

31 May, 2012

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

Re: ICE Clear Europe Limited Request for Order Pursuant to Section 4d(f) of the Commodity Exchange Act Permitting Commingling of Customer Funds and Portfolio Margining for Swaps and Security-Based Swaps

Dear Mr. Stawick:

ICE Clear Europe Limited (“**ICE Clear Europe**”), a registered derivatives clearing organization (“**DCO**”) under the Commodity Exchange Act, as amended (the “**Act**” or the “**CEA**”) and a registered securities clearing agency (“**SCA**”) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), hereby petitions the Commodity Futures Trading Commission (the “**Commission**” or “**CFTC**”) for an Order pursuant to Section 4d(f)(3)(B) of the Act, which would prescribe terms and conditions under which ICE Clear Europe and clearing members¹ of ICE Clear Europe (“**Clearing Members**”) that are broker-dealers (“**BDs**”) registered under Section 15(b) of the Exchange Act and that are also futures commission merchants (“**FCMs**”) registered under Section 4f(a)(1) of the Act (such dually registered entities referred to herein as “**BD/FCMs**”) would be permitted to (1) hold in a swap account² customer³ money, securities and property (“**customer funds**”) used to margin, secure or guarantee transactions involving “swaps” and “security-based swaps,” as such terms are defined in the Act and the Exchange Act (“Swaps” and “Security-Based Swaps”, respectively) entered into by the customers of such Clearing Members and submitted by such Clearing Members to ICE Clear Europe for clearance and settlement in its capacity as a registered DCO and SCA; and (2) margin

¹ The term “clearing member” as used herein shall have the meaning ascribed to it in Commission Regulation 22.1.

² As used herein, “swap account” means a cleared swaps customer account as defined in Commission Rule 22.1, and as such an account is required to be maintained in accordance with the requirements of Section 4d(f) of the Act and the rules thereunder.

³ The term “customer” as used herein means a “customer” as defined in Commission Rule 39.2, including, as applicable, a “cleared swaps customer” as defined in Commission Rule 22.1.

⁴ The term “customer funds” as used herein means “cleared swaps customer collateral” as defined in Commission Rule 22.1.



such Swaps and Security-Based Swaps transactions on a portfolio basis pursuant to ICE Clear Europe's portfolio margining methodology.⁵

Specifically, ICE Clear Europe requests that the Commission issue an exemptive order under Section 4d(f)(3)(B) of the Act to allow ICE Clear Europe, BD/FCMs that are Clearing Members, and BD/FCMs that clear on behalf of customers through those Clearing Members to: (i) hold customer positions in Credit Default Swaps (“**CDS**”), including broad-based index CDS (“**Index CDS**”) and narrow-based Index CDS and single-name CDS (together, “**Security-Based CDS**”), and the eligible types, classes and categories of all of the foregoing CDS that are identified in this request (collectively, the “**Eligible Products**”), and the customer funds used to margin, secure or guarantee such Eligible Products, in a single customer omnibus account at ICE Clear Europe that is subject to Section 4d(f) of the Act and subject to Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder;⁶ (ii) to calculate margin for the customer omnibus account of its Clearing Members on a portfolio margin basis pursuant to ICE Clear Europe's portfolio margining methodology, under which ICE Clear Europe could offset Index CDS and Security-Based CDS contracts that are correlated on a risk management and economic basis when calculating margin requirements; and (iii) to provide similar commingling and portfolio margining relief for BD/FCMs that are Clearing Members and BD/FCMs that clear on behalf of swap customers through those Clearing Members in respect of the Eligible Products at ICE Clear Europe. Sections 713(a), 724 and 725(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”)⁷ provide the Commission with the authority to grant the requested relief.⁸

ICE Clear Europe simultaneously is seeking an exemption from the Securities Exchange Commission (“**SEC**”) under Section 36(a)(1) of the Exchange Act granting relief from the application of Exchange Act Section 3E(b), Section 15(c)(3), and Rule 15c3-3 thereunder, with respect to the commingling and portfolio margining of Index CDS, narrow-based Index CDS and single-name CDS in a Section 4d(f) account for customers and allowing certain affiliates of Clearing Members to be excluded from the definition of “customer” for purposes of SEC Rules

⁵ A copy of ICE Clear Europe's portfolio margining methodology is attached hereto as Confidential Exhibit E.

⁶ ICE Clear Europe also commingles the Index CDS and Security-Based CDS positions in the proprietary account of its Clearing Members in a single “house account” at ICE Clear Europe and intends to portfolio margin such positions as described below. As used herein, the term “proprietary account” shall have the meaning ascribed to it in Commission Regulation 1.3(y). As used herein, the term “house account” shall have the meaning ascribed to it in Commission Regulation 39.2. ICE Clear Europe will separately submit its portfolio margining methodology to the Commission with respect to Clearing Member's proprietary accounts for self-certification under Commission Rules 39.4(b) and 40.6.

⁷ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁸ The relief sought herein is substantially the same as that requested by ICE Clear Credit LLC, ICE Clear Europe's affiliate. See Letter from Michael M. Philipp, Partner, Winston & Strawn LLP, to Mr. David Stawick, Secretary (October 4, 2011), available at: <http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/iceclearcredit100411public.pdf>.



8c-1 and 15c2-1 to allow such affiliates' CDS positions to be commingled with proprietary assets of a Clearing Member in the house account of such Clearing Member.

I. Background Regarding ICE Clear Europe's Current Operations

A. ICE Clear Europe's Regulatory Status

ICE Clear Europe is a DCO registered with the Commission and a recognized clearing house supervised by the U.K. Financial Services Authority (the "FSA"). It is also the operator of a "designated system" for purposes of the EU Settlement Finality Directive and an "inter-bank payment system" supervised by the Bank of England. ICE Clear Europe is incorporated under the laws of England and Wales.

ICE Clear Europe currently clears Index CDS and Security-Based CDS, among other products.⁹ A list of currently cleared Index CDS products is attached hereto as Exhibit A and a list of currently cleared Security-Based CDS is attached hereto as Exhibit B. ICE Clear Europe made rule changes in 2010 which enable it to clear sovereign CDS, but such clearing has not yet been launched. It is also considering introducing clearing in the future of additional Index CDS and Security-Based CDS products including (a) high yield corporate CDS and (b) sovereign CDS, and requests that the relief sought herein extend equally to such additional Eligible Products. ICE Clear Europe began clearing CDS in July 2009, pursuant to a temporary conditional exemption from SCA registration from the SEC together with other exemptions provided by the SEC.¹⁰ At present, ICE Clear Europe's CDS clearing activities are limited to its Clearing Members' proprietary accounts. However, ICE Clear Europe plans to extend those services to customer clearing, including customers clearing through BD/FCMs.

Title VII of the Dodd-Frank Act divides the universe of CDS currently cleared (and expected to be cleared) by ICE Clear Europe into two separate regulatory categories. Index

⁹ ICE Clear Europe also clears futures contracts traded on ICE Futures Europe as well as OTC energy swaps and has announced plans to clear foreign exchange swaps. The relief sought herein would not directly apply to those other clearing activities, although cleared OTC energy swaps and cleared foreign exchange swaps for customers would also be held in the swap account. ICE Clear Europe has separately petitioned the Commission for an order permitting ICE Futures Europe contracts (which constitute foreign futures under Part 30 of the Commission's regulations) also to be held in the swap account. *See* Letter from Paul Swann, President & Chief Operating Officer, ICE Clear Europe Limited, to Mr. David A. Stawick, Office of the Secretariat, Commodity Futures Trading Commission (March 8, 2012), available at: <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/iceclearuropepetition3-8-12.pdf>.

¹⁰ The ICE Clear Europe July 2009 Order provided temporary conditional exemptions for ICE Clear Europe and its Clearing Members, effective until April 23, 2010. *See* ICE Clear Europe July 2009 Order. The SEC's order of April 23, 2010, extended such relief until November 30, 2010. *See* Order Extending Temporary Conditional Exemptions Under the Securities Exchange Act Of 1934 in Connection with Request on Behalf Of ICE Clear Europe, Limited Related to Central Clearing of Credit Default Swaps, Exchange Act Release No. 61973, (Apr. 23, 2010). That relief was extended to July 16, 2011, *see* Order Extending Temporary Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE Clear Europe, Limited Related to Central Clearing of Credit Default Swaps and Request for Comment, Release No. 34-63389 (Nov. 29, 2010). Pursuant to Section 763 of the Dodd-Frank Act, ICE Clear Europe became a registered SCA effective on July 16, 2011.

CDS, such as broad-based index CDS, are defined as “**Swaps**,”¹¹ while Security-Based CDS, such as single-name CDS and narrow-based index CDS, are defined as “**Security-Based Swaps**.”¹² Security-Based Swaps are specifically defined as securities within the meaning of the Exchange Act.¹³ As a result, primary regulatory authority over Swaps and Security-Based Swaps is split between the Commission and the SEC, respectively, and such instruments are subject to parallel regulatory regimes. Accordingly, the Commission has jurisdiction over ICE Clear Europe in its capacity as a registered DCO under Section 5b of the Act and over Clearing Members that are FCMs registered pursuant to Section 4f(a)(1) of the Act, while the SEC has jurisdiction over ICE Clear Europe in its capacity as a registered SCA under Section 17A(1) of the Exchange Act and over Clearing Members that are registered as BDs pursuant to Section 15(b)(1) of the Exchange Act.

B. ICE Clear Europe’s Current Commingled CDS Customer Account Structure

The reduction of systemic risk through the centralized clearing of over-the-counter (“**OTC**”) derivatives, including CDS, is a major goal of the Dodd-Frank Act¹⁴ and also under European legislation to which ICE Clear Europe will be subject, namely the European Market Infrastructure Regulation. ICE Clear Europe is currently operating as a central counterparty for CDS and both it and its Clearing Members have expended considerable resources to become fully operational. As of February 24, 2012, ICE Clear Europe has cleared 182,141 Index CDS trades with a gross notional value of €7,400 billion and 220,856 single-name CDS trades with a gross notional value of €1,193 billion, and holds open interest with a gross notional value of €62 billion in Index CDS and €387 billion in single-name CDS.

Since it began clearing single-name CDS, ICE Clear Europe has cleared products now classified as Swaps and Security-Based Swaps, and held associated margin assets, for Clearing Members’ proprietary accounts in a commingled proprietary account (i.e., “one pot”) because of the greater operational and economic efficiency afforded by a single clearing account as opposed to a multiple account structure. At present, ICE Clear Europe provides CDS clearing services (both for Index CDS and Security-Based CDS) only for its Clearing Members’ proprietary accounts. ICE Clear Europe and its Clearing Members have been successfully clearing Index CDS and Security-Based CDS in commingled proprietary accounts since ICE Clear Europe

¹¹ §1a(47)(B)(iii)(XV) of the Act. See also joint proposed rules and proposed interpretations of the CFTC and SEC defining the terms “swap” and “security-based swap.” Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 Fed. Reg. 29818, 29888 (proposed April 29, 2011) (to be codified at 17 C.F.R. pt. 1).

¹² 15 U.S.C. 78c(a)(68).

¹³ Dodd-Frank Act Section 761(a)(2) and Section 3(a)(10) of the Exchange Act, which includes Security-Based Swaps under the definition of the term “security.”

¹⁴ “Centralized clearing of standardized OTC products is a key component of efforts to mitigate [such] systemic risk.” See S. Comm. on Banking, Housing and Urban Affairs, The Restoring American Financial Stability Act of 2010, S. Rep. No. 111-176, at 32 (2010) (quoting A. Patricia White, Associate Director, Division of Research and Statistics for the FRB, testimony before the Subcommittee on Securities, Insurance, and Investment of the Senate Committee on Banking, Housing, and Urban Affairs, July 9, 2008).



began clearing Security-Based CDS. As it expands CDS clearing to customer positions, it is crucial for ICE Clear Europe, its Clearing Members, and its Clearing Members' customers to be able to seamlessly continue and extend this operating model to customer accounts. To successfully expand the availability of the recognized benefits of central clearing to a broader universe of Clearing Members and customers, ICE Clear Europe must be able to clear Index CDS and Security-Based CDS in a commingled omnibus account on behalf of its Clearing Members that clear for customers.

C. ICE Clear Europe's Current Portfolio Margining Proposal

While ICE Clear Europe has been commingling Index CDS and Security-Based CDS in its Clearing Members' proprietary accounts since it began offering single-name CDS clearing, ICE Clear Europe does not currently provide portfolio margining benefits for such instruments. ICE Clear Europe will file separately with the Commission pursuant to Rules 39.4(b) and 40.6 its portfolio margining program between Index CDS and Security-Based CDS. Upon the implementation of portfolio margining under that program, ICE Clear Europe intends to apply portfolio margining to commingled customer accounts pursuant to the relief requested hereunder. The addition of portfolio margining is an important step toward furthering the goals of the Dodd-Frank Act. Customers have indicated that they are interested in clearing both Index CDS and Security-Based CDS. Market participants have indicated to ICE Clear Europe, however, that in the absence of portfolio margin treatment, they do not intend to clear Security-Based CDS or Index CDS prior to implementation of a mandatory clearing requirement.

D. ICE Clear Europe's Proposed Commingled CDS Customer Account Structure and Portfolio Margining Program

ICE Clear Europe has adopted rules establishing a swap account for purposes of clearing cleared swaps by Clearing Members on behalf of customers. Upon commencement of customer clearing for CDS, ICE Clear Europe proposes to permit the cleared swap customer account to hold, pursuant to Section 4d(f) of the Act, both Index CDS (which, as swaps, would be required to be held in the cleared swap customer account) and Security-Based CDS (which, as security-based swaps, would not be permitted to be held in such account absent the relief requested hereunder and from the SEC). Additionally, ICE Clear Europe proposes to permit portfolio margining of the positions held in such commingled customer account, subject to the necessary portfolio margining approvals from the CFTC and the SEC as described above. The commingled 4d(f) portfolio margining account will allow ICE Clear Europe to offer the greatest benefit to the market and market participants by providing its BD/FCM Clearing Members and their customers with greater operational efficiencies, capital efficiency, and a more comprehensive offering of products that can be cleared.

BD/FCMs that clear Swaps and Security-Based Swaps for customers are subject to both Sections 3E(b) and 15(c)(3) of the Exchange Act and SEC Rule 15c3-3, on the one hand and Section 4d(f) of the Act and the CFTC rules promulgated thereunder, on the other. Absent relief from the CFTC and the SEC, BD/FCMs would be unable to use ICE Clear Europe's commingled customer account for clearing all categories of CDS transactions on behalf of customers. Thus, it is essential for ICE Clear Europe to be granted exemptive relief, as called for by Section 713 of

the Dodd-Frank Act, in order for it to act as a central counterparty for BD/FCMs clearing CDS on behalf of their customers. If ICE Clear Europe is not granted such relief, it will not be in a position operationally to clear Security-Based CDS for customers. In addition, as noted above, market participants have indicated to ICE Clear Europe that, in the absence of portfolio margin treatment, they do not intend to clear Security-Based CDS or Index CDS prior to implementation of a mandatory clearing requirement. Because many market participants hedge Index CDS positions with single-name CDS, the inability to offer clearing of single-name CDS will mean that clearing will be an inefficient use of capital because of the need to use more capital to maintain positions in compliance with margin requirements (relative to the margin on the bilateral OTC contracts). As a result, the amount of clearing that customers will do for all types of CDS instruments will be limited, resulting in a less economically efficient and systemically riskier market. Such a result would be inconsistent with the intent of the Dodd-Frank Act, and may have a significant negative impact on the swap marketplace by preventing BD/FCMs from clearing CDS for their customers in an efficient manner through a centralized clearinghouse.

II. The Commission's Legal Authority To Permit Commingling and Portfolio Margining

A. CFTC and SEC Jurisdiction Over Swaps and Security-Based Swaps

As a result of the bifurcation of regulatory authority over the swap market, Index CDS cleared on behalf of Clearing Members' customers are subject to the cleared swaps customer protection regime of Section 4d(f) of the Act and the rules and regulations promulgated by the CFTC thereunder.¹⁵ Conversely, Security-Based Swaps cleared on behalf of Clearing Members' customers are subject to Sections 3E(b) and 15(c)(3) of the Exchange Act and, in particular, SEC Rule 15c3-3 thereunder. Importantly for purposes of this request, this split in regulatory authority results in different and in some ways inconsistent customer protection regimes for Swaps and Security-Based Swaps. This request seeks to ameliorate the negative effects of that disparate treatment by subjecting all Eligible Products cleared by ICE Clear Europe pursuant to a uniform and consistent customer protection regime under Section 4d(f) of the Act, Part 22 of the Commission's Regulations and the commodity broker insolvency provisions of the U.S. Bankruptcy Code.

B. The Dodd-Frank Act Enables the CFTC and the SEC to Permit Commingling and Portfolio Margining in a Futures Account

Congress provided a solution to the split in regulatory treatment of Swaps and Security-Based Swaps. The Dodd-Frank Act authorizes the CFTC and the SEC to allow

¹⁵ We note in this regard that the Commission has adopted the Part 22 regulations implementing Section 4d(f), which are to become effective November 8, 2012. Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 Fed. Reg. 6336 (Feb. 7, 2012). Under ICE Clear Europe Rule 1604, prior to the implementation of the Part 22 regulations, margin for cleared swaps required to be segregated in the same manner as futures margin under Section 4d(a) of the Act and CFTC regulations 1.20-1.30. ICE Clear Europe will amend its rules as necessary to conform to the requirements of Part 22 as of the time such regulations become effective. ICE Clear Europe requests that the Order be effective no later than such time as the Section 4d(f) requirements come into effect.

commingling and portfolio margining of cleared Swaps and Security-Based Swaps.¹⁶ Congress recognized the need for futures and securities, or Swaps and Security-Based Swaps, respectively, to be held in a single customer account to facilitate portfolio margining by BD/FCMs. Section 713(a) of the Dodd-Frank Act amended Section 15(c)(3) of the Exchange Act to grant BD/FCMs the right to hold cash and “securities”, a term that includes Security-Based Swaps, in a portfolio margining account that is carried as a futures account¹⁷ subject to regulation by the CFTC pursuant to a portfolio margining program approved by the CFTC.¹⁸ The SEC must give effect to this right either pursuant to an exemption granted under Section 36 of the Exchange Act or pursuant to a rule or regulation.¹⁹

C. Dodd-Frank Act Authorizes the CFTC to Permit Commingling and Portfolio Margining of Swaps and Security-Based Swaps

Congress contemplated a segregated customer account for cleared swaps and the ability of the Commission to permit commingling of other customer assets in such account. Dodd-Frank Act Section 724 added subsection (f)(3)(B) to Section 4d of the Act, which provides that:

. . . in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customers of a futures commission merchant described in paragraph (2) may be commingled and deposited in customer accounts with any other money,

¹⁶ See Dodd-Frank Act § 713. Pursuant to Section 4d(a) of the Act, the CFTC has previously issued orders permitting the adoption of non-customer cross-margining programs by FCMs. See, e.g., Order of the Commodity Futures Trading Commission dated November 5, 2004, “In the Matter of the Options Clearing Corporation Proposal to Implement Non-Proprietary Cross-Margining Program”; Order of the Commodity Futures Trading Commission dated February 29, 2008, “In the Matter of ICE Clear US, Inc. Non-Proprietary Cross-Margining Agreement with the Options Clearing Corporation.”

¹⁷ Section 1.3(vv) of the CFTC’s regulations defines “futures account” as “an account that is maintained in accordance with the segregation requirements of Section 4d of the Commodity Exchange Act and the rules thereunder.” SEC Rule 15c3-1(a)(15) contains an almost identical definition of the term “futures account,” but also notes parenthetically that a “futures account” is also referred to as “commodity account.” Section 4d encompasses both Section 4d(a)(2), which provides for the segregation of customer funds related to transactions effected on a contract market, and Section 4d(f), which provides for the segregation of customer cleared swaps. Because Congress referred broadly to a “futures account,” which is a term previously defined consistently by the CFTC and SEC, the term “futures account” should be read to give effect to the Congressional intent to permit commingling of Security-Based Swaps and Swaps in a 4d(f) “futures account” subject to CFTC regulation to facilitate portfolio margining of such products.

¹⁸ “[P]ursuant to an exemption granted by the [Securities and Exchange] Commission under Section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to Section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder.” Dodd-Frank Act Section 713(a).

¹⁹ *Id.*

securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

Additionally, Section 713(a) of the Dodd-Frank Act amended Section 15(c)(3) of the Exchange Act to require the SEC to adopt rules that permit securities to be held in a portfolio margining account that is regulated as a futures account “*pursuant to a portfolio margining program approved by the Commission*” (emphasis added). Congress clearly intended for the CFTC to have the authority to approve DCO rules providing for portfolio margining of Swaps and Security-Based Swaps in a Section 4d(f) cleared customer swaps account.

Further, Dodd-Frank Act Section 725(c) amended Section 5b(c)(2) of the Act to set forth core principles with which a DCO must comply to be registered and to maintain registration as a DCO. The Dodd-Frank Act amended DCO Core Principle F (Treatment of Funds) to provide as follows:

- (i) **REQUIRED STANDARDS AND PROCEDURES.**—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.
- (ii) **HOLDING OF FUNDS AND ASSETS.**—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

Read together, Dodd-Frank Act Sections 724, 713(a) and 725(c) clearly authorize the CFTC and the SEC to take steps to facilitate the ability of BD/FCMs to hold CFTC-regulated Swaps and SEC-regulated Security-Based Swaps, and related assets supporting such instruments in a single portfolio margin account subject to Section 4d(f) of the Act.²⁰ In furtherance of the statutory

²⁰ The Commission has previously issued Orders under Section 4d of the Act in various customer account commingling contexts, including the commingling of cleared OTC derivatives with exchange traded futures in a Section 4d account, and the commingling of exchange-traded futures listed on a foreign board of trade with exchange-traded futures listed on a designated contract market. *See* Order of the Commodity Futures Trading Commission dated June 20, 2001, regarding “Treatment of Customer Funds [by certain designated members of the Chicago Mercantile Exchange]”; Orders of the Commodity Futures Trading Commission dated March 30, 2002 and February 10, 2004, regarding “Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by The New York Mercantile Exchange”; Order of the Commodity Futures Trading Commission dated October 21, 2004, regarding “Treatment of Funds Held in Connection with the Clearing by The Clearing Corporation of Euro-Denominated Contracts Executed on Eurex Deutschland, AG”; Order of the Commodity Futures Trading Commission dated September 6, 2005, regarding “Treatment of Funds Held in Connection with Clearing by The New York Mercantile Exchange of Contracts Traded on NYMEX Europe”; Order of the Commodity Futures Trading Commission dated March 3, 2006, regarding “Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by Chicago Mercantile Exchange, Inc.”; Order of the Commodity Futures Trading Commission dated May 23, 2007, regarding “Treatment of Funds Held in Connection with the Clearing by the New York Mercantile Exchange, Inc. of Contracts Traded on the Dubai Mercantile Exchange Limited”; Order of the Commodity Futures Trading Commission dated April 30, 2008, regarding “Treatment of Funds Held in Connection with the Clearing by the New York Mercantile Exchange, Inc. of Contracts Traded on the Dubai Mercantile Exchange Limited”; Order of the Commodity Futures Trading Commission dated September 26,

provisions authorizing commingling and portfolio margining, and in furtherance of DCO Core Principle F, the CFTC has adopted regulations that permit a DCO to adopt rules, with Commission approval, to commingle customer positions in Security-Based Swaps and Swaps pursuant to DCO rules that have been approved by the CFTC.²¹ Commission Rule 39.15(b)(2)(i) permits a DCO to commingle, and permits BD/FCMs to commingle, customer positions in Swaps, and any money, securities, or property received to margin, guarantee, or secure such positions, with positions in futures and related margin in a cleared swap account subject to the requirements of Section 4d(f) of the Act. A Security-Based Swap that is held in a Section 4d(f) account pursuant to a portfolio margining program approved by the CFTC and SEC would constitute a security that has been received to margin, guarantee or secure a Swap, and therefore the Security-Based Swap would be eligible to be commingled and portfolio margined with the Swap under the regulation.

D. Treatment of the Commingled 4d(f) Account Under Part 190 of the CFTC Regulations

Cleared swaps, like exchange-traded futures, are “commodity contracts” under the U.S. Bankruptcy Code. Section 724(b) of the Dodd-Frank Act amends Section 761(4)(F) of the U.S. Bankruptcy Code to provide that the term “commodity contract” includes: “(i) any other contract, option, agreement or transaction referred to in this paragraph; and (ii) with respect to a futures commission merchant or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization.” Moreover, Section 724(a) of the Dodd-Frank Act added new Section 4d(f)(5) of the Act, which provides:

A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in Section 761 of title 11, United States Code, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities or property accruing to the customer as a result of the swap).

Congress, therefore, intended to provide customers trading cleared swaps with the same protections under the U.S. Bankruptcy Code afforded to customers trading exchange-traded futures in the event of an FCM insolvency.

2008, regarding “Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by The Chicago Mercantile Exchange”; Order of the Commodity Futures Trading Commission dated September 16, 2011, regarding “Treatment of Funds Held in Connection with the Clearing by the New York Mercantile Exchange, Inc. of Contracts Traded on the Dubai Mercantile Exchange Limited”; Order of the Commodity Futures Trading Commission dated December 12, 2008, “. . . Permitting Certain Customer Positions in [Certain Over-The-Counter Agricultural] Swaps and Associated Property to be Commingled With Other Property Held in Segregated Accounts”; and Order of the Commodity Futures Trading Commission dated March 18, 2009, “. . . Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds to be Commingled with Other Positions and Funds Held in Customer Segregated Accounts.” Additionally, the Commission has permitted the commingling of securities and exchange traded futures and the portfolio margining of such positions. *See* Footnote 16, *above*.

²¹ 17 C.F.R. § 39.15(b)(2)(i) (2011).

The customer segregation provisions of the Exchange Act were amended by Section 763(d) of the Dodd-Frank Act to provide that a Security-Based Swap is a security for purposes of the broker-dealer liquidation provisions of the U.S. Bankruptcy Code, and any account holding Security-Based Swaps is deemed a securities account. Security-Based Swaps held in customer accounts of a dual registered BD/FCM entity therefore generally would be subject to liquidation proceedings under the Securities Investor Protection Act of 1970, as amended (“SIPA”). Nonetheless, Section 763(d) provides an exception for securities in approved portfolio margining programs referred to in Section 15(c)(3)(C) of the Exchange Act. Section 713(c) of the Dodd-Frank Act provides that the CFTC must exercise its discretion to ensure that securities (e.g., Security-Based Swaps) held in an account subject to an approved portfolio margining program subject to Commission regulations are held as customer property of an FCM, not a BD, and liquidated under the commodity broker liquidation provisions of the U.S. Bankruptcy Code.

Section 713 authorizes the commingling of a customer’s Security-Based Swaps with its cleared Swaps in a Section 4d(f) cleared Swap account and provides that such account would not be deemed a securities account. Accordingly, the trustee in a commodity broker liquidation of a dually registered BD/FCM entity under the U.S. Bankruptcy Code would be authorized to liquidate Security-Based Swaps held in such an account as customer property pursuant to Part 190 of the Commission’s Regulations and the CFTC net equity rules governing cleared swap accounts. Moreover, the Dodd-Frank Act amended Section 20 of the Act to require the CFTC to exercise its authority to ensure that securities held in a portfolio margining account as a futures account are customer property and the owners of those accounts are customers for purposes of the commodity broker insolvency provisions of the U.S. Bankruptcy Code.²² To implement the mandate of Section 20, the CFTC has proposed amendments to Regulations 190.01(k) and 190.08(a)(1)(i) to ensure that securities held in a portfolio margining account as a futures account are customer property and that the owners of those accounts are customers for purposes of the commodity broker insolvency provisions of the U.S. Bankruptcy Code.²³

E. Public Interest Considerations

As the Commission has noted, “there can be benefits to commingling customer positions in futures, options on futures, and cleared swaps, primarily in the area of greater capital efficiency due to margin reductions for correlated positions. The Commission views this form of portfolio margining as a positive step toward financial innovation within a framework of responsible oversight, and it believes that the public can benefit from such innovation.”²⁴ Centralized clearing of the CDS market is a major goal of the Dodd-Frank Act and reflects the G20 agreement following the financial crisis, as well as other parallel international developments

²² Dodd-Frank Act §713(c).

²³ Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 75 Fed. Reg. 75,432 (proposed Nov. 19, 2010) (to be codified at 17 C.F.R. Parts 23 and 190).

²⁴ Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed. Reg. 3,698, 3,716 (proposed Jan. 20, 2011) (codified at 17 C.F.R. pt. 39).

such as the European Market Infrastructure Regulation. By requiring CDS to be centrally cleared, Congress is calling for a significant change to the risk-management of the swaps marketplace. The mandated margin requirements for cleared swaps will be considerably greater than the collateral requirements applicable to bilateral swaps in the pre-Dodd-Frank Act regulatory environment, for which there were no regulatory margin requirements. Unless the relief requested herein is provided, allowing for the commingling of Swap and Security-Based Swap assets, BD/FCMs clearing such transactions on behalf of customers will be required to maintain separate customer accounts subject to different margin rules, and will not be able to net customers' offsetting or risk-reducing Swap and Securities-Based Swap positions. A trader who sells a single-name CDS to offset the risk of a highly correlated Index CDS will, in the absence of portfolio margining, have to post full margin for both assets, which will require a significant capital outlay that will discourage participation in the U.S. swap market and potentially add to systemic risk during times of stress.

In enacting the Dodd-Frank Act, Congress authorized the Commission to make available the benefits of portfolio margining, which include capital efficiency, operational efficiency, risk management efficiency, greater uniformity of treatment for related products and greater regulatory and legal certainty. ICE Clear Europe's proposed "one pot" model provides an effective and efficient means to provide those benefits. All of the CDS contracts cleared and settled through ICE Clear Europe would be subject to the same credit risk mitigation and collateral terms. Notably, as a risk management matter, index CDS can be decomposed into a number of single-name CDS traded together. Allowing ICE Clear Europe to implement its portfolio margining program in a single 4d(f) account would thus foster the risk mitigation goals of the Dodd-Frank Act and allow the marketplace to function more efficiently, while at the same time affording market participants the full protections contemplated by the Dodd-Frank Act reforms. As the Securities Industry and Financial Markets Association ("**SIFMA**") has noted, portfolio margining "enables effective cash management by corporate end-users, institutional investors, and financial institutions."²⁵ Market participants will be able to expend fewer resources on margin and will be able to improve their allocation of funds based off of their actual risk profile, as more of their assets will be held in a single location with built-in systems to determine the risk of their current portfolio. Consequently, portfolio margining can incentivize large customers trading in highly correlated products to take positions that reduce their overall risk, and in turn, the overall risk of the market, thus furthering the overall goals of the Dodd-Frank Act.

By granting the requested Order, the Commission will provide participants in the CDS market with the incentive and capital efficiency necessary to make the central clearing of CDS, as contemplated in the Dodd-Frank Act, economically feasible. Moreover, the requested Order will foster the development of a CDS market that is characterized by a reduction of systemic risk by encouraging market participants to maintain hedged portfolios of CDS positions through ICE Clear Europe's proposed portfolio margining program. This will provide for uniform treatment of cleared Swaps and Security-Based Swaps carried in a commingled swap customer account

²⁵ Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, Letter to David A. Stawick, Secretary, CFTC, Re: RIN 3038-AD99; 17 CFR Part 190 Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies (January 18, 2011) (the "**SIFMA Letter**").

and will result in greater legal certainty in the event of the insolvency of a BD/FCM carrying a portfolio of such cleared instruments for its customers. Related instruments should have consistent margin treatment and insolvency treatment. In the context of attempting to reduce systemic risk it does not make sense to have different outcomes for related products.

Portfolio margining and commingling of related instruments also will harmonize the processing and bookkeeping of Index CDS and single-name CDS onto single production and accounting systems, eliminating the operational risks associated with maintaining separate systems. The incorporation of portfolio margining into ICE Clear Europe's margining methodology, and the commingling of Security-Based CDS with Index CDS, will therefore help to reduce such operational and managerial inefficiencies, substantially enhancing ICE Clear Europe's and its Clearing Members' risk management systems.

Finally, the International Swaps and Derivatives Association (“**ISDA**”) has estimated the total outstanding notional amount of the global CDS market to be \$25.9 trillion as of year-end 2011.²⁶ Facilitating portfolio margining will enable U.S. market participants to better compete for a share of that market with offshore firms that are not subject to the complexity and additional costs associated with a dual regulatory system, and which currently enjoy the benefits of commingled accounts and efficient cross-product margining permitted in foreign jurisdictions. Portfolio margining will be a major step in creating a level playing field for domestic and foreign swap market participants.

III. Commingling Index CDS with Security-Based CDS in ICE Clear Europe's Customer Cleared Swaps Account

Commission Regulation 39.15(b)(2) identifies several informational requirements that must be included in a DCO's rule submission to permit commingling and portfolio margining. Each of these informational requirements is addressed in turn below:

A. An Identification of the Swaps and Security-Based Swaps that would be Commingled, Including Contract Specifications or the Criteria that would be Used to Define Eligible Products

1. Overview

CDS are swap contracts pursuant to which the buyer of the CDS makes a series of payments to the seller and, in exchange, receives a payoff if a credit instrument -- typically a bond or loan -- experiences a credit event (e.g., bankruptcy, failure to pay, obligation default or acceleration, repudiation or moratorium). A credit event can also be triggered if a company restructures its debt.

A CDS contract is defined by the following:

²⁶ See ISDA, ISDA Market Survey - Notional amounts outstanding, semiannual data, all surveyed contracts, 1987-present, *available at* www.isda.org/statistics/pdf/ISDA-Market-Survey-historical-data.pdf.

1. Reference entity (the underlying entity on which one is buying/selling protection);
2. Reference obligation or seniority (the bond or loan that is being “insured”);
3. Term/tenor;
4. Coupon (amount of periodic payments that the buyer must make);
5. Credit events (the specific events that trigger payment by the protection seller to the protection buyer, including whether or not Restructuring is applicable);
6. Restructuring clause (a clause that defines the handling of restructurings as credit events); and
7. Currency.

The contract descriptions are set forth in Part 15 of the ICE Clear Europe Clearing Rules (the “**Clearing Rules**”) and the ICE Clear Europe CDS Procedures (the “**CDS Procedures**”).²⁷ The complete and current list of CDS contracts that are cleared by ICE Clear Europe is available to the public on ICE Clear Europe’s website.²⁸

2. Security-Based CDS

Single-Name CDS

Single-name CDS instruments reference individual corporate or sovereign government debt instruments. ICE Clear Europe currently clears corporate single-name CDS products that meet the following clearing criteria:

- (a) Must clear in a standardized coupon;
- (b) Must be denominated in a supported currency;
- (c) Must be in a supported restructuring clause;
- (d) The Depository Trust & Clearing Corporation (“**DTCC**”) Deriv/SERV Trade Information Warehouse²⁹ bilateral open interest must be of material value relative to that product class; and

²⁷ The Clearing Rules and CDS Procedures are available at: <https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=>

²⁸ ICE Clear Europe Contract Roster, https://www.theice.com/clear_europe_cds.jhtml.

²⁹ The Trade Information Warehouse (“**TIW**”) is a centralized global repository for trade reporting and post-trade processing of OTC credit derivative contracts.

- (e) Open interest must be held by a sufficient number of Clearing Members (as determined by the ICE Clear Europe Head of Risk) to provide breadth of price discovery through the end-of-day settlement pricing process.

ICE Clear Europe began clearing single-name CDS transactions in December 2009. ICE Clear Europe plans to clear single-name sovereign CDS under similar criteria.

An ICE Clear Europe single-name CDS that is based on a single reference obligation would be a Security-Based Swap based upon the second prong of the Security-Based Swap definition that includes a swap that is based on “a single security or loan, including any interest therein or on the value thereof.”³⁰ In addition, the third prong of the Security-Based Swap definition includes a swap that is based upon the occurrence of an event relating to a “single issuer of a security,” provided that such event “directly affects the financial statements, financial condition, or financial obligations of the issuer.”³¹ This provision applies generally to event-triggered swap contracts, such as single-name CDS contracts triggered by the bankruptcy of an issuer, a default on one of an issuer’s debt securities, or the default on a non-security loan of an issuer.

Narrow-Based Index CDS

A narrow-based Index CDS is a credit derivative used to hedge credit risk or to take a position on a basket of credit entities.

A narrow-based index is an index:

- (a) that has nine or fewer component securities;
- (b) in which a component security comprises more than 30 percent of the index’s weighting;
- (c) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index’s weighting;
or
- (d) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting,

³⁰ Section 3(a)(68)(A)(ii)(II) of the Exchange Act.

³¹ Section 3(a)(68)(A)(ii)(III) of the Exchange Act.

such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.³²

An ICE Clear Europe narrow-based CDS contract in which the underlying reference is a narrow-based index or the issuers of securities in a narrow-based index would be a Security-Based Swap. ICE Clear Europe does not currently clear narrow-based Index CDS.

3. Index CDS

Broad-Based Index CDS

A broad-based Index CDS is a credit derivative used to hedge credit risk or to take a position on an underlying reference index that is not a narrow-based security index or the issuers of securities that are not in a narrow-based security index. A broad-based Index CDS is a Swap, not a Security-Based Swap.

ICE Clear Europe clears broad-based iTraxx Europe Index CDS contracts. New series of the iTraxx Europe index are issued every six months by Markit Group Limited.³³ Prior to the announcement of each series, a group of investment banks is polled to determine the credit entities that will form the constituents of the new broad-based index. On the day of issue, a fixed coupon is decided for the whole index based on the credit spread of the entities in the index. Once this has been decided, the broad-based index constituents and the fixed coupon are published and the broad-based indices can be actively traded. ICE Clear Europe's Index CDS contract specifications do not provide for mandatory physical settlement.

ICE Clear Europe began clearing iTraxx Europe broad-based Index CDS contracts in July 2009.

4. Scope Of Eligible Products

ICE Clear Europe intends to apply the commingling and portfolio margining relief requested herein to the following Eligible Products: (a) the currently cleared Index CDS products identified in Exhibit A (including new series thereof); and (b) the currently cleared Security-Based CDS identified in Exhibit B. Product specifications for all of the foregoing Eligible Products are set forth in Part 15 of the Clearing Rules and the CDS Procedures.

³² Section 1a(35)(A) and (B) of the Act and Sections 3(a)(55)(B) and (C) of the Exchange Act. The SEC and Commission have proposed a specific definition of narrow-based security index in the context of CDS. See Further Definition of Swap, Security-Based Swap and Security-Based Swap Agreement; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 Fed. Reg. 29818 (May 23, 2011) (proposed rules).

³³ Markit Group Limited (“**Markit**”) is a financial information services company that specializes in CDS data.

In addition, ICE Clear Europe also intends to apply the commingling and portfolio margining relief to additional CDS instruments it may elect to clear in the future, such as: (a) additional investment grade single-name CDS (of the type currently cleared); (b) sovereign CDS, including from (i) Europe, the Middle East and Africa; and (ii) Asia; (c) high-yield corporate single-name CDS, specifically, CDS contracts referencing non-investment grade corporate entities domiciled in Europe; (d) tranche CDS and CDS swaptions; and (e) other CDS instruments within the above-described Eligible Product types, categories and classes, that satisfy the following criteria.

- (a) significant non-cleared outstanding notional exposure relative to other instruments in the same product class;
- (b) significant trading liquidity to support an orderly liquidation of positions if required; and
- (c) adequate pricing data from at least four Clearing Members who are available to provide daily prices for such instrument to assure the effectiveness of ICE Clear Europe's End of Day Settlement Pricing Process.

B. An Analysis of the Risk Characteristics of the Eligible Products

The primary categories of risk that apply to the Eligible Products include:

- (a) spread risk,
- (b) liquidity risk,
- (c) concentration risk,
- (d) jump-to-default risk,
- (e) interest rate sensitivity, and
- (f) basis risk.

These risk categories apply in varying degrees to the Eligible Products, depending on the type of CDS instrument, the tenor of a given position, and the underlying name(s) and indices and the management of these risks are addressed in the ICE Clear Europe Portfolio Approach to CDS Margining/Index Decomposition Methodology, attached as Confidential Exhibit E.

Spread risk is the most important risk characteristic of the Eligible Products. Spread risk relates to the movement of credit spreads with respect to a particular instrument. The credit spread reflects the default probability of the underlying name(s) of the CDS instrument.

Liquidity risk relates to the trading conditions for an instrument. Liquidity can be measured by considering the relative size of bid/offer spreads for an instrument, with narrow

values representing more active (i.e., liquid) trading conditions and wider values representing more volatile (i.e., illiquid) trading conditions. Generally, Index CDS are more actively traded than single-name CDS and have narrower bid/offer widths, and thus they offer greater liquidity.

Concentration risk relates to the risk of potential loss attributable to concentrated positions whose liquidation may lead to additional instrument or portfolio loss upon liquidation.

Jump-to-default risk relates to the exposure due to the underlying reference entity to entering a state of default.

Interest rate sensitivity relates to changes in the discount default-free term structure used to price CDS instruments.

Basis risk relates to the difference between quoted spread and fair (intrinsic) spread (i.e., the relative richness or cheapness of an index relative to its components).

The design of the ICE Clear Europe risk management methodology also addresses the following broader risk categories: (a) idiosyncratic risk (the risk that effects a small number of underlying names without ubiquitous market effects); (b) systematic risk (the risk that affects the entire market); and (c) contagion risk, which is considered for Clearing Members and cleared underlying reference entities that exhibit high levels of correlations. Please see Section III.G, below.

C. A Description of Whether the Eligible Products Would be Executed Bilaterally and/or Executed on a Designated Contract Market and/or a Swap Execution Facility

CDS transactions cleared by ICE Clear Europe are currently conducted on a bilateral basis between counterparties, rather than on a centralized exchange, although daily clearing of trades submitted through approved trade processing platforms is currently supported. Upon the commencement of the trading of CDS transactions on swap execution facilities (“SEFs”) and security-based swap execution facilities (“SSEFs”), ICE Clear Europe will accept for clearing CDS transactions executed on qualified SEFs for Index CDS and qualified SSEFs for Security-Based CDS transactions.

D. An Analysis of the Liquidity of the Respective Markets for the Swaps and Security-Based Swaps That Would be Commingled, the Ability of Clearing Members and ICE Clear Europe to Offset or Mitigate the Risk of Such Swaps and Security-Based Swaps in a Timely Manner Without Compromising the Financial Integrity of the Account, and, as Appropriate, Proposed Means for Addressing Insufficient Liquidity

1. Eligible Product Listing Criteria, Contract Volumes and Open Interest

ICE Clear Europe currently offers 42 unique Index CDS contracts and 121 single-name CDS.

As noted above, ICE Clear Europe applies the following listing criteria to Eligible Products, which are designed to assure sufficient liquidity:

- (a) material non-cleared open interest as measured by a minimum of €750 million gross notional in the Trade Information Warehouse;
- (b) sufficient market liquidity to support an orderly liquidation of positions if required; and
- (c) at least four Clearing Members are available to provide daily prices for each instrument.

Attached as Exhibit C is historical volume and open interest for cleared CDS transactions on ICE Clear Europe.

Attached as Exhibit D is open interest and transaction activity reported to the TIW for Index CDS and single-name CDS eligible for clearing by ICE Clear Europe based on DTCC publicly available data. This data includes ICE Clear Europe cleared volumes, as well as transactions in the reference names for Index CDS and single-name CDS that were not cleared by the parties on ICE Clear Europe, so as to provide a picture of the liquidity of the OTC market for instruments that are cleared on ICE Clear Europe. The DTCC data includes only transactions in which market participants were engaging in market risk transfer activity. Risk transfer activity is defined as transactions that change the risk position between two parties. This includes new trades between two parties, termination of an existing transaction, or the assignment of an existing transaction to a third party. The DTCC data indicates the number of clearing dealers that executed transactions on a particular reference entity on a monthly basis, the average daily notional of transactions executed on each reference entity name (this notional amount represents the amount executed across the entire maturity spectrum for each reference entity), and the average number of transactions (a buy and a sell) on each reference entity executed on a given day.

2. Ability of Clearing Members and ICE Clear Europe to Offset or Mitigate the Risks of Eligible Products Without Compromising the Integrity of the Account

Any Clearing Member that clears Index CDS transactions for U.S. customers is required under the Act to be registered with the Commission as an FCM. Any Clearing Member that clears Security-Based CDS transactions for U.S. customers is required under the Exchange Act to be registered as a BD with the SEC. All BD/FCM Clearing Members must maintain the Commission-prescribed minimum amount of Adjusted Net Capital as reported (or as would be reported) to the Commission on a Form 1-FR or FOCUS Report.

ICE Clear Europe's portfolio margining methodology describes the risk management policies and procedures of ICE Clear Europe, which seek to assure that Clearing Members possess the capacity to fulfill their responsibilities to ICE Clear Europe, and that ICE Clear Europe possesses the ability to manage the risks associated with discharging its responsibilities as a DCO. See Sections F and G below for further information.

3. Proposed Methods for Addressing Insufficient Liquidity

In the event of a default by a Clearing Member, ICE Clear Europe strives to minimize the impact of the default on non-defaulting Clearing Members³⁴ by instituting Default Management Procedures. The goal of such procedures is to limit the risk associated with the Defaulting Clearing Member's default and to conduct an orderly close-out or mitigate the risk relating to the Defaulting Clearing Member's positions. See Section K below for further information.

E. An Analysis of the Availability of Reliable Prices for Each of the Eligible Products

ICE Clear Europe has developed a comprehensive approach to the end-of-day settlement price process and the daily mark-to-market (valuation) process using reliable, market-driven pricing. The pricing methodology simulates trading based on the end-of-day prices submitted by Clearing Members. ICE Clear Europe periodically requires Clearing Members whose bids and offers "cross" to enter into positions at the crossed price. This requirement to periodically execute on matched interests serves as a means of ensuring Clearing Members submit bona fide end-of-day prices to ICE Clear Europe. The end-of-day pricing process begins each day at 4:30 p.m., London time, when each Clearing Member has five minutes to submit a firm end-of-day price to ICE Clear Europe. ICE Clear Europe converts these end-of-day prices into a single, standardized bid-offer spread format. ICE Clear Europe then applies its fixing algorithm to determine the end-of-day settlement prices and matched bid/offers (if any), by product. ICE Clear Europe then publishes the end-of-day settlement prices to the market at approximately 5:30 p.m.

F. A Description of the Financial, Operational, and Managerial Standards or Requirements for Clearing Members that Would be Permitted to Commingle Swaps and Security-Based Swaps

1. Clearing Member Financial Requirements

ICE Clear Europe has submitted pursuant to Commission Rules 39.4(b) and 40.6 amendments to its Clearing Rules and CDS Procedures that adjust its financial requirements to comply with the Commission-prescribed minimum capital requirements that will be applicable to BD/FCM clearing members of a DCO under Commission Rule 39.12.

CDS Clearing Members that are BD/FCMs will be required to maintain a minimum of \$50 million of Adjusted Net Capital.³⁵ Such Clearing Members will be required to report to ICE Clear Europe their Adjusted Net Capital as reported to the Commission on a Form 1-FR or FOCUS Report.

³⁴ See Clearing Rule 902.

³⁵ "Adjusted Net Capital" for a Clearing Member that is an BD/FCM is as defined in CFTC Rule 1.17 and as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the Commission under CFTC Rule 1.12.

If at any time a CDS Clearing Member that is a BD/FCM clearing CDS has a required CDS guaranty fund deposit³⁶ that exceeds 25 percent of its Excess Net Capital,³⁷ ICE Clear Europe may require the Clearing Member to post additional margin and/or prepay the amount of the maximum additional CDS Guaranty Fund assessment that would be applicable to it at such time under the Clearing Rules if it were to retire from clearing membership. Any material change in a FCM/BD Clearing Member's Adjusted Net Capital that is required to be reported to the Commission under Commission Regulation 1.12 also must concurrently be reported to ICE Clear Europe.

ICE Clear Europe, at its discretion, may deem the ongoing capital requirements of a Clearing Member set out above to be met by the provision to ICE Clear Europe of an unconditional guarantee (in a form, substance, and amount acceptable to ICE Clear Europe) of the obligations of the Clearing Member to ICE Clear Europe from a group company of the Clearing Member (including any parent or subsidiary, or subsidiary of any parent of the Clearing Member). If such a guarantee is provided, then the guarantor's capital can be taken into account in assessing compliance with ICE Clear Europe's minimum capital criteria. ICE Clear Europe is able to obtain audited financial information or other financial information as is reasonably requested by ICE Clear Europe to assess the guarantor's financial situation.

ICE Clear Europe relies on an internal ratings system to evaluate and monitor CDS Clearing Members. This internal rating provides guidance in determining the expected financial stability and credit/counterparty risk of each CDS Clearing Member.

2. Clearing Member Operational and Managerial Requirements

Additionally, ICE Clear Europe evaluates each applicant's operational capabilities. To become a Clearing Member, an applicant must demonstrate, among other requirements that it has (i) operational competence in CDS;³⁸ (ii) facilities, equipment, operational capability, personnel, hardware and software systems as are capable of supporting the proper performance of its business as a Clearing Member, including such IT links to ICE Clear Europe and software as are necessary or desirable;³⁹ and (iii) be a member of Derv/SERV.⁴⁰ The Clearing Rules also require Clearing Members to submit pricing data within the required time frames⁴¹ and enable Clearing Members to establish relationships with one or more swap data repositories and/or security-based swap data repositories as necessary for reporting its cleared Contracts in

³⁶ The Guaranty Fund is discussed in Section IV.J.5. below.

³⁷ "Excess Net Capital" for a Clearing Member that is an FCM or a Broker-Dealer shall equal its "excess net capital" as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the Commission under CFTC Rule 1.12.

³⁸ CDS Procedures 2.2(d).

³⁹ ICE Clear Europe Rule 201(a)(x).

⁴⁰ CDS Procedure 2.2(e).

⁴¹ ICE Clear Europe Rule 503(g).

accordance with applicable law.⁴² Risk management expertise is evaluated, in part, with a survey addressing risk management sophistication in the CDS product area.

Alternatively, an applicant may demonstrate certain operational capabilities by entering into an outsourcing arrangement with another person through an arrangement that is acceptable to ICE Clear Europe. The Clearing Member will nonetheless remain responsible to ICE Clear Europe for the performance of the functions outsourced to its service provider.

To become a Clearing Member, an applicant must complete the Clearing Member Application; execute and deliver a Clearing Membership Agreement to the Clearing House (and, where applicable for FCM/BDs, a Pledged Collateral Addendum to such Clearing Membership Agreement); and provide the supplemental information requested in the Clearing Member Application, including financial statements, an organization chart, organizational documents, and risk management policies and procedures.

3. Registration of Clearing Members with the Commission as an FCM and Registration with the SEC as a BD

Any Clearing Member that clears Index CDS transactions for U.S. customers must be registered with the Commission as an FCM, and any Clearing Member that clears Security-Based CDS transactions for U.S. customers also will be required to be registered with the SEC as a BD. All BD/FCM Clearing Members must also be “eligible contract participants” as defined in Section 1a(18) of the Act.

4. Monitoring of Clearing Members

ICE Clear Europe has established financial surveillance policies and procedures designed to enable ICE Clear Europe to meet applicable self-regulatory organization financial surveillance obligations standards established by the FSA, Commission and SEC and to allow ICE Clear Europe to satisfy itself that each Clearing Member meets ICE Clear Europe’s financial requirements as well as FSA, Commission and SEC financial reporting, net capital and segregation rules and requirements.

All Clearing Members are required to provide to ICE Clear Europe in a timely manner all reports and information relating to the Clearing Member, persons controlling the Clearing Member, and related or affiliated organizations as required by the Clearing Rules or otherwise required by ICE Clear Europe, and upon becoming aware that any such report or information was at the time provided false or misleading in any material respect, promptly provide to ICE Clear Europe a correcting amendment of or supplement to such report or information. Further, the Clearing Rules require Clearing Members to provide notice to ICE Clear Europe of significant financial, regulatory and organizational events that could impact the financial or operation capacity of a Clearing Member.⁴³ ICE Clear Europe personnel will review and analyze

⁴² CDS Procedure 1, definition of "Trade Processing Platform".

⁴³ ICE Clear Europe Rules, Part 2.

such reports, information and notices to monitor the financial and operational condition of its Clearing Members.

ICE Clear Europe's financial surveillance program includes a combination of ongoing monthly financial surveillance, daily clearing member monitoring in conjunction with the Risk Department, and ad hoc on-site examinations of Clearing Member's records and procedures, when deemed necessary, to verify their compliance with the Clearing Rules, FSA, Commission and SEC capital requirements, FSA, Commission and SEC customer segregation rules, customer protection rules and "early warning" and regulatory notice requirements and to identify any material inadequacies in internal controls by the review of an independent auditor's material inadequacies letter.

G. A Description of the Systems and Procedures that Would be Used by ICE Clear Europe to Oversee Clearing Members' Risk Management of any Commingled Eligible Products

1. The ICE Clear Europe CDS Risk Management Approach

ICE Clear Europe's CDS risk management approach is comprehensive, recognizing five types of risk: Systemic Risk, Collateral Risk, Market and Interest Rate Risk, Operational Risk, and Settlement Risk.

Systemic Risk. Systemic risk addresses the risks facing the broader financial market or system, and not just specific Clearing Members. ICE Clear Europe's systemic risk management goal is to ensure that no additional counterparty risk is introduced and that each Clearing Member is insulated from the Event of Default⁴⁴ of another Clearing Member.

ICE Clear Europe's approach to managing systemic risk is based on a six-tiered waterfall. The strength of the approach is that each tier builds on the other tiers, and all tiers apply to all Clearing Members without exception. The tiers are (in order):

- (a) Membership Criteria: Ensure that Clearing Members have sufficient credit strength, financial resources, and operational capabilities. Membership criteria are discussed above in Section III.F.
- (b) Initial Margin Requirement: Collateralize potential Clearing Member portfolio loss under distressed market conditions on a daily basis. Initial Margin⁴⁵ is discussed below in Section III.J. Unless the context otherwise requires, discussions of the Initial Margin model herein refer to the requirements for CDS, as opposed to energy products.

⁴⁴ See Clearing Rule 901 for the definition of "Event of Default."

⁴⁵ See Clearing Rule 502.

- (c) Mark-to-Market Margin: Adjust Clearing Member net asset value of cleared instruments daily based on end-of-day mark-to-market valuations. Mark-to-Market Margin⁴⁶ is discussed below in Section III.J. Unless the context otherwise requires, discussions of the Mark-to-Market Margin model herein refer to the requirements for CDS, as opposed to energy products.
- (d) Intra-day Risk Monitoring and Special Margin Call Execution: Identify additional margin requirements based on a comparison of unrealized profit/loss to initial margin, understanding unusual market fluctuations.
- (e) Guaranty Fund: Mutualize losses under extreme, but plausible, market scenarios. The CDS Guaranty Fund is discussed below in Section III.J. ICE Clear Europe maintains separate Guaranty Funds for CDS and for energy products. As used herein, unless the context otherwise requires, references to the “Guaranty Fund” shall be deemed to mean the CDS Guaranty Fund.
- (f) Limited One-time Assessment: Oblige Clearing Members to contribute a limited amount of additional default funding following exhaustion of the CDS Guaranty Fund.

Collateral Risk. Collateral risk management is the measurement and management of movement in the value of collateral relative to the Margin⁴⁷ deposits and Guaranty Fund requirements under current or future circumstances. Collateral risk management related to margin deposits and the Guaranty Fund is managed through a combination of conservative definitions of acceptable collateral, haircuts, and limitations on the investment of cash collateral/Guaranty Fund deposits (described below in Section J). Exchange rate risk related to non-U.S. dollar denominated collateral is mitigated by the application of foreign exchange-based haircuts.

Market Risk and Interest Rate Risk. Because ICE Clear Europe’s investment portfolio is in interest-bearing assets, ICE Clear Europe’s market risk is in the form of interest rate risk and general market risk affecting the issuers of non-cash assets (i.e. sovereign default risk). It should be noted that interest on non-cash assets and interest on cash is paid to Clearing Members. Presently, the Margin and Guaranty Fund deposits are held primarily in the form of cash, which is invested in a repo programme, or in the form of the original non-cash assets provided to ICE Clear Europe, which comprise government securities and are held with a custodian. ICE Clear Europe establishes the parameters for the management of the portfolio of margin, subject, in the case of customer margin, to the requirements of Commission Rule 1.25

⁴⁶ See Clearing Rule 502.

⁴⁷ See Clearing Rule 101 for the definition of “Margin.”

and other applicable law. Market risk related to Margin or Guaranty Fund deposits is mitigated by haircuts on such collateral.

Operational Risk. Operational risk is the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events. Operational risk also includes legal risk, which is the risk of loss resulting from failure to comply with laws as well as prudent ethical standards and contractual obligations. It also includes the exposure to litigation from ICE Clear Europe's activities. Operational risk is mitigated through the implementation of detailed policies and procedures, adequate management oversight, and risk management controls.

Settlement Risk. ICE Clear Europe bears settlement risk if Clearing Members do not meet their daily settlement obligations. This settlement risk is managed and mitigated with clear direct payment deadlines supported by explicit default policies and procedures.

2. Governance and Organization

ICE Clear Europe Risk Management Staff

ICE Clear Europe's risk management approach is reinforced by a governance and oversight framework designed to identify the day-to-day accountability for risk management as well as the responsible oversight and controls.

ICE Clear Europe's Head of Risk is directly responsible for risk management and in this capacity, is directly accountable to ICE Clear Europe's President.

The Risk Management Department, which is overseen by the Head of Risk, is responsible for practices and procedures implementing ICE Clear Europe's portfolio margining methodology. The Risk Management Department consists of fifteen individuals, who are dedicated to risk management and do not have responsibilities in other functions.⁴⁸

The Risk Management Department is responsible for managing the risk inherent in all products cleared by ICE Clear Europe and all forms of collateral accepted by ICE Clear Europe. This includes the following tasks:

Analytics

- (a) Quantifying and analyzing Margin and Guaranty Fund requirements;
- (b) Back testing Initial Margin requirements;
- (c) Stress testing and completing scenario analysis to supplement ICE Clear Europe's quantitative methodologies;

⁴⁸ In addition, ICE Clear Credit provides certain risk management and other operational services to ICE Clear Europe with respect to CDS pursuant to a Master Services Agreement. These include assistance with design, support and administration of CDS margin and guaranty fund requirements.

- (d) Reviewing CDS risk models and parameters (e.g., degrees of freedom, sample Mean Absolute Deviations, recovery rates, assumptions, portfolio benefit parameters) on a monthly basis;
- (e) Reviewing and validating the use of pricing or valuation models, including pricing for collateral;

Exposure

- (a) Monitoring Clearing Members' Margin and Guaranty Fund requirements on an ongoing basis;
- (b) Verifying Mark-to-Market values on all transactions and position reports;
- (c) Modeling and analyzing collateral values;
- (d) Analyzing and/or monitoring interest rate sensitivities;
- (e) Recommending position or concentration limits to the Risk Working Group, the CDS Risk Committee and the Board of Directors (see below), as well as the monitoring of those limits;

Monitoring

- (a) Analyzing and/or monitoring prospective and current Clearing Members;
- (b) Maintaining a "Watch List" of Clearing Members who pose a material risk to ICE Clear Europe and other Clearing Members;
- (c) Analyzing and/or monitoring settlement banks; and

Default Participation

- (a) Executing default procedures according to the Clearing Rules and procedures, with guidance from the CDS Default Committee (described in Section III.L below).

The Risk Management Department conducts periodic statistical analysis of the Margin levels and market performance. Using the minimum standards established by ICE Clear Europe management in consultation with the CDS Risk Committee, the Risk Management Department recommends margin methodology changes to the President and the Board of Directors for their approval.

ICE Clear Europe Committees

The relevant committees for the purposes of CDS risk management are the (i) CDS Risk Committee and (ii) Audit Committee, each of which is described below. The ICE Clear Europe risk management structure also includes the CDS Default Management Committee.

CDS Risk Committee. The CDS Risk Committee consists of fifteen members and is responsible for making recommendations to the Board of Directors on margin rate setting, stress testing, product acceptance, product definition, margin asset acceptance, margin asset discount rates, and investment policy. Three of the CDS Risk Committee members are (i) an independent non-executive member of the Board of Directors, and (ii) two officers of ICE Clear Europe from among the President and Head of Risk each appointed by ICE Clear Europe. The remaining members are appointed by Clearing Members.

Each member of the CDS Risk Committee is subject to the approval of the Board of Directors. Each member must have risk management experience and expertise. The CDS Risk Committee makes recommendations at a meeting by a majority vote of members or by unanimous written consent, absent a meeting. The CDS Risk Committee is required to meet no less frequently than quarterly; however, since its constitution, the CDS Risk Committee has generally met at least monthly. The Board of Directors or any two members of the CDS Risk Committee may call for a meeting. Emergency meetings of the CDS Risk Committee may be called by any one or more members of the CDS Risk Committee.

Pursuant to its terms of reference, the CDS Risk Committee must be consulted in relation to certain actions as they relate to CDS, including:

- (a) accepting for clearing any types of CDS transactions other than pre-approved products, making modifications to ICE Clear Europe provisions relating to the specific characteristics of a contract, or making the determination that a proposed modification to ICE Clear Europe provisions does not constitute a contract modification;
- (b) modifying ICE Clear Europe provisions that relate to Margin for CDS contracts;
- (c) modifying ICE Clear Europe provisions that relate to: (i) the structure, size, or application of the CDS Guaranty Fund; (ii) the methodology for calculating a Clearing Member's required CDS Guaranty Fund contribution or the components thereof; (iii) the types of currency or assets eligible for, or valuation methodology or discounts applied to, a Clearing Member's CDS Guaranty Fund contribution; (iv) the parameters for a Clearing Member's CDS assessment contributions; (v) the time period for, or means by which surplus collateral is returned to a Clearing Member; (vi) the methodology and procedures for applying amounts on deposit in

Guaranty Fund and recoveries related thereto; (vii) provisions relating to the use, rehypothecation or investment of collateral on deposit in the Guaranty Fund; or (viii) the size, form, timing, investment guidelines, valuation, or priority scheme with respect to the ICE Clear Europe contributions to the Guaranty Fund;

- (d) modifying ICE Clear Europe provisions that relate to (i) the closing-out process, the CDS Default Committee or the other rights and obligations of ICE Clear Europe upon the Event of Default of a Clearing Member or the occurrence of an ICE Clear Europe Default; (ii) the definition of ICE Clear Europe Default or Event of Default or the process required to determine that an Event of Default has occurred; (iii) the termination provisions, or the rights and obligations of ICE Clear Europe upon the occurrence of a termination with respect to a Clearing Member; (iv) the process for dispute resolution; or (v) the process for effecting physical settlement of Contracts or the allocation methodology relating thereto or to the occurrence of a restructuring credit event; and
- (e) modifying ICE Clear Europe provisions that relate to open access to the clearing system for all execution venues and all trade processing platforms.

Audit Committee. The Audit Committee of ICE Clear Europe provides the Board of Directors with an independent opinion and recommendations on matters of importance to ICE Clear Europe's financial matters, systems and controls, legal and regulatory compliance, and business ethics.

The Audit Committee consists of up to five members; all of which are non-executive managers of ICE Clear Europe and at least two of which are independent managers. The Audit Committee meets at least twice a year, and more frequently as circumstances dictate.

The Audit Committee has the following major responsibilities:

- (a) overseeing the performance of the internal financial controls, the internal audit function, external auditors, and annual financial reporting of ICE Clear Europe;
- (b) overseeing the integrity of ICE Clear Europe's financial statements;
- (c) overseeing the qualifications and independence of ICE Clear Europe's external auditors; and
- (d) any other matters referred to it by the Board of Directors from time to time.

In discharging its oversight role, the Audit Committee has authority to engage independent counsel and other advisors as it determines necessary to carry out its duties and responsibilities.

CDS Default Committee. The CDS Default Committee will be convened following an event of default, as described in Section III.K, below. Members of the CDS Default Committee are chosen from a list of Committee Eligible Clearing Members.⁴⁹ Three Committee Eligible Clearing Members are chosen on a rotating basis and are responsible for helping to manage ICE Clear Europe's exposure due to a Clearing Member's Default. The CDS Default Committee will convene upon the declaration of an Event of Default and, in conjunction with the Head of Risk, assists with the liquidation or unwinding of CDS positions in a Defaulting Clearing Member's portfolio. The CDS Default Committee also assists ICE Clear Europe in determining and managing "minimum target prices" for hedged portfolios related to an Event of Default. In this capacity, the CDS Default Committee provides advice on necessary auction(s) as well as the process to allocate remaining positions to Non-Defaulting Clearing Members.

H. A Description of the Financial Resources of ICE Clear Europe, Including the Composition and Availability of a Guaranty Fund with Respect to Swaps and Security-Based Swaps that Would be Commingled

1. Overview

ICE Clear Europe maintains adequate financial resources to discharge its financial obligations as a DCO. In addition to its own financial resources, ICE Clear Europe is able to cover its financial obligations to Clearing Members in the event of a Clearing Member's Event of Default with Margin, contributions to the CDS Guaranty Fund, and assessment powers, each of which is described in detail in Section J, below. The CDS Guaranty Fund as of April 13, 2012, was Euro 1.81 billion, which is approximately 30 percent of the amount of Initial Margin in respect of CDS of Euro 5.99 billion.⁵⁰ As described in detail below, Clearing Members' Margin and Guaranty Fund deposits are immediately available and highly liquid. At least 50 percent of Clearing Member's CDS Guaranty Fund deposits must be in cash, subject to a minimum of Euro 15 million.⁵¹ After the application of a Defaulting Clearing Member's Margin and Guaranty Fund Contributions, and the available Guaranty Fund Contributions of non-defaulting Clearing Members, ICE Clear Europe may make a one-time assessment against each non-defaulting Clearing Member of an amount equal to such Clearing Member's Guaranty Fund Contribution prior to the Event of Default.

⁴⁹ A Committee Eligible Clearing Member is any Clearing Member approved by the Board of Directors, after consultation with the CDS Risk Committee, for participation on one or more Regional CDS committees.

⁵⁰ ICE Clear Europe also operates an Energy Guaranty Fund which is not available for CDS. As of April 13, 2012, the Energy Guaranty Fund was approximately \$650 million, which is approximately 5 percent of the amount of Initial Margin of \$11.96 billion relating to Energy products.

⁵¹ ICE Clear Europe Finance Procedures, paragraph 14.2.

As described below, the size of the Guaranty Fund, not including assessment powers, set at the maximum stress loss of the uncollateralized losses of the two largest defaulting Clearing Members with a long protection profile and the uncollateralized losses of the two largest defaulting Clearing Members with a short protection profile. The funded amount of the Guaranty Fund covers the stress test of the two largest Clearing Members. The Guaranty Fund is described in detail in Section J.5., below.

2. ICE Inc.

Intercontinental Exchange, Inc. (“**ICE Inc.**”) is the ultimate parent company of ICE Clear Europe. ICE Inc. is a leading operator of global futures exchanges, OTC markets, and derivatives clearing houses. ICE Inc. operates leading futures and OTC marketplaces for trading and clearing a broad array of energy, environmental and agricultural commodities, CDSs, equity indices and foreign exchange contracts.

To meet immediate liquidity needs in the event of a Clearing Member’s Event of Default, ICE Clear Europe may borrow (through ICE Inc.) up to an aggregate principal amount of \$150,000,000 against ICE Inc.’s senior unsecured revolving credit facility of \$500,000,000, to be used to provide liquidity for the clearing operations of ICE Clear Europe. Borrowing requests against the senior revolving credit facility must be made prior to 10:00 a.m. Eastern Time and generally will be funded within one hour of the administrative agent receiving the borrowing request.

3. Clearing Member Margin

As described in further detail in Section J below, ICE Clear Europe collects adequate margin to collateralize risk. The margin required from each Clearing Member is sufficient to cover potential exposures in normal market conditions. Clearing Members’ Margin deposits are immediately available and highly liquid.⁵²

4. Guaranty Fund

As described in further detail in Section J below, ICE Clear Europe requires all Clearing Members clearing CDS to participate in funding the CDS Guaranty Fund. Guaranty Fund deposits are immediately available and highly liquid.⁵³ The first Euro 15 million of Guaranty Fund deposits must be in cash, and at least 50 percent of Guaranty Fund deposits must be in cash thereafter. Total required CDS Guaranty Fund Contributions as of April 13, 2012, was Euro 1.81 billion, which is approximately 30 percent of the amount of Initial Margin in respect of CDS of Euro 5.99 billion.

⁵² Clearing Members’ Margin deposits satisfy the Commission’s regulation 39.15(c)(1) regarding the types of assets acceptable as initial margin. .

⁵³ Guaranty Fund deposits satisfy the Commission’s proposed regulation 39.15(c)(1) regarding the types of assets acceptable as initial margin. *See id.*

I. A Description and Analysis of the Margin Methodology That Would be Applied to the Commingled Swaps and Security-Based Swaps, Including any Margin Reduction Applied to Correlated Positions, and any Applicable Margin Rules with Respect to Both Clearing Members and Customers

ICE Clear Europe's margin methodology is described in detail in Section J below. ICE Clear Europe's portfolio margining methodology, which will apply to commingled Eligible Products, are discussed in Section IV below and in Confidential Exhibit E attached hereto.

J. An Analysis of the Ability of ICE Clear Europe to Manage a Potential Default with Respect to Any of the Swaps or Security-Based Swaps that would be Commingled

1. Overview

ICE Clear Europe mitigates its financial exposure with a hierarchy of protections: (i) Initial Margin, (ii) Mark-to-Market Margin, (iii) the Guaranty Fund, and (iv) the right of one-time limited assessment. The combination of these protections mitigates the exposure of ICE Clear Europe to potential losses from Clearing Member Events of Default to ensure that ICE Clear Europe's operations are not disrupted and non-defaulting Clearing Members are not exposed to losses that they are not able to anticipate or control.

2. Initial Margin

ICE Clear Europe collects adequate but not excessive margins to collateralize risk. The margin required from each Clearing Member is sufficient to cover potential exposures in normal market conditions. The Initial Margin requirements account for instrument risk, hedging benefits, bid-offer spreads (liquidity), Jump-to-Default⁵⁴ exposure, and concentration risk. Features of the Initial Margin calculation methodology include accurately defined log-return credit spread distribution assumptions, specific stress scenarios for credit spread moves, and recovery rates. Collectively, ICE Clear Europe believes this methodology and the selected risk parameters provide a robust and conservative Initial Margin approach.

The instrument risk (margin) requirement is obtained by estimating scenario Profits/Losses ("P/L") for a set of hypothetical contracting (tightening) and widening credit spread scenarios and by considering the largest loss. The scenario P/L is defined as the difference between the hypothetical scenario spread level and the current market (settlement) spread level.

The bid/offer requirement incorporates the transaction costs associated with liquidating the portfolio of a Defaulting Clearing Member. Transaction costs can lead to significant losses for large portfolios. The developed approach provides a general solution that can capture the proper liquidation cost for directional portfolios as well as for well-hedged portfolios. The

⁵⁴ Jump-to-default exposure arises from the simultaneous default of a Clearing Member and credit events associated with the underlying single names on which the defaulting Clearing Member has sold protection.

bid/offer requirement is estimated by considering the liquidity and the expected bid/offer widths for different instruments. The approach assumes, in general, that short-protection and long-protection positions would be liquidated at different bid/offer widths.

Jump-to-Default requirements are incorporated to account for the simultaneous Event of Default of a Clearing Member and a credit event associated with the underlying single-name on which the Defaulting Clearing Member has sold protection. Index instruments are decomposed into their constituents and a Net Notional Amount (“NNA”) is calculated for every instrument in a portfolio at the single-name level. A probability of an Event of Default is estimated for every single-name from the front end of its credit spread term structure. The probability of an Event of Default is estimated from the simulated widening spread scenario at the market implied return rate that produces the greatest value. The “Expected Loss Given Default” is estimated by means of a single-name-specific minimum return rate. If the NNA is negative (sold more protection than bought), then Jump-to-Default requirements apply.

Large positions are subject to additional risk assessments derived from the market depth and liquidity associated with the instruments under consideration. Concentration charges apply to both long and short index and single-name positions for which the overall position size is above a specific threshold that is predetermined by the Risk Management Department. Thresholds and overall position sizes are defined in terms of a 5 Year On-the-Run equivalent notional (“**5Y OTR equivalent**”). Portfolio positions are converted into 5Y OTR equivalent notional amounts in order to apply the concentration charges. The concentration charges are progressive and can yield total requirements that asymptotically approach the full liability (i.e., NNA) for a directional short position portfolio, or the value of the premiums to be paid for a directional long position portfolio. The current price of the considered instrument is taken into account to determine the maximum potential risk factor loss.

Diversification benefits are provided across risk factors that exhibit low levels of dependence (based on Kendall Tau correlation). Risk factors that exhibit rank correlations whose absolute value is below a pre-determined threshold are eligible for diversification benefits. This benefit ensures that risk requirements accurately reflect the level of risk of a diversified portfolio.

ICE Clear Europe conducts periodic statistical analysis of margin levels and market performance. Using the minimum standards established by ICE Clear Europe management in consultation with the Risk Working Group and the CDS Risk Committee, the Risk Management Department recommends margin methodology changes to the President and the Board of Directors for their approval.

Margin requirements for each Clearing Member are calculated and communicated at least once each day (by 1:00 a.m. in the daily flow) and margin is due no later than 9:00 a.m. London Time. Intra-day calls including initial margin may also be made, as discussed in section 4.

3. Mark-to-Market Margin

Mark-to-Market Margin is calculated daily based on the changing market value of held positions. Clearing Members are required to post additional Mark-to-Market Margin when the prior day's margin balance is insufficient to meet the current day's margin obligation.

On a daily basis, concurrent with the calculation of Initial Margin for new positions, ICE Clear Europe calculates the Mark-to-Market Margin for all Clearing Members. ICE Clear Europe determines the replacement value of each of its Clearing Members' cleared positions based upon end-of-day settlement prices determined through ICE Clear Europe's price discovery process.

The required Mark-to-Market Margin is calculated as Net Mark-to-Market Margin per CDS position. Net Mark-to-Market Margin is calculated as $(1.0 - \text{Settlement Price}) * \text{Net Notional Amount}$. This total required Net Mark-to-Market Margin is compared to the previous balance of Mark-to-Market Margin posted. Any Mark-to-Market Margin deficits are payable in cash and are included in the daily settlement process. Excess margin is not returned unless requested by a Clearing Member.

To determine the cash owed, ICE Clear Europe deducts both the cash deposits and unrealized P/L related to previously cleared positions from the margin required. Unrealized gains for each Clearing Member are recognized in Clearing Members' cash accounts as a "Cash Mark-to-Market Credit."

Additionally, the President, Head of Risk, or the Head of Risk's designee, has the authority to change margins as necessary to protect the interests of ICE Clear Europe.

Margin requirements for each Clearing Member are calculated and communicated at least once each day (by 1:00 a.m. London Time in the daily flow) and are due no later than 9:00 a.m. London Time. All deficits related to change in net Mark-to-Market Margin must be met in cash. Intra-day calls including mark-to-market margin may also be made, as discussed in section 4.

4. Intraday Risk Monitoring/Special Margin Call

Intraday, the adequacy of the collected Initial Margin (i.e., risk-based margin) is actively monitored and is supported by automated feeds of the available intraday price data. This data is used to measure each Clearing Member's intraday unrealized profit and loss to determine if ICE Clear Europe's intraday exposure to each Clearing Member is covered by the margin on deposit. The data is also used to measure and further explain intraday variability, which contributes to the Risk Management Department's required determination of the type of daily market environment (as an input to the daily end-of-day settlement pricing process). Intraday prices are based on Bloomberg runs received throughout the day from Clearing Members' existing pricing processes. The bid-ask quotes are used as the intraday bid-ask and are automatically fed into the ICE Clear Europe risk management application. The ICE Clear Europe risk management application captures the intraday price and immediately revalues the P/L moves for each Clearing Member's portfolios and the related Initial Margin requirement.

ICE Clear Europe may issue margin calls to Clearing Members that maintain insufficient levels of risk collateralization to protect the Clearing House and its Clearing Members. If an additional margin call is made, the Clearing Member has one hour to fully collateralize any deficits associated with the additional margin call. The Risk Management Department will notify the ICE Clear Europe Treasury Department of the “special” margin call. As a backup, the risk management application confirms the “special” margin call with an email to the ICE Clear Europe Treasury Department to initiate the margin call.

Along with CDS intraday market information, the Risk Management Department monitors equity, foreign exchange and fixed income markets, and market volatility indices as an indicator of market movements and variability.

5. Guaranty Fund

ICE Clear Europe requires all Clearing Members clearing CDS to participate in funding the CDS Guaranty Fund. Each such Clearing Member is required to maintain a minimum of Euro 15 million in the CDS Guaranty Fund. The Guaranty Fund mutualizes losses under extreme but plausible market scenarios.⁵⁵ Typically these extreme scenarios are low-probability events whose quantification is designed to absorb the maximum stress loss of the uncollateralized losses of the two largest defaulting Clearing Members with a long protection profile and the uncollateralized losses of the two largest defaulting Clearing Members with a short protection.

The methodology computes the magnitude of potential losses based on a comprehensive set of stress test scenarios, relying on a combination of quantitative and qualitative inputs. The stress test scenarios are designed to account for both: (i) occurrence of credit events for three reference entities on which the defaulted Clearing Members sold protection (uncollateralized loss-given-default), and (ii) adverse contracting or widening credit spread scenarios (uncollateralized spread response losses).

Funds to meet Guaranty Fund requirements are requested on the first business day of every month. However, on a daily basis, the Risk Management Department monitors Guaranty Fund size and allocations. If a Clearing Member’s daily estimated Guaranty Fund requirements exceed 5 percent of its prior day’s Guaranty Fund collateral on deposit, additional Guaranty Fund contributions are called. All deficits related to a change in Guaranty Fund requirements must be met in cash by the end of the business day. The deficit may need to be met earlier at the Head of Risk’s discretion. Eligible collateral can be substituted for cash posted to the Guaranty Fund.

Additionally, in accordance with the Clearing Rules, the President, or his/her designee, has the authority to request additional Guaranty Fund commitments as necessary to protect the interests of ICE Clear Europe. In the event that ICE Clear Europe is accepting sizable positions through the weekly back-loading process, ICE Clear Europe may pre-collect Guaranty Fund

⁵⁵ The parameters for these scenarios include the most volatile periods—the bankruptcy of Bear Stearns and collapse of Lehman Brothers in 2008—reflecting periods of great market disruption.

contributions. ICE Clear Europe itself is presently required to maintain a deposit in the Guaranty Fund of the Euro equivalent of US\$10 million (as of April 13, 2012), which will increase to US\$25 million following the first anniversary of customer account clearing.⁵⁶

6. Right of One-Time Limited Assessment

After the application of a Defaulting Clearing Member's Margin and Guaranty Fund deposit, and the respective Guaranty Fund contributions of non-Defaulting Clearing Members, ICE Clear Europe may make a one-time assessment against all non-Defaulting Clearing Members of up to their Guaranty Fund obligation, to be paid within one business day, whereby the remaining losses are shared among those Clearing Members.

K. A Discussion of the Procedures that ICE Clear Europe Would Follow if a Clearing Member Defaulted, and the Procedures that a Clearing Member Would Follow if a Customer Defaulted, with Respect to any of the Commingled Swaps or Security-Based Swaps in the Account

1. Declaring a Clearing Member in Default

As set forth in Clearing Rule 901(a), an Event of Default occurs when a Clearing Member: (i) breaches the Clearing Rules, the procedures, the Clearing Member Agreement, any other agreement with ICE Clear Europe or the rules of a market; (ii) is unable, or likely to be unable, to meet its obligations under the Clearing Rules or in respect of any contract; (iii) fails to transfer Margin (whether Initial Margin or Mark-to-Market Margin), Guaranty Fund Contributions, or other amounts due to ICE Clear Europe by the deadline established under the Clearing Rules; (iv) or any of its affiliates, defaults on certain obligations in respect of financial indebtedness with third parties; (v) has any commitment for financial indebtedness of itself or any of its affiliates cancelled or suspended by a creditor as a result of an event of default (however described); (vi) has a creditor become entitled to declare any financial indebtedness due and payable prior to its specified maturity as a result of an event of default (however described); (vii) experiences an insolvency event in relation to itself or any of its affiliates; (viii) has any material action being taken against itself by any governmental authority, regulatory authority, exchange, clearing organisation or delivery facility; or (ix) breaches any Applicable Law relevant to its business as a Clearing Member.

If a Clearing Member is in Default as described above, ICE Clear Europe will declare the Clearing Member in Default and take necessary action to mitigate risk for the remaining Clearing Members. ICE Clear Europe may immediately suspend or terminate such Clearing Member's membership as a Clearing Member and take any action to close out such Clearing Member's positions. Any such suspension or termination may be temporarily postponed or may not be enforced if ICE Clear Europe in its discretion determines that any such suspension or termination would either (i) not be in the best interests of ICE Clear Europe; or (ii) be likely adversely to affect the operation of any market.

⁵⁶ ICE Clear Europe CDS Procedures, paragraph 7.

2. Communicating the Default

As soon as practicable after ICE Clear Europe has declared that a Clearing Member is subject to an Event of Default, ICE Clear Europe will issue a default notice to the Defaulting Clearing Member and will provide a copy of such default notice to any other party to an affected contract (if any). In addition, ICE Clear Europe will issue a “Circular” to all non-defaulting Clearing Members in respect of any default notice. Such Circular will specify the name of the Defaulting Clearing Member and will also be posted to ICE Clear Europe’s website.

3. Activating the CDS Default Committee

Immediately following the declaration of an Event of Default, ICE Clear Europe will cease all clearing activities for the Defaulting Clearing Member. ICE Clear Europe also will activate the CDS Default Committee. The CDS Default Committee will work with ICE Clear Europe management and will ultimately be responsible to the Board of Directors for their actions.

The CDS Default Committee consists of no more than three Committee Eligible Clearing Members. Each CDS Default Committee participant is responsible for designating one employee and one or more alternate employees with credit default swap trading experience to be a CDS Default Committee Member and serve as its representative on the CDS Default Committee. CDS Default Committee Members are randomly chosen pursuant to paragraph 5.2 of the CDS Procedures to serve the relevant term, and are responsible for consulting with ICE Clear Europe, as appropriate, to achieve the following:

- determining and executing any closeout or initial cover transactions;
- determining and adjusting minimum target prices for sales or transfers;
- providing ICE Clear Europe a recommendation as to how to unwind or hedge the open CDS positions of the Defaulting Clearing Member; and
- conducting an auction of a portion of the Defaulting Clearing Member’s portfolio.

4. Conducting Hedging and Portfolio Partitioning

The Clearing Rules and Clearing Member Default Management Procedures provide ICE Clear Europe with the authority to close, transfer, or otherwise resolve the Defaulting Clearing Member’s positions and apply the collateral of the Defaulting Clearing Member towards the losses. To manage the risk associated with the Clearing Member’s Event of Default, ICE Clear Europe will isolate the Defaulting Clearing Member’s positions and will convert any non-cash portion of the Defaulting Clearing Member’s Margin and collateral securing its portion of the Guaranty Fund into cash. The Head of Risk, in consultation with the CDS Default Committee members, will hedge and/or liquidate positions as necessary and appropriate.

The hedging process will be used to reduce the immediate risk associated with the Defaulting Clearing Member's positions. As positions are unwound and/or hedged, they will be entered into the ICE Clear Europe default management systems; positions will be updated intraday. Positions entered through the system will be copied into the risk database, allowing for updated risk to be calculated by the Head of Risk. The cost of entering into these positions also will be tracked to monitor the erosion of the Margin held against the Defaulting Clearing Member's portfolio. The Risk Management Department will periodically re-evaluate its risk exposure to the Defaulting Clearing Member as hedges are put on, positions are unwound, and auctions take place.

5. Conducting Auctions

The Head of Risk, in consultation with the CDS Default Committee, will use his/her discretion to split, if necessary, the hedged portfolio into marketable pieces which will be auctioned. At the discretion of ICE Clear Europe, the CDS Default Committee Members will be responsible for directing the auction process. For single-name CDS, the CDS Default Committee will attempt to organize sub-portfolios for auction within each sector. Once the positions are hedged, the auction process may begin. The objective of the auction is to effectively terminate and replace the Defaulting Clearing Member's positions in order for ICE Clear Europe to regain an exactly matched book. Hedged positions will be auctioned off to the Non-Defaulting Clearing Members.

The auction of each portion of the hedged portfolio will undertake the following steps:

- Position disclosure to Non-Defaulting Clearing Members;
- Minimum target price setting;
- Bidding mechanics;
- Auction result and legal novation/settlement; and
- Trade submission to the TIW by winning bidder and ICE Clear Europe.

6. Allocating Remaining Positions to Non-Defaulting Clearing Members

Those positions for which ICE Clear Europe does not receive a formal bid above the minimum target price (or any bids at all) from any of the Non-Defaulting Clearing Members will go through the allocation process, which will not begin until the auction process described above has been completed and associated trades have cleared. The allocation process schedule will be similar to the auction process and encompass six stages:

- Notification to the Non-Defaulting Clearing Members that an auction was not successful and the allocation process has been triggered;
- Re-aggregation and re-partitioning (as necessary) of the remaining positions;

- Determination of position allocation among Non-Defaulting Clearing Members based on risk exposure and overall portfolio size;
- Communication of position allocation to each relevant Clearing Member impacted;
- Communication of price; and
- Entry into by non-defaulters of replacement contracts.

After the new allocated contracts have been established, any of the non-defaulting Clearing Member's offsetting protection buyer and protection seller positions in the allocated CDS Contracts will be netted in accordance with the normal clearing and settlement process.

7. Use of Margin and Guaranty Fund

ICE Clear Europe procedures call for the use of the Defaulting Clearing Member's Margin and Guaranty Fund towards the losses. Following completion of the close-out or transfer of all positions in the Clearing Member's customer account, ICE Clear Europe would calculate a net sum under the Clearing Rules taking into account the loss or gain to ICE Clear Europe, the available Margin and Guaranty Fund Contribution of the Defaulting Clearing Member and, if necessary, Guaranty Fund Contributions of non-defaulting CDS Clearing Members.⁵⁷ The net sum calculated in respect of the customer account would, under the Clearing Rules, be determined separately from any other customer account class or from the proprietary account of the defaulting Clearing Member. ICE Clear Europe's policies also allow it to take any other action as ICE Clear Europe may deem necessary or appropriate for its protection, including but not limited to drawing promptly on other financial resources (including but not limited to the Guaranty Fund balances of ICE Clear Europe and the non-defaulting CDS Clearing Members).

Upon a Clearing Member Event of Default, withdrawals from the Guaranty Fund will be made in the following order (each tranche must be fully exhausted before moving to the next tranche):

- (a) Defaulting CDS Clearing Member's Margin and Guaranty Fund Contribution.
- (b) Any other asset of the Defaulting CDS Clearing Member which ICE Clear Europe is entitled to realise or liquidate, and any other right or claim of ICE Clear Europe against the Defaulting CDS Clearing Member or amount due to ICE Clear Europe from the Defaulting CDS Clearing Member.
- (c) Priority contribution by ICE Clear Europe.

⁵⁷ See Clearing Rule 904.

- (d) Guaranty Fund Contributions of non-defaulting CDS Clearing Members, together with an additional contribution from ICE Clear Europe (ranking pari passu with CDS Clearing Member contributions).
- (f) Assessment contributions levied by ICE Clear Europe on CDS Clearing Members.

In the event that the Guaranty Fund is exhausted, the remaining Clearing Members will be obligated to contribute additional amounts to the Guaranty Fund based on a one-time limited assessment. The amount of the assessment will be up to (but will not exceed) two times each Clearing Member's Guaranty Fund obligation prior to the Event of Default.

L. A Description of the Arrangements for Obtaining Daily Position Data from Each Beneficial Owner of Swaps and Security-Based Swaps in the Account.

ICE Clear Europe's Risk Management Department actively monitors Clearing Members' position concentration as part of its daily risk management processes. This monitoring is supported by the Clearing Member margin reports, which specify the concentration charges by Clearing Members. The report shows the simulated P/L and related concentration charges at the Clearing Member level. Long positions show a loss in the simulated downward moves of the credit spread while short positions show a loss in the simulated upward moves of credit spreads. The report provides the Risk Management Department with the tools to identify and monitor the riskiest directional (long & short) portfolios based on the size of the portfolios' concentration charges. ICE Clear Europe will obtain beneficial owner level position data through data submitted to the ICE Link trade processing platform by Clearing Members.

IV. Portfolio Margining Methodology

A. ICE Clear Europe's Portfolio Approach to CDS Margining/Index Decomposition Methodology

ICE Clear Europe based its portfolio risk management modeling approach to CDS instruments on a combination of time series analysis, used to obtain distributions for the realizations of the identified risk factors, and a stress scenario approach that augments statistical considerations. The methodology provides portfolio benefits, such as reduced risk requirements for portfolios containing Index CDS and Security-Based CDS instruments. The riskiness of a specific instrument position is assessed by estimating the profit-and-loss for a given notional amount in response to hypothetical credit spread and recovery rate scenarios combined with losses arising from a jump-to-default state. Through the index decomposition methodology, the actual portfolio is "reduced" to corresponding positions in index and single-name products. The reduced portfolio is then subjected to additional requirements and charges to account for credit spread risk, liquidity risk, portfolio basis risk, large position requirements, jump-to-default requirements, and portfolio interest rate sensitivity. See Confidential Exhibit E hereto for further detail regarding ICE Clear Europe's portfolio approach to CDS margining and index decomposition methodology.

B. Results of Independent Analysis of ICE Clear Europe Margin Methodology

ICE engaged Finance Concepts,⁵⁸ an independent risk management consultant, to provide a third-party review of the proposed Risk Methodology enhancements. Finance Concepts performed its study in March 2011 and concluded that, “(i) ICE variation margin levels were sufficient to cover liquidation costs under the most extreme credit conditions and (ii) the margin relief for long-short positions based on Index Decomposition constitutes a prudent and well-founded methodology for warehousing risk associated with multi-index, multi-obligor CDS portfolios.” A copy of Finance Concept’s analysis is attached as Confidential Exhibit F: Finance Concepts, “A Stress Test of the ICE Margin Requirements for Large Multi-Asset Portfolios.”

V. Terms and Conditions of Requested Order

ICE Clear Europe seeks an Order pursuant to Section 4d(f) of the Act, and approval of its portfolio margining methodology pursuant to Commission regulation 39.15(b)(2), which would permit holding customer funds used to margin, secure or guarantee Eligible Products in ICE Clear Europe’s and BD/FCMs’ customer cleared swaps accounts and permit portfolio margining of Eligible Products cleared by ICE Clear Europe when calculating margin requirements of ICE Clear Europe’s and its Clearing Members’ customer cleared swaps accounts, subject to the following terms, conditions and representations:

- (a) This relief will apply to Eligible Products cleared by ICE Clear Europe.
- (b) Subject to the terms and conditions herein and notwithstanding any provision to the contrary in the Commission’s regulations, ICE Clear Europe, its Clearing Members that are BD/FCMs, and BD/FCMs that clear on behalf of customers through those Clearing Members may hold Security-Based CDS and Index CDS in ICE Clear Europe’s 4d(f) customer cleared swaps account and the BD/FCM’s 4d(f) customer cleared swap accounts, as applicable, to margin, secure, or guarantee Eligible Products cleared by ICE Clear Europe.
- (c) ICE Clear Europe will hold all customer funds deposited with it by its Clearing Members that are BD/FCMs, and BD/FCMs that clear on behalf of customers through those Clearing Members, to margin, guarantee, or secure Eligible Products in its cleared swaps account in accordance with Section 4d(f) and the Commission regulations promulgated thereunder.
- (d) All money, securities, and property received by Clearing Members to margin, guarantee, or secure trades or positions of customers in

⁵⁸ See Finance Concepts Home Page, www.finance-concepts.com.

Eligible Products will be accounted for and treated and dealt with as belonging to the customers of the Clearing Members consistently with Section 4d(f) of the Act and the Commission regulations promulgated thereunder.

- (e) Subject to the terms and conditions herein and notwithstanding any provision to the contrary in the Commission's regulations, ICE Clear Europe may adopt a portfolio margining program for Clearing Members that are BD/FCMs, and BD/FCMs that clear on behalf of customers through those Clearing Members, under which it will offset Eligible Products that are correlated on a risk management and economic basis when calculating margin requirements, including the offsetting of Security-Based CDS against Index CDS.
- (f) ICE Clear Europe will apply appropriate risk management procedures to transactions in Eligible Products. ICE Clear Europe will conduct financial surveillance and oversight of Clearing Members clearing Eligible Products and manage risk relating to clearing Eligible Products.
- (g) ICE Clear Europe will mark-to market each Eligible Product on a daily basis, and will establish final settlement prices.
- (h) ICE Clear Europe will make available to Clearing Members and other market participants settlement price information for Eligible Products on a daily basis.
- (i) ICE Clear Europe will apply the portfolio margining system to the Eligible Products, with at least a 99 percent level of confidence that such margin would reflect the risk of price movement over a five-day period.
- (j) The relief will not provide any exemption from any provision of the Act or Commission regulations thereunder not specified herein.
- (k) All customer money, securities, and property received by Clearing Members that are BD/FCMs, and BD/FCMs that clear on behalf of customers through those Clearing Members, to margin, guarantee, or secure Eligible Products, which may be commingled with other funds held in segregated accounts maintained in accordance with Section 4d(f) of the Act and Commission regulations, pursuant to a Commission order, will be subject to the same protections set forth in the Commission's Part 190 bankruptcy rules that are applicable to other customer funds held in such segregated accounts.

VI. Conclusion

Based on the foregoing, we respectfully request that the Commission issue an exemptive order or rule in furtherance of Sections 713, 724 and 725(c) of the Dodd-Frank Act and pursuant to Section 4(d)(f) of the Act permitting ICE Clear Europe and its BD/FCM Clearing Members to (i) hold customer positions in CDS that include broad-based CDS and narrow-based CDS and single-name CDS, and customer funds used to margin, support or guarantee such positions, in a single customer omnibus account at ICE Clear Europe that is subject to Section 4d(f) of the Act and to Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder; (ii) to calculate margin for such positions in the customer account utilizing portfolio margin pursuant to a portfolio margining program approved by the CFTC; and (iii) to provide similar relief for BD/FCM Clearing Members that maintain clearing accounts for their customers at ICE Clear Europe.

We believe that the Commission's grant of the requested exemptive relief will enable participants in the CDS market to have the incentive and capital efficiency necessary to make, as contemplated in the Dodd-Frank Act, the central clearing of CDS through ICE Clear Europe economically feasible and to reduce the likelihood of regulatory arbitrage. The requested exemptive relief will foster the development of a market in CDS that is characterized by marked reduction of systemic risk by encouraging participants to maintain hedged portfolios of CDS positions through ICE Clear Europe's proposed portfolio margining program.

If you should have any questions or comments or require any further information regarding this request for exemptive relief, please do not hesitate to contact the undersigned at paul.swann@theice.com or +44 20 7065 7700 or Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Swann'.

Paul Swann
President & Chief Operating Officer

Attachments

cc: Chairman Gary Gensler
Commissioner Jill E. Sommers
Commissioner Bart Chilton
Commissioner Scott D. O'Malia
Commissioner Mark P. Wetjen
Mr. Ananda K. Radhakrishnan, Director, Division of Clearing & Risk
Mr. John Lawton, Deputy Director and Chief Counsel, Division of Clearing and Risk
Mr. Robert Wasserman, Associate Director, Division of Clearing and Risk

Supplemental Materials

Exhibit A: Currently Cleared Index CDS Products

Exhibit B: Currently Cleared Security-Based CDS Products

Exhibit C: Historical Volume and Open Interest for Cleared CDS Transactions on ICE Clear Europe

Exhibit D: Open Interest and Transaction Activity for Index CDS and Single-Name CDS Cleared by ICE Clear Europe Based on DTCC Publicly Available Data

Confidential Exhibit E: ICE Clear Europe Portfolio Margining Methodology

Confidential Exhibit F: Finance Concepts, “A Stress Test of the ICE Margin Requirements for Large Multi-Asset Portfolios”