



June 12, 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  
CDS Default Auctions and CDS 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 CDS Default Auctions (the “CDS Auction Terms”) and CDS Default Management Policy (the “Policy”), formerly the CDS 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 CDS Auction Terms and Policy. The amendments to the CDS Auction Terms (1) add a new “all or nothing” bidding type, (2) clarify certain procedures regarding determination of minimum bid requirements, (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 and make general updates and clarifications.

## I. CDS 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 the new definition in paragraph 1.2 as well as paragraph 3.8 of Part 1 and paragraph 3.6 of Part 2, an All or Nothing Bid will constitute a bid for the entire Auction Lot which, if it is the winning bid, will 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 will be optional, and auction participants could 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 3.8 of Part 1 and paragraph 3.6 of Part 2 also address 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.

The term “BP” is being similarly amended to include the price of any valid All or Nothing Bid made by a Primary CDS Auction Participant or Secondary CDS Auction Participant in the Primary CDS Auction or Secondary CDS Auction, in either case proportionately scaled to a portfolio size representing 100% of the relevant Auction Lot. This definition is being further amended to provide that where the Standard Bids submitted by an auction participant do not comply with any applicable Minimum Bid Requirement, the BP shall be only the price of any All or Nothing Bid made by such participant, should it have made one. If a participant does not comply with any applicable Minimum Bid Requirement based on its Standard Bids, and does not provide a valid All or Nothing Bid, then the participant will be considered a Non-Bidding CDS Clearing Member. Where a participant submitted only Standard Bids, or only an All or Nothing Bid, BP will be the weighted average bid price of the Standard Bids, or the price of the All or Nothing Bid, respectively.

The definitions of Primary CDS Auction Priority AC Sequence and Primary CDS Auction Priority GF Sequence (previously CDS Auction Priority AC Sequence and CDS Auction Priority GF Sequence) are being amended to clarify that each amount in the sequence will be applied pro rata for the relevant Auction Lot of a Primary CDS Auction by applying the Auction Lot Guaranty Fund Weighting. As discussed below, the terms CDS Auction Priority AC Sequence and CDS Auction Priority GF Sequence, are being renamed to indicate more clearly that these terms relate to the Primary CDS Auction. A number of other terms relating to the Primary CDS Auction are being similarly renamed. The term Lot Guaranty Fund Weighting is being renamed Auction Lot Guaranty Fund Weighting, consistent with the update from the term Lot to Auction Lot. The definition of this term has been clarified to refer to the aggregate of the PRIs for all Auction Lots in a Defaulter’s portfolio rather than all Lots in a CDS Auction or Secondary CDS Auction, which is a more precise definition, but the change is not intended to result in a substantive change in practice. The definitions of Secondary CDS Auction Priority AC Sequence, Secondary CDS Auction Priority GF Sequence are being amended generally to conform to the corresponding Primary CDS Auction definitions, including to cross-refer, for clarity, to Rule 908(i) (which is the relevant provision of the Rules relating to the order of

application of Guaranty Fund Contributions) and to clarify that each amount in the sequence will be applied pro rata for the relevant Auction Lot of a Secondary CDS Auction by applying the Auction Lot Guaranty Fund Weighting. The cross-reference is being added to ensure clarity and consistency between the relevant terms used for Primary and Secondary Auctions and between the CDS Auction Terms and the Rules, but is not intended to change the substance of current practice. The definition of CDS Auction Clearing Price is being redefined as Primary CDS Auction Clearing Price and a proviso is being added to this defined term and to the defined term Secondary CDS Auction Clearing Price stating that in the event that an All or Nothing Bid is included in such sum of the notional amount of CDS Contracts, the term will mean the price of the All or Nothing Bid in accordance with paragraph 5.4 of Part 1 or paragraph 5.4 of Part 2, as applicable, of the CDS Auction Terms. If an All or Nothing Bid is not submitted to or accepted by the Clearing House, then consistent with the current CDS Auction Terms, the Auction Lot will be allocated in full to bids at or above the Primary CDS Auction Clearing Price or Secondary CDS Auction Clearing Price, as applicable. If, however, an All or Nothing Bid is included in the group of bids with equal or higher bid prices, then the price of such All or Nothing Bid will be the Primary CDS Auction Clearing Price. The examples in Paragraph 5.4 of Part 1 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. The examples in Paragraph 5.4 of Part 2 are being removed, and cross-references to the examples in Paragraph 5.4 of Part I are being added instead.

Amended paragraph 5.5 of Parts 1 and 2 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 Primary CDS Auction Clearing Price or Secondary CDS Auction Clearing Price, as applicable. It also provides that if multiple All or Nothing Bids are received at the Primary CDS Auction Clearing Price or Secondary CDS Auction Clearing Price, as applicable, the Auction Lot will be allocated equally among those bidders.

Paragraph 5.6 in Part 1 is being amended to clarify that in the scenario where the Clearing House elects to determine the CDS Auction Clearing Price for less than 100% of the contracts in the lot and hold a further auction (a “Repeat CDS Auction”) for the remainder, any All or Nothing Bids will be disregarded. Related examples in paragraph 5.6 have been amended accordingly.

## 2. Minimum Bid Requirement.

The amendments revise Paragraph 2.2 of Parts 1 and 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) and to remove a stated exception from the requirement for each CDS Clearing Member to bid in every Primary CDS Auction or Secondary CDS Auction (as such terms are defined in the CDS Auction Terms), as applicable, for those whose membership privileges permit them not to participate (as there are no such CDS Clearing Members).

Paragraph 2.4 of Parts 1 and 2 are being amended such that a CDS 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 CDS Auction instead of through the template notification set out in an annex to the CDS Auction Terms (which is accordingly being removed). The amendments to Paragraph 2.4 of Part 1 and Paragraphs 2.4 and 2.5 of Part 2 also clarify the procedures for the Clearing House to determine that a Minimum Bid Requirement is inappropriate for a particular CDS Clearing Member in particular circumstances, which will permit the Clearing House greater flexibility in appropriate circumstances. A CDS 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 CDS 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 will not apply to it. ICE Clear Europe does not believe the 12 hour period was necessarily practicable as an operational matter, as the Clearing House may need to conduct an auction with less than 12 hours' notice. The requirement could thus either create an undesirable delay in conducting an auction or impose an unnecessary limitation on the CDS Clearing Member's ability to request an exception to the Minimum Bid Requirement. The change to permit notice within one hour after the Clearing House publishes auction details allows the Clearing House to move more quickly to minimize losses and preserve the CDS Clearing Member's ability to request an exception where warranted. The amendments also clarify that CDS Clearing Members can outsource the operational processing of any of their auction obligations under Rule 102(w) (regarding outsourcing). CDS Clearing Members could also transfer their Minimum Bid Requirements to an Affiliate that is also a CDS Clearing Member, subject to notification to the Clearing House prior to an auction and execution of an agreement in an approved format. The amendments clarify that a CDS Clearing Member that outsources any of its obligations will remain liable for any breach by any Affiliate or outsourcee of the CDS Auction Terms or the Primary CDS Auction Specifications, including without limitation in respect of CDS Guaranty Fund juniorization. This amendment broadens the prior requirement which only referred to transfers or outsourcees of the Minimum Bid Requirement rather than any obligation, and made specific reference to the CDS Guaranty Fund juniorization, and reflected the general principle that outsourcing or transfer of an obligation does not avoid responsibility for complying with the obligation. The amendments further add that a CDS Clearing Member that transfers or outsources its Minimum Bid Requirement to an Affiliate would, for the purposes of determining its Senior Guaranty Fund Contribution, Subordinate Guaranty Fund Contribution, Senior Assessment Contribution and/or Subordinate Assessment Contribution, and for determining whether it should be designated as a Non-Bidding CDS Clearing Member, assume the same position as a Senior Bidder, Split Bidder, Subordinate Bidder or Non-Bidding CDS Clearing Member as the Affiliate, as appropriate.

### 3. Default Management System

The amendments provide for the use of the 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 of Parts 1 and 2 and the revised definitions of Primary CDS Auction Announcement and Secondary CDS Auction

Announcement, the Clearing House will notify CDS 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 are being made throughout the CDS 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 in Parts 1 and 2. Paragraph 2.5 of Part 1 and Paragraph 2.7 of Part 2 are being amended to state that Primary CDS Auction Specifications or Secondary CDS Auction Specifications, as applicable will be provided through the DMS instead of in the template format currently attached to the CDS Auction Terms. Further, in Paragraph 2.5 of Part 1 and Paragraph 2.7 of Part 2, the statement that the Clearing House will provide each auction participant (other than Defaulters) with information about CDS Contracts to be auctioned is being amended to remove the exception for Defaulters because it is clear that Defaulters would not be auction participants and as such, the exception was unnecessary. The requirement that any minimum or maximum reserve price be provided is being deleted because, consistent with Paragraph 5.2, any reserve price would not necessarily be disclosed to bidders.

Paragraphs 2.9 and 2.10 of Part 1 and Paragraphs 2.10 and 2.11 of Part 2 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. Former Paragraph 2.11 of Part 1 and Paragraph 2.12 of Part 2 has been correspondingly removed as no longer relevant with electronic submission through DMS. Paragraph 3.12 of Part 1 and Paragraph 3.10 of Part 2 (each as renumbered) are 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 5.7 of Part 1, further Primary CDS Auction Specifications for any repeat CDS Auction will be notified by the Clearing House through the Primary CDS Auction Announcement and through the DMS (or via such other means and in such format as is specified by the Clearing House). Pursuant to revised Paragraph 5.8 of Part 1 and Paragraph 5.9 of Part 2, winning bidders could also be notified through the DMS. References to submission of a bid form are being removed from the definition of “Bid” and the term “Bid Form” is being amended to “Bid Submission” and will mean submission of a bid via DMS rather than via the ICE file transfer server.

#### 4. Clarification of Certain Regulatory and Compliance Obligations.

Paragraph 7.7 of Parts 1 and 2 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 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 CDS Auction Terms. Certain changes to defined terms are being made throughout the CDS Auction Terms, including the use of the term “CDS Default Auction Procedures” instead of CDS Auction Procedures, the new defined term “Bidding Close Time” instead of “Closing Time” (which ICE Clear Europe views as a more precise term in this context (as the concept of closing time more generally has other uses), but which would have the same definition), and the defined term “Auction Lot” instead of “Lot”, to better distinguish the term from the generic term, “lot”. The definition of Auction Lot is also being clarified to refer only to CDS Contracts of the Defaulter (rather than the generic term “portfolio” of a Defaulter), and to all or any part of such contracts as determined by the Clearing House for a particular discrete auction. ICE Clear Europe does not believe such change results in any change in practice. Conforming changes are also being made to the defined terms for Lot Assessment Contribution, Lot CDS Direct Auction Participant Contribution, Lot Guaranty Fund Contribution, Lot Guaranty Fund Weighting, Lot Resources and Lot Resource Shortfall.

A series of other changes are intended to more clearly distinguish between primary auctions under Part 1 and secondary auctions under Part 2. Thus, the term “CDS Auction” is being amended to “Primary CDS Auction” with corresponding changes to CDS Auction Announcement, CDS Auction Clearing Price, CDS Auction Participant, CDS Auction Priority, CDS Auction Priority AC Sequence, CDS Auction Priority GF Sequence and CDS Auction Specifications to refer to Primary CDS Auction Announcement, Primary CDS Auction Clearing Price, Primary CDS Auction Participant, Primary CDS Auction Priority, Primary CDS Auction Priority AC Sequence, Primary CDS Auction Priority GF Sequence and Primary CDS Auction Specifications. Conforming changes are being made throughout the CDS Auction Terms.

The terms “Non-Bidding CDS Clearing Member” and “Non-Bidding Direct Participating Customer” are being clarified to explicitly cover persons that do not submit or make (or will not be deemed to submit or make) a bid in the relevant Primary CDS Auction or Secondary CDS Auction (such as where their bid has been declared invalid under the CDS Auction Terms), whether or not they can be said to have “chosen” not to participate. The term “Elective CDS Auction Participants” and references to this term are being removed, as there are no CDS Clearing Members in such category. The term “Second CDS Auction” is being amended to “Repeat CDS Auction”, which term currently refers to a further Primary CDS Auction under Part 1 after an unsuccessful or partially unsuccessful first CDS auction, with the intention to more clearly distinguish such an auction from a Secondary CDS Auction under Part 2. The terms “Split Bidder” and “Subordinate Bidder” are being amended to explicitly note that this could be either a Primary CDS Participant or a Secondary CDS Auction Participant, as applicable for the relevant auction. This does not reflect a change in

substance, but is intended to make the drafting consistent with the deletion of the term “CDS Auction Participant” and addition of the more specific terms, Primary CDS Auction Participant and Secondary CDS Auction Participant.

Amendments to paragraph 1.64 clarify that references to CDS Contracts, for purposes of the CDS 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 CDS Contracts or notional amounts representing such terminated CDS 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 establishing replacement contracts with non-defaulting Clearing Members to balance the Clearing House’s positions as part of the default management process, and thereby also establishing an auction price to be used in determining the Clearing House’s loss with respect to the close out of the defaulter’s positions for purposes of the Rules. Amendments to this paragraph also add a general introductory note that the CDS Auction Terms govern the auctioning of lots representing one or more CDS Contracts to which a Defaulter is or was a party, where such auction is administered by the Clearing House pursuant to Part 9 of the Rules. In paragraph 1.65, the amendments clarify that nothing in the CDS Auction Terms prevent the Clearing House from administering a sale or entering into offsetting transactions without holding an auction to which the CDS 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 CDS Auction Terms.

Introductory provisions are being added in paragraph 1.67 and following paragraphs to address matters such as governing law and dispute resolution (including submission to arbitration and jurisdiction). These are substantially similar to existing provisions in the Rules and the other Procedures, and ICE Clear Europe is proposing to add them here for consistency across its documentation.

Paragraph 2.11 of Part 1 and Paragraph 2.13 of Part 2 are being amended to clarify that after the Bidding Close Time, the Clearing House will notify participants of the fact that the CDS Auction took place, in addition to the outcome.

Amended Paragraph 3.3 of Parts 1 and 2 clarifies that the specified order of application of CDS Guaranty Fund Contributions and Assessment Contributions in the Primary CDS Auction Priority or Secondary CDS Auction Priority, as applicable, only applies to bids indicated or deemed related to Minimum Bid Requirements (i.e., those Standard Bids, or if applicable the All or Nothing Bid, that count toward the Minimum Bid Requirement).

An additional clarification is being made in Paragraph 3.8 of Part 1 and Paragraph 3.6 of Part 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.

A clarification is being made in Paragraph 3.11 of Part 1 and Paragraph 3.9 of Part 2 that a bidder making a referential Bid (e.g. a Bid which purports to be a Bid which is €1 higher or lower than the highest or lowest Bidder) will be treated as if it had not made such bid. This change is consistent with other changes to the CDS Auction

Terms to refer to a person that does not bid in the auction (or is deemed not to bid) as “Non-Bidding CDS Clearing Member” or “Non-Bidding Direct Participating Customer”, without regard to whether the person “chose” not to participate. Similarly, under revised Paragraph 3.12 of Part 1 and Paragraph 3.10 of Part 2, following the bidding close time, upon request of a CDS Auction Participant stating that a mistake was made in the bid submission, the Clearing House could invalidate the bid and the participant would be treated as if it had not made such a bid. The Clearing House would no longer provide for the submitter to withdraw or correct the bid in this case. This reflects the operation of DMS, which does not permit submission of a bid following the bidding close time, and further reflects ICE Clear Europe’s view that given the objective of ensuring a fair and orderly auction, it is not appropriate for Clearing Members to modify bids following the bidding close deadline.

Similar amendments changing “treated as if it had chosen not to participate” to “as if it had not made such Bid” are being made to Paragraphs 3.13, 3.14, 3.15, 4.4 and 5.5 of Part 1 and Paragraphs 3.11, 3.12, 3.13, 4.4, 5.4 and 5.5 of Part 2 for similar reasons. An additional amendment to Paragraph 5.4 of Parts 1 and 2 provides that in the event of an invalid or void bid or no CDS Contract being established, such bid will not be accepted and the CDS Auction Participant will be treated as if it had not made such bid, instead of chosen not to participate, for similar reasons.

The amendments to Paragraph 4.1 of Parts 1 and 2 remove a statement that a CDS Clearing Member may make an unlimited number of separate bids and clarify 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 relevant Part of the CDS Auction Terms. This amendment reflects that relevant systems do not permit an infinite number of separate bids, and in practice is intended to give ICE Clear Europe flexibility to set a maximum number of bids if it determines that is appropriate. Amendments to Paragraph 4.3 of Parts 1 and 2 require that each Direct Participating Customer (as defined in the CDS Auction Terms) enter into a CDS Auction Participation Agreement with its CDS Clearing Member prior to participation in a Primary CDS Auction or Secondary CDS Auction, as applicable (rather than deeming them to be bound by the CDS Auction Terms). ICE Clear Europe believes it is preferable to have a formal agreement with the Direct Participating Customer in this situation, as it provides a clearer and stronger basis for enforcement of the CDS Auction Terms against the Direct Participating Customer.

Amendments to Paragraph 5.3 of Parts 1 and 2 also permit the Clearing House to at its discretion withdraw an auction lot after (as well as prior to) the bidding close time.

In Paragraph 5.5 of Parts 1 and 2, an additional clarification provides that bids invalidated pursuant to certain Paragraph 3 (Bidding Process) provisions could, at the Clearing House’s discretion, be excluded for purposes of calculating the auction clearing price or allocating sizes at that price.

Amendments to Paragraph 5.8 of Part 1 and Paragraph 5.9 of Part 2 clarify the mechanism under the Rules through which CDS Contracts are entered into as a result of an auction, by providing that each bid constitutes an offer by the CDS Clearing Member to the Clearing House to enter into CDS 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. The amendment is intended as a clarification of the existing process for entering into contracts and is not a substantive change in the CDS Auction Terms. Any unnecessary reference to acceptance of such offer by the Clearing House is being removed (as the paragraph provides for the relevant contracts to arise between the Clearing House and the winning bidder without need for any further step). Other changes in this paragraph clarify that resulting CDS Contracts will arise between the Clearing House and the winning bidder, 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 CDS Contracts that are the subject of the auction lot in the relevant Primary CDS Auction or Secondary CDS Auction, as applicable.

Clarifying amendments as to the treatment of Individually Segregated Sponsored Accounts as a form of Customer Account, consistent with other amendments discussed above, are being made in Paragraph 7.1 of Parts 1 and 2.

Throughout the CDS Auction Terms, various provisions are being renumbered as a result of the changes described above and related cross-references are being corrected and updated.

## II. CDS Default Management Policy

ICE Clear Europe is also proposing to make various amendments to its CDS Default Management Framework, which is being renamed the CDS Default Management Policy. The amendments are consistent with the amendments to the CDS 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 terms of the procedures for declaring a default, the Policy is being revised to remove a requirement that the default management process be implemented “immediately” after approval by appropriate management of the declaration of a default. Although ICE Clear Europe expects that such process will be implemented in a timely manner under the circumstances, it is not necessary (or necessarily feasible) to specify that it do so immediately. A similar change is being made to the requirement that ICE Clear Europe cease clearing trades for the defaulting Clearing Member when it is declared in default.

With respect to activation of the clearing risk team, the Policy is being amended to remove the statement that in the event that the President / Chief Operating Officer being 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. The amendment reflects a change in the Board’s delegation of authority to the President (and not to the Chief Operating Officer or Head of Clearing Risk in the President’s absence).

With respect to liquidation of a defaulting member’s collateral, the amendments remove a statement that for all assets the Clearing House ensures that it can sell the collateral, subject to settlements terms, within a single working day. This statement is unnecessary and an oversimplification, and the Clearing House in any event relies on

its existing and detailed collateral and liquidity policies to ensure it has sufficient access to liquidity in case of default. A related statement that the Head of Clearing Risk will have the discretion to postpone the collateral sale is being removed as unnecessary in light of the general standard that the Clearing House will take appropriate action to ensure an orderly close out. Amendments also clarify that the Clearing House may (but need not) convert any portion of the defaulting Clearing Member's non-cash margin or collateral into cash, as the Clearing House determines appropriate. This is intended as a drafting improvement that provides greater clarity, but does not affect the Clearing House's rights with respect to such margin or collateral.

The provisions of the Policy regarding bidding mechanics are being amended to address "All or Nothing" bids. A paragraph is being added to this section to provide that auction participants may submit "All or Nothing" bids for each auction. The amendments provide explanation as to the meaning of such a bid and an example of how such bids work. The amendments also provide that further information on the bidding types utilized in any given auction will be published as part of the CDS Default Auction Terms Specifications.

The existing requirement that ICE Clear Europe conduct quarterly reviews of the Policy is being deleted as the Policy is being reviewed as part of the ICE Clear Europe's separate annual documentation review process. The Policy continues to require ICE Clear Europe, in coordination with its Clearing Members, conduct an annual mock Clearing Member default test with the Clearing Risk Department, appropriate Clearing House management and CDS Default Committee Members for each Clearing Member.

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. Pursuant to the amendments, the document owner, as specified in ICE Clear Europe policies, will be responsible for reporting report material breaches or unapproved deviations from this document to the Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together will determine if further escalation should be made to relevant senior executives, the Board and/or competent authorities. Exceptions to the Policy will be approved in accordance with ICE Clear Europe's governance process for the approval of changes to the Policy.

#### *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 with the risk management requirements of Core Principle D and Commission Rule 39.13.

- *Default Rules and Procedures.* As discussed above, 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 will thus help to 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. The amendments also clarify and enhance certain procedures around the determination of Minimum Bid Requirements and requests for exceptions from such requirements in particular circumstances, and around the ability of Clearing Members to outsource bidding requirements. In ICE Clear Europe's view, the revisions to the CDS 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 CDS 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 CDS Auction Terms and the Policy. A copy of the changes to the CDS Auction Terms and the Policy 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.

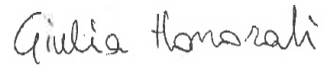
ICE Clear Europe hereby certifies that the amendments comply with the Act and the Commission's regulations thereunder.

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](mailto:giulia.honorati@theice.com) or +44 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