



October 16, 2023

Mr. Christopher Kirkpatrick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**RE: ICE Clear Credit Swap Submission Related to Mandatory Clearing Determinations**

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC (“ICE Clear Credit”) hereby submits (pursuant to the information requirements of Title 17 of the Code of Federal Regulations, Chapter 1 §39.5) to the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) the 5-year tenor in Series 40 of the CDX Emerging Markets (“EM”) High Yield (“HY”) and Investment Grade (“IG”) Sub-Indices maturing on December 20, 2028, (the “Sub-Indices” or “Submitted Swaps”) for a mandatory clearing determination.

***§39.5 Review of swaps for Commission determination on clearing requirement.***

***(b) Swap submissions.***

***(2) A derivatives clearing organization shall submit swaps to the Commission, to the extent reasonable and practicable to do so, by group, category, type, or class of swaps.***

Table 1 below identifies the characteristics of the Submitted Swaps; specifically its type, region, rating and spread-level, as follows:

*Type*

The Sub-Indices have constituent reference obligations that are sovereign bonds.

*Region*

The Sub-Indices are composed of sovereign issuers from three regions: (i) Latin America (“Latam”); (ii) Eastern Europe, the Middle East and Africa (“EEMEA”); and (iii) Asia.

*Rating*

The CDX EM HY Sub-Index is composed of sub-investment grade sovereign issuers. The CDX EM IG Sub-Index is composed of investment grade sovereign issuers.

*Spread Level*

Not applicable. Applicable only when spread level selection criteria are used to determine constituents of an index.

**Table 1**

Index Classification				Sub-Index Name	Swap		
Type	Region	Rating	Spread Level		Series	Maturity (Tenor)	Currency
Sovereign Bonds	Latam, EEMEA, Asia	Emerging Markets	[n/a]	CDX.EM.IG.S40 V1	40	12/20/2028 5Y	USD
Sovereign Bonds	Latam, EEMEA, Asia	Emerging Markets	[n/a]	CDX.EM.HY.S40 V1	40	12/20/2028 5Y	USD

**§39.5(b)(3)(i) Statement of Eligibility**

“A statement that the derivatives clearing organization is eligible to accept the swap, or group, category, type, or class of swaps for clearing and describes the extent to which, if the Commission were to determine that the swap, or group, category, type, or class of swaps is required to be cleared, the derivatives clearing organization will be able to maintain compliance with section 5b(c)(2) of the Act.”

ICE Clear Credit is a Derivatives Clearing Organization (“DCO”) pursuant to Section 5b of the United States Commodity Exchange Act, as amended (the “CEA”), and as such is supervised by the CFTC. ICE Clear Credit became a DCO on July 16, 2011 pursuant to Section 725 of the Dodd-Frank Act (the “Conversion Date”), and since the Conversion Date, ICE Clear Credit has cleared commodity-based swaps similar to the Indices submitted herein in compliance with section 5b(c)(2) of the CEA.

**§39.5(b)(3)(ii) Information Related to the Act’s Swap Submission Review Requirements**

“A statement that includes, but is not limited to, information that will assist the Commission in making a quantitative and qualitative assessment of the following factors:”

(A) “The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.”

Table 2 below provides data describing the adequacy of end-of-day pricing data for the Submitted Swaps. Three columns identify the Submitted Swaps by index, series and tenor.

The Sub-Indices became available for trading on September 27, 2023 and were launched in response to market participant’s requests to have the ability to trade the sub-investment and investment grade components of the flagship CDX.EM index separately.

ICE Clear Credit’s rules require its Clearing Participants (“CPs”) to submit end-of-day pricing data for any swap for which they have a relevant cleared interest. ICE Clear Credit recently demonstrated the ability of CPs to provide end-of-day price discovery submissions for the Sub-Indices. Price collection started the week of October 2, 2023, in which ICE Clear Credit asked all 30 of its CPs to provide submissions for all Sub-Indices. Table 2 summarizes the results of the price collection period. The first column provides the number of CPs providing submissions. The second column provides the average dispersion of submissions. For the purposes of this analysis, ICE Clear Credit defines dispersion as the difference between the highest and lowest quoted mid-levels after removing the quotes with the top 25% and bottom 25% mid-levels. The

table expresses dispersion as a percentage of the bid-offer width (“BOW”) established each day for the given swap by ICE Clear Credit.

**Table 2**

Index	Series	Tenor	ICC EOD Price Collection Summary <sup>1</sup>	
			CPs Providing Submissions	Average Dispersion (% of ICE BOW) <sup>2</sup>
CDX.EM.IG S40 V1	40	5Y	17	13%
CDX.EM.HY S40 V1	40	5Y	17	17%

**(B) Clearinghouse Capabilities**

“The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.”

Rule Framework – ICE Clear Credit maintains a comprehensive set of rules that are publicly available and may be viewed at [https://www.ice.com/publicdocs/clear\\_credit/ICE\\_Clear\\_Credit\\_Rules.pdf](https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf) and are listed herein as Exhibit A.

Capacity, Operational Expertise and Resources – ICE Clear Credit is the largest, leading, and most active CDS clearinghouse in the world as measured by (1) number and diversification of cleared CDS contracts, (2) volume, (3) open interest, (4) amount of default resources (margin collateral and guaranty fund deposits), and (5) number of active CDS CPs. As of October 6, 2023, ICE Clear Credit lists 6,140 CDS instruments for clearing. As of October 6, 2023, ICE Clear Credit has cleared approximately 7,230,749 trades representing over \$201.9 trillion of gross notional value, resulting in open interest of \$1.7 trillion (additional ICE Clear Credit’s statistics may be viewed at <https://www.ice.com/clear-credit>).

The following financial institutions have been approved as ICE Clear Credit CPs: Bank of America, N.A., Barclays Bank PLC, Barclays Capital Inc., BofA Securities, Inc., BNP Paribas, BNP Paribas Securities Corp., Citibank N.A., Citigroup Global Markets Inc., Credit Suisse International, Credit Suisse Securities (USA) LLC, Deutsche Bank AG, Goldman Sachs & Co. LLC, Goldman Sachs International, HSBC Bank USA, N.A., HSBC Bank plc, HSBC Securities (USA) Inc., Intesa Sanpaolo S.p.A, J.P. Morgan Chase Bank, National Association, J.P. Morgan Securities LLC, Merrill Lynch International, Morgan Stanley Capital Services LLC, Morgan Stanley & Co. LLC, Nomura International PLC, Nomura Securities International, Inc., Société Générale, SG Americas Securities LLC, The Bank of Nova Scotia, UBS AG, London Branch, UBS Securities LLC, and Wells Fargo Securities LLC.

Credit Support Infrastructure – As of June 30, 2023, ICE Clear Credit’s margin on deposit is approximately \$57.4 billion and Guaranty Fund amount is approximately \$3.6 billion. On a daily basis, ICE Clear Credit processes millions of dollars in settlements.

<sup>1</sup> Price collection period started the week of October 2, 2023.

<sup>2</sup> Average Dispersion calculated using Affiliate Group submissions.

### ***(C) Impact on Systemic Risk***

“The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.”

The effect on mitigation of systemic risk from the clearing of the Submitted Swaps is believed to be material for the following reasons:

- ICE Clear Credit’s CPs are amongst the most active CDS market participants and continue to clear a significant portion of their clearing-eligible portfolio.
- The multi-lateral netting achieved through the clearing process has been significant historically and has substantially reduced the number and notional amount of outstanding bi-lateral positions.
- ICE Clear Credit has developed a robust risk management framework that has been extensively reviewed by regulators, industry participants and third-party experts.
- ICE Clear Credit’s price discovery process is working successfully to provide reliable inputs to its risk models.

### ***(D) Competition***

“The effect on competition, including appropriate fees and charges applied to clearing.”

ICE Clear Credit’s fee structure is appropriate, and its margin and guaranty fund computations suitably account for the risk brought to the clearinghouse.

### ***(E) Insolvency Protection***

“The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.”

ICE Clear Credit believes that there is reasonable legal certainty in the event of the insolvency of ICE Clear Credit or a CP with regard to the treatment of house and customer positions, funds and property in connection with the clearing of the Submitted Swaps.

ICE Clear Credit’s CPs consist of several types of institutions, principally futures commission merchants (“FCMs”) (including FCMs that are also broker-dealers), U.S. banks and non-U.S. banks. In the event of a CP insolvency, ICE Clear Credit is of the view, based on the advice of counsel in the relevant jurisdictions, that ICE Clear Credit would be permitted to exercise its rights to close out house positions and apply margin and other property of the defaulting CP in accordance with its rules. With respect to customer positions, which must be carried through an FCM CP, the submitted swap would constitute “commodity contracts” for purposes of the commodity broker liquidation provisions of the U.S. Bankruptcy Code. Under the Bankruptcy Code and the Commission’s Part 190 regulations, ICE Clear Credit would have the ability to close out customer positions following the insolvency of the CP and/or, in appropriate circumstances, facilitate a transfer of such positions to another, solvent CP. Customer property provided in respect of submitted contracts would be subject to the protections for customer property under the Part 190 regulations for the cleared swaps account class. Under the Commission’s Part 22 regulations for cleared swaps, ICE Clear Credit is required to segregate cleared swap customer property. As such, customer property would be subject to distribution to cleared swap customers of the insolvent FCM in accordance with those regulations.

With respect to an ICE Clear Credit insolvency, ICE Clear Credit would itself be a commodity broker subject to the Bankruptcy Code and Part 190 regulations. ICE Clear Credit believes, based on the advice of counsel, that under the applicable provisions of those laws and regulations, ICE Clear Credit rules providing

for the termination of all outstanding contracts and the application and/or return of remaining member and customer property to CPs would similarly be enforceable.

### **§39.5(b)(3)(iii) Product Specifications**

“Product specifications, including copies of any standardized legal documentation, generally accepted contract terms, standard practices for managing any life cycle events associated with the swap, and the extent to which the swap is electronically confirmable.”

The submitted swap is electronically confirmable. Lifecycle events are processed by ICE Clear Credit and DTCC subject to determinations committee and industry groups. Product specifications are included below.

## **26C. CDX Untranching Emerging Markets.**

The rules in this Subchapter 26C apply to the clearance of CDX.EM Untranching Contracts.

### **26C-102. Definitions.**

#### **CDX.EM Untranching Contract**

A credit default swap in respect of any Eligible CDX.EM Untranching Index and governed by any CDX.EM Untranching Terms Supplement. A CDX.EM Untranching Contract is a CDS Contract for purposes of Chapter 20.

#### **CDX.EM Untranching Publisher**

Markit North America, Inc., or any successor sponsor of the Eligible CDX.EM Untranching Indexes it publishes.

#### **CDX.EM Untranching Rules**

The rules set forth in Chapters 1 through 8 and 20 through 22, inclusive, as modified by the provisions of this Subchapter 26C.

#### **CDX.EM Untranching Terms Supplement**

Each of the following:

- (a) The “CDX Emerging Markets Untranching Transactions Standard Terms Supplement”, as published by Markit North America, Inc. on January 31, 2011 (the “**2011 Supplement**”).
- (b) The “CDX Emerging Markets Legacy Untranching Transactions Standard Terms Supplement”, as published on or about September 20, 2014 (the “**Legacy 2014 Supplement**”).
- (c) The “CDX Emerging Markets Untranching Transactions Standard Terms Supplement”, as published on or about September 20, 2014 (the “**New 2014 Supplement**”, and together with the Legacy 2014 Supplement, the “**2014 Supplements**”).

- (d) Such other supplement as may be specified in relation to any Eligible CDX.EM Untranching Index by ICE Clear Credit, including any successor to any of the documents listed in subparagraphs (a), (b) or (c) of this definition.

### **Eligible CDX.EM Untranching Index**

Each particular series and version of a CDX.EM index or sub-index, as published by the CDX.EM Untranching Publisher, determined by ICE Clear Credit to be eligible and included in the List of Eligible CDX.EM Untranching Indexes.

### **List of Eligible CDX.EM Untranching Indexes**

The list of Eligible CDX.EM Untranching Indexes, maintained, updated and published by the Board or its designee on the ICE Clear Credit website, specifying the following information with respect to each index:

- (a) the name and series, including any applicable sub-index designation;
- (b) the “Effective Date”;
- (c) one or more eligible “Scheduled Termination Dates” and the applicable “Fixed Rate” for each such date;
- (d) the Relevant CDX.EM Untranching Terms Supplement;
- (e) the versions (and related annex dates) eligible for clearing (and, if applicable for the relevant index, the Applicable Credit Derivatives Definitions for each component); and
- (f) any inactive versions (and related annex dates), i.e., those that have been determined to be fungible with later versions.

### **Relevant CDX.EM Untranching Terms Supplement**

With respect to an Eligible CDX.EM Untranching Index, the CDX.EM Untranching Terms Supplement specified for such Eligible CDX.EM Untranching Index in the List of Eligible CDX.EM Untranching Indexes.

### **26C-309. Acceptance of CDX.EM Untranching Contracts by ICE Clear Credit.**

- (a) A CDS Participant shall make all reasonable efforts to not submit a Trade for clearance as a CDX.EM Untranching Contract, and any such Trade shall not be a Conforming Trade, if the Novation Time would be:
  - (i) at a time when the Fallback Settlement Method is applicable to a Credit Event with respect to such CDX.EM Untranching Contract; or
  - (ii) at or after the close of business on the calendar day following the Auction Final Price Determination Date for a Credit Event with respect to such CDX.EM Untranching Contract;

(such time with respect to any CDX.EM Untranching Contract, the “**Clearance Cut-off Time**”); provided that ICE Clear Credit may, by written notice to all CDS Participants following consultation with the Risk Committee, designate a time other than the time determined pursuant to

clauses (i) or (ii) above as the Clearance Cut-off Time with respect to any CDX.EM Untranching Contract. CDS Participants may again submit Trades for clearance as such CDX.EM Untranching Contract, and such Trades shall again be Conforming Trades, following receipt of notice from ICE Clear Credit that a Fungibility Date (as defined in Rule 26C-316) has occurred with respect to such CDX.EM Untranching Contract.

- (b) A CDS Participant shall as soon as reasonably practicable notify ICE Clear Credit if any Trade it has submitted for clearance was not at the time of submission, or ceases to be prior to the Novation Time, a Conforming Trade.

#### **26C-315. Terms of the Cleared CDX.EM Untranching Contract.**

- (a) Any capitalized term used in this Subchapter 26C but not defined in these CDX.EM Untranching Rules shall have the meaning provided in the Relevant CDX.EM Untranching Terms Supplement.
- (b) For purposes of the CDS Committee Rules, the CDS Region for each CDX.EM Untranching Contract is the North American Region for Latin American Reference Entities, the European Region for European Reference Entities and the Asian Region for Asian Reference Entities (or for an issue not specific to a particular Reference Entity, the North American Region).
- (c) Each CDX.EM Untranching Contract will be governed by the Relevant CDX.EM Untranching Terms Supplement, as modified by these CDX.EM Untranching Rules. In the event of any inconsistency between the Relevant CDX.EM Untranching Terms Supplement or the Confirmation (including in electronic form) for a CDX.EM Untranching Contract and these CDX.EM Untranching Rules, these CDX.EM Untranching Rules will govern.

#### **26C-316. Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranching Standard Terms Supplement.**

- (a) Where the CDX.EM Untranching Publisher of an Eligible CDX.EM Untranching Index publishes one or more subsequent versions or annexes of the relevant series following a Credit Event or a Succession Event or circumstances giving rise to a Successor and a Succession Date with respect to a Reference Entity included in such series, and the Board or its designee determines that CDX.EM Untranching Contracts referencing the earlier version or annex of such series are fungible with CDX.EM Untranching Contracts referencing a later version or annex of such series that is an Eligible CDX.EM Untranching Index and so notifies CDS Participants, CDX.EM Untranching Contracts referencing the earlier version or annex of such series shall become CDX.EM Untranching Contracts referencing such later version or annex of such series on the date determined by the Board or its designee (the “**CDX.EM Fungibility Date**”). Any CDX.EM Untranching Contracts referencing the earlier version or annex of such series submitted for clearing after the related CDX.EM Fungibility Date shall, upon acceptance for clearing, become a CDX.EM Untranching Contract referencing the latest version or annex of such series that the Board or its designee has determined is fungible with such earlier version or annex.
- (b) Where a new version of the CDX.EM Untranching Terms Supplement (a “**New CDX.EM Standard Terms**”) is published as of a date that is subsequent to the date of the version that is specified as the Relevant CDX.EM Untranching Terms Supplement for any CDX.EM Untranching Contract(s) (the “**Existing CDX.EM Standard Terms**”), and the Board or its designee determines that CDX.EM Untranching Contracts referencing the Existing CDX.EM Standard Terms are fungible with CDX.EM Untranching Contracts referencing the New CDX.EM Standard Terms, and so notifies CDS Participants, CDX.EM Untranching Contracts referencing the Existing CDX.EM

Standard Terms shall become CDX.EM Untranching Contracts referencing the New CDX.EM Standard Terms on the date determined by the Board or its designee (the “**CDX.EM Standard Terms Update Date**” and each prior CDX.EM Untranching Terms Supplement subject to such determination, a “**Superseded CDX.EM Standard Terms**”). Any Trade referencing a Superseded CDX.EM Standard Terms submitted for clearing as a CDX.EM Untranching Contract shall, upon acceptance for clearing, become a CDX.EM Untranching Contract referencing the New CDX.EM Standard Terms.

- (c) The Board or its designee may determine a different Fungibility Date or CDX.EM Standard Terms Update Date applicable to individual CDX.EM Untranching Contracts or groups of CDX.EM Untranching Contracts or may determine a Fungibility Date or CDX.EM Standard Terms Update Date applicable to all CDX.EM Untranching Contracts referencing the earlier version or annex of a series or standard terms described in clauses (a) or (b) of this Rule, as it deems appropriate.
- (d) Notwithstanding anything to the contrary herein (including Rule 616(b)), with respect to Open Positions in CDX.EM Untranching Contracts that are Converting Contracts, effective as of the 2003/2014 Changeover Effective Date and without need for further action or determination by the Board, the terms of each such Contract shall be deemed amended such that it references the applicable 2014 Supplement as set forth in the List of Eligible CDX.EM Untranching Indexes in lieu of the Relevant CDX.EM Untranching Terms Supplement in effect prior to such date. The amendments made by this Rule 26C-316(d) shall apply as of the 2003/2014 Changeover Effective Date regardless of whether any relevant transaction record in Deriv/SERV is updated to reflect such amendments.
- (e) Notwithstanding anything to the contrary herein (including Rule 616(b)), with respect to Open Positions in CDX.EM Contracts with a Component Transaction for which the Reference Entity is the Bolivarian Republic of Venezuela, effective as of October 20, 2017 (or such later date as may be designated by ICE Clear Credit Circular) (the “Venezuela Additional Provisions Effective Date”) and without need for further action or determination by the Board, the terms of each such Component Transaction will be deemed amended such that (i) the Additional Provisions for Certain Venezuelan Entities: Excluded Obligation and Excluded Deliverable Obligations, as published by ISDA on September 19, 2017, shall apply to such Component Transaction and (ii) such Component Transaction references the Credit Derivatives Physical Settlement Matrix with a date of September 19, 2017. The amendments made by this Rule 26C-316(e) shall apply as of the Venezuela Additional Provisions Effective Date regardless of whether any relevant transaction record in Deriv/SERV is updated to reflect such amendments.

#### **26C-317. Terms of CDX.EM Untranching Contracts.**

With respect to each CDX.EM Untranching Contract, the following terms will apply:

- (a) The following provisions will apply to each CDX.EM Untranching Contract or component thereof to which the 2003 Definitions apply under the Relevant CDX.EM Untranching Terms Supplement. For purposes of this Chapter 26C only, references to the 2003 Definitions shall not include the 2005 Matrix Supplement.
  - (i) Section 3.2(c)(i) of the Credit Derivatives Definitions is hereby amended by replacing the “or” at the end of subparagraph (B) thereof with an “and” and adding the following as a new subparagraph (C):



“(C) the tenth calendar day after the date of the actual decision by the relevant Regional CDS Committee (or Dispute Resolver) to Resolve (i.e., determined without regard to any Effectiveness Convention or any time of effectiveness specified in a Presented Position) that a Credit Event has occurred for which there is Publicly Available Information, as described in CDS Committee Rule 2101-02(a)(iii), with respect to such CDX.EM Untranching Contracts; or”.

- (ii) Intentionally omitted.
- (iii) For the purposes of any determination as to whether a Credit Event has occurred in respect of a Reference Entity or an Obligation thereof:
  - (A) at any time up to but excluding June 20, 2009; or
  - (B) if (A) a Credit Event Resolution Request Date occurs or (B) a Credit Event Notice and a Notice of Publicly Available Information are deemed delivered pursuant to Rule 2101-02(f) by a Notifying Party, in either case before June 20, 2009,

the Credit Event Backstop Date with respect to such determination shall be deemed to be the Effective Date.

- (iv) Section 6.8 of the CDX.EM Untranching Terms Supplement is hereby modified by inserting “or a Succession Event Notice is deemed delivered pursuant to Rule 2101-02(f), in either case” before the words “before June 20, 2009”.
- (v) Except for purposes of Rule 26C-317(a)(iii) and Section 1.23 of the Credit Derivatives Definitions, a Credit Event Notice and Notice of Publicly Available Information with respect to a CDX.EM Untranching Contract for a Credit Event other than Restructuring will be deemed to have been effectively delivered by the Notifying Party on the relevant Event Determination Date determined under the CDS Committee Rules only when the Resolution is effective, under the CDS Committee Rules, that a Credit Event other than Restructuring has occurred for which there is Publicly Available Information, as described in CDS Committee Rule 2101-02(a)(iii), with respect to such CDX.EM Untranching Contract. Notwithstanding anything to the contrary in the Credit Derivatives Definitions or the Relevant CDX.EM Untranching Terms Supplement, any delivery of a Credit Event Notice and/or Notice of Publicly Available Information by a CDS Participant (other than (i) the deemed delivery as provided in this Rule 26C-317(e) or (ii) notices with respect to a Relevant Restructuring Credit Event as provided in the CDS Restructuring Rules) shall not be valid. For the avoidance of doubt, Section 6.9 of the CDX.EM Untranching Terms Supplement shall not apply.
- (vi) (A) Section 1.8(a)(ii)(A)(I)(3)(y) of the Credit Derivatives Definitions is hereby modified by replacing the term “Auction Final Price Determination Date” with the phrase “date that is one Relevant City Business Day prior to the Auction Settlement Date”.
- (B) Section 1.30 of the Credit Derivatives Definitions is hereby modified by replacing the term “Auction Final Price Determination Date” in clause (ii) of the last sentence thereof with the phrase “date that is one Relevant City Business Day prior to the Auction Settlement Date”.

- (vii) With respect to CDX.EM Untranchured Contracts for which it is Resolved by the applicable Regional CDS Committee (or applicable Dispute Resolver) or Credit Derivatives Determinations Committee that a Credit Event has occurred for which there is Publicly Available Information, as described in CDS Committee Rule 2101-02(a)(iii) or the DC Rules, as applicable, Buyer may not deliver a Notice of Physical Settlement until after it is determined that the method of settlement for a particular Credit Event is the Fallback Settlement Method due to the occurrence of one of the events in Section 12.1 of the Credit Derivatives Definitions and as further provided in the CDS Physical Settlement Rules. For the avoidance of doubt, the effectiveness of any Notice of Physical Settlement and obligations relating thereto are subject to the suspension and finality provisions of Sections 6.5 and 9.1(c)(iii) of the Credit Derivatives Definitions.
- (b) The following provisions will apply to each CDX.EM Untranchured Contract or component thereof to which the 2014 Definitions apply under the Relevant CDX.EM Untranchured Terms Supplement:
  - (i) Section 8.10(a) of the 2014 Definitions is hereby amended by replacing the “.” at the end of subparagraph (B) thereof with “; and” and adding the following as a new subparagraph (C):

“(C) the tenth calendar day after the date of the actual decision by the relevant Regional CDS Committee (or Dispute Resolver) to Resolve (i.e., determined without regard to any Effectiveness Convention or any time of effectiveness specified in a Presented Position) that a Credit Event has occurred for which there is Publicly Available Information, as described in CDS Committee Rule 2101-02(a)(iii), with respect to such CDX.NA Untranchured Contracts.”.
  - (ii) Except for purposes of Section 1.39 of the 2014 Definitions, a Credit Event Notice and Notice of Publicly Available Information with respect to a CDX.EM Untranchured Contract for a Credit Event other than M(M)R Restructuring will be deemed to have been effectively delivered by the Notifying Party on the relevant Event Determination Date determined under the CDS Committee Rules only when the Resolution is effective, under the CDS Committee Rules, that a Credit Event other than M(M)R Restructuring has occurred for which there is Publicly Available Information, as described in CDS Committee Rule 2101-02(a)(iii), with respect to such CDX.EM Untranchured Contract. Notwithstanding anything to the contrary in the 2014 Definitions or the Relevant CDX.EM Untranchured Terms Supplement, any delivery of a Credit Event Notice and/or Notice of Publicly Available Information by a CDS Participant (other than (i) the deemed delivery as provided in this Rule 26C-317(b)(ii) or (ii) notices with respect to a Relevant Restructuring Credit Event as provided in the CDS Restructuring Rules) shall not be valid. For the avoidance of doubt, Section 5.9 of the Legacy 2014 Supplement and Section 5.8 of the New 2014 Supplement shall not apply.
  - (iii) For the purposes only of Section 1.16(a)(ii)(A)(II) of the 2014 Definitions, Section 1.17 of the 2014 Definitions is hereby modified by replacing the term “Auction Final Price Determination Date” with the phrase “date that is one Relevant City Business Day prior to the Auction Settlement Date”.
  - (iv) With respect to CDX.EM Untranchured Contracts for which it is Resolved by the Regional CDS Committee (or applicable Dispute Resolver) or Credit Derivatives Determinations Committee that a Credit Event has occurred for which there is Publicly Available Information, as described in CDS Committee Rule 2101-02(a)(iii) or the DC Rules, as

applicable, Buyer may not deliver a Notice of Physical Settlement until after it is determined that the method of settlement for a particular Credit Event is the Fallback Settlement Method due to the occurrence of one of the events in Section 6.1 of the 2014 Definitions, and as further provided in the CDS Physical Settlement Rules. For the avoidance of doubt, the effectiveness of any Notice of Physical Settlement and obligations relating thereto are subject to the suspension and finality provisions of Sections 10.1 and 10.2 of the 2014 Definitions.

- (c) The Settlement Method for particular CDX.EM Untranching Contracts will be Auction Settlement and the Fallback Settlement Method will be Physical Settlement in accordance with the CDS Physical Settlement Rules.
- (d) ICE Clear Credit is deemed an Index Party for purposes of the CDX.EM Untranching Terms Supplement.
- (e) Notwithstanding anything to the contrary in the Relevant CDX.EM Untranching Terms Supplement, the Reference Obligation for purposes of a New Trade (as defined therein) will be the Reference Obligation for the Restructured Entity in question as specified by ICE Clear Credit following consultation with the CDS Risk Committee (which for the avoidance of doubt may be determined by reference to any Standard Reference Obligation).
- (f) The following terms will apply to each CDX.EM Untranching Contract:
  - (i) The “Agreement” is the Participant Agreement between the relevant CDS Participant and ICE Clear Credit.
  - (ii) The “Source of Relevant Annex” is “Publisher” (if applicable under the Relevant CDX.EM Untranching Terms Supplement).
  - (iii) The “Effective Date” is the date specified in the List of Eligible CDX.EM Indexes for the relevant Index.
  - (iv) The “Calculation Agent” is ICE Clear Credit, except as provided in the CDS Committee Rules.
  - (v) There are no “Excluded Reference Entities” (in the case of a Relevant CDX.EM Untranching Terms Supplement prior to the 2014 Supplements).
  - (vi) “De Minimis Cash Settlement” is not applicable.
  - (vii) The “Fixed Rate” is the rate specified in the List of Eligible CDX.EM Indexes for the relevant Index and Scheduled Termination Date.
  - (viii) The “Initial Payment Date” will be the date that is the first Business Day immediately following the Trade Date; provided that with respect to a CDX.EM Untranching Contract that is accepted for clearing pursuant to Rule 309 after the Trade Date thereof, the “Initial Payment Date” will be the date that is the first Business Day following the date as of which such CDX.EM Untranching Contract is accepted for clearing pursuant to Rule 309.
- (g) For each CDX.EM Untranching Contract, the following terms will be determined according to the particular CDX.EM Untranching Contract submitted for clearing:

- (i) Which of the Eligible CDX.EM Untranchured Indexes is the “Index”.
- (ii) The “Annex Date”.
- (iii) The “Trade Date”.
- (iv) Which of the eligible Scheduled Termination Dates specified for the Index in the List of Eligible CDX.EM Untranchured Indexes is the “Scheduled Termination Date”.
- (v) The “Original Notional Amount”.
- (vi) The “Floating Rate Payer”.
- (vii) The “Fixed Rate Payer”.
- (viii) The “Initial Payment Payer”.
- (ix) The “Initial Payment Amount”.

#### §39.5(b)(3)(iv) Participant Eligibility

“Participant eligibility standards, if different from the derivatives clearing organization’s general participant eligibility standards.”

The participant eligibility standards related to the Indices are not different from ICE Clear Credit’s general participant eligibility standards.

#### §39.5(b)(3)(v) Price Discovery

“Pricing sources, models, and procedures, demonstrating an ability to obtain sufficient price data to measure credit exposures in a timely and accurate manner, including any agreements with clearing members to provide price data and copies of executed agreements with third-party price vendors, and information about any price reference index used, such as the name of the index, the source that calculates it, the methodology used to calculate the price reference index and how often it is calculated, and when and where it is published publicly.”

See the ICE Clear Credit End-of-Day Price Discovery Policies and Procedures attached hereto as Confidential Exhibit B.

#### §39.5(b)(3)(vi) Risk Management

“Risk management procedures, including measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress-testing and back-testing, settlement procedures, and default management procedures.”

See the ICE Clear Credit Risk Management Framework attached hereto as Confidential Exhibit C. See the ICE Clear Credit Risk Management Model Description attached hereto as Confidential Exhibit D.

See the ICE Clear Credit Risk Management Back-Testing Framework attached hereto as Confidential Exhibit E.

See the ICE CDS Clearing: Stress-Testing Framework attached hereto as Confidential Exhibit F.

See the ICE Clear Credit Clearing Participant Default Management Procedures attached hereto as Confidential Exhibit G.

### **§39.5(b)(3)(vii) Rules, Policies and Procedures**

ICE Clear Credit maintains a comprehensive set of rules that are publicly available and may be viewed at [ICE Clear Credit Rules.pdf](#) and are listed herein as Exhibit A.

See the ICE Clear Credit Risk Management Framework attached hereto as Confidential Exhibit C. See the ICE Clear Credit Risk Management Model Description attached hereto as Confidential Exhibit D.

### **§39.5(b)(3)(viii) Communication to Members Regarding this Submission**

“A description of the manner in which the derivatives clearing organization has provided notice of the submission to its members and a summary of any views on the submission expressed by the members (a copy of the notice to members shall be included with the submission.”

ICE Clear Credit posted a copy of this submission (absent any confidential exhibits) on its public website on October 16, 2023. Written comments relating to the submission have not been solicited or received. ICE Clear Credit will notify the CFTC of any written comments received by ICE Clear Credit.

Pursuant to applicable law, ICE Clear Credit respectfully requests confidential treatment of the confidential exhibits attached as part of this submission and any other information or documents which may at any time be submitted in connection with this submission and which may be marked “Confidential” or for which confidential treatment may be requested.

Confidential treatment of the confidential exhibits attached as part of this submission and any subsequent related documents is justified under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* and the Rules Regarding Availability of Information, 12 C.F.R. § 261.15 (2006). The confidential exhibits attached as part of this submission contain confidential business and commercial information (together with confidential intellectual property) related to ICE Clear Credit’s clearing facility for credit default swaps and ICE Clear Credit’s CPs, the disclosure of which could have a material adverse effect on, and cause injury to, the operations and competitive position of ICE Clear Credit and its CPs. We believe that the confidential exhibits are entitled to protection pursuant to exemptions (b)(4) and (b)(8) of the Freedom of Information Act. In particular, the confidential exhibits provide information that is useful to potential competitors and would be competitively harmful to ICE Clear Credit and its CPs if disclosed to the public.

In the event that a determination is made to release any confidential portion of this submission, we respectfully request an opportunity to discuss or to revise as appropriate prior to such release.

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If you should have any questions or comments, please do not hesitate to contact me at 904-855-5580.

Respectfully submitted,



Olivia Bazor  
Staff Attorney

Enc: Exhibit A – ICE Clear Credit Rules available at:  
[https://www.ice.com/publicdocs/clear\\_credit/ICE\\_Clear\\_Credit\\_Rules.pdf](https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf)  
Confidential Exhibit B – ICE Clear Credit End-of-Day Price Discovery Policies and Procedures  
Confidential Exhibit C – ICE Clear Credit Risk Management Framework  
Confidential Exhibit D – ICE Clear Credit Risk Management Model Description  
Confidential Exhibit E – ICE Clear Credit Risk Management Back-Testing Framework  
Confidential Exhibit F – ICE CDS Clearing: Stress-Testing Framework  
Confidential Exhibit G – ICE Clear Credit Clearing Participant Default Management Procedures