

# SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional)

Date: 6/6/14

**IMPORTANT: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.**

**ORGANIZATION**

ICE Clear Europe Limited

**FILING AS A:**

DCM

SEF

DCO

SDR

ECM/SPDC

**TYPE OF FILING**

- **Rules and Rule Amendments**

- Certification under § 40.6 (a) or § 41.24 (a)
- “Non-Material Agricultural Rule Change” under § 40.4 (b)(5)
- Notification under § 40.6 (d)
- Request for Approval under § 40.4 (a) or § 40.5 (a)
- Advance Notice of SIDCO Rule Change under § 40.10 (a)

- **Products**

- Certification under § 39.5(b), § 40.2 (a), or § 41.23 (a)
- Swap Class Certification under § 40.2 (d)
- Request for Approval under § 40.3 (a)
- Novel Derivative Product Notification under § 40.12 (a)

**RULE NUMBERS**

Rule 919 of the ICE Clear Europe Clearing Rules.

**DESCRIPTION**

ICE Clear Europe submits for self-certification amendments that amend the timeframe during which clearing members are required to make contributions to cover investment losses that exceed the available clearing house loss assets.



June 6, 2014

Ms. Melissa Jurgens  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

By Email: [submissions@cftc.gov](mailto:submissions@cftc.gov)

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6 -  
Rule Change Relating to Investment Losses

Dear Ms. Jurgens:

ICE Clear Europe Limited ("ICE Clear Europe"), 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 the attached amendments to its clearing rules discussed herein. The amendments are to become effective ten business days after submission, or such later date as ICE Clear Europe may determine.

*Concise Explanation and Analysis*

By way of a self-certification filed with the Commission on April 30, 2014 (the "Investment Loss Submission"), ICE Clear Europe previously adopted amendments to its clearing rules to address and allocate losses arising other than from a clearing member default, in accordance with requirements of the Bank of England. Those amendments defined "investment losses" and "non-default losses" for this purpose and adopted Rule 919.

In the instant filing, ICE Clear Europe submits certain additional amendments to Rule 919 that reflect ongoing discussions with its regulators. The principal purpose of the changes is to amend the timeframe during which clearing members are required to make contributions (referred to as "collateral offset obligations") to cover investment losses that exceed the available clearing house loss assets. Under revised Rule 919(f), collateral offset obligations are due on the date specified in the Circular issued by ICE Clear Europe pursuant to Rule 919(c). The change eliminates the two business day

notice requirement in the current version of the rule. As modified, the deadline is consistent with the deadline for replenishment of the guaranty fund and assessment contributions under the rules.

Rule 919(q) also is revised to clarify the extent of ICE Clear Europe's liability for investment losses or non-default losses if it elects to replenish loss assets. Certain other corrections to cross-references are also made.

*Compliance with the Act and CFTC Regulations*

The rule amendments are potentially relevant to the following core principles: (B) Financial Resources and (D) Risk Management, and the applicable regulations of the Commission thereunder.

In particular, the changes will shorten the timeframe in which collateral offset obligations as a result of investment losses must be paid to the clearing house. The changes are thus in furtherance of, and are consistent with, the requirements of Commission Rules 39.11 (relating to financial resources) and 39.13(f) (relating to risk management), and will facilitate the continued operation and stability of the clearing house because ICE Clear Europe will have access to additional resources to cover investment losses in a shorter timeframe than under the existing Rules.

ICE Clear Europe hereby certifies that the changes comply with the Act and the Commission's regulations thereunder.

ICE Clear Europe has not solicited or received comments with respect to the rule changes in the instant submission. ICE Clear Europe notes that it has received a number of comments on the Investment Loss Submission, including comments from the Futures Industry Association and comments provided on behalf of various clearing members. These comments raised certain objections to the Investment Loss Submission. ICE Clear Europe considered and disagrees with these comments. ICE Clear Europe believes that Rule 919 provides a significant additional resource to cover investment losses and non-default losses (as compared to the rules in effect prior to the Investment Loss Submission), in a manner consistent with the Act and other regulatory requirements applicable to ICE Clear Europe.

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 [patrick.davis@theice.com](mailto:patrick.davis@theice.com) or +44 20 7065 7738, Dee Blake, Director of Regulation, at [dee.blake@theice.com](mailto:dee.blake@theice.com) or +44 20 7065 7752 or Paul Swann, President & Chief Operating Officer, at [paul.swann@theice.com](mailto:paul.swann@theice.com) or +44 20 7065 7700.

Very truly yours,



Patrick Davis  
Head of Legal and Company Secretary

*ILA* is the Investment Loss Amount certified by the Clearing House in a Circular;

*LA* is the total amount of available Loss Assets at the time of the event giving rise to the Investment Loss and have been or are to be attributed to meet the Investment Loss Amount;

*GF&M(CM)* is the total of all Original/Initial Margin, Guaranty Fund Contributions and Permitted Cover in respect thereof for all Contract Categories across all Accounts of the relevant Clearing Member at the time of the event giving rise to the Investment Loss (provided that for a Defaulter, *GF&M(CM)* shall only equal the amount of such Original/Initial Margin and Permitted Cover that is not otherwise used to offset amounts representing losses in the net sum calculation as a result of the Default); and

*GF&M(all)* is the total of all Original/Initial Margin, Guaranty Fund Contributions and Permitted Cover in respect thereof for all Contract Categories across all Accounts of all Clearing Members at the time of the event giving rise to the Investment Loss (less Original/Initial Margin, Guaranty Fund Contributions and Permitted Cover in respect thereof provided by Defaulters that is used to offset amounts representing losses in the net sum calculation pursuant to these Rules as a result of the Default and excluding the Clearing House Contributions and Loss Assets).

- (e) The Collateral Offset Obligation of any Clearing Member shall at no time exceed the total of the Original/Initial Margin, Guaranty Fund Contributions and Permitted Cover in respect thereof that it has deposited with or transferred to the Clearing House at the time of the event giving rise to the Investment Loss across all its Accounts.
- (f) All Collateral Offset Obligations shall arise on the date specified in the Circular under Rule 919(b), ~~which shall be no less than 2 Business Days after the date of issuance of such Circular~~c. Any Collateral Offset Obligations falling due may, at the election of the Clearing House, be offset against the obligation of the Clearing House to return or pay any Original/Initial Margin, Guaranty Fund Contributions or other Permitted Cover to a Clearing Member and will be collected pursuant to a call for additional cash Margin or cash Guaranty Fund Contributions from a Proprietary Account of the Clearing Member in accordance with Rule 302 and the Finance Procedures. In the case of a Defaulter, Collateral Offset Obligations may, at the election of the Clearing House, be included in any net sum calculation or offset against any obligation to return or pay outside of the net sum calculation any Original/Initial Margin, Guaranty Fund Contributions or other Permitted Cover that has not been included in the net sum calculation pursuant to these Rules as a result of the Default. Collection from a Proprietary Account is not intended to prevent the Clearing Member from passing on the cost of a Collateral Offset Obligation to any of its Customers under the relevant Customer-Clearing Member Agreement or Standard Terms, to the extent that the Collateral Offset Obligation relates to Margin on a Customer Account or is otherwise attributable to a Customer and to the extent permitted by Applicable Laws.
- (g) The Clearing House shall apply Collateral Offset Obligations solely to meet Investment Losses referred to in a Circular under Rule 919(c).

respect of Collateral Offset Obligations ~~Losses~~ under this Rule 919. The conditions in Rule 916(a)(ii)(B)(2) shall not be considered satisfied to the extent that they are only satisfied as a result of any Non-Default Loss or Investment Loss.

- (l) Any right being exercised or circumstances occurring that are governed by this Rule 919 shall not constitute any kind of Clearing House Event.
- (m) Payments of Collateral Offset Obligations may be made pursuant to Part 3 of the Rules and the Finance Procedures. This Rule 919 is without prejudice to the Clearing House's rights to set off or net any sum owed by a Clearing Member to the Clearing House against any sum payable by the Clearing House to a Clearing Member or to any other powers of the Clearing House under Parts 3, 9 or 11 or the Procedures, but the Clearing House may not take any action under those provisions to the extent inconsistent with the provisions of this Rule 919.
- (n) Nothing in this Rule 919 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member, Defaulter, Custodian or any other Person in respect of any amount, obligation or asset which is owed or due but unpaid or unsatisfied by such Clearing Member, Defaulter, Custodian or other Person.
- (o) In carrying out any calculations or making any determinations pursuant to this Rule 919, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (p) The Clearing House will notify Clearing Members from time to time, by Circular of the total amount of Loss Assets, which will be set at a level of USD 90 million as at the date of introduction of this Rule.
- (q) The total amount of Loss Assets applied in connection with any Investment Loss shall be notified to Clearing Members in a Circular prior to or promptly after the same being applied or replenished. The Clearing House may also replenish any regulatory capital, using its or its Affiliates' resources or otherwise, as is required to bring it in compliance with Applicable Laws at any time including following an Investment Loss or Non-Default Loss. However, no such recapitalisation shall result in any obligation of any Clearing Member to pay Collateral Offset Obligations being reduced nor the size of any Investment Loss being reduced. The Clearing House may replenish Loss Assets through re-applying retained earnings, where these are available. To the extent that the Clearing House replenishes Loss Assets or its capital in such or other circumstances, its liability for any further Non-Default Losses or Investment Losses shall not exceed the amount specified in Rule 919(p) or such other amount as is notified by Circular.
- (r) Without limiting Rule 111 or Rule 502, but subject to any contrary requirements of law, the Clearing House shall not be liable to any Clearing Member, Customer or other Person for any losses, liabilities, damages, costs, claims, shortfalls or expenses arising out of or