

ICE Clear Europe Continuing CDS Rule Provisions



**ICE Clear Europesm
Clearing Rules**

(b) If, at any Withdrawal Date, any affected Contracts have not been finally settled, the Clearing House shall be entitled to terminate 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, committees, experts, 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 or any of its Affiliates, provided that information identifying the positions or name of a Clearing Member or any of its accounts or the name of any of a Clearing Member's Customers will not be so disclosed, except, in the case of a Clearing

- (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 transfer, deposit, maintain and pay Margin and make Guaranty Fund Contributions; 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.
 - (d) The Clearing House may publish details of any suspension or a copy of any suspension notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 208(e).
 - (e) The Clearing House will issue a Circular promptly following any suspension of a Clearing Member or the suspension of any Clearing Member's ability to clear Energy Contracts, LIFFE Contracts, F&O Contracts, CDS Contracts or FX Contracts specifying the name of the Clearing Member affected.
 - (f) The following categories of Clearing Members will not be permitted to clear LIFFE Contracts that are futures or options on underlying U.S. securities (other than futures contracts on broad-based security indices): (i) FCM/BD Clearing Members; (ii) other Clearing Members that are organised in the United States of America; and (iii) other Clearing Members having a U.S. residence, based upon the location of their executive office or principal place of business, including, without limitation, (a) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), and (b) a foreign branch of a U.S. bank or U.S. registered broker-dealer.

~~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 or required pursuant to Rule 201(a) or, if it is a CDS Clearing Member, Rule 201(i), or, if it is an FX Clearing Member, Rule 201(j); or~~
 - ~~(vi) upon an Insolvency in relation to that Clearing Member or any of its Group Companies.~~
- ~~(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)~~
- ~~(i) The Clearing Member shall be entitled to terminate its membership of the Clearing House:
 - ~~(A) upon no less than three months' prior written notice to the Clearing House;~~
 - ~~(B) upon the Insolvency of the Clearing House;~~
 - ~~(C) pursuant to Rule 1105(h);~~
 - ~~(D) pursuant to Rule 1106(h); or~~
 - ~~(E) pursuant to Rule 1107(h).~~~~
 - ~~(ii) The membership of a Clearing Member which is a CDS Clearing Member but neither an F&O Clearing Member nor an FX Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House or Failure To Pay in respect of the Clearing House. The membership of a Clearing Member which is an FX Clearing Member but neither an F&O Clearing Member nor a CDS Clearing Member shall terminate automatically upon the occurrence of an FX Failure To Pay in respect of the Clearing House.~~
 - ~~(iii) In the event of an Insolvency in respect of the Clearing House (in the case of any Clearing Member) or (in the case of a CDS Clearing Member that is neither an F&O Clearing Member nor an FX Clearing Member) a Failure To Pay (in the case of a CDS Clearing Member that is neither an F&O Clearing Member nor an FX Clearing Member) a Failure To Pay in respect of the Clearing House or (in the case of an FX Clearing Member that is neither an F&O Clearing Member nor a CDS Clearing Member) an FX Failure To Pay in respect of the Clearing House or (in the case of a Clearing Member that is an FX Clearing Member and a CDS Clearing Member but not an F&O Clearing Member) circumstances which constitute both a Failure To Pay and an FX Failure To Pay in respect of the Clearing House, Rule 912 applies and the rights and liabilities of each Clearing Member under all Contracts will be deemed to be terminated without need for any further step on the part of any party and discharged for the purposes of Rule 906 and a net sum or net sums payable by or to the Clearing Member to or from the~~

~~Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member. In circumstances in which this Rule 209(c)(iii) applies:~~

~~(A) Rules 1105, 1106 and 1107 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901(a) (rather than any Event of Default effectively deemed to occur pursuant to this provision or Rule 912);~~

~~(B) Rules 901, 902, 903, 904 and 905 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this provision or Rule 912);~~

~~(C) without prejudice to the generality of paragraph (B), Rule 905(e) shall apply only in relation to Contracts the counterparties to which are Clearing Members that are actually declared subject to an Event of Default (and not in relation to Contracts the counterparties to which are Clearing Members that are effectively deemed to be subject to an Event of Default pursuant to this provision);~~

~~(D) the net sum or net sums required to be determined in these circumstances pursuant to Rule 906 in respect of a Clearing Member that has multiple Membership Categories will be made separately in relation to the rights and liabilities of that Clearing Member for each applicable Membership Category and Rule 906 shall be interpreted accordingly;~~

~~(E) neither Rule 101(a)(ii) (iii) nor Rule 301(k) shall apply to payments made or received after the Insolvency or an Event of Default as aforementioned in respect of the Clearing House; and~~

~~(F) otherwise, Part 9 shall apply *mutatis mutandis* in relation to terminated CDS Contracts and rights, obligations and liabilities relating thereto.~~

~~(iv) If the Clearing House becomes aware of there being or occurring an Insolvency in respect of the Clearing House, the Clearing House will promptly notify the FX Clearing Members that the same has occurred.~~

~~(v) Any Clearing Member terminating its membership of the Clearing House under this Rule 209(c) shall provide notice of termination to the Clearing House.~~

~~(d) This Rule 209(d) applies to a Person that has served a notice of termination, except:~~

~~(A) if the Person is or was an FX Clearing Member but neither a CDS Clearing Member nor an F&O Clearing Member, in which case~~

~~Rule 209(g) and Rule 209(h) shall apply and this Rule 209(d) shall not apply; or~~

- ~~(B) if the Person is or was an FX Clearing Member and is or was also either an F&O Clearing Member or a CDS Clearing Member (or both), in which case Rule 209(g) and Rule 209(h) shall apply but only in respect of those of the rights, obligations or liabilities of the Person relating to FX Contracts, FX Guaranty Fund, FX Assessment Contributions, FX Mark to Market Margin, FX Original Margin and otherwise in respect of the Person's status (or former status) as an FX Clearing Member, and this Rule 209(d) shall apply otherwise in relation to the termination of membership of that Person.~~

~~In circumstances in which this Rule 209(d) applies, upon any termination of a Clearing Member's membership, the relevant Clearing Member shall remain liable to transfer, deposit, maintain and pay all Margin, make Guaranty Fund Contributions when due and make all other payments due pursuant to Contracts from time to time and shall be obliged to:~~

- ~~(i) transfer, terminate, 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) This Rule 209(e) applies to a Person that has served a notice of termination, except:-~~

~~(A) if the Person is or was an FX Clearing Member but neither a CDS Clearing Member nor an F&O Clearing Member, in which case Rule 209(g) and Rule 209(h) shall apply and this Rule 209(e) shall not apply; or~~

~~(B) if the Person is or was an FX Clearing Member and is or was also either an F&O Clearing Member or a CDS Clearing Member (or both), in which case Rule 209(g) and Rule 209(h) shall apply but only in respect of those of the rights, obligations or liabilities of the Person relating to FX Contracts, FX Guaranty Fund, FX Assessment Contributions, FX Mark to Market Margin, FX Original Margin and otherwise in respect of the Person's status (or former status) as an FX Clearing Member, and this Rule 209(e) shall apply otherwise in relation to the termination of membership of that Person.~~

~~In circumstances in which this Rule 209(e) applies, 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 Contributions until the Clearing House returns such Guaranty Fund Contributions in accordance with Part 11; and~~
 - ~~(iv) obliged to pay any Assessment Contribution for which it is liable pursuant to Part 11.~~
- ~~(f)~~
- ~~(i) A Clearing Member which has multiple Membership Categories (or which clears both Energy Contracts and LIFFE Contracts) shall be entitled to terminate its status as an Energy Clearing Member, LIFFE Clearing Member, F&O Clearing Member, CDS Clearing Member and/or an FX Clearing Member:~~
 - ~~(A) upon no less than three months' prior written notice to the Clearing House;~~
 - ~~(B) upon the Insolvency of the Clearing House;~~
 - ~~(C) in the case of F&O Clearing membership, pursuant to Rule 1105(i);~~
 - ~~(D) in the case of CDS Clearing membership, pursuant to Rule 1106(i); or~~
 - ~~(E) in the case of FX Clearing membership, pursuant to Rule 1107(i).~~
 - ~~(ii) If a CDS Clearing Member has multiple Membership Categories, its status as a CDS Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House or Failure To Pay in respect of the Clearing House.~~
 - ~~(iii) If an FX Clearing Member has multiple Membership Categories, its status as an FX Clearing Member shall terminate automatically upon the occurrence and continuance of an FX Failure To Pay in respect of the Clearing House.~~
 - ~~(iv) Rule 209(e)(iii), Rule 209(e)(iii)(D), Rule 209(d), Rule 209(e), Rule 209(g) and Rule 209(h) shall apply *mutatis mutandis* in relation to any termination described in this Rule 209(f), as regards F&O Contracts, CDS Contracts or FX Contracts (whichever the Clearing Member proposes to cease to clear or ceases to clear, as applicable) and Clearing related thereto only.~~

~~(g) If an FX Clearing Member serves notice of termination of its membership under Rule 209(e)(i)(A) or termination of FX Clearing membership under Rule 209(f)(i)(A) (other than if there is a termination pursuant to Rule 209(e)(i)(B) or the second sentence of Rule 209(e)(ii), Rule 209(f)(i)(B) or Rule 209(f)(iii)) it must use all reasonable endeavours, until such time as there is a subsequent Insolvency or FX Failure To Pay in respect of the Clearing House, to close out all of its open FX Contracts prior to the Termination Close Out Deadline Date. Such an FX Clearing Member, after the Termination Notice Time, shall only be entitled to submit FX Transactions for clearing or become party to FX Contracts which it can demonstrate have the overall effect of reducing risks to the Clearing House associated with the FX Contracts to which that FX Clearing Member is party, whether by hedging, novating, transferring, terminating, liquidating or otherwise closing out such FX Contracts. If any such FX Clearing Member has any open FX Contracts with the Clearing House after the Termination Close Out Deadline Date (and notwithstanding any provision of Rule 1107 or Rule 1710 to the contrary) the FX Clearing Member shall as from the Termination Close Out Deadline Date: (x) become liable to replenish any FX Guaranty Fund Contribution that would have fallen due for replenishment but has not been paid, to have applied any FX Guaranty Fund Contribution that would have been applied but was not so applied and to pay any FX Assessment Contribution that would have fallen due but has not been paid, in each case to the extent that the same would have been payable or applied but for its service of a notice of termination and in each case in respect of any Event of Default affecting an FX Clearing Member and relating to FX Clearing that has occurred subsequent to the Termination Notice Time; (y) become liable for further obligations to replenish any FX Guaranty Fund Contribution, have any FX Guaranty Fund Contribution applied or pay FX Assessment Contributions in the same way as any other FX Clearing Member in respect of any Event of Default affecting an FX Clearing Member and relating to FX Clearing occurring prior to the Termination Date; and (z) (unless the termination was under Rule 209(e)(i)(A) or Rule 209(f)(i)(A)) be reinstated as an FX Clearing Member without any need to follow the membership application process described in Part 2. For the avoidance of doubt, the Clearing House may call for additional FX Original Margin from an FX Clearing Member subject to this Rule 209(g), until such time as all of its open FX Contracts have been terminated, and such FX Clearing Member shall pay such additional FX Original Margin to the Clearing House. Following termination of all open FX Contracts to which a terminating FX Clearing Member (the "**Terminated Clearing Member**") was party in relation to a particular Customer Account or Proprietary Account, the Clearing House shall then declare a net sum (which may be declared in parts, as envisaged below) as due to or from the Terminated Clearing Member in accordance with Rule 905(f) and Rule 906, in the same way as if the Terminated Clearing Member were a Defaulter but with the following modifications:~~

~~(i) references in Part 9 to "Default", an "Event of Default" shall be read as references to a Terminated Clearing Member terminating its FX clearing membership and, in the case of a failure to close out relevant Contracts only in respect of a particular Customer Account or Proprietary Account, shall be construed as applying only in respect of such account;~~

- (ii) ~~any net sum calculated in relation to the Terminated Clearing Member under Rule 906 will be calculated only with regard to rights, obligations and liabilities relating to FX and any such net sum which is payable to the Terminated Clearing Member shall not be paid by the Clearing House to such Terminated Clearing Member until the later of:~~
 - ~~(A) ten Business Days after the date on which the termination of the Terminated Clearing Member's open FX Contracts and the realisation or return of any Margin provided in respect of FX Contracts, FX Guaranty Fund Contributions or other assets remaining credited to the Terminated Clearing Member's relevant Proprietary Account or Customer Account in respect of FX clearing or otherwise in the Clearing House's possession in respect of FX clearing is completed (subject always to Rule 102(q)); or~~
 - ~~(B) if the Terminated Clearing Member has any unapplied FX Guaranty Fund Contributions, the expiry of the Guaranty Fund Period for the FX Guaranty Fund immediately following the Guaranty Fund Period current on the Termination Date;~~
- (iii) ~~notwithstanding anything in Part 9 or elsewhere in these Rules:~~
 - ~~(A) the Clearing House may at its discretion return amounts due to the Terminated Clearing Member in different currencies or by way of transfer or return of non-cash Permitted Cover to the Terminated Clearing Member;~~
 - ~~(B) the Clearing House may further pay any net sum calculated under Rule 906 and payable to the Terminated Clearing Member in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and~~
 - ~~(C) the Clearing House may make part payment of any amounts due excluding the FX Guaranty Fund Contribution prior to the time specified in Rule 209(g)(ii)(B);~~
- (iv) ~~it is acknowledged that any 'net sum' declared in accordance with this provision is not formally a 'net sum' for purposes of the Companies Act 1989;~~
- (v) ~~an FX Clearing Member subject to these provisions is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such FX Clearing Member in order for the Clearing House to exercise its rights under this provision or for the FX Clearing Member in question to receive any payment or return of assets; and~~
- (vi) ~~references to Part 9 in any other Rules or in the Procedures, Circulars and Guidance shall be construed in accordance with this Rule 209(g) when they fall to be applied in relation to the termination of a Clearing Member's membership~~

~~under Rule 209 and any action taken by the Clearing House following such termination taking effect.~~

- ~~(h) — Notwithstanding Rule 209(e), after the Termination Date, a Person that was an FX Clearing Member shall remain and continue, in respect of all obligations, rights and liabilities relating to the Clearing Member's status as an FX Clearing Member:~~
- ~~(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) bound to the Clearing House to perform all and any obligations and liabilities (which either have not been performed or have fallen due but are unpaid) resulting from its status as an FX Clearing Member, including obligations and liabilities relating to: fees, fines, charges, payments pursuant to Contract Terms for FX Contracts, obligations to pay FX Guaranty Fund Contributions (subject always to Rule 209(g), Rule 1107(h) and Rule 1107(i)), obligations to pay FX Assessment Contributions (subject always to Rule 209(g), Rule 1107(h) and Rule 1107(i)), FX Original Margin payments and FX Mark to Market Margin payments; and~~
 - ~~(iii) subject always to Rule 1107(h) and Rule 1107(i), in a position such that its FX Guaranty Fund Contributions may be applied in accordance with Part 11, until such time as the Clearing House returns such FX Guaranty Fund Contributions in accordance with Part 11 and Rule 209(g)(ii)(B).~~
- ~~(i) — The Clearing House may publish details of any termination or a copy of any termination notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 209(j).~~
- ~~(j) — The Clearing House will issue a Circular promptly following any termination of membership of a Clearing Member or the termination of any Clearing Member's ability to clear Energy Contracts, LIFFE Contracts, F&O Contracts, CDS Contracts or FX Contracts, specifying the name of the Clearing Member affected.~~

Rule 908 [Not used]

Rule 909 [Not used]

Rule 910 [Not used]

Rule 911 [Not used]

Rule 912 — ~~Default procedure for certain termination events~~

~~(a) — If the Clearing House becomes aware of there being or occurring an Insolvency, Failure To Pay or FX Failure To Pay in respect of the Clearing House, the Clearing House will promptly issue a Circular specifying that the same has occurred.~~

~~(b) In the event of any termination pursuant to:-~~

~~(i) — Rule 209(e)(i)(B);~~

~~(ii) — Rule 209(e)(ii) (iii);~~

~~(iii) — Rule 209(f)(i)(B); or~~

~~(iv) — Rule 209(f)(ii) (iii);~~

~~the provisions of Rule 209(e)(iii) shall apply. Rule 209(e) and Rule 209(f) are default rules for such purposes and Rule 907(g) applies equally to such provisions.~~

- (iv) in the case of any CDS Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House CDS Contributions by Circular; and
- (v) in the case of any FX Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House FX Contributions by Circular.

~~F&O Clearing Members must make required F&O Guaranty Fund Contributions within ten Business Days of the notice under Rule 1102(i)(ii), or on or before such other later date as is specified by the Clearing House at its discretion. CDS Clearing Members must make required CDS Guaranty Fund Contributions and FX Clearing Members must make required FX Guaranty Fund Contributions prior to the opening of business on the first Business Day following the notice under Rule 1102(i)(ii) or such other later date as is specified by the Clearing House at its discretion.~~ The Clearing House shall ensure that any specified new Clearing House Contributions are held by it in accordance with Rule 1104(e) at the same date as Guaranty Fund Contributions for the relevant Guaranty Fund are so due. Any obligation on a Clearing Member to make payments pursuant to this Rule 1102(i) is separate from, and shall apply in addition to, any obligation to make payment in respect of F&O Assessment Contributions pursuant to Rule 1105 (subject only to the provisions of Rules 1105(h) and 1105(i)) or CDS Assessment Contributions pursuant to Rule 1106 (subject only to the provisions of Rules 1106(h) and 1106(i)) or FX Assessment Contributions pursuant to Rule 1107 (subject only to the provisions of Rules 1107(h) and 1107(i)).

g) 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 identified that Disclosed Principal Member in accordance with Rule 201(h)) (the defaulter in respect of whom default proceedings are first completed being the "**First Defaulter**" and any other defaulter being an "**Additional Defaulter**" or, if default proceedings are completed at the same time, the Defaulter whose name would appear first alphabetically being the "**First Defaulter**" and any other Defaulter or Defaulters being an "**Additional Defaulter**"); or
- (ii) a separate Event of Default is declared in relation to a Defaulter or Defaulters that has or have made a Guaranty Fund Contribution or Guaranty Fund Contributions to the same Guaranty Fund (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), then (subject in the case of FX Guaranty Fund Contributions only to Rule 1107(h) and Rule 1107(i)) Clearing Members shall be required to replenish the relevant 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