ICE CLEAR EUROPE

September 5, 2019

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 – Amendments to ICE Clear Europe Clearing Rules and Procedures

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 the ICE Clear Europe Clearing Rules (the "Rules") and Procedures (including the Clearing Procedures, CDS Procedures and Finance Procedures) 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 Rules and Procedures (including the Clearing Procedures, CDS Procedures and Finance Procedures) to update relevant references to, and facilitate compliance with, applicable European Union ("EU") and United Kingdom ("UK") laws, including the European Market Infrastructure Regulation[1] ("EMIR"), the revised Markets in Financial Instruments package[2] (collectively,

[1] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.
[2] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU; Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 and the various regulatory technical standards, implementing technical standards made thereunder and national law implementing measures in EU member states, including the UK, related thereto.

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"MiFID II") as implemented in the UK and elsewhere in the European Union, and certain other laws and regulations as discussed below. In general, these amendments are not expected to result in material changes in the Clearing House's current practices or in the rights or obligations of the Clearing House or Clearing Members, but are designed to reflect more clearly and explicitly various applicable legal requirements and provisions.

Specifically, ICE Clear Europe is making amendments to Parts 1, 2, 5, 9, 11, 15 and 16 of the Rules and to the Clearing Procedures, Finance Procedures and CDS Procedures. The text of the Rules and Procedures amendments is attached hereto. The Rules and Procedures amendments are described in detail, by subject matter, as follows:

1. MiFID II Provisions

The amendments include changes to the Rules and Procedures that more clearly take into account certain provisions and requirements of MiFID II. The amendments include changes to the definitions to reflect national implementing laws, adjustments to the way in which particular accounts of Non-FCM/BD Clearing Members are described to ensure compliance with MiFID II rules on indirect clearing and amendments to address the final legislative texts concerning "straight-through-processing" ("STP") requirements under MiFID II in relation to the clearing of OTC derivatives.

In Rule 101, changes are being made to the defined term "MiFID II" so that the definition expressly includes "national implementing measures in any member state." As an EU directive, Directive 2014/65/EU must generally be implemented within a Member State's national law to have direct legal effect in that jurisdiction. In practice, it is these "national implementing measures" which contain the legal substance of the directive and which impose legal obligations on ICE Clear Europe and its Clearing Members.

Revisions to the definition of "Segregated Gross Indirect Account" are to clarify that this type of indirect clearing account used by Non-FCM/BD Clearing Members will, in accordance with MiFID II, distinguish the assets and positions of one indirect client recorded in the account from those of another indirect client recorded in the account (in addition to distinguishing assets and positions of indirect clients generally from those of the relevant direct client of the Clearing Member). The amendments are intended to reflect legal obligations on ICE Clear Europe under the regulatory technical standards made under MiFID II, which obliges it to offer accounts that facilitate clearing by indirect clients of a direct client of a Clearing Member.[3]

[3] In this regard, Article 3(1) of Commission Delegated Regulation (EU) 2017/2154 (the "MiFIR Indirect Clearing RTS") requires CCPs to open certain indirect clearing accounts at the request of clearing members (who are also subject to a related requirement to offer certain accounts if they provide indirect clearing services). The "Segregated Gross Indirect Account" is intended to be one such account, namely "a segregated account for the exclusive purpose of holding the assets and positions of indirect clients of each client" of a Clearing Member (Article 4(4)(b) of the MiFIR Indirect Clearing RTS). This account must in turn allow the Clearing Member providing indirect clearing services to a client to comply with the MiFID II requirement to offer an account in which "the positions of an

Rule 108(a) is being amended to add a reference to the record-keeping requirements under MiFID II rules, in addition to the requirements under FCA and PRA rules that are referenced in the current rule. MiFID II sets out a number of record-keeping requirements such as the requirement to keep a record of all services, activities and transactions undertaken by a firm (including recordings of telephone conversations or electronic communications relating to transactions it concludes (either on a proprietary basis or on behalf of clients)), and these requirements will be applicable to EU Clearing Members which are not based in the UK. Compliance with these MiFID II requirements will be regarded as sufficient to satisfy the record-keeping obligation in Rule 108(a).

In the CDS Procedures, at paragraph 4.3, additional language is being added to specify that CDS Trade Particulars submitted for clearing must "be provided in an electronic format using the relevant interface designated for such purposes when presenting the trade to the Clearing House or the transaction submission system of the relevant CDS Trade Execution/Processing Platform (or such other format as is used by the Clearing House or a CDS Trade Execution/Processing Platform for such purposes from time to time as is notified to CDS Clearing Members)". This language is being added to ensure that ICE Clear Europe is compliant with the MiFID II rules on STP.[4]

Amendments to paragraph 4.4(a) of the CDS Procedures also facilitate compliance with MiFID II STP requirements. Additional language is being added to confirm that, if it decides not to accept CDS Trade Particulars for clearing, ICE Clear Europe is required to "give notice the sooner of (i) on a real-time basis or (ii) as soon as reasonably practicable (in any report identified for this purpose) specifying that the Clearing House has not accepted such CDS Trade Particulars for Clearing". In the following sentence, a conforming change is being made to provide that CDS Trade Particulars "shall not be deemed to be formally submitted, received, accepted or rejected" until completion of the pre-submission review. The amendment incorporates the requirement of Article 4(5) of the MiFIR STP RTS, which requires a central counterparty ("CCP") that does not accept a derivative transaction concluded on a bilateral basis for clearing to "inform the clearing member of the non-acceptance on a real-time basis", together with the existing "as soon as reasonably practicable" standards in the CDS Procedures, which implements other regulatory requirements.

2. References to Authorized Central Counterparty Status

The amendments make certain changes, updates and clarifications to the Rules and Procedures that reflect ICE Clear Europe's authorized central counterparty status under EMIR and cater for changes in the application of the Companies Act 1989 and Financial Services and Markets Act 2000 (Recognition Requirements for Investment

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indirect client do not offset the positions of another indirect client" and "the assets of an indirect client cannot be used to cover the positions of another indirect client" (Article 4(2)(b) of the MiFIR Indirect Clearing RTS). For this to be the case, the account offered by the CCP must "distinguish the collateral and positions of different indirect clients" (Recital 7 of the MiFIR Indirect Clearing RTS).

[4] These requirements are principally contained in Commission Delegated Regulation (EU) 2017/582 (the "MiFIR STP RTS"). Article 1(2) of the MiFIR STP RTS provides: "A CCP shall detail in its rules the information it needs from counterparties to a cleared derivative transaction and from trading venues in order to clear that transaction, and the format in which that information shall be provided."

Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (the "Recognition Requirements Regulations"). These changes are necessary due to the impact of the re-authorization of ICE Clear Europe in the UK under the EMIR regime (instead of its recognition under the pre-EMIR UK national regime). In addition, certain other amendments are introduced to more accurately reflect certain requirements of EMIR and the scope of its related instrument REMIT[5], which applies to spot contracts and applies a different regime, as regards the reporting of derivative trades by counterparties thereto to a trade repository.

Changes to Rule 102(r)(i) have been made to refer to ICE Clear Europe being an "authorized central counterparty under EMIR" in addition to its status as a recognized clearing house under the Financial Services and Markets Act 2000 ("FSMA"). Various other provisions of the Rules refer to the status of ICE Clear Europe as reflected in Rule 102(r)(i) as amended. In this regard, changes have been made to Rule 109(b)(v) to refer to the multiple regulatory statuses held by ICE Clear Europe (by way of a cross-reference to Rule 102(r)) rather than just its status under the FSMA. As modified, Rule 109(b)(v) permits ICE Clear Europe to make rule changes without following the normal public consultation process under UK laws where this is required to ensure compliance by ICE Clear Europe, Clearing Members or Customers with applicable laws or requirements imposed by regulators, or is necessary or desirable to maintain such regulatory status (and not merely where this is necessary to maintain its status under FSMA).

Similar changes were made to Rule 115(a), namely replacing an existing reference to ICE Clear Europe's recognition as a clearing house with a cross-reference to "its statuses referred to in Rule 102(r)." Rule 115(a) provides for certain permitted interactions with regulators and other authorities for the purposes of maintaining ICE Clear Europe's status as a recognized clearing house. The amendment ensures that ICE Clear Europe is also able to make arrangements with such authorities with a view to maintaining its other regulatory statuses, rather than merely its status under FSMA.

Rule 201(a)(vii) is being amended to reflect the fact that reporting to a trade repository is not required for all Contracts. This provision currently provides that a Clearing Member, as a criterion for attaining and maintaining membership, must "be a user of or otherwise have access to at least one Repository (if any) for the Contracts it proposes to clear." Reporting to a trade repository is required for derivative contracts falling within scope of EMIR but potentially not for other contracts falling under REMIT (such as spot contracts). As such, language is being added to clarify that this membership criterion only applies "where such Contract is required to be reported to a repository under Applicable Law."

Changes in Rule 207(d) state explicitly that set-off is not permitted under the Rules in circumstances which would breach section 182A of the Companies Act 1989. This was a new provision introduced into this UK primary legislation as part of the UK's implementation of EMIR and replaced other provisions concerning the set off of accounts at UK recognized clearing houses, for authorized central counterparties under EMIR. The relevant Rules changes reflect the wording of this provision and

[5] Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.

result in each Clearing Member that clears client positions agreeing with ICE Clear Europe that there will be no setting off of positions and assets recorded in any of the Clearing Member's accounts against positions and assets recorded in other accounts where this is in contravention of section 182A of the Companies Act 1989. Section 182A of the Companies Act 1989 provides protection to authorized central counterparties from normal insolvency law set-off processes that might otherwise apply to result in a combination across different accounts for assets recorded in the separate customer accounts or proprietary accounts of authorized central counterparties (such as ICE Clear Europe). The amendments also replace references to Section 187 of the Companies Act 1989, which previously addressed such set off issues and is no longer applicable to ICE Clear Europe as a result of it now being an authorized CCP under EMIR. Related changes are being made to Rule 906(b). A new paragraph is being added, which requires Clearing Members to confirm via a representation that the determination of net sums under Rule 906 would not involve the setting off of positions and assets in a manner that contravenes section 182A of the Companies Act 1989. This change reflects the fact that Clearing Members are ultimately responsible for recording assets and contracts in the correct accounts and is intended to reduce the risk for ICE Clear Europe that when it determines a post-default "net sum" for a particular customer account or proprietary account that it might inadvertently breach section 182A's restrictions on the setting off of positions and assets in Customer Accounts against those in Proprietary Accounts or those in other Customer Accounts, for example as a result of an error caused by the Clearing Member.

Changes are being made to the requirement in Rule 406(b) and (c) for ICE Clear Europe and Clearing Members to reflect aggregation and netting of positions in the records of a trade repository designated by ICE Clear Europe. These changes reflect the fact that ICE Clear Europe and Clearing Members may use different trade repositories for the purposes of complying with reporting obligations under applicable law (in particular EMIR), and the fact that repository will not necessarily be designated by ICE Clear Europe if the Clearing Member chooses otherwise.

Changes to the recital to Part 9 of the Rules are being made to update references to relevant legislation and terminology applicable to ICE Clear Europe as an authorized central counterparty. This includes replacing the term "default proceedings" with the term "default procedures", which is the term used in Article 48 of EMIR. Additional language is being added to clarify that the provisions of Part 9 are further intended to constitute "default arrangements" for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the "Settlement Finality Regulations"). The Settlement Finality Regulations implement Directive 98/26/EC (the "Settlement Finality Directive") and provide settlement finality and insolvency law protections for instructions to transfer cash or securities (referred to in the legislation as "transfer orders") that take place within the "designated system" operated by ICE Clear Europe, as well as for "the default arrangements of a designated system." Clarifying that the rules contained in Part 9 are intended to constitute "default arrangements" provides greater clarity and certainty that the operation of these rules will be enforceable in a default scenario, notwithstanding any otherwise applicable national insolvency law. It does not, however, change the substantive rights or obligations of the Clearing House or Clearing Members under

the Rules. In addition, amendments update references to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001, to reflect a change in the name of this legislation. A change is also being made to refer to compliance with the provisions of the Recognition Requirements Regulations more generally, rather than just those provisions "relevant to default rules." This is to reflect paragraph 29 of the Schedule to the Recognition Requirements Regulations, which requires compliance with EMIR generally (including its requirements with respect to "default procedures"). The overarching intention of the amendments to the recital is to confirm and give notice that the provisions of Part 9 are intended to be "default rules" (or the equivalent concepts under relevant applicable laws) under the package of legislation now applicable to ICE Clear Europe and so to give notice that such rules are intended to benefit from the special insolvency law protections which are afforded to clearing houses and their default rules under such legislation. A related change is being made at Rule 907(j). This involves adding references to "similar concepts" to a "default rule" and adds a reference to "any of the Applicable Laws referred to in the opening paragraph of this Part 9" in addition to merely those under the Companies Act 1989.

Rule 906(a) is being amended to update references to the relevant applicable legislation. New language is being added to link the net sum calculation in Rule 906(a) to various requirements applying to the default rules of CCPs under applicable law, such as the Recognition Requirements Regulations and EMIR. Changes are also being made to clause (i) of the definition of "*L*", an element of the net sum calculation in Rule 906, to refer to termination, liquidation or close out generally, instead of using the prescribed wording that was previously (but is no longer) applicable to ICE Clear Europe under the Schedule to the Recognition Requirements Regulations. The Schedule to the Recognition Requirements Regulations is being partially repealed and replaced for EMIR-authorized CCPs, following the coming into force of EMIR. In addition, a reference to Part 12 of the Rules is being added to reflect the fact that this Part contains the rules determining when a Transfer Order arises and becomes irrevocable within ICE Clear Europe's designated system for settlement finality purposes.

Changes to Rule 907(m) aim to provide further legal support for actions taken by ICE Clear Europe following a default of a Customer of a Clearing Member being regarded as actions falling under the protections of Part VII of the Companies Act 1989. The amendments are intended to clarify that where a Clearing Member requests ICE Clear Europe to transfer positions and collateral of a defaulting Customer held in a Customer Account to a Proprietary Account of that Clearing Member (or a different Customer Account of the same Clearing Member in which the Customer is interested) in connection with the management of the default; ICE Clear Europe is allowed, as a result of such request, to assume that the Customer is, or is likely to be, in default in respect of its positions (referred to as "market contracts" under the Companies Act 1989) and act upon the Clearing Member's request (if permitted under applicable laws and following confirmation of the default by the relevant Clearing Member). Similar provisions are also being made to deal with the default of an indirect client (i.e., a client of a Customer of a Clearing Member). The changes are aimed to promote ICE Clear Europe's default management actions being considered within scope of relevant statutory protections under the Companies Act 1989. The new provisions will "apply

equally to a request by a Sponsor following an Event of Default (whether or not declared) in respect of a Sponsored Principal" to ensure that all customer clearing models are covered by these new provisions. Finally, new language at the end of Rule 907(m) confirms that nothing in the Rule limits the right of ICE Clear Europe to declare a Sponsored Principal to be a Defaulter or to exercise any of its other rights under Part 9.

A new recital is being added to Part 12 of the Rules, which addresses settlement finality, to fulfill a similar purpose to the changes to the recital to Part 9 as discussed above. The new recital to Part 12 clarifies that this section of the Rules is intended to constitute part of the default rules of ICE Clear Europe. As with the recital to Part 9, this helps to identify the sections of ICE Clear Europe's rulebook which should have the benefit of special protections that are available for the default rules of a CCP under applicable carve-outs from insolvency laws. The new recital clarifies that the provisions of Part 12 are intended to constitute "default rules" for the purposes of the Companies Act 1989, "default procedures" for the purposes of Article 48 of EMIR, "default rules and procedures" for the purposes of section 5b(c)(2)(G) of the Commodity Exchange Act, "rules on the moment of entry and irrevocability" of a system for the purposes of the Settlement Finality Directive, "default arrangements" for the purposes of the Settlement Finality Regulations and "default procedures" for the purposes of Commission Rule 17Ad-22. Given that Part 12 sets out rules specifically designed to comply with the Settlement Finality Regulations, a confirmation to this effect is also contained in the changes. Moreover, language is being added at the end of the new recital to provide and give notice that ICE Clear Europe also relies on legal rights under applicable laws (including those referenced above) in addition to its rights under the Rules.

Changes are being made to paragraph 7.2 of the Finance Procedures to reflect that non-cash assets provided as Permitted Cover must be held at certain prescribed institutions in accordance with requirements under EMIR and regulatory technical standards under EMIR. The changes confirm that "Non-cash Permitted Cover is being held in accounts of the Clearing House at a Custodian, central securities depository ("CSD") or international central securities depository ("ICSD"), which accounts are in the name of the Clearing House, as permitted under regulatory technical standards under EMIR." This reflects the provisions of EMIR and Commission Delegated Regulation (EU) No 153/2013, which require CCPs to deposit financial instruments posted as margin "with the operator of a securities settlement system that ensures the full protection of those instruments". This effectively requires such instruments to be deposited in a CSD. Where this is not possible, financial instruments may be deposited with certain other institutions provided that this is on an insolvency-remote basis. The changes are consistent with ICE Clear Europe's long-standing practice for holding such Permitted Cover, in light of the requirements of EMIR. A related change is being added to the Finance Procedures at paragraph 6.1(i)(v) to reflect the fact that income on non-cash assets posted by Clearing Members may be received by a custodian of ICE Clear Europe rather than directly by ICE Clear Europe itself, as a result of the holding of such assets at CSDs.

Changes at paragraph 7.3(a)(vii)-(viii) of the Clearing Procedures remove references (in parentheses) to complaints processes having been established pursuant to the

Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 and Part 10 of the Rules, since these provisions are no longer in force for EMIR-authorized CCPs.

3. Other Amendments

Various other changes throughout the Rules and Procedures have been made to update references to applicable law and otherwise reflect or promote compliance with applicable law. In Rule 101, a change in the definition of "Applicable Law" is being made to include any memoranda of understanding between ICE Clear Europe and regulators. Memoranda of understanding between ICE Clear Europe and regulators or between regulators may have implications on the relationship between ICE Clear Europe and its Clearing Members, especially if disclosures are required under such documents. Disclosures pursuant to such memoranda of understanding may not currently be in scope of confidentiality carve-outs under the Rules without such an amendment. Including a reference to memoranda of understanding (or equivalent) between ICE Clear Europe and "one or more Governmental Authorities or between Governmental Authorities" facilitates disclosure of confidential information to regulators as necessary in accordance with such documents under the provisions of Rule 106.

Changes to the defined term "Regulatory Authority" reflect additional regulatory and self-regulatory authorities which may be of relevance to ICE Clear Europe and its Clearing Members, namely the European Central Bank and the Financial Industry Regulatory Authority (FINRA). This defined term is currently used throughout the Rules in the context of obligations imposed by a regulator or governmental authority on ICE Clear Europe, Clearing Members or Customers.

The definition of "Resolution Step" (which is relevant to ICE Clear Europe's ability to exercise default remedies under the Rules in the event of a resolution proceeding involving a Clearing Member) is being amended to expressly cover similar EEA measures to resolution powers and resolution tools under the EU Bank Recovery and Resolution Directive (Directive 2014/59/EU, "BRRD"), but which do not derive from the BRRD. The need to refer to similar EEA measures to the BRRD resolution powers and resolution tools within the "Resolution Step" definition reflects the fact that in some EEA jurisdictions (for example, in Germany) non-BRRD national law measures exist that often predate BRRD and which can also be applied to failing banks, but which are not be captured by the current defined term. Specific references to (non-EEA) Swiss and Australian resolution laws have also been added because ICE Clear Europe has Swiss and Australian Clearing Members who may be affected by such measures.

A new "Settlement Finality Directive" defined term in Rule 101 is being added because this term is currently used in the recital to Part 9 and in the new recital to Part 12 mentioned above.

The clearing membership criterion at Rule 201(a)(xxii) is being deleted because the EU Savings Directive (Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments) is no longer in force.

Changes to Rule 205(b) are being made to clarify that ICE Clear Europe will only be able to obtain copies of financial filings, returns and reports in relation to a Clearing Member directly from such Clearing Member's regulator (FCA or PRA) with the consent of the relevant Regulatory Authority. The amendment reflects the fact that a regulator's consent may be required before ICE Clear Europe may obtain a Clearing Member's financial reports from a particular regulator and the fact that these and other regulators may not in practice be willing or able to share such reports with ICE Clear Europe.

Rule 501(a) is being amended to remove an erroneous reference to Approved Financial Institutions being permitted to issue and confirm letters of credit for Clearing Members. ICE Clear Europe no longer accepts uncollateralized letters of credit as collateral, due to restrictions under EMIR and technical standards thereunder.[6] Although the Finance Procedures and ICE Clear Europe's permitted cover circulars were updated to remove references to letters of credit as collateral some time ago, there remains a legacy reference to such instruments in this Rules provision which requires deletion.

A new Rule 1203(m) clarifies that the time at which Transfer Orders become irrevocable (and binding) under the terms of the "system" operated by ICE Clear Europe in accordance with the Rules (i.e. the clearing and settlement procedures operated by ICE Clear Europe for cleared contracts) is governed by Part 12 thereof. As noted above, special protections are provided by the Settlement Finality Directive (as implemented in UK law by the Settlement Finality Regulations) for transfer orders of money or securities in a "designated system" (such as the settlement system operated by ICE Clear Europe), but only from the point that such transfer orders become irrevocable under the rules of the relevant system. Moreover, paragraph 5 of the Schedule to the Settlement Finality Regulations requires the rules of a designated system to "specify the point after which a transfer order may not be revoked by a participant or any other party". Part 12 sets out when different Transfer Orders prescribed under the Rules are deemed to become irrevocable under the ICE Clear Europe designated system.

In Rule 1501(a), the definition of "2010 PD Amending Directive" is being updated to include a reference to national laws implementing Directive 2010/73/EU, which amends the EU Prospectus Directive (Directive 2003/71/EC). This change is being made to clarify that the reference to Directive 2010/73/EU in the Rules also includes national Member State laws implementing the directive.

Rule 1603(i) currently clarifies that nothing in the Rules prevents an FCM/BD Clearing Member from providing FCM/BD Customer-provided collateral to ICE Clear Europe in respect of which the FCM/BD Clearing Member benefits from a security interest (to secure the FCM/BD Customer's obligations), subject to the rights of the Clearing House. A change is being made to also clarify that nothing in the Rules prevents an FCM/BD Clearing Member from having a security interest in the FCM/BD Customer's rights in respect of any contracts cleared through the FCM/BD Clearing Member, subject to the rights of the Clearing House. This change is being

[6] ICE Clear Europe certification to the Commission dated August 24, 2014.

being made in response to feedback from Clearing Members that such a security interest is provided as a matter of typical practice, and that this should be expressly permitted under the Rules.

Compliance with the Act and CFTC Regulations

The amendments are potentially relevant to the following core principle: (E) Settlement Procedures, (F) Treatment of Funds, (G) Default Rules and Procedures and (R) Legal Risk Considerations and the applicable regulations of the Commission thereunder.

- *Settlement Procedures.* As discussed herein, amendments to Part 12 of the Rules clarify the irrevocability and finality of Transfer Orders under the terms of the "system" operated by ICE Clear Europe in accordance with the Rules, which better ensures that these Rules receive protections under the Settlement Finality Directive. As a result, ICE Clear Europe believes the amendments are consistent with the settlement finality requirements of Core Principle E and CFTC Rule 39.14.

- *Treatment of Funds.* The amendments, as discussed above, adjust the account descriptions for the Segregated Gross Indirect Accounts used by Non-FCM/BD Clearing Members to clarify that such account will separately account for the positions and assets of each indirect client carried through the account. The changes related to set-off and the Companies Act 1989 also provide further clarification as to the protection of funds in one type of account from being applied to losses in other accounts. As a result, ICE Clear Europe believes the amendments further enhance ICE Clear Europe's segregation procedures, consistent with the requirements of Core Principle F and CFTC Rule 39.15.

- *Default Rules and Procedures.* The amendments make a range of clarifications and updates designed to enhance the Clearing House's default Rules and Procedures. As discussed herein, the amendments to update terminology in Part 9 of the Rules, and to clarify that the provisions of Part 9 are intended to constitute "default arrangements" under the Settlement Finality Directive, provides greater certainty that the Part 9 Rules are enforceable in a default scenario notwithstanding otherwise applicable national insolvency law in the EU. Other amendments similarly clarify that the provisions of Part 9 and Part 12 are intended to be "default rules" or the equivalent concepts under relevant applicable laws and therefore should benefit from any special protections applicable to a CCP's default rules from applicable insolvency regimes. The amendments also facilitate the ability of Clearing Members to transfer positions and collateral of a defaulting Customer held in a Customer Account to a Proprietary Account of that Clearing Member (or a different Customer Account) to facilitate management of the Customer default. Taken together, these amendments strengthen the enforceability of ICE Clear Europe's default rules and procedures and better enable it to take timely actions to contain losses. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle G and CFTC Rule 39.16.

- *Legal Risk Considerations*. As discussed herein, the amendments are designed to accurately reflect, and facilitate continued compliance with, applicable EU and UK law, including EMIR, REMIT, the Companies Act 1989, the Settlement Finality Directive and MiFID II. In this regard, the amendments make various changes to the definitions and terminology used throughout the Rules and Procedures to ensure consistency with applicable UK and EU laws (including, as applicable, national implementing legislation in the EU). In particular, various amendments to the Rules and Procedures more accurately reflect ICE Clear Europe's authorized CCP status under EMIR, as well as other regulated statuses of the Clearing House. The amendments also clarify application of set-off restrictions that are now applicable to it under the UK Companies Act 1989. Other changes more clearly reflect the requirements of MiFID II, including as to indirect clearing and STP. Taken together, these amendments will enhance the enforceability and clarity of the legal framework provided by the Rules and Procedures under which the Clearing House operates, and 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 Rules and Procedures, 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.

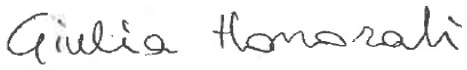
ICE Clear Europe received no substantive opposing views in relation to the proposed amendments. ICE Clear Europe has conducted a public consultation on amendments to its Rules that included the proposed Rule changes set forth herein, as well as a number of other changes which ICE Clear Europe intends to address in future filings.[7] ICE Clear Europe received three detailed and written responses to the overall consultation. It discussed aspects of the proposed Rule changes, as were presented in such consultation, with those interested Clearing Members who responded. Based on feedback received by ICE Clear Europe, those Clearing Members who responded supported all the changes proposed herein. Among other matters and addressed in the amendments that are subject to this filing, one Clearing Member in each case asked certain questions concerning the rationale and basis for, and contained suggestions as to the drafting of, proposed amendments to the definition of "Resolution Step", Rule 907(m) and Rule 1203, the rationale for each of which is presented above. Certain minor drafting clarifications were made in response to other comments that were received prior to the annexed rules and procedures set being finalized.

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 or +44 20 7429 7127.

[7] ICE Clear Europe Circular C19/046 (March 8, 2019), available at https://www.theice.com/publicdocs/clear_europe/circulars/C19046.pdf.

Very truly yours,



Giulia Honorati
Manager Regulation & Compliance