



October 4, 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 Membership 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, amendments to its Clearing Membership Procedures (the “Clearing Membership Procedures” or “Procedures”)<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 Membership Procedures to make certain clarifications and enhancements to remove certain provisions that are duplicative of the Clearing House’s Counterparty Credit Risk Policy and Counterparty Credit Risk

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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 and the Clearing Membership Procedures.

Procedures,<sup>2</sup> to more clearly document certain practices and to make certain non-substantive changes to improve clarity and readability.

The section describing the purpose of the Procedures has been updated to add a defined term referencing the Clearing House's Clearing Rules. Conforming changes have been made to each reference to the "Clearing Rules" appearing in the remainder of the Procedures.

The section describing the application process has been updated to include the names of certain departments responsible for reviewing Clearing Membership applications as follows: such applications (i) will be reviewed by the Credit and Clearing Risk department (this change does not represent a change in departments, rather, it is an inclusion of the relevant department names rather than simply the "Risk" department) and (ii) are subject to the approval of the Executive Risk Committee (rather than simply the "Committee"), which will also be known as "the Committee" or "ERC" in shorthand in the Procedures. Conforming changes have been made in the remainder of the Procedures.

A paragraph which provided that the Clearing Risk Department will conduct a credit review which may include a credit check and assessments based on the Clearing House's Counterparty Ratings System has been removed as the credit review is covered by the Counterparty Credit Risk Policy and Procedures.

For clarificatory purposes, the amendments provide that the list of Approved Jurisdiction for applicants (those jurisdictions for which additional legal and regulatory analysis is not required) will be maintained by the legal department, rather than in the Clearing Membership Parameters. This change reflects current practice as the list of Approved Jurisdictions is currently maintained by the legal department. Further, in order to consolidate information and because the legal department is placed to provide guidance on Approved Jurisdictions, the Clearing Membership Procedures reflect that such list is maintained by the legal department only.

The subsection discussing termination of Clearing Membership by ICE Clear Europe has been updated to remove a sentence which provided that the Board is required to approve the issuance of a Termination Notice against a Clearing Member. There is no such requirement under the Rules, and accordingly the amendments bring the Procedures into line with the Rules and the scope of authority currently delegated by the Board and does not represent a change in existing practice or procedures as they relate to Termination Notices. Action by the Clearing House to terminate a member under Rule 209 will be subject to the existing general governance provisions of the Rules, including Rule 114. Rule 114(a) allows the Clearing House to delegate authority to its Board, Chairman, President or any other Director or employee. Although ICE Clear Europe expects that a decision to issue a Termination Notice against a Clearing Member will likely be made by the Board, the Clearing House's existing Delegation of Authority to its President implemented pursuant to Rule 114(a) could potentially apply to issuance of a Termination Notice in certain emergency scenarios including situations where time is of the essence for the interests of the Clearing House and its Clearing

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<sup>2</sup> The Counterparty Credit Risk Policy and Procedures are described in Exchange Act Release No. 34-93880, SR ICEEU-2021-15 (Dec. 30, 2021).

Members. In such cases and pursuant to the specifications included in the Delegation of Authority, the President may be authorized to issue a Termination Notice. Accordingly, the updates conform the Clearing Membership Procedures to reflect the Clearing House's existing authority under the Rules and Delegation of Authority to issue Termination Notice in respect of Clearing Members.

The subsection discussing the minimum capital requirements that the Clearing House requires of Clearing Members has been updated to remove a reference to data sources used to determine a Clearing Member's Capital. Such matters are addressed in the Counterparty Credit Risk Policy and Procedures and do not need to be addressed in the Clearing Membership Procedures. Additionally, the amendments clarify that certain additional risk-based requirements that may be imposed under the CDS Procedures will apply only to CDS Clearing Members in accordance with the terms of the CDS Procedures. This update does not represent a change to the Clearing Membership Procedures and is intended to reflect that the Clearing Membership Procedures align with the CDS Procedures.

The subsection discussing contributions to the Guaranty Fund for CDS and F&O has been updated to clarify that the Clearing Membership applications will be required to make Guaranty Fund contributions as specified by the F&O Guaranty Fund Policy and Section 5 of the CDS Risk Policy. The change is intended to update references to the correct F&O and CDS policies and does not represent a change in substantive requirements.

A subsection discussing the Clearing House's margin-to-capital ratio requirement has been removed as unnecessary because such requirement is addressed in greater detail in the Clearing House's Counterparty Credit Risk Policy and Procedures.

In the section discussing on-going monitoring of the Clearing Members by the Clearing House, a sentence which cross-referenced the Counterparty Credit Risk Policy has been removed as unnecessary.

The amendments provide that the Clearing House's periodic counterparty review includes know-your-customer and anti-money laundering assessments. This amendment is intended to reflect current practice.

A subsection referencing the Clearing House's Quarterly Counterparty Rating System Report has been removed as the topic is discussed in greater detail in the Counterparty Credit Risk Policy and Procedures.

A subsection discussing the information the Clearing House requires that Clearing Members provide through the Annual Member Return (AMR) has been updated to expressly include updated Clearing Member information. AMR is an annual process by which ICE Clear Europe requests Clearing Members to provide and confirm certain information related to their clearing membership; AMR is a means for the Clearing House to ensure that it has up-to-date information about Clearing Members. The change is intended to inform Clearing Members that information requested as part of AMR will include updated Clearing Member information, which may include, for example, a change of a Clearing Member's registered or operational address, its legal entity name, etc.

Other non-substantive typographical and similar drafting clarifications and updates have been made throughout the Procedures to improve readability and correct grammatical errors.

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

The amendments to the Delivery Procedures are potentially relevant to the following core principles: (C) Participant and Product Eligibility and (O) Governance, and the applicable regulations of the Commission thereunder.

- *Participant and Product Eligibility.* As set forth above, the amendments to the Clearing Membership Procedures are intended to clarify and enhance the Clearing House's procedures as they relate to Clearing Member application and monitoring processes. The amendments do not substantively change the requirements for membership or the related Rules, but rather update the Procedures to reflect the Clearing House's current practices, avoid duplication of other Clearing House policies (specifically the Counterparty Credit Risk Policy and Procedures) and make other updates to improve clarity and readability. The amendments will facilitate the Clearing House's ability to implement and monitor its admission and continuing participation requirements. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle C and Commission Rule 39.12(a).
- *Governance.* The amendments clarify the governance arrangements around the termination of clearing membership status under Rule 209, to remove a requirement that terminations be approved by the Board. Such a requirement is not provided in the Rules, and accordingly the amendments make the Procedures consistent with the governance provisions of the Rules, including Rule 114. ICE Clear Europe believes that 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 amendments to the Clearing Membership Procedures, a copy of which is attached hereto. 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,

A handwritten signature in blue ink, appearing to read 'G. Milton', with a long horizontal flourish extending to the right.

George Milton  
Head of Regulation & Compliance