



June 10, 2019

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 –  
Interpretation of Certain Rules

Dear Mr. Kirkpatrick:

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rule 40.6 for self-certification, amendments to the Circular titled ICE Clear Europe: Interpretation of References to EU Legislation in the Clearing Rules Post-Brexit (the “Circular”). The Circular is 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*

As set forth in a prior filing,<sup>1</sup> ICE Clear Europe intends to publish the Circular to provide guidance as to the interpretation of references to European Union (“EU”) directives and regulations in the ICE Clear Europe Clearing Rules and Procedures<sup>2</sup> in the event that the United Kingdom (“UK”) ceases to be a European Union (“EU”) member state, in circumstances where no withdrawal agreement stipulating that EU laws will continue to apply in the UK has been agreed between the UK and the EU-27. The interpretation contained in the Circular will only apply under such circumstances.

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<sup>1</sup> See ICE Clear Europe filing dated April 8, 2019.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

In such circumstances, directly applicable EU directives and regulations will be incorporated into UK law with modifications on “exit day” through the European Union (Withdrawal) Act 2018 (the “EUWA”), which would result in there being two versions of a directly applicable EU legislative act which may be applicable to the Rules: (1) the version as enacted in the EU, directly applicable throughout the EU (and, in certain cases, the EEA); and (2) the version incorporated into UK law (referred to as “on-shored”). There are various references to EU directives and regulations in the Rules and Procedures. ICE Clear Europe is publishing the Circular to provide guidance as to the proper interpretation of such references in the event of the UK leaving the EU without withdrawal agreement that provides for continued applicability of EU law in the UK.

The amendments to the Circular provide an example of an application of the interpretation set out in the Circular, in the context of capital and segregation requirements. The example explains how Rule requirements that Clearing Members maintain sufficient capital and segregated accounts would require UK Clearing Members to comply with the on-shored version of the applicable regulatory requirements, while EU Clearing Members would be required to comply with the existing EU regulations.

#### *Compliance with the Act and CFTC Regulations*

The amendment is potentially relevant to the following core principle: (R) Legal Risk, and the applicable regulations of the Commission thereunder.

- *Legal Risk.* As discussed herein, the Circular is designed to ensure that references to EU directives and regulations in the Rules and Procedures are properly interpreted should the UK cease to be an EU member state. The example provided in the amendments further clarifies the guidance provided by the Circular, which will facilitate continued clearing in light of the requirements of UK and EU law in those circumstances, minimize the potential for disputes and legal uncertainty and generally address conflicts of law issues. As a result, ICE Clear Europe believes that the amendments are consistent with the requirements of Core Principle R and CFTC Rule 39.27.

As set forth herein, the rule change consists of the amendments to the Circular, a copy of which is attached hereto.

ICE Clear Europe hereby certifies that the rule change complies with the Act and the Commission’s regulations thereunder.

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

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 Carolyn Van

den Daelen, Head of Regulation & Compliance, at carolyn.vandendaelen@theice.com  
or +44 20 7429 4515.

Very truly yours,

A handwritten signature in black ink, appearing to read 'H. Davies', with a stylized flourish at the end.

Huw Davies  
Regulatory & Compliance Analyst