



November 27, 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 – Investment
Management 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 its Investment Management Procedures (the “Procedures”), 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 adopting the amendments to the Procedures to clarify the requirements for investment of customer funds provided by FCM/BD Clearing Members, in light of the expansion of permitted investments to include qualifying Euro-denominated non-U.S. sovereign debt pursuant to an exemptive order issued by the Commission (the “CFTC Order”).¹ The amendments also remove certain credit rating requirements for government bonds, clarify certain matters relating to the use of central bank deposits and update certain portfolio concentration limits in light of market conditions.

ICE Clear Europe is amending the investment management objectives to clarify that the references to cash subject to investment under the Procedures are not intended to

¹ Order Granting Exemption From Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and From Certain Related Commission Regulations, 83 F.R. 35241 (July 25, 2018).

refer to ICE Clear Europe's corporate cash held for operating purposes and not for meeting skin-in-the-game contributions, regulatory capital or other purposes connected to treasury activities in connection with the management of Clearing Member margin or guaranty fund contributions. This is consistent with current practice.

In the discussion of overall investment considerations, the amendments clarify that the overall goal that non-overnight investments should have a variety of maturity dates is not necessarily applicable in all cases (such as investments in bank deposits). Further, the description of how futures commission merchant ("FCM") customer funds may be invested is being amended to permit investments in cash deposits, to clarify that direct purchases with U.S. dollar cash are limited to U.S. sovereign bonds and to provide that direct purchases with Euro cash may be made in French and German sovereign bonds as permitted in the CFTC Order. The requirement that no more than 5% of the investible funds should be held as unsecured cash is being clarified to state that the calculation will be made over an averaging period of one calendar month. Certain other typographical and similar corrections are being made to this section.

The table of authorised investments and concentration limits for cash from Clearing Members and Clearing House "Skin In The Game" is being amended such that: (i) instead of stating that the maximum issuer/counterparty concentration limit is 15% of the total EUR balance in a single government issuer, there is no limit for French/German government bonds and the 15% limit will apply for government bonds issued by Belgium and the Netherlands; and (ii) an additional concentration limit for EU government bonds is being imposed at 20% of the total EUR balance in a single issue for German or French government bonds and 10% of the total EUR balance in a single issue for Belgian or Dutch government bonds. For investments of FCM customer funds in EU government bonds, additional criteria apply as set out in the CFTC Order. With respect to central bank deposits, the Federal Reserve and the European Central Bank ("ECB") are being added to the list of allowed central banks. While ICE Clear Europe does not necessarily have access to deposits at such central banks at this time, the amendment is intended to allow for possible future developments.

The amendments add an additional category to the table of authorised investments and concentration limits for regulatory capital for commercial bank deposits, with unsecured cash limits to be set separately for financial service providers, the maximum portfolio concentration limit being no more than 5% of the total investible funds in unsecured cash on average each calendar month, the maximum maturity being overnight and the minimum credit ratings being A-1/P-1.

The acceptable collateral table for reverse repurchase agreements is being amended to add GBP and EUR agency bonds with AA-/Aa3 credit ratings and a 2% haircut. The credit rating requirement (currently (AA-/Aa3)) is being removed for UK and US sovereign bonds. The amendments also specify that for FCM customer funds invested in EUR reverse repo, only collateral meeting the requirements of the CFTC Order will be accepted.

The Glossary section is being updated such that central banks are being added to the definition of Permitted Depositories for FCM Customer Funds where the Commission has provided the relevant exemption to ICE Clear Europe. A definition of Permitted Purchases of Euro denominated debt for FCM Customer Funds is being added to set

forth the restrictions and conditions on investment of FCM customer funds in euro denominated sovereign debt issued by the French Republic and the Federal Republic of Germany under the CFTC Order.

Compliance with the Act and CFTC Regulations

The amendments are potentially relevant to the following core principle: (B) Financial Resources, (D) Risk Management, (E) Settlement Procedures and the applicable regulations of the Commission thereunder.

- *Financial Resources.* As discussed above, the amendments to the acceptable collateral table permit the use of certain government agency collateral (subject to appropriate limitations), remove unnecessary rating requirements on US and UK government bonds and update concentration and similar requirements for EU government bonds. These updates allow for better liquidity management of ICE Clear Europe's Clearing Member, customer and Clearing House funds. Further, the addition of commercial bank deposits to the table of authorized investments and concentration limits for investment of ICE Clear Europe's regulatory capital will facilitate ICE Europe's ability to maintain liquid net assets to cover such requirements. In ICE Clear Europe's view, these revisions to the Procedures are thus consistent with the requirements of Core Principle B and Commission Regulation 39.11.
- *Risk Management.* As discussed herein, through enhancing ICE Clear Europe's investment management procedures and providing greater investment flexibility, including for FCM customer funds, in a manner consistent with applicable regulatory requirements, ICE Clear Europe believes that the amendments enhance ICE Clear Europe's overall risk management framework, consistent with the risk management requirements of Core Principle D and Commission Rule 39.13.
- *Treatment of Funds.* The amendments are intended to generally enhance the procedures for investment by the Clearing House of Clearing Member, customer and Clearing House funds, in a manner that mitigates risk of loss and ensures that investments are in instruments with minimal credit, market, and liquidity risks. Specifically, as noted above, the amendments to the acceptable collateral table permit the use of certain government agency collateral (subject to appropriate limitations), remove unnecessary rating requirements on US and UK government bonds and update concentration and similar requirements for EU government bonds. The amendments also provide the Clearing House with greater flexibility to diversify investments. As such, in ICE Clear Europe's view, the amendments are consistent with the requirements of Core Principle F and Commission Rule 39.15.

As set forth herein, the amendments consist of changes to the Procedures. ICE Clear Europe has requested confidential treatment with respect to the amendments to the Procedures, 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 has received no substantive opposing views in relation to the proposed 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 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 stylized flourish underneath.

George Milton
Interim Head of Regulation & Compliance