



September 28, 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
– Clearing Membership Policy and Procedures 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 (i) Clearing Membership Policy (“Policy”) to update certain monitoring and document review procedures and to make certain drafting clarifications and (ii) Clearing Membership Procedures (“Procedures”) to clarify the Clearing House’s discretion with respect to certain requirements and to add notification requirements, among other changes.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

I. Clearing Membership Policy

In the discussion of the purpose of the Policy, the amendments will change an incorrect reference to “model documents” to “parameter documents” (reflecting that relevant

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

parameters are set out in parameter documents). Further changes will clarify that Clearing Members are required to notify the Clearing House promptly when there is any change to its business which will have an impact on meeting the membership criteria. Additionally, the monitoring of membership criteria will be revised to reflect that the Clearing House conducts ongoing (rather than only quarterly or other periodic) monitoring of compliance with membership criteria. Ongoing monitoring for this purpose consists of continuous monitoring and additional trigger-based reviews, including relating to credit and AML/KYC risk and to daily operational matters (such as margin calls). References to quarterly reviews of financial position through Audited Annual Accounts, quarterly review of financial information, quarterly updates of the Counterparty Rating System (“CRS”), and the requirement to maintain a watch list will be removed (as such matters relate to credit issues that are addressed in the Clearing House’s Counterparty Credit Risk Policy, and do not need to be referenced in this Policy). A cross reference to the Clearing Membership Procedures and the Counterparty Credit Risk Policy for monitoring information will also be removed as unnecessary.

The amendments will also update document governance requirements, consistent with other ICE Clear Europe policies. Document review will be conducted by the document owner or relevant staff, with approval of the head of department (or their delegate) and the Chief Risk Officer (or their delegate). The amendments will specify that document review, at a minimum, will encompass regulatory compliance, documentation and purpose, implementation, use and open items from prior reviews. The results of the review will be reported to the Executive Risk Committee (and in certain cases, to the Model Oversight Committee). The document owner will aim to remediate any findings, complete internal governance and obtain regulatory approvals (as applicable) before the next annual review. The amendments will also state explicitly that changes to the Policy need to be approved in accordance with the Clearing House governance process and take effect after completion of all necessary internal and regulatory approvals.

Certain other non-substantive typographical and similar corrections will also be made in the Policy.

II. Clearing Membership Procedures

ICE Clear Europe is proposing to amend its Clearing Membership Procedures to make certain clarifications and updates, including for consistency with the amendments to the Policy described above. Under the discussion of the application process, the amendments will specifically require notifications by Clearing Members of changes to their business that may impact the membership criteria, consistent with the change to the Policy described above. Additionally, under the diligence process, the amendments will clarify that the applicant is required to provide sufficient evidence, details and information as required by the Rules. The proposed amendment will also state that the membership team will ensure that all applicants will be added to the applicable schedule of insured entities by the ICE Group insurer.

The amendments will remove a provision that the Product Risk Committee would be notified of new applications, after approval of an application by the Executive Risk Committee. ICE Clear Europe does not believe notification of applications to the

Product Risk Committee is necessary in light of the duties and functions of those committees. In addition, the amendments will make non-substantive clarifications concerning the requirement for Clearing Members to respond in a timely manner to any additional information requested by the Clearing House.

The proposed changes will also clarify and make consistent throughout the Procedures certain provisions relating to decisions that may be taken or requirements that may be imposed by the Clearing House in its discretion. Specifically, the amendments will clarify ICE Clear Europe's absolute legal discretion in making certain determinations, imposing additional requirements and granting exceptions relating to the minimum capital requirement, acceptability of subordinated loans, acceptability of controller guarantee, requirements for additional cash or collateral and the size of additional guaranty fund assessments. The amendments will similarly clarify that the Clearing House defines the maximum period between in-depth counterparty reviews and the threshold for taking further action on negative changes in Clearing Member financial condition in its absolute discretion. ICE Clear Europe does not believe these amendments change its existing authority, but rather state more explicitly the scope of its discretion, which remains subject to the Rules and applicable law.

The discussion of document governance and oversight in the Policy and Procedures will be replaced with a new Document Governance and Exception Handling section that is substantially the same as that described above for the Policy, and is consistent with other Clearing House policies.

Compliance with the Act and CFTC Regulations

The amendments to the Clearing Membership Policy and Procedures are potentially relevant to the following core principles: (C) Participant and Product Eligibility and (O) Governance, and the applicable regulations of the Commission thereunder.

- *Participant and Product Eligibility.* As set forth above, the amendments to the Clearing Membership Procedures are intended to clarify and enhance the Clearing House's procedures and policies as they relate to the Clearing Membership application and monitoring processes. The amendments do not substantively change the requirements for membership or the related Rules, but rather update the Policy and Procedures to reflect the Clearing House's current practices, and make other updates to improve clarity, including to state more clearly the Clearing House's discretion to make certain determinations as part of the application process. The amendments will facilitate the Clearing House's ability to implement and monitor its continuing participation requirements. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Core Principle C and Commission Rule 39.12.
- *Governance.* As discussed above, the amendments update the documentation governance, review and approval provisions for both the Clearing Membership Policy and Procedures, in a manner consistent with other ICE Clear Europe policies and procedures. The amendments more clearly set out the roles of

relevant personnel and committees and in the governance process, among other enhancements. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Core Principle O and Commission Rule 39.24.

As set forth herein, the amendments consist of the amendments to the Clearing Membership Policy and Procedures. 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@ice.com or +44 20 7429 4564.

Very truly yours,



George Milton
Head of Regulation & Compliance