



August 09, 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  
– Outsourcing and Third Party Risk Management Policy Amendments

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 Outsourcing Policy (to be renamed the Outsourcing and Third Party Risk Management Policy) (the “Outsourcing Policy” or “Policy”) to broaden the coverage of the Policy to address third party service provider arrangements that may not technically constitute outsourcing, to enhance third party risk management, to add the execution of risk assessments and to update the Document Governance and Exception Handling language, among other changes discussed herein.<sup>1</sup> 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 Outsourcing Policy (to be renamed the Outsourcing and Third Party Risk Management Policy) to extend coverage of the policy to include risk management of third party arrangements that may not constitute outsourcing. The

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

purpose of the Policy reflects this change by clarifying that the Policy will generally extend to arrangements in which services are provided by third parties to the Clearing House, whether or not such services are considered outsourcing, including assessing the risks of such services.

The Outsourcing Policy will clarify its definition of outsourcing in the introduction section to be the use of third party service providers (which could be an external party or an affiliate), either directly or through sub-outsourcing, to provide a service that would otherwise be performed by ICE Clear Europe itself and is therefore subject to the Board's oversight. The amendments will further clarify that the Clearing House will remain responsible for discharging its obligations with respect to the outsourced activities, the outsourcing arrangement will not result in the delegation of the Clearing House's responsibility, and the outsourced activities will conform to the same standards that would be required if the activities were completed internally. The amendments will also clarify the distinction between an outsourcing and a purchasing arrangement, which will not involve an arrangement otherwise performed by the Clearing House and therefore will not typically be subject to Board oversight.

The amendments will also clarify the distinction between external third party providers of services and affiliated providers. The Policy will add a definition for third party, which will cover any organization (whether or not affiliated) that has entered into a relationship or contract with the Clearing House to provide products, services, processes, activities or business functions. Use of external third parties (i.e., those not affiliated with the Clearing House) will be managed consistently at the group level through the existing Vendor Management Policy ("VMP"). It will further clarify that outsourcing through the Clearing House's affiliates presents a lower residual risk profile because, among listed reasons in the existing Policy, the affiliates will have a similar higher standard of operational resilience generally (as opposed to referring only to business continuity) and the Clearing House will also have greater influence (as well as control) over the operation of the affiliate's services. These amendments are intended to more clearly describe current practice under the existing Policy.

The amendments will revise statements in the existing Policy relating to objectives, assessments of service providers in various situations (including regulated parties and parties in different jurisdictions), management of outsourcing, conflicts of interest and audit to also extend to other third party service arrangements. The amendments will reference the Clearing House's outsourcing operating manual (renamed to reflect the broader goal of third party risk management as well of outsourcing). As so revised, the Policy will state that contracting with third parties is covered consistently at a group level under the VMP. The amendments will clarify, consistent with current practice, that ICE Clear Europe will use the VMP process as an input for the risk-based assessment of each service provider. The amendments will also provide that the Clearing House will make the third parties aware of relevant internal policies to gain a better understanding of the obligations and services expected. For contracting with affiliates, the amendments will clarify that the relevant assessment will be made by ICE Clear Europe, in accordance with its ordinary governance practices (and not necessarily by the senior management). The revised Policy will state that ICE Clear Europe will follow its Conflicts of Interest Policy when managing any potential conflicts of interests as a result of its service arrangements. (This reflects current practice but will add an

appropriate reference in the Policy to the Conflicts of Interest Policy.) With respect to cloud outsourcing, the amendments will add that ICE Clear Europe will consider any risks related to the Clearing Members connecting to the Clearing House through cloud service providers.

The Policy will also include a new Risk Assessments section that will set out the proportional risk assessment that will be performed on a service provider in order to identify, measure and mitigate risks. The section will include certain considerations (although not limited to those listed) that include whether the service is a critical or important function or a dependence to the delivery of one of ICE Clear Europe's services, whether the activity is outsourcing, whether the service relies on cloud-based technology that may pose new or additional risks, whether the service provider is an external third party or an affiliate, the legal jurisdiction of the service provider, conflicts of interest, operational resilience considerations, data security, exit plans, contractual terms, and availability of alternative or back-up providers, among others. For outsourced or critical non-outsourced services, this assessment will be performed at least annually and on an ad-hoc basis following a material incident or service disruption event or material service agreement breach. This will include comparing the performance of the service provider against the agreed service levels. The responsibilities of risk assessments and related testing will be overseen by the Clearing House's Chief Operating Officer or delegate, with ownership of each service and the related resiliency arrangements resting with the relevant Head of Department.

The amendments will clarify and expand certain provisions relating to identification of critical or important functions, including to extend the existing provisions to apply to acquired services generally and not only outsourcing. In identifying critical or important functions the amendments will add that the Clearing House will consider continuity of ICE Clear Europe's important business services or operation as a CCP that could in turn threaten the Clearing House's financial stability or impact its resolvability. A third party will be treated as critical if it is contracted to perform such a critical function. Criticality will be reassessed on at least an annual basis.

The revised Policy will also acknowledge that any outsourcing of critical or important functions could have an effect on the operational resilience measures of the Clearing House more generally (and not merely the narrower category of business continuity). The revised Policy further clarifies that exit plans for critical and important functions will be periodically tested. As part of its operational resilience framework, the Clearing House will examine purchased services as well as outsourced or sub-outsourced services that are a dependence for the Clearing House's important business services. In addition, the operational resilience framework will include extreme but plausible test scenarios resulting from the disruption of critical third party services.

The Policy will also make various amendments to the discussion of additional important considerations for the Clearing House to ensure that considerations will be given to important business services and critical functions that are affected by third party service arrangements, including with respect to business continuity arrangements, incident management responsiveness and reporting, independent assurances, redundancies, notice periods and exit strategies. The amendments will add a new section on Contractual Agreements. The section will add that for outsourcing arrangements in

particular, the Clearing House's legal team will review any written service agreements to confirm the inclusion of all relevant contractual safeguards so that ICE Clear Europe could monitor relevant risks, regulatory requirements and expectations. The aim will be for the agreements to outline the rights, obligations, and responsibilities of all the parties, and include provisions associated with data security, access, audit and information rights, sub-outsourcing, service resilience, service levels, incident management, termination and exit plans. Arrangements for purchased services should be similarly reviewed, but the Policy will acknowledge that some purchased services may be subject to non-negotiable terms set by the third party. This situation will be considered during the pre-execution risk assessment phase. The Outsourcing Policy will also set out that ICE Clear Europe will periodically exercise its audit rights under agreements relating to outsourcing arrangements, perform audits as appropriate which can include on-site visits.

Provisions relating to Board oversight will be revised to provide that the Board must approve new or materially amended outsourcing arrangements. Certain clarifications will be made to the requirements for the annual outsourcing assessment report to be prepared by the Chief Operating Officer, including the addition of a summary of critical non-outsourcing services received. A new provision will be added setting out that ICE Clear Europe will engage with regulatory authorities before executing or materially amending a critical service arrangement with regard to the relevant regulatory requirements or expectations.

Finally, the amendments will make changes to the Policy's document governance, breach management and exception handling, to make it generally consistent with other ICE Clear Europe policies. The document owner identified by the Clearing House will be responsible for ensuring that the Policy remains up-to-date and reviewed in accordance with the Clearing House's governance processes. Document review will be conducted by the document owner and related staff, with sign off by the head of department and the Chief Risk Officer (or their respective delegates). 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 in order to determine if further escalation is required. The amendments will state explicitly that changes to the Policy will have to be approved in accordance with the Clearing House's governance process and will take effect following completion of required internal and regulatory approvals. Exceptions to the Policy will also be approved in accordance with the governance processes for approvals of changes to the Policy.

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

The amendments to the Outsourcing Policy are potentially relevant to the following core principles: (D) Risk Management and (O) Governance, and the applicable regulations of the Commission thereunder.

- *Risk Management.* The amendments to the Outsourcing Policy are intended to better document and to enhance the Clearing House's practices that relate to management of the Clearing House's use of outsourcing and other third party service providers, as set forth above. In particular, the changes to the Outsourcing Policy aim to extend certain Clearing House risk management practices to third party service arrangements that may not be covered by existing outsourcing practices. The amendments also add new requirements around risk assessments, identification of critical functions, operational resilience, and review of contractual arrangements with service providers. In ICE Clear Europe's view, the Policy as amended will facilitate overall risk management with respect to third party services. As such, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle D and Commission Rule 39.13.
- *System Safeguards.* As stated above, the amendments extend the coverage of the Outsourcing Policy to third party services that may not be considered outsourcing. The amendments also enhance oversight of outsourcing generally, including as to risk assessment, identification of critical services and operational resilience. The amendments also address testing (as part of the Clearing House's operational resiliency framework) of extreme but plausible test scenarios that may result from the disruption of critical third party services. Collectively, these changes facilitate the Clearing House's ability to supervise third party service providers in providing services to meet the Clearing House's requirements and to apply the same level of testing over outsourced resources as it does with its own resources. Therefore, in ICE Clear Europe's view, the amendments are consistent with the requirements of Core Principle I and Commission Rule 39.18.
- *Governance.* As discussed, the amendments to the Outsourcing Policy update the provisions relating to Board oversight, including by stating that the Board must approve new or materially amended outsourcing arrangements. The amendments will also state more clearly requirements around document governance, regulatory engagement, and exception handling, generally in a manner consistent with other ICE Clear Europe policies. The Policy will describe the responsibilities of the document owner and appropriate escalation and notification requirements for responding to exceptions and deviations from the Policy. In ICE Clear Europe's view, 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 Outsourcing Policy, 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', is positioned above the typed name.

George Milton  
Head of Regulation & Compliance