



June 12, 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 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, a new Futures and Options Default Management Procedures (the “Procedures”) to supplement the Clearing House’s existing Futures and Options Default Management Policy by describing in further detail the actions the Clearing House may take in the event of a Clearing Member default.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 new Futures and Options Default Management Procedures, which will supplement the Clearing House’s existing F&O Default Management Policy (the “Default Management Policy”) and describe in further detail the actions the Clearing House will take if an Event of Default is declared in relation to an F&O Clearing Member. The Procedures are generally intended to document, in a

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

consolidated way, the Clearing House's current practices around default management in the F&O clearing business and will not generally change those practices.

The Procedures will outline the Clearing House's overall purposes and objectives when managing an Event of Default by a Clearing Member.² The first objective is to take quick action to contain losses and liquidity pressures while returning the Clearing House to a matched book, as soon as reasonably practicable. In addition, the Clearing House may consider other objectives, depending on the characteristics of the default, including ensuring timely completion of settlement, limiting disruptions to the market, and managing and closing out the defaulter's positions and liquidating any applicable collateral in a prudent and orderly manner. The Clearing House's default management framework will be guided by ICE Clear Europe's default Rules and the Default Management Policy and supporting procedures (including the Procedures). The Procedures will further recognize that each default is unique and the Procedures do not provide an exhaustive list of actions ICE Clear Europe will take.

The Procedures will detail the governance and responsibilities of various Clearing House personnel and committees with respect to default management, consistent with the Default Management Policy. The Procedures will in particular reflect 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 will have discretion to consult the ERC Default Management Committee ("DMC"), which is a subcommittee of the Executive Risk Committee. The President will have 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 will require a quorum of the majority of voting members of the Executive Risk Committee for the DMC to make decisions and the decisions will have to 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 Procedures will state 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. Following an Event of Default, the Board will have to be informed as soon as practicable of the relevant circumstances, key steps or actions taken or determinations made or approvals given.

The Procedures will detail the actions that may be taken with respect to a potential defaulter prior to the occurrence of an Event of Default. The Procedures will reflect that the Clearing Risk Department ("CRD") may perform heightened monitoring of the potential defaulter including an increase in daily credit risk monitoring, scenario planning for a potential default management strategy and appropriate risk mitigation through additional collateralization. The Treasury Department ("Treasury") will also review its relationships and accounts with the potential defaulter in the context of auxiliary banking services. The Operations Department ("Operations") may conduct a review of operational activities relevant to the potential defaulter. The Compliance

² The Procedures will also provide that similar provisions will apply in the case of a Sponsored Principal default. The Procedures also note that in the case of a default of a customer of a Clearing Member, the default Rules will not be expected to apply.

Department (“Compliance”) will be expected to be in close contact with regulators at times when there is an anticipated default in relation to a Clearing Member. The Legal Department (“Legal”) may seek the advice of outside legal counsel regarding the laws of the defaulter’s domicile country. Senior Management may inform the senior management of the other ICE clearing houses and exchanges of the increased monitoring of a potential defaulter and the President may provide the Board with an update on increased monitoring of a potential defaulter.

The Procedures will also set out the Clearing House’s actions in a declaration of an Event of Default, in accordance with the Rules. The President or its delegate will be expected to be in contact with the potential defaulter in order to ensure accurate and up to date information is available to declare an Event of Default. Prior to a declaration of an Event of Default, Compliance will consult with and keep informed the relevant regulatory authorities. The President or the President’s delegate may convene the DMC to discuss the potential default. The Procedures will address internal reports that may be considered by the DMC in connection with a potential default. If the criteria for an Event of Default under the Rules are met, the President (or the President’s delegate) will declare an Event of Default. The Procedures will address the process for issuing a Default notice to the Defaulter, communicating this issuance to the relevant regulators, issuing a Circular to the Clearing Members and a notice on its website, as well as for communication to the Board and other relevant ICE exchanges and clearing houses.

The Procedures will also detail the actions ICE Clear Europe will take immediately following the Default Notice in order to protect itself from any further losses related to the default event. These actions will include the convening of the DMC, suspension of the Defaulter’s trading access, prevention of payments to the Defaulter, communication with brokers that may be used in any liquidation strategy for default management, and confirmation of the Defaulter’s positions.

The Procedures will address procedures for client porting in circumstances where the defaulting Clearing Member provides clearing services to customers. Consistent with the Rules and applicable law, the Clearing House will attempt within a predefined period to port client positions and assets to another solvent Clearing Member, subject to specified conditions and requirements. The Procedures will set out certain requirements for porting notices to be provided to the Clearing House under the Rules with respect to customers’ porting preferences. Consistent with the Rules, where porting is not performed, the Clearing House will liquidate customer positions.

The Procedures will set out the responsibilities of various Clearing House departments for aspects of the default management process. For example, the CRD is responsible for assessing the defaulter’s positions and proposing whether splitting the portfolio is the appropriate strategy. In making its determination the CRD may consider combining offsetting positions of different accounts and liquidating or hedging the remaining positions. Moreover, the CRD will consider the portfolio’s complexity and timing for the execution of the default management process. The Procedures will note that the CRD can determine to take various actions depending on market circumstances, such as liquidation through private sales or brokers or liquidation through default auctions with broader participation. The Procedures will further address considerations in circumstances where the Defaulter holds physically delivered contracts close to

maturity and where the defaulter's positions are in products traded across different ICE exchanges.

The Procedures will also address potential hedging strategies. The CRD has the responsibility to assess the Defaulter's positions and determine if hedge trades are useful to reduce the portfolio's risk prior to liquidation. Hedge trades can be executed through brokers, voluntary auctions or private sales. During the course of the hedging strategy, the CRD will periodically re-evaluate the risk exposure as hedges are executed and positions are liquidated. Hedging may continue until reaching hedging/liquidation targets.

The Procedures will also address liquidation of remaining positions following hedging, through various strategies. The Procedures will set out the responsibilities of the President, with advice of the CRD, in deciding how the remaining positions can be liquidated. Liquidation options will include holding and financing open positions until maturity, liquidating positions or sub-portfolios via brokers, arranging a private sale of part or the entire book, and Default Auctions.

The Procedures will describe the key features of Default Auctions, which are more fully set out in the existing published Auction Terms for F&O Default Auctions. The Procedures will describe, among other features, the use of a modified Dutch auction methodology, the use of "all or nothing" bids, the establishment of minimum bid requirements, customer participation, use of mirrored auctions, and "juniorization" of guaranty fund contributions, in accordance with the Auction Terms for F&O Default Auctions. The Procedures also address the process for establishing positions with winning bidders and payment of related amounts. An annex to the Procedures will set out examples of the operation of the auction methodology.

The Procedures will describe the Treasury's responsibility in proposing to the President a liquidation strategy of non-cash collateral provided by the Defaulter. The liquidation strategy will take into account the liquidity waterfall as defined under the Liquidity Stress testing methodology.

The Procedures will address the steps taken at the conclusion of the transfer and close out of all the Defaulter's positions, including an analysis of the cost of managing the event in accordance with the default Rules. The Procedures will reflect the requirement of the Rules that post-default, a net sum will be calculated separately for house and customer accounts according to the methodology in the Rules, and the net sum will be reported to the officer or administrator responsible for the Clearing Member in default.

The Procedures will also provide for the testing and review of the Default Management Procedures on a quarterly basis, through practicing certain aspects of the default management process. In addition, the Procedures provide for the Clearing House to conduct a default test on an annual basis with mandatory participation of the Clearing Members. The Procedures will list the aims of the annual default test and quarterly reviews, and the elements that may be included in a default management test plan.

Finally, the Procedures will describe the process for reviews, breach management, exception handling and document governance in a manner generally consistent with other ICE Clear Europe policies. The document owner identified by the Clearing House

will be responsible for ensuring that the Procedures remain up-to-date and reviewed in accordance with the Clearing House's governance processes. Any changes to the document will have to be approved in accordance with ICE Clear Europe's governance process and will be implemented after the completion of all required internal and regulatory approvals. 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 will also be responsible for reporting any material breaches or deviations to the Head of Department, Chief Risk Officer and Head of Regulation and Compliance. Exceptions to the Procedures will also be approved in accordance with such governance processes.

Compliance with the Act and CFTC Regulations

The amendments to the Futures and Options Default Management Procedures 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 discussed above, the Procedures are designed to supplement the existing Default Management Policy by setting out in additional details the actions and processes of the Clearing House in declaring and managing an Event of Default. The Procedures more clearly set out the responsibilities of the President and various ICE Clear Europe committees and departments. The Procedures address various aspects of the default management process, including use of the DMC, suspension of the defaulter's trading access, liquidity considerations, hedging strategy and liquidation strategy through various means. The Procedures also address the Clearing House's practices for testing its default management framework, which include annual default tests in which participation by Clearing Members is mandatory, and further provides for additional quarterly reviews. In ICE Clear Europe's view, the Procedures will thus facilitate management of the risks of a default of a Clearing Member, and together with the Rules and Default Management Policy, enhance the Clearing House's ability to take timely action to contain losses and liquidity pressure and continue meetings 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.* As noted above, the Procedures identify relevant responsibilities of the President, Board, DMC, Executive Risk Committee, CRD and other ICE Clear Europe departments in relation to oversight of default management processes in the period leading up and following an Event of Default. Specifically, and consistent with the Rules, Default Management Policy and current practice, the President has full authority in declaring and managing an Event of Default, with the ability to delegate if necessary or for the DMC to

assume certain responsibilities if the President is unavailable. The CRD has the responsibility of advising the President throughout various actions and decisions when managing an Event of Default. In line with the Clearing House's other policies and procedures, the Procedures will also describe the responsibilities of the document owner and appropriate escalation and notification requirements for responding to exceptions and deviations from the Procedures. 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 Procedures. ICE Clear Europe has requested confidential treatment with respect 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 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,

A handwritten signature in blue ink, appearing to read 'G. Milton', is positioned above the typed name and title.

George Milton
Head of Regulation & Compliance