

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

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**In the Matter of the Application of  
ICE Clear Europe Limited  
For Registration as a Derivatives Clearing Organization**

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**ORDER OF REGISTRATION**

ICE Clear Europe Limited ("ICE Clear Europe") has submitted, pursuant to Section 5b of the Commodity Exchange Act (the "Act"), at various times, the following: (i) an application for registration as a derivatives clearing organization ("DCO"); (ii) an amended application; (iii) exhibits to such application and amended application; and (iv) supporting materials (collectively, the "Application"). The Commodity Futures Trading Commission (the "Commission") has reviewed the Application. Based on the Application and further submissions of ICE Clear Europe during the licensing process, the Commission finds that ICE Clear Europe has, subject to the terms and conditions specified, demonstrated compliance with the requirements of the Act and Commission regulations thereunder (the "Regulations"), in each case, as applicable to the registration of DCOs. Therefore,

**IT IS ORDERED**, under Section 5b of the Act, 7 U.S.C. § 7a-1, that the Application of ICE Clear Europe for registration as a DCO is granted, subject to the terms and conditions specified herein.

**IT IS FURTHER ORDERED**, that:

(1) Core Principle Compliance. ICE Clear Europe shall remain in compliance, and shall demonstrate compliance as requested by the Commission, with the core principles set forth

in Section 5b of the Act (the “Core Principles”). ICE Clear Europe shall fulfill each of the representations relating to compliance with the Core Principles, which ICE Clear Europe made in connection with the Application. Such representations include, without limitation, the following:

(a) ICE Clear Europe shall maintain (i) one guaranty fund for (A) futures contracts and options on such futures contracts traded on, or subject to the rules of, a designated contract market or a derivatives transaction execution facility, as each such term is defined in the Act (together, such contracts and options, the “Futures Contracts”) and (B) over-the-counter derivative instruments, as such term is defined in Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (the “OTC Instruments”) (other than an OTC Instrument in which the credit status of an entity or a group of entities constitutes the underlying reference (each, a “Credit-Based Contract”)) (such guaranty fund, the “Futures Guaranty Fund”) and (ii) one guaranty fund for Credit-Based Contracts (such guaranty fund, the “Credit Guaranty Fund”); and

(b) ICE Clear Europe shall ensure that each of the Futures Guaranty Fund and the Credit Guaranty Fund is sufficient to cover losses, in excess of applicable performance bond, that ICE Clear Europe may incur in the event of the default, under extreme but plausible market conditions, of the member with the largest exposure to (i) Futures Contracts and OTC Instruments (other than Credit-Based Contracts), in the case of the Futures Guaranty Fund, or (ii) Credit-Based Contracts, in the case of the Credit Guaranty Fund.

(2) Self-Regulatory Function. ICE Clear Europe shall ensure the performance of all self-regulatory functions required of it as a DCO under the Act and the Regulations, including, without limitation: (a) monitoring and enforcing member compliance with ICE Clear Europe admission and continuing eligibility standards, such as capital requirements; (b) conducting

examinations of the risk management procedures of each member on a periodic basis; and  
(c) enforcing member compliance with the terms of all ICE Clear Europe rules, regulations, and procedures not specifically referenced in clauses (a) and (b) of this section.

(3) Operating Resources Requirement. In order to ensure that ICE Clear Europe continues to comply with Core Principle B and continues to have the ability to comply with all of the Core Principles:

(a) ICE Clear Europe shall maintain, at all times, sufficient financial resources to cover its operating expenses for at least one year. ICE Clear Europe may deem projected revenue to constitute a financial resource;

(b) Notwithstanding Section 3(a) of this Order, ICE Clear Europe shall maintain, at all times, assets sufficient to meet each of the following requirements, which are not cumulative: (i) its current assets must exceed its current liabilities in an amount greater than or equal to its operating expenses for six months; and (ii) it must hold unencumbered, liquid assets (*i.e.*, cash, cash equivalents, or highly-liquid securities) greater than or equal to its operating expenses for six months; and

(c) ICE Clear Europe shall calculate both its financial resources and its operating expenses on a rolling basis. Specifically, ICE Clear Europe shall calculate: (i) its projected revenue, if included in its financial resources, to equal no more than its aggregate revenue for the year ending with the last complete month immediately preceding the date of calculation; and (ii) its operating expenses to equal no less than its aggregate operating expenses for the year ending with the last complete month immediately preceding the date of calculation, except that ICE Clear Europe may calculate its projected revenue or operating expenses

otherwise if it provides a rationale supporting such calculation that is satisfactory to the Director of the Division of Clearing and Intermediary Oversight (the "Director").

(4) Clearing Member Reporting. In order to ensure that ICE Clear Europe continues to comply with Core Principle J, ICE Clear Europe shall provide the Commission with the information specified below, in a manner and at a frequency that would enable the Commission to conduct its oversight function of ICE Clear Europe with respect to Core Principles B and D.

(a) With respect to each Futures Contract, ICE Clear Europe shall provide to the Commission: (i) the clearing member position information described in Regulations 16.00(a) and 16.00(a)(1), and (ii) the settlement pricing information described in Regulations 16.01(b) and 16.01(b)(2).

(b) With respect to each OTC Instrument that is not a Credit-Based Contract, ICE Clear Europe shall provide to the Commission: (i) the clearing member position information described in Regulations 16.00(a) and 16.00(a)(1), and (ii) the settlement pricing information described in Regulations 16.01(b) and 16.01(b)(2), in each case, as if such regulations applied to such OTC Instrument.

(c) With respect to Credit-Based Contracts, ICE Clear Europe shall provide to the Commission by clearing member: (i) the open interest, volume, and settlement pricing information for each Credit-Based Contract cleared, (ii) settlement payment information (including, without limitation, mark-to-market payment information), identified by relevant proprietary and customer account(s), for all Credit-Based Contracts, (iii) performance bond requirements, identified by relevant proprietary and customer account(s), for all Credit-Based Contracts, and (iv) position information, identified by relevant proprietary and customer account(s), for each Credit-Based Contract.

(d) Consistent with the representations that ICE Clear Europe has made during the licensing process, ICE Clear Europe shall take all action reasonably necessary to be able, by no later than April 30, 2010, to provide the information specified in this Section 4 in a manner and on a schedule acceptable to the Director.

(e) For the avoidance of doubt:

(i) Nothing in this Section 4 shall supersede, modify, or limit any other obligations that ICE Clear Europe or any affiliate of ICE Clear Europe may owe, as of the date hereof or in the future, regarding reporting or other provision of information to the Commission.

(ii) Should the Commission promulgate a Regulation addressing obligations under Regulation Part 16, or otherwise affecting any of the obligations referenced in this Section 4, then such Regulation will supersede the obligations referenced in this Section 4 to the extent applicable.

(5) Risk Management Procedures. ICE Clear Europe shall promptly inform the Commission prior to adopting:

(a) any changes to the methodology, as described in the Application, that ICE Clear Europe uses to calculate performance bond for any Futures Contract or OTC Instrument (other than a Credit-Based Contract), if such changes would result in a reduction of the amount of performance bond that ICE Clear Europe would otherwise require for such Futures Contract or OTC Instrument (other than a Credit-Based Contract);

(b) any changes to the scenarios, as described in the Application, that ICE Clear Europe uses to calculate the losses referenced in Section 1(b) of this Order, if such changes

would result in a reduction of the amount that ICE Clear Europe would otherwise hold in the Futures Guaranty Fund;

(c) any changes to the methodology, as described in the Application, that ICE Clear Europe uses to calculate performance bond for any Credit-Based Contract, if such changes would result in a reduction of the amount of performance bond that ICE Clear Europe would otherwise require for such Credit-Based Contract;

(d) any changes to the parameters, as described in the Application, of the member defaults that the Credit Guaranty Fund has been structured to cover, if such changes would result in a reduction of the amount that ICE Clear Europe would otherwise hold in the Credit Guaranty Fund. Such parameters include, without limitation, (i) the number of simultaneous member defaults (*e.g.*, one or two), (ii) the profile of the positions held by such members in Credit-Based Contracts (*i.e.*, long or short), and (iii) the percentage of offset that ICE Clear Europe would permit between (A) profits and losses in Credit-Based Contracts in the same product category and (B) profits and losses in Credit-Based Contracts in different product categories; and

(e) any changes to the scenarios, as described in the Application, that ICE Clear Europe uses to calculate losses resulting from the member defaults referenced in Section 5(d) of this Order, if such changes would result in a reduction of the amount that ICE Clear Europe would otherwise hold in the Credit Guaranty Fund.

(6) Location of Funds. ICE Clear Europe shall adopt a default rule stating that the locus of any account in which it holds funds from members to guarantee, margin, or secure customer positions in Futures Contracts (the "U.S. Customer Funds") shall be in the United States.

(7) Segregation of Funds. ICE Clear Europe shall hold all U.S. Customer Funds in accordance with Section 4d of the Act and the Regulations applicable to the segregation of such funds, including Regulation 1.49.

(a) ICE Clear Europe shall adopt rules stating that:

(i) each member that is carrying customer positions in Futures Contracts shall (X) deposit U.S. Customer Funds in, and associate positions in such Futures Contracts with, an account (the "U.S. Customer Account") that is separate from its proprietary account (the "Proprietary Account") and from its customer account for funds other than U.S. Customer Funds (the "Non-U.S. Customer Account"), and (Y) arrange with the relevant approved financial institution for the ability to make electronic transfers of funds and securities separately with respect to each of the U.S. Customer Account, the Proprietary Account, and the Non-U.S. Customer Account.

(ii) ICE Clear Europe shall calculate and call for performance bond and variation settlement payments separately with respect to positions associated with each of the U.S. Customer Account, the Proprietary Account, and the Non-U.S. Customer Account.

(iii) ICE Clear Europe shall determine final settlement obligations (whether relating to cash-settled or physically-settled contracts) separately with respect to positions associated with each of the U.S. Customer Account, the Proprietary Account, and the Non-U.S. Customer Account.

(b) ICE Clear Europe shall, if it clears Futures Contracts, adopt default rules stating that, in the event that a member defaults:

(i) ICE Clear Europe shall calculate net sums separately with respect to the U.S. Customer Account, the Proprietary Account, and the Non-U.S. Customer Account of such member.

(ii) ICE Clear Europe shall not use any surplus in the U.S. Customer Account to cover any shortfall in the Proprietary Account or the Non-U.S. Customer Account of such member.

(iii) ICE Clear Europe intends for any surplus in the U.S. Customer Account of such member to be treated in accordance with applicable United States laws, including the Bankruptcy Code, the Act, and the Regulations.

(8) Restrictions on Operations and Activities. ICE Clear Europe shall restrict its operations and activities to comport with the assumptions referenced in the memorandum entitled “‘Ring-Fencing’ of US Accounts,” dated as of September 28, 2009, which was prepared by the United Kingdom counsel of ICE Clear Europe (the “Ring-Fencing Memorandum”). Specifically, as described in the Ring-Fencing Memorandum, ICE Clear Europe will (i) execute a clearing membership agreement with each member on terms materially (for purposes of the Ring-Fencing Memorandum) in the form of the standard form of clearing membership agreement included in the Application, and (ii) permit members to deposit non-cash U.S. Customer Funds (other than letters of credit or gold) only in the form of “financial instruments” as defined in the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) (the “Financial Collateral Regulations”), insofar as any opinion expressed in the Ring-Fencing Memorandum relates to or is based on the Financial Collateral Regulations. As part of any future request for relief from the aforementioned restrictions, ICE Clear Europe shall submit a reasoned

memorandum prepared by United Kingdom counsel describing the effect that removal of the relevant restrictions would have on the conclusions of the Ring-Fencing Memorandum.

(9) Changes in Applicable Law. ICE Clear Europe shall promptly inform the Commission of any material change in United Kingdom law relevant to its operation as a clearing house, including, without limitation: (a) any change to United Kingdom requirements for Recognised Clearing Houses (each, an “RCH”); and (b) any change that would affect the conclusions of the Ring-Fencing Memorandum. Further, ICE Clear Europe shall promptly inform the Commission of any change in the status of ICE Clear Europe as an RCH.

(10) Changes to Operations. ICE Clear Europe shall promptly inform the Commission of any event, circumstance, or situation concerning any aspect of ICE Clear Europe operations that may materially detract from the ability of ICE Clear Europe to continue complying with any of the Core Principles.

(11) Notice of Default. ICE Clear Europe shall immediately inform the Commission of any default, suspension, termination, or forced liquidation of the positions of any member. ICE Clear Europe shall provide the Commission with information regarding the impact of any of the aforementioned actions on the adequacy of ICE Clear Europe financial resources.

(12) Notice of Emergency. In the event of an emergency, as described in the ICE Clear Europe rules, ICE Clear Europe shall use its best efforts to notify Commission officials prior to declaring the existence of such emergency, and shall, in any event, advise the Commission as soon as practicable by telephone, with subsequent confirmation in writing, of the ICE Clear Europe declaration of such emergency, the reasons for such declaration, and the actions that ICE Clear Europe has taken or intends to take in response to such emergency.

(13) Agent for Service of Process. ICE Clear Europe shall maintain a valid, effective, and binding agreement appointing an agent in the United States for purposes of communications, including acceptance, on behalf of ICE Clear Europe, of any summons, complaints, orders, subpoenas, requests for information, notice, or any other written document or correspondence issued by or on behalf of the Commission, the United States Department of Justice, or any member clearing customer positions in Futures Contracts, and ICE Clear Europe shall promptly inform the Commission of any change in such agent or such agreement.

In the event of any material changes to or omissions in the facts and circumstances pursuant to which this Order is issued, or for any reason in its own discretion, the Commission may condition, modify, suspend, terminate or otherwise restrict the terms of this Order, as appropriate and as permitted by law.

Issued in Washington, D.C., this 22 day of January 2010.

By the Commission



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David Stawick  
Secretary of the Commission