



October 24, 2012

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

By Email: submissions@cftc.gov

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6

Dear Mr. Stawick:

ICE Clear Europe Limited ("ICE Clear Europe"), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the "Act"), hereby submits to the Commodity Futures Trading Commission (the "Commission"), pursuant to Commission Rule 40.6 for self-certification, the attached rule amendments (the "Rule Amendments") and settlement and notices terms (the "Notice Terms"). The Rule Amendments and Notice Terms are expected to become effective ten business days after submission, or such later date as ICE Clear Europe may determine.

The Rule Amendments implement various changes to the ICE Clear Europe rules in order to comply with the Part 22 regulations governed cleared swap customer margin adopted by the Commission, which become effective November 8, 2012. The Notice Terms establish procedures governing the delivery of certain notices and certain fallback settlement procedures related to CDS contracts and complement recent amendments to ICE Clear Europe rules submitted to the Commission that provide for the clearing of CDS contracts for both proprietary and customer accounts. ICE Clear Europe is publishing the Notice Terms as an exhibit to ICE Clear Europe rules. The Rule Amendments and Notice Terms are potentially relevant to the following core principles: (C) Participant and Product Eligibility, (D) Risk Management, (E) Settlement Procedures, (F) Treatment of Funds, (G) Default Rules and Procedures and (L) Public Information, and the applicable regulations of the Commission thereunder.

ICE Clear Europe hereby certifies that the Rule Amendments and Notice Terms comply with the Act and the Commission's regulations thereunder.

ICE Clear Europe has received no opposing views in relation to the Rule Amendments and Notice Terms.

ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website concurrent with the filing of this submission.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at paul.swann@theice.com or +44 20 7065 7700, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Patrick Davis, Head of Legal and Company Secretary, at patrick.davis@theice.com or +44 20 7065 7738.

Very truly yours,



Patrick Davis
Head of Legal & Company Secretary



[CDS CUSTOMER CLEARING AMENDMENTS]
[WITHLSOC]

ICE Clear Europesm

Clearing Rules

The term "**Short**", in respect of an Option, refers to the positions of Persons against whom Put Options and Call Options may be exercised.

The term "**Standard Terms**" means the form of Customer-CM CDS Transactions Standard Terms as published by the Clearing House from time to time as an Exhibit to these Rules, but which do not form part of these Rules, which are applicable as between each Non-FCM/BD CDS Clearing Member and each of its Segregated CDS Customers, as amended from time to time in accordance with the Standard Terms.

The term "**Strike Price**" in respect of an Option, means the price of the relevant Future upon exercise of the Option.

The term "**Summary Disciplinary Committee**" means a summary disciplinary committee established pursuant to Rule 1004(c).

The term "**Surplus Collateral**" in respect of a Clearing Member or a particular Customer Account, Proprietary Account or account for Guaranty Fund Contributions at any time, means any Permitted Cover transferred to the Clearing House by a Clearing Member that is not required to satisfy the Clearing Member's current or most recently calculated requirements in respect of Margin or Guaranty Fund Contributions at such time.

The term "**Swap**" means (i) a "swap" as defined in the CEA and the Exchange Act, (ii) to the extent permitted to be held in an account with swaps (as defined in (i) above) under Applicable Law, a "security-based swap" as defined in the CEA and the Exchange Act, and (iii) Permitted Co-mingled Contracts.

The term "**Swap Customer**", in respect of an FCM/BD Clearing Member, means any FCM/BD Customer with respect to any Contract arising as a result of CDS Trade Particulars or a Transaction that relates to a Swap. A Person may be a Swap Customer in relation to certain Contracts and another category of FCM/BD Customer in relation to other Contracts.

The term "**Swap Customer Account**", in respect of an FCM/BD Clearing Member, means a kind of Customer Account with the Clearing House (in its capacity as a registered U.S. derivatives clearing organisation clearing Swaps), the books and records of which are located in the United States of America, opened in the name of the FCM/BD Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to Swap Customers where segregation of related collateral is required in accordance with Section 4d(f) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and [any interpretations thereof by the CFTC](#), and entering into market contracts in the capacity of a clearing member in relation to transactions connected with the provision of services to Swap Customers) relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Swap Customers (whose transactions the FCM/BD Clearing Member requests be recorded in the Swap Customer Account where the same is required in accordance with the segregation provisions of Section 4d(f) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder [and any interpretations thereof by the CFTC](#)) and in which the Clearing House records such Contracts and to which monies in respect of such Contracts are debited and credited, which may be divided

- (iv) where a Clearing Member that is a Defaulter has a Pledged Collateral Account, the Clearing House shall be entitled, in addition to the rights and remedies referred to in Rule 902, to exercise the rights of a secured party, collateral taker, market chargee and collateral security chargee under Applicable Law with respect to any Pledged Collateral and the rights set forth in the Pledged Collateral Addendum in order to facilitate any such transfer of Margin.
- (e) The Clearing House may rely upon any information relating to the positions, assets or identities of individual Customers provided to it by an Exchange ~~or~~, Approved CDS Trade Processing Platform or Clearing Member, without need for further enquiry by the Clearing House with respect thereto. The books and records of the Clearing House may be treated as definitive evidence of the positions and Customers which correspond to Contracts recorded in a Defaulter's Customer Account.
- (f) The Clearing House is not obliged to effect any transfer of Margin. The Clearing House shall be entitled to make partial or full transfers of available Margin at any time from the relevant account of a Defaulting Clearing Member in respect of Contracts subject to a Transfer, provided that in any case the total amount of Margin transferred in respect of any Contracts relating to a particular Customer remains commensurate to the Margin that was provided in respect of such transferred Contracts and held by the Clearing House immediately prior to the Event of Default.
- (g) Nothing in these Rules shall require a Clearing Member to accept any Transfer of Contracts as a Transferee Clearing Member, without the prior consent of that Clearing Member (and for these purposes no such consent shall have been provided as a result of a Clearing Member being named as a potential Transferee Clearing Member in accordance with the Standard Terms). The Clearing House shall be entitled (but not required) to Transfer any Contract regardless of whether the relevant Customer has designated the Transferee Clearing Member as a permitted transferee or has consented to such Transfer.
- (h) If the Clearing House determines that any Contracts of the Defaulter are to be Transferred pursuant to this Rule 904, the Clearing House may estimate the loss or gain that it would incur in respect of the relevant Customer Account Positions (i.e. the amount *L-A* in Rule 906 as calculated in respect of those Customer Account Positions) and the extent, if any, to which any Margin would be applied to any such loss and may (but shall not be required) to prioritise and give effect first to any Transfers on the basis of the extent of any potential resulting loss or gain to a Customer Account notwithstanding the time at which any Transfer instructions are submitted or confirmed.
- (i) The Clearing House may take into consideration such factors as the Clearing House determines to be relevant in accepting or effecting any Transfer. Without limiting the foregoing, any Transfer or transfer of Margin shall be subject to any requirements or limitations under Applicable Law, and any approvals or consents that the Clearing House may determine to be required or desirable under the circumstances.

Provisions applicable only to Contracts recorded in a Designated CDS Customer Account of a Defaulter

- (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 Energy Contracts in Contracts in the current expiration month and for CDS Contracts in Contracts of a different series or version number or scheduled termination 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 and expenses (including, without limitation, legal ~~fees and disbursements~~, 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 ~~or the close-out, termination or Transfer of the Contracts of the Defaulter~~. 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):

L = the aggregate amount of all sums payable by the Defaulter in respect of Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) taking into account any of the following actions under Rule 903, 904 or 905:

- (i) the effecting by the Clearing House of corresponding contracts (as defined in section 25(3) of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, SI 2001/995) in relation to Contracts to which the Defaulter is party;
- (ii) the Transfer of any of the Defaulter's Contracts to a Transferee Clearing Member (not being the Defaulter) or acceptance or entry into by a Clearing Member of any of the Defaulter's Contracts or contracts similar to any of the Defaulter's Contracts; and
- (iii) the exercise by the Clearing House of any Option,

plus all amounts that were payable but remain unpaid by the Defaulter under the terms of Contracts, plus any costs and expenses of the Clearing House in any way relating to any Contract to which the Defaulter was party, including, without limitation, legal, accountancy or other professional services; expenses and disbursements, the costs of ~~transfer~~close-out, termination or ~~close-out~~Transfer of Contracts 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; but excluding, in respect of a Contract where the Defaulter acts as agent (if any), any liabilities attributable to the Defaulter arising out of the relationship of principal and agent; and the Clearing House may assess any one or more elements of such amount L in its discretion, provided that any ~~legal, accountancy or other professional services costs or expenses of the Clearing House may~~costs, expenses, taxes or other amounts falling within the scope of the indemnity in Rule 905(f) (not being amounts payable in respect of Contracts falling under L(i) to (iii) above) shall be allocated to the Proprietary Account regardless of the Contracts or Account to which they relate.

A = the aggregate amount of all sums payable to the Defaulter in respect of Contracts (which are not voidable and voided by the Clearing House pursuant to Part 1), taking into account any of the actions referred to under L (i), (ii) or (iii) above, plus all amounts that were payable but remain unpaid by the Clearing House under the terms of Contracts, excluding, in respect of a Contract where the Defaulter acts as agent (if any), any rights attributable to the Defaulter arising out of the relationship of principal and agent and further excluding any amount included under D , C , M , GFC or SC ; and the Clearing House may assess any one or more elements of such amount A in its discretion.

Note on calculation of the amounts L and A : For the purposes of calculating amounts L and A , the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:

- (x) the price of the Contract or Open Contract Position recorded in the Clearing House's books for the later of: (A) the last date on which a payment in respect of

Variation Margin or Mark-to-Market Margin was successfully and fully made by the Clearing Member to or to the account of the Clearing House; or (B) the last date on which a return of amounts following a Variation Margin or Mark-to-Market Margin call was successfully and fully made by the Clearing House to the Clearing Member or to the account of the Clearing Member; and

(y) the price at which the Contract or Open Contract Position was Transferred, terminated or closed out pursuant to Rules 903 to 905.

D = if the Clearing House so determines at its discretion, the aggregate amount of any sums in respect of a Commodity or Investment delivered, physically settled, to be delivered or to be physically settled under a Contract with the Defaulter or in respect of which cash settlement is to be made as calculated by the Clearing House at its discretion (if payable to the Clearing Member being a positive number and hence set off in the calculation under this Rule 906(a) against any amount *L-A* if that amount is also a positive number or if payable to the Clearing House being a negative number and aggregated in the calculation under this Rule 906(a) with any amount *L-A* if that amount is a positive number), in any case excluding any amount included under *C*, *M*, *GFC* or *SC*.

C = if relevant, any sum owed by or to the Clearing House to or from a recognised investment exchange or another recognised clearing house of which the Defaulter is or was a member, under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the Defaulter chose to participate (if payable to the Clearing Member being a positive number and set off in the calculation under this Rule 906(a) against any amount *L-A-D* if that amount is also a positive number or if payable to the Clearing House being a negative number and aggregated in the calculation under this Rule 906(a) with any amount *L-A-D* if that amount is a positive number).

M = means

- (i) in relation to a net sum calculation for the Proprietary Account of the Defaulter, any property provided by or on behalf of the Defaulter as margin under Rule 502(g), Original Margin, Initial Margin, buyer's security or seller's security (without any double counting) or in satisfaction of such Margin requirements and recorded in the Proprietary Margin Account of the Defaulter; or
- (ii) in relation to a net sum calculation for any Customer Account of the Defaulter (other than a Swap Customer Account of an FCM/BD Clearing Member), any property provided by or on behalf of the Defaulter as margin under Rule 502(g), Original Margin, Initial Margin, buyer's security or seller's security (without any double counting) or in satisfaction of such Margin requirements that is recorded in the related Customer Margin Account of the Defaulter, excluding any Margin that would otherwise fall under amount *M* but that is transferred to a Transferee Clearing Member pursuant to this Part 9, and further excluding, for the avoidance

of doubt, in relation to a Designated CDS Customer Account, the Customer Account Gross-Net Amount and any Surplus Collateral,

- (iii) in relation to a net sum calculation for a Swap Customer Account of an FCM/BD Clearing Member, any property provided by or on behalf of the Defaulter as margin under Rule 502(g), Original Margin, Initial Margin, buyer's security or seller's security (without any double counting) (collectively, "FCM Swap Customer IM") or in satisfaction of such Margin requirements that is recorded in the related Customer Margin Account of the Defaulter, excluding any Margin that would otherwise fall under amount M but that is transferred to a Transferee Clearing Member pursuant to this Part 9 and further excluding, for the avoidance of doubt, any Surplus Collateral, provided that such assets allocated to a particular Customer Swap Portfolio and proceeds thereof shall only be included in M to the extent of obligations to the Clearing House in respect of Open Contract Positions in such Customer Swap Portfolio in accordance with CFTC Rule 22.15, and provided, further, that where an amount payable by the Defaulter as determined in L(i)-(iii) includes a net obligation (after taking into account Variation Margin or Mark-to-Market Margin in accordance with the 'Note on Calculation of the Amounts in L and A ') in respect of Open Contract Positions of the Defaulter in relation to multiple Customer Swap Portfolios, M shall include the FCM Swap Customer IM allocated to each Customer Swap Portfolio to which a corresponding payment or margin obligation to the Clearing House is referable up to the amount of such payment or obligation;

including in any such case under ~~M (i)-or~~, (ii) or (iii) any such Margin transferred to the Clearing House by the Defaulter and any amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee entered into in favour of the Clearing House in satisfaction of such applicable Margin requirements that would, if the Margin was funded, fall under M .

GFC = any property provided by or on behalf of the Defaulter as Guaranty Fund Contributions, which may be applied in connection with the net sum for any Customer Account or the Proprietary Account of the Defaulter at the discretion of the Clearing House regardless of the basis under which any Guaranty Fund Contribution was calculated under Rule 1101(e), provided that the total applied to the Customer Accounts and Proprietary Account of a Defaulter under GFC shall not exceed the total Guaranty Fund Contributions of the Defaulter.

SC =

- (i) in the case of a Defaulter that was a Non-FCM/BD CDS Clearing Member and a CDS Customer Account: any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral or the Customer Account Gross-Net Amount;
- ~~(ii) in the case of a Defaulter that was an FCM/BD CDS Clearing Member and one of its Designated CDS Customer Accounts, such part of any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral or the Customer~~

~~Account Gross Net Amount as is attributable to a particular CDS Sub Account and is available in accordance with Rule 502(i) to meet a loss on that CDS Sub Account;~~

- (ii) ~~(iii)~~ otherwise, any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral,

including, in each of cases (i), and (ii) ~~and (iii)~~, where applicable any such amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee in favour of the Clearing House not falling under *M*, but excluding any Pledged Collateral returned to a Clearing Member or any of its Customers pursuant to Rule 502(i) or amounts not needed that are returned to the letter of credit issuer; or

OA = the aggregate of any amounts not falling under *A*, *D*, *C*, *M*, *GFC* or *SC* standing to the credit of the Defaulter or payable to the Defaulter or any right or claim of the Defaulter against the Clearing House, in any case whether pursuant to these Rules, any Contract or otherwise, including without limitation:

- (i) any available assets that would be recorded in the Proprietary Account but for Rule 906(c); and
- (ii) in the case of a Designated CDS Customer Account for a Non-FCM/BD Clearing Member only: such Guaranty Fund Contributions of non-Defaulters, Clearing House CDS Contributions and CDS Assessment Contributions as may be required to be applied pursuant to Rule 1103 to meet a Gross Margin Shortfall,

but excluding in any case: (A) any Pledged Collateral returned to a Clearing Member or any of its Customers pursuant to Rule 502(i) (B) any Customer Account Gross-Net Amount; (C) any Surplus Collateral; and (D) separate amounts payable pursuant to the final sentence of Rule 906(i).

and

OL = the aggregate of any other amounts not falling under *L* payable by the Defaulter to the Clearing House or any right or claim of the Clearing House against the Defaulter, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any fines payable pursuant to Part 10 and any other amounts payable in respect of any breach by the Defaulter of these Rules in either case not falling under *L*), in any case at the discretion of the Clearing House, provided that any amounts falling within the scope of the indemnity in Rule 905(f) but not falling under *L* shall be allocated to the Proprietary Account regardless of the Contracts or Account to which they relate.

All such amounts specified above must be aggregated, set off and applied in the order set out in the calculation above and in such order as is further required, restricted or limited by Rules 102(q), 906(b) and 1103 and provided further that any amount is only included in respect of the relevant net sum to the extent allowed pursuant to Rule 906(b).

and each such Clearing Member intend and agree that all Pledged Collateral provided to the Clearing House is provided pursuant to a "market charge" for purposes of the Companies Act 1989.

- (h) Any amounts received from a letter of credit issuer in respect of Margin, Surplus Cover or Guaranty Fund Contributions may at the discretion of the Clearing House be returned to the letter of credit issuer and not included in any net sum calculation relating to an Account of a Defaulter, to the extent that such amounts are not needed to cover a loss or shortfall (including any Gross Margin Shortfall), to the extent that the same is permitted pursuant to the terms of the letter of credit in question.
- (i) Without duplication of any other obligation under these Rules, the Clearing House shall be obliged to pay a Defaulter that was a Non-FCM/BD Clearing Member in respect of its Designated CDS Customer Account (such Defaulter acting in respect of such obligation solely in the capacity in which it was acting in respect of such account and not for its own account) an amount equal to the Gross Margin Shortfall (if any) in respect of such Designated CDS Customer Account. Such obligation may be satisfied in whole or in part through payment of a net sum in respect of the relevant Designated CDS Customer Account, and to the extent not so satisfied shall remain payable as a separate amount.

Rule 907 *Administrative matters concerning an Event of Default*

- (a) The Clearing House may co-operate, by the sharing of information and otherwise, with any Governmental Authority, Clearing Organisation, Exchange or Insolvency Practitioner having responsibility for any matter arising out of, or connected with, an Event of Default or the default of a recognised investment exchange or another recognised clearing house.
- (b) The Clearing House will report to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part 9.
- (c) For the avoidance of doubt, nothing in these Rules shall oblige the Clearing House to take any step to recover any asset or amount in the possession of a Defaulter or one of its Customers in connection with an Event of Default.
- (d) Without prejudice to the Clearing House relying on any other information provided to it by a Clearing Member, the Clearing House shall be entitled to rely on the most recent information provided to it in relation to Default Portability Preferences and Non-Transfer Positions (for Non-FCM/BD CDS Clearing Members) and Margin provided to the Clearing House by a Defaulter prior to declaration of an Event of Default, notwithstanding any notice or purported notice to the contrary from a Defaulter, its Insolvency Practitioner or any other Person received by the Clearing House after declaration of an Event of Default. The Clearing House shall have no obligation to enquire of any Customer or other Person as to any Default Portability Preference or Non-Transfer Positions. The rights of the Clearing House to deal with Margin and other Permitted Cover under the default rules shall not be restricted as a consequence of a Defaulter having either entered into any indebtedness with a Customer or having

which may be co-mingled to the extent permitted by the applicable provisions of the Exchange Act and SEC rules and regulations.

- (e) The term "**Clearing House FCM/BD Segregated Account**" means the Clearing House Swap Segregated Account, the Clearing House DCM Segregated Account, the Clearing House SBS Segregated Account or the Clearing House Non-DCM/Swap Account, as the case may be.
- (f) The term "Customer Swap Portfolio" means the portfolio of rights and obligations under Contracts that are registered in the Swap Customer Account of an FCM/BD Clearing Member and that are allocated to a particular Swap Customer in the books and records of the Clearing House in accordance with the Swap Customer Segregation Requirements. With respect to CDS Contracts, the FCM/BD Clearing Member will establish a separate CDS Sub-Account for each Customer Swap Portfolio.

Rule 1603 FCM/BD Contracts

- (a) A Contract that arises under Rule 401 between the Clearing House and an FCM/BD Clearing Member shall be subject to this Part 16, regardless of whether any offsetting Contract between the Clearing House and another Clearing Member is subject to this Part 16. In respect of any Contract between the Clearing House and an FCM/BD Clearing Member, and in respect of other matters relating to such FCM/BD Clearing Member and/or FCM/BD Customer under the Rules, this Part 16 shall govern in the event of any conflict with any other provision of the Rules, and, for the avoidance of doubt, the Procedures, Clearing Membership Agreement or Pledged Collateral Addendum. With respect to an FCM/BD Clearing Member, references in these Rules to such Clearing Member in respect of a Contract recorded in a Customer Account shall be deemed to refer to such FCM/BD Clearing Member acting for the account of and on behalf of one or more FCM/BD Customers in respect of such Contract under the terms of these Rules as set forth in Rule 1603(d).
- (b) Each FCM/BD Clearing Member shall have a Proprietary Account and one or more Customer Accounts in which its Contracts shall be registered. Except as provided herein, references in the Rules to a Customer Account of an FCM/BD Clearing Member or to a "class" of Customer Account shall refer to one or more of the DCM Customer Account, Swap Customer Account, Non-DCM/Swap Customer Account, SBS Customer Account, General Customer Account, as applicable, each such account being of a different "class". Notwithstanding anything to the contrary herein, to the extent that pursuant to a CFTC rule, order or exemption (or a Rule of the Clearing House approved thereunder) it is permissible under Applicable Law for Contracts in U.S. Futures, Swaps and/or Non-DCM/Swaps (and related Margin or Permitted Cover) to be co-mingled in a single class of Customer Account, the Clearing House may permit such co-mingling in such class of Customer Account, and references herein to the relevant Customer Account and FCM/BD Customer shall thereupon be construed accordingly. Without limiting the foregoing, Permitted Co-mingled Contracts shall be treated as Swaps, and not as Non-DCM/Swaps, and the appropriate classes of Customer Account shall be construed accordingly.

obligation or liability in respect of any transaction, agreement or arrangement between an FCM/BD Clearing Member and an FCM/BD Customer. This Rule 1603(j) shall not be deemed to limit the rights, if any, of an FCM/BD Customer as against such FCM/BD Clearing Member in respect of such Open Contract Positions, and payments or other performance thereunder, under Applicable Law or the terms of any agreement between the FCM/BD Clearing Member and such FCM/BD Customer.

- (k) With respect to any Open Contract Position carried by an FCM/BD Clearing Member for a Customer Account, all terms of the position, as carried in the customer account on the books of the FCM/BD Clearing Member, must conform to the terms of the Open Contract Position under the Rules as in effect from time to time (including any changes therein or actions by the Clearing House in relation thereto).
- (l) This Rule 1603 is without prejudice to and shall not restrict or exclude any of the other obligations of Clearing Members under the Rules.
- (m) The Standard Terms shall not apply to FCM/BD Clearing Members.

Rule 1604 *Additional default rules for FCM/BD Clearing Members*

The following provisions constitute default rules for purposes of the Companies Act 1989.

- (a) Any right of the Clearing House pursuant to Rule 902 or Rule 903 to transfer Open Contracts and related Margin (or Permitted Cover in respect thereof) of an FCM/BD Clearing Member that is a Defaulter will be subject to Applicable Law, including without limitation Part 190 of the CFTC Regulations.
- (b) Where an FCM/BD Clearing Member wishes to terminate or close out an Open Contract Position in any class of Customer Account with respect to an FCM/BD Customer because of a default or similar event with respect to that FCM/BD Customer, the relevant FCM/BD Clearing Member must, in accordance with Rule 406 and the Clearing Procedures, either: (i) offset such Open Contract Position against a Contract or Contracts entered into by such FCM/BD Clearing Member for such Customer Account (which may be entered into contemporaneously with a separate Contract or Contracts entered into at the same time for its Proprietary Account) for the specific purpose of liquidating such Customer Account position; or (ii) to the extent permitted by Applicable Law, transfer such Open Contract Position from such Customer Account to its Proprietary Account, whereupon it shall be treated as an Open Contract Position in the Proprietary Account for all purposes under these Rules. Nothing in this Rule 1604(b) is intended to create a condition precedent to any step being taken under any agreement between a Clearing Member and its Customer. However, a Clearing Member shall continue to be liable to the Clearing House in respect of any Contracts until such time as they are offset in accordance with this Rule 1604(b) or otherwise terminated in accordance with the Rules and the Clearing Procedures. For the avoidance of doubt, any Open Contract Position and any such offsetting Contract or Contracts entered into by an FCM/BD Clearing Member for a Customer Account for the specific purpose of liquidating such Open

- (C) transferring Margin (in such amount as the Clearing House may determine) credited to the Customer Margin Account of its FCM/BD Clearing Member to the Customer Margin Account of the Transferee Clearing Member (and, if such a transfer occurs, the Defaulter's obligations to the FCM/BD Customer in respect of such transferred Margin shall be fully discharged).
- (d) In respect of any Contract to which a Defaulter that is or was an FCM/BD Clearing Member and ~~ICE Clear Europe~~ [the Clearing House](#) is or was a party, any net sum certified by the Clearing House pursuant to Rule 905(b) as payable by the Clearing House to the Defaulter in respect of any class of Customer Account of the Defaulter is intended to be treated in accordance with Applicable Laws of the United States of America, including the U.S. Bankruptcy Code and the CEA. With respect to any FCM/BD Clearing Member, the Clearing House and such FCM/BD Clearing Member intend that:
 - (i) for purposes of the relevant provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991:
 - (A) the Clearing House is a 'clearing organization';
 - (B) the Clearing House and each Clearing Member is a 'member';
 - (C) the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts together constitute a 'netting contract' between those parties and include 'security agreements or arrangements or other credit enhancements related to such netting contract';
 - (D) an obligation of a Clearing Member to make a payment to the Clearing House, or of the Clearing House to make a payment to a Clearing Member, subject to a netting agreement, is a 'covered clearing obligation' and a 'covered contractual payment obligation';
 - (E) an entitlement of a Clearing Member to receive a payment from the Clearing House, or of the Clearing House to receive a payment from a Clearing Member, subject to a netting contract, is a 'covered contractual payment entitlement';
 - (F) the amount by which the covered contractual payment entitlements of a Clearing Member or the Clearing House exceed the covered contractual payment obligations of such Clearing Member or the Clearing House after netting under a netting contract is its 'net entitlement'; and
 - (G) the amount by which the covered contractual payment obligations of a Clearing Member or the Clearing House exceed the covered contractual payment entitlements of such Clearing Member or the Clearing House after netting under a netting contract is its 'net obligation';

- (ii) for purposes of the Title 11 of the United States Code (the "U.S. Bankruptcy Code"), each Contract or Open Contract Position is a 'commodity contract' or 'securities contract', as applicable and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'commodity contract' or 'securities contract', as applicable; and
 - (iii) for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, each Open Contract Position is a 'swap agreement' and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'swap agreement'.
- (e) Without limiting Rule 904(e), for purposes of calculating *M* in Rule 906(a) and applying assets to meet the obligations and liabilities of a Defaulter that is an FCM/BD Clearing Member in respect of a Swap Customer Account, and determining any loss or shortfall to the Clearing House upon or following any Event of Default of that Clearing Member under Rule 1103, the Clearing House shall be entitled to rely conclusively on the allocation of Open Contract Positions to Customer Swap Portfolios and the allocation of Margin to such Customer Swap Portfolios, as set forth in the books and records of the Clearing House from time to time in accordance with CFTC Rule 22.15 (absent manifest error by the Clearing House in making such allocation based on accurate information provided to the Clearing House), without need for further enquiry by the Clearing House as to the origin, source or ownership of any such Margin. Without limiting the Clearing House's rights under the preceding sentence, if the Clearing House applies FCM Swap Customer IM or Permitted Cover in respect thereof allocated to a particular Customer Swap Portfolio as permitted hereunder and subsequently determines that such asset was not the property of the relevant Swap Customer of the Defaulter (a "**Reviewed Application**"), the Clearing House shall be entitled, to the extent permitted by Applicable Law, to apply any Guaranty Fund Contribution of the Defaulter remaining after satisfaction of the obligations and liabilities of the Defaulter to reimburse the Clearing House Swap Segregated Account up to the amount of the Reviewed Application. The Clearing House shall have no obligation to rescind or otherwise refund any Reviewed Application or to apply any other assets (including, without limitation, any other assets in the Guaranty Fund, Clearing House Contributions or Assessment Contributions) to any reimbursement pursuant to the immediately preceding sentence.

Rule 1605 *Margin and Segregation Rules*

- (a) An FCM/BD Clearing Member shall require each FCM/BD Customer to provide margin (or permitted cover in respect thereof) (such assets, "**FCM/BD Customer Collateral**") in an amount at least equal to (or, if and to the extent so specified by Circular, greater than) the amount of Margin of each relevant type required on a gross basis by the Clearing

House with respect to the relevant Open Contract Position(s), separately for each relevant class of Customer Account (regardless of whether the FCM/BD Clearing Member is required to provide such Margin to the Clearing House on a gross basis pursuant to Rule 503). Any additional required amount may be specified by the Clearing House in a Circular with reference to a percentage of required Customer Account Margin. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set and same FCM/BD Customer in the same class of Customer Account, but without giving effect to any offset or permitted offset of such Open Contract Positions against Open Contract Positions relating to a different FCM/BD Customer.

- (b) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the DCM Customer Account arising from U.S. Futures ("**FCM/BD U.S. Futures Customer Collateral**"), the Clearing House shall receive and hold such collateral in the Clearing House DCM Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Section 4d(a) and (b) of the CEA and the regulations of the CFTC thereunder. By means of this Rule, the FCM/BD Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under CFTC regulations.
- (c) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the SBS Customer Account arising from SBS ("**FCM/BD SBS Customer Collateral**"), the Clearing House shall receive and hold such collateral in the Clearing House SBS Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with ~~Section~~[Sections](#) 3E(b) ~~and/or 15(c)(3)~~ of the Exchange Act and the applicable rules and regulations of the SEC.
- (d) With respect to FCM/BD Customer Collateral in respect of Contracts registered in the Swap Customer Account arising from Swaps (including for the avoidance of doubt Permitted Co-mingled Contracts) ("**FCM/BD Swap Customer Collateral**")~~:~~
 - (i) An FCM/BD Clearing Member shall receive, hold and use all FCM/BD Swap Customer Collateral only as permitted under CEA Section 4d(f) and the regulations of the CFTC thereunder, including but not limited to Part 22 of the CFTC regulations and any interpretations thereof by the CFTC or its staff (and, to the extent applicable, Securities Exchange Act ~~Section~~[Sections](#) 3E(b) ~~and/or 15(c)(3)~~ and the regulations or any orders of the SEC thereunder) and as further set forth in these Rules and the Procedures (the "**Swap Customer Segregation Requirements**"). The Clearing House shall receive and hold such collateral transferred to the Clearing House in the Clearing House Swap Segregated Account and shall segregate, hold and use all such FCM/BD Swap Customer Collateral as cleared swaps customer property in accordance with the Swap Customer Segregation Requirements. By means of this Rule, FCM/BD Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under the Swap Customer Segregation Requirements.

- (ii) ~~Prior to the effectiveness of the Swap Customer Segregation Requirements, Contracts registered in the Swap Customer Account and related FCM/BD Swap Customer Collateral shall be held in the cleared swaps account class for purposes of Part 190 of the CFTC regulations. The Clearing House shall receive and hold such FCM/BD Swap Customer Collateral transferred to the Clearing House in the Clearing House Swap Segregated Account as customer property separated from the proprietary positions and margin of the FCM/BD Clearing Member and shall treat FCM/BD Swap Customer Collateral as belonging to the FCM/BD Customers of the FCM/BD Clearing Member. Subject to the foregoing, the FCM/BD Clearing Member and the Clearing House shall treat such FCM/BD Swap Customer Collateral in the manner required for segregated customer property with respect to futures contracts under CFTC Rules 1.20-1.30; provided that such customer property shall be accounted for and held separately from, and not in any event commingled with, any such segregated customer property for futures contracts; and provided, further, that such customer property may be commingled by the FCM/BD Clearing Member with customer property segregated or sequestered for purposes of the cleared swaps account class under the rules of other derivatives clearing organisations to the extent such rules are not inconsistent with the requirements hereof. With respect to such Open Contract Positions and related FCM/BD Swap Customer Collateral, the records required to be maintained under Rule 1605(e) will be those that would be required under CFTC regulations for positions subject to segregation under CFTC Rule 1.20 (including pursuant to CFTC Rules 1.32 and 1.36). The provisions of this Rule 1605(d)(ii) shall apply equally to any FCM/BD that is a Customer of a Clearing Member but clears Contracts registered in the Swap Customer Account through an FCM/BD Clearing Member on behalf of the customers of such FCM/BD.~~ Without prejudice to clause (i) of this subsection, Open Contract Positions in any Swap Customer Account and related FCM/BD Swap Customer Collateral (or, solely to the extent permitted by applicable rules, orders or exemptions of the CFTC and the SEC, Contracts or Open Contract Positions that are security-based swaps) shall be part of the cleared swaps account class for purposes of Part 190 of the CFTC regulations.
- (iii) Property credited to or recorded in the Clearing House Swap Segregated Account may only be applied in respect of Contracts or Open Contract Positions in the Swap Customer Account as provided in these Rules and only to the extent permitted by the Swap Customer Segregation Requirements (including CFTC Rule 22.15). For the avoidance of doubt, following an Event of Default with respect to an FCM Clearing Member, property credited to or recorded in the Clearing House Swap Segregated Account that is not eligible to be applied pursuant to the preceding sentence will be returned to the FCM Clearing Member (or its trustee or representative) pursuant to the Pledged Collateral Addendum and Rule 502(i).
- (e) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the Non-DCM/Swap Customer Account arising from Non-DCM/Swap Transactions (other than Permitted Co-mingled Contracts) ("FCM/BD

Other Transaction Collateral"), the Clearing House shall hold such FCM/BD Customer Collateral as constituting the foreign futures or foreign options secured amount subject to the requirements of CFTC Rule 30.7. By means of this Rule, the FCM/BD Clearing Member shall have satisfied the requirement to obtain an acknowledgement letter of such status from the Clearing House under CFTC regulations.

- (f) In connection with any Open Contract Position and related FCM/BD U.S. Futures Customer Collateral, FCM/BD SBS Customer Collateral, FCM/BD Swap Customer Collateral or FCM/BD Other Transaction Collateral provided to the Clearing House, the FCM/BD Clearing Member shall keep and maintain written records with respect thereto as required under Applicable Law. Each FCM/BD Clearing Member shall provide such records to the Clearing House upon request and upon such other basis, if any, as may be provided in the Procedures.
- (g) For the avoidance of doubt, the acknowledgement in the first sentence of Rule 505 and the first sentence of clause 2.11 of a Pledged Collateral Addendum are intended to apply in relation to Pledged Collateral to the extent that the characterisation of any Pledged Collateral or the terms of a Pledged Collateral Addendum fall to be considered under the laws of any member state of the European Economic Area that has implemented Directive 2002/47/EC. For the avoidance of doubt, neither Rule 505 nor clause 2.11 of a Pledged Collateral Addendum are intended to affect any of: (i) the choice of law of the parties to any Pledged Collateral Addendum in respect of such addendum; (ii) the choice of law under Rule 1608; (iii) the location or governing law of any account in which Pledged Collateral is held by the Clearing House; (iv) the location or governing law of any account from or to which assets intended to become or which were previously Pledged Collateral are transferred to or from the Clearing House; (v) the existence or nature of any place of business, establishment or office in any jurisdiction of any Person; or (vi) the principal place of business or centre of main interests of any FCM/BD Clearing Member or any of its Customers or Affiliates.
- (h) Notwithstanding anything to the contrary in Parts 3 or 5 of these Rules, Margin shall be calculated, called and returned in respect of Contracts recorded in the Swap Customer Account of an FCM/BD Clearing Member as follows:
- (i) The Clearing House shall calculate the amount of required FCM Swap Customer IM separately for each Customer Swap Portfolio. The Clearing House shall determine an amount for each Customer Swap Portfolio at the time of each FCM Swap Customer IM calculation equal to the amount of required FCM Swap Customer IM for such Customer Swap Portfolio minus the value of the Margin (or Permitted Cover in respect thereof) then standing to the credit of the Swap Customer Account that is allocated by the Clearing House to such Customer Swap Portfolio as FCM Swap Customer IM (a "Customer Swap Portfolio Initial Margin Call/Return Amount").
- (A) With respect to each Customer Swap Portfolio Initial Margin Call/Return Amount applicable to the Clearing Member's Swap Customer Account that is a positive number, the Clearing House shall call such Clearing

Member for an amount of FCM Swap Customer IM, to be transferred in accordance with Parts 3 and 5 of the Rules, equal to such Customer Swap Portfolio Initial Margin Call/Return Amount.

(B) following the settlement in full of all Margin due to be transferred to the Clearing House pursuant to Rule 1605(h)(i)(A) above, the Clearing House will make available for return to the Clearing Member, in accordance with Parts 3 and 5 of the Rules, for each Customer Swap Portfolio with a Customer Swap Portfolio Initial Margin Call/Return Amount that is a negative number, Margin (or Permitted Cover in lieu thereof) in an amount as close as reasonably practicable to (but not to exceed) the absolute value of such Customer Swap Portfolio Initial Margin/Call Return Amount;

(ii) The Clearing House shall calculate Mark-to-Market Margin requirements for the Swap Customer Account of an FCM/BD Clearing Member on a net basis across all Customer Swap Portfolios in the Swap Customer Account, in accordance with Parts 3 and 5 of the Rules.

(iii) Notwithstanding anything to the contrary in the Rules (including Rule 302), amounts required to be transferred between an FCM/BD Clearing Member and the Clearing House in respect of Margin pursuant to any of Rules 1605(h)(i)(A)-(B) and/or (ii) above shall not be netted or offset, except to the extent such netting or offset may be permitted by Applicable Law.

(i) The Clearing House will not accept the deposit of FCM/BD Swap Customer Collateral from an FCM/BD Clearing Member in respect of Contracts or Open Contract Positions 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.

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.
- (b) The Clearing House shall have no duties or responsibilities with respect to any Clearing House FCM/BD Segregated Account except as expressly set forth in these Rules and ~~applicable law~~ [Applicable Law](#). The Clearing House shall have no obligation to monitor any requirements set forth in any agreement between an FCM/BD Clearing Member and an FCM/BD Customer. The Clearing House shall have no responsibility for the compliance by any FCM/BD Clearing Member or FCM/BD Customer with its obligations under any such agreement.
- (c) Each FCM/BD Customer for which an FCM/BD Clearing Member clears a Swap must be an "eligible contract participant" as defined in the CEA.
- (d) Each FCM/BD Customer whose transactions are cleared by an FCM/BD Clearing Member with the Clearing House will be deemed to have consented to:
 - (i) the Clearing House having the right to obtain information in relation to transactions from any Trade Processing Platform, Deriv/SERV or any other trade information or data depository so as to enable the Clearing House to identify which Contracts and Margin or Permitted Cover between the Clearing House and FCM/BD Clearing Member relate to such transactions;
 - (ii) the FCM/BD Clearing Member making any disclosures in connection with FCM/BD Customer and transactions as are required by the Rules or CDS Procedures or as required by Applicable Law;
 - (iii) disclosures to, use by and disclosures by the Clearing House of information relating to the FCM/BD Customer (including the Personal Data of its Data Subjects) pursuant to Rule 106;
 - (iv) submissions of and other actions relating to data concerning such transactions by the Clearing House pursuant to the Rules and the Procedures; and
 - (v) the operation of Rule 1605(d)(ii).
- (e) Each FCM/BD Customer whose transactions are cleared by an FCM/BD Clearing Member with the Clearing House will be deemed to have consented to its FCM/BD Clearing Member entering into Contracts arising under Rule 404(c)(i) on its behalf.