

May 19, 2017

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

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6:
Amendments to its Articles of Association

Dear Mr. Kirkpatrick:

ICE Clear Europe Limited (“ICE Clear Europe”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), for self-certification pursuant to Commission Rule 40.6, the rule amendments discussed herein. The amendments are to become effective on the business day following the tenth business day after submission, or such later date as ICE Clear Europe may determine.

Concise Explanation and Analysis

The purpose of the changes is to make certain amendments to ICE Clear Europe’s Articles of Association (the “Articles”). The amendments are generally intended to update the Articles to reflect the Clearing House’s committee structure, to modify certain matters relating to the term of office of directors and to adopt certain new procedures addressing conflicts of interest of directors, as discussed in more detail herein.

In article 1¹, a cross-reference to relevant parts of UK companies regulations has been updated. In article 3, certain definitions have been updated, including to add definitions for key existing committees: the Audit Committee, Board Risk Committee, Compensation Committee and Nominations Committee. The amendments also update the definition of Risk Committee to refer to product-specific Risk Committees (as distinct from the Board Risk Committee). A definition has also been added for the Senior Independent Director, as discussed below. Certain

¹ References herein to the numbering of particular articles will be to the articles as amended.

definitional provisions have also been clarified, including to remove unnecessary references to certain extraordinary resolutions.

Articles 7 and 8 have been revised to remove the reference to extraordinary meetings and to confirm notice arrangements for general meetings.

In article 25, the minimum number of directors has been changed from two to six (the maximum of twelve is unchanged, as are the requirements with respect to independent directors). The clearing house currently has ten directors; as a result, this amendment is not expected to affect current operations of the board. Article 26 has been revised to reflect that selection of replacement or additional directors will be made following recommendation by the Nominations Committee. Article 29 provides for the board to appoint one of its independent directors as Senior Independent Director (and to revoke or terminate such appointment at its discretion). The Senior Independent Director will serve as the lead independent director appointed in accordance with the UK Corporate Governance Code² as in effect from time to time.

The amendments make certain changes to the procedures for staggering the retirement or rotation of independent directors. Under revised Articles 31 and 32, at a general meeting to be held each year, the two longest serving independent directors (who are not CDS directors) that have served at least three consecutive years on the board, at the discretion of the Nominations Committee, must retire from office, but may offer themselves for reappointment for a new three year term by the shareholder. An independent director may be so reappointed a maximum of two times for three year terms, unless the clearing house by resolution of its sole shareholder determines otherwise. The provisions for the retirement or rotation of CDS directors are unchanged. The revised retirement procedures do not apply to directors other than independent directors. Various conforming and clarifying changes have been made in article 33, which will provide that a director whose term ends at a general meeting may be reappointed and if not, may retain office until the meeting appoints a replacement (or until the end of the meeting if no replacement is named). In article 34, standards for determining that a director has become incapacitated have been updated. The amendments also reduce from six to three the number of consecutive meetings that a director may miss before being removed on that basis.

A new article 37 has been added to state explicitly that the directors will appoint the members of the relevant committees, as is current practice, consistent with the terms of reference for those committees, and that the committees will operate in accordance with such terms of reference. Article 43, which addresses delegation of board powers to committees, has been revised to refer explicitly to the Audit Committee, Board Risk Committee, Nominations Committee and Compensation Committee, and such other committees as the board determines may be required. A new article 48 has been

² Financial Reporting Council Limited, *UK Corporate Governance Code* (April 2016). The code sets out a code of conduct and best practices for governance matters for UK companies. Among other matters, the code states that the board should appoint one of the independent non-executive directors as a senior independent director “to provide a sounding board for the chairman and to serve as an intermediary for the other directors when necessary.” The senior independent director should lead meetings of the non-executive directors, at least annually, to evaluate the performance of the Board chairman.

added to require independent directors to disclose to the board all other directorships they hold, both prior to appointment and on an ongoing basis.

Additional amendments have been made to the provisions of the Articles relating to conflicts of interest (and potential conflicts of interest) of directors to ensure that there is a clear procedure in place to deal with any such conflicts of interest (and potential conflicts of interest), consistent with the provisions of the UK Companies Act 2006. In article 52, the prohibition on a director participating in or voting on a decision in which he or she has an interest is modified (i) to eliminate a restriction that the interest be material and (ii) to provide additional exceptions where ICE Clear Europe by ordinary resolution of the shareholder disapplies the provision of the Articles that would prevent the director from participating in that decision or where the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest.

The amendments also adopt a new article 53, which addresses certain conflicts of interests and potential conflicts of interest of directors that do not arise in relation to a transaction or agreement with ICE Clear Europe (without limiting the obligations of directors under applicable provisions of the UK Companies Act 2006). In the case of such a conflict that arises from the appointment or proposed appointment of a person as a director, the uninterested directors or the shareholder may nonetheless authorize the appointment of the director, and address the relevant situation, on such terms as they determine. In the case of other conflicts, the uninterested directors or the shareholder may choose to permit the relevant situation and the continued performance by the interested director of his or her duties, on such terms as they determine. The interested directors will not be counted in the quorum for, and will not be allowed to vote on, any decision of the directors on such matters. The uninterested directors may act on such matters even if there are insufficient directors to meet the normal quorum and voting requirements. The resolution adopted by the uninterested directors or the shareholder may, for example, permit the interested directors to vote, exclude the interested directors from all information and discussion about the relevant situation, and/or impose additional duties of confidentiality on the interested directors. The authorization of an interested director situation can be withdrawn or modified at any time. The article also contains requirements on directors to provide notice of potential conflicts and specifies certain other procedures and documentation requirements.

In article 55, clarifications are made that a director may not retrospectively waive notice of a meeting more than seven days after the meeting is held. The revised article also clarifies that the chair will not have a second or casting vote (in the case of an equally divided vote) if the chair is not otherwise to be counted for quorum or voting purposes (such as because of a conflict of interest). In revised article 60, the requirements for action by written resolution of directors have been clarified to provide that all directors entitled to vote on the matter (rather than all directors entitled to receive notice of a board meeting) must consent to the action.

The recordkeeping requirements in article 63 have been revised to provide that the company must keep a written record of all unanimous or majority decisions of the directors for at least 10 years. Article 69 has been revised to refer to a special rather than extraordinary resolution.

Certain other non-substantive corrections and clarifications have been made in the Articles. For example, various references to persons throughout the Articles have been revised to be gender-neutral. Various articles have also been renumbered in light of the changes discussed above, and related cross-references have been updated.

Compliance with the Act and Commission Regulations

The rule amendments are potentially relevant to the following core principles: (O) Governance Fitness Standards and (P) Conflicts of Interest, and the applicable regulations of the Commission thereunder.

- *Governance Fitness Standards.* The amendments are designed to update and enhance overall clearing house governance. As discussed above, the amendments more clearly delineate the Board committee structure and certain aspects of the process for the appointment, removal, retirement and rotation of directors. In ICE Clear Europe's view, the amendments will facilitate governance arrangements that are transparent to fulfill public interest requirements and permit consideration of the views of owners and participants. As such, the amendments are consistent with the requirements of Core Principle O.
- *Conflicts of Interest.* The Articles have also been amended to establish additional procedures for handling actual and potential conflicts of interest involving directors, including procedures for decisions by uninterested directors or the shareholder in conflict situations involving a director. In ICE Clear Europe's view, these amendments will further the goal of minimizing conflicts of interest in its decision-making process, and establishing a process for resolving such conflicts, within the meaning of Core Principle P.

As set forth herein, the amendments consist of revisions to the Articles, 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 has received no substantive opposing views in relation to the 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 patrick.davis@theice.com or +44 20 7065 7738, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Paul Swann, President & Managing Director, at paul.swann@theice.com or +44 20 7065 7700.

Very truly yours,



Patrick Davis
Head of Legal and Company Secretary