



April 17, 2023

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 Rule 40.6
– Futures and Options Default Management 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, a new Futures and Default Management Policy (the “Policy”) to provide clearer procedures and guidance for managing a default by one or more Clearing Members.¹ 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 adopting a new Futures and Options Default Management Policy, which will address procedures and requirements for the Clearing House’s management of an Event of Default with respect to an F&O Clearing Member consistent with the requirements of Clearing House’s Rules and Procedures. The Policy will replace the existing Futures and Options Default Management Policy. The new Policy is designed to more clearly reflect and describe various aspects of the Clearing House’s existing default management practices and procedures for F&O Contracts (and will not

¹ Capitalized terms used but not defined herein have the meanings specified in the Policy or, if not defined therein, the ICE Clear Europe Clearing Rules.

generally change those practices and procedures). The new Policy will also clarify and enhance certain governance matters relating to F&O default management, as well as certain practices relating to hedging strategy following a default, as discussed below. The new Policy will also provide for certain additional scenarios to be used in default testing drills, as discussed below. The new Policy will eliminate certain outdated or superseded provisions or the provisions that are no longer applicable.

The Policy includes a background section describing the overall purpose of the document, which is to provide structure and guidance for ICE Clear Europe's management of an Event of Default within the framework of the Rules and applicable law, and without attempting to specify the actions the Clearing House will take in all or any particular situations. The background section also sets out the scope of the Policy, which is to reference the key factors to consider in declaring and managing an Event of Default. In addition, it presents the Clearing House's three lines of defense model for managing risks. The First Line of defense is responsible for ensuring the Policy requirements are met and consists of the Clearing Risk, Treasury, Operations, Legal, Compliance and Finance Departments. The Second Line of defense is responsible for challenging the First Line on adherence to the requirements of the Policy and is the Risk Oversight Department. The Third Line provides independent and objective assurance to the Board and is the Internal Audit Function.

The Policy sets out the Clearing House's overall objectives when declaring and managing an Event of Default, which are generally to take timely action to return the Clearing House, as soon as reasonably practicable, to a matched book while aiming to contain losses and liquidity pressures. Depending on the circumstances, other objectives may include ensuring timely completion of settlement, limiting disruption to the market and closing out the defaulter's positions and liquidating collateral in a prudent and orderly manner. The objectives reflect that the default management framework will be guided by the relevant Rules as well as the Policy and any supporting procedures that may be adopted.

The Policy details the governance and responsibilities of various personnel and committees with respect to default management. (These provisions are intended to more clearly document existing practice, rather than change that practice.) The Policy in particular reflects the following: the Board of Directors has delegated to the President the authority to declare an Event of Default and take all actions the Clearing House may take under the rules in managing an event of default. The President has the discretion to consult the ERC Default Management Committee ("DMC"), which is a subcommittee of the Executive Risk Committee. The President has the authority to make final decisions but may delegate powers as appropriate. The DMC will also assume the responsibilities of the President in the declaration and management of an Event of Default if the President is unavailable. The DMC requires a quorum of the majority of voting members of the Executive Risk Committee for the DMC to make decisions and the decisions must be by unanimous agreement of the voting members of the Executive Risk Committee present in the meeting. If there are dissenting views at the DMC level, the issue must be escalated to the Board. Consistent with the requirements of the Rules, the Policy states that a declaration of an Event of Default will be limited to circumstances where an event in Rule 901(a) has occurred with respect to a Clearing Member.

The Policy also outlines various aspects of default management for which processes and procedures must be in place (which processes and procedures are not set out in the Policy itself). The Policy states that procedures for pre-default monitoring must be in place in order to identify early circumstances that may develop into Events of Default, and procedures must be in place to quickly suspend a defaulting Clearing Member's access to trading and prevent payments or collateral transfers to the defaulting Clearing Member. Furthermore, management information will have to be available on short notice to support the President and must be sufficiently detailed to allow for risk management decisions, including key risk details on positions, collateral and liquidity. Processes must be in place to establish hedging strategies and support timely liquidation of positions. Pursuant to the existing Rules, the Clearing House may engage in hedging trades ahead of liquidating the defaulter's portfolio. The Policy provides that advice on hedging strategy may be sought from relevant exchanges or market participants. Any hedging strategy needs to be approved by the President before execution. In terms of liquidation, the Policy provides that a process to liquidate positions via auctions or private sale must be in place. For an auction, the Policy states that factors such as participation and possible risk of auction failure shall be considered in determining auction composition. If there is a dependency on a third party, arrangements must be in place in case the third party is not available.

The Policy also addresses the need for a defined process for client porting (and for liquidation where porting cannot occur). A notification of the opening of the porting window must be communicated to the market in order to allow clients of the defaulting Clearing Member to participate in the porting process. A process must be defined to support the porting of client positions and collateral pursuant to the Rules and Standard Terms but subject to applicable law.

The Policy addresses the Clearing House's communication strategy around defaults. Prior to an Event of Default, the Clearing House will endeavor to prevent communications with the concerned Clearing Member becoming public, unless allowed under Rule 106 or required by the Clearing Member's regulators, the Clearing House's regulators, and/or other government authorities. The Clearing House will serve a default notice on the defaulter as soon as practicable after declaring a default and issue a circular in respect of any default notice, consistent with the Rules. ICE Clear Europe will engage with other ICE exchanges, clearing organizations, and external legal advisors when appropriate.

The Policy reflects the requirement of the Rules that post-default, a net sum will be calculated according to the methodology in the Rules.

The policy also requires the testing and review of the default procedures on a quarterly basis, through practicing certain aspects of the default management process. In addition, the Clearing House will have to conduct a default test on an annual basis with mandatory participation of the Clearing Members. Moreover, a multi-year default management plan will have to be maintained and approved by the Executive Risk Committee and shared with the Board Risk Committee. The multi-year default management plan will consider Default Member Scenarios (looking at representative credit and market risk scenarios over the testing cycle), Other Variables (such as the timing of the default and other potential constraints), Liquidity Management (including

liquidity issues arising from sourcing liquidity, collateral liquidation and investment counterparty failure), End of Default and Recovery (including testing powers of assessment and recovery mechanisms), People (including relevant personnel and testing the ability of departments to support default management), and Governance (including testing executive governance, communication with the Board and Board approval). Additional testing will be conducted following material changes in the default management process or otherwise where necessary, and more extreme scenarios or combinations of scenarios will be considered to identify weakness in the default management process. The multi-year default management plan along with the scope, results and lessons learned of each default test will be shared with the Board Risk Committee and the Board. In order to ensure the Board maintains oversight of the default management process, the default drills that include direct participation of the Board members will be done at least on an annual basis.

Finally, the Policy describes governance, breach management and exception handling, in a manner generally consistent with other ICE Clear Europe policies. The document owner identified by the Clearing House is responsible for ensuring that the Policy remains up-to-date and reviewed in accordance with the Clearing House's governance processes. Document reviews will encompass at the minimum regulatory compliance, documentation and purpose, implementation, use and open items from previous validations or reviews. Results of the review will have to be reported to the Executive Risk Committee or in certain cases to the Model Oversight Committee. The document owner will also aim to remediate the findings, complete internal governance and receive regulatory approvals before the following annual review is due. The document owner is also responsible for reporting any material breaches or deviations to the Head of Department, Chief Risk Officer and Head of Regulation and Compliance in order to determine the appropriate governance escalation and notification requirements. Exceptions to the Policy will also be approved in accordance with such governance processes.

The Policy also recognizes that the management of any particular default will depend on factors and circumstances that may be difficult to predict. As a result, the President will be allowed to override elements of the Policy to declare and manage an Event of Default in accordance with the provisions of the Rules.

Compliance with the Act and CFTC Regulations

The amendments to the Futures and Options Default Management Policy are potentially relevant to the following core principles: (G) Default Rules and Procedures and (O) Governance, and the applicable regulations of the Commission thereunder.

- *Default Rules and Procedures.* As noted above, the Policy is designed to provide clearer procedures and guidance for management of Clearing Member default. The Policy will set out the objectives and overall default management plan of the Clearing House in declaring and managing an Event of Default, recognizing that the details of any particular default will vary. The new Policy would more clearly set out the responsibilities of the President and DMC in declaring and managing a default. The Policy would also outline various

aspects of the default management process, including communications, hedging, client porting and liquidation. The Policy would address the Clearing House's procedures for testing its default management framework, which will include annual default tests in which participation by Clearing Members is mandatory, and further provides for additional testing in the event of material changes in the default management process. The Policy also contemplates the Clearing House's multi-year testing plan to address various scenarios and aspects of the default management process. As a result, the Policy will facilitate the Clearing House's ability to take timely action to contain losses and liquidity pressure and continue meeting its obligations in the event of a Clearing Member default. As such, ICE Clear Europe believes the amendments are consistent with the default management requirements of Core Principle G and Commission Rule 39.16.

- *Governance.* The Policy identifies responsibilities of the President, Board, DMC, and Executive Risk Committee, among others, in relation to oversight of the Clearing House's declaration and management of an Event of Default. The Policy also provides for annual review to ensure that it remains up-to-date and is reviewed in accordance with the Clearing House's internal governance processes. ICE Clear Europe believes that the amendments are therefore consistent with the governance requirements of Core Principle O and CFTC Rule 39.24.

As set forth herein, the amendments consist of the adoption of the new the Futures and Options Default Management Policy. ICE Clear Europe has requested confidential treatment with respect to the new Policy, which has 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 or +44 20 7429 4564.

Very truly yours,



George Milton

Head of Regulation & Compliance