

Rule 106 Confidentiality and Information

- (a) The Clearing House shall be entitled to keep records in an electronic or durable medium of all data or information available to it under these Rules or otherwise concerning Clearing Members (including financial statements filed with the Clearing House), Customers, Sponsored Principals, Sponsors, Accounts, Margin, Transactions, Contracts, past or current Open Contract Positions, deliveries and settlement.
- (b) The following information received or held by the Clearing House shall be held in confidence by the Clearing House and shall not be made known to any other Person, subject to paragraph (c):
 - (i) information received or held by the Clearing House concerning Transactions, Contracts or past or current Open Contract Positions held with the Clearing House;
 - (ii) information concerning or positions with any other Clearing Organisation for a Clearing Member or Sponsored Principal or relating to any Customer;
 - (iii) information concerning Margin payments between the Clearing House or any other Clearing Organisation and a Clearing Member or Sponsored Principal, including in relation to a Customer;
 - (iv) information concerning deliveries made by or to a Clearing Member or any of its Transferors or Transferees;
 - (v) any financial statements filed with the Clearing House by any Clearing Member or Sponsored Principal; or
 - (vi) any other information relating to a Clearing Member, Sponsored Principal, Sponsor or Customer provided by a Clearing Member, Sponsored Principal, Sponsor or Customer to the Clearing House at the Clearing House's request, or pursuant to the Rules or Applicable Laws.
- (c) Subject, at all times to Applicable Laws, the Clearing House may, notwithstanding Rule 106(b), make the following disclosures of confidential information, subject to such terms and conditions as the Clearing House may from time to time deem appropriate:
 - (i) to a Regulatory Authority or Governmental Authority where a lawful request is made to the Clearing House by or on behalf of the same or pursuant to Applicable Laws or where disclosure is required under Applicable Laws or is necessary for the making of a disclosure, complaint or report permitted under Applicable Laws for an offence alleged or suspected to have been committed under Applicable Laws;
 - (ii) in the case of a breach by a Clearing Member or Sponsored Principal of: (A) any clearing membership criteria established by the Clearing House, whether as a breach of Rule 202(a)(iv) (including as applied to Sponsored Principals pursuant

to Rule 1901(k)) or otherwise; or (B) in the case of a Clearing Member, such Clearing Member's obligation to publicly disclose prices and fees associated with the clearing services it provides and/or its obligation to provide Customers with separate access to each specific service it provides; to the public, subject to any decision made by any Regulatory Authority pursuant to article 38(5) of EMIR;

- (iii) pursuant to any Applicable Law, including any 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 where a contractual or professional obligation of confidentiality arises on the part of the recipient, 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 Member and its accounts only, as is necessary to respond to any enquiries of such a Person concerning the Clearing House's or any of its Affiliates' potential losses or exposures relating to an Event of Default (whether or not declared);
- (vii) to the Secretary of State, any Insolvency Practitioner and any other authority or Person having responsibility for any matter arising out of or connected with an Event of Default;
- (viii) in the case of information relating to any Transaction or Contract (including details of the parties thereto and related Margin), to Deriv/SERV, a Repository or Governmental Authority for purposes of transaction reporting;
- (ix) to any Person or to the public as a result of its complaints procedure or disciplinary proceedings;
- (x) to any Person if the information comes into the public domain (or was or becomes available to the Clearing House on a non-confidential basis from a source that is not and was not prohibited, as far as the Clearing House is aware, from disclosing

such information by any contractual, legal or fiduciary obligation), other than as a result of a breach of this Rule by the Clearing House or its Representatives;

- (xi) in the case of information concerning any Individually Segregated Sponsored Account, to the Sponsor or Sponsored Principal in respect of such Account;
- (xii) in the case of information concerning any Customer, to any Clearing Member with a relationship with such Customer in respect of one of its Customer Accounts;
- (xiii) otherwise with the written consent of the Person or Persons to whom the confidential information relates; ~~or~~

(xiv) to any Person if the information was independently developed by the Clearing House or any of its affiliates without reliance on the information furnished; or

(xv) ~~(xiv)~~ pursuant to any obligation on the Clearing House or a Market under the rules or terms of a Delivery Facility or as is needed to comply with any obligation or to exercise any right under these Rules.

- (d) Clearing Members, Sponsored Principals, Sponsors and Customers are given notice that the Clearing House is subject to section 348 (Restrictions on disclosure of confidential information by the FCA / PRA etc.) and regulations made under section 349 (Exemptions from section 348) of the FSMA. Clearing Members, Sponsored Principals, Sponsors and Customers 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 Applicable Law.
- (e) The Clearing House is a Controller in relation to Personal Data provided to it by Clearing Members, Sponsored Principals, Customers and their Representatives. Each Clearing Member and Sponsored Principal shall ensure that in respect of any Personal Data that it provides to the Clearing House it has a lawful basis for processing the relevant Personal Data in this manner.
- (f) In this Rule 106 only, the terms "Control" (and derivations thereof), "Process" (and derivations thereof), "Personal Data" and "Controller" each have the meaning given to such terms in Regulation (EU) 2016/679 (General Data Protection Regulation) (including any relevant implementing measure or successor legislation thereto).
- (g) Each Clearing Member, Sponsored Principal and the Clearing House:
 - (i) acknowledges that the recording of telephone conversations between the trading, clearing and other relevant personnel of the Clearing Member or Sponsored Principal and the Clearing House or their Group Companies in connection with the Rules and any Contract, potential Contract or Transaction will take place to the extent permitted or required under Applicable Law;

- (ii) acknowledges, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any Dispute; and
- (iii) acknowledges that the remainder of this Rule 106 shall apply to any such recordings made by the Clearing House.

(h)

- (i) Each Clearing Member and each Sponsored Principal agrees that it will hold in confidence the following information, files or documents owned or licensed by or currently or previously in possession of the Clearing House or any of its Affiliates, which have been communicated or delivered to the Clearing Member or Sponsored Principal, and agrees that the same shall be used solely for its business purposes, acting in its capacity as a Clearing Member or Sponsored Principal as applicable, and shall not be disclosed or made known to any other Person or used for any other purpose except as set forth in this Rule 106(h):
 - (A) all business, financial, strategic and technical information and materials (including, without limitation, any transaction data or position data other than its own or that of its clients, any risk models and risk model outputs (or any components thereof)),
 - (B) the identity of actual or potential business partners or investors, e-business opportunities and each party's potential interest therein;
 - (C) designs, analyses, reports, business methods and processes, business models and plans;
 - (D) customer and market information;
 - (E) any unpublished financial statements of the Clearing House;
 - (F) any information concerning the Open Contract Positions or risk relating to a Defaulter or any default management process;
 - (G) computer hardware and software systems, applications, program listings, licenses, manuals and documentation;
 - (H) any document or information connected with an arbitration or possible arbitration under Rule 117, any disciplinary proceedings or envisaged disciplinary proceedings under Part 10 or any complaint under the Complaint Resolution Procedures;
 - (I) any document or information concerning or related to the governance of the Clearing House, its board or any of its committees;
 - (J) any other document, material, file or information shared by the Clearing House with the Clearing Member or Sponsored Principal, which by its

nature is private or confidential or which is marked or designated by the Clearing House as such.

- (ii) Rule 106(h)(i) shall not apply where any of the exceptions set forth in Rule 106(c)(i), (iii), (v), (vi), (vii), (viii), (x), (xi), (xii), (xiii), (xiv) or (xv) apply, mutatis mutandis (including, in paragraphs (i), (v), (vi), (x) and (xiv) with references to the Clearing House being read as references to the Clearing Member and vice versa; and in (xiii) with the reference to Person or Persons being a reference only to the Clearing House; and without reference to the opening wording of Rule 106(c)).
- (iii) Rule 106(h)(i) shall not apply to any information in, or document attached to, the Rules, the Procedures or any Circular.
- (iv) Subject at all times to Applicable Laws, the Clearing Member may, notwithstanding this Rule 106(h), disclose confidential information within the scope of Rule 106(h)(i) to any member of its Group and its auditors, advisers or lawyers where a contractual or professional obligation of confidentiality arises on the part of the recipient.
- (v) This Rule 106(h) shall not apply to any of the information specified in Rule 106(b) when in possession of the Clearing House (or such Persons other than a Clearing Member or Sponsored Principal to whom the Clearing House may make disclosure thereunder), which information shall instead be subject to that Rule.
- (vi) This Rule 106 is without prejudice to the Intellectual Property rights of the Clearing House and its Affiliates in all and any of the materials referred to in Rules 106(h)(i) and (iii). Such materials are not to be used or disclosed for any purposes unconnected to Clearing at the Clearing House.