

Rule 106 *Confidentiality and Information*

- (a) The Clearing House shall be entitled to keep records in an electronic or durable medium of all data or information available to it under these Rules or otherwise concerning Clearing Members (including financial statements filed with the Clearing House), Customers, Sponsored Principals, Sponsors, Accounts, Margin, Transactions, Contracts, past or current Open Contract Positions, deliveries and settlement. All information received or held by the Clearing House concerning Transactions, Contracts or past or current Open Contract Positions carried by the Clearing House or positions with any other Clearing Organisation for a Clearing Member or Sponsored Principal or relating to any Customer, or concerning Margin payments between the Clearing House or any other Clearing Organisation and a Clearing Member or Sponsored Principal or concerning deliveries made by or to a Clearing Member or any of its Transferors or Transferees or any financial statements filed with the Clearing House by any Clearing Member or Sponsored Principal or any other information relating to a Clearing Member, Sponsored Principal, Sponsor or Customer provided by a Clearing Member, Sponsored Principal, Sponsor or Customer to the Clearing House at the Clearing House's request, or pursuant to the Rules or Applicable Laws shall be held in confidence by the Clearing House and shall not be made known to any other Person except that each Clearing Member, Sponsored Principal, Sponsor and Customer hereby consents to the Clearing House making the following disclosures, subject to such terms and conditions as the Clearing House may from time to time deem appropriate:
- (i) to a Regulatory Authority or Governmental Authority where a request is formally made to the Clearing House by or on behalf of the same or pursuant to Applicable Laws or where disclosure is required under Applicable Laws;
 - (ii) in the case of a breach by a Clearing Member or Sponsored Principal of: (i) any clearing membership criteria established by the Clearing House, whether as a breach of Rule 202(a)(iv) (including as applied to Sponsored Principals pursuant to Rule 1901(k)) or otherwise; or (ii) in the case of a Clearing Member, such Clearing Member's obligation to publicly disclose prices and fees associated with the clearing services it provides and/or its obligation to provide Customers with separate access to each specific service it provides; to the public, subject to any decision made by any Regulatory Authority pursuant to article 38(5) of EMIR;
 - (iii) pursuant to an order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Law;
 - (iv) to any member of the ICE Group, any Exchange or Clearing Organisation (including any Participating Exchange) and any of their or the Clearing House's Representatives, committees, experts, Delivery Facilities, auditors, advisers or lawyers including (without limitation) for audit, compliance, making or taking delivery, market surveillance or disciplinary purposes, in connection with or pursuant to a Link Agreement, for the purposes of an arbitration pursuant to Rule 117 or any proceedings in support of such an arbitration, or in relation to any possible or actual Event of Default or the termination or suspension of any clearing membership;

- (v) to any Person in the business of providing data processing or similar services for the purposes of performing computations or analysis, or of preparing reports or records, for the Clearing House;
 - (vi) to any Person who has provided or is considering entering into a loan, insurance policy, guarantee or other financial arrangement with the Clearing House or any of its Affiliates, provided that information identifying the positions or name of a Clearing Member or any of its accounts or the name of any of a Clearing Member's Customers will not be so disclosed, except, in the case of a Clearing Member and its accounts only, as is necessary to respond to any enquiries of such a Person concerning the Clearing House's or any of its Affiliates' potential losses or exposures relating to an Event of Default (whether or not declared);
 - (vii) to the Secretary of State, any Insolvency Practitioner and any other authority or body having responsibility for any matter arising out of or connected with an Event of Default;
 - (viii) in the case of information relating to any Transaction or Contract (including details of the parties thereto and related Margin), to Deriv/SERV, a Repository or Governmental Authority for purposes of transaction reporting;
 - (ix) to any Person or to the public as a result of its complaints procedure or disciplinary proceedings;
 - (x) to any Person if the information comes into the public domain, other than as a result of a breach of this Rule by the Clearing House or its Representatives;
 - (xi) in the case of information concerning any Individually Segregated Sponsored Account, to the Sponsor or Sponsored Principal in respect of such Account;
 - (xii) in the case of information concerning any Customer, to any Clearing Member with a relationship with such Customer in respect of one of its Customer Accounts;
 - (xiii) otherwise with the written consent of the Person or Persons to whom the confidential information relates; or
 - (xiv) pursuant to any obligation on the Clearing House or a Market under the Network Code, the Fluxys Belgium Rules, the Huberator Terms or the GTS Rules (as such terms are defined in the Delivery Procedures).
- (b) Clearing Members, Sponsored Principals, Sponsors and Customers are given notice that the Clearing House is subject to section 348 (Restrictions on disclosure of confidential information by the FCA / PRA etc.) and regulations made under section 349 (Exemptions from section 348) of the FSMA. Clearing Members, Sponsored Principals, Sponsors and Customers shall be deemed to consent to any use, disclosure or non-disclosure of information by the Clearing House that is required or permitted pursuant to such provisions.
- (c) The Clearing House is a ~~Data~~-Controller in relation to Personal Data provided to it by Clearing Members, Sponsored Principals, Customers and their Representatives. Each

Clearing Member and Sponsored Principal shall ensure that in respect of any Personal Data that it provides to the Clearing House it has a lawful basis for processing the relevant Personal Data in this manner:

- ~~(i)~~ any and all of its Representatives in relation to whom Personal Data are provided to the Clearing House ("**Data Subjects**") have consented in advance to such data being Controlled and Processed by the Clearing House or, if not a natural person, have agreed to procure such consent to the extent necessary;
- ~~(ii)~~ the disclosure of Personal Data by the Clearing Member, Sponsored Principal or its Representatives is in all respects and in each case lawful; and
- ~~(iii)~~ the information set out in Rule 106(d) has been provided to each Data Subject prior to disclosure of Personal Data relating to such Data Subject to the Clearing House.

~~(d)~~ The Clearing House shall have the right to disclose Personal Data to such Persons and for such purposes as are set out in Rule 106(a). The Clearing House and other Persons referred to in Rule 106(a) may transfer Personal Data outside the European Economic Area and Process Personal Data outside the European Economic Area.

~~(e)~~ Data Subjects have the right, on payment of a small fee to the Clearing House, to receive a copy of Personal Data held by the Clearing House and to have any errors or inaccuracies in such Personal Data rectified. Any request should be addressed to the Clearing House's registered office.

~~(f)~~(d) In this Rule 106 only, the terms "**Control**" (and derivations thereof), "**Process**" (and derivations thereof), "**Personal Data**", "**Data Subject**" and "**Data Controller**" each have the meaning given to such terms in Regulation (EU) 2016/679 (General Data Protection Regulation) (including any relevant implementing measure or successor legislation thereto)~~the Data Protection Act 1998.~~

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~~(g)~~(e) Each Clearing Member, Sponsored Principal and the Clearing House:

- ~~(i)~~ acknowledges that consents to the recording of telephone conversations between the trading, clearing and other relevant personnel of the Clearing Member or Sponsored Principal and the Clearing House or their Group Companies in connection with the Rules and any Contract, potential Contract or Transaction will take place to the extent permitted or required under applicable laws;
- ~~(ii)~~ agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its and its Group Companies' relevant personnel;
- ~~(iii)~~(ii) acknowledges agrees, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any Dispute; and
- ~~(iv)~~(iii) acknowledges agrees that the remainder of this Rule 106 shall apply to any such recordings made by the Clearing House.