



September 21, 2012

Mr. David A. Stawick  
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

Dear Mr. Stawick:

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 CDS procedures. The amendments are to become effective ten business days after submission.

The amendments serve to implement the Commission's requirements governing the time frame for acceptance of transactions for clearing under Commission Rule 39.12(b)(7) (the "Clearing Certainty Amendments"). The amendments are potentially relevant to the following core principles: (C) Participant and Product Eligibility and (L) Public Information, and the applicable regulations of the Commission thereunder. ICE Clear Europe notes that it has previously submitted certain rule changes to the Commission affecting its CDS procedures in the context of CDS customer clearing in a filing with the Commission dated September 13, 2012. ICE Clear Europe expects that when such rules changes are implemented, it will make and submit certain technical and conforming changes to these Clearing Certainty Amendments. For instance, (i) the term "Bilateral CDS Transactions" will become "CDS Trade Particulars"; (ii) the term "Trade Processing Platform" will become "Approved CDS Trade Processing Platform"; and (iii) all references to "TD Acceptance Notices" and "Weekly Acceptance Notices" will become "Acceptance Notices."

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

ICE Clear Europe has received no opposing views in relation to the proposed 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 [paul.swann@theice.com](mailto:paul.swann@theice.com) or +44 20 7065 7700, Dee Blake, Director of Regulation, at [dee.blake@theice.com](mailto:dee.blake@theice.com) or +44 20 7065 7752 or Patrick Davis, Head of Legal and Company Secretary, at [patrick.davis@theice.com](mailto:patrick.davis@theice.com) or +44 20 7065 7738.

Very truly yours,



Paul Swann  
President & Chief Operating Officer

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Member will suppress its own processes (and procure that its Representatives suppress their processes) for the submission of the terms of such Bilateral CDS Transaction to Deriv/SERV or another service specified by the Clearing House.

- (b) Where it is submitted for Weekly Clearing, the Clearing House shall give notice (in a final trade status report or other report identified for the purpose) from time to time in accordance with this paragraph 4.4 (a "~~Weekly Acceptance~~Preliminary Notice") to the Clearing Members submitting such Bilateral CDS Transaction specifying that the Clearing House proposes to accept a Bilateral CDS Transaction for Clearing if such Bilateral CDS Transaction is submitted in accordance with and meets the requirements established by the Rules and these CDS Procedures, provided that the Clearing House may decline to issue such a notice if it determines in good faith that, based on the exercise of prudent risk management standards, it should not accept such Bilateral CDS Transaction for Clearing or if it determines that a Revocation Right would apply in respect of such submission for Clearing. Bilateral CDS Transactions will be subject to such pre-submission review and processing as the Clearing House shall designate, and shall not be deemed to be formally submitted until such time as is designated for the completion of such pre-submission review and processing. Acceptance of a Bilateral CDS Transaction submitted for Weekly Clearing shall, in addition to the other criteria set forth herein, be subject to receipt by the Clearing House of any advance funding of Margin as may be required by the Clearing House in connection with the Bilateral CDS Transaction. Each Clearing Member shall check each Weekly Preliminary Notice that concerns CDS Contracts that it is proposed to enter into at the Acceptance Time and shall promptly notify the Clearing House of any error of which it is aware. Following the completion of pre-submission review and processing and receipt of such Margin, the Clearing House shall give notice (in a final trade status report or other report identified for the purpose) from time to time in accordance with this paragraph 4.4 (a "Weekly Acceptance Notice") to the Clearing Members submitting such Bilateral CDS Transaction specifying that the Clearing House accepts such Bilateral CDS Transaction for Clearing if such Bilateral CDS Transaction is submitted in accordance with and meets the requirements established by the Rules and these CDS Procedures, provided that the Clearing House may decline to accept a Bilateral CDS Transaction for Clearing if it determines in good faith that, based on the exercise of prudent risk management standards, it should not accept such Bilateral CDS Transaction for Clearing or if it determines that a Revocation Right would apply in respect of such submission for Clearing. Subject to Part 4 of the Rules and this paragraph 4, a Weekly Acceptance Notice will result in the Clearing Member and the Clearing House entering into a CDS Contract at the Acceptance Time. ~~A Weekly Acceptance Notice delivered after 4:00 p.m. on a Business Day or delivered on a day that is not a Business Day shall, unless otherwise notified by the Clearing House to the Clearing Member or otherwise stated in a Circular, be deemed to have been issued on the following Business Day. No Weekly Acceptance Notice shall result in any Contract arising pursuant to Rule 401(a)(ix) until the relevant Acceptance Time determined under paragraph 4.5. Each Clearing Member shall check each Weekly Acceptance Notice that concerns CDS Contracts that it is proposed to enter into at the Acceptance Time and shall promptly notify the Clearing House of any error of which it is aware such that the Weekly Acceptance Notice can be corrected and re-issued prior to the Acceptance Time.~~ With effect as from the Acceptance Time and unless and until reissued pursuant to paragraph 4.4(f)(i), the Weekly Acceptance Notice shall be definitive as to any CDS Contracts entered into between the Clearing House and any Clearing Member, regardless of whether any CDS Contract is based on any Bilateral CDS Transaction and regardless of any error. ~~Any Weekly Acceptance Notice may be revoked by the Clearing House (and not any third party) at the Clearing House's discretion at any time prior to the Acceptance Time but only if a Revocation Rights applies in respect of the related submission for Clearing.~~ Following the issuance of a Weekly Acceptance Notice, the Clearing House will, using the ANT Process, promptly submit (for itself and for the Clearing Member which is its counterparty to the relevant CDS Contract) the terms of each new CDS Contract arising on Clearing to Deriv/SERV or another service specified by the Clearing House with identical terms as the original submission for clearing of the relevant Bilateral CDS Transaction (or the CDS Contracts specified in the Weekly

4.5 Rules 401(a)(ix), (x) and (xi) refer to a time to be specified pursuant to the Procedures for the acceptance of CDS Contracts ("**Acceptance Time**"). For CDS Contracts arising pursuant to Trade Date Clearing or Weekly Clearing, the Acceptance Time shall be the time on a Business Day at which the TD Acceptance Notice or Weekly Acceptance Notice, as the case may be, was given. The Clearing House will include, in each TD Acceptance Notice and Weekly Acceptance Notice, the time at which such notice is given. Such TD Acceptance Notice or Weekly Acceptance Notice will be given by electronic message. ~~For CDS Contracts arising pursuant to Weekly Clearing, the Acceptance Time shall be 12:01 a.m. on the calendar day following the Business Day on which the Weekly Acceptance Notice was given or deemed to be given, unless otherwise stated in a Circular or to any Clearing Member with prior notice in writing.~~ For CDS Contracts arising pursuant to Rule 401(a)(x), the Acceptance Time shall be the time specified by the Clearing House in the relevant acceptance notice.

4.6

- (a) The Clearing House may accept the submission of Bilateral CDS Transactions for clearing for the account of a Clearing Member from a Representative of such Clearing Member that is an Affiliate of such Clearing Member or from a Trade Processing Platform as the Representative of such Affiliate; provided that such Affiliate is currently designated for this purpose as an authorised Representative of the Clearing Member in accordance with the Membership Procedures and such Trade Processing Platform is currently designated as a Representative of the Clearing Member.
- (b) Where a Bilateral CDS Transaction is recorded in the name of an Affiliate of a CDS Clearing Member and is submitted for Clearing to be recorded in the CDS Clearing Member's Proprietary Account:
  - (i) where Weekly Clearing applies, upon issuance of the relevant Acceptance Notice, the Clearing House is authorised by both CDS Clearing Members (in each case, for itself and, where applicable, on behalf of its Affiliate) to provide a termination notice to Deriv/SERV in respect of the Bilateral CDS Transaction;
  - (ii) where Weekly Clearing applies, the Clearing House will enter details of two new CDS Contracts in Deriv/SERV, one in the name of each of the CDS Clearing Members, and each of the CDS Clearing Members will enter details of the new CDS Contract to which it and the Clearing House is a party, in each case in accordance with the Procedures applicable to other Bilateral CDS Transactions;
  - (iii) each Clearing Member submitting a Bilateral CDS Transaction to which an Affiliate was party shall be responsible for ensuring that any give-up or novation agreements or back-to-back CDS transactions between it and its Affiliate come in to effect and are properly documented at the appropriate time;
  - (iv) for the avoidance of doubt, each relevant Affiliate, to the extent that it is a Customer of a Clearing Member which submitted the Bilateral CDS Transaction, shall be treated as a non-segregated Customer for purposes of the Rules and, accordingly, the Clearing House is not party to any Contract with the Affiliate and shall have no liability to the Affiliate;
  - (v) the Affiliate shall be deemed to be on notice of this provision and shall (in the absence of evidence of a contrary intention under the relevant Bilateral CDS Transaction) be deemed to agree to its application by the Affiliate's conduct in having the relevant Bilateral CDS Transaction submitted for Clearing, so that Rules 402(b) and 404 shall operate in respect of any rights, liabilities or obligations of the Affiliate relating to, or arising out of or in connection with any Bilateral CDS Transaction (whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any

4.18 The Clearing House will, where required in order to give effect to the election of each CDS Clearing Member made pursuant to Rule 406(d), aggregate and net those CDS Contracts of the same Set in the same CDS Sub-Account of such CDS Clearing Member which are eligible for netting pursuant to the CDS Operational Procedures, (a) on a weekly basis as part of the process for Weekly Clearing and (b) on such other dates as the Clearing House may determine. In addition, the Clearing House will aggregate and net relevant CDS Contracts in a CDS Sub-Account (i) when a CDS Contract for such CDS Sub-Account arises pursuant to Rule 401(a)(x) and (ii) when a CDS Contract recorded in such CDS Sub-Account is voided (and such voiding is duly notified by the Clearing House pursuant to Rule 404(e)) or, to the extent that termination and replacement is necessary in the circumstances, Rule 404(c)(i).

4.19 The Clearing House will accept or reject Bilateral CDS Transactions submitted for Clearing that are executed competitively on or subject to the rules of a designated contract market, swap execution facility or other similar Trade Processing Platform or Market in another jurisdiction as quickly after execution as would be technologically practicable if fully automated systems were used. The Clearing House will accept all such Bilateral CDS Transactions (i) for which the executing parties have clearing arrangements in place with Clearing Members, (ii) for which the executing parties identify the Clearing House as the intended clearing house and (iii) that satisfy the criteria of the Clearing House as set out herein and in the Rules (which criteria shall be non-discriminatory across trading venues and shall be applied as quickly as would be technologically practicable if fully automated systems were used).

4.20 The Clearing House will accept or reject Bilateral CDS Transactions submitted for Clearing that are not executed on or subject to the rules of a designated contract market, swap execution facility or other similar Trade Processing Platform or Market in another jurisdiction or that are executed non-competitively on or subject to the rules of a designated contract market, swap execution facility or other similar Trade Processing Platform or Market in another jurisdiction as quickly after submission to the Clearing House as would be technologically practicable if fully automated systems were used. The Clearing House will accept all such Bilateral CDS Transactions (i) that are submitted to the Clearing House by the parties in accordance with Applicable Laws, (ii) for which the executing parties have clearing arrangements in place with Clearing Members, (iii) for which the executing parties identify the Clearing House as the intended clearing house, and (iv) that satisfy the criteria of the Clearing House as set out herein and in the Rules (which criteria shall be non-discriminatory across trading venues and shall be applied as quickly as would be technologically practicable if fully automated systems were used).

4.21 Each CDS Clearing Member must accept or reject each Bilateral CDS Transaction submitted by or for it as quickly as would be technologically practicable if fully automated systems were used and (to the extent such Bilateral CDS Transaction has not already been submitted to the Clearing House at the time of acceptance by such Clearing Member) must submit such Bilateral CDS Transaction to the Clearing House as quickly following such acceptance (or execution, if executed directly by such Clearing Member) as would be technologically practicable if fully automated systems were used. For the avoidance of doubt, such acceptance or rejection by a Clearing Member does not constitute acceptance or the issuance of an Acceptance Notice by the Clearing House.

## 5. CDS DEFAULT COMMITTEE

5.1 The CDS Default Committee shall be comprised of not more than three CDS Committee-Eligible Clearing Members designated in accordance with paragraph 5.2 (each, a "**CDS Default Committee Participant**"). The CDS Default Committee shall act as a committee of the Clearing House with powers under the Rules pursuant to Rule 114. Each CDS Default Committee Participant shall designate an employee of it or one of its Affiliates with CDS trading experience by notice in writing to the Clearing House (an "**Eligible Employee**") to serve as its representative on the CDS Default Committee, along with one or more alternates in the event such person is not available on a timely basis (the designated employee or alternate, as applicable, a "**CDS Default Committee Member**"). A CDS Default Committee Participant may replace its designated CDS Default Committee Member or alternate(s) with an Eligible Employee from time to time by notice in writing to the Clearing House.