



February 22, 2012

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: ICE Clear Europe Swap Submission Related to Mandatory Clearing Determinations

Dear Mr. Stawick:

In response to the U.S. Commodity Futures Trading Commission (“CFTC”) request from the Division of Clearing and Risk (“DCR”) dated February 1, 2012, ICE Clear Europe Limited (“ICE Clear Europe”) hereby submits (pursuant to the information requirements of Title 17 of the Code of Federal Regulations, Chapter 1 §39.5) all of the commodity-based swaps that ICE Clear Europe accepted for clearing as of February 1, 2012, in order to facilitate the CFTC’s mandatory clearing determination process.

In addition, ICE Clear Europe agrees (to the extent that ICE Clear Europe has such authority) to the CFTC’s request for a further extension of the deadline for a mandatory clearing determination on pre-enactment swaps until the Commission has completed the review process outlined in §39.5(b).

Swap Submissions

“Accordingly, DCR requests that each DCO submit all swaps that it is accepting for clearing as of February 1, 2012, in accordance with the requirements of §39.5. Each DCO’s submission should include all pre-enactment swaps that is was accepting for clearing on July 21, 2010, and continues to accepts for clearing as of February 1, 2010... In addition, pursuant to §39.5(b)(2), DCR invites each DCO to subdivide its swap submission/s into groups or categories based on the primary product specifications that are relevant to defining and distinguishing one swap category from other swap categories for clearing purposes.”

Table 1 (on the attached spreadsheet) identifies all listed¹ energy swaps that were accepted for clearing by ICE Clear Europe as-of February 1, 2012. Please note that the ICE Clear Europe clears energy swaps for our European, Asian, and U.S. markets. Pursuant to Dodd-Frank Act² section 722(d): “[t]he

¹ For the purposes of this submission, swaps that were accepted for clearing as-of February 1, 2012 are referred to as listed swaps or submitted swaps.

² Dodd-Frank Wall Street Reform and Consumer Protection Act (July 2010)

provisions of [the Dodd-Frank Act] shall not apply to activities outside the United States unless those activities...have a direct and significant connection with activities in, or effect on, commerce of the United States..."

Included in Table 2 (attached on the spreadsheet, worksheet 2) are swaps that are cleared by ICE Clear Europe, but may not have a direct and significant connection on the commerce of the United States. Contracts in Tables 2 either have little or no U.S. participation, or are targeted at market participants outside of the U.S. and will likely be subject to mandatory clearing in their applicable home jurisdiction.³ While ICE Clear Europe is sending the Division of Clearing and Risk a list of these swaps pursuant to the February 1, 2012 letter, we believe the contracts listed in Tables should not be subject to mandatory clearing in the United States.

Table 3 (attached on the spreadsheet, worksheet 3) identifies all index Credit Default Swaps (i.e., those credit default swaps that constitute swaps as defined in the CEA) that were accepted for clearing as of February 1, 2012. Each swap has been classified according to the characteristics of the constituents of the related index; specifically their type, region, credit rating and spread level, as follows:

Type

All listed swaps are related to indices whose constituent reference obligations are corporate bonds or loans.

Region

All listed swaps are related to indices whose constituent reference entities are domiciled in Europe.

Credit Rating

All listed swaps are related to indices whose constituent reference obligations are rated as either Investment Grade or High Yield.

Spread Level

The constituents of listed swaps with a spread level classification of High Volatility are comprised of the sub-set of constituents of the related Investment Grade index with the highest average spread levels.

The name of the index associated with each swap has also been provided in Table 3, following industry conventions. Individual swaps are defined by the index series and the maturity date and currency of the contracts.

Statement of Eligibility

"A statement that the derivatives clearing organization is eligible to accept the swap, or group, category, type, or class of swaps for clearing and describes the extent to which, if the Commission were to determine that the swap, or group, category, type, or class of swaps is required to be cleared,

³ See, Joint Report on International Swaps Regulation, Commodity Futures Trading Commission and Securities and Exchange Commission (January 31, 2012)(describing international financial reform efforts).

the derivatives clearing organization will be able to maintain compliance with section 5b(c)(2) of the Act.”

ICE Clear Europe is a recognised clearing house under section 288 of the Financial Services and Markets Act 2000 by the U.K. Financial Services Authority (FSA). ICE Clear Europe provides clearing services for all ICE Futures Europe futures and options contracts and all cleared OTC energy contracts transacted through ICE OTC. ICE Clear Europe also received the settlement finality designation (SFD) by the FSA under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, which enhances the systemic risk protection provided to clearing members in the event of a clearing counterparty default. Under SFD, payment instructions can be protected from EU administrators or liquidators of insolvent firms. Designation means that ICE Clear Europe's system is now designated under the EU's Settlement Finality Directive. The Clearing House is also a recognised as an inter-bank payment system under the Banking Act 2009 and regulated by the Bank of England.

ICE Clear Europe is a registered Derivatives Clearing Organization (“DCO”) pursuant to Section 5b of the United States Commodity Exchange Act, as amended (the “CEA”), and as such is supervised by the Commodity Futures Trading Commission (“CFTC”). ICE Clear Europe became a DCO on January 22, 2010, and that date, ICE Clear Europe has cleared the commodity-based swaps submitted herein in compliance with section 5b(c)(2) of the CEA. Additionally, ICE Clear Europe is a registered Securities Clearing Agency pursuant to Section 17A of the Securities Exchange Act of 1934 and as such is supervised by the Securities and Exchange Commission. As one of the leading clearinghouses in the world, ICE Clear Europe is able to accept the swaps if designated for mandatory clearing by the Commission.

Information Related to the Act’s Swap Submission Review Requirements

“A statement that includes, but is not limited to, information that will assist the Commission in making a quantitative and qualitative assessment.”

In accordance with §39.5(b)(3)(ii), information is provided below to assist the Commission in its review of ICE Clear Europe swap submissions against market activity, clearing house capabilities, impact on systemic risk, competition, and insolvency protection.

(A) Market Activity

“The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.”

Tables 4 and 5 (attached in the spreadsheet) provide data for each submitted swap which describes outstanding notional exposures, observed trading liquidity and adequacy of end-of-day pricing data.

Requested Information

In relation to the information provided in Table 4, The Commission’s request to submit swaps which are already listed for clearing, and for which a significant portion of the market exposure has been cleared, complicates the information required to comply with §39.5(b)(3)(ii)(A). In order to demonstrate the significance of the outstanding notional exposure, one must consider both the uncleared and cleared exposures. Because cleared positions are netted during the clearing process it

is difficult to quantify both the cleared and uncleared exposures on a directly comparable basis. Therefore, ICE Clear Europe is including three different measures of cleared exposure; cleared volume, cleared outstanding positions and cleared open interest.

Cleared Volume

Cleared volume is the sum of the gross notional amounts for positions submitted for clearing.

Cleared Outstanding Positions

Through netting, the clearinghouse transforms the uncleared outstanding positions submitted for clearing into a population of cleared outstanding positions that are maintained in the Trade Information Warehouse (“TIW”). Typically, the gross notional amount for cleared outstanding positions is significantly smaller than for the original positions submitted for clearing. It should be noted that the clearinghouse’s netting process does not necessarily result in a fully-net set of cleared outstanding positions due to the bookkeeping flexibility the clearinghouse affords its Members; the clearinghouse allows its Members to manage their cleared positions by desk for record-keeping purposes such that netting is not performed across desks, and can be suppressed for chosen desks.

Open Interest

The clearinghouse’s responsibilities and obligations are at the fully-net level. The notional amount associated with this fully-net set of positions is quantified by calculating open interest.

A further challenge in complying with the information requirements of §39.5(b)(3)(ii)(A), is that the publically available information quantifying swap exposures between all market participants, available through DTCC, is provided at the series and not the individual swap level. Because ICE Clear Europe lists only certain maturity dates within any given series, the information requested specifically for submitted swaps has been provided based on exposures between ICE Clear Europe’s Members, since this is the information the clearinghouse has permission to access directly.

The data provided in Table 4 (attached in the spreadsheet) is described below.

Index, Series and Tenor

Three columns identify the submitted swap by index, series and tenor.

Uncleared Outstanding Positions between CMs

This column provides the gross notional amount of the uncleared positions in the TIW between ICE Clear Europe’s Members as-of February 3, 2012.

Cleared Outstanding Positions

This column provides the gross notional amount for the cleared outstanding positions as-of February 3, 2012.

Cleared Volume

This column provides the cleared volume from the initial listing of the specific swap through February 3, 2012.

Cleared Open Interest

This column provides the cleared open interest for the specific swap as-of February 3, 2012.

Estimated New Trade Volume between CMs

Two columns provide an estimate of the mean weekly-new-trade-volume between Members in terms of gross notional amount and number of contracts. The means are calculated for a 13 month observation period from January 3, 2011 through February 3, 2012. A third column provides the standard deviation of the number of new contracts per week over the same observation period.

CMs with Cleared Positions

This column provides the number of Members with cleared positions in the given swap during the observation period. Pursuant to ICE Clear Europe's rules and policies and procedures, a Member with cleared positions in a given swap is required to submit end-of-day pricing data.

Minimum No. of CMs Submitting End-of-Day Pricing

One column providing the number of Members contributing daily quotes for use in the end-of-day price discovery process, as required by ICE Clear Credit's rules and procedures.

Average Dispersion of End-of-Day Quotes

One column providing a figure of merit for the dispersion in submitted-quote mid-levels. Dispersion is defined as the difference between the highest and lowest quoted mid-levels after removing the highest two quotes and the lowest two quotes from the sample. In the table, Dispersion is expressed as a percentage of the bid-offer width established each day for the given swap by ICE Clear Europe.

Additional Information

For completeness, ICE Clear Europe is providing additional information in the form of Table 5, related to outstanding positions and new trade volumes between Members for non-listed swaps in each listed series. This data facilitates a comparison of outstanding positions and new trade volume for listed (Table 4) and non-listed (Table 5) swaps. The data provided in Table 5 is described below.

Index, Series and Tenor

Three columns identify the non-listed swap by index, series and tenor.

Uncleared Outstanding Positions between CMs

This column provides the gross notional amount of positions in the TIW between ICE Clear Europe's Members as-of February 3, 2012. All positions are uncleared since the swaps are not listed.

Estimated New Trade Volume between CMs

Two columns provide an estimate of the mean weekly-new-trade-volume between Members in terms of gross notional amount and number of contracts. The means are calculated for a 13 month observation period from January 3, 2011 through February 3, 2012. A third column provides the standard deviation of the number of new contracts per week over the same observation period.

(B) Clearinghouse Capabilities

“The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.”

Rule Framework – ICE Clear Europe maintains a comprehensive set of rules that are publicly available and may be viewed at <https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=> .

Capacity, Operational Expertise and Resources - ICE Clear Europe is ICE Clear Europe has fifty four clearing firms, the complete list can be found at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Clearing_Member_List.pdf.

Credit Support Infrastructure - ICE Clear Europe has established two mutualised Guaranty Funds, one for energy products and one for CDS. The Energy Guaranty Fund is based on levels of volatility and open positions and is currently set at U.S. \$650 million. In relation to CDS Clearing, as of January 23, ICE Clear Europe held approximately €5.8 billion in margin collateral and approximately €1.9 billion in guaranty fund deposits.

(C) Impact on Systemic Risk

“The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contracts.”

The impact on systemic risk from the clearing of the submitted swaps is believed to be material for the following reasons:

- The swaps listed for clearing contain some of the most actively traded swaps with the largest pre-clearing outstanding positions.
- ICE Clear Europe’s CMs are amongst the most active market participants and, in relation to CDS, are honoring industry commitments to clear a significant portion of their outstanding positions in listed swaps.
- The multi-lateral netting achieved through the clearing process has been significant and has substantially reduced the notional amount of outstanding bi-lateral positions.
- ICE Clear Europe has developed a robust risk management framework that has been extensively reviewed by regulators, industry participants and third-party experts.
- ICE Clear Europe’s price discovery process is working successfully to provide accurate inputs to its risk models.
- ICE Clear Europe holds substantial margin collateral and guaranty fund deposits.

(D) Competition

“The effect on competition, including appropriate fees and charges applied to clearing.”

ICE Clear Europe's fee structure is appropriate and the margin and guaranty fund computations suitably account for the risk brought to the clearinghouse, therefore clearing the clearing of the submitted swaps has no impact on competition.

(E) Insolvency Protection

“The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.”

ICE Clear Europe believes that there is reasonable legal certainty in the event of the insolvency of ICE Clear Europe or a clearing member of ICE Clear Europe with regard to the treatment of house and customer positions, funds and property in connection with the clearing of the submitted swaps, as required by CFTC Rule 39.5(b)(3)(ii)(E).

ICE Clear Europe clearing members consist of several types of institutions, principally U.K. and EU financial institutions and clearing firms but also futures commission merchants (“FCMs”) (including FCMs that are also broker-dealers). In the event of a clearing member insolvency, ICE Clear Europe is of the view, based on the advice of counsel in the relevant jurisdictions, that ICE Clear Europe would be permitted to exercise its rights to close out house and customer positions and apply margin and other property of the defaulting clearing member in accordance with its rules. Specifically, as a matter of English law, ICE Clear Europe is protected by Part VII of the Companies Act 1989, the Financial Markets and Insolvency (Settlement Finality Regulations 1999) and the EU Settlement Finality Directive (Directive 98/26/EC) from the general application of the insolvency laws of England and Wales, meaning that the clearinghouse's default rules prevail over insolvency laws, such as any applicable moratorium on transactions.

With respect to customer positions carried through an FCM clearing member, the submitted swaps would constitute “commodity contracts” for purposes of the commodity broker liquidation provisions of the U.S. Bankruptcy Code. Under the Bankruptcy Code and the Commission's Part 190 regulations, ICE Clear Europe would have the ability to close out customer positions following the insolvency of the clearing member and/or, in appropriate circumstances, facilitate a transfer of such positions to another, solvent clearing member. Pending implementation of the Commission's Part 23 regulations for cleared swaps, ICE Clear Europe rules will require segregation of customer property in a manner analogous to that required for swaps under CEA Section 4d(f) and Commission Rules 1.20-1.30. As such, customer property would be subject to distribution to cleared swap customers of the insolvent FCM in accordance with those regulations.

With respect to an ICE Clear Europe insolvency, ICE Clear Europe would be subject to applicable English insolvency law and in addition would be a commodity broker subject to the Bankruptcy Code and Part 190 regulations. U.S. bankruptcy law would also apply in respect of any U.S. customer property for customer positions carried through an FCM clearing member. ICE Clear Europe believes, based on the advice of counsel, that under the applicable provisions of those laws and regulations, ICE Clear Europe rules providing for the termination of all outstanding contracts and the application and/or return of a net sum in respect of remaining member and customer property to each of its clearing members would similarly be enforceable.

ICE Clear Europe notes that in connection with its application for registration as a DCO, it has previously provided to the Commission further information on the application of relevant English insolvency laws.

Product Specifications

“Product specifications, including copies of any standardized legal documentation, generally accepted contract terms, standard practices for managing any life cycle events associated with the swap, and the extent to which the swap is electronically confirmable.”

The Product Specifications for ICE's OTC Energy products can be found at https://www.theice.com/publicdocs/clear_europe/rulebooks/procedures/General_Contract_Terms_and_ICE_OTC_Standard_Contract_Terms_and_Eligibility_Criteria_29_August_2011.pdf

The Product Specifications for ICE's OTC CDS products can be found at https://www.theice.com/publicdocs/clear_europe/rulebooks/procedures/CDS_Procedures_15_April_2011.pdf.

Participant Eligibility

“Participant eligibility standards, if different from the derivatives clearing organization’s general participant eligibility standards.”

Participant eligibility is governed by the Rule 201 of the ICE Clear Europe rulebook. https://www.theice.com/publicdocs/clear_europe/rulebooks/rules/Clearing_Rules_9_January_2012.pdf

Price Discovery

“Pricing sources, models, and procedures, demonstrating an ability to obtain sufficient price data to measure credit exposures in a timely and accurate manner, including any agreements with clearing members to provide price data and copies of executed agreements with third-party price vendors, and information about any price reference index used, such as the name of the index, the source that calculates it, the methodology used to calculate the price reference index and how often it is calculated, and when and where it is published publicly.”

In relation to Energy clearing, end of day pricing methodology can be found in the ICE Clear Europe Energy Risk Management Framework (previously submitted) and the ICE Clear Europe CDS Risk Management Framework (previously submitted)

Risk Management

“Risk management procedures, including measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress testing and back testing, settlement procedures, and default management procedures.”

The ICE Clear Europe Energy and CDS Risk Committee each comprise up to 15 members, including up to 10 representatives from members of the clearing house. The role of the Risk Committees includes:

1. ensuring that the clearing house maintains and implements procedures, processes and controls which are designed to:
 - protect the integrity of the Guaranty Fund;
 - manage and mitigate credit and market risks;
2. considering applications for membership; and
3. reviewing the clearing of new products.

ICE Clear Europe uses has an agreement with the CME Group that permits the clearing house to use SPAN4[®] for margin calculations in relation to Energy Clearing.

ICE Clear Europe uses ICE's proprietary CDS margin calculation methodology for the calculation of margins in relation to CDS Clearing.

Rules, Policies and Procedures

ICE Clear Europe maintains a comprehensive set of rules that are publicly available and may be viewed at <https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=>.

See the ICE Clear Europe Risk Management Framework (previously submitted)

Communication to Members Regarding this Submission

“A description of the manner in which the derivatives clearing organization has provided notice of the submission to its members and a summary of any views on the submission expressed by the members (a copy of the notice to members shall be included with the submission.)”

ICE Clear Europe posted a copy of this response (absent any confidential exhibits) on its public website on February 22, 2012. Written comments relating to the submission have not been solicited or received. ICE Clear Europe will notify the CFTC of any written comments received by ICE Clear Europe.

Pursuant to applicable law, ICE Clear Europe respectfully requests confidential treatment of this submission and any other information or documents which may at any time be submitted in connection with this submission and which may be marked “Confidential” or for which confidential treatment may be requested.

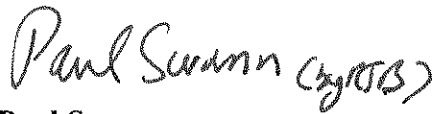
Confidential treatment of this submission and any subsequent related documents is justified under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* and the Rules Regarding Availability of Information, 12 C.F.R. § 261.15 (2006). This submission contains confidential business and commercial information regarding (together with confidential intellectual property) related to ICE Clear Europe’s clearing facility for credit default swaps, the disclosure of which could have a material adverse effect on, and cause injury to, the operations and competitive position of ICE Clear Europe. We believe that this submission is entitled to protection pursuant to exemptions (b)(4) and (b)(8) of the Freedom of

Information Act. In particular, this submission provides a detailed description of the clearinghouse and disclosure could provide information that is useful to potential competitors and would be competitively harmful to ICE Clear Europe.

In the event that a determination is made to release any portion of this submission, we respectfully request an opportunity to discuss or to revise as appropriate prior to such release.

If you should have any questions or comments, please do not hesitate to contact me at +44 (0)20 7065 7617.

Respectfully submitted,



Paul Swann
President and COO