

ICE Clear Europe Ltd Framework Arrangement among Crisis Management Group Members (Arrangement)

Background and Rationale for the Arrangement

- 1 ICE Clear Europe Limited (ICE Ltd) is a recognised clearing house and recognised central counterparty for the purposes of Sections 285 and 290 of the Financial Services and Markets Act 2000 (FSMA) and the authorisation requirements under Article 17 of the European Markets Infrastructure Regulation (EMIR).¹ ICE Ltd is subject to regulatory regimes both in and outside of the UK and Europe based on its registration status in such other jurisdictions.
- 2 The Financial Stability Board's (FSB) *Key Attributes of Effective Resolution Regimes for Financial Institutions* and its annexes (*Key Attributes*), specifically Key Attribute 9 (Institution-specific cross-border cooperation agreements) call for the establishment of Crisis Management Groups (CMGs), or other cooperative arrangements that achieve an equivalent outcome for financial market infrastructures (FMIs) that are systemically important in more than one jurisdiction. The *Key Attributes* provide that such CMGs may be based on cooperative arrangements maintained under Responsibility E of the Responsibilities of central banks, market regulators and other relevant authorities for FMIs (Responsibility E), contained in CPSS-IOSCO's Principles for Financial Market Infrastructures (PFMI). This CMG is a distinct group from ICE Ltd's global supervisory college, which is governed by a separate agreement.

Parties and Objectives of the Arrangement

- 3 In accordance with the *Key Attributes*, the Bank of England, as the resolution authority for ICE Ltd, and the other CMG Members wish to establish a CMG. This document sets out how the CMG Members intend to cooperate, share information and coordinate, both during business as usual periods and in times of crisis with a view to facilitating the recovery or, as necessary, an orderly resolution of ICE Ltd. The objective of orderly resolution is to minimise the impact of the failure of ICE Ltd on financial stability and allow for the continuity of critical functions while minimising the use of public funds.
- 4 The Parties to this Arrangement are the CMG Members and Observers set out in Annex 2. The Bank of England may from time to time:
 - a. invite additional regulatory authorities to join the CMG and become Parties to this Arrangement, as CMG Members or Observers (subject to paragraph 10 of this Arrangement); and/or
 - b. remove CMG Members or Observers who no longer meet the conditions set out in Annex 2.
- 5 The Bank of England may invite additional external entities to attend the CMG on a standing or ad hoc basis in accordance with Annex 2.
- 6 Save as agreed on a case-by-case basis by the Bank of England, the CMG shall include only one representative from each of the Parties.

¹ EU 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.

- 7 This Arrangement is not legally binding and not legally enforceable. Its provisions do not give rise to any legal claim on behalf of any Party or third parties. This Arrangement should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and requirements applicable to each Party. Nothing in this Arrangement affects the competence or the supervisory, resolution or regulatory authority of the Parties under their respective laws.
- 8 The Parties may have existing bilateral arrangements (e.g., Memoranda of Understanding) or may execute bilateral arrangements in the future. This Arrangement is not intended to amend or supersede pre-existing arrangements or limit the terms of any future arrangements.
- 9 The existence of this Arrangement may be publicly disclosed. A Party may publicly disclose an outline of the provisions of this Arrangement or all or portions of this Arrangement itself may also be publicly disclosed, to the extent it is required to do so by law, or to the extent such public disclosure is in the proper exercise of its functions, powers or obligations. If a Party discloses any part of this Arrangement, including Annex 2 or the signing pages of other Parties, it will give prior notice to the Bank of England, which will inform the other Parties.
- 10 This Arrangement will continue indefinitely subject to termination by mutual consent of the CMG Members in writing. Any modification to this Arrangement (including, without limitation, any changes to the Parties to this Arrangement) will be agreed to in writing by all Parties.
- 11 For the avoidance of doubt, the confidentiality provisions set forth in Annex 1 (Information Sharing Framework) will survive any termination of this Arrangement.

General framework for cooperation

- 12 The Parties acknowledge that the *Key Attributes*, PFMI, CPMI-IOSCO's Recovery of Financial Market Infrastructures (Recovery Guidance), the "FSB Guidance on Central Counterparty Resolution and Resolution Planning", and such other guidance as the CMG Members may agree, should guide their approach to crisis management, recovery and resolution for ICE Ltd, to the extent permitted by their respective laws.
- 13 The Bank of England has established the CMG with the objective of enhancing preparedness for, and facilitating crisis management, recovery and resolution of ICE Ltd. This will be achieved through regular meetings and conference calls with Parties to discuss, inter alia, recovery and resolution information submissions by ICE Ltd, resolution planning options, informational requirements and enhancement of communication and cooperation.
- 14 The CMG does not have legal personality, and understandings reached at the CMG will not be legally binding or enforceable.

Roles of the Parties

- 15 **The Bank of England will:**
 - i. Facilitate and chair meetings of the CMG, at a sufficiently senior level and on at least an annual basis.

- ii. Discuss ICE Ltd's recovery plan (the Recovery Plan) in the CMG, taking into account the input of the other Parties, and in line with the PFMI and Recovery Guidance and such other guidance as the CMG Members may agree.
- iii. Assess through the CMG, taking into account the input of the other CMG Members, ICE Ltd's resolvability in line with FSB guidance in I-Annex 3 to the *Key Attributes on Resolvability Assessments* (the Resolvability Assessments) and such other guidance as the CMG Members may agree. This will identify potential actions that CMG Members or ICE Ltd may need to take to ensure the resolvability of ICE Ltd, in line with their respective laws and subsequent international guidance.
- iv. Create and ultimately maintain a detailed resolution plan for ICE Ltd (the Resolution Plan), which considers resolution of ICE Ltd as a whole or in part and the financial stability impact in other jurisdictions concerned. To the extent permitted by its laws, the Bank of England should share the Resolution Plan with the Parties and will coordinate through the CMG, on at least an annual basis, the preparation and maintenance of the Resolution Plan of ICE Ltd in line with FSB guidance.
- v. To the extent permitted by its laws, alert the other Parties without undue delay if ICE Ltd: encounters material financial or operational difficulties; takes recovery actions whether or not set out in its Recovery Plan; is likely to enter the Bank of England's resolution regime; or if significant supervisory action is going to be taken.
- vi. In the event that resolution should become necessary, work with the other CMG Members towards the coordinated orderly resolution of ICE Ltd.

16 Each CMG Member (other than the Bank of England) will, as appropriate:

- i. Participate, at a sufficiently senior level, at meetings of the CMG.
- ii. Provide input to discussion in the CMG of ICE Ltd's Recovery Plan.
- iii. Provide input to the development and maintenance of the Resolution Plan for ICE Ltd.
- iv. Under its statutory and regulatory remit, coordinate with the other CMG Members the implementation of the actions set out in the Resolution Plan, and coordinate with domestic authorities not party to this Arrangement, to achieve greater resolvability of ICE Ltd.
- v. Subject to Annex 1, both during business as usual periods and in times of crisis, share information with other Parties as necessary to facilitate resolution planning with respect to ICE Ltd, and the development of the Resolution Plan.
- vi. In the event that resolution should become necessary, work with the CMG Members towards the coordinated orderly resolution of ICE Ltd.
- vii. In taking resolution actions, endeavour:
 - a. not to pre-empt resolution actions by the Bank of England, whilst reserving the right to act on its own initiative if necessary to achieve domestic financial stability and meet its own supervisory, recovery or resolution obligations under law in the absence of effective action by the Bank of England; and
 - b. to notify, to the extent permitted by its respective laws, all Parties (including the Bank of England) prior to taking any resolution actions.

- 17 The CMG Members may, through the CMG process, engage in periodic table top simulations or other scenario exercises in order to assess the Resolution Plan and to help facilitate resolution planning.
- 18 Subject to their respective laws, the CMG Members will inform the other Parties of material changes to their crisis management or resolution frameworks through regular CMG meetings and teleconferences.
- 19 The role of an Observer is to observe the work of the CMG and express views where appropriate.
- 20 A Party may terminate its membership in the CMG and cease being a Party to this Arrangement by notifying the Bank of England in writing.

Cooperation mechanism and cross-border resolution measures

- 21 While it is recognised that each Party must operate within the framework of its own laws, each CMG Member will work with the other CMG Members, both during business as usual periods and in times of crisis, to identify and, to the extent possible, to address any legal and operational impediments to effective cross-border resolution of ICE Ltd under the existing legal and operational frameworks relating to crisis management, recovery and resolution in a cross-border context in such CMG Members' jurisdictions.
- 22 Where CMG Members have material concerns regarding the Resolution Plan they should submit them in writing to the Bank of England, setting out proposed remedies.
- 23 The Bank of England will organise the practical procedures for the meetings and activities of the CMG. The CMG Members should ensure that they provide sufficient human resources to take forward the actions determined at the CMG meetings, which will require close and continuous working-level cooperation. If decided by the Bank of England, in consultation with the CMG Members it may be appropriate for some tasks to be taken forward by the Bank of England through ICE Ltd's global supervisory college.
- 24 The Parties will maintain up-to-date contact lists which should include contact details for key senior and working-level staff. The Parties intend to agree on multiple means of telecommunication (e.g., electronic correspondence, conference calls) to facilitate rapid and effective information sharing and communication among the Parties. The Bank of England will be responsible for setting up and keeping such arrangements up-to-date, and for providing the necessary infrastructure to facilitate communication (e.g. conference calling facilities). The Parties will develop a procedure for making the communications detailed in this Arrangement.
- 25 The CMG Members should work together to identify critical systems and services located in and/or provided by ICE entities within their jurisdiction to ICE entities or third parties in the jurisdictions of CMG Members. The relevant CMG Members will endeavour to reach a mutual understanding that where critical systems and services are needed in a resolution scenario, the Resolution Plan should provide for the continuation of such systems and/or services to the extent permitted under their respective laws.
- 26 In the event of a resolution, the Parties will maintain an open communication channel and coordinate with each other, to the extent permitted by their respective laws, to ensure consistency of external communications both leading up to, at the time of, and for whatever period of time is necessary following resolution.

Bank of England (Resolution Authority)

Name: Andrew Gracie

Position: Executive Director, Resolution

Date:

Bank of England (Supervisory Authority for Financial Market Infrastructure)

Name: David Bailey

Position: Executive Director, Financial Market Infrastructure Division

Date: 08 MAY 2018

Prudential Regulation Authority

Name: Sarah Breeden

Position: Executive Director, International Banks Supervision

Date:

Financial Conduct Authority

Name: TOM SPRINGBETT
Position: MANAGER
Date: 25/7/18

Autorité de Contrôle Prudentiel et de Résolution

Name: OLIVIER JAUDOIN
Position: RESOLUTION DIRECTOR.
Date: 24 May 2018

Autorité des Marchés Financiers

Name: Robert Ophèle
Position: Président
Date: 04/07/2018

Autoriteit Financiële Markten

Name: H.L. van Borselen
Position: Member of the Executive Board
Date: 12/15/2019

Board of Governors of the Federal Reserve System

Name: Matthew J. Eichner

Position: Director, Division of Reserve Bank Operations and Payment Systems

Date: November 29, 2018

Bundesanstalt für Finanzdienstleistungsaufsicht

Name: *Svetlana Dimova*
Position: *Head of Department*
Date: *12/06/2018*

De Nederlandsche Bank

Name: J. Swank
Position: MEMBER EXECUTIVE BOARD
Date: 17-5-2010

Deutsche Bundesbank

Name: Jochen M...er

Position: Director General Payments and Settlement Systems

Date: 28.05.2018

European Central Bank

Name: PATRICK AMIS
Position: DEPUTY DIRECTOR GENERAL,
Date: 11/05/2018 DG-MSI

Marc BAYLE DE JESSE
Director General Market Infrastructure
and Payments -
11/05/2018

Federal Deposit Insurance Corporation

Name: Ricardo Delfin

Position: Director, Office of Complex Financial Institutions

Date: 6/12/18

Eidgenössische Finanzmarktaufsicht FINMA (Switzerland)

Name: David Wyss

Position: Head Recovery and Resolution

Date: 18 Mai 2018

Name: Rupert Schaefer

Position: Head Strategic Services

Date: 18 Mai 2018

U.S. Commodity Futures Trading Commission

Name: *Briana A. Bussey*
Position: *Director, Division of Clearing and Risk*
Date: *9/6/18*

**Annex A: Signature Page of the ICE Clear Europe Ltd Framework Arrangement among Crisis
Management Group Members**

U.S. Securities and Exchange Commission

Name: Jay Clayton

Position: Chairman

Date: 6-30-18

European Securities and Markets Authority (Observer)

Name:
Position
Date:

STEVEN MAIJOR
CHAIR

5/7/18

ANNEX 1 - Information sharing framework

- 1 To the extent permitted by their respective laws, the Parties may from time to time share confidential (i.e. non-public) proprietary or supervisory information, including but not limited to Resolvability Assessments, the Recovery Plan, the Resolution Plan and information regarding the members of ICE Ltd (Confidential Information) with each other. To the extent that any Party's authority permits the sharing of Confidential Information only upon request, any requests for Confidential Information to such Party will be made in writing, to the extent practicable in the situation. To the extent that such Confidential Information is received by the Parties, such Confidential Information should be used only for lawful purposes related to the Parties' financial stability, safety and soundness functions or other lawful or regulatory functions, including recovery and resolution planning and crisis management. In addition, to the extent permitted by its respective laws, each Party will hold confidential all such Confidential Information, and will not disclose any of it other than as necessary to carry out its lawful responsibilities and as consistent with the following limitations:
 - i. Except as provided below in subparagraph (ii), before a Party discloses any Confidential Information obtained pursuant to this Arrangement to any person other than a Party, including another governmental entity that is not a signatory to this Arrangement, the Party seeking to disclose such Confidential Information will request and obtain prior written consent from the Party that produced or provided the Confidential Information (the Producing Party).
 - ii. In the event that a Party is required by statute or legal process, including a legally enforceable demand, to disclose Confidential Information, it will, to the extent permitted by its laws, inform the Producing Party about such possible onward sharing, in advance of sharing such Confidential Information. If that Producing Party does not consent to such disclosure, the Party will take reasonable steps, to the extent permitted by its laws, to resist disclosure, including by asserting all legal exemptions or privileges as may be available to challenge the requirement or demand to disclose Confidential Information.
- 2 No privileges or confidentiality associated with information provided by any Party are intended to be waived as a result of sharing information as contemplated by this Arrangement.
- 3 The provision of, or request for, information under this Arrangement may be denied on grounds of public interest or national security, or when disclosure would interfere with an ongoing investigation.
- 4 It is recognised that information pertaining to the Recovery Plan and the Resolution Plan is commercially sensitive and confidential, and access by each Party should be restricted to those staff who have a genuine need for such access. Additionally, such data and information should be handled carefully and appropriately in the same manner applicable to similar information in each Party's respective jurisdiction.
- 5 The Bank of England will be responsible for providing a secure means of exchanging Confidential Information (e.g., secure extranet website).
- 6 The Bank of England will be responsible for coordinating with the other Parties in connection with the exchange of Confidential Information pursuant to this Arrangement for purposes of the CMG.

7 The confidentiality provisions set forth in this Arrangement will continue to apply to all Confidential Information in the possession of any Party to this Arrangement even if such Party ceases to be a Party to this Arrangement, by way of termination or otherwise.

ANNEX 2 - ICE Ltd Crisis Management Group membership

The Bank of England, as Resolution Authority for ICE Ltd, has established the following principles regarding who should be a CMG Member:

1. Home resolution authority of ICE Ltd.
2. National competent authority (i.e. supervisor) of ICE Ltd.
3. Supervisors and resolution authorities of the two to five largest clearing members by location and contributions to the default fund.
4. Central banks of issue of the most material currencies, based upon products cleared by ICE Ltd. and cash collateral accepted by ICE Ltd.
5. Supervisors and resolution authorities of material resolution entities (primarily CCPs, potentially other FMIs, and exchanges) in the same group
6. If not already captured above, the relevant authorities located in jurisdictions where the Bank of England identifies a general need for that particular jurisdiction to be represented to facilitate the resolution of ICE Ltd.

On the basis of these criteria, as at (date) the following authorities (CMG Members) were invited by the Bank of England to become a CMG Member, and as a result sent one representative per capacity for which they sit on the CMG:

1. Bank of England
2. Prudential Regulation Authority
3. Financial Conduct Authority
4. Autorité de Contrôle Prudentiel et de Résolution
5. Autorité des Marchés Financiers
6. Autoriteit Financiële Markten
7. Board of Governors of the Federal Reserve System²
8. Bundesanstalt für Finanzdienstleistungsaufsicht
9. De Nederlandsche Bank
10. Deutsche Bundesbank
11. European Central Bank
12. Federal Deposit Insurance Corporation
13. Federal Reserve Bank of New York
14. Eidgenössische Finanzmarktaufsicht FINMA (Switzerland)
15. U.S. Commodity Futures Trading Commission
16. U.S. Securities and Exchange Commission

In addition, on (date) the European Securities and Markets Authority (ESMA) was invited by the Bank of England to become an Observer, and as a result ESMA sends a representative to observe the CMG. Collectively, the CMG Members and Observer named above constitute the Parties to this Arrangement.

The Bank of England also has the discretion to invite additional external entities to attend CMG meetings on a standing or ad hoc basis, provided that the Bank of England provides written notice to the Parties to this Arrangement of the identity of such external entities at least 30 days in advance of the relevant meeting. Any external entities invited to CMG meetings must agree in writing, pursuant to a template agreed upon by all Parties, to abide by the confidentiality requirements set forth in Annex 1 before receiving Confidential Information.

² The Board of Governors of the Federal Reserve System is the signatory to this Arrangement on behalf of both the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York.