



July 22, 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 – Default Insurance  
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 Clearing Rules (the “Rules”)<sup>1</sup> to address the receipt of proceeds from default insurance, 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 Parts 9 and 11 of the Rules relating to default insurance that is intended to cover losses resulting from a Clearing Member default. Among other changes, the amendments address the potential receipt of proceeds from default insurance. Although ICE Clear Europe is not, and will not be, required to obtain or maintain default insurance, the proceeds of any such insurance will, under the Rules as to be revised, be applied as part of the resources available to ICE Clear Europe in the event of a Clearing Member default. Such default insurance would provide additional default resources to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources from non-defaulting Clearing Members. This would provide a potential extra layer of protection for the non-defaulting Clearing Members’ guaranty fund contributions and assessments. ICE

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

Clear Europe is also making certain additional conforming amendments to the Rules. The revisions are described in detail below.

ICE Clear Europe is amending the default waterfalls in Rules 908(b) (for F&O-only Clearing Members or Sponsored Principals), (c) (for CDS-only Clearing Members or Sponsored Principals), (d) (for FX-only Clearing Members or Sponsored Principals) and (g) (for Clearing Members or Sponsored Principals in multiple membership categories) such that default insurance proceeds will be placed third in the waterfall of assets used to meet the obligations and liabilities of a Defaulter and any shortfall, loss or liability to the Clearing House upon an Event of Default. (In the case of a defaulter with multiple membership categories, the proceeds of default insurance will be applied to each Default Amount on a pro rata basis, as provided in revised Rule 908(g)(iii).) Default insurance proceeds will thus be applied following the Clearing House initial contribution and before the Clearing Member guaranty fund contributions and assessment contributions. Conforming amendments are being made to the Rule 101 definitions of “Clearing House CDS GF Contribution”, “Clearing House F&O GF Contribution” and “Clearing House FX GF Contribution” as well as to Rule 909(a), reflecting the placement of default insurance proceeds in the applicable waterfalls under Rule 908.

Rule 1103(e) (which states certain limitations with respect to the benefits of default insurance) is being amended to provide that the Clearing House is not obliged to obtain or maintain any default insurance policy or make or receive the proceeds under any claim prior to processing to the next levels of assets in the applicable waterfall in Rule 908, subject to the payment order specified in Rule 1102(k). The amendments further reflect that there could be a delay in receiving insurance proceeds such that other assets applicable under Rule 908 may be called prior to insurance proceeds being received and proceeds of any claim may need to be applied to meet losses across more than one Event of Default if there are multiple defaulters. The amendments further set out the order in which proceeds of default insurance claims will be paid out if there are multiple defaulters within a certain period, such that insurance proceeds will not be applied to a default in respect of which there are no further losses after applying default resources up to and including the Clearing House contribution, and will be applied to remaining losses based on which default occurred first in time, and to losses from defaults occurring simultaneously (including defaults occurring on the same day) on a pro rata basis.

Rule 1102(k) (which addresses allocation of amounts recovered from a Defaulter) is being amended to address application of recoveries to pay amounts owed to default insurers in respect of default insurance, as well as reimbursements to Clearing Members and the Clearing House in respect of their contributions that have been used, in the reverse order in which assets were applied under Rule 908 (i.e., to non-defaulting Clearing Members in respect of their Guaranty Fund Contributions that had been applied, then to the default insurance provider in respect of amounts owed to it, and then to the Clearing House in respect of its default contribution). Rule 1102(k) is also being revised to clarify that application of such amounts will be subject to (i) retaining or repaying amounts applied by the Clearing House (which no longer includes claims under insurance policies) or other third parties applied to meet shortfalls; (ii) if applicable, reimbursing payments to Persons that made Assessment

Contributions in the reverse order specified in Rule 908; and (iii) if applicable, meeting certain repayment obligations under Rules 909(j), 914(j) or 916(n).

Rule 909(j) (which addresses reimbursement of Assessment Contributions) is also being amended to reflect the application of default insurance. The amendments expand the existing provision to provide that if, after any Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects on the defaulted obligation, loss or shortfall in whole or in part from an insurer, the Clearing House will refund the collected amount, less expenses, to non-defaulting Clearing Members in respect of their paid Assessment Contributions. The amendment also adds a drafting clarification that such reimbursements are subject to the Clearing House retaining or repaying amounts applied to meet any shortfall and certain repayment obligations, if applicable, under Rules 914(j) (addressing payment of recoveries to persons that were subject to reduced gains distributions under Rule 914) and 916(n) (addressing payments of recoveries to persons that received reduced amounts in the case of product termination under Rule 916), which is consistent with the existing language of Rule 914(j) and 916(n).

The term “Available Non-Defaulter Resources” in Rule 913 will be amended to include claims under default insurance policies available to be applied pursuant to Rule 908, provided that they were received in cleared funds at the time the Clearing House performs a calculation of Available Non-Defaulter Resources.

Rule 914(j) (which addresses application of recoveries in the context of reduced gains distribution) is being extended such that it will also apply where the Clearing House receives insurance proceeds. Existing Rule 914(j) provides that if the Clearing House receives an amount that would, had it been paid on time, have increased the Clearing House’s available resources on a day on which a Margin Account Adjustment was made in connection with Reduced Gains Distributions, the Clearing House will distribute the amounts received first to non-defaulting Contributors who were liable to pay an adjustment on a pro rata basis and second in accordance with Rule 1102(k) (as described above). The amendment include default insurance proceeds in the type of received amounts subject to the rule.

Similarly, Rule 916(n) (which addresses application of recoveries in the context of product termination) is being amended such that it also applies to insurance proceeds. Existing Rule 916 in general permits the Clearing House to terminate the open contracts in a relevant contract category (e.g., F&O or CDS) under specified circumstances, including in certain cases following an Under-priced Auction or where the Clearing House determines there are not sufficient Clearing Members to support continued clearing of the relevant contract category. In the case of such a termination of a contract category, under existing Rule 916(n), where ICE Clear Europe receives an amount that would, had it been paid on time, have increased the amount owed to (or decreased the amount owed by) Clearing Members or Sponsored Principals upon termination of a contract category, ICE Clear Europe will distribute the amount received first to non-defaulting Clearing Members or Sponsored Principals who received less in respect of product termination than they were otherwise owed, then in accordance with Rule 914(j) (as discussed above), and then in accordance with Rule

1102(k) (as discussed above). The amendment includes default insurance proceeds in the type of received amounts subject to distribution under Rule 916(n).

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

The amendments are potentially relevant to the following core principles: (B) Financial Resources and (G) Default Rules and Procedures and the applicable regulations of the Commission thereunder.

- *Financial Resources.* As described above, the changes amend the default waterfalls in Rule 908 to apply the proceeds of default insurance, if any, as an additional default resource after the application of ICE Clear Europe's own initial contributions and prior to the application of guaranty fund contributions or assessment contributions of non-defaulting Clearing Members. Placing the proceeds from any default insurance that ICE Clear Europe may receive before the guaranty fund resources of non-defaulting Clearing Members in the default waterfall is generally favorable to non-defaulting Clearing Members and enhances ICE Clear Europe's procedures that are designed to protect and ensure the safety of Clearing Member funds and assets. Although ICE Clear Europe is not relying on the additional default resources from default insurance to meet regulatory minimum financial requirements, in ICE Clear Europe's view, the changes to the Rules nonetheless enhance ICE Clear Europe's ability to manage the risk of defaults by providing resources to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources from non-defaulting Clearing Members. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Core Principle B and Commission Rule 39.11.
- *Default Rules and Procedures.* As discussed above, the changes to the Rules integrate default insurance into the default waterfall, providing additional potential default resources to cover losses from Clearing Member defaults, prior to the need to use guaranty fund resources from non-defaulting Clearing Members. Amended Rule 1103(e) provides that ICE Clear Europe may use the contributions of non-defaulting Clearing Members to the guaranty fund prior to the receipt of proceeds owed under the default insurance provided that those Clearing Members are reimbursed from the insurance proceeds when received, in accordance with amended Rule 1102(k). Given that there may be delays in making and processing an insurance claim, this provision ensures that the existence and use of default insurance does not interfere with ICE Clear Europe's default management and allows ICE Clear Europe to continue its default management process without having to wait for the payment of insurance proceeds. The amendments thus facilitate the ability of ICE Clear Europe to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Core Principle G and Commission Regulation 39.16.

As set forth herein, the amendments consist of changes to the Rules to address the receipt of proceeds from default insurance. A copy of the changes to the Rules 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 proposed rule amendments. ICE Clear Europe conducted a public consultation regarding the amendments<sup>2</sup> and received one written response inquiring into whether the total default insurance coverage covers both F&O and CDS clearing together and, if both, how the insurance policy will be applied if the defaulting clearing member was active in both clearing segments. ICE Clear Europe noted that these points were addressed in the consultation Circular, which states that the coverage includes both F&O and CDS Contract Categories, and Rule 908(g)(iii), which states that proceeds of any insurance policy claim shall be applied to each segment on a basis pro rata to the shortfall, loss or liability of each Default Amount (as defined in Rule 908(g)) less Clearing House Contributions applied to such amount. No changes were made as a result of the comments.

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,



George Milton  
Interim Head of Regulation & Compliance

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<sup>2</sup> ICE Clear Europe Circular C20/037 (March 24, 2020), available at [https://www.theice.com/publicdocs/clear\\_europe/circulars/C20037.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C20037.pdf) (the "Circular").