



June 17, 2022

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 –  
Clearing Rules 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, amendments to its Clearing Rules (the “Clearing Rules” or “Rules”)<sup>1</sup> discussed herein. The amendments will 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 Clearing Rules to provide greater certainty and additional detail in relation to (i) the scenarios where there is an external or other change in a relevant price or event which results in a need for the Clearing House to correct settlement prices; and (ii) the cash settlement of transactions in lieu of delivery where a Clearing Member is in default or there are grounds for declaring a default in respect of a Clearing Member.

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.

## Determination of Settlement Price

### Futures Contracts

Although the Exchange Delivery Settlement Price (“EDSP”) for a futures contract is generally determined based on data provided by the relevant Market, Rule 701(c) provides that in a number of scenarios the Clearing House may itself determine the EDSP. The amendments add the cases of Force Majeure Event, Illegality or Impossibility as circumstances in which the Clearing House could take such action. Although the existing general language of Rule 701(c) generally permits the determination by the Clearing House of the EDSP in those cases, ICE Clear Europe believes it is appropriate, as a matter of clarity and transparency, to provide so explicitly. The amendments also remove a redundant reference to the Clearing House acting in its discretion. Rule 701(c) has also be updated to provide that any EDSP determined under such Rule will be communicated only to affected Clearing Members (as communication to unaffected Clearing Members should be unnecessary).

A new subsection (d) has been added to Rule 701 and provides that the Clearing House is entitled to amend any previously communicated EDSP, including in respect of futures contracts already settled or delivered, in the following two scenarios: (i) a Market or other external pricing source has made an error in or amends the EDSP or the basis for, or any element or input data in respect of the EDSP, or (ii) there has been an error by the Clearing House. In such scenarios, the Clearing House may order revised payments to reflect the amended EDSP, including in respect of settled or delivered Contracts. Any amended EDSP determined by the Clearing House under subsection (d) will be communicated to affected Clearing Members, and any revised payments ordered by the Clearing House in connection therewith will be promptly processed by the Clearing House as part of its usual operational processes. The amendments are intended to provide greater certainty under the Rules as to the situations in which a change of price might take place and the consequences of such change, including the rights and obligations of the Clearing House in the event of a change in a settlement price or an input in the settlement price, and the rights and obligations of the Clearing House and F&O Clearing Members to make appropriate payments in the event of a resulting change in an EDSP, including following settlement of a Contract. Such a change could occur, for example, where an input for the EDSP is based by the relevant Market on a price reporting service or prices in a spot or cash market for an underlying commodity, or where an input price is subject to or affected by action of relevant governmental or other authorities with jurisdiction over those markets. Although the Clearing House has other existing general authority, including under Rule 701(c) and Rule 109, that it might potentially use to address such situations, the Clearing House believes it is appropriate for the Clearing House to have explicit, specific rules addressing the possibility of such a change in a relevant price, in light of experiences with errors involving underlying prices and other cases in which underlying or related markets have considered such changes that could potentially have affected the EDSP. The amendments also provide increased certainty for Clearing Members and other market participants as to the likely consequences of such changes occurring. ICE Clear Europe does not expect that 701(d) will be commonly used in the ordinary course of business.

The amendments redesignate the ultimate paragraph in Rule 705 as subsection (b). This non-substantive update is intended to improve the organization and readability of the Rules, and to align with the parallel provision in Rule 805. A further conforming change has been made to the same paragraph provide that the discharge of the rights and obligations of Clearing Members upon settlement will be made expressly subject to Rule 701(d) (as discussed above), a change which reflects the Clearing House's present interpretation of how these two provisions interrelate.

Parallel changes have been made for Options Contracts in Rules 802(c) and (d). Rule 802(c) has been amended to add Force Majeure Event, Illegality or Impossibility to the list of scenarios that entitle the Clearing House to determine the EDSP at its discretion. The amendments also remove a redundant reference to the Clearing House acting in its discretion. Rule 802(c) has been updated to provides that any EDSP determined under such Rule has been communicated to affected Clearing Members, for the reasons discussed for Rule 701(c) above.

A new subsection (d) has been added to Rule 802 and provides that the Clearing House has been entitled at its discretion to amend any previously communicated EDSP for option contracts, including in respect of contracts already settled or delivered, in the following two scenarios: (i) a Market or other external pricing source has made an error in or amends the EDSP or the basis for, or any element or input data in respect of the EDSP, or (ii) there has been an error by the Clearing House. In such scenarios, the Clearing House may order revised payments, including in respect of settled or delivered Contracts. Any amended EDSP determined by the Clearing House under each new such subsection will be communicated to affected Clearing Members, and any revised payments ordered by the Clearing House in connection therewith will be promptly processed by the Clearing House as part of its usual operational processes. The purpose and rationale for these amendments is substantially the same as for the amendments to Rule 701(d), as discussed above.

Similar to the changes to Rule 705 discussed above, a conforming change has been made to Rule 807 to provide that the discharge of Clearing Members on settlement will be subject to Rule 802(d) (as discussed above). Likewise, a change has been made to Rule 808(b) to provide that the termination of rights and obligations upon abandonment of an option is subject to Rule 802(d), for similar reasons.

### Cash Settlement on Default

The Clearing House is amending Rule 703(h) to provide greater certainty as to the treatment of delivery obligations under F&O Contracts in the event of a default by a Clearing Member or when there are grounds for declaring a default in respect of a Clearing Member. Depending upon the kind of F&O Contract, pursuant to existing Rule 703(f) and the Delivery Procedures, selling Clearing Members may be matched with buying Clearing Members to effect delivery between them, in satisfaction of the selling Clearing Member's delivery obligation to the Clearing House and the Clearing House's delivery obligation to the buying Clearing Member. In the case of other F&O Contracts, there is no such matching and delivery is made by Sellers to the Clearing House and then by the Clearing House to Buyers, pursuant to Rules 703(b) to (e) and the Delivery Procedures.

The proposed amendments to Rule 703(h) provide further detail, consistent with existing Clearing House practices and interpretations, as to what happens when a Clearing Member which has been matched for purposes of delivery fails to perform its delivery obligations. Rule 703(h) applies to a Clearing Member that has been declared a Defaulter or is subject to grounds for declaring an Event of Default or Force Majeure Event. In such a case, the Clearing House already has under Rule 703(h) the ability to direct that delivery obligations be substituted for cash, including as against non-defaulting Clearing Members. This enables it to ensure that the number of Contracts under delivery remain matched and that the Clearing House does not need to source deliverable commodities in the physical marketplace. Amended Rule 703(h) provides explicitly that a relevant Contract of the defaulter may be substituted for cash settlement obligations at a price determined by ICE Clear Europe at its discretion. The rights, liabilities, and obligations of any Clearing Member with an Account having an opposite delivery position in Contracts in the same Set could then, at the discretion of the Clearing House, also be substituted for cash settlement obligations at the same price. These amendments are intended to build on the Clearing House's existing authority to substitute cash settlement for delivery obligations in the case of default, in furtherance of its default management and more clearly reflect how the existing authority operates in practice.

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

The amendments to the Delivery Procedures are potentially relevant to the following core principles: (D) Risk Management, (E) Settlement Procedures, (R) Legal Risk Considerations and the applicable regulations of the Commission thereunder.

- *Risk Management.* The amendments provide greater certainty and additional detail as to the rights and obligations of the Clearing House and Clearing Members in certain scenarios where there is an external or other change of a relevant price, which results in a need to change or correct the EDSP. The amendments may apply in scenarios where settlement has already occurred and additional payments may be required to reflect the change in EDSP. The amendments thus address the particular risks that may be posed to the Clearing House by such a change in an input price. The Clearing House believes it is important to have clear provisions in the Rules for this scenario given the potential impact on market participants. ICE Clear Europe also believes that its existing risk management, operational and other procedures will be sufficient for processing any revised or additional payments resulting from a change in the EDSP under the amendments and addressing the risks therefrom. As such, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle D and Commission Rule 39.13.
- *Settlement Procedures.* As described above, the amendments address a change in EDSP in limited circumstances where there has been an error or other change in a relevant underlying price. Where necessary, the amendments also provide for additional payments to or from Clearing Members to reflect the amended price. ICE Clear Europe does not believe that correction of an error or similar circumstance, even though it may require additional payments, is inconsistent with settlement finality within the

meaning of Commission Rule 39.14(d). Specifically, in ICE Clear Europe's view, the proposed amendments should not be viewed as affecting the finality of settlement payments previously made (which were final and irrevocable when made in accordance with the settlement finality provisions of the ICE Clear Europe Rules and applicable settlement finality regulations) but rather as establishing an independent new payment obligation, with a new payment date, to reflect the change in EDSP. Such new payment obligation will itself give rise to or be subsumed in a new payment transfer order which is subject to the settlement finality provision of the Rules. As a result, ICE Clear Europe believes these amendments are consistent with the requirements of Core Principle E and Commission Rule 39.14.

In addition, the amendments address certain risks relating to physical delivery, by setting forth more clearly the ability of the Clearing House to provide for cash settlement in lieu of physical delivery in a Clearing Member default scenario. The amendments are thus consistent with the requirements of Core Principle E and Commission Rule 39.14(g).

- *Legal Risk Considerations.* As discussed above, the amendments provide greater certainty as to the rights and obligations of the Clearing House and F&O Clearing Members in cases where there is a subsequent change in a settlement price or input to the settlement price. The amendments also elucidate the rights and obligations of relevant parties relating to delivery (or cash settlement in lieu thereof) in a default scenario. As such, the amendments will facilitate the operation of the Clearing House pursuant to a well-founded, transparent and enforceable legal framework, within the meaning of Core Principle R and Commission Rule 39.27.

As set forth herein, the amendments consist of the amendments to the Clearing Rules, 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 proposed amendments. ICE Clear Europe consulted with a number of market participants, including a relevant futures industry group, in connection with the development of the proposed rule changes, and considered feedback from such participants in preparing the specific rule changes that are now proposed to be adopted. In particular, market participants raised questions concerning (i) the circumstances in which settlement prices might be changed, and (ii) the appropriate timeframe in which a change to EDSP may be made. In developing the current proposal, ICE Clear Europe notes that the amendments are generally intended to deal with changes from external pricing sources, which may be permitted to make such changes in a variety of circumstances, and with a variety of characterizations, that are outside the control of ICE Clear Europe and may be difficult to define more specifically in advance. ICE Clear Europe also notes that it has not defined a specific timeframe in which a change to EDSP may be made, in light of the fact that different Markets cleared by ICE Clear Europe and different external pricing sources may have their own time period in which changes to relevant prices

may be made. ICE Clear Europe has thus sought to maintain appropriate flexibility to deal with the range of potential changes to relevant prices as they may arise. ICE Clear Europe has also conducted a formal public consultation with respect to the proposed rule changes.<sup>2</sup> No written comments were received as a result of the public consultation. ICE Clear Europe will notify the Commission of any written comments received with respect 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 the undersigned at [George.milton@theice.com](mailto:George.milton@theice.com) or +44 20 7429 4564.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'G. Milton', with a horizontal line underneath.

George Milton  
Head of Regulation & Compliance

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<sup>2</sup> ICE Clear Europe Circular C22/056 (25 April 2022), available at [https://www.theice.com/publicdocs/clear\\_europe/circulars/C22056.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C22056.pdf).