

# SUBMISSION COVER SHEET

**IMPORTANT:** Check box if Confidential Treatment is requested

Registered Entity Identifier Code (optional): \_\_\_\_\_

Organization: ICE Clear Europe Limited

Filing as a:  DCM  SEF  DCO  SDR Please note - only ONE choice allowed.

Filing Date (mm/dd/yy): 10/30/2015 Filing Description:

ICE Clear Europe is adopting amendments to its rules and clearing procedures relating to the margining of certain customer accounts.

**SPECIFY FILING TYPE** Please note only ONE choice allowed per Submission.

## Organization Rules and Rule Amendments

- |                                     |                                     |            |
|-------------------------------------|-------------------------------------|------------|
| <input checked="" type="checkbox"/> | Certification                       | § 40.6(a)  |
| <input type="checkbox"/>            | Approval                            | § 40.5(a)  |
| <input type="checkbox"/>            | Notification                        | § 40.6(d)  |
| <input type="checkbox"/>            | Advance Notice of SIDCO Rule Change | § 40.10(a) |
| <input type="checkbox"/>            | SIDCO Emergency Rule Change         | § 40.10(h) |

Rule Numbers: Parts 3, 4, 6, 7 and 16 of the Rules, Clearing Procedures

## New Product

Please note only ONE product per Submission.

- |                          |                                       |            |
|--------------------------|---------------------------------------|------------|
| <input type="checkbox"/> | Certification                         | § 40.2(a)  |
| <input type="checkbox"/> | Certification Security Futures        | § 41.23(a) |
| <input type="checkbox"/> | Certification Swap Class              | § 40.2(d)  |
| <input type="checkbox"/> | Approval                              | § 40.3(a)  |
| <input type="checkbox"/> | Approval Security Futures             | § 41.23(b) |
| <input type="checkbox"/> | Novel Derivative Product Notification | § 40.12(a) |
| <input type="checkbox"/> | Swap Submission                       | § 39.5     |

Official Product Name: \_\_\_\_\_

## Product Terms and Conditions (product related Rules and Rule Amendments)

- |                          |   |                      |
|--------------------------|---|----------------------|
| <input type="checkbox"/> | Certification   | § 40.6(a)            |
| <input type="checkbox"/> | Certification Made Available to Trade Determination     | § 40.6(a)            |
| <input type="checkbox"/> | Certification Security Futures                          | § 41.24(a)           |
| <input type="checkbox"/> | Delisting (No Open Interest)                            | § 40.6(a)            |
| <input type="checkbox"/> | Approval  | § 40.5(a)            |
| <input type="checkbox"/> | Approval Made Available to Trade Determination          | § 40.5(a)            |
| <input type="checkbox"/> | Approval Security Futures                               | § 41.24(b)           |
| <input type="checkbox"/> | Approval Amendments to enumerated agricultural products | § 40.4(a), § 40.5(a) |
| <input type="checkbox"/> | “Non-Material Agricultural Rule Change”                 | § 40.4(b)(5)         |
| <input type="checkbox"/> | Notification  | § 40.6(d)            |

Official Name(s) of Product(s) Affected: \_\_\_\_\_

Rule Numbers: \_\_\_\_\_



October 30, 2015

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:  
Amendments Related to Margining of Certain Customer Accounts

Dear Mr. Kirkpatrick:

ICE Clear Europe Limited (“ICE Clear Europe”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), for self-certification pursuant to Commission Rule 40.6, the rule amendments discussed herein. The amendments are to become effective on the business day following the tenth business day after submission, or such later date as ICE Clear Europe may determine.

*Concise Explanation and Analysis*

The purpose of the changes is to amend certain ICE Clear Europe Clearing Rules (the “Rules”) and Clearing Procedures relating to the margining of Customer Accounts, principally in the case of Non-FCM/BD Clearing Members. The amendments provide additional options for Clearing Members to use so-called “gross margined” Customer Accounts (and will require use of such accounts for certain F&O products). The amendments further clarify which types of Customer Accounts are margined on a gross as opposed to a net basis,<sup>1</sup> as well as related procedures for the collection and

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<sup>1</sup> For this purpose, for a Customer Account margined on a “gross” basis, initial or original margin requirements are determined separately with respect to the positions of each customer of the relevant Clearing Member (i.e., without netting of different positions across multiple customers). By contrast, for a Customer Account margined on a “net” basis, initial or original margin requirements are determined for the entire account on a net basis across the positions of all customers in that account.

transfer of margin for such accounts and certain related information requirements, as discussed herein.

The proposed changes are principally relevant to the Customer Accounts of Non-FCM/BD Clearing Members with respect to F&O Contracts. ICE Clear Europe's existing rules provide several types of Customer Accounts for such Clearing Members in light of relevant regulatory requirements and permissions. Currently, most such accounts for F&O Contracts are margined on a net basis, which is permitted under the European Market Infrastructure Regulation ("EMIR").<sup>2</sup> ICE Clear Europe is proposing to revise its account structure to allow Clearing Members to use Customer Accounts of the same types but which are margined on a gross basis for certain products. The use of such gross margined accounts would be required for Non-FCM/BD Clearing Members in relation to certain F&O products in the energy category, such as oil contracts traded on ICE Futures Europe. Gross or net margined accounts would be available on an optional basis for such Clearing Members for other categories of F&O Contracts. In this regard, ICE Clear Europe notes that the European Securities and Markets Authority has issued a discussion paper for consultation as to the use of gross margined customer accounts under certain circumstances (and in particular, whether a gross margined account using a one-day margin period of risk should be a permitted alternative to an account using a two-day margin period of risk in order to satisfy requirements under EMIR, in light of the fact that EMIR is currently silent on whether accounts should be net or gross margined).<sup>3</sup> For Customer Accounts with respect to CDS Contracts, the current practice of margining on a gross basis would be maintained.

The status of the DCM Customer Account and Swap Customer Account of FCM/BD Clearing Members (which are currently gross margined, consistent with U.S. regulatory requirements) would not be affected by the proposed amendments. The amendments would clarify the option for FCM/BD Clearing Members to use their Non-DCM/Swap Customer Account or General Customer Account on either a gross margined or net margined basis, to the extent permitted by applicable law. Certain other clarifications and updates are made in the Rules and Clearing Procedures as well, as discussed herein.

Specifically, ICE Clear Europe proposes to make amendments to Parts 3, 4, 6, 7 and 16 of its Rules and to the Clearing Procedures. The text of the proposed amendments is attached hereto.

In Part 3 of the Rules, Rule 302, which addresses the procedures for payments to and from the Clearing House in respect of various categories of Customer Accounts, has been revised to take into account the new set of gross margined accounts and to simplify some of the drafting. As revised, the Rule clarifies that the Clearing House will determine the required margin amount based on the relevant margin model for that account type (net or gross). With respect to the Swap Customer Account, Rule

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<sup>2</sup> 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, as well as various implementing regulations and technical standards.

<sup>3</sup> ESMA, Review of Article 26 of RTS No. 153/2013 with respect to client accounts (26 August 2015) (Discussion Paper).

302 has been revised to add a cross-reference to the appropriate provisions in Rule 1605(h), which address the calculation and settlement of margin for that account more specifically. In Rule 304, which addresses payments with respect to Sponsored Principal accounts, certain changes have been made to conform to the changes made in Rule 302.

Rule 401(g) is amended to require each Clearing Member to submit on a daily basis (or more frequently, if requested by ICE Clear Europe) a breakdown of the open positions in each Customer Account on a per customer basis, in order to permit the Clearing House to calculate gross margin for that account, if applicable. Rule 406 is amended to clarify that positions in a Customer Account of one customer are not to be netted against opposite positions of another customer, and that positions in separate Customer Accounts are not to be netted against each other, consistent with other existing provisions of the Rules.

Rule 702(c) is amended to set out more clearly how the cash settlement amount for futures contracts is calculated based on the positions held in different accounts, in light of the use of gross or net margining discussed above (and consistent with current practice for such contracts). Similar clarifications are made in Rule 705(a) to reflect the treatment of contracts entered into on the day of settlement. In Rule 803(a), a similar change is made to reflect the treatment of option contracts entered into on the same day as the exercise date. Rule 810(d) is amended to set out more clearly the calculation of the cash settlement amount for an option contract. This is also consistent with current practice for such option contracts.

In Rule 1605(h), which addresses margin for the Swap Customer Account of FCM/BD Clearing Members, certain amendments have been made to refer more specifically to the relevant Rules and procedures used for the transfer of relevant amounts to and from the Clearing House (in line with the procedures applicable to transfers of Margin for other accounts under the Rules and Finance Procedures). The amendments do not change the operation of the Swap Customer Account, but are intended to provide greater clarity to Clearing Members and market participants.

The Clearing Procedures have been amended to add the relevant new account designations and to distinguish more clearly between net margined and gross margined Customer Accounts, along with various conforming and clarifying changes.

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

The rule amendments are potentially relevant to the following core principles: (B) Financial Resources, (D) Risk Management and (F) Treatment of Funds, and the applicable regulations of the Commission thereunder.

- *Financial Resources.* As described herein, the amendments are designed principally to facilitate the use by Non-FCM/BD Clearing Members of gross margined Customer Accounts for the F&O product category. (In many cases, such accounts are currently margined on a net basis, consistent with applicable legal and regulatory requirements.) The use of gross margining for such accounts will, in ICE Clear Europe's view, be consistent with the financial

resources requirements applicable to the Clearing House under Core Principle B and Commission Rule 39.11.

- *Risk Management.* In addition to facilitating the gross margining of Customer Accounts for the F&O product category, the amendments also more clearly distinguish between net margined and gross margined accounts in the Rules and Procedures, and clarify and simplify the rules and procedures relating to the calling and return of initial and original margin for all accounts. The amendments thus build on the existing customer account structure established in the ICE Clear Europe rules. In so doing, and in providing the Clearing House with customer-by-customer position data that supports such margining, the amendments will enhance the Clearing House's risk management infrastructure with respect to F&O Customer Accounts. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Core Principle D and Commission Rule 39.13.
- *Treatment of Funds.* These amendments, which facilitate the use of gross or net margining in various categories of Customer Accounts, are designed to be consistent with the applicable legal and regulatory requirements and permissions applicable to those account categories. (In this regard, the status of the DCM Customer Account and Swap Customer Account of FCM/BD Clearing Members are unaffected.) As a result, ICE Clear Europe believes that the amendments are consistent with the requirements of regarding the treatment of customer funds under Core Principle F and Commission Rule 39.15.

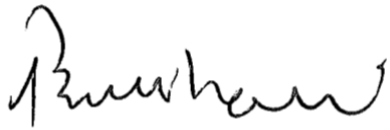
ICE Clear Europe hereby certifies that the amendments comply with the Act and the Commission's regulations thereunder.

ICE Clear Europe has received no substantive opposing views in relation to the rule 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 [patrick.davis@theice.com](mailto:patrick.davis@theice.com) or +44 20 7065 7738, Dee Blake, Director of Regulation, at [dee.blake@theice.com](mailto:dee.blake@theice.com) or +44 20 7065 7752 or Paul Swann, President & Managing Director, at [paul.swann@theice.com](mailto:paul.swann@theice.com) or +44 20 7065 7700.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Patrick Davis', with a stylized, cursive script.

Patrick Davis  
Head of Legal and Company Secretary