



March 8, 2012

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: ICE Clear Europe Petition for an Order Pursuant to Section 4d(f) of the
Commodity Exchange Act to Permit Commingling of Customer Funds in
Connection with Cleared Swaps and Foreign Futures Contracts

Dear Mr. Stawick:

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) is a registered derivatives clearing organization (“DCO”) under the Commodity Exchange Act, as amended (the “Act”). ICE Clear Europe hereby petitions the Commodity Futures Trading Commission (the “Commission”) for an order pursuant to Section 4d(f) of the Act (the “Order”) to permit ICE Clear Europe and its clearing members (“Clearing Members”) that are registered futures commission merchants (“FCMs”)¹ (i) to hold in a cleared swap account subject to Section 4d(f) of the Act customer² money, securities and property (“customer property”) used to margin, secure or guarantee both cleared swaps³ and contracts that constitute foreign futures and foreign options under Commission Rule 30.1 (collectively, “foreign futures”) and (ii) to provide for portfolio margining of such cleared swaps and foreign futures.

ICE Clear Europe is requesting the Order in order to permit its FCM Clearing Members and their customers to continue the current market practice of holding both cleared OTC derivatives and cleared foreign futures contracts in a single account and permitting portfolio margining and margin offsets between such positions,⁴ while

¹ Clearing Members that are FCMs are referred to herein as “FCM Clearing Members”.

² As used herein, “customer” has the meaning set forth in Commission Rule 39.2.

³ As used herein, “cleared swap” has the meaning set forth in Section 1a of the Act as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and Commission Rule 22.1.

⁴ ICE Clear Europe intends to continue to permit proprietary account positions of Clearing Members, as well as positions of non-U.S. customers that clear through non-U.S., non-FCM Clearing Members, to be held in a single account and to provide for portfolio margining of such positions. For this purpose, “proprietary account” will have the meaning set forth in Commission Rule 1.3(y).

allowing customers to take advantage of the additional protections afforded by the Section 4d(f) cleared swaps account when it becomes available.⁵ Without the Order, FCM Clearing Members would be forced to hold foreign futures and cleared swaps cleared on behalf of customers through ICE Clear Europe in separate customer accounts, even where the positions are related, and accordingly would have to margin such positions separately. That would result in significant additional (and, in the Clearing House's view, unnecessary) costs and inefficiencies for both FCM Clearing Members and their customers. It would also likely prove disruptive to current clearing and trading activities of market participants and be a disincentive for market participants to clear contracts in situations where they may not be required to do so.

I. Background

ICE Clear Europe is a DCO registered with the Commission and a recognized clearing house supervised by the U.K. Financial Services Authority (the "FSA"). It is also the operator of a "designated system" for purposes of the EU Settlement Finality Directive and a "inter-bank payment system" supervised by the Bank of England. The Clearing House is incorporated under the laws of England and Wales.

ICE Clear Europe currently clears both exchange-traded futures and OTC, or swap, products. Specifically, ICE Clear Europe serves as the clearing house for all transactions conducted on the ICE Futures Europe market, a UK recognized investment exchange and EU regulated market licensed and supervised by the FSA and subject to the terms of a CFTC foreign board of trade no-action letter in respect of US participants. ICE Futures Europe has obtained Commission staff foreign board of trade no-action relief to permit direct access to the exchange by U.S. persons,⁶ and expects to register as a "foreign board of trade" for purposes of the Act following the effectiveness of the Dodd-Frank Act amendments. ICE Futures Europe contracts currently cleared by ICE Clear Europe include 36 separate energy futures and options contracts representing a significant portion of global crude oil and refined products futures trading. As of 27 January, 2012, the aggregate open interest for ICE Futures Europe contracts was 4,343,686 contracts. In 2011, ICE Clear Europe cleared a total volume of 246,134,855 lots of ICE Futures Europe contracts.

In terms of swap products, ICE Clear Europe currently clears a range of energy contracts, both for proprietary and customer accounts of Clearing Members offered by the ICE, Inc. exempt commercial market (which, as discussed below, is expected to be transferred to a swap execution facility ("SEF") supervised by the CFTC). In light of the close relationship between OTC and exchange-traded energy contracts, ICE Clear Europe currently offers margin offsets between such products, and seeks to continue to be able to do so through the Order. As of 27 January, 2012, the aggregate open interest for ICE OTC Energy contracts was 54,385,325 contracts. In 2011, ICE Clear Europe cleared a total volume of 830,160,634 lots of ICE OTC Energy contracts.

⁵ We note in this regard that the Commission has adopted the Part 22 regulations governing the Section 4d(f) account, which are to become effective November 8, 2012. Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 Fed. Reg. 6336 (Feb. 7, 2012). ICE Clear Europe requests that the Order be effective no later than such time as the Section 4d(f) requirements come into effect.

⁶ See Commission No-Action Letters 99-69 (Nov. 12, 1999), 08-09 (June 17, 2008).

ICE Clear Europe also currently clears OTC credit default swap (“CDS”) transactions. At present, ICE Clear Europe does not offer customer clearing for such contracts, although it expects to do so in the future. The Clearing House may in the future offer clearing of other swap transactions as well. Consistent with the requirements of the Dodd-Frank Act, ICE Clear Europe anticipates that cleared CDS and other cleared swaps for customers will be held in the cleared swaps account.

ICE Clear Europe has adopted, pursuant to self-certification under Commission Rule 40.6, rules implementing the three relevant categories of account class for FCM Clearing Members under the Act as amended by the Dodd-Frank Act: the futures or Section 4d(a) account class,⁷ the cleared swap or Section 4d(f) account class, and the foreign futures or Rule 30.7 account class. A copy of these rules is attached as Exhibit A hereto.

II. Relief Requested

ICE Clear Europe is hereby requesting approval from the Commission to:

(i) permit the Clearing House to hold in the cleared swaps account class (together with cleared swaps) Covered Foreign Futures Contracts (as defined below) traded on ICE Futures Europe, and customer property used to margin, secure or guarantee such contracts, that would otherwise fall within the foreign futures account class;

(ii) calculate margin for Covered Products (as defined below) in the commingled cleared swaps account on a portfolio basis in accordance with the ICE Clear Europe’s risk management framework, under which ICE Clear Europe could offer margin offsets for Covered Products that are correlated on a risk management and economic basis when calculating margin requirements; and

(iii) permit similar commingling and portfolio margining by FCM Clearing Members of ICE Clear Europe that clear on behalf of customers in Covered Products.

In connection with the adoption of these amendments, ICE Clear Europe proposes to move Covered Foreign Futures Contracts and related customer property currently held in the foreign futures account of FCM Clearing Members into the cleared swaps account of such members.

A copy of the ICE Clear Europe rules specifically relating to commingling of positions upon Commission approval is attached as Exhibit B hereto.

As used herein, the “Covered Foreign Futures Contracts” that will be subject to commingling under the Order will include (i) the ICE Futures Europe futures and option contracts listed on

⁷ ICE Clear Europe does not currently clear any contracts for a designated contract market under Section 5 of the Act that would fall into this category, but may elect to do so in the future. ICE Clear Europe might file a supplemental request to commingle such contracts in the cleared swaps account as well at such time.

<https://www.theice.com/productguide/Search.shtml?productGuide=&advancedKeyword=&markets=ICE+Futures+Europe>, as those contracts may be modified from time to time in accordance with exchange and Clearing House rules and applicable regulatory requirements and (ii) such other ICE Futures Europe energy contracts constituting foreign futures and foreign options as may be listed after the date hereof and cleared through ICE Clear Europe. As used herein, “Covered Products” will mean Covered Foreign Futures Contracts and cleared swaps cleared by ICE Clear Europe and held in the Section 4d(f) account (including for the avoidance of doubt cleared swaps traded on a SEF).

The Commission is authorized, pursuant to Section 4d(f)(3)(B) of the Act, to permit by rule, regulation or order the commingling of customer property held in connection with cleared swaps with other customer property required by the commission to be separately accounted for and treated and dealt with as belonging to the swap customer of an FCM. Commission Rule 39.15(b)(2)⁸ establishes standards and procedures for the approval of clearing organization rules under which futures, options and swap positions may be held in the cleared swaps account subject to the requirements of Section 4d(f) of the Act and Commission regulations thereunder. Although Commission Rule 39.15(b)(2) does not specifically refer to “foreign futures” as opposed to futures generally, the Commission’s authority under Section 4d(f)(3)(B) would apply to both categories of products, and we believe the standards under Commission Rule 39.15(b)(2) are equally applicable in this context.⁹

If permitted to be held in the cleared swaps account pursuant to the Order, Covered Foreign Futures Contracts would be subject to the same segregation and other legal requirements applicable to cleared swaps under the Part 22 regulations,¹⁰ and in addition would be treated as part of the cleared swaps account class for purposes of the Commission’s Part 190 bankruptcy rules in the event of the insolvency of the carrying FCM.

As a policy matter, as both Congress and the Commission have recognized, commingling and portfolio margining across positions in futures and swaps can bring important benefits to market participants, including more efficient use of capital through potential margin reductions for correlated positions. Such portfolio

⁸ See Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69334 (Nov. 8, 2011).

⁹ We also note that the Commission has previously by order permitted the commingling of exchange-traded futures listed on a foreign board of trade with exchange-traded futures listed on a designated contract market. See, e.g., Order of the Commission regarding “Treatment of Funds Held in Connection with the Clearing by The Clearing Corporation of Euro-Denominated Contracts Executed on Eurex Deutschland AG” (Oct. 21, 2004); Order of the Commission regarding “Treatment of Funds Held in Connection with Clearing by the New York Mercantile Exchange of Contracts Traded on NYMEX Europe (Sept. 6, 2005). The Commission has similarly permitted by order the commingling of exchange-traded futures and cleared swaps. See, e.g., Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The-Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated Property To Be Commingled With Other Property Held in Segregated Accounts, 73 Fed. Reg. 77015 (Dec. 18, 2008).

¹⁰ See Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 Fed. Reg. 6336 (Feb. 7, 2012).

marginining promotes sound risk management by allowing the clearing organization, FCMs and customers to view a portfolio of positions based on its overall economic substance, as opposed to dividing a portfolio based on regulatory distinctions that may not reflect commercial or economic realities. In addition, portfolio margining, with its greater capital efficiency, would provide an incentive for market participants to use clearing services, even in situations where they are not mandated by law to do so. This would further the goals of the Dodd-Frank Act and stated Commission policies. This request is thus consistent with these policy goals as well as the statutory authority given to the Commission to permit portfolio margining and longstanding Commission precedent to allow commingling of positions and portfolio margin between futures and swaps.

III. Informational Requirements

Commission Rule 39.15(b)(2) identifies twelve categories of information that should be included in a DCO's rule submission to permit commingling and portfolio margining. We address each category in turn.

A. Identification of the Contracts to be Commingled

ICE Clear Europe proposes to provide for commingling of the Covered Foreign Futures Products with cleared swaps in the cleared swaps account. At present, Covered Foreign Futures Contracts comprise all of the energy futures and options contracts traded on ICE Futures Europe and cleared with the Clearing House. The Clearing House contemplates that any other energy futures or options contracts that may be traded on ICE Futures Europe would also be treated as Covered Foreign Futures Contracts¹¹.

OTC swaps cleared through ICE Clear Europe will, of course, also be held in the cleared swaps account in accordance with the Act. At present, such contracts include all OTC energy contracts cleared through the Clearing House¹².

B. Analysis of Risk Characteristics of the Commingled Products

ICE Clear Europe has considerable experience with clearing and managing the risks of both the Covered Foreign Futures Contracts and its existing OTC contracts. Notably, the Clearing House has managed the risk of these contracts, on a commingled, portfolio basis, since the inception of clearing in these products.

¹¹ The list of contracts for the Covered Foreign Futures Contracts is available at the following website:
<https://www.theice.com/productguide/Search.shtml?productGuide=&advancedKeyword=&markets=ICE+Futures+Europe>, and the contract specifications can be found at the following website:
<https://www.theice.com/FuturesEuropeRegulations.shtml> (Section I et seq)

¹² The list of cleared OTC products is available at the following website:
https://www.theice.com/publicdocs/ICE_OTC_Cleared_Product_List.pdf, and the contract specifications can be found at the following website:
https://www.theice.com/publicdocs/clear_europe/rulebooks/procedures/General_Contract_Terms_and_ICE_OTC_Standard_Contract_Terms_and_Eligibility_Criteria_29_August_2011.pdf.

As discussed in further detail in subsection G below, the principal risk characteristics of the commingled products, which are taken into consideration in the Clearing House's risk management framework, include the following: (i) market risk, (ii) liquidity risk, (iii) credit risk and (iv) operational risk. Full details concerning the risk management framework were provided in connection with ICE Clear Europe's DCO application, and remain unchanged. Relevant portions are provided in Exhibit C for your reference.

Although each cleared product raises a slightly different set of risks, as a general matter the energy futures and OTC energy contracts that are proposed to be commingled have broadly similar risk profiles. For example, ICE Clear Europe clears both futures contracts and swaps relating to the same underlying energy reference asset, resulting in similar sensitivities to market prices and other energy market events. There is market activity in both the swap and futures products and as a result both have similar open interest and liquidity profiles. Clearing participant credit risk and operational risk are also similar across both categories of contracts. In fact, these risks, and operational risk in particular, would tend to be reduced by commingling the contracts in a single account rather than having to develop additional infrastructure to support multiple accounts for similar products.

C. Description of Manner of Execution

Covered Foreign Futures Contracts would continue to be executed and traded on ICE Futures Europe in accordance with its rules and trading protocols. Currently, OTC energy products are executed either bilaterally between the relevant counterparties on an over-the-counter basis or through the ICE OTC electronic trading system, which is an exempt commercial market under Part 36 of the Commission's Rules. Following effectiveness of the Dodd-Frank Act clearing and trading requirements, it is expected that the trading activity in cleared swaps for U.S. customers currently conducted on the ICE OTC system will move to one or more registered swap execution facilities ("SEFs"), once such entities have been formed and registered with the Commission and are in operation. To the extent mandatory SEF trading is not required, cleared swaps may continue to be executed bilaterally as well.

D. Analysis of Liquidity of Commingled Products

Attached as Exhibits D and E, respectively, are historical volume and current open interest data for the Covered Foreign Futures Contracts.

Attached as Exhibits D and F, respectively, are historical volume and open interest data for cleared OTC contracts. As noted above, the cleared OTC contracts are both executed bilaterally and on the ICE OTC system. As a result, there is not a single source of liquidity for such contracts.

As a general matter, contract liquidity is part of ICE Clear Europe's risk management framework, and the Clearing House considers liquidity among other factors in determining whether to accept a contract for clearing.

ICE Clear Europe believes that the liquidity of cleared contracts is such that it, as well as its Clearing Members, have the ability to offset or mitigate the risk of commingled

contracts in a timely manner and without compromising the financial integrity of the customer account. FCM Clearing Members are required to satisfy regulatory capital requirements as well as those of the Clearing House. In addition, as discussed below, FCM Clearing Members are required to have sufficient operational competence to manage the risks of their positions and participate in default management.

In the case of a default of an FCM Clearing Member, the Clearing House has the ability to conduct an orderly close out of positions, including through the use of such techniques as the sale or auction of the FCM Clearing Member's book of positions to a solvent Clearing Member, temporary hedging arrangements, entering into offsetting transactions (both on exchanges or SEFs and in the over-the-counter market) and other actions it deems appropriate, as set out in Part 9 of the ICE Clear Europe Rules. These procedures are designed to permit the Clearing House to manage its risk even if liquidity in the relevant contracts is lower than is normal or expected in the market.

E. Analysis of the Availability of Reliable Prices for Commingled Products

Prices for Covered Foreign Futures Contracts will usually be available from trading activity on ICE Futures Europe, as is currently the case for those products. With respect to cleared OTC energy swaps, ICE Clear Europe will obtain pricing data from the ICE OTC trading platform or any other relevant swap execution facility or other market on which such products are traded in the future. Where appropriate, ICE Clear Europe may obtain prices from market participants or other sources, or use prices from related products for which there is a more active trading market.

F. Description of the Financial, Operational and Managerial Standards for FCM Clearing Members

ICE Clear Europe proposes that all FCM Clearing Members will commingle customer positions in Covered Products in the cleared swaps account. As set forth in ICE Clear Europe's rules and procedures and as described in ICE Clear Europe's application for registration as a DCO, FCM Clearing Members are subject to extensive requirements as to financial, operational, managerial and other standards.

1. Financial Standards

All FCM Clearing Members will be required to maintain the minimum capital requirements under applicable law (including Commission regulations), as well as any additional requirements imposed by the Clearing House. Currently, Clearing Members are required under Clearing House rules to have (or provide a guarantee from an affiliate with) minimum capital of \$20 million for energy clearing activities (\$10 million is permissible subject to review and approval by the Risk Committee). (Clearing other asset categories may require higher minimum capital levels.) Clearing Members are required to provide financial statements and other financial information to the Clearing House. Clearing Members must also meet Clearing House standards of financial responsibility and creditworthiness.

2. Operational and Managerial Standards

FCM Clearing Members, like all Clearing Members of ICE Clear Europe, must demonstrate operational competence to perform the duties of a Clearing Member, including (i) having all necessary regulatory or other authorizations to perform their business, (ii) having sufficient qualities of operational capacity, business integrity, reputation and competence as determined by the Clearing House, (iii) having facilities, personnel and systems capable of supporting its clearing functions, and (iv) having sufficient knowledge about the types of contracts that it intends to clear and the related risks.¹³ The Clearing House may impose additional objective conditions on Clearing Members in order for them to obtain or maintain membership and may require additional information as part of the membership application process.

G. Description of Clearing House Systems and Procedures Used to Oversee Clearing Member Risk Management of Commingled Positions

1. Risk Management Framework

The Clearing House has developed a comprehensive risk management framework applicable to its clearing business, including for both its foreign futures and OTC products. ICE Clear Europe has developed this framework in connection with its current operations, in which the risks of foreign futures and OTC products are commingled. It believes that this framework will be equally effective if positions are commingled in the cleared swaps account under the requested Order.

The risk management framework includes the following elements:

- *Membership Criteria.* As noted above, the membership admission process requires Clearing Members to demonstrate financial responsibility (including creditworthiness) and operational capabilities.
- *Initial Margin.* The Clearing House requires Clearing Members to post initial or original margin on a daily (or more frequent) basis to collateralize potential losses under distressed market conditions.
- *Variation/Mark-to-Market Margin.* The Clearing House determines the settlement value of each contract on a daily basis and assesses daily variation or mark-to-market margin on Clearing Members to reflect changes in such value.
- *Risk Monitoring.* The Clearing House assesses portfolio and position risk and market movements on a continual intraday basis and can make intraday margin calls on Clearing Members to protect against unusual market movements or conditions.
- *Guaranty Fund.* The Clearing House collects required Guaranty Fund contributions for Clearing Members, which are available to provide additional resources for, and to mutualize, additional losses under extreme, but plausible, market scenarios.¹⁴

¹³ See ICE Clear Europe Rules 201-202.

¹⁴ See Part 11 of the ICE Clear Europe Rules.

- *Assessments.* In extreme loss scenarios, the Clearing House can make an assessment on Clearing Members to replenish the applicable Guaranty Fund as set forth in the ICE Clear Europe rules, in an amount of up to two times the Guaranty Fund contributions as of the time of default of an energy Clearing Member.¹⁵

The Clearing House uses these tools to manage the risks presented by the trading activity and positions of Clearing Members. As noted above, in the context of the products proposed to be commingled, the risk management framework focuses on market risk, liquidity risk, credit risk and operational risk.

Market Risk: ICE Clear Europe addresses market risk on its cleared contracts through a combination of margin (both initial and variation) and Guaranty Fund contributions, as well as its ongoing risk monitoring and market surveillance.

Liquidity Risk: ICE Clear Europe addresses liquidity risks through its Clearing Member eligibility standards and management of margin and Guaranty Fund assets, including through the definitions of acceptable margin and permitted cover, valuation haircuts, and limitations on the investment of cash margin.

Credit Risk: The Clearing House addresses credit risk of its Clearing Members through its membership eligibility standards, including its internal analysis of Clearing Member creditworthiness. Credit risk is regularly monitored by the Clearing House, including through required reporting of capital levels and other reporting requirements applicable to Clearing Members.

Operational Risk: The Clearing House mitigates operational risk through implementation of risk management and other policies and procedures and monitoring of Clearing Members' compliance with them. As noted above, the Clearing House examines operational experience, preparedness and understanding of Clearing House Rules and procedures in connection with the membership application process. ICE Clear Europe has procedures in place for escalating operational failures to appropriate levels within each Clearing Member organization. It has a series of investigative and disciplinary powers. The Clearing House also monitors regulatory status of Clearing Members and is in close contact with regulatory authorities as necessary.

2. Risk Management Staff Organization

ICE Clear Europe's risk management functions are led by its risk department. The Head of Risk manages the risk department, which, including the Head of Risk, consists of 9 risk managers.

H. Description of Financial Resources of the Clearing Organization

ICE Clear Europe maintains and will maintain adequate financial resources to discharge its financial obligations as a DCO and a UK recognized clearing house

¹⁵ ICE Clear Europe Rule 1105.

under applicable law. These resources will be available to cover its obligations in respect of commingled contracts to the same extent as under its current operations.

Pursuant to its rules, ICE Clear Europe can apply several forms of financial resources to cover losses in connection with a default by a Clearing Member. With respect to the defaulting Clearing Member itself, these include margin posted by the defaulting Clearing Member (subject to prohibitions on the use of customer account margin to cover proprietary account losses and on the use of margin of non-defaulting customers, as required by the Part 22 regulations and other applicable law) and the Guaranty Fund contribution of the defaulting Clearing Member. To the extent necessary, the Clearing House can also apply contributions to its Guaranty Fund from non-defaulting Clearing Members and, in extreme cases, can make an assessment on Clearing Members to cover additional losses. ICE Clear Europe maintains separate Guaranty Funds in respect of its energy businesses, such that Guaranty Fund contributions of non-defaulting Clearing Members with respect to energy contracts cannot be used to cover losses on CDS contracts, and vice versa.

As of 31 December 2011, initial margin deposits in respect of energy contracts (both for ICE Futures Europe and ICE OTC energy contracts) were approximately USD12.51 billion. As of such date, ICE Clear Europe's energy Guaranty Fund was approximately USD650,000,000.

I. Description of the Margin Methodology Applied to Commingled Positions

ICE Clear Europe intends to continue to use its existing margin methodology with respect to commingled positions, which permits certain offsets between related Covered Foreign Futures Contracts and cleared OTC energy contracts.

ICE Clear Europe uses London SPAN™ to calculate margin offsets for the suite of contracts included in this request. London SPAN™ (SPAN™) is ostensibly the same as CME SPAN 4™. SPAN™ provides features which are utilized to recognize product correlations. The correlations themselves are monitored and assessed outside of SPAN™ using standard statistical analysis. Where a stable correlation is evidenced by the statistical analysis it is recognized in SPAN™ through a reduction to the margin which would otherwise be required if no correlation benefit was provided. The correlation benefits recognized by SPAN™ include intra-product correlations such as trading strategies and maturity curve. This request is with regard to “inter product offsets” which recognize correlations between products which displaying stable price relationships. Inter-product offsets are fully described in the SPAN™ technical documentation. Where a margin correlation offset is provided, ICE Clear Europe routinely monitors the level of the offset and makes adjustment to the SPAN™ parameters to reflect changes to the correlations which may occur over time.

ICE Clear Europe's margin methodology will otherwise conform to the applicable requirements under the Part 39 regulations.

J. Analysis of Clearing House Ability to Manage a Potential Default With Respect to Commingled Products

ICE Clear Europe is confident in its ability to manage a potential default with respect to a commingled product. ICE Clear Europe intends to use the same default procedures and methodologies that exist and that function effectively today under its existing rules for both Covered Foreign Futures Contracts and cleared OTC contracts. Such contracts are currently carried in the same account, and ICE Clear Europe does not anticipate any incremental difficulties in handling such a default when the positions are carried in the cleared swaps account.

In particular, the Clearing House believes that its default procedures, as discussed in subsection K below, together with its margin, Guaranty Fund and other financial resources, as discussed in subsections H and I above, are sufficient to permit the Clearing House to manage a potential default and comply with its obligations in respect thereof under applicable law.

K. Discussion of Default Procedures

As discussed in more detail in its DCO application and as set forth in the Clearing House Rules, ICE Clear Europe has a detailed and tested set of procedures for handling the default of a Clearing Member. Upon the occurrence of a default, the Clearing House is entitled to close out all open contract positions of the defaulting Clearing Member, and has broad flexibility in the manner of doing so.¹⁶ It is expected that Covered Foreign Futures Contracts of a defaulting Clearing Member would generally be liquidated through transactions on ICE Futures Europe, where possible, and that other cleared swaps would be liquidated either in the bilateral market or through transactions on a SEF. If positions could not be unwound through market transactions, ICE Clear Europe would be permitted under its rules to auction the relevant position among its non-defaulting Clearing Members or take other actions in its discretion to unwind or settle the position.

Following completion of the close-out of all positions in the cleared swaps account, ICE Clear Europe would calculate a net sum under its rules taking into account the close-out loss or gain to the Clearing House, the available margin and Guaranty Fund contribution of the defaulting Clearing Member and, if necessary, Guaranty Fund contributions of non-defaulting Clearing Members in the relevant product category (energy or CDS).¹⁷ The net sum calculated in respect of the commingled cleared swaps account would, under the Clearing House rules, be determined separately from any other customer account class or from the proprietary account of the defaulting Clearing Member.

In the case of a customer default, the Clearing Member would be entitled to exercise the remedies agreed between the Clearing Member and customer under the applicable customer documentation. Typically, for an FCM Clearing Member, this would allow the FCM Clearing Member to liquidate the open positions of that customer. Provided that the FCM Clearing Member continues to perform its obligations to the Clearing House, the default of a customer of a Clearing Member would not generally involve the Clearing House default management procedures.

¹⁶ See Clearing House Rules 902-903.

¹⁷ See Clearing House Rule 904.

L. Description of Arrangement for Obtaining Daily Position Data from each Beneficial Owner of Commingled Positions

ICE Clear Europe's risk department actively monitors the positions of Clearing Members throughout the trading day, including with respect to the concentration of a Clearing Member's positions. To the extent required by applicable law or otherwise required in the performance of its clearing functions, ICE Clear Europe will obtain beneficial owner level position data.

IV. Terms and Conditions of Requested Relief

The requested Order approving commingling of Covered Products in the cleared swaps account would be subject to the following terms, conditions and representations:

- (i) The Order will only apply to Covered Products cleared by ICE Clear Europe.
- (ii) Subject to these terms and conditions and notwithstanding anything to the contrary in the Commission's regulations, ICE Clear Europe and its FCM Clearing Members that clear on behalf of customers may hold all Covered Products in ICE Clear Europe's Section 4d(f) cleared swaps account and FCM customer cleared swaps accounts, as applicable, to margin, secure or guarantee Covered Products cleared by ICE Clear Europe.
- (iii) ICE Clear Europe will hold all customer property deposited with it by FCM Clearing Members that clear on behalf of customers to margin, guarantee or secure Covered Products in its cleared swaps account in accordance with Section 4d(f) of the Act and Commission regulations promulgated thereunder.
- (iv) All customer property received by FCM Clearing Members to margin, guarantee or secure trades or positions of customers in Covered Products will be accounted for and treated and dealt with as belonging to the customers of the FCM Clearing Member consistent with Section 4d(f) of the Act and Commission regulations promulgated thereunder.
- (v) Subject to the terms and conditions herein and notwithstanding any provision to the contrary in the Commission's regulations, ICE Clear Europe may adopt a portfolio margining program for FCM Clearing Members that clear on behalf of customers under which it will offset contracts in Covered Products that are correlated on a risk management and economic basis when calculating margin requirements.
- (vi) ICE Clear Europe will apply appropriate risk management procedures to transactions in Covered Products. ICE Clear Europe will conduct financial surveillance and oversight of FCM Clearing Members clearing Covered Products and manage risks relating to clearing Covered Products.
- (vii) Each Covered Product will be marked-to-market, and final settlement prices will be established, on a daily basis.

- (viii) ICE Clear Europe will make available settlement price information for Covered Products on a daily basis.
- (ix) The relief will not provide any exemption from any provision of the Act or Commission regulations not specified herein.
- (x) All customer property received by FCM Clearing Members that clear on behalf of customers to margin, guarantee or secure Covered Products will be subject to the same protections set forth in the Commission's Part 190 bankruptcy rules that are applicable to customer property held in respect of cleared swaps generally.

V. Conclusion

On the basis of the foregoing, ICE Clear Europe respectfully requests that the Commission issue an Order pursuant to Section 4d(f) of the Act permitting ICE Clear Europe and its FCM Clearing Members to hold Covered Foreign Futures Contracts, and customer property used to margin, secure or guarantee such positions, in the Section 4d(f) cleared swaps account, together with other cleared swaps, and to calculate margin for such customer account on a portfolio basis as described herein.

ICE Clear Europe believes that the requested Order will facilitate clearing by market participants in these products by allowing them to continue to take advantage of economically appropriate margin offsets between related cleared swap and foreign futures positions, while enabling them to obtain the benefits of the enhanced segregation provided by the Section 4d(f) account. The Order will avoid the significant additional costs, and market disruptions, that would be caused by requiring market participants to hold these related positions in separate accounts with separate margin requirements.

If you or your staff should have any questions or comments or require further information regarding this request, please do not hesitate to contact the undersigned at paul.swann@theice.com or +44 20 7065 7700 or Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752.

Very truly yours,



Paul Swann
President & Chief Operating Officer

Exhibits

cc: Chairman Gary Gensler
Commissioner Jill E. Sommers
Commissioner Bart Chilton
Commissioner Scott D. O'Malia
Commissioner Mark P. Wetjen
Mr. Ananda K. Radhakrishnan, Director, Division of Clearing & Risk
Mr. Robert B. Wasserman, Associate Director, Division of Clearing & Risk

CONFIDENTIAL TREATMENT REQUESTED BY
ICE CLEAR EUROPE LIMITED

List of Exhibits

Exhibit A	FCM Clearing Rules
Exhibit B	Commingling Rules
Exhibit C	ICE Clear Europe Risk Management Policy *
Exhibit D	Historical Trading Volume for Covered Foreign Futures Contracts and Cleared Swaps *
Exhibit E	Current Open Interest Data for Covered Foreign Futures Contracts*
Exhibit F	Current Open Interest Data for Cleared Swaps *

* Confidential Treatment is requested for each of Exhibits C through F (inclusive).