



December 19, 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  
– ICE Clear Europe Clearing Rule 106 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 ICE Clear Europe Clearing Rules (“Clearing Rules”).<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 Clearing Rule 106 relating to Confidentiality and Information. These amendments would impose certain obligations on Clearing Members and Sponsored Principals to maintain the confidentiality of specified information provided by the Clearing House, on terms (and with exceptions) generally similar to the existing provisions requiring the Clearing House to maintain confidentiality of Clearing Member information. The approach under the amended Rule is generally consistent with that of affiliated ICE DCOs. The amendments would also make certain other clarifications to existing confidentiality requirements applicable to the Clearing House.

The amendments would add new Rule 106(h), requiring that each Clearing Member and each Sponsored Principal hold certain information, files or documents provided by the Clearing House confidential and use such information solely for business purposes in its capacity as a Clearing Member or Sponsor Principal. This amendment would specify the types of information subject to the confidentiality obligation, including certain business, financial, strategic and technical information and materials, the identities of current or potential business partners or investors, and certain proprietary

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.



information regarding business plans, business methods, models and customers, information relating to default management and information relating to automated systems, among other information.

The amendments will also set out various customary exceptions to the confidentiality requirements in Rule 106(h), generally include the same exceptions that apply to the Clearing House's confidentiality obligations with respect to Clearing Member proprietary information. They will additionally exclude any information that is attached to the Clearing Rules, Procedures or Circulars and according to certain other provisions in the Rules.

The amendments also clarify certain existing exceptions to the disclosure of confidential information by the Clearing House. In particular, the amendments clarify, under Rule 106(c), the ability to make certain disclosures permitted under Applicable Law relating to alleged offenses, under Rule 106(c)(iv), disclosures to professional advisors subject to a duty of confidentiality, under Rule 106(c)(x), disclosure of information that becomes available to the Clearing House on a non-confidential basis, and under Rule 106(c)(xiv), disclosure of information independently developed by the Clearing House or its affiliates without reliance on the confidential information furnished. The exceptions at Rule 106(c)(i), (x) and (xiv) will apply in respect of disclosure by the Clearing Member, by virtue of the *mutatis mutandis* provision being introduced at 106(h)(ii).

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

The amendments to the Clearing Rules are potentially relevant to the following core principles: (I) System Safeguards, (L) Public Disclosure and (O) Governance.

- *System Safeguards.* As mentioned above, amendments clarify certain obligations of the Clearing House to maintain confidentiality of information provided by Clearing Members, as well as appropriate exceptions to those obligations. The amendments are consistent with the protection of confidential information held by the Clearing House and accordingly, in ICE Clear Europe's view, are consistent with the requirements of Core Principle I and Commission Rule 39.18.
- *Public Information.* Commission Rule 39.21 requires that the Clearing House make public certain information concerning its rules, procedures, terms and conditions of contracts, margin models and financial resources. Although the amendments will impose certain confidentiality obligations on Clearing Members with respect to information provided by the Clearing House, the amendments contain appropriate exceptions. As a result, the amendments will not affect the Clearing House's ability to comply with Rule 39.21, and as a result are consistent with the public disclosure requirements of that rule and Core Principle L.

- *Governance.* The amendments update the Clearing Rules to impose specific confidentiality obligations on Clearing Members, in a manner generally consistent with the confidentiality obligations that apply to ICE Clear Europe, with appropriate exceptions. In ICE Clear Europe's view, the amendments will facilitate the governance of the Clearing House by enhancing its ability to share appropriate confidential information concerning Clearing House operations, decision-making, business plans and processes and models, among other relevant information, with Clearing Members. 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 revisions to Rule 106 of the Clearing Rules, a copy of which is attached hereto.

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', with a horizontal line underneath.

George Milton  
Head of Regulation & Compliance