

## **Annex 7**





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

## **Clearing Rules**

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## **Part 1 General Provisions**

### **Rule 101 Definitions**

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

The term "**Affected Party**" means a Person prevented, hindered or delayed by a Force Majeure Event.

The term "**Affiliated Person**" means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person.

The term "**Appeals Panel**" means the panel at which an appeal of a decision of a Disciplinary Panel is heard pursuant to Rule 1005.

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

The term "**Approved Financial Institution**" means a credit institution, bank, trust company or other institution which is an "institution" as defined in the Settlement Finality Regulations and which has been designated as an approved financial institution by the Clearing House.

The term "**Assessment Amount**" means the total amount of all Assessment Contributions levied by the Clearing House on Clearing Members pursuant to Rule 1103(g) and Rule 1105 in respect of an Event of Default.

The term "**Assessment Contribution**" has the meaning set out in Rule 1105.

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

The term "**Board**" means the board of Directors or any other body established thereunder (whether called a board, a committee or otherwise) of the Clearing House.

The term "**Business Day**" means a day on which the Clearing House is open for business or, in relation to deliveries, has the meaning given in the Procedures or, in relation to certain Contract Terms, has the meaning given in the Procedures or ICE Futures Europe Rules.

The term "**Buyer**" means, in relation to deliveries under Part 7, the Clearing Member or the Clearing House, whichever is obliged to receive delivery of a Commodity (whether itself or through another Person).

The term "**Buying Clearing Member**" means: (a) the Clearing Member that was, before formation of a Contract, party to the corresponding Transaction as buyer; (b) where a Clearing Member's Customer is a party to the corresponding Transaction as buyer, the Clearing Member that provides clearing services in relation to clearing at the Clearing House for that Customer (or if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer in relation to such Transaction); or (c) where one Clearing Member that would be the Buying Clearing Member in accordance with (a) or (b) above has allocated a Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Transaction is allocated.

The term "**Call**" means an Option pursuant to which a Person with a Long position has the right to buy a Future or Futures from a Person with a Short position at the Strike Price and at a specified time.

The term "**Capital**" has the same meaning as the term "own funds", as such term is defined in the Banking Consolidation Directive and applicable on a stand-alone (non-consolidated) basis and subject to the limits and deductions set out therein and, in relation to matters reserved for member states, as implemented in the United Kingdom, whether or not the relevant Clearing Member is subject to the Banking Consolidation Directive or the supervision of the FSA and such other classes of Capital as are permitted at the Clearing House's discretion pursuant to the Procedures.

The term "**CFTC**" means the Commodity Futures Trading Commission of the United States of America, or any successor thereto.

The term "**Chairman**" means the chairman of the Board from time to time.

The term "**Circular**" means a publication issued by the Clearing House for the attention of all Clearing Members and posted on the Clearing House's website in accordance with Rule 109(f).

The term "**Clearing**" means the central counterparty, risk, Open Contract Position, Margin, settlement, delivery, administrative, transaction data and other functions of the Clearing House pursuant to these Rules.

The term "**Clearing House**" means ICE Clear Europe Limited, a company registered in England & Wales with registered number 06219884.

The term "**Clearing House Account**" means an account of the Clearing House at an Approved Financial Institution.

The term "**Clearing Member**" means a member of the Clearing House.

The term "**Clearing Membership Agreement**" means an agreement between the Clearing House and a Clearing Member under which, *inter alia*, the Clearing House agrees to provide Clearing in respect of Contracts to that Clearing Member and that Clearing Member agrees to be bound by and subject to these Rules.

The term "**Clearing Organisation**" means any clearing house duly authorised, regulated, recognised or licensed under Applicable Laws in any jurisdiction, including any recognised clearing house, recognised overseas clearing house, derivatives clearing organisation or similar entity.

The term "**Clearing Processing System**" means the clearing processing system used by the Clearing House and any Market from time to time.

The term "**Commodity**" means any kind of property which is capable of being delivered pursuant to a Contract.

The term "**Complaints Procedures**" means the complaints procedures of the Clearing House from time to time.

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

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

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

The term "**Contract Terms**" means all the terms and conditions of a Contract, as applicable, in: (i) the general conditions set out in the Procedures; (ii) (in relation to ICE Futures Europe Contracts) the ICE Futures Europe Rules; (iii) (in relation to ICE OTC Contracts) the specific standard terms and eligibility criteria in the Procedures for the class of Contract involved and the participant agreement between the Clearing Member and ICE Inc.; and (iv) (except in relation to Contracts which are settled only in cash) if such Contract becomes deliverable, the relevant delivery Procedures for the class of Contract and ICE Futures Rules.

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

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

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

The term "**Customer**" means a Person who is a client or customer of a Clearing Member.

The term "**Customer Account**" means an account (if any) with the Clearing House opened in the name of a Clearing Member relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Customers (whose transactions the Clearing Member requests be recorded in the Customer Account) and in which such Contracts are recorded and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers.

The term "**Default Notice**" means a notice issued by the Clearing House under Rule 901(c).

The term "**Defaulter**" means a Person in respect of whom a Default Notice has been issued.

The term "**Delivery Facility**" means any Person or facility used for the delivery of Commodities (excluding Transferors and Transferees).

The term "**Director**" means a director of the Clearing House.

The term "**Disciplinary Panel**" means a disciplinary panel established pursuant to Rule 1003.

The term "**Disclosed Principal Member**" means, where a Clearing Member acts as agent for a disclosed principal in respect of its clearing business and such principal has been admitted by the Clearing House as a Disclosed Principal Member, that principal.

The term "**Dispute**" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with these Rules or any Contract, including any dispute as to the construction, validity, interpretation, enforceability or breach of these Rules or any Contract.

The term "**EFPs**" means 'exchange for physicals' under the ICE Futures Europe Rules.

The term "**EFSSs**" means 'exchange for swaps' under the ICE Futures Europe Rules.

The term "**Eligible Complaint**" means a complaint which is eligible pursuant to the Complaints Procedures.

The term "**Eligible Currencies**" means USD, EUR, GBP and such other currencies as are specified as such by the Clearing House from time to time.

The term "**Encumbrance**" means any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing.

The term "**EUR**" means the euro, or any other lawful currency that is a successor to it.

The term "**Event of Default**" has the meaning set out in Rule 901 and the term "**Default**" shall be construed accordingly.

The term "**Exchange**" means any exchange or similar body duly authorised, regulated, recognised or licensed (to the extent necessary) under Applicable Laws in any jurisdiction, including, but not limited to, any recognised investment exchange, recognised overseas investment exchange, designated investment exchange, designated contract market, exempt commercial market, regulated market, alternative trading system, multilateral trading facility or similar entity.

The term "**Financial Emergency**" means, with respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member is not or is likely not to be, in either case determined at the discretion of the Clearing House, adequate for such Clearing Member to meet its obligations (including, without limitation, its obligations to comply with these Rules) or to engage in business, or is such that it would not be in the best interests of the Clearing House or the marketplace for such Clearing Member to continue to be a Clearing Member.

The term "**Financial Indebtedness**" means any indebtedness for or in respect of: (a) monies borrowed; (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with applicable accounting standards, be treated as a finance or capital lease; (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis); (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or

price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account) (excluding Contracts); (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in (a) to (h) above.

The term "**Force Majeure Event**" means any occurrence outside the control of the Clearing House or the relevant Clearing Member, as applicable, which hinders or prevents the performance in whole or in part of any of its obligations hereunder (other than an obligation to make payments), including, but not limited to, fire, flood, storm, earthquake, explosion, war, hostilities, accidents howsoever caused, strike, labour dispute, lockout, work to rule or other industrial dispute, lack of energy supply, criminal action, terrorist action, civil unrest, embargoes, acts of God, acts of a public enemy, unavailability of computer or data processing facilities, the actions or omissions of third Persons (including, without limitation, Delivery Facilities, Approved Financial Institutions, bank or electronic transfer systems, Exchanges, Clearing Organisations, Governmental Authorities and Regulatory Authorities, but excluding the Clearing House in the case of a Force Majeure Event affecting the Clearing House and a Clearing Member, its Customers, Transferors and Transferees in the case of a Force Majeure Event affecting a Clearing Member); or alternatively and to the exclusion of the foregoing, in relation to delivery of any Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that Contract under the Contract Terms or Market Rules.

The term "**FSA**" means the UK's Financial Services Authority or any successor entity.

The term "**FSA Rules**" means all rules, requirements, directions, guidance, examples, waivers and other similar materials published or otherwise made by the FSA from time to time.

The term "**FSMA**" means the UK's Financial Services and Markets Act 2000.

The term "**Future**" means a Contract subject to Clearing by the Clearing House that is a 'future' or 'contract for differences etc.' under articles 84 or 85 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**GBP**" means the lawful currency from time to time of the United Kingdom.

The term "**Governmental Authority**" means any Regulatory Authority and any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction.

The term "**Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11.

The term "**Guaranty Fund Contribution**" means a contribution of a Clearing Member to the Guaranty Fund.

The term "**Guaranty Fund Quarter**" means a three-month period for which the total amount of Guaranty Fund Contributions is fixed (subject to any termination or suspension of any Clearing Members' membership, new Clearing Members making Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11).

The term "**Guidance**" means guidance issued by the Clearing House pursuant to Rule 109(e).

The term "**HM Treasury**" means Her Majesty's Treasury in the UK and any successor thereto.

The term "**ICE Futures Europe**" means ICE Futures Europe (a company registered in England and Wales with registration number 01528617) and the recognised investment exchange (as defined in the FSMA) known as and operated by ICE Futures Europe.

The term "**ICE Futures Europe Block Contract**" means a Contract resulting from an ICE Futures Europe Block Transaction.

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

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

The term "**ICE Futures Europe Contract**" means an ICE Futures Europe Block Contract or an ICE Futures Europe Matched Contract.

The term "**ICE Futures Europe Matched Contract**" means a Contract resulting from an ICE Futures Europe Matched Transaction.

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

The term "**ICE Futures Europe Rules**" means the rules of ICE Futures Europe and, except when a particular rule is cross-referenced herein, has the same meaning as that given to the term "*Regulations*" in the regulations of ICE Futures Europe.

The term "**ICE Futures Europe Transaction**" means an ICE Futures Europe Matched Transaction or an ICE Futures Europe Block Transaction.

The term "**ICE Group**" means the Clearing House and all its Affiliated Persons.

The term "**ICE Inc.**" means IntercontinentalExchange, Inc., a company incorporated in Delaware with registered file number of 2497808.

The term "**ICE OTC**" means the exempt commercial market operated by ICE Inc.

The term "**ICE OTC Block Contract**" means a Contract resulting from an ICE OTC Block Transaction.

The term "**ICE OTC Block Transaction**" means a transaction reported through ICE OTC without a trade having been matched by ICE OTC.

The term "**ICE OTC Contract**" means an ICE OTC Matched Contract or an ICE OTC Block Contract.

The term "**ICE OTC Matched Contract**" means a Contract resulting from an ICE OTC Matched Transaction.

The term "**ICE OTC Matched Transaction**" means a transaction that occurs or occurred on ICE OTC in accordance with applicable ICE OTC Participant Agreements.

The term "**ICE OTC Participant**" means a Clearing Member that has entered into an ICE OTC Participant Agreement.

The term "**ICE OTC Participant Agreement**" means an agreement between ICE Inc. and an ICE OTC Participant relating to the ICE OTC Participant's access to ICE OTC.

The term "**ICE OTC Transaction**" means an ICE OTC Matched Transaction or an ICE OTC Block Transaction.

The term "**Insolvency**" means, in relation to any Person: a bankruptcy or winding-up petition being presented; a bankruptcy order being made; a voluntary arrangement being approved; an Insolvency Practitioner being appointed or petition or order being made for such an appointment; a composition or scheme of arrangement being approved by a court or other Governmental Authority; an assignment, compromise or composition being made or approved for the benefit of any creditors or significant creditor; an order being made or resolution being passed for winding up; dissolution; the striking off of that Person's name from a register of companies or other corporate bodies; a distress process being levied or enforced or served upon or against property of that Person; a trust deed granted by it becoming a protected trust deed (where the terms 'trust deed' and 'protected trust deed' are construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985); or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, change of Control or merger notified to the Clearing House in accordance with Rule 204(a)(i)).

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

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

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

by the Clearing House pursuant to Rule 104; and the terms "**Invoiced Back**", "**Invoicing Back**" and other similar expressions shall be construed accordingly.

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

The term "**LCIA Rules**" means the arbitration rules of the London Court of International Arbitration.

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

The term "**Margin**" means Original Margin and Variation Margin.

The term "**Market**" means ICE Futures Europe, ICE OTC and any other market for which the Clearing House provides or may provide Clearing services.

The term "**Market Delivery Settlement Price**" in respect of a Set of Contracts or a Contract, means the delivery or cash settlement price determined pursuant to Rule 701.

The term "**Market Rules**" means the rules, regulations, procedures of, and agreements governing, a Market, including the ICE Futures Europe Rules and ICE OTC Participant Agreements and the procedures of each of ICE Futures Europe and ICE Inc.

The term "**Monetary Default**" means a Clearing Member failing to deposit with, or pay to, the Clearing House in full any Margin, Guaranty Fund Contribution, amount due under or in connection with any Contract or other amount due to the Clearing House or required by or pursuant to Market Rules.

The term "**Nominated Account**" means a Nominated Customer Account or a Nominated Proprietary Account.

The term "**Nominated Customer Account**" means an account (if any) of a Clearing Member at an Approved Financial Institution recognised by the Clearing House for administrative convenience only and used by the Clearing Member for the business of its segregated Customers.

The term "**Nominated Proprietary Account**" means an account of a Clearing Member at an Approved Financial Institution that is not a Nominated Customer Account.

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

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

(a) *Contract Position* means:

- (i) in relation to a Proprietary Account for Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the number that equals the netted sum of buy and sell obligations pursuant to those Contracts;

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

in any case as calculated by the Clearing House from time to time based on data received by the Clearing House in respect of Contracts entered into by the Clearing Member up to the close of business on the immediately preceding Business Day (or such other period determined by the Clearing House at its discretion); and

- (b) *Net Amount Position* means the price at which the Open Contract Position is recorded on the Clearing House's books based on Settlement Prices for each Contract.

The term "**Opening Days**" means the days upon which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Opening Hours**" means the hours during which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Option**" means a Contract subject to Clearing by the Clearing House that is an 'option' under article 83 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**Original Margin**" means the Permitted Cover required to be provided to the Clearing House as security for the obligations of a Clearing Member pursuant to Part 5.

The term "**Permitted Cover**" means assets or cash determined by the Clearing House as permissible for Margin and Guaranty Fund Contributions, including cash in Eligible Currencies.

The term "**Person**" means any individual, partnership, firm, body corporate, association, trust, unincorporated organisation or other entity.

The term "**Position Holder**" has the meaning set out in Rule 407.

The term "**Position Limit**" of any Clearing Member means the limit(s) on Open Contract Positions established by the Clearing House pursuant to Rule 601.

The term "**President**" means the president of the Clearing House from time to time.

The term "**Procedures**" means the procedures of the Clearing House from time to time, as amended pursuant to Rule 109(d).

The term "**Proprietary Account**" means an account with the Clearing House, which is not a Customer Account, opened in the name of a Clearing Member in which Contracts made by the Clearing Member are recorded (whether directly or indirectly) and to which monies in respect of such Contracts are credited and debited, which may be divided for administrative convenience only into sub-accounts.

The term "**Put**" means an Option pursuant to which the Person with a Long position has the right to sell a Future or Futures to the Person with a Short position at the Strike Price and at a specified time.

The term "**Reference Price**" in respect of a Set of Options or an Option, means the reference price determined by the Clearing House on the basis of data provided by the relevant Market or otherwise pursuant to Rule 802.

The term "**Regulatory Authority**" means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, Exchanges or Clearing Organisations (including, without limitation, the FSA, any Person given powers under the FSMA, the Bank of England, HM Treasury, the OFT, the CFTC and the SEC).

The term "**Representative**" means any Person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person, including without limitation any director, partner, officer, executive, employee, Affiliate, Customer, contractor or agent of that other Person.

The term "**Rule Change**" means any amendment, alteration, restatement, addition, deletion or other change to the Rules made in accordance with Rule 109.

The term "**Rules**" means these rules, together with the Procedures, as interpreted in accordance with Guidance and Circulars.

The term "**SEC**" means the Securities and Exchange Commission of the United States of America, or any successor thereto.

The term "**Seller**" means, in relation to deliveries under Part 7, the Clearing Member or the Clearing House, whichever is obliged to make delivery of a Commodity (whether itself or through another Person).

The term "**Selling Clearing Member**" means: (a) the Clearing Member that was, before formation of a Contract for Clearing, party to the corresponding Transaction as seller; or (b) where a Clearing Member's Customer is party to the corresponding Transaction as seller, the Clearing Member that provides clearing services in relation to Clearing at the Clearing House for that Customer (or if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer in relation to such Transaction); or (c) where one Clearing Member that would be a Selling Clearing Member in accordance with (a) or (b) above has allocated a Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Transaction is allocated.

The term "**Set**" means:

(a) for Futures Contracts: a set or class of Contracts that are identical as to their terms (including the Underlying to which such Contract relates and contract date; but excluding any amount paid or to be paid for entry into the Contract and any amount paid or to be paid in respect of settlement or delivery of a Contract); and

(b) for Options Contracts: a set of Contracts that are identical as to their terms (including the Investment to which such Contracts relate, contract date and strike price; but excluding any amount paid or to be paid for entry into or writing of a Contract and any amount paid or to be paid in respect of settlement).

The term "**Settlement Finality Regulations**" means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

The term "**Settlement Price**" means the settlement price for any Contract as determined in accordance with the ICE Futures Europe Rules (for Contracts traded on ICE Futures Europe) or by the Clearing House in coordination with ICE Inc. (for Contracts traded on ICE OTC); except that if on any day a Contract ceases to be traded, then the Clearing House may treat as the Settlement Price for such Contract on such day a price determined by the Clearing House at its discretion (or by the relevant Market and accepted by the Clearing House at its discretion), as reflecting the fair market value of such Contract as of the close of trading in such Contract on such day.

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 "**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 "**Termination Date**" means the date on which a Clearing Member's membership of the Clearing House terminates.

The term "**Transaction**" means an ICE Futures Europe Transaction or an ICE OTC Transaction.

The term "**Transaction Rights or Obligations**" means any rights, liabilities or obligations of a Clearing Member relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than a Customer of the Clearing Member in relation to the Transaction in question.

The term "**Transferee**" means a Person nominated by a Buyer to whom a transfer or delivery is to be made under a Contract and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

The term "**Transferor**" means a Person nominated by a Seller by whom a transfer or delivery is to be made under a Contract and includes reference to the Seller where transfer or delivery is to be made by the Seller.

The term "**Tribunal**" means an arbitral tribunal established under Rule 117.

The term "**Underlying**" means any kind of property, currency, document, title, right, investment, interest, index or other matter to which a Contract relates, including a Commodity.

The term "**USD**" means the lawful currency from time to time of the United States of America.

The term "**Variation Margin**" means the cash required to be provided to the Clearing House by Clearing Members in respect of Contracts by reference to the difference between the contract value of such Contracts and the contract value referable to the Settlement Price; and amounts due to the Clearing House from a Clearing Member or to a Clearing Member from the Clearing House, as the case may be, arising out of settlement of a Contract or Contracts.

The term "**Withdrawal Date**" means, if at any time the Clearing House decides to terminate its services, either generally or in relation to a significant part of its business or certain categories of Contract, the date on which that termination will take effect.

#### ***Rule 102 Interpretation***

- (a) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.
- (b) References to any rules or any agreement are references to such rules or agreement as amended or restated from time to time, provided that such amendments or restatements are made in accordance with these Rules.
- (c) The Interpretation Act 1978 shall apply to these Rules in the same way as it applies to an enactment.
- (d) When a reference is made in these Rules to a rule, part, paragraph or procedure, such reference is to a Rule, Part, paragraph, Procedure of, to or made under these Rules, unless otherwise indicated.
- (e) The headings in these Rules are for reference purposes only and do not affect in any way the meaning or interpretation of these Rules.
- (f) To the extent there is any conflict between any of the provisions of these Rules, the Procedures (including all exhibits, attachments and appendices thereto), any Guidance or Circular or between any of the foregoing, the relevant provisions of these Rules, the Procedures, the Guidance or the Circular (in that order of precedence) shall prevail, control, govern and be binding upon the parties.
- (g) To the extent there is any conflict between any of the provisions of these Rules and any of the provisions of any Market Rules, the provisions of these Rules shall prevail

except in the case of Contracts traded on ICE Futures Europe in relation to those aspects of the ICE Futures Europe Rules containing Contract Terms only.

- (h) All references to timings or times of day are to London (UK) times, unless indicated otherwise. Business hours shall occur only on Business Days and shall be construed accordingly.
- (i) All references to "tax" shall include, without limitation, any tax, levy, impost, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying the same).
- (j) Reference to the "conduct" of a Clearing Member includes any act, omission, conduct or behaviour in relation to the Rules. For the purposes of determining a Clearing Member's liability for any conduct (referred to in Rule 111 as a "disciplinary matter"), a Clearing Member shall be responsible for all conduct of that Clearing Member's Representatives, including conduct of a Clearing Member's Customer and such Customer's clients, as if that conduct were the conduct of the Clearing Member itself; but notwithstanding the attribution of such conduct to the Clearing Member, the Representative responsible for such conduct (where relevant) may also be liable to be sanctioned for their conduct through sanctions imposed on the Clearing Member or otherwise.
- (k) Any capitalised term used in these Rules that is not defined in Rule 101 or elsewhere herein shall have the meaning given to it (in order of priority) in the Procedures, the Clearing House's standard form Clearing Membership Agreement, the ICE Futures Europe Rules and ICE Inc.'s standard form ICE OTC Participant Agreement.
- (l) Each of the Rules shall, unless the context otherwise requires, be construed as an independent provision and shall be in addition and without prejudice to any other provision of the Rules.
- (m) If any provision of these Rules (or part of any provision) is found by any Court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Rules, and the validity, legality or enforceability of the other provisions of these Rules shall not be affected.
- (n) These Rules, together with the applicable Clearing Membership Agreement and other documents given contractual force pursuant to these Rules, form a contract between the Clearing House and each Clearing Member. All obligations of the Clearing House hereunder are solely to Clearing Members. No Person other than the Clearing House (such as any of its service providers) has any obligation to Clearing Members pursuant to these Rules. No Person who is not a Clearing Member shall have any right pursuant to the Contract (Rights of Third Parties) Act 1999 to enforce any provision of these Rules.
- (o) Any matter or right stated to be in, of or at the Clearing House's discretion shall be subject to the Clearing House's sole, unfettered and absolute discretion and such discretion may be exercised at any time. Where there is a provision that the Clearing House (or its Directors, officers or committees) may make further directions upon or in relation to the operation of a Rule or may make or authorise any arrangement,

direction or procedure thereunder, the Clearing House may make such direction or make or authorise such arrangement or procedure in relation to or under the whole or any part of the Rule and may make or authorise different directions, arrangements or procedures in relation to different Clearing Members and may make or authorise such directions, arrangements or procedures generally or in relation to a particular Clearing Member or particular occasion and in all cases subject to such conditions as it may think fit. Any action taken at the discretion of the Clearing House may not be challenged by a Clearing Member (subject to the requirements of Rule 111(c) and the right of the Clearing Member to make a complaint pursuant to the Procedures and Part 10).

- (p) Without prejudice to the requirements of any Applicable Laws relating to clients' money made by the FSA under sections 138 and 139 of the FSMA and notwithstanding any other provision of these Rules, nothing in these Rules shall have the effect of requiring or implying that any Original Margin or other amounts deposited in relation to a Clearing Member or Defaulter's Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Proprietary Account or *vice versa* (which restriction, for the avoidance of doubt, shall not apply to any Guaranty Fund Contribution or Assessment Contribution).
- (q) The Rules shall at all times be observed, interpreted and given effect in the manner most conducive to the promotion and maintenance of:
  - (i) recognition of the Clearing House as a recognised clearing house under the FSMA and any other legal or regulatory status it has from time to time under any other Applicable Law;
  - (ii) the good reputation of the Clearing House (and Clearing Members);
  - (iii) high standards of integrity and fair dealing in accordance with FSA Rules; and
  - (iv) proper protection for all Persons interested in the performance of Contracts.
- (r) These Rules and each Contract shall be governed by and construed in accordance with the laws of England and Wales.

**Rule 103      *Delay in performance by the Clearing House***

Subject to the provisions of the Contract Terms relating to deliveries, where an obligation of the Clearing House must be performed immediately, promptly or by or prior to a specified time or date but is not so performed, the Clearing House shall not be in breach of these Rules if, having used all reasonable endeavours to perform such obligation by such specified time or date, it performs the relevant obligation promptly after such specified time or date.

**Rule 104      *Invoicing Back and Specification of Terms***

- (a) The Clearing House shall have at all times the right, at its discretion, in consultation with the relevant Market, to Invoice Back a Contract, including a Contract that is subject to delivery or tender.

- (b) The Clearing House shall have at all times the right, at its discretion, in consultation with the relevant Market, to specify or over-ride the price or other terms of any Contract or Transaction.
- (c) Except in the case of manifest error, negligence or fraud, any Invoicing Back, specification or over-riding by the Clearing House shall be final and binding for the purposes of these Rules and not be subject to challenge by any Person under these Rules or otherwise.
- (d) Where the Clearing House deems it necessary to exercise its powers under paragraph (a) or (b) above, it will do so in good faith and in accordance with Rule 102(q).
- (e) The Clearing House will not exercise its powers under paragraph (a) or (b) to avoid or amend the terms of any Contract to which a Defaulter is party unless there is an objective justification for it doing so and such an approach is applied objectively.

**Rule 105      *Termination***

- (a) If at any time the Clearing House decides to cease acting as a clearing house, either generally, in relation to a particular Exchange or in relation to a class of Contracts, it shall give all Clearing Members advanced notice of the proposed Withdrawal Date by Circular. In the event of a complete cessation of services or of services in relation to a particular Exchange, at least four months' notice shall be necessary. In any other event for which there is a Withdrawal Date, at least one month's notice shall be necessary. The Clearing House shall be entitled to postpone any such Withdrawal Date, generally or in respect of any individual Clearing Member, Exchange or class of Contract.
- (b) If, at any Withdrawal Date, any affected Contracts have not been finally settled, the Clearing House shall be entitled to liquidate any or all such Contracts and require any such Contracts to be cash settled on terms specified by the Clearing House in accordance with Rule 104.
- (c) Rule 209(d) and Rule 209(e) shall apply, either in relation to the Clearing House's services generally or the Contracts in question, as applicable, in the event of any termination under this Rule 105.

**Rule 106      *Confidentiality and Information***

- (a) All information received or held by the Clearing House concerning past or current positions carried by the Clearing House or any other Clearing Organisation for a Clearing Member, or concerning Margin payments between the Clearing House or any other Clearing Organisation and a Clearing Member or concerning deliveries made by or to a Clearing Member and any financial statements filed with the Clearing House by any Clearing Member shall be held in confidence by the Clearing House and shall not be made known to any other Person except where disclosed, subject to such terms and conditions as the Clearing House may from time to time deem appropriate:
  - (i) with the written consent of the Clearing Member involved;

- (ii) to a Regulatory Authority or Governmental Authority where a request is formally made to the Clearing House by or on behalf of the same or pursuant to Applicable Laws;
  - (iii) pursuant to an order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Law;
  - (iv) to any member of the ICE Group, any Exchange or Clearing Organisation and any of their or the Clearing House's Representatives, Delivery Facilities, auditors, advisers or lawyers including (without limitation) for audit, compliance, making or taking delivery, market surveillance or disciplinary purposes, for the purposes of an arbitration pursuant to Rule 117 or any proceedings in support of such an arbitration, or in relation to any possible or actual Event of Default or the termination or suspension of any clearing membership;
  - (v) to any Person in the business of providing data processing or similar services for the purposes of performing computations or analysis, or of preparing reports or records, for the Clearing House;
  - (vi) to any Person who has provided or is considering entering into a loan, insurance policy, guarantee or other financial arrangement with the Clearing House;
  - (vii) to the Secretary of State, any Insolvency Practitioner and any other authority or body having responsibility for any matter arising out of or connected with an Event of Default;
  - (viii) to any Person or to the public as a result of its complaints procedure or disciplinary proceedings;
  - (ix) to any Person if the information comes into the public domain, other than as a result of a breach of this Rule by the Clearing House or its Representatives; or
  - (x) to any other Person if and to the extent that, and pursuant to such terms and conditions as, the Clearing House at its discretion considers appropriate.
- (b) Clearing Members are given notice that the Clearing House is subject to section 348 (Restrictions on disclosure of confidential information by the FSA etc.) and regulations made under section 349 (Exemptions from section 348) of the FSMA. Clearing Members shall be deemed to consent to any use, disclosure or non-disclosure of information by the Clearing House that is required or permitted pursuant to such provisions.
- (c) The Clearing House is a Data Controller in relation to Personal Data provided to it by Clearing Members and their Representatives. Each Clearing Member shall ensure that:
- (i) any and all of its Representatives in relation to whom Personal Data are provided to the Clearing House ("**Data Subjects**") have consented in advance

to such data being Controlled and Processed by the Clearing House or, if not a natural person, have agreed to procure such consent to the extent necessary;

- (ii) the disclosure of Personal Data by the Clearing Member or its Representatives is in all respects and in each case lawful; and
  - (iii) the information set out in Rule 106(d) has been provided to each Data Subject prior to disclosure of Personal Data relating to such Data Subject to the Clearing House.
- (d) The Clearing House shall have the right to disclose Personal Data to such Persons and for such purposes as are set out in Rule 106(a). The Clearing House and other Persons referred to in Rule 106(a) may transfer Personal Data outside the European Economic Area and Process Personal Data outside the European Economic Area.
- (e) Data Subjects have the right, on payment of a small fee to the Clearing House, to receive a copy of Personal Data held by the Clearing House and to have any errors or inaccuracies in such Personal Data rectified. Any request should be addressed to the Clearing House's registered office.
- (f) In this section only, the terms "**Control**" (and derivations thereof), "**Process**" (and derivations thereof), "**Personal Data**" and "**Data Controller**" each have the meaning given to such terms in the Data Protection Act 1998.

***Rule 107 Conversion to other Eligible Currency***

The Clearing House shall be entitled to direct Approved Financial Institutions to convert any cash standing to the debit or credit of any Clearing Member into such other Eligible Currency as the Clearing House, in its discretion, determines is appropriate or expedient. Any such conversion shall be effected at a reasonable exchange rate determined by the Clearing House at its discretion or such Approved Financial Institution.

***Rule 108 Maintenance of Records; Return of Documents and other Materials***

- (a) Clearing Members that provide or present any documentation or other materials to the Clearing House are required to make a copy (whether electronic or physical) prior to doing so and must maintain each such copy for at least five years. Clearing Members that are authorised and regulated by the FSA will be deemed to satisfy this requirement if they comply with all applicable FSA Rules relating to record-keeping in relation to their activities connected with the Clearing House.
- (b) The Clearing House shall not be obliged to return or provide a copy of any document or other materials presented or provided by any Clearing Member or other Person to the Clearing House, except where an express right to such copy or return is set out in these Rules.

***Rule 109 Alteration of Rules, Procedures, Guidance and Circulars***

- (a) The Clearing House shall provide details (which, where appropriate, will include a reasoned account) of any Rule Change in a Circular. A Rule Change shall take effect and be binding on the Clearing House and Clearing Members on the relevant date specified by the Clearing House in a Circular. Where the reason for any Rule Change

is not manifest in the amended text of the Rules, the Clearing House will seek to provide an appropriate reasoned account of the Rule Change.

- (b) The Clearing House shall be entitled, at its discretion, to make any Rule Change at any time and without consulting Clearing Members where such Rule Change:
- (i) is of a minor nature and relates to Rules of an administrative or commercial nature;
  - (ii) is of a limited, technical nature, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (iii) relates to the Clearing House's fees, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (iv) is considered by the Clearing House to be necessary as a result of an Event of Default, Force Majeure Event or Financial Emergency;
  - (v) is required to ensure compliance by the Clearing House or any Clearing Member or Members with Applicable Laws, Accounting Standards or the requirements of any Governmental Authority or Regulatory Authority or is necessary or desirable to maintain the Clearing House's status as a recognised clearing house under the FSMA or any other legal or regulatory status it has under any other Applicable Law;
  - (vi) concerns the parameters for Margin or the Guaranty Fund or classes of or haircuts for Permitted Cover, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (vii) amounts to a change in any Contract Terms, the removal of an existing Contract Set or the addition of a new Contract Set; or
  - (viii) is considered by the Clearing House to be of an urgent nature (provided that the Clearing House may consult Clearing Members in relation to the continued applicability of the Rule Change after the urgent event or circumstance has concluded or ended), of a nature that would not affect significantly the rights of Clearing Members or of a nature where a consultation would otherwise not be appropriate or necessary;

provided that, in any such case, the requirements of sections 300A to 300E of the FSMA or article 10(4) of the Settlement Finality Regulations would not prevent such Rule Change from being made.

- (c) In cases other than those described in Rule 109(b), prior to any proposed Rule Change taking effect, the Clearing House will either: (i) issue a consultation paper by Circular or (ii) consult with a smaller number of Clearing Members selected by the Clearing House at its discretion. In cases where this Rule 109(c) applies, the Clearing House will seek to provide at least 14 days for Clearing Members and any other Persons to respond to the consultation. The contents of responses and the names of Persons who respond to any consultation may be made publicly available by the Clearing House, unless the Clearing House receives a request to the contrary by a Person making a

response. If the Clearing House receives any such requests for confidentiality or anonymity, the Clearing House may state that an anonymous response was made and may make public a summary of the contents of any response but the response will otherwise be subject to Rule 106. Clearing Members are encouraged, where appropriate, to inform Customers of proposed Rule Changes.

- (d) The Clearing House may at any time amend the Procedures. Any such amendment shall have immediate effect or shall take effect at such time as is specified by the Clearing House. The Clearing House will issue a Circular in respect of any amendment to the Procedures.
- (e) The Clearing House may issue, amend or revoke interpretative Guidance in relation to any aspect of the management of the Clearing House, its action under these Rules or the conduct of business of the Clearing House or Clearing Members at any time at its discretion and without prior consultation.
- (f) The Clearing House may issue Circulars or amend or revoke the contents of Circulars in connection with Clearing, the Rules or any action taken by it under the Rules at any time at its discretion and without prior consultation.
- (g) None of the following (whether proven, evidenced or alleged) shall invalidate any Rule Change, Procedures amendment or the contents of any Circular or Guidance in respect of any individual Clearing Member:
  - (i) omission by the Clearing House to give any notice or publish any Circular which may be required under these Rules;
  - (ii) non-receipt of any Circular by the Clearing Member or any of its Representatives;
  - (iii) lack of awareness on the part of the Clearing Member or any of its Representatives;
  - (iv) lack or inadequacy of any reasoned account; or
  - (v) failure by the Clearing House to comply with its obligations under Rule 109(c).
- (h) Without prejudice to the generality of Rule 109(g), in the event of any of the circumstances in Rule 109(g)(i), (g)(iv) or (g)(v) occurring, the Clearing House will consider what action should appropriately be taken in relation to the Rule Change which may (or may not) include the Clearing House:
  - (i) opening a second or subsequent consultation on the past Rule Change, subject to the procedures required by this Rule 109 *mutatis mutandis*; or
  - (ii) allowing a particular Clearing Member or Clearing Members to make representations or submissions in relation to a past Rule Change and considering whether to propose a new Rule Change in accordance with this Rule 109.

**Rule 110      *Extension or Waiver of Rules***

- (a) The time fixed by the Rules for the doing of any act or acts may be extended, or the doing of any act or acts required by the Rules may be waived, by the Clearing House whenever in its discretion it considers that such extension or waiver is necessary or in the best interests of the Clearing House.
- (b) Without prejudice to the generality of Rule 110(a), the time fixed by the Rules for filing any report or other document, for submitting any information or for making deposits or payments may be extended by the Clearing House whenever in its discretion it considers that such extension is necessary or in the best interests of the Clearing House. Any such extension may continue in effect after the event or events giving rise thereto, provided that the time fixed for making deposits or payments shall not be extended beyond two hours after the time such deposit or payment is due, and no other extension shall continue in effect for more than 60 calendar days, unless it is approved by the Clearing House within such period.
- (c) Any waiver of any right or consent given by the Clearing House under these Rules is only effective if it is in writing, applies only in the circumstances for which it is given and shall not prevent the Clearing House from subsequently relying on the relevant provision. No delay or failure to exercise by the Clearing House of any of its rights or pursuing any of its remedies hereunder shall constitute a waiver. No single or partial exercise of any right or remedy by the Clearing House shall prevent any further exercise of the same or any other right or remedy.

**Rule 111      *Liability***

- (a) Each Clearing Member shall indemnify and hold harmless the Clearing House and its officers and employees against any and all losses, liabilities, damages, injuries, delays, costs and expenses incurred or suffered by any of them arising out of or in connection with such Clearing Member's conduct, a breach by such Clearing Member of any of its obligations hereunder or under any Contract or a breach by the Clearing Member of any Applicable Laws.
- (b) The provisions of this Rule 111 shall apply:
  - (i) without prejudice to the liability of any other Person subject to the Rules or the rules of any Exchange for the same conduct;
  - (ii) in the case of inconsistency with any other provision of the Rules, in priority to that other provision;
  - (iii) whether or not the Clearing Member's Representative(s) are subject to the Rules; and
  - (iv) whether or not the Clearing Member's Representative(s) can be conclusively identified (provided that it is established that the relevant conduct was in fact carried out by a Clearing Member's Representative, albeit an unidentified Clearing Member's Representative).

- (c) Neither the Clearing House nor any of its Representatives, its Affiliates or its Affiliates' Representatives shall be liable to any Clearing Member or any other Person in respect of any loss, liability, damage, injury, delay, cost or expense incurred or suffered by such Clearing Member or Person, whether in contract, tort or restitution, as a fiduciary or under any other cause of action, arising out of or in connection with any of the following:
- (i) any suspension, restriction or closure of the Clearing House or its services;
  - (ii) any failure or malfunction of or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by the Clearing House or any Exchange or the suspension, restriction or closure of any Market;
  - (iii) any act or omission of any Exchange, any Clearing Member or any other third party including any error in relation to price data;
  - (iv) any Force Majeure Event affecting the Clearing House (including, in relation to a delivery, a Force Majeure Event affecting a Person making or taking delivery on behalf of the Clearing House);
  - (v) any dispute relating to the validity, existence or terms of any Contract;
  - (vi) the exercise (or failure to exercise) by the Clearing House of any discretion or right conferred upon it pursuant to these Rules;
  - (vii) the exercise (or failure to exercise) by any Exchange of any discretion or right conferred upon it pursuant to its rules (including, without limitation, in relation to error trades);
  - (viii) any indirect or consequential loss, liability, damage, injury, delay, cost or expense, any loss of profit (whether direct or indirect) or any loss of bargain;
  - (ix) any action in libel, defamation or slander in connection with the issue of any Default Notice, conduct of any proceedings relating to an Event of Default, the timing of liquidation of any Contracts or the manner in which or the price at which any Contracts are liquidated following an Event of Default;
  - (x) rejection of any application to become a Clearing Member;
  - (xi) any Contract being void pursuant to Rule 403 or avoided pursuant to Rule 404, including (without limitation) the causes and consequences of such Contract being void or voidable;
  - (xii) any action or inaction on the part of a Transferor or Transferee;
  - (xiii) in respect of a Contract subject to tender or delivery:
    - (A) a tender given by the Clearing House;
    - (B) any documents accompanying a tender as required by Market Rules or the Procedures;

- (C) the performance by the Clearing House of its obligations to make delivery of a Commodity under a Contract or to pay the price; or
- (D) any other loss, liability, damage, injury, delay, cost or expense arising under the terms of a Contract in relation to tender or delivery,

unless the relevant Clearing Member gives notice of its loss, liability, damage, injury, delay, cost or expense within seven Business Days of either the day on which documents must be taken up and paid for by the Buyer (whether or not a Buyer fulfils that obligation) or the Buyer must take delivery of the Commodity, whichever is the earlier;

- (xiv) as a result of any action taken by it pursuant to Market Rules on the basis that Market Rules are to any extent invalid or *ultra vires* or that a determination or request made by the Market or any agreement made by the Market, is *ultra vires* or incompatible with Market Rules;
- (xv) any express or implied representations or warranties in relation to the Clearing House's systems, including, but not limited to, representations or warranties of good title, merchantability and fitness for purpose or for a particular use;
- (xvi) any statement, representation, assurance or warranty of the Clearing House or any other Person other than as expressly set out in the Rules, Contract Terms or Clearing Membership Agreement; or
- (xvii) any action, suit or proceeding brought against the Clearing House over one year after the time that a cause of action, suit or proceeding has accrued,

provided that neither this Rule 111(c) nor any other provision of these Rules shall affect the application of section 291 of the FSMA nor shall exclude or restrict the liability of the Clearing House or any other Person for:

- (xviii) fraud, bad faith or wilful misconduct;
  - (xix) personal injury or death resulting from negligence, recklessness, or an intentional act or omission;
  - (xx) obligations under Contracts (except that, other than as provided in Part 7 and the Procedures, the Clearing House shall have no obligation physically to make or accept delivery of any Commodity and shall have no liability arising out of the failure or lateness of another Clearing Member (or its Transferor or Transferee) physically to make or accept any such delivery); or
  - (xxi) any liability which in accordance with Applicable Laws cannot be excluded, to the extent such liability cannot lawfully be excluded.
- (d) Any possible action, suit or proceeding against the Clearing House must be notified to the Clearing House as soon as reasonably practicable, including all relevant details then known and supporting documentation.
  - (e) Due to ICE OTC not being a 'designated contract market' regulated under Applicable Laws in the United States of America, there may be result in additional risks, losses or

liabilities for Clearing Members that are authorised to clear ICE OTC Contracts. Save as described in Rule 111(c)(xviii)-(xxi), the Clearing House shall not be liable to any Person as a result of any losses, damages, injuries, delays, costs or expenses arising out of or in connection with the lack of regulatory oversight or regulatory status of ICE OTC.

- (f) Save for any liability which it cannot exclude pursuant to Applicable Laws, the Clearing House shall not be liable pursuant to these Rules or any Membership Agreement to any Person who is not a Clearing Member. Without prejudice to the generality of the foregoing, the Clearing House shall not be liable (save for any liability which it cannot by law exclude) to any Transferor or Transferee (that is not the Seller or Buyer under a Contract, respectively) or to any Customer of a Clearing Member. If any Eligible Person (as defined in the Clearing Membership Agreement), Transferor or Transferee of a Clearing Member successfully brings any claim or asserts any liability against the Clearing House at any time or the Clearing House otherwise is or becomes liable to any Customer, Transferor or Transferee of a Clearing Member, the relevant Clearing Member shall immediately become liable to indemnify the Clearing House in respect of such loss, liability, damage, injury, delay, cost or expense of the Clearing House and the Clearing House shall be entitled to collect such payment pursuant to Part 3.
- (g) If the Clearing House is found liable to a Clearing Member in respect of a Contract and another Clearing Member is also found liable to the Clearing House in respect of a Contract which arose pursuant to the same Transaction as the first Contract, then the liability of the Clearing House under the first Contract shall be deemed to be a foreseeable consequence of the breach by the Clearing Member of the second Contract and the Clearing House shall be entitled to be indemnified by such Clearing Member in accordance with this Rule 111.
- (h) Damage or loss to the property of the Clearing House or any other property on the Clearing House's premises will be paid for by the Clearing Member causing such damage or loss.

**Rule 112      *Force Majeure and similar events***

- (a) Neither the Clearing House nor a Clearing Member shall be liable for any failure, hindrance or delay in performance in whole or in part of its obligations under these Rules or of any Contract if and to the extent that such failure, hindrance or delay arises as a result of a Force Majeure Event.
- (b) On the occurrence of any Force Majeure Event:
  - (i) the Affected Party shall immediately notify the Clearing House of the same (or, if the Affected Party is the Clearing House, the Clearing House shall issue a Circular in relation to the Force Majeure Event);
  - (ii) the Clearing House shall be entitled to require any Contracts affected by the event or circumstance to be performed in accordance with directions issued by the Clearing House or to be Invoiced Back;

- (iii) the Clearing House shall be entitled to require any Clearing Member to take such action as the Clearing House may direct in respect of Contracts affected by the event or circumstance;
  - (iv) the Clearing House shall be entitled to require Clearing Members to comply with any directions issued by the Clearing House regarding the performance of, or otherwise in respect of, such affected Contracts as are specified by the Clearing House; and, upon receipt of such an invoice, settlement of all affected accounts shall be due immediately and shall be made forthwith in discharge of such Contracts;
  - (v) a Clearing Member affected by a Force Majeure Event shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform its obligations to the Clearing House and if the Clearing House is affected by a Force Majeure Event, it shall use all reasonable endeavours to mitigate the effects of same upon its ability to perform such obligations to Clearing Members; and
  - (vi) the Affected Party shall notify the Clearing House immediately as soon as its ability to perform is no longer affected by the Force Majeure Event (or, if Affected Party is the Clearing House, the Clearing House shall issue a Circular in relation to the cessation of the Force Majeure Event).
- (c) If a Market determines in accordance with Market Rules that an excessive position or unwarranted speculation or any other undesirable situation or practice is developing or has developed which is affecting or capable of affecting the Market, the Clearing House may take such action as is requested of it by that Market in respect of one or more Contracts.

***Rule 113 Notices***

- (a) The delivery by hand, electronic transmission, facsimile or telephone of any notice, order or other communication to a Clearing Member at the address, facsimile number or telephone number last designated by it shall be good and sufficient delivery thereof to such Clearing Member (unless another method of delivery is specified in the Rules or in relation to any Contract). The publication of a Circular shall amount to good and sufficient delivery of the contents of the Circular to all Clearing Members.
- (b) Any notice, document, communication, filing or form to be served on, filed with, made to or provided to the Clearing House pursuant to these Rules or in relation to any Contract shall be served, filed, made or provided at the address, fax number or e-mail address (or through such other communication system) as is specified by the Clearing House from time to time in its Rules and Procedures and shall be marked for the attention of such person or department as is specified by the Clearing House from time to time in its Rules and Procedures. Unless another form or method is specified in the Rules or the Procedures for the notice, document, communication, filing or form in question, a notice, document, communication, filing or form must be served, filed, made or provided in writing.

- (c) Any notice, document, communication, filing or form, unless otherwise specified in the Rules or the Procedures, will only be effectively served, filed, made or provided and delivered to the Clearing House for the purposes of these Rules:
  - (i) if sent by post, on the third Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope; or
  - (ii) if delivered in person or by courier, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day.
- (d) Unless otherwise specified in the Rules or Procedures, any notice by fax or electronic communication shall not be effective until hard copy confirmation is served pursuant to Rule 113(c).

***Rule 114      Action by the Clearing House***

- (a) Except as otherwise specifically set out herein, any action permitted or required to be taken by the Clearing House may be taken by the Board, the Chairman, the President, any other Board member or any other officer or committee to whom or which authority has been delegated by the Clearing House, the Board, the Chairman, the President or any committee.
- (b) Where there is a provision to the effect that an action may be taken or power exercised by the Clearing House, any action taken or power exercised by the Clearing House shall be without prejudice to the right of the Clearing House to exercise such powers and take such other steps (or not as the case may be) as it may think fit upon that or any other occasion.

***Rule 115      Relations with Governmental Authorities and other Persons***

- (a) With a view to maintaining recognition as a clearing house under the FSMA, the Clearing House may:
  - (i) make arrangements with any Person for monitoring compliance with and investigating alleged breaches of the Rules (and arrangements, Procedures and directions made, authorised or given thereunder); and
  - (ii) co-operate generally with any Governmental Authority.
- (b) Without prejudice to the generality of Rule 115(a):
  - (i) this may include making arrangements for the sharing of information with Governmental Authorities; and
  - (ii) the Clearing House may, where appropriate, at any time refer a complaint or any other matter coming to its attention to one or more Exchanges, Clearing Organisations or Regulatory Authorities for its or their comment or investigation and may, pending the result of such reference, either suspend or continue with (in whole or in part) its own investigation, proceedings or other actions.

**Rule 116      *Opening Hours***

The Clearing House will notify Clearing Members of any changes to its Opening Days and Opening Hours from time to time by Circular.

**Rule 117      *Dispute Resolution***

- (a) Any Dispute between the Clearing House and the Clearing Member(s) shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated into this Rule 117. In the event of a conflict between any provision of the LCIA Rules and this Rule 117, this Rule 117 shall prevail.
- (b) The seat of arbitration will be London and the language of the arbitration proceedings shall be English.
- (c) The Tribunal will comprise three arbitrators appointed by the LCIA Court. The LCIA Court shall nominate one of the arbitrators to act as the chairman of the Tribunal. Tribunal members shall not be current or former employees or directors of any Clearing Member that is a party to the arbitration, current or former employees of the Clearing House or any person or persons with a material interest or conflict of interest in the outcome of the Dispute.
- (d) The Tribunal shall have the power on the application of any party to an existing arbitration, to require one or more Clearing Members to be joined to an existing arbitration. Each Clearing Member agrees that it may be joined as an additional party to an arbitration involving the Clearing House and another Clearing Member. For the purposes of this Rule 117 only, all Clearing Members and the Clearing House shall be treated as being bound to each other.
- (e) If more than one arbitration is begun under these Rules and the Clearing House or a Clearing Member that is a party to an arbitration so concerned serves notice upon the Tribunals concerned that it believes two or more arbitrations are substantially related and that the issues should be heard in one set of proceedings, the Tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the proceedings should be consolidated and heard together before that Tribunal.
- (f) In the case of such joinder or consolidation, the Tribunal shall make a single, final award determining all Disputes between the relevant parties in those proceedings. Each Clearing Member and the Clearing House irrevocably waives any right to challenge any award or order of any Tribunal by reason of the fact that it arises from a joined or consolidated arbitration.
- (g) The award of the arbitral Tribunal will be final and binding on the Clearing House and any Clearing Member from the day it is made. Judgment upon the award may be entered or the award enforced through any other procedure in any court of competent jurisdiction.
- (h) No arbitral proceedings under this Rule 117 may be instigated where arbitral proceedings could have been instigated in respect of the same Dispute under Market Rules.

- (i) The provisions of this Rule 117 may not be varied by any Clearing Member or Clearing Members save where each Clearing Member that is a party to the Dispute or arbitration proceedings and the Clearing House agree in express written terms.
- (j) The commencement of any arbitral proceedings shall be without prejudice to and shall not limit in any way the right of the Clearing House to instigate any procedure under Part 9 or Part 10 of these Rules, including without limitation in relation to any Event of Default, any investigation, disciplinary proceedings or the imposition of a sanction.
- (k) Each Clearing Member that now or hereafter has a right to claim sovereign immunity from suit or sovereign immunity from enforcement for itself or any of its assets shall be deemed to have waived any such immunity to the fullest extent permitted by Applicable Laws. Such waiver shall apply in respect of any immunity from:
  - (i) any proceedings commenced pursuant to this Rule 117;
  - (ii) any judicial, administrative or other proceedings to aid an arbitration commenced pursuant to this Rule 117; and
  - (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from any judicial or administrative proceedings commenced pursuant to this Rule 117.
- (l) The rights and obligations of a Clearing Member under the Rules and in relation to any Contract are of a commercial and not a governmental nature.
- (m) No Clearing Member shall raise or in any way whatsoever assert a defence of sovereign immunity in relation to any claim or enforcement proceedings arising from a Dispute under this Agreement.
- (n) All Permitted Cover standing to the credit of a Clearing Member who is party to one or more Contracts subject to a Dispute or difference to which this Rule 117 or Market Rules applies, whether or not such Permitted Cover is held with respect to a disputed Contract, may be retained by the Clearing House until the Dispute in question is finally disposed of.

## **Part 2 Clearing Membership**

### ***Rule 201 Clearing Membership Criteria***

- (a) In order to attain and maintain membership as a Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Clearing Member:
- (i) have paid the Clearing House's (non-refundable) application fee (if applicable) and provided completed membership application forms;
  - (ii) (if proposing to become a Clearing Member in relation to ICE Futures Europe Transactions) be a member of ICE Futures Europe;
  - (iii) (if proposing to become a Clearing Member in relation to ICE OTC Transactions) be an ICE OTC Participant;
  - (iv) have nominated a Person, satisfactory to the Clearing House, who is (A) a director, general partner, trustee or officer of the applicant (or Person occupying a similar status or performing similar functions), (B) responsible for the clearing operations of the applicant and (C) authorised to act on behalf of the applicant in all transactions with or involving the Clearing House, and have nominated a second Person who meets the requirements of (A) above and is authorised to act on behalf of the applicant in the event of the death, incapacity or other inability of the first Person to so act;
  - (v) hold sufficient Capital in accordance with Rule 206;
  - (vi) unless the Clearing House at its discretion agrees otherwise in writing, where the applicant is subject to Control by any Person or Persons, procure in favour of the Clearing House a Controller Guarantee or Controller Guarantees from such of its Controllers as the Clearing House may request in such form as the Clearing House may prescribe from time to time, each such Controller Guarantee guaranteeing payment of all amounts due by such applicant;
  - (vii) be party to a Clearing Membership Agreement with the Clearing House;
  - (viii) have in place all necessary regulatory authorisations, licences, permissions and approvals in its country of origin, the UK and any other jurisdiction in which it conducts business;
  - (ix) be fit and proper, have sufficient qualities of financial responsibility, operational capacity, business integrity, reputation and competence as the Clearing House, in its discretion, considers necessary or appropriate and satisfy the Clearing House that its directors, officers and Controllers also satisfy such tests;
  - (x) have such facilities, equipment, operational capability, personnel, hardware and software systems as are capable of supporting the proper performance of its business as a Clearing Member, including such IT links to the Clearing House and software as in the judgment of the Clearing House are necessary or desirable;

- (xi) have in place business continuity procedures that satisfy the Clearing House's minimum requirements;
- (xii) have a sufficient level of knowledge about the types of Contracts that it intends to clear and any risks involved in relation to the same;
- (xiii) have demonstrated its ability to make available to the Clearing House sufficient Original Margin and make Variation Margin payments as required pursuant to these Rules;
- (xiv) have made the required Guaranty Fund Contribution;
- (xv) not be subject to an Insolvency;
- (xvi) be either a Person that is not a natural person or a Person that is subject to business taxation for the purposes of Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments;
- (xvii) if it is a Clearing Member in respect of ICE OTC Transactions, be an 'eligible commercial entity' (as defined in Section 1a(11) of the U.S. Commodity Exchange Act) or an 'eligible contract participant' (as defined in Section 1a(12) of the U.S. Commodity Exchange Act);
- (xviii) not be subject to any circumstances pursuant to which an Event of Default could be declared were the applicant to be a Clearing Member;
- (xix) have provided details of an office which is staffed during normal business hours and sufficient for its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive officer of the Clearing Member (who need not be physically located at such office) to which all notices, orders and other communications from the Clearing House may be transmitted or delivered;
- (xx) satisfy the Clearing House that it, its officers, directors and Controllers would each meet the requirements for an 'approved person' (for individuals) or 'controller' (for partnerships, companies and other bodies corporate) under the FSA Rules;
- (xxi) hold an account or accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House;
- (xxii) if non-cash assets are to be used as Permitted Cover, have executed all necessary documentation relating to the transfer of such assets and not be in dispute with the Clearing House in relation to the ownership over or rights relating to such non-cash assets; and
- (xxiii) either (A) be a Person in respect of whom 'simplified due diligence' may be applied pursuant to the Money Laundering Regulations 2007; or (B) have been subject to customer due diligence measures under the Money Laundering Regulations 2007 to the Clearing House's satisfaction.

- (b) The Clearing House may at its discretion attach further objective conditions to any application for Clearing Member status prior to such status being granted. The Clearing House may grant approval to an applicant conditional upon satisfying certain requirements, provided that the applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.
- (c) Applicants for membership must provide information or documentation to the Clearing House evidencing compliance (or lack thereof) with each of the criteria set out in or required pursuant to Rule 201(a). Failure by an applicant to supply such information or documentation may result in an application being rejected.
- (d) All information supplied to the Clearing House in respect of an application for membership shall be deemed to have been provided by the Clearing Member to the Clearing House on the day on which that Clearing Member becomes a Clearing Member, save to the extent that such information has been amended or revoked at least two Business Days prior to membership being granted.
- (e) If the Clearing House determines that an application for membership should be denied, the applicant will be given notice of such denial. In such an event, the applicant may request an opportunity to be heard by the Clearing House's Board (or an appropriately constituted sub-committee of the Board) in relation to the matter and to present evidence as to why its application should not be denied or may raise a complaint which the Clearing House will deal with in the same way as if Part 10 applied to such complaint (notwithstanding that the Rules do not apply to the complaint).
- (f) Membership of the Clearing House does not entitle any Clearing Member to any shareholding or other similar interest in the Clearing House or any of the Clearing House's Controllers or Affiliates. Nothing in these Rules is intended to, or shall be deemed to, establish any partnership or joint venture between any Clearing Members or between the Clearing House and any other person. Nothing in these Rules constitutes any Clearing Member or the Clearing House as the agent or principal of any other Person. Nothing in these Rules authorises any Person to make or enter into any commitments for or on behalf of any other Person (save in the case of a Clearing Member acting on behalf of and being liable for a Customer or as otherwise expressly provided herein).
- (g) Clearing Members shall be deemed to represent and warrant, upon their first date of membership and on each subsequent date that they are a Clearing Member, that they meet all of the membership criteria in Rule 201(a) and are in compliance with all of their obligations under these Rules.
- (h) In order to attain and maintain membership as a Disclosed Principal Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Disclosed Principal Member, meet all the requirements for membership as a Clearing Member. A Disclosed Principal Member shall be subject to and bound by all these Rules in every way as if it were a Clearing Member, subject to such modifications as are set out herein and acting at all times as disclosed principal for the Clearing Member that has appointed it.

**Rule 202      *Obligations of Clearing Members***

- (a) In connection with these Rules, all and any Contracts, its membership of the Clearing House and its business and activities as a Clearing Member, each Clearing Member shall at all times:
- (i) comply with these Rules and any agreement with the Clearing House;
  - (ii) comply with all Applicable Laws relating to its status and performance as a Clearing Member;
  - (iii) act in good faith in its dealings with the Clearing House;
  - (iv) continually satisfy the criteria for membership set out in Rule 201(a);
  - (v) respond promptly to any direction by the Clearing House to provide information or documentation;
  - (vi) hold at least the amount of Capital required pursuant to Rule 206;
  - (vii) pay all fees and other charges when due in accordance with Part 3;
  - (viii) provide Original Margin and make Variation Margin payments to the Clearing House in accordance with Part 3 and Part 5;
  - (ix) make all such payments to the Guaranty Fund as are required pursuant to Part 11;
  - (x) respond promptly to all enquiries or requests for information made by the Clearing House;
  - (xi) maintain accounts at an Approved Financial Institution for the deposit of funds in Eligible Currencies and the deposit of securities required to be transferred to and from the Clearing Member pursuant to these Rules (whether by way of Margin, Guaranty Fund Contributions, fees, amounts due under Contracts or otherwise) and have arrangements with such Approved Financial Institutions satisfactory to the Clearing House for electronic transfer of funds and securities into and out of such accounts (separately for Customer Account and Proprietary Account) on the order of the Clearing House and without the need to seek the consent of such Clearing Member or any of its Customers;
  - (xii) [*Not used.*];
  - (xiii) if the Clearing House at its discretion so directs, allow formal audits or system tests of its operations related to its business with the Clearing House during reasonable business hours and on reasonable notice no more than twice annually, at the expense of the Clearing Member;
  - (xiv) have adequate systems and controls in place in order to ensure that:
    - (A) its internal affairs are organised and controlled in a responsible and effective manner;

- (B) it has adequate risk management systems that are applied appropriately;
  - (C) its internal record-keeping is adequate;
  - (D) all of its Representatives are fit and proper, suitable, adequately trained and properly supervised;
  - (E) all clearing business conducted by it, including in relation to individual Contracts, complies with the Clearing Member's obligations under the Rules and Applicable Laws;
  - (F) it only enters into Contracts or accesses the Clearing House (through actions of its Representatives or otherwise) in or from jurisdictions on a list of acceptable jurisdictions published by the Clearing House from time to time and in accordance with all conditions and requirements as are specified by the Clearing House from time to time for entry into Contracts or access in or from that jurisdiction;
  - (G) it is able continuously to monitor communication facilities for receipt of communications from the Clearing House; and
  - (H) it is able promptly to review Circulars and other communications delivered or made available to the Clearing Member or its Representatives by the Clearing House;
- (xv) ensure that any power of attorney, appointment of any agent or Representative or other authorisation to transact business with the Clearing House given by a Clearing Member to any Person remains in effect on its original terms until not less than five Business Days after a written notice of change has been received by the Clearing House; and
  - (xvi) keep accurate records showing the details of each Contract offered for clearing by or on behalf of such Clearing Member and such other information, in such form, as shall be required by the Clearing House from time to time and in accordance with Applicable Laws and Accounting Standards.

**Rule 203      *Prohibitions on Clearing Members***

- (a) In connection with these Rules, any Contracts, its membership of the Clearing House or its business and activities as a Clearing Member, no Clearing Member shall at any time:
  - (i) provide any information to the Clearing House (including information for the purpose of obtaining or reinstating membership) which is false, misleading or inaccurate in any material respect;
  - (ii) breach any Applicable Law relating to its status and performance as a Clearing Member;
  - (iii) commit any act of fraud;

- (iv) engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering or which is in breach of any similar Applicable Laws;
- (v) except with the prior written consent of the Clearing House and otherwise than to liquidate existing positions, continue to trade, enter into Contracts or provide or accept payments or transfers in respect of Margin when not in compliance with the Capital requirement then applicable;
- (vi) knowingly disseminate false, misleading or inaccurate reports concerning any Contract, product or market information or conditions that affect or tend to affect prices of Contracts;
- (vii) make or report a false or fictitious Transaction or Contract;
- (viii) knowingly, fraudulently, recklessly or negligently furnish any false, inaccurate or misleading information to the Clearing House;
- (ix) enter into any Contract or fail to close out the same either intending to default in performance of the same or having no reasonable grounds for believing that it would be able to avoid such default (provided that it shall not be sufficient to have intended to comply with any contractual or other provision governing the consequences of default);
- (x) use or reveal any information confidential to the Clearing House or any of its Representatives when under a legal or contractual obligation to the Clearing House or any Applicable Law not to do so;
- (xi) use any information technology or any online services provided to it or made available to it pursuant to its membership of the Clearing House other than for the purposes of conducting its business and activities as a Clearing Member in accordance with these Rules;
- (xii) engage in any other event or practice which has developed or is developing on the Clearing House and is reasonably considered by the Clearing House to be capable of impairing the orderly conduct of business of the Clearing House or affecting the timely delivery or settlement of Contracts;
- (xiii) represent or hold out to any Person that membership of the Clearing House brings with it any stamp of approval, special status, hallmark, regulatory supervision or approval or confers any rights or protections to Customers or any other Person in relation to the Clearing Member's business, policies, financial standing or otherwise (although Clearing Members may inform their Customers, potential Customers and other Persons that they are a member of the Clearing House and details of their privileges);
- (xiv) participate in, facilitate, procure, counsel, incite, encourage, aid or abet any conduct by a third party which would be a violation or attempted violation of these Rules regardless of whether that third party is subject to these Rules;

- (xv) take any action or make any omission or knowingly or recklessly permit the use of its services, facilities or membership or clearing privileges by any Person in a manner which in the reasonable opinion of the Clearing House is liable to:
  - (A) bring the Clearing House or any of its Clearing Members into disrepute;
  - (B) impair the dignity or degrade the good name of the Clearing House;
  - (C) create or maintain or exacerbate actual or attempted breaches, infringements, manipulations or violations of the Rules (or arrangements, provisions or directions made or given thereunder) or market practice; or
  - (D) otherwise be substantially detrimental to the interests or welfare of the Clearing House;
- (xvi) engage in conduct that would render it unable to satisfy the membership criteria in Rule 201(a);
- (xvii) knowingly, negligently, recklessly or carelessly allow any Representative to engage in any conduct that might itself breach these Rules or render it unable to satisfy the membership criteria in Rule 201(a);
- (xviii) assign any of its rights or transfer by novation any of its rights and obligations under these Rules to a third party (or purport to do so) unless the Clearing House provides its prior written consent (which consent shall not unreasonably be withheld or delayed); or
- (xix) breach any Contract Terms.

***Rule 204      Notifications by Clearing Members***

- (a) Each Clearing Member shall notify the Clearing House in writing without delay providing full particulars known to it:
  - (i) in relation to any change of Control, as soon as it becomes aware of that change or proposed change of Control and it is not prevented from disclosing the change of Control by Applicable Laws;
  - (ii) if it breaches any applicable Position Limit that has been notified to it;
  - (iii) if it ceases to have sufficient Capital;
  - (iv) if its Capital for any reason is reduced by more than 10% from that shown on the latest financial statement filed by it with the Clearing House;
  - (v) prior to any payment, loan, distribution or redemption causing a reduction in Capital of the nature described in Rule 204(a)(iv), detailing the payment, loan, distribution or redemption involved and a description of the effect that the same will have on the Capital of the Clearing Member;

- (vi) in the event that it fails to meet any obligation to deposit or pay any Margin when and as required by any Clearing Organisation of which it is a member (other than the Clearing House), excluding any matter subject to a dispute (where the Clearing Member is not in default) or resulting from manifest error;
  - (vii) in the event that it fails to comply with any applicable financial requirements of any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility;
  - (viii) of an Insolvency affecting it or any of its Controllers or Affiliates (and must provide a copy of such notice to the FSA and the Bank of England pursuant to Part 12);
  - (ix) of any Event of Default affecting it;
  - (x) of any financial or commercial difficulty such as would give rise to a risk of an Event of Default occurring;
  - (xi) [*Not used.*];
  - (xii) of any breach by it of any Applicable Law relating to its status and performance as a Clearing Member or of the Rules, including full particulars of the breach; or
  - (xiii) of anything relating to the Clearing Member of which Clearing House would reasonably expect notice (including of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded).
- (b) Where a Clearing Member is regulated by the FSA:
- (i) Notifications under Rule 204(a)(i) shall only be required where a change of Control is notifiable to the FSA; and in such cases the Clearing Member should provide the Clearing House contemporaneously with a copy of all submissions sent to the FSA relating to the change of Control; and
  - (ii) Notifications under Rule 204(a)(xiii) (other than notifications of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded) shall only be required if a notification is also required to the FSA under the Principles for Business in the FSA Rules.

**Rule 205      *Financial Reporting***

- (a) Each Clearing Member must file with the Clearing House in relation to the Clearing Member and, if so notified by the Clearing House at its discretion, any Controller:
  - (i) an audited financial statement including profit and loss accounts and balance sheet, with the auditor's report, drawn up in accordance with Applicable Laws

and Accounting Standards or otherwise following the requirements of the Clearing House, within 90 days of the end of the Clearing Member's or relevant Controller's fiscal year;

- (ii) a quarterly financial statement including management profit and loss accounts and balance sheet, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House, within 30 days of the end of each quarter; and
  - (iii) in the case of Clearing Members or their Controllers that are licensed, authorised or regulated by a Regulatory Authority, a copy of all financial returns, reports, statements and notices provided to the relevant Regulatory Authority as soon as so provided and, if any such material is other than a routine periodic return, statement or report required under Applicable Laws, a written statement setting out (to the extent known) the reasons why such Clearing Member or relevant Controller is filing it.
- (b) In the case of Clearing Members authorised and regulated by the FSA, the Clearing House shall be authorised, at its discretion, to obtain copies of filings, returns and reports directly from the FSA rather than from the Clearing Member. The Clearing Member will not be relieved of any of its obligations to the extent that the Clearing House does not obtain, or is unable to verify the accuracy of, any return or report obtained by it from the FSA.
  - (c) Each Clearing Member shall file with the Clearing House such financial or other information, in addition to what is explicitly required by this Rule 205, as may be requested by the Clearing House at its discretion from time to time.
  - (d) All qualifications and reports of Clearing Members' auditors in any financial report must be satisfactory to the Clearing House.

**Rule 206      *Minimum Capital***

- (a) Each Clearing Member shall at all times hold the requisite types and amounts of Capital specified in the Procedures or otherwise as specified in writing by the Clearing House from time to time. The Clearing House may, at any time and at its discretion, require that a Clearing Member hold additional Capital.
- (b) A Clearing Member must, upon request of the Clearing House, provide financial statements and other documentation supporting calculations of Capital and details of the terms and conditions of any documentation relating to any Capital (including, without limitation, subordinated loan agreements, legal opinions, information provided to Governmental Authorities and accounts) to the Clearing House.

**Rule 207      *Clearing Member Status***

- (a) Each Clearing Member shall be authorised to enter into Contracts and hold an Open Contract Position with the Clearing House. Clearing Members may, at the Clearing House's discretion, be subject to restrictions in their business with the Clearing House, for example by reference to certain Contracts, Markets or the clearing of Contracts for Customers or using a Customer Account. The Clearing House shall be entitled to

publish lists of Clearing Members including details of their privileges and restrictions from time to time.

- (b) Each Clearing Member shall have the privileges, rights and obligations provided for in these Rules. Such privileges, rights and obligations may be terminated or altered in any respect at any time as provided in these Rules.
- (c) A Clearing Member may apply to clear additional categories of Contract by furnishing such information as is relevant to such request in accordance with Rule 201.
- (d) Each Clearing Member shall be liable to the Clearing House and responsible for all its obligations in respect of its Proprietary Account and Customer Account as principal. Any sub-accounts of a Customer Account are reported on by the Clearing House for administrative convenience of the Clearing Member only. Recognition by the Clearing House, and transfers to and from, a Clearing Member's Nominated Customer Account and Nominated Proprietary Account are for administrative convenience of the Clearing Member only. Neither any separate Customer Account or sub-accounts of a Customer Account recognised in the Clearing House's or any Clearing Member's books and records or those of any Approved Financial Institution nor any other Procedures or Rules of the Clearing House shall result in any obligation of the Clearing House towards any Customer of the Clearing Member, any other Person that is not a Clearing Member, whether under FSA Rules relating to client money, any other Applicable Laws or otherwise. It is the responsibility of the Clearing Member (and not the Clearing House) to ensure that its Nominated Proprietary Account and Nominated Customer Account are linked appropriately to its Proprietary Account and Customer Account and to ensure its own compliance with Applicable Laws relating to conduct of business, client money and segregation of client assets. A Disclosed Principal Member shall be liable as principal to the Clearing House and responsible for all obligations arising in respect of the Proprietary Account referable to the Clearing Member that has appointed it as a Disclosed Principal Member, instead of the Clearing Member. Where the Clearing Member appoints a Disclosed Principal Member, there shall be no Customer Account for either the Clearing Member or the Disclosed Principal Member and the only Proprietary Account shall be that of the Disclosed Principal Member.
- (e) Subject to Market requirements, a Clearing Member may appoint another Clearing Member to perform specific functions, including deliveries, on the first Clearing Member's behalf. In order to do so, the relevant Clearing Members, the Market and the Clearing House must be party to an agreement pursuant to which the second Clearing Member agrees to perform specific functions detailed in the agreement on behalf of the first Clearing Member. A Clearing Member intending to perform functions for another Clearing Member will represent and warrant to the Clearing House that it has sufficient authorisation under the FSMA and other Applicable Laws to carry on such function.

***Rule 208      Suspension of Clearing Member***

- (a) A Clearing Member may be suspended:
  - (i) if one or more of the conditions set out in Rule 209(a) is satisfied;

- (ii) upon any breach by the Clearing Member of these Rules;
  - (iii) if a Market suspends the Clearing Member or any of its trading privileges;
  - (iv) if the Clearing House at its discretion considers that suspension is necessary to protect the interests of the Clearing House or its Clearing Members (excluding the Clearing Member concerned); or
  - (v) in the event of any Financial Emergency or Force Majeure Event affecting the Clearing Member.
- (b) Any suspension may occur in relation to the Clearing Member's status as a Clearing Member or in respect of certain classes of Contracts or rights of a Clearing Member only. A Clearing Member that has been suspended shall, during the term of such suspension and thereafter, remain and continue to be:
- (i) subject to and bound by these Rules and any agreements between it and the Clearing House;
  - (ii) obliged to pay all fees, fines, assessments or other charges imposed by the Clearing House;
  - (iii) liable pursuant to these Rules for all other obligations arising under Contracts and all obligations incurred before, during or after such suspension including, but not limited to, obligations to deposit, maintain and pay Margin and make its Guaranty Fund Contribution; and
  - (iv) able to undertake such activities of a Clearing Member as are expressly permitted by the Clearing House and required to undertake such activities of a Clearing Member as are required by the Clearing House, in each case subject to compliance with all reasonable instructions of the Clearing House in relation to those activities.
- (c) The Clearing House shall be entitled at its discretion to revoke the suspension of any suspended Clearing Member.

***Rule 209 Termination of Clearing Membership***

- (a) The Clearing House shall be entitled to terminate the membership of any Clearing Member immediately upon notice to the Clearing Member:
- (i) following the occurrence of any Event of Default affecting that Clearing Member;
  - (ii) as a result of disciplinary proceedings brought against that Clearing Member pursuant to Part 10;
  - (iii) upon receipt of notice of termination of the Clearing Member's Clearing Membership Agreement from that Clearing Member;
  - (iv) following any material and unremedied breach by the Clearing Member of these Rules;

- (v) upon such Clearing Member ceasing to meet, or being unable to satisfy the Clearing House that it is able to meet, any of the membership criteria set out in Rule 201(a); or
  - (vi) upon an Insolvency in relation to that Clearing Member or any of its Affiliates.
- (b) The Clearing House shall be entitled to terminate the membership of any Clearing Member upon no less than three months' prior written notice.
  - (c) The Clearing Member shall be entitled to terminate its membership of the Clearing House upon no less than three months' prior written notice, upon the Insolvency of the Clearing House or pursuant to Rule 1105(d). In the event of a termination upon the Insolvency of the Clearing House, the rights and liabilities of each Clearing Member shall be determined as if each Clearing Member were a Defaulter pursuant to Part 9, *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default.
  - (d) Upon any termination of a Clearing Member's membership, the relevant Clearing Member shall remain liable to deposit, maintain and pay all Margin, make its Guaranty Fund Contribution when due and make all other payments due pursuant to Contracts from time to time and shall be obliged to:
    - (i) transfer, liquidate, make settlement in respect of and/or make delivery (as applicable) pursuant to all Contracts to which it is party in accordance with applicable Contract Terms; and
    - (ii) take such other actions as the Clearing House at its discretion deems appropriate or necessary.
  - (e) Any Person who for any reason ceases to be a Clearing Member shall remain and continue to be:
    - (i) subject to any arbitration, investigations, panels or proceedings, and provisions of these Rules relating thereto, which relate in whole or in part to any acts or omissions of that Person while it was a Clearing Member;
    - (ii) obliged in respect of all fees, fines, charges, payments pursuant to Contract Terms, Margin payments and other amounts due to the Clearing House as a result of Contracts and other obligations entered into or incurred prior to the termination of its status as Clearing Member;
    - (iii) subject to claims against its Guaranty Fund Contribution until the Clearing House returns such Guaranty Fund Contribution in accordance with Part 11;
    - (iv) obliged to pay any Assessment Contribution for which it is liable pursuant to Part 11.

### **Part 3 Financial Requirements and Payments**

#### ***Rule 301 Fees, Margin, Contract and other payment obligations***

- (a) Clearing Members shall be liable to pay such fees and charges as are levied by the Clearing House in accordance with published rates from time to time. Unless otherwise provided and without limitation, fees shall be payable on each Contract cleared by the Clearing House and the Clearing House shall be entitled to levy fees in respect of Permitted Cover. The Clearing House may amend its fees and charges and the bases for its fees at any time and will notify Clearing Members of any such amendments by means of a Circular prior to the same taking effect.
- (b) Fees charged to Clearing Members by the Clearing House may include the fees of any one or more Markets. The Clearing House shall be entitled to collect fees due from Clearing Members on behalf of all Markets of which a Clearing Member is a member or participant.
- (c) Clearing Members shall be liable to make any payment to the Clearing House that is required pursuant to these Rules at the time and in the amount specified by the Rules or required in accordance with the Rules. In particular, Clearing Members shall be liable to make payment in respect of Margin and Guaranty Fund Contributions from time to time in accordance with Part 5, Part 6 and Part 11 of the Rules at the times and in the amounts that are required pursuant to the instructions of the Clearing House made pursuant to Rule 302.
- (d) Clearing Members shall be liable to pay all amounts due under the Contract Terms, upon entering into a Contract, as Original Margin in respect of obligations under Contracts, as Variation Margin and upon settlement, as further described in these Rules and the Contract Terms at the time and in such amounts as are required pursuant to the Contract Terms. Without prejudice to the generality of the foregoing:
  - (i) in relation to each Contract that is a Future, the parties to such Contract shall be liable to make such payments upon settlement and delivery as are required pursuant to Part 7 and the Procedures; and
  - (ii) in relation to each Contract that is an Option, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 8 and the Procedures.
- (e) Each Clearing Member will procure that the Clearing House has at all times the right to instruct that Clearing Member's Approved Financial Institution to debit its Proprietary Account and its Customer Account (if any) and any other account designated by that Clearing Member for the purposes of this Rule 301, for payment in respect of fees, charges, fines, penalties, Margin, the Guaranty Fund, amounts due pursuant to Contracts (whether upon their formation, settlement or delivery) and any other amounts due to the Clearing House or due to any Market.
- (f) All amounts payable to the Clearing House (except, with the prior written consent of the Clearing House, application fees) shall be payable by electronic transfer from an account at an Approved Financial Institution only. The Clearing Member shall continue to be liable for any amount due under these Rules unless and until the

relevant electronic transfer of funds is actually received by the Clearing House in unencumbered, fully cleared and fully available funds.

- (g) Interest shall be charged to the Clearing Member on any unpaid but due amount from the date on which the amount becomes due and payable until the date of payment at 1% above the rate per annum which is the cost (without proof or evidence of any actual cost) to the Clearing House if it were to fund the relevant amount, compounded daily.
- (h) In the event that the Clearing House determines that it will suffer or has suffered (directly or indirectly) any loss, liability or cost for or on account of any tax in connection with any Contract, any amount payable to the Clearing House or in respect of any future obligation, or these Rules, the Clearing Member counterparty to such Contract, the Clearing Member by which such amount is payable, or such other Clearing Member whom the Clearing House at its discretion determines should be responsible for meeting the amount of such loss, liability, or cost, shall be liable to pay to the Clearing House, pursuant to Rule 302, an amount equal to such loss, liability, or cost.
- (i) All amounts set out in or expressed to be payable to the Clearing House in connection with any Contract or these Rules or otherwise and which constitute the consideration for a supply made by the Clearing House for the purposes of value added tax, and the value of any supply made by the Clearing House for value added tax purposes, shall be deemed to be exclusive of any value added tax which is chargeable on that supply and accordingly if value added tax is chargeable on any supply made by the Clearing House the relevant Clearing Member or such other Clearing Member whom the Clearing House at its discretion determines should be responsible for meeting the amount of such value added tax shall pay to the Clearing House (in addition to and at the same time as the consideration is paid or provided, or if no consideration is due, at the time the supply is made or an appropriate value added tax invoice is issued, whichever is earlier) an amount equal to the amount of the value added tax and the Clearing House shall issue an appropriate value added tax invoice.
- (j) All amounts payable to the Clearing House in connection with any Contract or these Rules or otherwise shall be paid without any deduction or withholding for or on account of tax unless such deduction or withholding is required by Applicable Law. If a deduction or withholding for or on account of tax is required to be made, the amount of the payment due shall be increased to an amount which (after making the deduction or withholding) leaves an amount equal to the payment which would have been due if no such deduction or withholding had been required.
- (k) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation of the Clearing Member to make payment to the Clearing House shall be construed as an obligation of the Disclosed Principal Member, any right to receive payment of the Clearing Member shall be construed as a right of the Disclosed Principal Member and all other provisions of these Rules relating to payment shall be construed accordingly.

**Rule 302      *Mechanics for Payments***

- (a) The Clearing House shall advise each Clearing Member of amounts due to or from the Clearing Member in respect of its Proprietary Account and Customer Account on the following Business Day and:
  - (i) if the net amount for the Proprietary Account is due to the Clearing House, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from a Nominated Proprietary Account of the Clearing Member with the Approved Financial Institution to a Clearing House Account in an amount equal to the amount so due;
  - (ii) if the net amount for the Proprietary Account is due to the Clearing Member, the Clearing House shall instruct an Approved Financial Institution to transfer funds from a Clearing House Account to a Nominated Proprietary Account of the Clearing Member with the Approved Financial Institution in an amount equal to the amount so due;
  - (iii) if the net amount for the Customer Account is due to the Clearing House, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from a Nominated Customer Account of the Clearing Member with the Approved Financial Institution to a Clearing House Account in an amount equal to the amount so due;
  - (iv) if the net amount for the Customer Account is due to the Clearing Member, the Clearing House shall instruct an Approved Financial Institution to transfer funds from a Clearing House Account to a Nominated Customer Account of the Clearing Member with the Approved Financial Institution in an amount equal to the amount so due.
- (b) Instructions made pursuant to this Rule 302 may be made by means of a SWIFT message (or, in the case of a contingency, such other electronic message, fax, telephone or other means as are allowed pursuant to the Procedures) to the relevant Approved Financial Institution. Payments pursuant to this Part 3 shall be made immediately at the time and on the date that the obligation to pay arises or at such other time as is specified by the Clearing House in writing.
- (c) Upon notice from the Clearing House that a transfer of funds from a Clearing Member's Nominated Account was not effected as instructed by the Clearing House for any reason, the Clearing Member shall deliver to the Clearing House the amount required at such time and in such form as the Clearing House may prescribe.

**Rule 303      *Set Off***

- (a) Subject to Rule 102(p), the Clearing House may set off any obligation due to it from a Clearing Member against any obligation owed by the Clearing House to, or for the account of, the Clearing Member, regardless of the place of payment, account, branch or currency of either obligation. If the obligations referred to in this Rule 303(a) are in different currencies, the Clearing House may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set off.

- (b) The Clearing House shall be entitled to make any necessary adjustments to the Clearing Member's Proprietary Account and Customer Account resulting from exercise of its rights of set off.
- (c) The rights of the Clearing House in this Rule 303 are without prejudice to any rights of lien, setoff, netting, liquidation, combination of accounts or appropriation, or to instruct the same or any other rights or remedies of the Clearing House or any Approved Financial Institution, whether under these Rules or otherwise.

## Part 4 Clearing Mechanism

### *Rule 401 Formation of Contracts*

- (a) Subject to Rule 403 and Rule 404, two Contracts shall arise automatically, one between the Selling Clearing Member and the Clearing House and the other between the Clearing House and the Buying Clearing Member, at the moment that:
- (i) in the case of any ICE Futures Europe Matched Transaction, the relevant orders are matched on ICE Futures Europe;
  - (ii) in the case of any ICE OTC Matched Transaction, the relevant orders are matched on ICE OTC in an instance in which, in accordance with ICE Inc.'s systems and procedures, the Transaction is to proceed to clearing;
  - (iii) in the case of any ICE Futures Europe Block Transaction, ICE Futures Europe receives and has recorded on its system complete data in respect of the Transaction;
  - (iv) in the case of any ICE OTC Block Transaction, ICE Inc. receives complete data in respect of the Transaction in an instance in which, in accordance with ICE Inc.'s systems and procedures, the Transaction is to proceed to clearing;
  - (v) in the case of Transactions generated by ICE Futures Europe or ICE Inc. as a result of the operation of their contra trade, error trade, invalid trade, cancelled trade, error correction or similar policies and rules and procedures relating thereto or otherwise, upon notice of the final terms of the Transaction being received by the Clearing House;
  - (vi) in the case of a Contract that is formed as a result of another Contract being Invoiced Back by the Clearing House, immediately upon notice of the existence and final terms of the new Contract being given by the Clearing House to the Clearing Members affected;
  - (vii) in the case of a Contract that forms as a result of an Option being exercised in accordance with Part 8, immediately upon such exercise taking effect pursuant to Part 8; and
  - (viii) in the case of a Contract that is allocated by one Clearing Member to another Clearing Member by agreement of both Clearing Members subsequent to that Contract arising but on the same day as that on which such Contract arose, upon both such Clearing Members having recorded their agreement to such allocation on the Clearing House's systems.
- (b) Subject to Rule 403 and Rule 404, a contract or contracts shall arise between the Clearing House and the Buyer and/or the Clearing House and the Seller at the moment that an alternative delivery is agreed in respect of a Contract where, pursuant to the Procedures, a new collateral contract arises as a result of the alternative delivery being agreed, at the time and subject to the conditions and effects on existing Contracts specified in the Procedures.

- (c) The Clearing House shall be entitled to rely conclusively on the accuracy and authenticity of any and all information and data regarding any Transaction or Contract submitted to the Clearing House by or on behalf of a Market or any Clearing Member or Customer of a Clearing Member, whether or not a Clearing Member or Customer in fact authorised the submission of such information or the details so submitted.
- (d) In the case of a new Contract that forms as a result of another Contract being Invoiced Back pursuant to Rule 401(a)(vi), the new Contract shall be on the same terms as the original Contract, except that the roles of Buying Clearing Member and Selling Clearing Member shall be reversed and the Clearing House shall be entitled, at its discretion, to determine the price at which the Contract was bought or sold and any delivery or settlement price.
- (e) In the case of a Contract that forms as a result of another Contract being subject to allocation pursuant to Rule 401(a)(viii), the new Contract shall be on the same terms as the original Contract, except that the identity of the Clearing Member shall be different, in accordance with the allocation instructions received by the Clearing House. The Clearing Member that was party to the original Contract and the Clearing House shall each automatically and immediately be released and discharged from all their rights, liabilities and obligations in respect of the original Contract upon formation of the new Contract.
- (f) Upon request by the Clearing House, a Clearing Member shall promptly confirm or otherwise notify the details of any Contract or Transaction to the Clearing House in such form and manner as the Clearing House requests. Any such confirmation or notification shall not of itself affect the status or terms of any Contract.
- (g) Clearing Members shall designate each Contract as related to either its Proprietary Account or Customer Account (if any).
- (h) Where a Clearing Member has appointed a Disclosed Principal Member, the Disclosed Principal Member shall be the Buying Clearing Member or the Selling Clearing Member (as applicable) instead of the relevant Clearing Member in respect of all Contracts arising under this Rule 401 to which that Clearing Member would, but for the requirements of this Rule 401(h), otherwise be party. All provisions of these Rules relating to Contracts shall be construed accordingly.

***Rule 402      Contracts only between Clearing Members and Clearing House***

- (a) Each Clearing Member that is party to a Contract shall act as principal and not as agent. In performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).
- (b) Upon the formation of a Contract in accordance with Rule 401, any Clearing Member that has any Transaction Rights or Obligations in relation to the original Transaction shall be automatically and immediately released and discharged from all and any such Transaction Rights or Obligations.

- (c) The liabilities and obligations of the Clearing House pursuant to Contracts extend only to, and are enforceable only by, Clearing Members. Without limiting the generality of the foregoing, the Clearing House shall have no liability or obligation whatsoever to any Customer of a Clearing Member or any client of such a Customer.
- (d) The Clearing House shall have no liability or obligation in relation to any Transaction whatsoever, unless and until a Contract arises in accordance with Rule 401 that is not void; in which case its liabilities shall be pursuant to the Contract only. The Clearing House's obligations and liabilities under any Contract shall be limited to those pursuant to the Contract Terms and these Rules, and are subject to the Contract not being void pursuant to Rule 403 and to the Clearing House's rights in relation to voidable Contracts pursuant to Rule 404.

**Rule 403      *Contracts that are Void from Inception***

- (a) No Contract will arise (it being void *ab initio*) and the Clearing House shall have no obligation or liability to any Person in respect of a Transaction for which incomplete or conflicting details are received by the relevant Market.
- (b) In the event of a Contract being void, all amounts paid pursuant to the purported Contract shall be returned by the affected Clearing Member and the Clearing House to their respective contractual counterparties, in each case without interest.

**Rule 404      *Contracts that are Voidable***

- (a) The Clearing House shall have the discretion to avoid any Contract (which is not void *ab initio* pursuant to Rule 403) if the relevant Contract or Transaction (or related information or data received by the Clearing House, as applicable) whether in whole or in part:
  - (i) conflicts or appears to conflict with information received by the Clearing House in relation to such Contract or Transaction from another source, including (without limitation) information received from a Market, any other Clearing Member or any Governmental Authority;
  - (ii) is or appears to be incomplete or erroneous in any way;
  - (iii) results or appears to result from a communications or information technology error or problem;
  - (iv) is or appears to be connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws;
  - (v) is or appears to be a result of a Force Majeure Event;
  - (vi) is one which any Governmental Authority or Market requires or requests that the Clearing House treat as void or voided;
  - (vii) is one in respect of which the Clearing House has requested additional Original Margin or Permitted Cover from the Clearing Member and no Original Margin or Permitted Cover is provided by the time required; or

- (viii) is otherwise made or received in such circumstances or in such a manner that acceptance of the Contract or Transaction would be inadvisable, in the opinion of the Clearing House, for the Clearing House's own protection, the protection of Clearing Members or the protection of a Market.
- (b) If the Clearing House exercises its discretion to avoid a Contract, it shall immediately notify the affected Clearing Members and the relevant Market. Upon such notification, the Clearing House and Clearing Members shall immediately be released from all rights, liabilities and obligations under any affected Contract and all affected Contracts shall become null and void and all amounts paid pursuant to the Contract shall immediately be returned by Clearing Members and the Clearing House to their respective contractual counterparties, in each case without interest.

**Rule 405      *Representations and Warranties on Contract Formation***

- (a) In relation to each Contract, the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that the Clearing Member is:
  - (i) acting as principal and not as agent; and
  - (ii) in full compliance with the Rules.
- (b) In relation to each Contract (other than a Contract arising pursuant to Rule 401(a)(v), Rule 401(a)(vi) or Rule 401(b)), the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
  - (i) the data submitted by the Clearing Member or its Customer to the Exchange has been authorised by the Clearing Member and is complete and correct in all respects; and
  - (ii) Market Rules and all Applicable Laws have been complied with by the Clearing Member and any relevant Customer in respect of the Transaction.
- (c) In relation to each Contract that arises pursuant to Rule 401(a)(iii), Rule 401(a)(iv) and Rule 401(a)(viii), the Clearing House will, and will be entitled to, rely on representations and warranties deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
  - (i) all and any previously subsisting contracts, rights, obligations or liabilities in connection with the subject matter of the Transaction or proposed Contract are on equal terms to that of the relevant Contract Terms (save as to the parties) and, in the case of rights, free from all Encumbrances (excluding liabilities and obligations arising pursuant to the Contract Terms);
  - (ii) any Person other than the Clearing Member to whom any contracts, rights, obligations or liabilities referred to in Rule 405(c)(i) pertain has agreed with the Clearing Member, or such other Person as is relevant, to be released from all of its rights, obligations and liabilities as a result of Contracts arising

pursuant to Rule 401(a) (save for any contracts, rights, obligations or liabilities as between the Clearing Member and its Customers and any Customer and its customers and so on in relation to the subject matter of the Contract); and

- (iii) any contracts giving rise to the Transaction were, immediately prior to the formation of a Contract pursuant to Rule 401(a), legally valid, binding and enforceable under Applicable Laws.
- (d) Clearing Members will become party to, and liable under, Contracts each and every time a Transaction that gives rise to a Contract arises as a result of the action or omission of its Representatives, regardless of any circumstance in relation to such Transaction, including without limitation whether the person placing the Transaction was authorised to do so by the Company or its Representative or whether the Transaction caused a Representative to exceed the Clearing House's credit or other parameters set for such Representative, the Clearing House's Position Limits or otherwise was in breach of the Rules or any of the Clearing Member's or Clearing House's policies, procedures or controls.

**Rule 406      *Open Contract Positions***

- (a) At the end of each day or at such other frequency as the Clearing House determines at its discretion either generally or in respect of any Clearing Member, the Clearing House will calculate Open Contract Positions in its books and records. Settlement or revaluation of Open Contract Positions will take place pursuant to the Clearing Processing System and applicable Contract Terms. The Clearing House shall have no obligation to notify any Clearing Member of Open Contract Positions other than through the Clearing Processing System.
- (b) If a Clearing Member so instructs the Clearing House, the Clearing House will net particular buy and sell positions (for a Set of Futures) or Long and Short positions (for a Set of Options) within the Clearing Member's Open Contract Position in respect of a Clearing Member's Customer Account.
- (c) The Clearing House may at its discretion treat a Contract pursuant to which a Clearing Member is the Buying Clearing Member and another Contract of the same Set pursuant to which the same Clearing Member is the Selling Clearing Member simultaneously as being netted, set off and mutually closed out upon calculation of the Open Contract Position in respect of such Contracts, subject to the Clearing Member having made all then due payments pursuant to the Contract Terms in respect of such Contracts and to separate treatment of Open Contract Positions in the Clearing Member's Proprietary Account and Customer Account (if any).
- (d) All Intellectual Property in data relating to Transactions, Contracts and Open Contract Positions provided to the Clearing House under these Rules or generated by the Clearing House shall be the property of the Clearing House and may be provided by the Clearing House to any Market and any member of the ICE Group and used by the Clearing House or such other Persons for any commercial or other purpose. Each Clearing Member's rights in such Intellectual Property shall be automatically assigned to the Clearing House by virtue of this provision as such rights arise.

**Rule 407**      ***Reporting of Open Contract Positions Carried by Other Clearing Members***

If a Clearing Member (for the purposes of this Rule 407 only, the "**Relevant Clearing Member**") has Customer or proprietary positions in respect of any Contract carried for it by another Clearing Member (for the purposes of this Rule 407 only, the "**Position Holder**"), the Relevant Clearing Member shall give written notice to the Clearing House of the name of the Position Holder and the extent of its position on the Business Day following the Business Day on which a position was carried by the Position Holder.

**Rule 408**      ***Transfer of Contracts***

- (a) A Clearing Member shall not assign, allocate or transfer, or create any Encumbrance whatsoever in relation to, any of its rights, liabilities or obligations under a Contract except:
  - (i) that all rights and obligations of a Clearing Member pursuant to a Contract may be transferred from one Clearing Member to another Clearing Member with the agreement of each of the two Clearing Members involved and the consent of the Clearing House and relevant Market, subject to such conditions as the Clearing House at its discretion stipulates;
  - (ii) as a result of an allocation resulting in a Clearing Member being the 'Buying Clearing Member' or 'Selling Clearing Member' as such terms are defined in Rule 101; or
  - (iii) as a result of an allocation pursuant to Rule 401(a)(viii).
- (b) Any purported transfer of any rights, liabilities or obligations under a Contract other than in accordance with Rule 408(a) shall be null and void.

**Rule 409**      ***Amendment of Contract Terms***

- (a) The terms of any Contract may only be amended, waived or varied with the prior written consent of the Clearing House.

## **Part 5 Margin**

### ***Rule 501 Approved Financial Institutions***

- (a) The Clearing House will maintain a list of Approved Financial Institutions. Only Approved Financial Institutions shall be permitted by the Clearing House:
  - (i) to open and operate, on behalf of Clearing Members, accounts from which the Clearing House can draw amounts pursuant to a direct debit mandate, for the collection of amounts due to the Clearing House from time to time; and
  - (ii) to issue and confirm letters of credit for Clearing Members. Approved Financial Institutions may also act in such other capacity as the Clearing House may approve from time to time.
- (b) All cash transfers made by Clearing Members to or to the order of the Clearing House must be made from an account at an Approved Financial Institution, unless the Clearing House gives its prior written consent to another method being used.
- (c) Clearing Members are given notice that the Clearing House may suspend or terminate the status of an Approved Financial Institution or attach, amend or revoke conditions to the continued status of an Approved Financial Institution. The Clearing House may take such steps if an institution no longer meets all of the requirements of the Clearing House or if the Clearing House determines that it would be advisable for the Clearing House's own protection, the protection of Clearing Members or the protection of a Market to do so.

### ***Rule 502 Margin***

- (a) Each Clearing Member shall deposit with the Clearing House Original Margin and pay to the Clearing House Variation Margin in such amounts, in such forms and at such times as is required pursuant to this Part 5 and otherwise as may be prescribed by the Clearing House from time to time.
- (b) At any time on which a requirement for Original Margin falls due and insufficient Permitted Cover is held, the Clearing Member must initially make a deposit of cash in an Eligible Currency. Thereafter a Clearing Member may substitute such cash Original Margin with other Permitted Cover as Original Margin by delivery of the replacement Permitted Cover to the Clearing House.
- (c) Variation Margin payments may be made by the Clearing House or a Clearing Member only in cash in the Eligible Currency in which the Contract in question is to be or can be settled pursuant to the Contract Terms.
- (d) Details of Eligible Currencies and other Permitted Cover that may be used to satisfy Original Margin obligations will be published by the Clearing House in accordance with the Procedures. Certain classes of Permitted Cover may be subject to haircuts, as specified in the Procedures, pursuant to which certain classes of Permitted Cover do not count for their full face or market value in the determination of Original Margin for the account of a Clearing Member. The Clearing House may, at its discretion, vary or alter the standard Margin requirements, nature or types of acceptable Eligible

Currencies and Permitted Cover, specify proportions or maximum proportions of asset classes, modify any valuation procedures or haircuts set out in the Procedures. The Clearing House may require a Clearing Member or Clearing Members to deposit cash in other Eligible Currencies or Permitted Cover with the Clearing House in substitution for any Permitted Cover already deposited with the Clearing House. The Clearing House may impose, amend or withdraw additional Margin requirements in respect of any Clearing Member at any time and at its discretion. Any general changes to requirements for Margin or Permitted Cover will be notified to Clearing Members by a Circular.

**Rule 503      *Margin Calls and Return of Excess Margin***

- (a) Margin shall be and become due and payable at the times specified by the Clearing House pursuant to Rule 302.
- (b) Regular Margin calculations will be made by the Clearing House on each Business Day. Any such calculation may result in a call for additional Permitted Cover pursuant to Part 3.
- (c) The Clearing House shall be entitled, at its discretion, to make an intra-day call for Margin or any other amount payable to it. In the event of such a call being made, the Clearing House will:
  - (i) give notice to each Clearing Member which is required to make payment to the Clearing House of the amount payable by such Clearing Member and time by which payment must be made; and
  - (ii) immediately after giving or making reasonable efforts to give the notice described in Rule 503(c)(i), instruct the relevant Approved Financial Institution to transfer funds equal to the amount due to the Clearing House from the account of such Clearing Member to an account of the Clearing House.
- (d) For regular calls, Margin shall be calculated with reference to a Clearing Member's Open Contract Position. For any intra-day Margin call, Margin shall be calculated with reference to a Clearing Member's Open Contract Position and gross number of Contracts in relation to any Contracts not included in Open Contract Positions.
- (e) The amount of Variation Margin for any Business Day shall be calculated (and, if necessary, called) separately in respect of the Proprietary Account and Customer Account of a Clearing Member. Each such Variation Margin call shall be:
  - (i) in the case of an Open Contract Position, based on the price at which the Open Contract Position is recorded on the Clearing House's books; and
  - (ii) in the case of Contracts not reflected in a Clearing Member's Open Contract Position, represented by the difference between the Settlement Price and the price at which each such Contract was bought or sold; provided, however, that in the case of any Contract based on an index, the amount of the final Variation Margin payment shall be determined as specified in the rules of the Exchange on which the index is based.

- (f) The Clearing House shall return to a Clearing Member the amount of any excess Margin on deposit from such Clearing Member, provided that the Clearing House receives a request for such a release from such Clearing Member by such time as may be specified by the Clearing House on the day such release is to be made, in accordance with Rule 302.

**Rule 504      *Rights relating to Margin and Representations of Clearing Members***

- (a) The rights and liabilities of the Clearing House and each Clearing Member in relation to Margin are set out in the Clearing Membership Agreement and these Rules.
- (b) Each Clearing Member will act as principal and not as agent in providing Margin to the Clearing House. The Clearing House will take no account of any right or interest which any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House.
- (c) Each Clearing Member will be deemed to represent and warrant to the Clearing House on each date on which such Clearing Member provides assets to the Clearing House to be held by way of Margin pursuant to these Rules, that:
  - (i) the Clearing Member is the sole legal and beneficial owner of all such assets (or such assets are provided with the legal and beneficial owner's unconditional consent for their use and application pursuant to these Rules);
  - (ii) no such assets are subject to any Encumbrance whatsoever; and
  - (iii) the use or application of Margin by the Clearing House pursuant to these Rules is not in breach of any of the Clearing Member's contractual obligations towards any third party or Applicable Laws.
- (d) The Clearing Member shall be liable to the Clearing House for any cost or liability incurred by the Clearing House as a result of the Clearing House possessing, holding, perfecting the title to or otherwise being associated with, any asset provided to it by that Clearing Member by way of Margin.
- (e) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation to transfer Margin of the Clearing Member shall be construed as an obligation of the Disclosed Principal Member and all other provisions of these Rules relating to Margin shall be construed accordingly.

**Rule 505      *Financial Collateral Regulations***

The Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements) apply in relation to all Permitted Cover, Original Margin and Guaranty Fund Contributions. As a result, in accordance with such Regulations, *inter alia*:

- (a) certain Applicable Laws of the United Kingdom relating to Insolvency, in as much as they restrict the Clearing House's enforcement of its rights in relation to Permitted Cover, Original Margin and Guaranty Fund Contributions, are not applicable; and

- (b) the Rules in relation to close-out netting will take effect in accordance with their terms notwithstanding an Insolvency of the Clearing Member.

## **Part 6    Position Limits**

### ***Rule 601    Establishment of Position Limits***

- (a) The Clearing House will be entitled at its discretion to establish, amend or revoke Position Limits for Clearing Members. The Clearing House may or may not inform Clearing Members of their Position Limits.
- (b) The Position Limit for each Clearing Member will be determined at the Clearing House's discretion and may take into account the Clearing House's evaluation of the financial and operational capacity of the Clearing Member and such other factors as the Clearing House at its discretion deems appropriate.

### ***Rule 602    Breach of Position Limit***

- (a) If a Clearing Member exceeds its Position Limit, the Clearing House may, at its discretion:
  - (i) require a Clearing Member to provide information to the Clearing House in respect of its positions;
  - (ii) require a Clearing Member to allocate, transfer or liquidate such Contracts or close out its Open Contract Position to the extent necessary to reduce its Open Contract Position so as to meet its Position Limit within such time as the Clearing House may prescribe;
  - (iii) make an additional call for such Margin as the Clearing House in its discretion determines; and/or
  - (iv) impose such additional Capital requirements on the Clearing Member as the Clearing House in its discretion determines.
- (b) If the Clearing Member fails to comply with any requirement imposed on it pursuant to Rule 602(a), the Clearing Member shall be in breach of these Rules and, without limitation, the Clearing House may, at its discretion, in respect of the Clearing Member concerned:
  - (i) declare an Event of Default;
  - (ii) terminate or suspend membership of the Clearing Member;
  - (iii) liquidate such Contracts as the Clearing House at its discretion selects on behalf of the Clearing Member;
  - (iv) instigate an investigation or disciplinary proceedings under Part 9 of the Rules; and/or
  - (v) impose such other requirements on the Clearing Member as it sees fit.

## **Part 7 Settlement and Delivery of Futures**

### ***Rule 701 Determination of Market Delivery Settlement Price***

- (a) The Clearing House will specify the Market Delivery Settlement Price for any Future Set.
- (b) The Market Delivery Settlement Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Market Delivery Settlement Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine a Market Delivery Settlement Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Market Delivery Settlement Price;
  - (iii) there is an error in data provided by a Market; or
  - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

### ***Rule 702 Cash Settlement***

- (a) A Futures Contract shall be settled in cash if:
  - (i) pursuant to the applicable Contract Terms it can be settled only in cash; or
  - (ii) pursuant to the applicable Contract Terms it may be settled in cash and the Clearing Member opts to settle the Contract(s) in cash.
- (b) Cash settlement for a Set of Futures Contracts shall occur separately, and separate payment obligations shall accrue, in respect of a Clearing Member's:
  - (i) Proprietary Account;
  - (ii) buy positions under its Customer Account (if applicable); and
  - (iii) sell positions under its Customer Account (if applicable).
- (c) Provided that all Margin payments in respect of the Set have been paid by the Clearing Member to the Clearing House or repaid by the Clearing House, the amount payable for cash settlement of any Future shall be the net gain or loss, as the case may be, based on the price at which Open Contract Positions are recorded on the Clearing House's books and the Market Delivery Settlement Price and, for Contracts not reflected in a Clearing Member's Open Contract Position, the difference between the Market Delivery Settlement Price and the price at which each new relevant Contract not in the Clearing Member's Open Contract Position was bought or sold. Each cash settlement shall occur in accordance with the Contract Terms.

- (d) Neither those parts of the Procedures relating to delivery nor the requirements of Rule 703 shall apply to any Contract which is settled in cash in accordance with this Rule 702.

**Rule 703      *Delivery***

- (a) In relation only to Futures which are not settled in cash pursuant to Rule 702, those parts of the Procedures relating to delivery and the requirements of this Rule 703 shall apply.
- (b) The Buyer and Seller shall each make such payments and deliveries and deliver such tenders, notices and invoices as are required pursuant to the Procedures and Market Rules.
- (c) Full compliance with the Procedures applicable to the Contract in question and, where applicable, Market Rules shall amount to a good discharge of the rights, liabilities and obligations of the parties under such Contract (but shall be without prejudice to any rights, liabilities or obligations of any party to a Contract in relation to breach of warranty, representation, damaged goods, under-delivery, over-delivery or otherwise).
- (d) The Clearing House may, at its discretion, direct a Clearing Member who is a Seller under a Contract subject to delivery to deliver the Commodity the subject matter of such Contract to another Clearing Member that is a Buyer. The Seller and Buyer shall each be bound by any such direction. Delivery in accordance with any such direction shall be deemed to constitute delivery by the Seller to the Clearing House and from the Clearing House to the Buyer for the purposes of the Contract or Contracts in question (but title shall not pass unless and until specified in the Procedures). All payments in relation to such Contracts shall nonetheless be made only to and from the Clearing House by the Clearing Members concerned.
- (e) If a Buyer under a Contract rejects a Commodity delivered to it, the Clearing House as Buyer under the similar (effectively, back to back) Contract shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under the equivalent Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.
- (f) If an invoice has not been prepared or delivered when payment becomes due pursuant to a Contract, payment shall be made and received on account, pending the issue of that invoice.
- (g) Where a Clearing Member that is a Buyer or Seller under a Contract subject to delivery is subject to an Event of Default or Force Majeure Event, the rights, liabilities and obligations of any Clearing Member that is not a Defaulter in respect of such performance shall be discharged and there shall arise in place of the same an obligation to account as between the Clearing Member and the Clearing House for a settlement amount. The Clearing House shall be entitled to substitute an obligation to account for such settlement amount, or a proportion thereof, for the Clearing House's rights, liabilities and obligations in respect of performance of delivery obligations under other Contracts subject to tender with other Clearing Members (such Contracts

and Clearing Members selected by the Clearing House at its discretion) of the same Set.

- (h) Where a Clearing Member has appointed a Disclosed Principal Member, any delivery or related obligation of the Clearing Member shall be construed as an obligation of the Disclosed Principal Member and terms 'Buyer,' 'Seller' and all other provisions of these Rules relating to deliveries shall be construed accordingly.

***Rule 704 Credit and Debit of Accounts***

The Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Account and Customer Account, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3.

***Rule 705 Settlement and Delivery Obligations only in respect of Open Contract Position and Termination of other Contracts***

- (a) The Clearing House and each Clearing Member shall make cash settlement or delivery only for such number of Contracts as are reflected in the Clearing Member's Open Contract Position plus any Contracts not included in the Open Contract Position, separately for each of the positions on the Clearing Member's Proprietary Account, gross buy position on its Customer Account and gross sell position on its Customer Account. No such Open Contract Position (or additional Contracts) may be netted against another Open Contract Position on cash settlement or delivery without the prior written consent of the Clearing House, and subject always to Rule 102(p).
- (b) Upon each of the parties to a Contract having made all necessary payments and deliveries in accordance with these Rules in respect of all Futures Contracts in a Set in relation to which a cash settlement or delivery obligation exists for each of a Clearing Member's Proprietary Account, gross buy position on its Customer Account or gross sell position on its Customer Account, the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Futures Contracts belonging to such Set to the account of the Clearing Member's Proprietary Account, gross buy position on its Customer Account or gross sell position on its Customer Account (as applicable).

## **Part 8 Options**

### ***Rule 801 Payment of Premium***

- (a) A Buying Clearing Member that becomes party to an Option shall be obliged to pay to the Clearing House the premium for the Option at the time specified in the Contract Terms.
- (b) A Selling Clearing Member that becomes party to an Option will be credited by the Clearing House with an amount equal to the premium for the Option at the time specified in the Contract Terms.

### ***Rule 802 Reference Prices***

- (a) The Clearing House will specify the Reference Price for any Option Set.
- (b) The Reference Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Reference Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine a Reference Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Reference Price;
  - (iii) there is an error in data provided by a Market; or
  - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

### ***Rule 803 Exercise of Options***

- (a) An Option Contract may be exercised only by a Clearing Member with a Long Open Contract Position or by the Clearing House in respect of a Contract in which it is Long. Option Contracts may only be exercised by a Clearing Member for any Option Set for such number of Contracts as are reflected in the Clearing Member's Open Contract Position (plus any Contracts not included in the Open Contract Position), separately for each of the positions on the Clearing Member's Proprietary Account, gross Long positions on its Customer Account and gross Short positions on its Customer Account.
- (b) Any exercise of an Option Contract shall be in accordance with the applicable Contract Terms. In particular, an Option Contract shall only be exercised:
  - (i) if it is an Option Contract which in accordance with the applicable Contract Terms is automatically exercised, in which case it will be automatically exercised at the time and in the manner specified in the Contract Terms; or
  - (ii) if it is an Option Contract not falling in Rule 803(b)(i), at such time as is permitted pursuant to the applicable Contract Terms (whether on the day and by the time prescribed by the applicable Contract Terms or in such period as is

prescribed by the applicable Contract Terms) and in such form and manner as is permitted pursuant to the Contract Terms and the Procedures (including, where permitted, by manual exercise or the establishment of settings in the Clearing House's systems for the exercise of Options).

- (c) An Option Contract may be abandoned by notice to the Clearing House in writing or such other form as is permitted pursuant to the Procedures.
- (d) The Clearing House shall be entitled to rely upon any form or electronic communication purporting to give notice of exercise or abandonment of an Option made in accordance with these Rules without any enquiry as to:
  - (i) whether such form or electronic communication complies with the Contract Terms or the requirements of the Procedures; or
  - (ii) as to the authority of any Representative purporting to exercise an Option on behalf of a Clearing Member or due execution of the relevant form.
- (e) The Clearing House may reject any notice of exercise or abandonment of an Option if such notice does not, or appears not to, comply with the Contract Terms or the Procedures, notwithstanding any equivalent notice or other prescribed form of exercise that has been provided by the Clearing House to any Clearing Member in respect of the exercise of an Option Contract.
- (f) No notice or other form of exercise or abandonment of an Option received by the Clearing House may be cancelled or withdrawn once the deadline for exercise has passed.
- (g) Part 7 of these Rules shall not apply in relation to Options.

***Rule 804 Notice of Assignment***

The Clearing House will assign exercise notices to Clearing Members which have or carry Short Open Contract Positions (and Short Contracts not in their Open Contract Position) in the Option Set being exercised, in accordance with the Procedures.

***Rule 805 Formation of new Futures Contracts***

- (a) Upon exercise of any Option, one or more Futures Contracts at the Strike Price (or such other price as is required pursuant to the Contract Terms) shall arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules.
- (b) Upon such Futures Contract or Contracts having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

***Rule 806 Termination of other Contracts***

Upon each of the parties to a Contract having made all necessary payments and becoming party to all resulting Futures Contracts in accordance with these Rules in respect of all Option Contracts in a Set for each of a Clearing Member's Proprietary Account, gross Long position on its Customer Account or gross Short position on its Customer Account, the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Option Contracts belonging to such Set to the account of the Clearing Member's Proprietary Account, gross Long position on its Customer Account or gross Short position on its Customer Account (as applicable).

***Rule 807 Expiry and Abandonment***

- (a) If an Option Contract is not automatically exercised in accordance with Rule 803(b)(i) or exercised by the Clearing Member by the day and time referred to in Rule 803(b)(ii), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of any the Option shall lapse and the Option shall be terminated and be deemed to be abandoned.
- (b) If notice of abandonment of an Option Contract is given pursuant to 803(c), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of any the Option shall lapse and the Option shall be terminated and be deemed to be abandoned upon the Clearing House updating its books and records in respect of such abandonment.

## **Part 9 Events of Default**

### ***Rule 901 Events of Default***

- (a) If any of the following events should occur with respect to any Clearing Member (regardless of whether it is cured by the Clearing Member, a guarantor or other third party on behalf of the Clearing Member or otherwise), such event shall, if so declared by the Clearing House, constitute an "**Event of Default**":
- (i) any breach by that Clearing Member of these Rules, the Procedures, the Clearing Membership Agreement, any other agreement with the Clearing House or Market Rules;
  - (ii) that Clearing Member being unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract;
  - (iii) a Monetary Default occurring with respect to that Clearing Member;
  - (iv) any Financial Indebtedness of that Clearing Member or any of its Affiliated Persons: (A) not being paid when due or within any originally applicable grace period; or (B) being declared to be or otherwise becoming due and payable prior to its specified maturity as a result of an event of default (however described);
  - (v) any commitment for any Financial Indebtedness of that Clearing Member or any of its Affiliated Persons being cancelled or suspended by a creditor as a result of an event of default (however described);
  - (vi) any creditor of that Clearing Member or any of its Affiliated Persons becoming entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described);
  - (vii) an Insolvency in relation to that Clearing Member or any of its Affiliated Persons;
  - (viii) any material action being taken against that Clearing Member (including, without limitation, any declaration of default, material adverse notice or finding, material fine, suspension or expulsion or withdrawal of, revocation of or failure to renew any permission, licence or authorisation) by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility; or
  - (ix) breach by that Clearing Member of any Applicable Law relevant to its business as a Clearing Member.
- (b) If an Event of Default is declared in respect of a Clearing Member, the Clearing House may immediately suspend or terminate such Defaulter's membership as a Clearing Member and take any action to close out the Defaulter's positions under this Part 9. Any such suspension or termination may be temporarily postponed or may not be enforced if the Clearing House in its discretion determines that any such suspension or termination would either (i) not be in the best interests of the Clearing House; or (ii) be likely adversely to affect the operation of any market.

- (c) As soon as practicable after the Clearing House has declared that a Clearing Member is subject to an Event of Default, the Clearing House shall issue a Default Notice in respect of such Clearing Member and shall supply a copy of the Default Notice to the Defaulter and shall provide a copy of such Default Notice to any other party to an affected Contract (if any). The Clearing House may issue a Circular to Clearing Members in respect of any Default Notice but shall not be obliged to do so. The Clearing House shall, as soon as reasonably practicable after issuing a Default Notice, appoint a day on which any net sums certified under Rule 905 are to be paid.
- (d) The Clearing House may assume that the occurrence of any Event of Default means that a Clearing Member is unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract.

**Rule 902      *Liquidation following an Event of Default***

- (a) Where a Person is subject to an Event of Default, the Clearing House may take such steps pursuant to this Part 9 as appear in the circumstances to be necessary or expedient to discharge all the Defaulter's rights and liabilities under or in respect of Contracts to which it is party, to protect the Clearing House and its non-defaulting Clearing Members and to complete the process described in this Part 9. All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be liquidated in the manner set out in Rule 903 below unless and to the extent that:
  - (i) such Contracts are transferred or sold to and accepted by one or more other Clearing Members, with the prior consent of the Clearing House and at a price agreed between the Clearing House and the Clearing Member that is the transferee or purchaser;
  - (ii) the Clearing House determines in its discretion that the protection of the financial integrity of the Clearing House does not require such a liquidation; or
  - (iii) such liquidation is delayed because of the cessation or curtailment of trading on an Exchange which lists such Contracts.
- (b) If it is determined pursuant to Rule 902(a)(ii) or Rule 902(a)(iii) not to liquidate any Contracts to which the Defaulter is party, or if the Clearing House is unable for any reason to liquidate such Contracts in a prompt and orderly fashion, the Clearing House may authorise the execution from time to time for the account of the Clearing House, solely for the purpose of reducing the risk to the Clearing House resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts. Any such hedging transactions that are executed shall be reported to the Clearing House on a daily basis. Any costs or expenses, including losses, sustained by the Clearing House in connection with transactions effected for its account pursuant to this Rule 902 shall be charged to the Defaulter and any gains (net of any costs and expenses) shall be credited to the Defaulter.

**Rule 903**      **Method of Closing Out**

- (a) Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) of any Clearing Member which, pursuant to Rule 902 are required to be liquidated in accordance with this Rule 903, shall be liquidated in such manner as the Clearing House in its discretion may direct for the purposes of discharging all the rights, obligations and liabilities of the Defaulter (provided that in respect of Contracts, this does not include, where the Defaulter acts as agent, any rights or liabilities attributable to the Defaulter arising out of the relationship of principal and agent), pursuant to such powers as are granted pursuant to the Clearing Membership Agreement. Without prejudice to the generality of the foregoing, at the Clearing House's discretion:
- (i) Any such liquidation may be effected by placing, with one or more members of an Exchange upon which the relevant category of Contract is traded, orders for the purchase, grant, exercise or sale of Contracts. The Clearing House may designate and authorise an individual to be responsible for the placement of such orders or may place Contracts with non-defaulting Clearing Members by way of auction.
  - (ii) Contracts on opposite sides of the market, having different expiration months, may be liquidated by any transactions, Invoicing Back or the creation of new Contracts at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise.
  - (iii) Any Contracts (including for the Defaulter's Customer Account) which are sale and purchase Contracts of the same Set may be terminated by way of off-set.
  - (iv) An Option may be liquidated by closing transactions, exercise or abandonment, at the discretion of the Clearing House, and in any case where an Option is exercised, the Clearing House may liquidate the underlying Future, if any, resulting from such exercise in accordance with the provisions of this Rule 903.
  - (v) Notwithstanding any other provision of this Rule 903, any such liquidation may be effected without placing orders for execution, by making appropriate book entries on the records of the Clearing House (including, without limitation, by pairing and cancelling offsetting Long and Short positions in the same Future or Option Set) at a price equal to the Settlement Price on the day such liquidation is ordered or at such other price as the Clearing House may establish.
  - (vi) The Clearing House shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any Court order) to sell, transfer, value or create any interest in any Permitted Cover, Original Margin or other assets that remain credited to the Defaulter's Proprietary Account or Customer Account (as applicable, subject to Rule 102(p)) or are otherwise in the Clearing House's possession (subject always to Rule 102(p)), subject to an obligation to account to the Defaulter for the net proceeds of such actions after having deducted the

Clearing House's reasonable and properly incurred expenses and costs in doing so in accordance with this Part 9.

- (vii) The Clearing House shall be entitled to settle any Contract in respect of which settlement may have been or may otherwise (but for the Event of Default) have been requested by the Defaulter.
  - (viii) The Clearing House shall be entitled to take such actions, take or make delivery and give such notices on behalf of the Defaulter in respect of a Contract under delivery as it determines; or to make or receive a tender in the Defaulter's name.
  - (ix) The Clearing House shall be entitled to determine an amount due from the Defaulter in substitution of delivery obligations.
  - (x) The Clearing House shall be entitled to take any other action as it deems to be necessary or prudent.
  - (xi) The Clearing House's powers to convert currency under Rule 107 may be applied.
- (b) If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to liquidate all Contracts to which the Defaulter is party pursuant to Rule 903(a), the Clearing House may liquidate such Contracts by taking opposite positions in the current expiration month and liquidating the resultant offset positions by a transaction effected by the Clearing House.
- (c) All liquidations made pursuant to this Rule 903 shall be for the account and risk of the Defaulter.

***Rule 904      Amounts Payable to the Clearing House***

Upon completion of the liquidation or transfer of the positions of a Defaulter pursuant to Rule 903, the Defaulter shall be liable to the Clearing House to make payment in respect of all the Clearing House's and Markets' losses, liabilities, damages, injuries, delays, costs and expenses (including, without limitation, legal fees and disbursements) incurred by the Clearing House and Markets in connection with the Event of Default.

***Rule 905      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 conduct the following process such that the sums payable in respect of Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) between the Defaulter and any other Person (including, without limitation, the Clearing House) may be aggregated or set off so as to produce a net sum or net sums (each, *N*) in any case defined by the formula:

$N = L - A - D - M$ , where:

*L* = the aggregate amount of all sums payable by the Defaulter in respect of Contracts or otherwise under these Rules and all sums payable in respect of any breach of these Rules or arising in consequence of:

- (i) the effecting by the Clearing House of corresponding contracts (as defined in section 25(3) of the FSMA 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, SI 2001/96) in relation to Contracts to which the Defaulter is party;
- (ii) the transfer of any of the Defaulter's Open Contract Positions or Contracts to a Clearing Member (not being the Defaulter); and
- (iii) the exercise by the Clearing House of any Option,

(including in either case any costs and expenses of the Clearing House, including, without limitation, legal and accountancy expenses and disbursements and the costs of liquidation but excluding, in respect of a Contract where the Defaulter acts as agent (if any), any rights or 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;

$A$  = the aggregate amount of all sums payable to the Defaulter in respect of Contracts (or to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default) or otherwise under or due to a breach of these Rules, including any other right to any amount arising in consequence of any of (i), (ii) or (iii) above but excluding, in respect of a Contract where the Defaulter acts as agent (if any), any rights or 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  $A$  in its discretion);

$D$  = if the Clearing House so determines at its discretion, the aggregate amount of any sums payable under a Contract as the price for the Commodity or other Underlying that is the subject of such Contract delivered or to be delivered or in respect of which settlement is to be made to the Clearing House by or on behalf of the Defaulter (if payable to the Clearing Member, being a positive number or, if payable to the Clearing House, being a negative number); and

$M$  = any Margin, Permitted Cover, Guaranty Fund Contribution or other amounts standing to the credit of those of the Defaulter's Accounts determined to be relevant to  $N$  in accordance with Rule 905(b).

- (b) Where the Defaulter has a Customer Account and a Proprietary Account, the process set out in Rule 905(a) shall, subject to Part 11, be completed separately in respect of:
  - (i) the Defaulter's Customer Account and Contracts relating to the Defaulter's Customers; and
  - (ii) the Defaulter's Proprietary Account and other Contracts, rights, obligations and liabilities.

The Defaulter's Guaranty Fund Contribution may be used for the purpose of calculating either or both net sums (provided that such Guaranty Fund Contribution is not double counted). The aggregate sums finally payable shall be separately certified under Rule 905(c).

- (c) Where  $N$  is a positive number, the net sum equal to  $N$  shall be payable by the Defaulter to the Clearing House. Where  $N$  is a negative number, the net sum equal to the absolute value of  $N$  shall be payable by the Clearing House to the Defaulter. Where  $N$  is equal to zero, no amount shall be payable as between the Clearing House and the Defaulter pursuant to this Rule 905. Where there is more than one separately certified amount  $N$ , each amount so certified shall be treated as a separate obligation which cannot automatically be netted off against another  $N$ .
- (d) Each amount  $N$  shall be certified by the Clearing House promptly upon its determination. Such determination may be delayed or withheld until such time as all relevant sums and components have been evaluated and until the value or sale proceeds of any non-cash Original Margin, Permitted Cover or other assets are determined or received. A certificate of the Clearing House made pursuant to this Rule 905 shall be conclusive as to the amount required to be paid by any Defaulter in discharge of its rights and liabilities in respect of the Contracts to which such certificate relates or by any other Person in relation to such Event of Default.
- (e) 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.
- (f) The Clearing House will report to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part 9.
- (g) If a Disclosed Principal Member and the Clearing Member that appointed the Disclosed Principal Member are both Defaulters, the Clearing House shall be entitled to set off any amount or asset to the credit of either Defaulter against any liability or obligation of the other Defaulter for the purposes of calculating any net sum under this Rule 905 and may exercise any of its powers under this Part 9 accordingly.

## **Part 10 Disciplinary Proceedings**

### ***Rule 1001 Complaints***

- (a) The Clearing House shall consider all complaints made to it in writing by a Clearing Member and may consider any complaints made to it by any other person. If the Clearing House, in its discretion, considers it appropriate or if it is otherwise compelled to do so under any Applicable Law, the Clearing House may refer the matter or make a report on the matter to a Market, Regulatory Authority or Governmental Authority.
- (b) In the case of a complaint which alleges a breach of these Rules, the Clearing House may authorise an investigation or commence disciplinary proceedings under this Part 10 or take no further action if it considers it disproportionate or otherwise, in its discretion.
- (c) The Clearing House shall inform the complainant in writing of any steps taken as a result of the complaint and of the result thereof.
- (d) In the event of a complaint against the Clearing House or any of its officers or employees (or agents in their capacity as such), such complaint shall be investigated in accordance with the Complaints Procedures and shall not otherwise be subject to this Part 10.

### ***Rule 1002 Investigations***

- (a) Investigations into breaches or alleged breaches of the Rules may be authorised and conducted by the Clearing House.
- (b) Upon determining that a complaint, matter or concern requires investigation, the Clearing House shall issue a Notice of Investigation ("NoI") notifying the Clearing Member concerned that an investigation has been commenced. The NoI shall be sent to the Clearing Member or the person concerned and shall contain a brief description of the matter under investigation.
- (c) In the course of conducting an investigation, the Clearing House may call for the assistance of such professional, legal or accounting advisers, Clearing Organisations, Exchanges, Regulatory Authorities and advisers or other Persons as it thinks fit. Any external adviser appointed by the Clearing House shall be required to treat all information obtained in the course of the investigation as confidential and to disclose it only to the Clearing House, save where compelled to disclose such documents to a third party under any Applicable Law.
- (d) Clearing Members shall co-operate fully with all investigations (whether or not such Clearing Member or person is the direct subject of such investigation). Without limitation, each Clearing Member shall:
  - (i) promptly furnish to the Clearing House such information and documentary and other material (including any information in electronic form) as may reasonably be requested (including without limitation in the case of Clearing Members, details of the Clearing Member's Customers' accounts);

- (ii) permit those persons appointed to carry out or assist in carrying out the investigation on reasonable notice, such notice being commensurate with the seriousness of the potential or alleged breach of the Rules and to enter any premises in any part of the world where the Clearing Member carries on its business or maintains its records during normal business hours for the purpose of carrying out such investigation. Each Clearing Member hereby irrevocably grants the Clearing House a licence for this purpose and shall procure a licence to the Clearing House from any Affiliated Person, agent or third party under its control that is necessary for this purpose;
  - (iii) exercise best endeavours to make available for interview such of the Clearing Member's Representatives as may reasonably be requested and use its best endeavours to ensure that such persons answer truthfully and fully any question put to him or them by or on behalf of the Clearing House. A Clearing Member who fails to procure any of its Representatives to attend an interview or hearing with the Clearing House and who fails in the reasonable opinion of the Clearing House to demonstrate good cause for such failure may be fined £1000 per day of non-attendance, such fine representing a genuine pre-estimate of the likely cost to the Clearing Houses attributable to such non-attendance, and the Clearing Member may be suspended until the Clearing Member takes reasonable steps to make its Representatives available on an alternative date;
  - (iv) make available for inspection such documents, records or other material in its possession, power or control as may reasonably be required and, upon request, provide copies of the same; and
  - (v) use its best endeavours to ensure that so far as possible its Representatives give similar co-operation.
- (e) Failure to co-operate with an investigation by the Clearing House, failure to provide information requested on a timely basis and concealment **or** destruction of evidence are each, for the avoidance of doubt, a breach of these Rules.
- (f) The Clearing House, having conducted an investigation into an alleged breach of the Rules, shall send to the relevant Clearing Member a letter of mindedness ("**Letter of Mindedness**") setting out its preliminary factual conclusions and its intended course of action in relation to the alleged breach.
- (g) Following its issuing of the Letter of Mindedness, the Clearing House shall invite the Clearing Member to either attend an Initial Meeting ("**IM**") or alternatively send the Clearing House written comments. The purpose of the IM or the written comments shall be to afford the Clearing Member an opportunity to correct any factual error it considers to be contained in the Letter of Mindedness. The IM is not intended to be a hearing. The proceedings of the IM will take place on a confidential basis, subject, in the case of the Clearing House, to Rule 106. The Clearing House and Clearing Member shall each be entitled to nominate up to four attendees, who may include lawyers or legal advisers.

- (h) Following the IM or the receipt of written comments from the Clearing Member (if received within a reasonable time) the Clearing House shall finalise its initial findings and communicate these in writing to the Clearing Member.
- (i) Without prejudice to any other powers, the possible powers of the Clearing House following the completion of its investigation and the communication of its initial findings to the Clearing Member include:
- (i) to decide that no further action should be taken and notify any Clearing Member or other Person concerned in writing accordingly;
  - (ii) in the event of a minor breach, to issue a written warning (which shall be private save as provided for in Rule 1002(i)(vii) below) to the Clearing Member concerned (or, in the case of such a breach by some other Person, that Person with a copy to any Clearing Member with whom he was associated at the time of such breach);
  - (iii) to order that the Clearing Member concerned pay a fine which the Clearing House in its discretion regards as commensurate with a breach of the Rules, the amount of such fine to be appealable to the Appeals Tribunals directly without reference first to a Disciplinary Panel;
  - (iv) to commence disciplinary proceedings;
  - (v) to refer the matter for further enquiry where the Clearing House considers it necessary to investigate further;
  - (vi) to report the findings of the investigation and hand over any documents or communicate any information it has acquired whether during the course of its investigation or otherwise, to other Clearing Organisations, Exchanges, Regulatory Authorities or Governmental Authorities; or
  - (vii) to publish such findings as it has made following the IM and in such detail as the Clearing House deems appropriate where the matter under investigation is considered of relevance to the market in general or in the public interest, save that the Clearing Member shall be afforded an opportunity to comment on the text of such an announcement during a period of no less than 48 hours prior to publication, such period commencing on a Business Day;

provided that the Clearing House may, in an appropriate case, take more than one of the above actions in relation to any one Clearing Member and/or different actions in relation to different Clearing Members concerned in the same investigation or on similar facts.

### **Rule 1003     *Disciplinary Proceedings***

- (a) Disciplinary proceedings may be commenced by the Clearing House only when the Clearing House is satisfied (whether or not a formal investigation has taken place under this Part 10) that there is *prima facie* evidence of a breach of the Rules by a Clearing Member.

- (b) Upon determining that disciplinary proceedings should be commenced, the Clearing House must establish a Disciplinary Panel. Each Disciplinary Panel shall consist of a chairman sitting with two other persons. Such persons, including the Chairman, that are appointed to the Disciplinary Panel may be drawn from market practitioners, experts, lawyers or other suitable persons at the discretion of the Clearing House. Neither employees nor directors of the Clearing House or Clearing Member subject to disciplinary proceedings nor any of their Affiliated Persons, Representatives or Customers shall be appointed to a Disciplinary Panel. Expert assessors may be appointed, at the discretion of the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but not to vote. No person shall serve on or sit with a Disciplinary Panel if he has a personal or financial interest in or has been involved in any investigation into or previous disciplinary panel hearing on the matter under consideration.
- (c) The Clearing Member alleged to have committed the breach may object to any particular appointment to the Disciplinary Panel, which objection will be determined in the first instance by the chairman of the Disciplinary Panel and, in the event that the objection is in relation to the chairman of the Disciplinary Panel, the Chairman of the Clearing House.
- (d) In the event of any member of the Disciplinary Panel having or acquiring a personal or financial interest in the outcome or in any other way being or becoming incapacitated or permanently unavailable, the chairman of the Disciplinary Panel (or in the case of the chairman of the Disciplinary Panel, the Chairman of the Clearing House) may direct that the Disciplinary Panel shall continue to act with a reduced number or appoint another person to take the place of the retiring member of the Disciplinary Panel (and the disciplinary proceedings shall then proceed as if such person had been originally appointed in lieu of the first person) or may direct that a new Disciplinary Panel should be appointed to rehear the matter.
- (e) In the event of equality of votes, the chairman shall have a second or casting vote in reaching any determination.
- (f) The Clearing House may discontinue disciplinary proceedings or reach a settlement with the Clearing Member on such terms as it sees fit at any stage during the course of the disciplinary proceedings (including any Summary Procedure pursuant to Rule 1004 or any appeal).
- (g) When the Clearing House commences disciplinary proceedings, it shall send a written notice ("**Notice**") to the Clearing Member, setting out the alleged breach of the Rules, including a summary of facts relied upon in sufficient detail for a party in the Clearing Member's position properly to understand and respond to the allegations made against it.
- (h) The Clearing Member or other person the subject of a Notice shall have 20 working days (or such further time as either the Clearing House or Disciplinary Panel may in their discretion allow) from the service of the Notice in which to provide a statement of defence (the "**Defence**") responding to all or any of the allegations, stating its intended pleas and what admissions of fact, if any, it makes. If no Defence has been served within 20 days of service of the Notice or such extended period as has been

agreed, the Disciplinary Panel may in its discretion deem the Clearing Member to have accepted the facts and matters alleged in the Notice.

- (i) Having seen and considered the Defence, the Clearing House may proceed with the disciplinary proceedings, discontinue the disciplinary proceedings or deal with the matter as set out in Rule 1003(j).
- (j) The Clearing House may at any time amend a Notice by deletion, alteration or addition, change to the Rule breach alleged in the Notice or addition of another Rule breach in the Notice provided that:
  - (i) the deletion, alteration, addition, change, amendment or variation is relevant to the course of conduct under investigation;
  - (ii) the essential character of the allegation or Rule breach has not been changed;
  - (iii) the Clearing Member or other respondent would not be substantially prejudiced in any defence he might wish to put before the Disciplinary Panel; and
  - (iv) the Disciplinary Panel has not previously and does not subsequently make a procedural ruling adverse to the Clearing House in connection with such deletion, alteration, addition, change, amendment or variation.
- (k) For the avoidance of doubt, the power of the Clearing House to amend a Notice will exist where the Clearing House has in its discretion determined that a separate or unrelated *prima facie* breach of the Rules has been revealed during the course of the disciplinary proceedings. The Disciplinary Panel may order an adjournment at any stage upon an application by the Clearing House to enable such an alleged separate or unrelated *prima facie* breach to be investigated further. The Clearing House shall not be obliged to hold a further IM or otherwise consult with the Clearing Member in respect of additional or new alleged breaches.
- (l) Upon amendment of a Notice, the Clearing Member shall have 14 days or such extended period as may be agreed with the Clearing House or as directed by the Disciplinary Panel to make any consequential amendment of its Defence. If no amended Defence has been served within 14 days of service of the amended Notice on the Clearing Member, the Disciplinary Panel may in its discretion deem the Clearing Member to have accepted the facts and matters alleged in the Notice.
- (m) The Disciplinary Panel shall hear submissions on the matter of the alleged breach of the Rules and shall determine whether there has been a violation of the Rules and, if so, the appropriate sanction (if any) to be imposed. In carrying out this function, the Disciplinary Panel acting as a whole or through the Chairman may adopt such procedure as it thinks fit, including the holding of a pre-hearing review to hear procedural applications by the Clearing House or Clearing Member at any stage following its composition or in order to set a procedural timetable. Without limitation, the Disciplinary Panel may:

- (i) order the disclosure by the Clearing House or Clearing Member of such further statements, information, documents or other evidence as may be necessary;
  - (ii) allow either party to the proceedings to present to it further evidence within time limits ordered by the Disciplinary Panel;
  - (iii) issue directions and take such other steps as it considers appropriate for the clarification of the facts and issues and for the just and expeditious determination of the case;
  - (iv) balancing the need for cases to be dealt with expeditiously and the need for affected Persons to have sufficient opportunity to prepare and present their case: specify deadlines for the production of documents or hearings, which shall be binding on the parties;
  - (v) if it considers appropriate, but only with the express agreement of the Clearing House and the Clearing Member concerned (or the Person concerned and any associated Clearing Member), decide to determine the case upon written submissions and evidence placed before it;
  - (vi) in all other cases, give the opportunity to, or require, the Clearing House and the Clearing Member to attend hearings before the Disciplinary Panel and the Clearing House and the Clearing Member may call witnesses to give evidence and be questioned;
  - (vii) allow the Clearing Member and the Clearing House to be assisted or represented by any person, who may or may not be legally qualified;
  - (viii) call for any person to attend its hearings;
  - (ix) require hearings to be held in private unless the Clearing Member or Clearing House requests otherwise and the other consents; and
  - (x) appoint its own legal advisers.
- (n) The Disciplinary Panel shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach.
  - (o) The Disciplinary Panel shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact made by a court or any other Governmental Authority.
  - (p) If the Clearing House or Clearing Member should fail to meet a time limit imposed by the Disciplinary Panel or fail to attend a hearing, the Disciplinary Panel may in its discretion allow an extension of time, adjourn its proceedings or proceed, if necessary in the absence of the Clearing Member.
  - (q) Upon having determined whether a breach of the Rules has been proven in accordance with the standard of proof set out in Rule 1003(n), the Disciplinary Panel shall communicate in writing its findings and particulars of any sanction determined

to the Clearing House and to the Clearing Member concerned. Such findings and sanction shall be deemed conclusive and binding upon expiry of the time permitted for appeal or receipt by the Clearing House of any earlier written notice from the Clearing Member that such right of appeal will not be exercised. The Disciplinary Panel may in its absolute discretion communicate its findings to the parties and give them, where there is a finding that there has been a disciplinary breach, the opportunity to make representations as to the appropriate sanction(s) before deciding on the sanction(s).

- (r) The sanctions which may be imposed on a person subject to the Rules by a Disciplinary Panel shall be communicated to the Clearing Member and shall not exceed the following:
  - (i) the issue of a private warning or reprimand;
  - (ii) the issue of a public notice of censure;
  - (iii) in the case of a Representative, a finding that any Clearing Member for which such Representative is a director, controller or officer would not meet the Clearing House's membership criteria for any period or indefinitely;
  - (iv) in the case of a Clearing Member, disqualification (either indefinitely or for a fixed term) of any of its Representatives from being a Director or member of a committee or any panel of the Clearing House;
  - (v) a fine of any amount, to be paid on such terms as may be prescribed;
  - (vi) the disgorgement of any gain made by the Clearing Member or its Representatives in connection with the breach of the Rules;
  - (vii) a recommendation to the Clearing House to suspend membership for a period of time or terminate the membership of the Clearing Member;
  - (viii) the issue of an order requiring the Clearing Member or Representative found to have committed the breach to take such steps including making an order for compensation, as the Disciplinary Panel may direct, to remedy the situation including, without limitation, making an order for restitution to any affected person when the Clearing Member (or person concerned) has profited (or avoided a loss) from a breach at that person's expense;
  - (ix) provided that the Clearing House may, in an appropriate case, take more than one of the above actions in relation to any one Clearing Member and/or different actions in relation to different Clearing Members concerned in the same investigation or on similar facts; and
  - (x) any combination of the foregoing.
- (s) Following the suspension or expulsion of a Clearing Member, the Clearing House may make such directions as it thinks fit in respect of Contracts to which that Clearing Member is a party (including, without limitation, directions for the reduction, transfer or elimination of any of them).

- (t) (i) The contravention of any sanction imposed or direction made under or pursuant to Rule 1003(q) may be treated for all purposes as a breach of the Rules.
- (ii) A Disciplinary Panel may order any party to the proceedings to pay costs as it thinks appropriate, including, but not limited to the costs of running the Disciplinary Panel, further administration costs directly attributable to the disciplinary proceedings, costs incurred in the investigation, preparation and presentation of the case, including the costs of the Clearing House's and Disciplinary Panel's external advisers.

***Rule 1004 Summary Procedure***

- (a) A Clearing Member may submit in writing a request that the Clearing House adopt a summary procedure under this Rule 1004 ("**Summary Procedure**") for disposing of the matter. Such notice may be served by the Clearing Member at any time prior to the formation of the Disciplinary Panel.
- (b) The Clearing House may in its discretion agree to refer the matter to the Summary Procedure and shall notify the Clearing Member of any such determination.
- (c) Upon reference of the matter to the Summary Procedure the Clearing House in its absolute discretion shall nominate three Directors or employees of the Clearing House or of any Clearing Member other than the Clearing Member subject to the Summary Procedure to hear the submissions of the Clearing Member into the alleged breach, who shall form a Summary Disciplinary Committee. The Clearing House shall nominate one such member of the Summary Disciplinary Committee to act as Chairman.
- (d) The Summary Disciplinary Committee shall make such directions as to the procedural conduct of the case before it as it sees fit.
- (e) The Summary Disciplinary Committee shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach. The Summary Disciplinary Committee shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact by a court or Governmental Authority.
- (f) The Summary Disciplinary Committee shall hold a private hearing at which the Clearing Member shall be present in order to put to the Clearing Member the alleged breach of the Rules and hear any submissions the Clearing Member or its Representatives make in relation to the alleged breach or the mitigation.
- (g) None of the Clearing House, the Clearing Member or the Summary Disciplinary Committee shall be represented by legal advisors at a hearing except with the prior express agreement of the Summary Disciplinary Committee.
- (h) Save as provided in Rule 1005, a Clearing Member that chooses to submit itself to the Summary Procedure expressly waives any right of appeal or review by any body

including any court of law against any determination or ruling of the Summary Disciplinary Committee.

- (i) The Summary Disciplinary Committee shall, following the hearing, determine whether a Clearing Member has breached the Rules and shall determine what sanction or sanctions are to be imposed on the Clearing Member or Representative. Upon having determined in its absolute discretion whether a breach of the Rules has occurred, the Summary Disciplinary Committee shall communicate its findings and particulars of any sanction to the Clearing Member. The Summary Disciplinary Committee shall enjoy the full range of powers of sanction open to a Disciplinary Panel and may impose a combination of any such sanctions as it sees fit.
- (j) A determination or sanction imposed by the Summary Disciplinary Committee may be appealed under Rule 1005 to an Appeals Panel and shall not be referred to a Disciplinary Panel.

***Rule 1005 Appeals***

- (a) (i) Within 14 days of receiving notice in writing of a decision of a Disciplinary Panel, a determination in writing of a Summary Disciplinary Committee or a notice of sanction (whichever is the later), or such longer period as the chairman of the Disciplinary Panel or the Summary Disciplinary Committee may in his discretion direct, a Clearing Member (whether current or former in the case of expulsion) or the Clearing House, or both, may appeal to an Appeals Panel by lodging with the Clearing House a notice of appeal in writing and by delivering a copy thereof to any other party to the disciplinary proceedings.
- (ii) A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The grounds of the appeal may be any one or more of the following:
  - (A) the Disciplinary Panel or Summary Disciplinary Committee misdirected itself; or
  - (B) the Disciplinary Panel's or Summary Disciplinary Committee's decision was:
    - (1) one which no reasonable tribunal could have reached; or
    - (2) unsupported by the evidence or was against the weight of the evidence; or
    - (3) in the case of the Disciplinary Panel only, based on an error of law, or a misinterpretation of the Rules; or
  - (C) the sanction imposed by the Disciplinary Panel, Clearing House or Summary Disciplinary Committee was excessive or, in the case of an appeal by the Clearing House, was insufficient or inappropriate; or
  - (D) new evidence is available and that, had it been made available, the Disciplinary Panel, Clearing House or Summary Disciplinary

Committee could reasonably have come to a different decision. This will not apply, in the case of the Disciplinary Panel only, if the evidence could have been adduced before the Disciplinary Panel by the exercise of reasonable diligence;

but no party may otherwise appeal.

- (iii) In the case of appeal against a sanction, the Appeals Panel may affirm, vary or revoke the sanction. The Appeals Panel may make such order or give such direction as it considers fit, including, in the case of an appeal from the Disciplinary Panel, a direction for a rehearing of the case by another newly constituted Disciplinary Panel.
- (b) Upon receipt of such a notice of appeal, the Clearing House shall appoint an Appeals Panel.
- (c) The Clearing House shall have 14 working days or such other period as the Chairman of the Disciplinary Panel or the Summary Disciplinary Committee, as the case may be (or the Appeals Panel in its exclusive discretion should it be constituted at such time), may allow from the service of the notice of appeal to serve notice of any grounds on which it objects to such appeal.
- (d) An Appeals Panel shall consist of a chairman sitting alone who shall be a Solicitor admitted in England and Wales or a member of the Bar of England and Wales and who shall be appointed at the discretion of the Clearing House. No Members of any disciplinary panel, serving members of the Clearing House's committees dealing with any disciplinary or summary disciplinary proceedings, employees of the Clearing House or Clearing Member subject to disciplinary proceedings or any of their Affiliated Persons, Representatives or Customers shall be appointed to an Appeals Panel. Expert assessors may be appointed, at the discretion of the Chairman of the Appeals Panel, to sit with and advise the Appeals Panel but not to vote. No Person shall serve on or sit with an Appeals Panel if he has a personal or financial interest in or has been involved in any investigation into or previous disciplinary panel or Summary Disciplinary Committee hearing (including that which is the subject of the appeal itself) on the matter under consideration.
- (e) An Appeals Panel may adopt such procedure as it thinks fit and just, including, without limitation, the procedures described in Rule 1003(m) and shall be bound by Rule 1003(n) and (o). An Appeals Panel shall further enjoy all powers vested in disciplinary panels, procedural or otherwise. The appellant and the respondent may appear, make representations and (subject to any restriction on adducing new evidence), call witnesses, who may be examined and cross-examined.
- (f) The decision of an Appeals Panel shall be final and binding and there shall be no further appeal. The decision with reasons shall be notified to the appellant and respondent in writing without undue delay.

## **Part 11 Guaranty Fund**

### ***Rule 1101 Establishment and parameters of the Guaranty Fund***

- (a) The total amount required in the Guaranty Fund will be established by the Clearing House in accordance with the Procedures. The total amount of the Guaranty Fund will be expressed in USD and will be reviewed quarterly by the Clearing House. If the Clearing House determines that the total amount in the Guaranty Fund is to change, Clearing Members will be given notice by Circular and will be informed of their new Guaranty Fund Contribution requirements prior to the start of the Guaranty Fund Quarter when the change becomes effective.
- (b) The Clearing House will communicate to Clearing Members by Circular the basis on which their Guaranty Fund Contribution is calculated.
- (c) The Clearing House may vary the parameters by reference to which the Guaranty Fund is calculated from time to time and at any time upon issuing a Circular to Clearing Members. Any new parameters will come into effect on the date of the next applicable quarterly re-calculation of Guaranty Fund Contributions, unless Clearing Members are otherwise notified of a different effective date.
- (d) Clearing Members shall be required and liable to make Guaranty Fund Contributions in the amounts and at the times specified in accordance with Rule 1102 and Part 3, such that the Guaranty Fund is always at least of the size required pursuant to this Rule 1101, except in circumstances in which amounts are drawn down from the Guaranty Fund in order to meet liabilities resulting from an Event of Default and such amounts have not been replenished in accordance with this Part 11.

### ***Rule 1102 Clearing Members' Contributions***

- (a) Clearing Members' required Guaranty Fund Contribution at the start of each Guaranty Fund Quarter (or otherwise when a payment to the Guaranty Fund is due) will be calculated with reference to the total amount of the Guaranty Fund established pursuant to Rule 1101.
- (b) Each Clearing Member's Guaranty Fund Contributions will be proportional to its relative share of total clearing activity, defined as: (i) that Clearing Member's percentage of total average Original Margin of all Clearing Members over the preceding complete Guaranty Fund Quarter, given a weighting of 75%; and (ii) that Clearing Member's share of total average of all new Contract volumes over the same period, given a weighting of 25%; subject to (iii) the minimum contribution of any one Clearing Member being USD 2 million.
- (c) Required Guaranty Fund Contributions will be re-calculated by the Clearing House for each Clearing Member and notified in advance of each Guaranty Fund Quarter. If a Default has occurred, existing Guaranty Fund Contributions may be retained and a Guaranty Fund Quarter may be extended until the completion of default proceedings pursuant to these Rules.
- (d) Guaranty Fund Contributions must be in the form of cash or other Permitted Cover, subject to haircuts and payment procedures and substitution of cash for other

Permitted Cover in the same way as for Original Margin pursuant to Part 3, Part 5 and the Procedures. Each Clearing Member shall be required to provide a minimum of 50% of their contribution amount in USD, subject to a USD 10 million cap. Amounts in excess of 50% or the USD 10 million cap must be made in the form of Permitted Cover.

- (e) In the event of any change in the value of non-cash collateral Guaranty Fund Contributions, the Clearing Member may be required by the Clearing House to make an additional Guaranty Fund Contribution, pursuant to Rule 302. Clearing Members will be permitted (and may be required) at any time to make additional Guaranty Fund Contributions (beyond the required Guaranty Fund Contribution) in order to reduce the risk that revaluations of non-cash Permitted Cover result in such additional Guaranty Fund Contributions falling due.
- (f) New Clearing Members admitted to membership of the Clearing House during the course of a Guaranty Fund Quarter shall make the required minimum Guaranty Fund Contribution plus such other amount as the Clearing House at its discretion determines is necessary based on projected clearing activity. Any such Guaranty Fund Contribution by a new Clearing Member or Clearing Members shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contribution to other Clearing Members and the size of the Guaranty Fund shall be increased accordingly until the end of the relevant Guaranty Fund Quarter.
- (g) Guaranty Fund Contributions of Clearing Members following termination of membership of the Clearing House will be returned to the Clearing Member at the end of the Guaranty Fund Quarter immediately following the transfer or liquidation of all of their positions at the Clearing House and the payment of all other amounts due to the Clearing House. A Person that ceases to be a Clearing Member shall not be entitled to return of any Guaranty Fund Contribution to be applied in respect of any Event of Default occurring prior to the Termination Date (whether or not declared prior to the Termination Date) or any Event of Default caused in whole or in part by the Person ceasing to be a Clearing Member.
- (h) Each Clearing Member will be entitled to receive interest payments on its cash Guaranty Fund Contribution each quarter through the banking arrangements detailed in Part 3 and no accommodation charges will apply to the securities. Interest payments relating to Guaranty Fund Contributions will be remitted to members.
- (i) In the event of application of Guaranty Fund Contributions taking place pursuant to Rule 1103(d) or 1103(e), the Clearing House shall:
  - (i) give notice by Circular of the amount by which the Guaranty Fund has been reduced; and
  - (ii) specify:
    - (A) the amount for which each Person that is then a Clearing Member is liable to make additional Guaranty Fund Contributions in order to replenish the Guaranty Fund; and

- (B) the amount of additional contributions of the Clearing House to the Guaranty Fund, specifying the amount that is to be applied prior to Guaranty Fund Contributions and the amount that ranks *pari passu* with Guaranty Fund Contributions.

All Clearing Members on the date of such Circular and the Clearing House must make the required Guaranty Fund Contributions within ten Business Days of the notice, or on or before such other later date as is specified by the Clearing House at its discretion.

- (j) If:
  - (i) an Event of Default is declared in relation to more than one Defaulter contemporaneously (excluding an Event of Default declared in respect of a Disclosed Principal Member, only when an Event of Default is declared contemporaneously in respect of the Clearing Member that appointed that Disclosed Principal Member); or
  - (ii) a separate Event of Default is declared in relation to a Defaulter or Defaulters (any, an "**Additional Defaulter**") prior to the termination of default proceedings in relation to an existing Defaulter ("**First Defaulter**"),

and recourse is made to Guaranty Fund Contributions in respect of the First Defaulter (or any Additional Defaulter), Clearing Members shall be required to replenish the Guaranty Fund pursuant to Rule 1102(i) separately in respect of each Defaulter causing a reduction in the Guaranty Fund. The Clearing House may apply Guaranty Fund Contributions resulting from replenishment following default proceedings in relation to the First Defaulter to meet the liabilities of an Additional Defaulter and may apply Guaranty Fund Contributions resulting from replenishment following default proceedings in relation to an Additional Defaulter to meet the liabilities of another Additional Defaulter.

- (k) In the event of the Clearing House applying any Guaranty Fund Contributions of non-defaulting Clearing Members, the Clearing House will make payment to the Guaranty Fund in respect of any amounts received from the Defaulter as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise up to the amount by which the Guaranty Fund was reduced (excluding the Guaranty Fund Contribution of the Defaulter) but without counting for interest, subject to the Clearing House first retaining amounts up to the amount of any assets of the Clearing House (not falling under Rules 1103(d) and 1103(e)) applied in connection with the Default and making repayment in respect of any assets applied pursuant to Rule 1103(g) or Rule 1103(f).
- (l) If an Event of Default occurs prior to the end of a Guaranty Fund Quarter where the total amount of Guaranty Fund Contributions would otherwise subsequently be reduced in the next Guaranty Fund Quarter, the Clearing House shall at its discretion be entitled to retain all then held Guaranty Fund Contributions and shall not be obliged to make any repayment to Clearing Members in respect of Guaranty Fund Contributions until and subject to completion of the relevant Default proceedings pursuant to Part 9 and this Part 11.

### **Rule 1103 Application of Assets upon an Event of Default**

Without prejudice to the generality of Part 9 of these Rules, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of a Defaulter upon or following any Event of Default, in the following order of recourse:

- (a) first, pursuant to Part 9, Original Margin of the Defaulter, including any surplus Permitted Cover deposited with the Clearing House and any accrued interest or rights arising pursuant to any of the foregoing;
- (b) second, pursuant to Part 9, Guaranty Fund Contribution of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contribution;
- (c) third, pursuant to Part 9, any other asset of the Defaulter which the Clearing House is entitled to realise or liquidate upon an Event of Default or Insolvency and any other right or claim of the Clearing House against the Defaulter or amount due to the Clearing House from the Defaulter determined by the Clearing House at its discretion (and the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 1103(d) to Rule 1103(g) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
- (d) fourth, an amount up to that contributed by the Clearing House to the Guaranty Fund which is allocated as applying prior to Guaranty Fund Contributions of non-defaulting Clearing Members;
- (e) fifth:
  - (i) Guaranty Fund Contributions of non-defaulting Clearing Members; and
  - (ii) an amount up to that contributed by the Clearing House to the Guaranty Fund which is allocated as ranking *pari passu* with Guaranty Fund Contributions, on a basis *pro rata* to the total of Guaranty Fund Contributions (excluding Guaranty Fund Contributions of the Defaulter) and Clearing House contribution at the time of the Event of Default, provided that the total amount required to be paid from Guaranty Fund Contributions and the Clearing House contribution is first certified by the Clearing House in a Circular;
- (f) sixth, claims under default insurance policies of which the Clearing House is the beneficiary; and
- (g) seventh, Assessment Contributions levied by the Clearing House on Clearing Members pursuant to Rule 1105.

### **Rule 1104 Use of Guaranty Fund Contributions**

- (a) Subject to the Clearing House first applying assets pursuant to 1103(a) to 1103(c), Guaranty Fund Contributions may be applied or used by the Clearing House at its discretion as follows:

- (i) against any amounts that become due to the Clearing House for any reason (including but not limited to Margin, amounts due pursuant to Contract Terms, fees, dues, assessments and fines);
  - (ii) pursuant to Rule 1103;
  - (iii) to meet the Clearing House's costs involved in facilitating the transfer of Customer Account positions from a Clearing Member experiencing financial difficulty or during a termination of membership to another Clearing Member, at the Clearing House's discretion; and
  - (iv) upon an Event of Default and to the extent that such Guaranty Fund Contributions are called upon, Guaranty Fund Contributions may be sold, substituted, set off, transferred, assigned, pledged, repledged or have any lien, interest or charge created over them at the Clearing House's discretion, pursuant to Part 10.
- (b) Any expense (including, without limitation, legal fees and expenses) incurred by the Clearing House in connection with the deposit by a Clearing Member of assets into the Guaranty Fund, or the return of equivalent assets to such Clearing Member, may, at the option and discretion of the Clearing House, be charged to the account of such Clearing Member.
- (c) A Clearing Member's entitlement to repayment of its Guaranty Fund Contribution or any part of it or interest thereon shall not be capable of assignment or transfer by the Clearing Member or being made subject to any Encumbrance whatsoever purporting to rank in priority over, *pari passu* with, or subsequent to, the rights of the Clearing House. Any purported Encumbrance of a Clearing Member in respect of a Guaranty Fund Contribution shall be null and void.
- (d) Default insurance policies of which the Clearing House is the beneficiary for the purposes of Rule 1103(f) may be subject to limits on claims applicable in respect of particular time periods (each such period, a "Relevant Period"). Furthermore, pursuant to the terms of insurance obtained by the Clearing House, it is possible that insurance claims may be payable in excess of losses resulting from a Default or Defaults above a certain amount ("Loss Threshold") occurring within a Relevant Period as opposed to following the application of particular assets in respect of particular Defaults. As a result, it is possible that: (a) insurance receipts may be available to the Clearing House prior to it applying all available Guaranty Fund Contributions if the total available Guaranty Fund Contributions exceed the Loss Threshold or in respect of a second or subsequent Default where the limit on claims for the Relevant Period has not been exhausted; or (b) no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period. The Clearing House will issue a Circular to Clearing Members specifying the Loss Threshold and Relevant Period applicable to any insurance obtained by the Clearing House for the purposes of Rule 1103(f). Neither this Rule 1104(d) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.
- (e) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Procedures, of the amounts that are contributed by the Clearing

House to the Guaranty Fund pursuant to Rules 1103(d) and 1103(e)(ii). The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain such amounts in a separate account from its other assets and to use such amounts only for the purposes of meeting shortfalls arising directly or indirectly from Defaults. This Rule 1104(e) shall not restrict the Clearing House from investing such amounts in any way that it is able to invest Guaranty Fund Contributions made by Clearing Members.

**Rule 1105 Powers of Assessment**

(a) Powers of assessment under this Rule 1105 may be exercised by the Clearing House following an Event of Default occurring and the liabilities of a Defaulter or Defaulters not having been met pursuant to Rule 1103(a) to Rule 1103(f). Immediately upon the Clearing House certifying the relevant Assessment Amount in a Circular, all Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay Assessment Contributions to the Clearing House in accordance with Rule 1105(b).

(b) The Assessment Contribution payable by each Clearing Member shall be the amount:

$$AA \times \frac{GF(CM)}{GF(all)}$$

where:

*AA* is the Assessment Amount certified by the Clearing House in a Circular as the total shortfall following an Event of Default occurring after funds available pursuant to Rule 1103(a) to Rule 1103(f) have been applied, provided that the total Assessment Amount shall be no greater than the amount equal to twice the total required Guaranty Fund Contributions of all Clearing Members immediately prior to the relevant Event of Default (less Guaranty Fund Contributions of Defaulters and any contributions to the Guaranty Fund or otherwise in respect of Defaults made by the Clearing House);

*GF(CM)* is the required Guaranty Fund Contribution of the relevant Clearing Member immediately preceding the relevant Event of Default; and

*GF(all)* is the total required Guaranty Fund Contributions of all Clearing Members immediately preceding the relevant Event of Default (less Guaranty Fund Contributions of Defaulters and any contributions to the Guaranty Fund or otherwise in respect of Defaults made by the Clearing House) .

(c) A Person that ceases to be a Clearing Member shall be subject to obligations to pay Assessment Contributions only in respect of:

(i) Events of Default occurring prior to the Termination Date (whether or not declared prior to the Termination Date); and

(ii) any Events of Default occurring after the Termination Date but whilst it still has a Guaranty Fund Contribution deposited with the Clearing House,

provided that:

- (A) the aggregate amount of all Assessment Contributions in respect of all Events of Default for any such Person shall be capped at: (I) in the case of a Person terminating its membership of the Clearing House following an Event of Default or Events of Default where Guaranty Fund Contributions have been applied, an amount equal to twice that Person's Guaranty Fund Contribution immediately prior to the first Event of Default being declared which led to the application of Guaranty Fund Contributions; or (II) in the case of a Person otherwise terminating its membership of the Clearing House, an amount equal to twice that Person's Guaranty Fund Contribution on the date of service of the relevant notice of termination; and
  - (B) Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1105(h) shall be included for the purpose of calculating such a cap.
- (d) If the Assessment Amount is not met by Assessment Contribution receipts from Clearing Members due to non-payment by a Clearing Member or Clearing Members, Default of a Clearing Member or Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall shall be re-assessed against all Clearing Members (other than Defaulters and Persons that have defaulted in making an Assessment Contribution) in accordance with Rule 1105(a), as if the shortfall were the Assessment Amount, provided that no Clearing Member shall be liable to pay Assessment Contributions in respect of a single Default for an amount greater than twice its Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1105(c), further Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire Assessment Amount has been met in full by Assessment Contributions.
- (e) All Assessment Contributions shall become due and payable at such time as the Clearing House notifies to Clearing Members and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any Assessment Contribution has been paid, the Clearing House collects amounts in respect of a defaulted obligation or unpaid Assessment Contribution in whole or in part from a Defaulter or Person liable to pay an unpaid Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees incurred in connection therewith) to other Clearing Members *pro rata* in respect of paid Assessment Contributions.
- (g) Amounts deposited by Clearing Members in the Guaranty Fund, including without limitation amounts deposited to restore a deficiency in the Guaranty Fund, do not constitute Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of Assessment Contributions shall affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish the Guaranty Fund pursuant to Rule 1102(i).
- (h) Upon an Event of Default or Events of Default occurring and recourse being made to Assessment Contributions, a Clearing Member liable to pay an Assessment

Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further Assessment Contribution payments pursuant to Rules 1105(c) and 1105(d). Rules 209(c) (second sentence only), 209(d)(i), 209(d)(ii), 209(e)(i) and 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1105(h) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for Assessment Contributions was made.

## Part 12 Settlement Finality Regulations and Companies Act 1989

### *Rule 1201 Introduction and Interpretation*

- (a) The Clearing House is a Designated System for the purposes of the Settlement Finality Regulations in respect of Transfer Orders. In addition, Part VII of the Companies Act 1989 applies in respect of Contracts, the 'default rules' and 'default proceedings' of the Clearing House and certain other matters related to the Clearing House.
- (b) Clearing Members are subject to various obligations and requirements as a result of the Settlement Finality Regulations and Companies Act 1989. Clearing Members must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Regulations or the Companies Act 1989. Furthermore, various modifications to Applicable Laws relating to Insolvency affecting Clearing Members apply pursuant to the Settlement Finality Regulations and Companies Act 1989.
- (c) The term "**Default Arrangements**" means the Rules and Procedures relating to, or that can be exercised upon, an Event of Default including, without limitation, all of Parts 9 and 11 and this Part 12 of the Rules and Procedures relating thereto and any and all actions, omissions, powers and arrangements of the Clearing House pursuant to such Rules or Procedures.
- (d) The term "**Designated System**" means the standardised formal arrangements, common rules and procedures, as set out in the Rules and the Procedures, and related functionality which, *inter alia*:
  - (i) enable the Clearing House to give instructions and to place at the disposal of Clearing Members amounts of money on the account of Approved Financial Institutions;
  - (ii) enable Clearing Members to give instructions and to place at the disposal of the Clearing House amounts of money on the accounts of Approved Financial Institutions;
  - (iii) enable the Clearing House and Clearing Members to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
  - (iv) enable transfers, assignments and novations of Contracts between Clearing Members or following a Default; and
  - (v) facilitate supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in respect of Contracts or Permitted Cover.
- (e) The term "**Participants**" means Clearing Members and Approved Financial Institutions that are participants (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, a Participant).

- (f) The term "**Payment Transfer Order**" means a payment transfer order (as defined in the Settlement Finality Regulations) that is an Open Offer Payment Transfer Order, Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order, CB-AFI Payment Transfer Order or Insufficient Funds Payment Transfer Order subject to this Part 12.
- (g) The term "**Securities Transfer Order**" means a securities transfer order (as defined in the Settlement Finality Regulations) that is a Position Transfer Order subject to this Part 12.
- (h) The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (i) The term "**Trading & Clearing IT**" means the trade registration and clearing processing hardware and software used by the Clearing House from time to time, as further described in the Procedures, including TRS/CPS (trade registration system / clearing processing system).
- (j) No transfer orders (as defined in the Settlement Finality Regulations) shall arise, enter the Designated System or become irrevocable under these Rules except as set out in this Part 12.

***Rule 1202    Transfer Orders Arising***

- (a) Subject to regulation 20 of the Settlement Finality Regulations, a Payment Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
  - (i) in relation to a Contract that forms in accordance with Rule 401, at the point that a Contract arises under Rule 401 ("**Open Offer Payment Transfer Order**");
  - (ii) the Clearing House sending an instruction pursuant to Rule 302 ("**Credit/Debt Payment Transfer Order**");
  - (iii) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank ("**AFI-CB Payment Transfer Order**");
  - (iv) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the Concentration Bank to a Clearing House Account ("**CB-AFI Payment Transfer Order**"); or
  - (v) the Clearing House receiving a notification pursuant to Rule 1205(b) ("**Insufficient Funds Payment Transfer Order**").

- (b) Subject to regulation 20 of the Settlement Finality Regulations and only if both of the Clearing Members affected are Participants, a Securities Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) if either:
    - (A) the Clearing House, the relevant Market and the two Clearing Members involved have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another Clearing Member pursuant to Rule 408(a)(i); or
    - (B) the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member pursuant to the Clearing House's powers under Rule 902(a)(i), Rule 903 or otherwise,

in either case, instructions for settlement of the transfer, assignment or novation in question being effected through the Trading & Clearing IT at the relevant settlement transfer deadline for the relevant Contract ("**Position Transfer Order**").
  - (c) If two or more Transfer Orders exist in respect of the same obligation prior to becoming irrevocable, all such Transfer Orders shall be valid. No duplication of an obligation to pay shall arise as a result of two or more Transfer Orders existing in respect of the same obligation.
  - (d) The status of a Transfer Order shall not be affected by any calculation of Open Contract Position, netting, set off or closing out of a Contract to which it relates.
  - (e) Each Payment Transfer Order shall apply and have effect in respect of the following amounts:
    - (i) in the case of an Open Offer Payment Transfer Order, the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the Contract to which the confirmation referred to in Rule 1202(a)(i) relates arising;
    - (ii) in the case of a Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order, the amount specified in the relevant instruction referred to in Rule 1202(a);
    - (iii) in the case of an Insufficient Funds Payment Transfer Order, the amount determined pursuant to Rule 1205(b).
  - (f) Each Position Transfer Order shall apply and have effect in respect of the Contracts to be transferred, assigned or novated.
  - (g) Transfer Orders shall apply and have effect as between the following Persons:

- (i) in the case of an Open Offer Payment Transfer Order, the affected Clearing Member (if it is a Participant) and the Clearing House and, as from and after the time of irrevocability only, the affected Approved Financial Institution;
- (ii) in the case of a Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order, the affected Clearing Member (if it is a Participant), the affected Approved Financial Institutions and the Clearing House;
- (iii) in the case of an AFI-CB Payment Transfer Order, CB-AFI Payment Transfer Order, the affected Approved Financial Institution, the Concentration Bank and the Clearing House;
- (iv) in the case of a Position Transfer Order, the Clearing Members (that are the transferor, assignor or person whose rights, liabilities and obligations are novated and the transferee, assignee or person that assumes rights, liabilities and obligations pursuant to a Novation) and the Clearing House.

***Rule 1203 Transfer Orders Becoming Irrevocable***

- (a) A Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.
- (b) An AFI-CB Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.
- (c) A CB-AFI Payment Transfer Order shall become irrevocable at the time when the Concentration Bank sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.
- (d) Subject to Rule 1207(c) and Rule 1207(d), an Open Offer Payment Transfer Order shall become irrevocable upon an Approved Financial Institution sending a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.
- (e) A Position Transfer Order shall become irrevocable at the time when the definitive record of the long or short position of the Clearing Member (that is the assignee, transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the Trading & Clearing IT to reflect the transfer of Contracts given effect to pursuant to the Position Transfer Order.
- (f) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.

**Rule 1204     *Variations to Payment Transfer Orders***

- (a) This Rule 1204 applies if an Open Offer Payment Transfer Order, Credit/Debit Payment Transfer Order, Insufficient Funds Payment Transfer Order or Position Transfer Order that is not irrevocable relates to a Contract which is:
  - (i) void *ab initio* pursuant to Rule 403;
  - (ii) avoided pursuant to Rule 404; or
  - (iii) amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules,
- (b) Neither the validity nor the irrevocability of any Transfer Order shall be affected by any event described in Rule 1204(a) occurring.
- (c) The terms of all Open Offer Payment Transfer Orders, Credit/Debit Payment Transfer Orders, Insufficient Funds Payment Transfer Orders and Position Transfer Orders that have not become irrevocable shall each include the condition that the relevant Transfer Order does not relate to a Contract described in Rule 1204(a)(i) to (iii). The amount payable or Contracts to be transferred pursuant to any such Transfer Order relating to such a Contract and that has not become irrevocable may at the discretion of the Clearing House be reduced or increased, as necessary, to reflect the payments or transfers, assignments or novations of Contracts that would have been required:
  - (i) in the case of Rule 1204(a)(i) or Rule 1204(a)(ii) applying, had no Contract or Transaction ever arisen or occurred; or
  - (ii) in the case of Rule 1204(a)(iii) applying, had the Contract always been subject to such amended terms as are agreed or determined,(each a "**Transfer Order Variation**").
- (d) A Transfer Order Variation may be effected only by the Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants.
- (e) This Rule 1204 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof in the event of any of the events described in Rule 1204(a) occurring.

**Rule 1205     *Insufficient Funds***

- (a) If an Approved Financial Institution notifies the Clearing House prior to a Credit/Debit Payment Transfer Order becoming irrevocable otherwise than pursuant to this Rule 1205 that there are insufficient funds in the relevant Nominated Account, the Credit/Debit Payment Transfer Order shall nonetheless become irrevocable and shall bind all relevant Participants but only in respect of such amount as that Approved Financial Institution notifies to the Clearing House is available in the relevant Nominated Account (or such other amount, if greater, as is notified by the Approved Financial Institution).

- (b) If a Credit/Debit Payment Transfer Order becomes irrevocable pursuant to this Rule 1205, the affected Clearing Member shall notify (or shall cause the relevant Approved Financial Institution to notify) the Clearing House immediately if any other amount is deposited in the Nominated Account. Upon the Clearing House receiving any such notification, an Insufficient Funds Payment Transfer Order shall arise in respect of such amount or the amount outstanding in respect of the original Credit/Debit Payment Transfer Order, whichever is the smaller amount. Insufficient Funds Payment Transfer Orders shall arise upon any further amounts being received in the Nominated Account and notification being made from time to time until the amount due pursuant to the original Credit/Debit Payment Transfer Order has been paid to the Clearing House in full.
- (c) This Rule 1205 shall not affect the obligation of the Clearing Member to make payment to the Clearing House in respect of the full amount to which the original Credit/Debit Payment Transfer Order related or the validity of any Open Offer Payment Transfer Order or Contract.

***Rule 1206 Cancellation of Transfer Orders***

- (a) All Transfer Orders that have not become irrevocable shall be subject to the condition that they are not affected by manifest or proven error. A Transfer Order that is affected by manifest or proven error and that has not become irrevocable may be cancelled by the Clearing House. Any such cancellation may be effected only by the Clearing House serving a notice of cancellation on all affected Participants.
- (b) This Rule 1206 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof in cases of manifest error.

***Rule 1207 Termination of Transfer Orders***

- (a) Each Payment Transfer Order shall terminate immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in cleared funds or full satisfaction of the relevant underlying obligations is otherwise made, in either case not subject to any Encumbrances.
- (b) Each Position Transfer Order shall terminate immediately and automatically at the same time that it becomes irrevocable under Rule 1203(e) (whereupon, without prejudice to the foregoing, all Contracts arising in connection with the Position Transfer Order will have arisen pursuant to the Rules).
- (c) If a Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order becomes irrevocable in respect of the same obligation to which an Open Offer Payment Transfer Order relates, the Open Offer Payment Transfer Order shall automatically be terminated and shall not become irrevocable.
- (d) An Open Offer Payment Transfer Order shall terminate immediately and automatically if and at the point that the relevant Transaction is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii).

**Rule 1208**     *Provision of Information by the Clearing House and Clearing Members*

- (a) The Clearing House and any Participant must provide, upon payment of a reasonable charge, the following information to any person who requests it, save where the request is frivolous or vexatious, within 14 days of a request being made:
  - (i) details of the Designated System; and
  - (ii) information about the Rules relevant to the functioning of the Designated System.
- (b) The Clearing House will provide a copy of information referred to in Rule 1208 (a) to any Clearing Member upon request.

**Rule 1209**     *Notice to the FSA and Bank of England*

- (a) Any notice which under Rule 204(a)(viii) must be copied to the FSA and Bank of England, shall be sent to the following addresses:
- (b) FSA:  
  
Manager, Clearing/Settlement  
Markets and Exchanges Division  
Financial Services Authority  
25 The North Collonade  
London E14 5HS  
Fax: 020 7676 9735
- (c) Bank of England:  
  
The Senior Manager, Payment Systems Oversight  
Financial Resilience Division, HO-3  
Bank of England  
Threadneedle Street  
London EC2R 8AH  
Fax: 020 7601 3217
- (d) Any such notice will only be effectively served, filed, made or provided and delivered to the FSA and Bank of England:
  - (i) if sent by post, on the fifth Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope;
  - (ii) if delivered in person to the officer or department specified, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day.
- (e) Any notice by fax shall not be effective until hard copy confirmation is served pursuant to Rule 1209(d).

