



April 30, 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 for Non-Default 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*

The purpose of the rule amendments is to adopt new provisions addressing certain investment losses on margin and guaranty fund contributions as well as other losses to the clearing house arising other than from a clearing member default (as defined more fully below, "non-default losses"), including losses from general business risk and operational risk. The amendments would (i) require ICE Clear Europe to apply a specified amount of its own assets to cover non-default losses and investment losses ("loss assets") and (ii) require clearing members in all product categories to make contributions (referred to as "collateral offset obligations") to cover investment losses (but not other non-default losses) that exceed the available clearing house loss assets. The proposed rules would also limit the clearing house's liability for losses arising from a failure of a bank or similar custodian.

The Bank of England has indicated that ICE Clear Europe will be required to have rules addressing the allocation of non-default losses that threaten the clearing house's

solvency and to have plans to maintain continuity of services if such continuity is threatened as a result of such losses.

The proposed Rule amendments are described in further detail as follows:

- Part 1 of the Rules has been revised to include new definitions for “Investment Losses” and “Non-Default Losses.” Investment Losses means losses incurred or suffered by the clearing house arising in connection with the default of the issuer of any instrument and/or counterparty to any repurchase contract or transaction in respect of investment or reinvestment by the clearing house of margin (other than variation margin) or guaranty fund contributions. “Non-Default Losses” means losses suffered by the clearing house (other than Investment Losses), arising in connection with any event other than an event of default and which threaten the solvency of the clearing house.
- The proposed changes would adopt new Rule 919, which includes the allocation rules for investment losses and non-default losses and procedures for applying collateral offset obligations. Under Rule 919(b), non-default losses will be satisfied by applying the available loss assets designated by the clearing house and then other available capital or assets of the clearing house. Investment losses, on the other hand, will first be satisfied by applying the available loss assets provided by the clearing house, and thereafter by collateral offset obligations as discussed herein. The amount of loss assets provided by ICE Clear Europe will initially be USD 90 million, subject to adjustment by the clearing house by circular from time to time.
- Pursuant to Rule 919(c), if there is an investment loss in an amount greater than the available loss assets, all clearing members will be required to indemnify the clearing house and pay collateral offset obligations to the clearing house in accordance with Rule 919(d). Under Rule 919(e), the collateral offset obligation of a clearing member shall not exceed the total of all margin and guaranty fund contributions (across all accounts and product categories) that it has deposited with the clearing house at the time of the event giving rise to the investment loss.
- Collateral offset obligations are due within two business days of the call by the clearing house, under Rule 919(f). Collateral offset obligations may be offset against the obligation of the clearing house to return margin or guaranty fund contributions, and will be collected pursuant to a call for margin from a proprietary account of the clearing member.
- If the clearing house subsequently recovers amounts in respect of an investment loss, Rule 919(h) implements a procedure for allocating the recovery to clearing members in proportion to their collateral offset obligations. The obligation of a clearing member to make collateral offset obligations is separate from, and does not reduce, its obligation to provide margin and to make guaranty fund contributions or guaranty fund assessment contributions under the existing rules.

- Under Rule 919(r), the clearing house is not liable to any clearing member, customer or any other person for losses arising from a failure of a payment or security services provider, including a Custodian such as a payment or custody bank, securities depository or securities settlement system.
- New Rule 1606(b) is added to address certain matters relating to the investment of customer collateral in the form of cash provided by FCM/BD Clearing Members under applicable CFTC regulations. The revised rule confirms that such cash can only be invested in U.S. treasury securities in accordance with applicable law. The rule further provides that FCM/BD Clearing Members must direct the clearing house whether to so invest such cash or to leave it uninvested (and deems the clearing member to have instructed the clearing house to invest such collateral if it does not provide direction).

#### *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.

ICE Clear Europe has developed the proposed rules to satisfy paragraphs 29A and 29B under the UK's Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, Schedule, as inserted by the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013. Consistent with these requirements, the proposed rules are designed to allocate investment losses (i.e., losses from a default under an investment) to the clearing house and clearing members, while other non-default losses (i.e., other losses not resulting from clearing member default) are allocated only to the clearing house. The rules further limit the liability of the clearing house for losses resulting from a failure of a Custodian. ICE Clear Europe does not expect that these rules will affect the ordinary course operation of the clearing house. ICE Clear Europe believes that the proposed rule changes will enhance the stability of ICE Clear Europe if it experiences significant investment losses or non-default losses, by providing additional resources to cover such losses. The proposed rules will also provide greater certainty for clearing members and the clearing house itself as to the scope of resources that will be available to cover such losses and the liability of the clearing house and clearing members for such losses.

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.

- *Financial Resources.* ICE Clear Europe does not propose to change the amount of financial resources (both pre-funded resources and potential assessment resources) currently available to support its clearing operations in any product category. The amendments would provide an additional financial resource to address investment losses and non-default losses. In addition, ICE Clear Europe believes that the changes will enhance its ability to continue

clearing operations following an investment loss or non-default loss and provide it and market participants with greater certainty as to the financial resources that will be available to the clearing house following such losses.

- *Risk Management.* ICE Clear Europe believes that the new rules will enhance the clearing house's ability to manage investment and non-default losses, which will in turn further the clearing house's ability to continue operations if faced by such losses, which will facilitate ICE Clear Europe's risk management program.

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

ICE Clear Europe has consulted with its F&O and CDS Risk Committees, which did not object to the adoption of 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 [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



# **ICE Clear Europe<sup>sm</sup>**

## **Clearing Rules**

Non-default loss and investment loss draft: 28 April 2014, based on the 28 February rules not including the "Continuing CDS Provisions".

## Table of Contents

Part 1	General Provisions.....	3
Part 2	Clearing Membership.....	6465
Part 3	Financial Requirements and Payments.....	8081
Part 4	Clearing Mechanism.....	8687
Part 5	Margin.....	109110
Part 6	Position Limits.....	117118
Part 7	Settlement and Delivery of Futures.....	119120
Part 8	Options.....	123124
Part 9	Default Rules.....	129130
Part 10	Disciplinary Proceedings.....	196201
Part 11	Guaranty Funds.....	208213
Part 12	Settlement Finality Regulations and Companies Act 1989.....	216221
Part 13	[Not used].....	231236
Part 14	Transition Rules for ICE Energy Markets in 2008 [No longer applicable: available on request.].....	231236
Part 15	Credit Default Swaps.....	232237
Part 16	FCM/BD Clearing Member Provisions.....	257262
Part 17	Foreign Exchange.....	273278
Part 18	Transition Rules for LIFFE in 2013.....	281286
Exhibit 1:	Customer-CM CDS Transaction Standard Terms	
Exhibit 2:	Settlement and Notices Terms	

**Part 1** General Provisions

**Rule 101** *Definitions*

The term "**Account**" means a Customer Account or Proprietary Account, as the case may be, of a Clearing Member.

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

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.

The term "**Applicable Law**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession, judgment or decision of a Governmental Authority and, for the avoidance of doubt, includes all the provisions of the FSA Rules and any rules or regulations of any other Regulatory Authority.

The term "**Approved Financial Institution**" means a credit institution, bank, trust company or other institution which is an "institution" as defined in the Settlement Finality Regulations and which has been designated as an approved financial institution by the Clearing House for purposes of making and receiving cash transfers to and from the Clearing House and Payment Transfer Orders.

The term "**Approved CDS Trade Processing Platform**" has the meaning given to that term in the definition of Trade Processing Platform below.

The term "**Assessment Contribution**" means an F&O Assessment Contribution, a CDS Assessment Contribution or an FX Assessment Contribution.

The term "**Banking Consolidation Directive**" means Directive 2006/48/EC.

The term "**Bankruptcy**" means, in relation to a Person, where that Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it, by a Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation

clearing house, recognised overseas clearing house, derivatives clearing organisation or similar entity.

The term "**Clearing Processing System**" means the clearing processing system for Energy Contracts, the universal clearing platform for LIFFE Contracts and other clearing processing systems and platforms used by the Clearing House for F&O Contracts.

The term "**CLS Bank**" means CLS Bank International.

The term "**Collateral Offset Obligations**" means obligations of a Clearing Member arising pursuant to Rule 919 to pay the Clearing House, which offset obligations of the Clearing House to pay the Clearing Member or return assets in respect of Permitted Cover transferred or pledged to the Clearing House by the Clearing Member.

The term "**Concentration Bank**" means an Approved Financial Institution at which the Clearing House has an account or accounts for the purpose of making transfers between Clearing House Accounts.

The term "**Continuing CDS Rule Provisions**" means the Rules as in effect prior to the effectiveness of Circular C14/012 as of February 1, 2014, which Continuing CDS Rule Provisions will continue to be in effect with respect to the CDS Contract Category as set forth herein. The Continuing CDS Rule Provisions will be available on the Clearing House website at <https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=> or a successor website identified by the Clearing House.

The term "**Contract**" means a contract between the Clearing House and a Clearing Member arising in accordance with these Rules, and as amended, subject to netting or aggregation in accordance with these Rules, the terms and conditions of which are the relevant Contract Terms.

The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House which are linked to a specific Guaranty Fund, i.e. F&O Contracts, CDS Contracts and FX Contracts.

For the definition of the term "**Contract Position**", see 'Open Contract Position' below.

The term "**Contract Terms**" means all the terms and conditions of a Contract, as applicable, in: (i) (in relation to F&O Contracts only) the general conditions set out in the Contract Terms Procedures; (ii) (in relation to ICE Endex Contracts only) the ICE Endex Rules; (iii) (in relation to ICE Futures Europe Contracts only) the ICE Futures Europe Rules; (iv) (in relation to ICE Futures US Contracts only) the ICE Futures US Rules; (v) (in relation to LIFFE Contracts only) the LIFFE Rules; (vi) (in relation to ICE OTC Contracts only) the specific standard terms and eligibility criteria set out in the Contract Terms Procedures and Clearing Procedures for the class of Contract involved, the ICE OTC Participant Agreement between the Clearing Member and the ICE OTC Operator and any relevant ICE OTC Broker Agreement; (vii) (except in relation to F&O Contracts which are settled only in cash) if such F&O Contract becomes deliverable or is a Contract of Sale, the relevant Delivery Procedures for the class of F&O Contract, the specified standard terms set out in the Contract Terms Procedures and ICE Endex Rules, ICE Futures Europe Rules, ICE Futures US Rules or LIFFE Rules, as applicable; (viii) for CDS Contracts,



the terms specified pursuant to Rule 1502; and (ix) for FX Contracts, the general conditions set out in the Rules and Procedures.

The term "**Control**" means the rights and powers exercised over a Person by a Controller and its cognate terms shall be construed accordingly.

The term "**Controller**" has the meaning given to that term in section 422 of the FSMA.

The term "**Controller Guarantee**" means a guarantee given by a Controller of a Clearing Member under Rule 201(a)(ix).

The term "**Corresponding Contract**", means an transaction arising or as referred to in Rule 401(m) between a Non-FCM/BD Clearing Member and a Segregated Customer on economic terms similar to a corresponding Non-CDS Contract recorded in the Clearing Member's Non-CDS Customer Account (except, where applicable, the position of the Clearing Member as buyer or seller).

The term "**Credit Derivatives Definitions**" means the document of that name dated 2003 published by ISDA as supplemented by the 2009 ISDA Credit Derivatives Determination Committees, Auction Settlement and Restructuring Supplement to the 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) 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 "**Credit Support Document**" means any guarantee or letter of credit or other security interest issued or granted to or for the benefit of the Clearing House that guarantees, covers or secures the Clearing Member's obligations under any Contract, but excluding any Pledged Collateral Addendum.

The term "**Credit Support Provider**" means, in respect of a Clearing Member each provider of a Credit Support Document in relation to that Clearing Member.

The term "**Custodian**" means any bank, custodian, sub-custodian, nominee, agent, depository or settlement system.

The term "**Customer**" means a Person who is a client or customer of a Clearing Member (which Customer may, subject to Applicable Law, be acting for one or more other clients or customers for purposes of the clearing of Contracts).

The term "**Customer Account**" means, in respect of a Clearing Member, any one customer account of the various different Customer Account Categories and comprises in the case of each Customer Account the related Customer Position Account and Customer Margin Account.

The term "**Customer Account Category**" means: (i) in relation to an FCM/BD Clearing Member, any of the following categories of Customer Account: DCM Customer Account, Non-DCM/Swap Customer Account, Swap Customer Account, Non-CDS Customer Account

trust deed' are construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985) and, for CDS Clearing Members only, also any event not otherwise falling within this definition but which constitutes a Bankruptcy in respect of such CDS Clearing Member; or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, change of Control or merger notified to the Clearing House in accordance with Rule 204(a)(i)).

The term "**Insolvency Practitioner**" means a receiver, administrator, bank administrator, manager or administrative receiver, liquidator, conservator, examiner, trustee in bankruptcy, relevant office-holder (under the Companies Act 1989) or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

The term "**Intellectual Property**" means copyright, trade marks, design rights, patents, domain names, database rights and know-how, in each case whether registered or unregistered and including applications to register and rights to apply for registration, and all similar or equivalent rights which may subsist anywhere in the world.

The term "**Investment**" means any 'specified investment' as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or any loan, bond, obligation or debenture referenced in a CDS Contract.

The term "**Investment Losses**" means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House, to the extent that the same are not subjected to any power of assessment under Rules 909 to 911 or any mechanism under Rules 914 to 916, arising in connection with the default of the issuer of any instrument and/or the counterparty to any repurchase or reverse repurchase contract or similar transaction in respect of any investment(s) or re-investment(s) by the Clearing House of assets representing Original/Initial Margin, Guaranty Fund Contributions or Permitted Cover in respect thereof (including any such assets transferred by a Defaulter) or the proceeds of any of the foregoing, other than any such losses, liabilities, damages, costs, claims, shortfalls or expenses resulting directly from a failure by the Clearing House to comply with its own investment policies. For the avoidance of doubt, "Investment Losses" shall not include losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House as a result of a Custodian default.

The term "**Invoice Back**" means the process by which a Contract of the same Set as an existing Contract is created by the Clearing House pursuant to Rule 104 and Rule 401(a)(vi), with the role of Buying Clearing Member or Selling Clearing Member reversed and, at the Clearing House's discretion, a different price or premium and other terms as are determined by the Clearing House pursuant to Rule 104; and the terms "**Invoiced Back**", "**Invoicing Back**" and other similar expressions shall be construed accordingly.

The term "**LCIA**" means the London Court of International Arbitration or any successor thereto.

The term "**LCIA Rules**" means the arbitration rules of the LCIA.

The term "**LIFFE**" means LIFFE Administration and Management (a company registered in England and Wales with registration number 01591809) and the recognised investment exchange (as defined in the FSMA) known as and operated by LIFFE Administration and Management.

The term "**LIFFE Block Contract**" means a Contract resulting from a LIFFE Block Transaction.

The term "**LIFFE Block Trade Facility**" means the block trade facility operated by LIFFE in accordance with the LIFFE Rules.

The term "**LIFFE Block Transaction**" means an EFS, EFP, LIFFE Block Trade Facility Transaction or BClear transaction reported through LIFFE in accordance with the LIFFE Rules.

The term "**LIFFE Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to LIFFE Contracts and that is a clearing member of LIFFE.

The term "**LIFFE Contract**" means a LIFFE Block Contract or a LIFFE Matched Contract.

The term "**LIFFE Matched Contract**" means a Contract resulting from a LIFFE Matched Transaction.

The term "**LIFFE Matched Transaction**" means a Transaction that occurs or occurred on the LIFFE exchange in accordance with the LIFFE Rules.

The term "**LIFFE Rules**" means the rules of LIFFE, together with any procedures, as interpreted in accordance with guidance, notices and circulars, of LIFFE and, except when a particular rule is cross-referenced herein, has the same meaning as that given to the term "*Rules*" in the rules of LIFFE, as amended from time to time.

The term "**LIFFE Transaction**" means a LIFFE Matched Transaction or a LIFFE Block Transaction.

The term "**Long**", in respect of an Option, refers to the positions of Persons entitled to exercise Options.

The term "**Loss Assets**" means assets of the Clearing House of a value specified pursuant to Rule 919(p) which are intended to be applied towards Non-Default Losses or Investment Losses pursuant to Rule 919.

The term "**Margin**" means Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or pledge pursuant to a Pledged Collateral Addendum) to the Clearing House (or, in the case of Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin, provided to or by the Clearing House, as the context may require or, in the case of Variation Margin provided pursuant to a transfer of cash) pursuant to a requirement for Original Margin, Variation Margin, FX Original Margin, Initial Margin, Mark-to-Market Margin, FX Mark-to-Market Margin or any other requirement under the Rules or the Finance Procedures and includes, where the context so requires, any proceeds of realisation of the same.

The term "Non-Default Losses" means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House that are not Investment Losses, arising in connection with any event other than an Event of Default and which threaten the Clearing House's solvency.

The term "**Non-FCM/BD CDS Clearing Member**" means any CDS Clearing Member that is not an FCM/BD Clearing Member.

The term "**Non-FCM/BD Clearing Member**" means any Clearing Member that is not an FCM/BD Clearing Member.

The term "**Non-FCM/BD Customer**" means any Customer that is not an FCM/BD Customer.

The term "**Non-Transfer Positions**" in respect of a Designated CDS Customer Account of a CDS Clearing Member, means the Customer Account Positions in respect of which either: (i) the relevant Segregated Customer has not made a Default Portability Preference; or (ii) a Default Portability Preference has been made by the relevant Segregated Customer but has not been communicated to the Clearing House by such CDS Clearing Member or, where permitted, by such Segregated Customer, in each case in accordance with the Rules and the Procedures.

The term "**OFT**" means the UK's Office of Fair Trading and any successor thereto.

The term "**Open Contract Position**", in respect of each Set of Contracts for a Clearing Member from time to time, comprises the Contract Position and, for F&O Contracts only, the Net Amount Position, where:

(a) *Contract Position* means:

- (i) in relation to a Proprietary Position Account for F&O Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the number that equals the netted sum of buy and sell obligations pursuant to those Contracts recorded in that account;
- (ii) in relation to a Proprietary Position Account for F&O Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the number that equals the netted sum of Long and Short obligations pursuant to those Contracts recorded in that account;
- (iii) in relation to a Customer Position Account for F&O Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the gross number of buy positions and the gross number of sell positions pursuant to those Contracts recorded in that account (subject to any netting pursuant to Rule 406);
- (iv) in relation to a Customer Position Account for F&O Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the gross number of Long positions and the gross number of Short

- (d) Any waiver of any right or consent given by the Clearing House under these Rules is only effective if it is in writing, applies only in the circumstances for which it is given and shall not prevent the Clearing House from subsequently relying on the relevant provision. No delay or failure to exercise by the Clearing House of any of its rights or pursuing any of its remedies hereunder shall constitute a waiver. No single or partial exercise of any right or remedy by the Clearing House shall prevent any further exercise of the same or any other right or remedy.
- (e) If any extension of any length of time is approved in respect of any payment, deposit, transfer or performance under this Rule 110, any notice given to the Clearing House prior to the end of such extension period shall be deemed not to have been given.
- (f) The Clearing House shall be entitled without breach of these Rules to delay the making of a payment to any Clearing Member in respect of a Variation Margin or Mark-to-Market Margin call in respect of all or any of a Clearing Member's accounts on an intra-day basis without following the procedure set out in Rule 110(a) to (e) in circumstances in which:
  - (i) another Clearing Member or Clearing Members has or have been or will be asked to make payment in respect of a Variation Margin or Mark-to-Market Margin call occurring at or around the same time;
  - (ii) that other Clearing Member has, or those other Clearing Members have failed to pay the Clearing House (which term for purposes of this Rule 503(k) and Rule 503(l) includes a request for payment or planned request for payment not yet being made, confirmed or due including for technical or operational reasons); and
  - (iii) the total amount of such failure or failures to pay exceeds the Original Margin, Initial Margin or FX Original Margin for each Proprietary Account or Customer Account to which the unpaid call relates provided by the Clearing Member or Clearing Members that has or have failed to pay the Clearing House.<sup>2</sup>

**Rule 111      *Liability***

- (a) Each Clearing Member shall indemnify and hold harmless the Clearing House against any and all losses, liabilities, damages, injuries, costs, claims, shortfalls and expenses (excluding any consequential losses, liabilities, damages, injuries, costs, claims, shortfalls or expenses) incurred or suffered by the Clearing House or any of its officers or employees arising out of or in connection with any of the following:
  - (i) a breach (or an allegation made by the Clearing House or any Governmental Authority of a breach) by such Clearing Member of any of its obligations under these Rules, the Procedures, its Clearing Membership Agreement or any Contract;
  - (ii) such Clearing Member's conduct (excluding conduct attributed to a Clearing Member solely as a result of the conduct of a Customer under Rule 102(j)),

<sup>2</sup> Rule 110(f) does not apply to the CDS Contract Category.

Account or Proprietary Account of the Pledged Collateral Account (provided that the value of any Pledged Collateral returned directly to a Clearing Member or any Person on such Clearing Member's behalf will be excluded from the calculation of any relevant net sum); and (B) only to the extent that such applied amount is required to be included in the net sum calculation to ensure that the net sum for the Customer Account or Proprietary Account of the Pledged Collateral Account would not represent an amount payable by the Clearing Member to the Clearing House; or (ii) pursuant to the Default Portability Rules. Any Pledged Collateral not applied in accordance with this provision and which is not transferred to a Transferee Clearing Member in accordance with Part 9 of the Rules shall be returned to the relevant Clearing Member for its applicable proprietary or customer account, as the case may be, subject to Applicable Law as a result of such Clearing Member's or its customers' entitlements to such Pledged Collateral and not as part of the net sum process arising pursuant to Part 9 of the Rules. Any such return by the Clearing House of Pledged Collateral outside of the net sum calculation shall discharge and satisfy in full the Clearing House's obligations to return such Pledged Collateral to the Clearing Member or any of its Customers and no Customer or Clearing Member shall have any further claim in respect of such Pledged Collateral. To the extent any Pledged Collateral is, or is required under Applicable Law to be, returned to a Defaulter, it shall be returned separately from any net sum certified by the Clearing House pursuant to Rule 905.

- (j) Without limiting Rule 111, 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, ~~claims~~, liabilities, damages, ~~costs, claims, shortfalls~~ or expenses arising out of or relating to the holding of any Pledged Collateral or the assets in any Pledged Collateral Account ("**Custodial Losses**"), except to the extent such Custodial Losses result from the gross negligence or wilful misconduct of the Clearing House. The Clearing House shall have no responsibility for any investment decisions made or directed by a Clearing Member (or any Representative thereof) with respect to assets representing Pledged Collateral or for the results of any such investments. The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any requests, instructions or directions with respect to Pledged Collateral or the assets in any Pledged Collateral Account under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate Clearing Member.
- (k) With respect to F&O Contracts, changes to the matters described in Rules 502(d) and (e) above, including assets eligible as Margin or Permitted Cover and the haircuts established with respect thereto, will be based on an analysis of appropriate factors as determined by the Clearing House, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spreads and correlations between relevant assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information.

the Defaulter was party shall be treated as having been closed out and terminated at the same price.

- (d) If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to close out or terminate all Contracts to which the Defaulter is party pursuant to Rule 905(b) or Rule 905(c), the Clearing House may close out or terminate such Contracts by taking opposite positions for F&O Contracts in Contracts in the current expiration period, for CDS Contracts in Contracts of a different series or version number or scheduled termination date or, for FX Contracts in Contracts of a different FX Settlement Date, and terminating the resultant terminated positions.
- (e) All terminations and closing out of Contracts pursuant to this Rule 905 shall be for the account and cost of the Defaulter.
- (f) Without prejudice to the generality of the indemnities in Rules 111 and 301, but without duplication of any other obligation under these Rules, the Defaulter, acting for its own account as principal, shall indemnify, hold harmless and be liable to the Clearing House in respect of all the losses, unpaid fees, liabilities, damages, injuries, taxes, costs, claims, shortfalls and expenses (including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts or Margin and any amount payable by the Clearing House to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default), in the case of any such item whether relating to a Proprietary Account or Customer Account of the Defaulter, incurred or suffered by any of the Clearing House, any Market or any of their officers or employees or those of their Affiliates arising out of the Defaulter's conduct (whether such conduct took place prior to or after declaration of the Event of Default) or in connection with the Event of Default. Rule 111(b) shall apply in respect of this Rule 905(f) in the same way as it applies to Rule 111(a).

**Rule 906**      *Net Sums Payable*

- (a) Following discharge of a Defaulter's rights, obligations and liabilities under Contracts pursuant to this Part 9, the Clearing House shall carry out the following calculation separately in respect of the Proprietary Account and each different Customer Account of the Defaulter. The calculation set out below follows the requirements relating to default rules of recognised clearing houses set out in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995). The methodology involves aggregating or setting off various amounts (as applicable) so as to produce separate net sums for the Proprietary Account and each different Customer Account of the Defaulter (each such net sum, *N*) in each case defined by the formula:

$$N = L - A - D - C - M - GFC - SC - OA + OL$$

where such letters have the meanings set out below in this Rule 906(a):

- (c) Any Termination Notice issued by a Clearing Member shall be irrevocable by the Clearing Member and membership may only be reinstated pursuant to a new application for membership following the close-out of all its open Contracts of the Relevant Contract Category.
- (d) A Clearing Member whose membership in respect of the Relevant Membership Category has terminated shall, following the Termination Date, cease to be liable for Guaranty Fund Contribution replenishments under Rule 1102 in respect of Events of Default relating to the Relevant Contract Category or affected Membership Category has that occur after the Termination Date.

**Rule 919**      *Non-Default Losses and Investment Losses*

- (a) This Rule 919 shall only apply if:
  - (i) there has been a Non-Default Loss or Investment Loss; and
  - (ii) there has been no Clearing House Event.
- (b) Any Non-Default Loss will first be met by the Clearing House applying any Loss Assets that were available at the time of the event giving rise to the Non-Default Loss and after that, only by applying any other available capital or assets of the Clearing House. The first portion of any Investment Loss will also be met by the Clearing House first applying any Loss Assets that were available at the time of the event giving rise to the Investment Loss prior to taking any action under Rule 919(c).
- (c) Upon the Clearing House certifying an Investment Loss Amount in a Circular of an amount greater than the Loss Assets that were available at the time of the event giving rise to the Investment Loss, all Clearing Members shall indemnify the Clearing House and become liable to pay Collateral Offset Obligations to the Clearing House in accordance with the formula set out in Rule 919(d). Any Circular under this Rule 919(c) shall specify:
  - (i) the nature and extent of the Investment Loss
  - (ii) the date on which Collateral Offset Obligations will become due; and
  - (iii) such other matters as the Clearing House considers are relevant.
- (d) The Collateral Offset Obligation payable by each Clearing Member shall be the amount:

$$\frac{(ILA - LA)}{\quad \quad \quad} \times \frac{GF\&M(CM)}{GF\&M(all)}$$

subject to the caps in Rules 919(d)-(e).

where:



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. 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).

- (h) If, after any Collateral Offset Obligations have fallen due, the Clearing House collects amounts from an issuer, counterparty or otherwise so as to reduce an Investment Loss, in either case in cleared funds, the Clearing House shall be obliged to pay the amount or value of Permitted Cover so collected (less any expenses of the Clearing House, including without limitation any expenses incurred in connection with recovery) to the Clearing Members that provided such Collateral Offset Obligations *pro rata* in respect of satisfied Collateral Offset Obligations relating to the event in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House (not being Loss Assets) or other Persons applied to meet the Investment Loss following exhaustion of the assets specified in this Rule 919 or in substitution of any such assets.
- (i) No Collateral Offset Obligation shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.*, to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i) or to pay Assessment Contributions. Notwithstanding any Collateral Offset Obligations, Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, the Clearing House in accordance with the Rules and Procedures, including obligations to pay Original/Initial Margin, Guaranty Fund Contributions and Assessment Contributions and the Clearing House will remain liable to pay or release Margin and Permitted Cover to Clearing Members in the usual way, subject to netting under Part 3 and the Finance Procedures to take into account the effect of any Collateral Offset Obligation. All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the Collateral Offset Obligations) and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.
- (j) If the Clearing House determines that it has provided for Collateral Offset Obligations in excess of that required or actually applied against an Investment Loss (less Loss Assets applied) or makes a recovery that is due to Clearing Members under Rule 911(h), it shall credit any excess or recovered amounts due to the Clearing Member's Proprietary Account. Credit to a Proprietary Account is not intended to prevent the Clearing Member from passing on the credit related to a Collateral Offset Obligation to any of its Customers under the relevant Customer-Clearing Member Agreement and Standard Terms, to the extent that the Collateral Offset Obligation relates to Margin or Permitted Cover on a Customer Account or is otherwise attributable to a Customer. If a Proprietary Account becomes over-collateralised as a result of any such credit, any resulting Surplus Collateral will be available for withdrawal under Part 3 and the Finance Procedures in the normal way.
- (k) Liabilities of Clearing Members in respect of Collateral Offset Obligations under this Rule 919 shall apply independently from any powers of assessment under Rules 909 to 911 and give rise to a separate and additional payment obligation for Clearing Members. For the avoidance of doubt, none of the caps on powers of assessment liabilities arising pursuant to Rule 917 or 918 shall restrict or limit any liability of a Clearing Member in

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 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

relating to any failure, in whole or in part, of any payment or securities services provider, including without limitation any Custodian, Approved Financial Institution, central securities depository or central bank.

pledged, repledged or have any lien, interest or charge created over them at the Clearing House's discretion, in order to realise proceeds therefrom.

- (b) Any expense (including, without limitation, legal fees and expenses) incurred by the Clearing House in connection with the use, application or transfer of Guaranty Fund Contributions, or the return of equivalent assets to a Clearing Member, may, at the option and discretion of the Clearing House, be charged to the account of such Clearing Member.
- (c) A Clearing Member's entitlement to repayment of any Guaranty Fund Contribution or any part of it or interest thereon shall not be capable of assignment or transfer by the Clearing Member or being made subject to any Encumbrance whatsoever purporting to rank in priority over, *pari passu* with, or subsequent to, the rights of the Clearing House or in conflict with Rule 908. Any purported Encumbrance of a Clearing Member in respect of any Guaranty Fund Contribution shall be null and void.
- (d) Default insurance policies of which the Clearing House is the beneficiary (if any) may be subject to limits on claims applicable in respect of particular time periods (each such period, a "**Relevant Period**"). Furthermore, pursuant to the terms of any such insurance obtained by the Clearing House, it is possible that (i) insurance claims may be payable in excess of losses resulting from a Default or Defaults above a certain amount ("**Loss Threshold**") occurring within a Relevant Period as opposed to following the application of particular assets in respect of particular Defaults in the order set out in Rule 908; or (ii) default insurance policies may apply only in relation to losses occurring in relation to certain Sets of Contracts cleared by the Clearing House or particular Guaranty Funds. As a result, it is possible that: (A) insurance receipts may be available to (and applied by) the Clearing House at an earlier order to that specified in Rule 908 if the total available Guaranty Fund Contributions exceed the Loss Threshold or in respect of a second or subsequent Default where the limit on claims for the Relevant Period has not been exhausted; (B) no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period; (C) the insurance policies (if any) may not provide cover in respect of certain Events of Default; or (D) there may be no default insurance either generally or in respect of any particular products cleared by the Clearing House. The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contract or Guaranty Fund applicable to any default insurance obtained by the Clearing House. Neither this Rule 1103(d) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.
- (e) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Finance Procedures, of each of the Clearing House Contributions. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain amounts equal to the total of the Clearing House Contributions in a separate account from its other assets (other than Loss Assets) and to use such amounts only for the purposes of meeting shortfalls arising directly or indirectly from Defaults in accordance with this Part 11. ~~The Clearing House undertakes to all non-defaulting~~

~~Clearing Members from time to time to maintain Clearing House F&O Contributions, Clearing House CDS Contributions and Clearing House FX Contributions in a separate account or accounts for each such contribution. This Rule 1103(e) shall not restrict the Clearing House from investing such amounts in any way that it is able to invest Guaranty Fund Contributions made by Clearing Members.~~

- (f) The total amount of Guaranty Fund Contributions for each Guaranty Fund and any Clearing House Contributions applied in connection with any Event of Default shall be notified to Clearing Members in a Circular prior to the same being applied.

## Part 12 Settlement Finality Regulations and Companies Act 1989

### Rule 1201 *Introduction and Interpretation*

- (a) The Clearing House is the system operator of a Designated System for the purposes of the Settlement Finality Regulations in respect of Transfer Orders. In addition, Part VII of the Companies Act 1989 applies in respect of Contracts, the 'default rules' and 'default proceedings' of the Clearing House and certain other matters related to the Clearing House.
- (b) Clearing Members are subject to various obligations and requirements as a result of the Settlement Finality Regulations and Companies Act 1989. Clearing Members must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Regulations or the Companies Act 1989. Furthermore, various modifications to Applicable Laws relating to Insolvency affecting Clearing Members apply pursuant to the Settlement Finality Regulations and Companies Act 1989.
- (c) The term "**AFI Agreement**" means a payment services agreement between the Clearing House and an Approved Financial Institution.
- ~~(d) The term "**Custodian**" means any custodian, sub-custodian, nominee, agent, depository or settlement system used by a Clearing Member or the Clearing House for the holding or transfer of Non-Cash Collateral that is subject of a Collateral Transfer Order provided that such person is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).~~
- (d) ~~(e)~~ The term "**Default Arrangements**" means the Rules and Procedures relating to, or that can be exercised upon, an Event of Default including, without limitation, all of Part 9 and Part 11 and this Part 12 of the Rules and Procedures relating thereto and any and all actions, omissions, powers and arrangements of the Clearing House pursuant to such Rules or Procedures.
- (e) ~~(f)~~ The term "**Designated System**" means the system operated by the Clearing House consisting of the formal arrangements, between the Clearing House and Participants including the common rules (including the Rules and the Procedures) and the standardised arrangements (including the AFI Agreements, Clearing Membership Agreements and other agreements involving the Clearing House, Clearing Members and Approved Financial Institutions) and related functionality for the effecting of Transfer Orders between the Clearing House and Participants which, *inter alia*:
- (i) enable the Clearing House to give instructions and to place at the disposal of Clearing Members amounts of money on the account of Approved Financial Institutions;

- (ii) enable Clearing Members to give instructions and to place at the disposal of the Clearing House amounts of money on the accounts of Approved Financial Institutions;
- (iii) enable the Clearing House and Clearing Members to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
- (iv) enable transfers, assignments and novations of Contracts between Clearing Members or following a Default;
- (v) enable transfers of Non-Cash Collateral to or to the order of the Clearing House and Clearing Members;
- (vi) enable Bilateral CDS Transactions and CDS Trade Particulars to give rise to CDS Contracts;
- (vii) enable ICE Endex Block Transactions, ICE OTC Block Transactions, ICE Futures Europe Block Transactions, ICE Futures US Block Transactions and LIFFE Block Transactions to give rise to F&O Contracts;
- (viii) facilitate physical settlement obligations under CDS Contracts and obligations for the delivery of Deliverables that are SFD Securities under LIFFE Contracts;
- (ix) facilitate the transfer between the Clearing House and Participating Exchanges of Linked Incoming Contracts, Linked Outgoing Contracts and Participating Exchange Transactions pursuant to Rule 410; and
- (x) facilitate supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in respect of Contracts or Permitted Cover.

(f) ~~(g)~~ The term "**Indirect Participant**" means any Disclosed Principal Member or Customer, provided that: (i) it is an 'indirect participant', within the meaning of the Settlement Finality Regulations, in the Designated System; (ii) the identity of that Disclosed Principal Member or Customer has been notified to the Clearing House in writing by the Clearing Member; (iii) the Clearing House has accepted such notification and treatment as an indirect participant in writing (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, an Indirect Participant); and (iv) such Disclosed Principal Member or Customer has executed such agreement as is prescribed by the Clearing House from time to time in order for it to become contractually bound by these Rules and this Part 12 in particular.

(g) ~~(h)~~ The term "**Intermediary Financial Institution**" means any bank or branch used by an Approved Financial Institution, whether as banker, corresponding banker, intermediary or agent, for the fulfilment of a Payment Transfer Order, that is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).



- (h) ~~(f)~~ The term "**Non-Cash Collateral**" means any Permitted Cover that is in the form of an SFD Security.
- (i) ~~(g)~~ The term "**Participant**" means the Clearing House, each Clearing Member, each Participating Exchange and each Approved Financial Institution, in the case of a Clearing Member or Approved Financial Institution to the extent that it is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, a Participant).
- (j) ~~(h)~~ The term "**Payment Transfer Order**" means a payment transfer order (as defined in the Settlement Finality Regulations) that is a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order subject to this Part 12.
- (k) ~~(i)~~ The term "**Securities Transfer Order**" means a securities transfer order (as defined in the Settlement Finality Regulations) that is a Position Transfer Order, Collateral Transfer Order, F&O Block Clearing Order, CDS Clearing Order, CDS Physical Settlement Order, LIFFE Delivery Order, Linked Exchange Incoming Order or Linked Exchange Outgoing Order subject to this Part 12.
- (l) The term "**SFD Custodian**" means any Custodian used by a Clearing Member or the Clearing House for the holding or transfer of Non-Cash Collateral that is subject of a Collateral Transfer Order provided that such person is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).
- (m) The term "**SFD Security**" means a 'security', as defined in the Settlement Finality Regulations.
- (n) The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (o) The term "**ICE Post Trade and Clearing Systems**" or the "**ICE Systems**" means the trade registration, clearing processing and finance hardware and software used by the Clearing House and Clearing Members from time to time, as further described in the Procedures.
- (p) No transfer orders (as defined in the Settlement Finality Regulations) shall arise, enter the Designated System or become irrevocable under these Rules except as set out in this Part 12.
- (q) The Clearing House and each Clearing Member with a Pledged Collateral Account that is a Participant in the Designated System acknowledge and agree that: (i) all forms of Permitted Cover provided as Pledged Collateral constitute 'realisable assets'; and (ii) Pledged Collateral is provided under a 'charge or a repurchase or similar agreement' which has been entered into 'for the purpose of securing rights and obligations potentially

- (C) the Clearing House.
- (v) in the case of a Collateral Transfer Order:
  - (A) the Clearing Member that is the transferor of the Non-Cash Collateral in question;
  - (B) any SFD Custodian of the Clearing Member or the Clearing House; and
  - (C) the Clearing House;
- (vi) in the case of an F&O Block Clearing Order:
  - (A) each Clearing Member that has submitted or confirmed details of the ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Transaction;
  - (B) any Affiliate of the Clearing Member that was party to an ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Block Transaction and which is an Indirect Participant (if any); and
  - (C) the Clearing House;
- (vii) in the case of a CDS Clearing Order:
  - (A) each Clearing Member that has submitted or confirmed details of the CDS Trade Particulars;
  - (B) any Affiliate of a Clearing Member that is or was party to a Bilateral CDS Transaction and which is an Indirect Participant (if any); and
  - (C) the Clearing House;
- (viii) in the case of a CDS Physical Settlement Order:
  - (A) each Clearing Member in the Matched Pair; and
  - (B) the Clearing House;
- (ix) in the case of a LIFFE Delivery Order:
  - (A) each Clearing Member that is party to a LIFFE Contract under delivery;
  - (B) any SFD Custodian of the Clearing Member or the Clearing House; and
  - (C) the Clearing House;

- (f) A Collateral Transfer Order shall become irrevocable at the earlier of the time when: (i) the Clearing House receives the Non-Cash Collateral; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which is a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.
- (g) An F&O Block Clearing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).
- (h) A CDS Clearing Order shall become irrevocable when the time specified pursuant to the CDS Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a).
- (i) A CDS Physical Settlement Order shall become irrevocable at the earliest of: (i) the time when the Matched CDS Buyer in the Matched Pair has submitted irrevocable instructions to a ~~securities system, depository, nominee or custodian~~ Custodian for the transfer of securities to or to the account of the Matched CDS Seller; (ii) the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or (iii) if the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the CDS Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.
- (j) A LIFFE Delivery Order shall become irrevocable at the earlier of the time when: (i) the Clearing House (or a Clearing Member that is due to receive delivery directly from another Clearing Member under Part 7) receives the SFD Security into its account; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which is a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.
- (k) A Linked Exchange Incoming Order or Linked Exchange Outgoing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(xiv).
- (l) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.

**Rule 1204**     *Variations to or Cancellation of Transfer Orders*

- (a) This Rule 1204 applies only to a Transfer Order that is not irrevocable and:
  - (i) in the case of any Transfer Order, it is affected by manifest or proven error or an error that is agreed so to be by all affected Participants;

recorded in a Swap Customer Account in excess of the amount required by the Clearing House, within the meaning of CFTC Rule 22.13(c). For the avoidance of doubt, any FCM/BD Swap Customer Collateral deposited with the Clearing House that subsequently exceeds the amount required by the Clearing House as a result of a change in the amount required or change in the market value of such FCM/BD Swap Customer Collateral will become available for withdrawal in accordance with Rules 302, 503 and 1605(h).

- (j) Notwithstanding anything to the contrary in the Rules, if the Clearing House determines to call for Margin pursuant to Rule 1605(h) in respect of one or more Customer Swap Portfolio Initial Margin Call/Return Amounts or Mark-to-Market Margin requirements for a Swap Customer Account of an FCM/BD Clearing Member on an intra-day basis, the Clearing House may in lieu thereof increase the applicable Margin requirement for the Proprietary Account of such FCM/BD Clearing Member.

**Rule 1606**     *Additional FCM/BD Clearing Membership Requirements*

- (a) Each FCM/BD Clearing Member that has a Customer Account shall execute and deliver to the Clearing House a Pledged Collateral Addendum to its Clearing Membership Agreement, in the form specified by the Clearing House.
- (b) FCM/BD Customer Collateral in the form of USD cash that is transferred by an FCM/BD Clearing Member to the Clearing House pursuant to the Rules shall be invested by the Clearing House only in U.S. Treasury securities constituting permitted investments under Applicable Law in accordance with the Procedures (including through direct purchases or repurchase or reverse repurchase transactions). Each FCM/BD Clearing Member that has a Customer Account shall instruct the Clearing House, in a manner to be specified by the Clearing House, whether or not such FCM/BD Customer Collateral transferred by it to the Clearing House should be so invested, and if it so instructs (or is deemed to so instruct), then by its transfer to the Clearing House of any such FCM/BD Customer Collateral in the form of USD cash, the FCM/BD Clearing Member hereby acknowledges and consents to such investment. If the FCM/BD Clearing Member fails to provide any such instruction, it will be deemed to have instructed the Clearing House to so invest such FCM/BD Customer Collateral. If an FCM/BD Clearing Member instructs the Clearing House not to so invest, the FCM/BD Clearing Member acknowledges and agrees that any such FCM/BD Customer Collateral in the form of USD cash will not be invested by the Clearing House, to the extent permitted by Applicable Law, and may therefore be held in a bank deposit selected by the Clearing House, and may be subject to a cash management fee determined by the Clearing House from time to time.

**Rule 1607**     *Additional FCM/BD Requirements for Customer Transactions*

- (a) The relationship between an FCM/BD Customer and an FCM/BD Clearing Member in respect of Open Contract Positions for that FCM/BD Customer shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties, subject to the applicable provisions of these Rules and provided that no such agreement may be inconsistent with these Rules or the Clearing Membership Agreement.

**EXHIBIT 1**

**ICE CLEAR EUROPE LIMITED**

**CUSTOMER-CM CDS TRANSACTIONS STANDARD TERMS**

**BACKGROUND:**

- (1) Clearing Member is a Non-FCM/BD Clearing Member, as defined in the rules (the "**Rules**") of ICE Clear Europe Limited (the "**Clearing House**") and is thereby permitted to submit certain CDS Trade Particulars which, if an Acceptance Notice is issued, will result in a cleared CDS Contract arising in accordance with the Rules and the CDS Procedures of the Clearing House.
- (2) Clearing Member and Segregated CDS Customer desire to agree to the operation of the Rules and the Procedures in relation to any Customer-CM CDS Transactions that may arise following the submission of the related CDS Trade Particulars, as further provided for in these Customer-CM CDS Transactions Standard Terms (these "**Standard Terms**").
- (3) Clearing Member and Segregated CDS Customer have established a "master" futures account, clearing agreement or other master agreement (the "**Cleared Transactions Master Agreement**", as amended from time to time) and, if applicable, a related collateral arrangement, whether contained in the same or another agreement (the "**Cleared Transactions Margin Terms**", as amended from time to time) with respect to cleared transactions, including such Customer-CM CDS Transactions (which Cleared Transactions Master Agreement may be supplemented by a cleared derivatives addendum, or similar document, as agreed by Clearing Member and Segregated CDS Customer (together, the "**Customer-Clearing Member Agreement**") and as amended and supplemented by these Standard Terms).

**STANDARD TERMS:**

1. **Defined Terms.** Terms used but not otherwise defined in these Standard Terms shall have the meaning set forth in the Rules or the Procedures, as applicable.
2. **Exhibit to Rules.** These Standard Terms are published by the Clearing House as an Exhibit to the Rules but do not form part of the Rules. Clearing Member and Segregated CDS Customer agree that any amendments, modifications, restatements or supplements in respect of such Exhibit to the Rules (including the withdrawal of any part of these Standard Terms) may be effective if made by the Clearing House pursuant to the provisions of Rule 109 as if the Exhibit were Rules and as if Rule 109 applied to Segregated CDS Customers in addition to, and in the same way as it applies to, Clearing Members. At the request of Clearing Member or the Clearing House, Segregated CDS Customer will enter into a written confirmation of the terms of any such amendment, modification, supplement or restatement.

## EXHIBIT 2

### ICE CLEAR EUROPE LIMITED

#### SETTLEMENT AND NOTICES TERMS

##### 1. APPLICATION AND INTERPRETATION

These settlement and notices terms (the "**Settlement and Notices Terms**") apply to all Customer-CM CDS Transactions and, where specified, to the clearing arrangements between an FCM/BD CDS Clearing Member and its FCM/BD Customers and, in each case, to the related CDS Contracts (the term "**CDS Contract**", as used in these Settlement and Notices Terms, is restricted to such CDS Contracts). Notwithstanding the previous sentence, a Clearing Member and its Customer may agree in their clearing arrangements or otherwise to vary or override the terms of these Settlement and Notices Terms in respect of Customer-CM CDS Transactions, in each case through their clearing arrangements or otherwise.

These Settlement and Notices Terms are published by the Clearing House as an exhibit to the Rules but do not form part of the Clearing House's Rules (the "**Rules**"), Procedures or Standard Terms. They constitute a separate document that is incorporated by reference in the Standard Terms and forms part of the terms of CDS Contracts and Customer-CM CDS Transactions (or, in relation to FCM/BD CDS Clearing Members, clearing agreements between FCM/BD CDS Clearing Members and their Customers). These Settlement and Notices Terms shall be governed by and construed in accordance with the law governing the CDS Contract, Customer-CM CDS Transaction or clearing arrangement to which they relate in any instance and subject to such dispute resolution mechanisms and procedures and such courts or other forum for hearing disputes as are applicable in respect of the CDS Contract, Customer-CM CDS Transaction or clearing arrangement to which they relate. Each Clearing Member and Customer to which these Settlement and Notices Terms apply hereby waives any right to object to any such choice of law or proceedings on the basis of *forum non conveniens*, that the governing law or forum is not specified on the face of this document or otherwise.

These Settlement and Notices Terms are intended to apply in their present form pending broader industry discussion of other possible solutions, possibly in connection with technological progress and may be amended as any further technological or industry developments take place. Any amendments, modifications, restatements or supplements in respect of these Settlement and Notices Terms shall be effective if made by the Clearing House pursuant to the provisions of Rule 109 as if these Settlement and Notices Terms were Rules and as if Rule 109 applied to Customers of CDS Clearing Members in addition to, and in the same way as it applies to, Clearing Members. At the request of a CDS Clearing Member or the Clearing House, a Customer of that CDS Clearing Member will enter into a written confirmation of the terms of these Settlement and Notices Terms or any amendment, modification, supplement or restatement made to them.