



August 01, 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 –  
Outsourcing Policy

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 Outsourcing Policy (the “Outsourcing Policy” or “Policy”)<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 submitting its Outsourcing Policy which describes, in a consolidated document, the Clearing House’s procedures for management of its outsourcing arrangements. The Outsourcing Policy complements the existing ICE Clear Europe Vendor Management Policy (“VMP”), which describes certain group-wide policies of the Clearing House’s ultimate parent, Intercontinental Exchange, Inc., with respect to its outsourcing arrangements with third parties. The Outsourcing Policy also references ICE Clear Europe’s Outsourcing Operating Manual (“OOM”), which

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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.

sets out additional details concerning the steps it follows in order to introduce, amend and/or maintain outsourcing arrangements.

The purpose of the Outsourcing Policy is to set out, in a consolidated document, how the Clearing House manages its outsourcing arrangements, both with third party providers and its affiliates, and how the Clearing House's Board maintains oversight of the outsourcing arrangements. Together with the VMP, the Outsourcing Policy is intended to document how the Clearing House assesses the risks of outsourcing certain functions. The Policy is not expected to represent a change in the Clearing House's current practices, but rather to more clearly document those practices in a Clearing House level policy.

The Outsourcing Policy includes an introductory section which describes the differences between outsourcing and purchasing services, the former being the Clearing House's use of a service provider to perform an ongoing activity that is usually performed by the Clearing House and which often involves transferring or sharing related non-public proprietary information, and the latter being the Clearing House's purchases of services, goods and facilities and which typically does not include any transfer of non-public proprietary information.

The Outsourcing Policy also differentiates the Clearing House's outsourcing practices and purchasing arrangements in respect of third-party providers, which are managed through the VMP, from outsourcing through its affiliates, which typically have a lower risk profile for the Clearing House because such affiliates tend to be regulated entities with the same or similar systems, risk appetites, standards and processes, among other commonalities, as the Clearing House.

The Policy sets out the Clearing House's overall objectives when considering outsourcing.

The Policy includes a discussion of outsourcing to third parties and outsourcing to the Clearing House's affiliates. As mentioned, outsourcing to third parties is covered under the VMP, which covers due diligence, risk assessment, suitability, and performance management, among other topics. Outsourcing to affiliates of the Clearing House follows the same process and standards as under the VMP; however, assessment will be performed by ICE Clear Europe's senior management rather than the Clearing House's Vendor Management Office. In all cases, the Clearing House looks to ensure that all service provider related incidents (such as service interruptions) are recorded and monitored and escalated to the Clearing House's senior management in a consistent manner.

The Policy provides that the Clearing House will consider in its assessment of service providers that there can be lower risk in outsourcing functions to third parties that are also regulated or authorized. The Clearing House will consider in its assessment of a service provider how the service provider's jurisdiction impacts the risks associated with outsourcing functions to that service providers.

ICE Clear Europe is including in the Policy that it looks to manage any potential or actual conflicts of interest resulting from its outsourcing arrangements, particularly in respect of outsourcing arrangements it has with its affiliates.

Additionally, ICE Clear Europe is including in the Policy that it looks to reserve independent audit rights to check compliance with legal and regulatory requirements and policies in its outsourcing agreements with third party and affiliate service providers, as required.

The Policy also includes information about ICE Clear Europe's cloud-based outsourcing arrangements. Outsourcing to the cloud is generally covered under the existing VMP. Relevant ICE Clear Europe and ICE Group policies, such as the Corporate Information Security Policy will also be considered when engaging in cloud outsourcing arrangements. Adding a new or significantly change an existing cloud outsource arrangement will be covered under the OOM.

The Policy includes a section describing the Clearing House's considerations when deciding whether to outsource a function considered "critical or important". A function is considered by the Clearing House to be "critical or important" where a defect or failure in its performance would materially impair the Clearing House's continuing compliance with the conditions and obligations or its authorizations or other obligations, financial performance or the soundness or continuity of its services and activities.

The Policy includes an acknowledgment by the Clearing House that outsourcing "critical or important" functions could impact the Clearing House's risk profile, ability to oversee the service provider and manage risks, business continuity measures and performance of its business activities, to name a few. Such matters would be considered in the decision-making processes in respect of outsourcing. Additionally, "critical or important" functions will impact how the Clearing House will assess how an outsourcing arrangement is assessed, documented and managed by the Clearing House (including by having an exit plan, if practical). Also, if a function to be outsourced is or will be a dependency to the delivery of one or more of the Clearing House's important business services under its operational resilience framework, such function will be mapped accordingly with appropriate consideration given to potential vulnerabilities, resiliency and impact to the relevant impact tolerances.

The Policy includes a discussion of additional considerations of particular importance to the Clearing House in light of its position as a systemically important financial market infrastructure and in alignment with its regulatory oversight. The Clearing House places particular importance on the following additional considerations when considering its outsourcing arrangements, each described in further detail in the Policy: (i) business continuity arrangements, (ii) incident management responsiveness and reporting, (iii) independent assurances, and (iv) redundancies, notice periods and exit strategies. Regarding business continuity arrangements, during the onboarding process and through periodic reviews and testing the Clearing House will assess the service provider's business continuity plans to ensure that they are fit for the relevant purposes. Next, the Policy states that incident management and responsiveness and timely reporting are important factors in the Clearing House's outsourcing arrangements, given the services that the Clearing House operates. Accordingly, the Clearing House will require that outsourcing providers have appropriate mechanisms for timely response and incident management. Regarding independent assurances, the Clearing House will, where possible and practicable, look to collect independent assurances of

the outsourcing providers' services, which may include but are not limited to SOC2 audits, Regulation SCI audits and enterprise technology risk assessments. Finally, where possible and practicable, the Clearing House will look to mitigate the risk of disruption to its services from outsourcing providers ceasing to provide their services to the Clearing Houses, through redundancies (the use of multiple providers), sufficient notice periods, or exit strategies.

The Policy also includes a section describing ICE Clear Europe's Board oversight of outsourcing arrangements. The Board oversees the Clearing House's outsourcing arrangement through risk appetite metrics that include service and incident reporting, operational risk reporting that covers typically Priority 3 incidents or higher, observed in the relevant period, their resolution and other performance metrics, and an Annual Outsourcing Assessment Report.

The COO or its delegate will prepare the Annual Outsourcing Assessment Report, which will be reviewed by the Board each year directly or via its committees. The Annual Outsourcing Assessment Report will cover the following topics: (i) the activities and services that are outsourced, (ii) the identities of the outsource providers (iii) the performance of the outsourcing providers and their adherence to agreed service levels, (iv) where relevant, the security measures of the outsourcing providers, (v) risk reviews of the outsourcing providers, particularly those providing critical or important cloud outsourcing arrangements, (vi) exit strategies and contingency arrangements associated with outsourcing critical or important functions and (vii) results and conclusions of additional assurance mechanisms (for example, SOC2 audits) where applicable.

Finally, the Policy describes governance and exception handling. The document owner will be responsible for ensuring that it remains up-to-date and reviewed in accordance with the Clearing House's governance processes. Exceptions to the Policy will also be approved in accordance with such governance processes. Any deviations from the Policy will have to be appropriately escalated and reported in a timely manner by the document owner, and the document owner will also be responsible for reporting any material breaches or deviations to the President of ICE Clear Europe and the Risk Oversight Department in order to determine the appropriate governance escalation and notification requirements.

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

The amendments to the Delivery Procedures are potentially relevant to the following core principles: (D) Risk Management and (O) Governance, and the applicable regulations of the Commission thereunder.

- *Risk Management.* The Outsourcing Policy is intended to document the Clearing House's practices that relate to management of the Clearing House's outsourcing functions. The Policy would, among other matters, document the objectives of the Clearing House in outsourcing responsibilities to various third parties (including affiliates) and managing related risks, including conflict of interest risks and legal and regulatory requirements. The Policy would also set out in detail certain key considerations of the Clearing House in

outsourcing “critical or important” functions. In ICE Clear Europe’s view, as set out above, the Policy facilitates overall risk management with respect to outsourcing. As such, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle D and Commission Rule 39.13.

- *Governance.* As discussed above, the Outsourcing Policy clarifies certain responsibilities of the Clearing House Board and COO in relation to oversight of the Clearing House’s outsourcing arrangements. In line with the Clearing House’s other policies and procedures, the Policy also describes the responsibilities of the document owner and appropriate escalation and notification requirements for responding to exceptions and deviations from the Policy. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of Core Principle O and CFTC Rule 39.24.

As set forth herein, the amendments consist of the adoption of the Outsourcing Policy. ICE Clear Europe has requested confidential treatment with respect to the amendments, which have been submitted concurrently 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 received no substantive opposing views in relation to the 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 [George.milton@theice.com](mailto:George.milton@theice.com) or +44 20 7429 4564.

Very truly yours,



George Milton  
Head of Regulation & Compliance