



November 13, 2014

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 40.6 -
UK Client Money Rule 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”), for self-certification pursuant to Commission Rule 40.6, the amendments to its clearing rules discussed herein. The amendments are to become effective on the first business day following the tenth business day after submission, or such later date as ICE Clear Europe may designate.

Concise Explanation and Analysis

The purpose of the amendments is to implement certain requirements under the revised client money and client asset (collectively, “client money”) requirements adopted by the U.K. Financial Conduct Authority (the “FCA”) in the U.K. Client Asset Sourcebook (“CASS”) that apply to certain classes of customer accounts of Clearing Members. Among numerous other changes, revised CASS 7.18.4R and 7.18.6R will require ICEU Clearing Members that are subject to the CASS requirements to identify to the Clearing House those accounts that contain client money for purposes of CASS through the use of a specified form of acknowledgment letter. Such identification is intended to facilitate the proper segregation of client money at the Clearing House level.

ICE Clear Europe’s existing Rules establish several categories of customer accounts for Non-FCM/BD Clearing Members. Certain such account categories are intended for use with customer property subject to the FCA client money requirements; other

such account categories are not intended for use with such property. For example, the Segregated Customer Omnibus Account for F&O, Segregated Customer Omnibus Account for CDS and Segregated Customer Omnibus Account for FX are to be used for customers that provide assets to their Clearing Members that are subject to the FCA client money regime. In addition, Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts may be used for such customers. By contrast, Segregated TTFCA Customer Omnibus Accounts are not to be used for customers whose assets are subject to the FCA client money regime. To date, the Clearing House has identified such accounts for purposes of the client money rules pursuant to a Circular. The new FCA rules require such identification to be provided by the Clearing Member in a specified form.

ICE Clear Europe is adopting amendments to its Rules that implement the CASS acknowledgment letter requirement and specify the account categories for which acknowledgment letters should (and should not) be provided by Clearing Members.

Specifically, ICE Clear Europe proposes to make amendments to Parts 1, 2 and 5 of the Rules. Rule 102(q) has been revised to refer specifically to the customer account categories for customers whose assets are subject to the FCA client money requirements (specifically, the Segregated Customer Omnibus Accounts for F&O, CDS and FX, as well as Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts).

In Rule 202(a), which establishes ongoing obligations of Clearing Members, new subparagraph (xxi) has been added. It requires that Clearing Members that are subject to CASS 7.18 deliver to the Clearing House an acknowledgment letter in the required format for each of its Segregated Customer Omnibus Accounts, Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts which are treated by it as client transaction accounts under CASS 7.18.

In addition, Rule 203(a) has been amended to add a new subparagraph (xx), which provides that a Clearing Member that is subject to CASS 7.18 is not permitted to deliver an acknowledgment letter in respect of any Proprietary Account or Segregated TTFCA Customer Omnibus Account, as such accounts are not intended to be used for customers whose assets are subject to the FCA client money regime.

In Rule 504, a new subparagraph (c)(vi) has been added with respect to Clearing Members that are subject to CASS 7.18. Each such Clearing Member is deemed to represent that its Segregated Customer Omnibus Accounts only contain cash where the corresponding cash claim or receivable in the hands of the Clearing Member is treated by the Clearing Member as a client money claim or receivable, and only contain non-cash assets (resulting from a transfer into the Account by the Clearing Member) which the Clearing Member was entitled to treat as client assets prior to their transfer to the Clearing House. A similar representation applies to Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts which have been designated pursuant to a client money acknowledgment letter delivered by the Clearing Member. With respect to other Customer Accounts and Proprietary Accounts, the Clearing Member is deemed to represent that such accounts do not contain any property subject to the client money rules.

Compliance with the Act and CFTC Regulations

The rule amendments are potentially relevant to Core Principle F (Treatment of Funds) under the Act, and the applicable regulations of the Commission thereunder.

The proposed amendments are intended to facilitate the holding by the Clearing House of securities and funds that are subject to the U.K. client money regime under the CASS rules. Consistent with the existing customer account structure established in the ICE Clear Europe Rules, securities and funds subject to such rules are required to be maintained in certain categories of Customer Accounts. Under the revised CASS regulations, the Clearing Member is required to provide to the Clearing House an acknowledgment letter with respect to such assets and accounts. The proposed amendments are designed to implement this acknowledgment procedure, by requiring the proper acknowledgment letter for each relevant account category, and by prohibiting delivery of such a letter with respect to accounts not intended to hold client money. As such, ICE Clear Europe believes that the proposed changes, together with the related CASS amendments described above, will enhance the Clearing House's ability to protect and ensure the safety of funds and assets belonging to customers of Clearing Members that are subject to the CASS regulations, and are therefore consistent with the requirements of Core Principle F and Commission Rule 39.15. ICE Clear Europe notes that the amendments do not affect the segregation requirements applicable to FCM/BD Clearing Members under the Act and Commission regulations.

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

ICE Clear Europe has received no substantive opposing views in relation to the proposed rule amendments.

ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website concurrently 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 or +44 20 7065 7738, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752, or Paul Swann, President & Managing Director, at paul.swann@theice.com or +44 20 7065 7700.

Very truly yours,



Patrick Davis
Head of Legal and Company Secretary



ICE Clear Europesm

Clearing Rules

Published version CASS 2014 update - 731 October 2014

Part 1 General Provisions

Rule 101 *Definitions*

The term "**2003 Credit Derivatives Definitions**" means the document titled "2003 ISDA Credit Derivatives Definitions" dated 2003 published by ISDA as supplemented by (a) the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 Credit Derivatives Definitions (published by ISDA on 14 July 2009) and the Credit Derivatives Determinations Committees Rules (published by ISDA and as amended from time to time) and (b) the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions (published by ISDA on 7 March 2005), all including as supplemented or modified by incorporation of any additional provisions thereto (howsoever described) under, and as amended by, the Contract Terms for any relevant CDS Contract from time to time.

The term "**2014 Credit Derivatives Definitions**" means the document titled "2014 ISDA Credit Derivatives Definitions" published by ISDA on 21 February 2014 including as supplemented or modified by incorporation of any additional provisions thereto (howsoever described) under, and as amended by, the Contract Terms for any relevant CDS Contract from time to time.

The term "**2003-type CDS Contract**" means a CDS Contract incorporating the 2003 Credit Derivatives Definitions.

The term "**2014-type CDS Contract**" means a CDS Contract incorporating the 2014 Credit Derivatives Definitions.

The term "**Acceptance Notice**" has the meaning set out in the CDS Procedures.

The term "**Account**" means a Customer Account of a particular Contract Category, a Proprietary Account or an Individually Segregated Sponsored Account.

The term "**Accounting Standards**" means applicable accounting standards and principles.

The term "**Affected Customer**" means a Customer in respect of whom Applicable Laws in the Customer's jurisdiction of establishment or applicable in the context of activity on a relevant trading platform do not prevent or prohibit a Customer Account providing individual client segregation and a Customer Account providing omnibus client segregation (in the manner set out in Articles 39 and 48 of EMIR) being provided to the Customer.

The term "**Affected FM Party**" means a Person prevented, hindered or delayed by a Force Majeure Event.

The term "**Affiliated Person**" or "**Affiliate**" means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person.

The term "**Appeals Panel**" means the panel at which an appeal of a decision of a Disciplinary Panel is heard pursuant to Rule 1005.

Rule 102(q)

Without prejudice to the requirements of any Applicable Laws including, but not limited to, those relating to clients' money made under sections 138 and 139 of the FSMA, nothing in these Rules shall have the effect of enabling, requiring or implying that any Contracts recorded in a Clearing Member's or Defaulter's:

- (iv) Customer Account of any class be netted, combined or offset with any Contract recorded in any of that Clearing Member's or Defaulter's Proprietary Accounts;
- (v) particular Customer Account be netted, combined or offset with any Contract recorded in another Customer Account of the same Clearing Member or Defaulter; or
- (vi) particular Proprietary Account be netted, combined or offset with any Contract recorded in another Proprietary Account of the same Clearing Member or Defaulter;

(except as expressly provided under the Rules and to the extent permissible under Applicable Laws).

For the avoidance of doubt and ease of reference, the following provisions or documents relevant to asset and account segregation also apply in respect of each Segregated Customer Accounts for Non-FCM/BD Clearing Members Omnibus Account for CDS, Segregated Customer Omnibus Account for F&O and Segregated Customer Omnibus Account for FX of each Clearing Member that is subject to CASS 7.18 of the FCA rules, as well as each Individually Segregated Sponsored Account and Margin-flow Co-mingled Account of such a Clearing Member in respect of which the Clearing House gives an acknowledgement in accordance with paragraph (viii) below:

- (vii) the third and fourth sentences of clause 5.3 of the Clearing Membership Agreement (and equivalent provisions of the Sponsored Principal Clearing Agreement and Sponsor Agreement, if applicable); and
- (viii) Circular no. C08/032; any letter delivered to the Clearing House pursuant to CASS 7.18, where the Clearing House has countersigned the same and returned it to the Clearing Member.

Any reference in these Rules or the Procedures to Rule 102(q) shall be deemed to include a reference to such provisions as are mentioned in paragraph (vii) and such letters as are mentioned in paragraph (viii), as are applicable to the Clearing Member concerned.

- (r) The Rules shall at all times be observed, interpreted and given effect to in the manner most conducive to the promotion and maintenance of recognition of:
 - (i) the Clearing House as a recognised clearing house under the FSMA, as a registered derivatives clearing organization under the CEA and as a registered clearing agency under the Exchange Act and any other legal or regulatory status it has from time to time under any other Applicable Law;

Rule 202(a)

- (xvi) keep accurate records showing the details of each Transaction submitted for Clearing by or on behalf of such Clearing Member and such other information, in such form, as shall be required by the Clearing House from time to time and in accordance with Applicable Laws and Accounting Standards;
 - (xvii) gather and make available to the Clearing House basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to Customers;
 - (xviii) upon request, inform the Clearing House about the criteria and arrangements adopted by it to allow clients access to Clearing with the Clearing House;
 - (xix) participate in default management simulations, new technology testing and other exercises, as notified by the Clearing House from time to time; and
 - (xx) be responsible for ensuring that Customers comply with their obligations in the manner set forth in the Rules and Standard Terms; and
 - (xxi) if it is subject to CASS 7.18 of the FCA rules, deliver to the Clearing House, in the format required under CASS 7.18, a letter in respect of each of its Segregated Customer Omnibus Accounts for CDS, Segregated Customer Omnibus Accounts for F&O and Segregated Customer Omnibus Accounts for FX, as well as each Individually Segregated Sponsored Account and Margin-flow Co-mingled Account which is treated by it as a client transaction account under CASS 7.18.
- (b) Prior to making available services relating to Clearing of CDS, F&O or FX to any Customer, a Non-FCM/BD Clearing Member is obliged to procure the agreement of such Customer to the CDS Standard Terms, F&O Standard Terms or FX Standard Terms respectively, in such a way that:
- (i) the relevant Standard Terms and/or Rules are duly cross-referenced (as being applicable to Customer-CM Transactions between such Customer and such Non-FCM/BD Clearing Member) in an agreement between the Non-FCM/BD Clearing Member and its Customer that has been duly executed and duly authorised by both of them; and
 - (ii) subject to Rule 202(c), the obligations of the Customer to the Non-FCM/BD Clearing Member and the Clearing House under the relevant Standard Terms constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application and to other matters which are standardly excluded, restricted or qualified in legal opinions (regardless of whether enforcement is sought in a proceeding in equity or at law)); and
 - (iii) automatic early termination does not apply under such agreement in respect of either the Non-FCM/BD Clearing Member or its Customer and the relevant

Rule 203(a)

- (xvii) knowingly, negligently, recklessly or carelessly allow any Representative to engage in any conduct that might itself breach these Rules or render it unable to satisfy the membership criteria in Rule 201(a), Rule 201(i) or Rule 201(j) (in the case of Rule 201(i), only if it is a CDS Clearing Member and in the case of Rule 201(j), only if it is an FX Clearing Member);
- (xviii) assign any of its rights or transfer by novation any of its rights and obligations under these Rules to a third party (or purport to do so) unless the Clearing House provides its prior written consent (which consent shall not unreasonably be withheld or delayed); ~~or~~
- (xix) breach any Contract Terms; or
- (xx) if it is subject to CASS 7.18 of the FCA rules, deliver any letter to the Clearing House in the manner referred to in Rule 102(q)(viii) in respect of any Proprietary Account, Segregated TTFCA Customer Omnibus Accounts for CDS, Segregated TTFCA Customer Omnibus Accounts for F&O or Segregated TTFCA Customer Omnibus Accounts for FX.

Rule 204 *Notifications by Clearing Members*

- (a) Each Clearing Member shall notify the Clearing House in writing without delay providing full particulars known to it:
 - (i) in relation to any change of Control, as soon as it becomes aware of that change or proposed change of Control and it is not prevented from disclosing the change of Control by Applicable Laws;
 - (ii) if it breaches any applicable Position Limit that has been notified to it;
 - (iii) if it ceases to have sufficient Capital, as determined pursuant to Rule 206;
 - (iv) if its Capital for any reason is reduced by more than 10% from that shown on the latest financial statement filed by it with the Clearing House;
 - (v) prior to any payment, loan, distribution or redemption causing a reduction in Capital of the nature described in Rule 204(a)(iv), detailing the payment, loan, distribution or redemption involved and a description of the effect that the same will have on the Capital of the Clearing Member;
 - (vi) in the event that it fails to meet any obligation to transfer, deposit or pay any Margin when and as required by any Clearing Organisation of which it is a member (other than the Clearing House), excluding any matter subject to a dispute (where the Clearing Member is not in default) or resulting from manifest error;

Rule 504(c)

(c) Each Clearing Member will be deemed to represent and warrant to the Clearing House on each date on which such Clearing Member transfers Permitted Cover to the Clearing House that:

- (i) immediately prior to any such Permitted Cover being transferred to the Clearing House, the Clearing Member is or was the sole legal and beneficial owner of all such assets (or such assets are provided with all legal and beneficial owners' unconditional consent for their use and application pursuant to these Rules);
- (ii) the Clearing House is not subject to any obligation to perform directly to any of a Clearing Member's Customers, Affiliates or Representatives or any third party as a result of the Clearing Member granting any interest in any receivable from the Clearing House resulting from the Clearing House's receipt or use of such Permitted Cover, except as expressly provided pursuant to these Rules or any Pledged Collateral Addendum or as mandated pursuant to Applicable Law;
- (iii) such Permitted Cover is provided on the basis that it may be used by the Clearing House and applied in accordance with these Rules;
- (iv) the Clearing Member will not claim that any use of Permitted Cover by the Clearing House in accordance with the Rules or the relevant Clearing Membership Agreement is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation (provided that the Clearing House does not cause such breach by amending these Rules); ~~and~~
- (v) the Clearing Member is not in breach of any of its contractual obligations towards any third party as a result of the transfer of Permitted Cover to the Clearing House (provided that the Clearing House does not cause such breach by amending these Rules); ~~and~~
- (vi) if it is subject to CASS 7.18 of the FCA rules:

(A) its Segregated Customer Omnibus Accounts for CDS, Segregated Customer Omnibus Accounts for F&O and Segregated Customer Omnibus Accounts for FX only contain cash where the corresponding cash claim or receivable in the hands of the Clearing Member is treated by the Clearing Member as a client money claim or receivable and only contain non-cash assets (resulting from a transfer into the account by the Clearing Member) which the Clearing Member was entitled to treat as client assets prior to their transfer to the Clearing House;

(B) each of its Individually Segregated Sponsored Accounts and Margin-flow Co-mingled Accounts in respect of which a letter has been delivered to the Clearing House pursuant to Rule 102(q)(viii) only contain cash where the corresponding cash claim or receivable in the hands of the

Clearing Member is treated by the Clearing Member as a client money claim or receivable and only contain non-cash assets (resulting from a transfer into the account by the Clearing Member) which the Clearing Member was entitled to treat as client assets prior to their transfer to the Clearing House; and

(C) none of its Customer Accounts or Proprietary Accounts other than such Accounts as are mentioned in paragraphs (A) or (B) contain any cash where the corresponding cash claim or receivable in the hands of the Clearing Member is required to be treated by the Clearing Member as a client money claim or receivable nor contain any non-cash assets (resulting from a transfer into the account by the Clearing Member) which the Clearing Member was required to treat as client assets prior to their transfer to the Clearing House.

- (d) The Clearing Member shall be liable to the Clearing House for any cost or liability incurred by the Clearing House as a result of the Clearing House possessing, holding, perfecting the title (or, in the case of Pledged Collateral, perfecting its security interest) to or otherwise being associated with, any asset provided to it by that Clearing Member by way of Margin.
- (e) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation to transfer Margin (or any other amount, payment or performance) of a Clearing Member to the Clearing House shall be construed as an obligation of the Disclosed Principal Member and any right to receive Margin (or any other amount, payment or performance) from the Clearing House shall be construed as a right of the Disclosed Principal Member and all other provisions of these Rules relating to Margin, payments and performance shall be construed accordingly.
- (f) Each Non-FCM/BD Clearing Member shall require and receive Customer-CM Collateral from its Customers or fund such Permitted Cover only in such a manner as is consistent with these Rules and the relevant Standard Terms and in a manner which allows the Clearing Member to transfer Permitted Cover to the Clearing House in accordance with its obligations under the Clearing Membership Agreement and these Rules.
- (g) Any amount or asset recorded in a particular Account may be applied by the Clearing House to the extent permitted under Part 9 of the Rules as against the net sum for such Account or transferred to the extent permitted under Rule 906 regardless of the origin or status of such amount or assets at the time of transfer or prior to the time of transfer as Customer-CM Collateral, title transfer collateral, security interest collateral, Pledged Collateral or otherwise.
- (h) The Clearing House has acknowledged in Rule 102(q), Rule 906(b), Circulars and letters countersigned and returned by the Clearing House in accordance with Rule 102(q).