove a statement that an F&O Clearing Member may make an unlimited number of separate bids and instead provide that the member may make separate bids for Customers or Sponsored Principals for whom it acts as Sponsor in the same way as it may make a bid for one of its Proprietary Accounts and subject to the same provisions of the Auction Terms. Amendments to paragraph 4.2 clarify that F&O Clearing Members are liable with respect to F&O Contracts resulting from bids made on behalf of a Customer or Sponsored Principal (including a Customer or Sponsored Principal that is an F&O Auction Participant) in the same

manner and to the same extent as for other customer contracts. Amendments to Paragraph 4.3 require that each F&O Auction Participant that is not an F&O Clearing Member enter into an F&O Auction Participation Agreement with its F&O Clearing Member prior to participation in an F&O Auction.

Amendments to Paragraph 5.1 clarify a reference to the Clearing House's F&O default management policies and procedures.¹ Amendments to Paragraph 5.2 also permit the Clearing House to at its discretion withdraw an auction lot after (as well as prior to) the bidding close time. An additional amendment to Paragraph 5.3 provides that in the event of invalid or void bid or no F&O Contract being established, such bid will not be accepted and the F&O Auction Participant will be treated as if it had not made such bid.

In Paragraph 5.4, an additional clarification adds that bids invalidated pursuant to certain Paragraph 3 (Bidding Process) provisions could, at Clearing House discretion, be excluded for purposes of calculating the auction clearing price or allocating sizes at that price.

Paragraph 5.7 is being amended to provide that the Winning Bidder will be the relevant F&O Clearing Member, acting for its Proprietary Accounts or Customer Account, including Individually Segregated Sponsored Accounts, as applicable.

Amendments to Paragraph 5.8 clarify the mechanism under the Rules through which F&O Contracts are entered into as a result of an auction, by providing that each bid constitutes an offer by the F&O Clearing Member to the Clearing House to enter into F&O Contracts pursuant to a Transfer governed by Rule 904(b) (but without regard to any Customer or Customer-CM Transactions of the Defaulter) and Part 4 of the Rules. A reference to such an offer being made by a Sponsored Principal is being removed, as the F&O Clearing Member will be offering to enter into the contract on behalf of the Sponsored Principal in such case. Other changes in this paragraph clarify that resulting F&O Contracts will arise between the Clearing House and the winning bidder (acting for one of its Proprietary Accounts or Customer Accounts, including for an Individually Segregated Sponsored Account, as applicable), in accordance with such a Transfer and Part 4 of the Rules, but without regard to any Customer or Customer-CM Transactions of the Defaulter, on economically identical terms to the F&O Contracts that are the subject of the auction lot in the relevant F&O Auction.

Paragraph 5.10 is being amended such that if the Clearing House accepts bids below a reserve price or above a maximum price, the F&O auction for that lot will not be treated as a failed F&O auction.

Paragraph 6.2 is being amended to clarify that Customer-CM F&O Transactions relating to Customers of the winning bidder arising as a result of the F&O auction will be established in accordance with the Rules and the Procedures in the same way and time as F&O Contracts entered into pursuant to the post-bid procedures set out in Paragraph 6.1.

¹ This change is consistent with similar clarifications made in Paragraph 5.5.

Conforming amendments as to the treatment of Individually Segregated Sponsored Accounts are made in paragraph 7.1.

II. Default Management Policy

ICE Clear Europe is also proposing to make various amendments to its F&O Default Management Framework, which is being renamed the F&O Default Management Policy. The amendments are consistent with the amendments to the Auction Terms discussed above and make certain other clarifications and updates. Conforming changes are also being made throughout the document to reflect the name change.

In the statement of purpose of the document, a reference to the “Executive” is being replaced with the “Senior Management Team” (to more accurately reflect relevant ICE Clear Europe governance arrangements). References to Executive elsewhere in the Policy are similarly being updated. With respect to default declarations, the Policy is being updated to clarify that the Board has delegated authority to declare an event of default to the President (instead of the President & COO or the Head of Clearing Risk).

The amendments also clarify that the Clearing House expects to liaise with the relevant regulators prior to the declaration of an Event of Default and issuance of a Default Notice, but removes a statement that it will do so in all instances. In ICE Clear Europe’s view, there may be circumstances in which liaising with regulators in advance may not be feasible, such as where a default may require immediate action to protect the Clearing House. The revised Policy nonetheless retains the requirement that the Clearing House notify its regulators prior to declaration of an Event of Default.

With respect to the issuance of a circular and the posting of a website notice regarding an event of default, the amendments remove a requirement that such actions be taken “immediately” following notice to the Defaulter. Similarly, the amendments remove the requirement that the Clearing House act “immediately” to take certain additional actions relating to forming committees, suspending Defaulter trading access and preventing payments from the Clearing House to the Defaulter following issuance of the Default Notice. Although ICE Clear Europe expects that such actions will be implemented in a timely manner under the circumstances, it is not necessary (or necessarily feasible) to specify that it do so immediately.

Pursuant to the amendments, the statement that in the event that the President and COO are absent, the Head of Clearing Risk has the ability to overrule any other head of department (including Head of Treasury and Head of Operations) where necessary on matters relating to default management, is being removed. Such provision is not necessary in light of the Clearing House’s existing governance processes. With respect to preventing payments from the Clearing House to the Defaulter, the requirement for treasury to call and e-mail the Clearing House’s account manager to stop the auto-release of funds is being amended to remove the reference to a specific bank (as a number of financial institutions may be relevant in particular circumstances). Certain other clarifications are being made as to the means of contacting default brokers and to refer to relevant liquidity groups rather than sub-markets.

Certain references to the “Risk Management” are being updated to refer to the “Clearing Risk Department” to better reflect the Clearing House’s internal organization.

The provisions of the Policy regarding bidding mechanics are being amended to address “All or Nothing” bids and the “Minimum Bid Requirement”, among other general clarifications and drafting improvements. The amendments clarify that the positions to be auctioned will generally be divided by liquidity group (replacing the less accurate term “sub-market”). The amendments also reference the ability for Auction Participants to also submit an “All or Nothing” bid type and explain this bid type. Amendments also clarify that Clearing Member participation in the auction is mandatory provided that Clearing Members have an Initial Margin requirement in the liquidity group of the auctioned portfolio and that each Clearing Member is allocated a Minimum Bid Requirements based its portion of the Initial Margin of a liquidity group. The description of the bid submission process is being updated to refer to submission of bids through the DMS. Winning bidders also receive notice through the ICE DMS rather than through the ICE secure server. The statement that in the event that a Clearing Member receives a partial fill at auction if its bid is over the cusp for clearing the auction is being amended to clarify that this is only true of standard (i.e., non All or Nothing) bids. The statement that the Clearing House only expects to utilize mirror portfolios for the Dutch auction methodology is being removed (as it is unnecessary in the context of current F&O products).

The amendments also clarify that trades resulting from the auction will be booked against the margin account specified in the portfolio bid submission.

The amendments to the Policy also update arrangements for breach management, ongoing Policy reviews and exception handling. The amendments are intended to make the Policy consistent in this regard with other ICE Clear Europe policies and governance processes.

Compliance with the Act and CFTC Regulations

The amendments are potentially relevant to the following core principle: (D) Risk Management, (G) Default Rules and Procedures and (R) Legal Risk Considerations and the applicable regulations of the Commission thereunder.

- *Risk Management.* As discussed herein, the optional All or Nothing Bid is designed to incentivize competitive bidding, promoting the goal of reaching an efficient auction clearing price that permits ICE Clear Europe to close out the defaulter’s portfolio and return ICE Clear Europe to a matched book. Additionally, the changes reflect the use of the automated DMS to replace certain manual tasks in the auction process, including communicating the Minimum Bid Requirement and auction specifications, submitting bids, and notifying winning bidders. Such changes allow ICE Clear Europe to more efficiently and safely manage its auction process and reduce the risk of error. ICE Clear Europe believes that the amendments thus serve to promote the soundness of ICE Clear Europe’s overall risk management system,

strengthening ICE Clear Europe's ability to manage the risks associated with discharging its responsibilities, consistent the risk management requirements of Core Principle D and Commission Rule 39.13.

- *Default Rules and Procedures.* As discussed herein, the addition of All or Nothing Bidding and the automated DMS are designed to enhance ICE Clear Europe's ability to withstand defaults and continue providing clearing services, including by incentivizing competitive bidding to promote effective and efficient auctions that facilitate the close-out of the defaulter's portfolio and strengthening ICE Clear Europe's ability to efficiently and safely manage its auction process in default events. These changes thus will help ensure that ICE Clear Europe can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. Moreover, the amendments to the determination of the Minimum Bid Requirement enhance default management by more closely linking the bid requirement for a clearing member with the risk of the clearing member's particular positions, as evidenced through original margin requirements. The amendments are designed to allocate potential risk in the auction taking into account the ability of the clearing member to trade in the particular product and thus to manage the risk of positions that it may acquire in the auction as a result of its minimum bid requirement. The amendments would thus reduce the risk to a clearing member of being forced to bid on a type of contract that it does not typically trade and may have less capability to manage.² In ICE Clear Europe's view, the revisions to the Auction Terms and the Policy are thus consistent with the requirements of Core Principle G and Commission Regulation 39.16.
- *Legal Risk Considerations.* As discussed herein, the amendments are designed to enhance compliance by F&O auction participants with Market Abuse Laws to the extent that they receive any inside information relating to any Contracts cleared by the Clearing House or in respect of securities of a Defaulter. In ICE Clear Europe's view, the amendments 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 Auction Terms and the Policy. A copy of the changes to the Auction Terms is attached hereto. ICE Clear Europe has requested confidential treatment with respect to the amendments to the Policy, which have been submitted currently with this self-certification submission.

ICE Clear Europe hereby certifies that the amendments comply with the Act and the Commission's regulations thereunder.

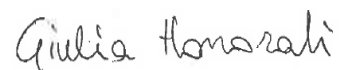
² This change is intended to be consistent with the Commission's recently adopted Rule 39.16(c)(2)(iii)(C), which requires that a DCO not require a clearing member to bid for a portion of the defaulting clearing member's positions that is not proportional to the size of the bidding clearing member's positions in the same product class of the DCO. ICE Clear Europe has determined that use of original margin is an appropriate measure of the size of the clearing member's positions in the relevant product class for this purpose.

ICE Clear Europe has received no substantive opposing views in relation to the proposed rule amendments.

ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website concurrent with the filing of this submission.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at giulia.honorati@theice.com or +44 (0)20 7429 7127.

Very truly yours,

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

Giulia Honorati
Manager Regulation & Compliance