



## Clearing Rules

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## 6. MISCELLANEOUS

### 611. Relation to Insolvency Laws.

- (a) ICE Clear Credit and each Participant intend that certain provisions of these Rules be interpreted in relation to certain terms (identified by quotation marks) that are used or defined in the “Clearing organization netting” provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“**FDICIA**”), 12 U.S.C. § 4404, as amended, as follows:
- (i) ICE Clear Credit is a “clearing organization.”
  - (ii) An obligation of a Participant to make a payment to ICE Clear Credit, or of ICE Clear Credit to make a payment to a Participant, subject to a netting agreement, is a “covered clearing obligation” and a “covered contractual payment obligation.”
  - (iii) An entitlement of a Participant to receive a payment from ICE Clear Credit, or of ICE Clear Credit to receive a payment from a Participant, subject to a netting contract, is a “covered contractual payment entitlement.”
  - (iv) ICE Clear Credit is a “member,” and each Participant is a “member.”
  - (v) The amount by which the covered contractual payment entitlements of a Participant or ICE Clear Credit exceed the covered contractual payment obligations of such Participant or ICE Clear Credit after netting under a netting contract is its “net entitlement.”
  - (vi) The amount by which the covered contractual payment obligations of a Participant or ICE Clear Credit exceed the covered contractual payment entitlements of such Participant or ICE Clear Credit after netting under a netting contract is its “net obligation.”
  - (vii) These Rules and any other agreement between ICE Clear Credit and a Participant governing Contracts are a “netting contract” and include “security agreements or arrangements or other credit enhancements related to such netting contract.”
  - (viii) The rights granted to ICE Clear Credit herein upon the Default of a Participant are all rights that enable ICE Clear Credit to “terminate, liquidate, accelerate and net” the related Open Positions.
- (b) ICE Clear Credit and each Participant intend that certain provisions of these Rules be interpreted in relation to certain terms (identified by quotation marks) that are used or defined in Section 11(e) of the Federal Deposit Insurance Act (“**FDIA**”), 12 U.S.C. § 1821(e)(8), as amended, as follows:
- (i) Each Open Position is a “swap agreement.”

- (ii) These Rules and any other agreement between ICE Clear Credit and a Participant governing Contracts constitute a “master agreement” and each security interest granted and each transfer of title provided for herein (including each Participant’s grant of a security interest in Margin and Collateral) constitutes a “security agreement or arrangement or other credit enhancement” in connection with or related to a “swap agreement.”
  - (iii) The rights granted to ICE Clear Credit herein upon the Default of a Participant are rights that enable ICE Clear Credit “to cause the termination, liquidation, or acceleration” of the Defaulting Participant’s Open Positions and “to offset or net out any termination value, payment amount, or other transfer of” any Open Positions.
  - (iv) Each Participant’s Transfer of Collateral to the General Guaranty Fund constitutes a “security arrangement or other credit enhancement” related to a “swap agreement” and therefore is itself a “swap agreement.”
- (c) ICE Clear Credit and each Participant intend that certain provisions of these Rules be interpreted in relation to certain terms (identified by quotation marks) that are used or defined in Section 561 and Section 761 of Title 11 of the United States Code, as amended (the “**Bankruptcy Code**”), as follows:
- (i) Each Open Position is a “commodity contract”.
  - (ii) These Rules and any other agreement between ICE Clear Credit and a Participant governing Contracts constitute a “master agreement” and each security interest granted and each transfer of title provided for herein (including each Participant’s grant of a security interest in Margin and Collateral) constitutes a “security agreement or arrangement or other credit enhancement” related to a “commodity contract.”
  - (iii) The rights granted to ICE Clear Credit herein upon the Default of a Participant are rights that enable ICE Clear Credit “to cause the termination, liquidation, or acceleration” of the Defaulting Participant’s Open Positions and “to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with” any Open Positions.
  - (iv) Each Participant’s Transfer of Collateral to the General Guaranty Fund constitutes a “security arrangement or other credit enhancement” related to a “commodity contract” and therefore is itself a “commodity contract.”
- (d) ICE Clear Credit and each Participant intend that certain provisions of these Rules be interpreted in relation to certain terms (identified by quotation marks) that are used or defined in Section 561 and Section 741 of Title 11 of the Bankruptcy Code, as follows:
- (i) Each Open Position is a “securities contract”.

- (ii) These Rules and any other agreement between ICE Clear Credit and a Participant governing Contracts constitute a “master agreement” and each security interest granted and each transfer of title provided for herein (including each Participant’s grant of a security interest in Margin and Collateral) constitutes a “security agreement or arrangement or other credit enhancement” related to a “securities contract.”
  - (iii) The rights granted to ICE Clear Credit herein upon the Default of a Participant are rights that enable ICE Clear Credit “to cause the termination, liquidation, or acceleration” of the Defaulting Participant’s Open Positions and “to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with” any Open Positions.
  - (iv) Each Participant’s Transfer of Collateral to the General Guaranty Fund constitutes a “security arrangement or other credit enhancement” related to a “securities contract” and therefore is itself a “securities contract.”
- (e) ICE Clear Credit and each Participant intend that certain provisions of these Rules be interpreted in relation to certain terms (identified by quotation marks) that are used or defined in Section 210(c) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, as follows:
- (i) Each Open Position is a “swap agreement.”
  - (ii) These Rules and any other agreement between ICE Clear Credit and a Participant governing Contracts constitute a “master agreement” and each security interest granted and each transfer of title provided for herein (including each Participant’s grant of a security interest in Margin and Collateral) constitutes a “security agreement or arrangement or other credit enhancement” related to a “swap agreement.”
  - (iii) The rights granted to ICE Clear Credit herein upon the Default of a Participant are rights that enable ICE Clear Credit “to cause the termination, liquidation, or acceleration” of the Defaulting Participant’s Open Positions and “to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with” any Open Positions.
  - (iv) Each Participant’s Transfer of Collateral to the General Guaranty Fund constitutes a “security arrangement or other credit enhancement” related to a “swap agreement” and therefore is itself a “swap agreement.”
- (f) The provisions of the Rules, Participant Agreement and ICE Clear Credit Procedures relating to, or that can be exercised upon, a Default including, without limitation, Chapter 8, Rule 20-605, Rule 20A-02 and this Chapter 10 of the Rules and ICE Clear Credit Procedures relating thereto and any and all actions, omissions, powers and arrangements of ICE Clear Credit pursuant to such provisions of the Rules, Participant Agreement or ICE Clear Credit Procedures are intended to:

- (i) constitute "default rules" for purposes of the UK Companies Act 1989;
- (ii) include a "default waterfall" for purposes of article 45 of EMIR;
- (iii) constitute "default procedures" for purposes of article 48 of EMIR;
- (iv) include a "default waterfall" for purposes of article 45 of UK EMIR;
- (v) constitute "default procedures" for purposes of article 48 of UK EMIR;
- (vi) constitute "default arrangements" for the purposes of the Settlement Finality Directive;
- (vii) constitute "default arrangements" for the purposes of the Settlement Finality Regulations;
- (viii) constitute "rules on the moment of entry and irrevocability" of a system for the purposes of Article 5 of the Settlement Finality Directive; and
- (ix) constitute "rules on the moment of entry and irrevocability" of a system for the purposes of paragraph 5 of the Schedule to the the Settlement Finality Regulations.

## **10. Settlement Finality Laws**

### **1000. Definitions**

#### **EMIR**

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

#### **Financial Collateral Directive**

Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on Financial Collateral Arrangements, including any national implementing measures in any member state of the European Union or the European Economic Area.

#### **Financial Collateral Regulations**

The UK Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226).

#### **FSMA**

The UK Financial Services and Markets Act 2000 (as amended).

#### **ICE Post-Trade and Clearing Systems or ICE Systems**

The trade registration, clearing processing and finance hardware and software used by ICE Clear Credit and Participants from time to time, as further described in ICE Clear Credit Procedures

#### **Indirect Participant**

A Non-Participant Party to the extent it is an "indirect participant" for purposes of the Settlement Finality Directive or Settlement Finality Regulations and satisfies any requirements in respect thereof that may be specified by ICE Clear Credit.

#### **Non-Cash Collateral**

Any non-cash Margin or Collateral that is in the form of an asset specified in Schedule 401, provided that it is an SFD Security.

#### **Payment Transfer Order**

A "transfer order" falling within the first indent of Article 2(i) of the Settlement Finality Directive or limb (a) of the definition of "transfer order" in Regulation 2 of the Settlement Finality Regulations, as applicable, that is a Credit/Debit Payment Transfer Order subject to this Chapter 10.

## **Securities Transfer Order**

A "transfer order" falling within the second indent of Article 2(i) of the Settlement Finality Directive or limb (b) of the definition of "transfer order" in Regulation 2 of the Settlement Finality Regulations, as applicable, that is a Position Transfer Order, Collateral Transfer Order, Transaction Clearing Order or CDS Physical Settlement Order subject to this Chapter 10.

## **Settlement Finality Directive**

EU Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, including any national implementing measures in any member state of the European Economic Area, including any such measures pursuant to which a member state applies the provisions of such Directive to a third country system or collateral security provided in connection with participation in a third country systems pursuant to recital 7 of that Directive, whether to all third country systems or those which meet certain criteria by virtue of the implementing measure itself or whether pursuant to any designation, recognition or order made by the relevant Regulatory Body in that member state pursuant to which ICE Clear Credit is to be treated as a third country system for such purposes. References in this Chapter 10 to a section or provision of or definition in the Settlement Finality Directive shall be deemed to include the corresponding section or provision or definition in any member state law.

## **Settlement Finality Regulations**

The UK's Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979) to the extent the same are applicable or relate to ICE Clear Credit or participation in ICE Clear Credit.

## **SFD Custodian**

A custodian located in the European Economic Area or United Kingdom used by ICE Clear Credit or a Participant for the holding or transfer of Non-Cash Collateral that is the subject of a Collateral Transfer Order, provided that such person is a "participant" (as defined in the Settlement Finality Directive or the Settlement Finality Regulations, as applicable) in the SFD System.

## **SFD Financial Institution**

A credit institution, bank, trust company or other financial institution located in the European Economic Area or United Kingdom used by ICE Clear Credit or a Participant for purposes of the deposit or transfer of cash in connection with the ICE Clear Credit Rules and ICE Clear Credit Procedures and which is an

“institution” as defined in the Settlement Finality Directive or the Settlement Finality Regulations, respectively, as applicable.

### **SFD Participant**

ICE Clear Credit, each Participant that is organized in a member state of the European Economic Area or the United Kingdom, and each SFD Financial Institution and SFD Custodian, in the case of any such Person (other than ICE Clear Credit) to the extent that it is a 'participant' (as defined in the Settlement Finality Directive or the Settlement Finality Regulations, as applicable) in the SFD System, and this Chapter 10 shall apply equally to any insolvency practitioner appointed for, or with powers in respect of, an SFD Participant.

### **SFD Security**

A 'security', as defined in the Settlement Finality Directive or the Settlement Finality Regulations, as applicable.

### **SFD System**

The third country system for the purposes of the Settlement Finality Directive or Settlement Finality Regulations, as applicable, operated by ICE Clear Credit and consisting of the formal arrangements between ICE Clear Credit and SFD Participants including the common rules (including the Rules and ICE Clear Credit Procedures) and the standardized arrangements (including the Participant Agreements and other agreements involving ICE Clear Credit, Participants, SFD Financial Institutions and SFD Custodians) and related functionality for the effecting of Transfer Orders between ICE Clear Credit and SFD Participants which, *inter alia*:

- (i) enable ICE Clear Credit to Transfer funds and Non-Cash Collateral to Participants in accordance with the Rules and ICE Clear Credit Procedures;
- (ii) enable Participants to Transfer funds and Non-Cash Collateral to ICE Clear Credit in accordance with the Rules and ICE Clear Credit Procedures;
- (iii) enable ICE Clear Credit and Participants to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
- (iv) enable transfers of Client-Related Positions between Participants whether or not following a Default;
- (v) enable Trades and Trade confirmations to give rise to Contracts;
- (vi) facilitate physical settlement obligations under Contracts; and



(vii) 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.

## **Transfer Order**

A Payment Transfer Order or a Securities Transfer Order.

## **UK EMIR**

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018.

### **1001. Introduction and Interpretation**

- (a) ICE Clear Credit is the operator of a third country system for the purposes of certain member state laws under the Settlement Finality Directive and may further become designated or determined as such from time to time as a third country system under other member state laws or under the Settlement Finality Regulations by the relevant Regulatory Body. This Chapter 10 shall apply with respect to ICE Clear Credit, as such operator, and SFD Participants to the extent that the Settlement Finality Directive or Settlement Finality Regulations are applicable.
- (b) SFD Participants must comply with, facilitate compliance by ICE Clear Credit with, and comply with any action taken by ICE Clear Credit pursuant to, this Chapter 10 and the Settlement Finality Directive or Settlement Finality Regulations (as applicable). Furthermore, Participants and other users acknowledge that various modifications to applicable laws in the European Economic Area or the United Kingdom relating to insolvency apply, pursuant to the Settlement Finality Directive, the Settlement Finality Regulations, Companies Act 1989, EMIR and UK EMIR.
- (c) Each SFD Participant in the SFD System is on notice of the provisions of this Chapter 10. Each SFD Participant shall, by participating in the SFD System, be deemed to have agreed that:
- (i) (without prejudice to the generality of the provisions of the Rules and any Participant Agreement or other relevant agreement) the provisions set out in this Chapter 10 apply to and shall bind such SFD Participant (and to any insolvency practitioner appointed for, or with powers in respect of, it) in connection with such SFD Participant's participation in the SFD System; and
  - (ii) to the extent that there is any conflict between any provision of this Chapter 10 and any provision of any agreement or any contractual or non-contractual obligation which may arise or exist from to time involving any SFD Participant and ICE Clear Credit, the relevant provision of this Chapter

10 shall prevail, control, govern and be binding upon the parties (regardless of the date of entry into or amendment of any such agreement or obligation).

(f)(d) ICE Clear Credit and each Participant that is an SFD Participant acknowledge and agree that: (i) all forms of Margin and Collateral Transferred to ICE Clear Credit constitute "realisable assets"; and (ii) Pledged Items are provided under a "pledge[...], a repurchase or similar agreement" which has been entered into "for the purpose of securing rights and obligations potentially arising in connection with a system", for purposes of the Settlement Finality Directive or the Settlement Finality Regulations, as applicable. Accordingly, ICE Clear Credit and each such Participant that is an SFD Participant in the SFD System intend and agree that: (a) Pledged Items constitute both "collateral security" and "collateral security provided[...in connection with a system" for purposes of the Settlement Finality Directive or the Settlement Finality Regulations, as applicable; and (b) the Participant Agreement, Rules and Contracts applicable to Pledged Items constitute a "pledge" (under which "realisable assets" are provided) in respect of the Pledged Items, for purposes of the Settlement Finality Directive or the Settlement Finality Regulations, as applicable.

## **1002. Transfer Orders Arising**

(a) Subject to Article 3 of the Settlement Finality Directive or Regulation 20 of the Settlement Finality Regulations, as applicable, a Payment Transfer Order shall arise and shall enter the SFD System immediately and automatically upon a requirement for cash to be Transferred to or from ICE Clear Credit from or to a Participant that is an SFD Participant arising under the Rules and/or the ICE Clear Credit Procedures (a "**Credit/Debit Payment Transfer Order**").

(b) Subject to Article 3 of the Settlement Finality Directive or Regulation 20 of the Settlement Finality Regulations, as applicable, a Securities Transfer Order shall arise and shall enter the SFD System immediately and automatically upon any of the following:

(i) if either:

(A) ICE Clear Credit and the two Participants involved have agreed, at the request of a Non-Participant Party, to a transfer of Client-Related Positions from one Participant to another Participant pursuant to Rule 20A-01; or

(B) a Participant is in Default and any Eligible Transfer Positions of the Defaulting Participant are proposed to be transferred from the Defaulting Participant to another Participant pursuant to ICE Clear Credit's powers under Rule 20A-02 or otherwise in accordance with applicable law,

in either case, instructions for settlement of the transfer in question being effected through the ICE Clear Credit systems at the relevant settlement

transfer deadline for the relevant Client-Related Position (such Securities Transfer Order, a "**Position Transfer Order**"):

(ii) ICE Clear Credit accepts, through the ICE Clear Credit systems, that a Participant has validly requested either:

(A) the transfer of Non-Cash Collateral to or to the order of ICE Clear Credit; or

(B) a transfer to that Participant or to its order of Non-Cash Collateral

(such Securities Transfer Order, in either case, a "**Collateral Transfer Order**"):

(iii) in respect of a Backloaded Trade submitted for clearing pursuant to Rule 301(c), ICE Clear Credit completes pre-submission review and processing of such trade in accordance with Rule 309 (such Securities Transfer Order, a "**Backloaded Transaction Clearing Order**"):

(iv) in respect of a Trade confirmation submitted for clearing pursuant to Rule 301(b), ICE Clear Credit issues notice of acceptance of such Trade for clearing through the ICE Systems pursuant to Rule 309 (such Securities Transfer Order, a "**New Transaction Clearing Order**" and, together with a Backloaded Transaction Clearing Order, "**Transaction Clearing Order**"):  
or

(v) (A) ICE Clear Credit being provided with a written copy of a notice delivered by a Matched Delivery Buyer to a Matched Delivery Seller in a Matched Delivery Pair of a Notice of Physical Settlement in respect of Matched Delivery Contracts, where the Notice of Physical Settlement specifies an instrument to be delivered that is an SFD Security; or (B) ICE Clear Credit being provided with a copy of a notice delivered by a Matched Delivery Buyer to a Matched Delivery Seller in a Matched Delivery Pair of a NOPS Amendment Notice in respect of Matched Delivery Contracts, where the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security but where the Notice of Physical Settlement (including, as amended by any previous NOPS Amendment Notice) had specified an instrument that is not an SFD Security as the instrument that was to be delivered (either such Securities Transfer Order, a "**CDS Physical Settlement 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 subsequent calculation of Open Positions, 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 the relevant cash payment amount to be transferred to or to the order of ICE Clear Credit or the Participant.
- (f) Each Position Transfer Order shall apply and have effect in respect of the Contracts to be transferred.
- (g) Each Collateral Transfer Order shall apply and have effect in respect of the Non-Cash Collateral to be transferred to or to the order of ICE Clear Credit or the Participant.
- (h) Each Transaction Clearing Order shall apply and have effect in respect of the Trade confirmation and any Trade in question and any resulting Contract.
- (i) Two separate CDS Physical Settlement Orders shall apply and shall have effect separately in respect of each of the Matched Delivery Buyer Contract and Matched Delivery Seller Contract that are subject to a physical settlement obligation, and the instrument to be delivered pursuant thereto.
- (j) Transfer Orders shall apply to, and have effect as against and between each of the following Persons, in respect of any particular Person only to the extent that such Person is an SFD Participant or an Indirect Participant:
  - (i) in the case of a Payment Transfer Order, the affected Participant (if it is an SFD Participant) and ICE Clear Credit, and any affected SFD Financial Institution.
  - (ii) in the case of a Position Transfer Order:
    - (A) the SFD Participants (that are the transferor and the transferee);
    - (B) any Indirect Participant affected by the Position Transfer Order; and
    - (C) ICE Clear Credit.
  - (iii) in the case of a Collateral Transfer Order:
    - (A) the SFD Participant that is the transferor or transferee of the Non-Cash Collateral in question;
    - (B) any SFD Custodian of the Participant or ICE Clear Credit; and
    - (C) ICE Clear Credit.
  - (iv) in the case of a Transaction Clearing Order:
    - (A) each Participant that has submitted or confirmed details of the Trade;

(B) any Indirect Participant affected by the Transaction Clearing Order;  
and

(C) ICE Clear Credit;

(v) in the case of a CDS Physical Settlement Order:

(A) each SFD Participant in the Matched Delivery Pair; and

(B) ICE Clear Credit.

(k) Where a Transfer Order applies additionally to an Indirect Participant, the liability of any SFD Participant pursuant to the same Transfer Order shall not be affected.

### **1003. Transfer Orders Becoming Irrevocable**

(a) A Payment Transfer Order shall become irrevocable at the earlier of the time when (i) ICE Clear Credit or the SFD Participant, as applicable, receives payment of the amount that is the subject of the Payment Transfer Order or (ii) a financial institution used by ICE Clear Credit for this purpose sends a SWIFT confirmation message, other electronic message, fax, telephone or other message to ICE Clear Credit confirming that the relevant payment has been made.

(b) A Position Transfer Order shall become irrevocable at the time when the definitive record of the Open Position of the Participant (that is the transferee) is updated as a result of a successful position transfer clearing run in the ICE Clear Credit systems to reflect the transfer of Client-Related Positions which are given effect pursuant to the Position Transfer Order.

(c) A Collateral Transfer Order shall become irrevocable at the earlier of the time when: (i) ICE Clear Credit or the SFD Participant, as applicable, receives the Non-Cash Collateral; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which is a securities transfer order in a designated system for the purposes of the Settlement Finality Directive or the Settlement Finality Regulations, as applicable, which is not the SFD System) becomes irrevocable.

(d) A Transaction Clearing Order shall become irrevocable when the Novation Time occurs for the Trade in question, in accordance with Rule 309.

(e) A CDS Physical Settlement Order shall become irrevocable at the earliest of: (i) the time when the Matched Delivery Buyer in the Matched Delivery Pair has submitted irrevocable instructions to its custodian for the transfer of securities to or to the account of the Matched Delivery Seller; (ii) the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or (iii) if the Matched Delivery Buyer or Matched Delivery Seller has (in the absence of any Matching Reversal Notice or not later than one ICE Business Day after any Matching

Reversal Notice) given notice to ICE Clear Credit in accordance with Rule 2203(d) or the ICE Clear Credit Procedures (as applicable) that the relevant Matched Delivery Pair have settled the relevant Matched Delivery Contracts, at the time of such notice.

(f) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any SFD Participant or ICE Clear Credit and shall be binding upon all SFD Participants.

#### **1004. Variations to or Cancellation of Transfer Orders**

(a) This Rule 1004 applies only to a Transfer Order that is not irrevocable and:

(i) in the case of any Transfer Order, is affected by manifest or proven error or an error that is agreed so to be by all affected SFD Participants;

(ii) in the case of a Payment Transfer Order or Collateral Transfer Order, relates to a Contract which is (or a Trade or Trade confirmation which, if accepted, would be):

(A) void, avoided or voided pursuant to the Rules or applicable law; or

(B) amended as a result of ICE Clear Credit exercising its discretion under the Rules;

(iii) without prejudice to the generality of Rule 1004(a)(i), in the case of a Backloaded Transaction Clearing Order, if an error or omission is noted by or notified to ICE Clear Credit prior to the Novation Time or the data in the Trade confirmation to which the Backloaded Transaction Clearing Order relates is otherwise capable of being amended in accordance with the Rules or ICE Clear Credit Procedures;

(iv) in the case of a CDS Physical Settlement Order, if a NOPS Amendment Notice is validly delivered by the Matched Delivery Buyer in accordance with Rule 2201(b), Rule 2203 and/or the ICE Clear Credit Procedures; or

(v) without prejudice to the generality of Rule 1004(a)(i), (ii) or (iii), in the case of a Transaction Clearing Order, it relates to a Trade which is not eligible for clearing or which is not accepted for clearing by ICE Clear Credit.

(b) Subject to Rule 1004(d), (e), (f) and (g), neither the validity nor the irrevocability of any Transfer Order shall of itself be affected by any event described in Rule 1004(a) occurring.

(c) The terms of all Transfer Orders that have not become irrevocable shall each be subject to a condition (which, if not satisfied, shall enable ICE Clear Credit to exercise its rights under this Rule 1004) that the circumstances described in Rule 1004(a) have not occurred.

(d) If any of the circumstances described in Rule 1004(a) has occurred, the amount payable, Contracts to be transferred or to arise or Non-Cash Collateral to be delivered pursuant to the affected Transfer Order may at the discretion of ICE Clear Credit be increased, decreased or otherwise varied, as necessary, to reflect the payments, transfers, Contracts, SFD Securities, Non-Cash Collateral or deliveries that would have been required in accordance with the Rules and ICE Clear Credit Procedures:

(i) in the case of Rule 1004(a)(i) applying, had there been no error;

(ii) in the case of Rule 1004(a)(ii)(A) or Rule 1004(a)(v) applying, had no Contract, Trade or Trade confirmation ever arisen, occurred or been submitted;

(iii) in the case of Rule 1004(a)(ii)(B) applying, had the Contract always been subject to such amended terms as are agreed or determined;

(iv) in the case of Rule 1004(a)(iii) applying, had the details of the Trade confirmation always been corrected or amended as permitted in accordance with the Rules and the ICE Clear Credit Procedures; or

(v) in the case of Rule 1004(a)(iv) applying and the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security, had the Notice of Physical Settlement been originally issued as amended pursuant to the NOPS Amendment Notice

(any such variation, a "Transfer Order Variation").

(e) A Transfer Order Variation may be effected only by ICE Clear Credit delivering a notice of amendment of an existing Transfer Order to all affected SFD Participants. Valid delivery of a NOPS Amendment Notice in accordance with Rule 2201(b), Rule 2203 and the ICE Clear Credit Procedures by a Matched Delivery Buyer in a Matched Delivery Pair shall be deemed to constitute notice by ICE Clear Credit for purposes of this Rule 1004(e) in respect of a Transfer Order Variation to a CDS Physical Settlement Order, if the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security.

(f) If any of the circumstances described in Rule 1004(a) has occurred, the Transfer Order in question may at the discretion of ICE Clear Credit alternatively be cancelled (but without prejudice to any other rights or obligations under the Rules or the ICE Clear Credit Procedures in respect of such circumstances). Any such cancellation may be effected by ICE Clear Credit serving a notice of cancellation on all affected SFD Participants. In respect of a Transaction Clearing Order, such notice shall be deemed to have been given if ICE Clear Credit rejects a Trade for clearing.

(g) A CDS Physical Settlement Order shall be cancelled immediately and automatically if and when a copy is provided to ICE Clear Credit of a validly

delivered NOPS Amendment Notice specifying an instrument for delivery which is not an SFD Security (but without prejudice to the obligations of the Participant under the Rules in respect of such NOPS Amendment Notice).

- (h) This Rule 1004 does not affect the ability of ICE Clear Credit to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof if any of the events described in Rule 1004(a) occur. No Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by ICE Clear Credit. The ability of ICE Clear Credit to cancel or vary a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

#### **1005. Satisfaction and Termination of Transfer Orders**

- (a) Each Payment Transfer Order shall be satisfied immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in immediately available funds or full satisfaction of the relevant underlying obligations is otherwise made and recorded in ICE Clear Credit's systems, in either case not subject to any liens, claims, charges or encumbrances.
- (b) Each Position Transfer Order shall be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1003(c) (whereupon all Client-Related Positions to which the Transfer Order in question relates will have been transferred pursuant to the Rules).
- (c) Each Collateral Transfer Order shall be satisfied immediately and automatically at the later of the time when: (i) ICE Clear Credit or the Participant, as applicable, receives the Non-Cash Collateral in its account; or (ii) the definitive record of the assets transferred by the Participant that is the transferor is updated in the ICE Clear Credit systems to reflect the successful transfer of Non-Cash Collateral to or to the order of ICE Clear Credit or the Participant, as applicable, pursuant to the Collateral Transfer Order.
- (d) A Transaction Clearing Order shall be satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 301 and Rule 309.
- (e) A CDS Physical Settlement Order shall be satisfied immediately and automatically at the time when ICE Clear Credit updates its records of the relevant Contracts in the ICE Clear Credit systems to reflect that either physical delivery of the security in question has been completed or the delivery obligations of the parties under the relevant Contracts have otherwise been discharged or settled.

#### **1006. Applicability of Financial Collateral Directive, the Financial Collateral Regulations and the collateral-related provisions of the Companies Act 1989**

- (a) Participants, Non-Participant Parties and ICE Clear Credit acknowledge and agree that to the extent any matter relating to Margin or Collateral falls to be determined



under applicable laws of any member state of the European Economic Area or the United Kingdom, (i) the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable, applies in relation to all Margin and Collateral Transferred to ICE Clear Credit in the form of "cash" or "financial instruments" (in either case, as defined in the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable); and (ii) it will not dispute the construction of the arrangements regarding the provision of Margin or Collateral under these Rules as "financial collateral arrangements" within the meaning of the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable.

(b) Participants, Non-Participant Parties and ICE Clear Credit intend and agree that, to the extent any matter relating to Margin or Collateral falls to be determined under applicable laws of any member state of the European Economic Area or the United Kingdom:

(i) the arrangements for the provision of Margin and Collateral (other than Pledged Items) to ICE Clear Credit in the form of "cash" (as defined in the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable) under these Rules constitute "title transfer financial collateral arrangements" as defined in and for the purposes of the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable;

(ii) the arrangements for the provision of Pledged Items to ICE Clear Credit in the form of "cash" or "financial instruments" (in either case, as defined in the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable) under these Rules constitute "security financial collateral arrangements" as defined in and for the purposes of the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable;

(ii) all forms of Margin and Collateral provided to ICE Clear Credit constitute "financial collateral" as defined in and for the purposes of the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable and that only assets in the form of such financial collateral may be provided to ICE Clear Credit under these Rules;

(iii) ICE Clear Credit has "possession or control" of all Margin and Collateral (including Pledged Items) within the meaning of the Financial Collateral Directive or the Financial Collateral Regulations, respectively, as applicable; and

(iv) in the case of the laws of the United Kingdom, each security interest created or expressed to be created by or pursuant to these Rules constitutes a "market charge" as defined in and for the purposes of the Companies Act 1989;

and Participants and Non-Participant Parties agree that they and their representatives and agents shall not be entitled to, and Participants and Non-Participant Parties hereby undertake not to, assert any claim, counterclaim or other right to the contrary. Any assets received by Participants or Non-Participant Parties in breach of any agreements or undertakings under this Rule 1006 shall be held by the Participant or Non-Participant Party on trust for ICE Clear Credit.