



January 23, 2013

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

By Email: submissions@cftc.gov

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6

Dear Mr. Stawick:

ICE Clear Europe Limited (“ICE Clear Europe”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rule 40.6, for self-certification the attached amendments to its clearing rules. The rule amendments are to become effective ten business days after submission, or such later date as ICE Clear Europe may determine.

The amendments, which are principally to ICE Clear Europe Rule 301, serve to clarify the standards for the satisfaction of payment obligations to ICE Clear Europe by clearing members. Specifically, the amendments specify certain prerequisites before a transfer of funds will be deemed to satisfy or discharge a clearing member’s payment obligation to ICE Clear Europe. No payment obligation of a clearing member will be treated as having been satisfied or discharged unless and until certain specified steps, including the following, have taken place in respect of any payment of such amount:

- (i) the relevant electronic transfer of funds is actually received by ICE Clear Europe in unencumbered, fully cleared and fully available funds in an ICE Clear Europe account at an approved financial institution that is not subject to an Insolvency (as defined in the ICE Clear Europe clearing rules);
- (ii) if the approved financial institution used by the clearing member is not an approved ICE Clear Europe concentration bank, such financial

institution has completed the transfer of funds from the ICE Clear Europe account at such financial institution to the ICE Clear Europe concentration account at an ICE Clear Europe concentration bank that is not subject to an Insolvency (as defined in the ICE Clear Europe Rules).

The rule changes also provide a mechanism for recovery of amounts provided by a clearing member that do not complete the settlement cycle as described above. Furthermore, the rule changes provide that any payment due to a clearing member from ICE Clear Europe will, subject to certain limited exceptions, be recognized as having been duly made, and ICE Clear Europe's obligations in respect thereof will be treated as having been satisfied and discharged, at the time the relevant Credit/Debit Payment Transfer Order (as defined in the Clearing Rules) arises relating to such payment.

The amendments are potentially relevant to the following core principles: (D) Risk Management, (E) Settlement Procedures, and (L) Public Information, and the applicable regulations of the Commission thereunder. ICE Clear Europe believes that the proposed rule changes will improve the finality and accuracy of its daily settlement process and reduce the risk to ICE Clear Europe of settlement failures. Specifically, the rule change limits the risk to ICE Clear Europe of failures of settlement banks. The changes are thus in furtherance of, and are consistent with, the requirements of Commission Rule 39.14(c) and will facilitate the efficient operation of the clearing house's settlement process.

ICE Clear Europe hereby certifies that the proposed rule amendments comply with the Act and the Commission's regulations thereunder.

ICE Clear Europe received questions and comments in relation to the proposed rule amendments from certain clearing members. ICE Clear Europe will address one comment by making available a list of concentration banks. ICE Clear Europe concluded that the other comments related to non-substantive drafting issues in respect of which further clarifications were not necessary.
~~ICE Clear Europe has received no opposing views in relation to the proposed rule amendments.~~

ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website concurrent with the filing of this submission.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at patrick.davis@theice.com or +44 20 7065 7738, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Paul Swann, President & Chief Operating Officer, at paul.swann@theice.com or +44 20 7065 7700.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Patrick Davis', is positioned above the typed name.

Patrick Davis
Head of Legal and Company Secretary



ICE Clear Europesm

Clearing Rules

~~26 April~~ [Extended liability draft: 26 October](#) 2012

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- (v) upon such Clearing Member ceasing to meet, or being unable to satisfy the Clearing House that it is able to meet, any of the membership criteria set out in Rule 201(a) or, if it is a CDS Clearing Member, Rule 201(i); or
 - (vi) upon an Insolvency in relation to that Clearing Member or any of its Affiliates.
- (b) The Clearing House shall be entitled to terminate the membership of any Clearing Member upon no less than three months' prior written notice.
- (c) The Clearing Member shall be entitled to terminate its membership of the Clearing House: (i) upon no less than three months' prior written notice to the Clearing House; (ii) upon the Insolvency of the Clearing House; (iii) pursuant to Rule 1105(h); or (iv) pursuant to Rule 1106(h). The membership of a Clearing Member which is a CDS Clearing Member but not an Energy Clearing Member shall terminate automatically upon the occurrence and continuance of an 'Event of Default' (as defined in the Master Agreement between the Clearing House and such CDS Clearing Member) in respect of the Clearing House. In the event of the Insolvency of the Clearing House or an 'Event of Default' as aforementioned in respect of the Clearing House, the rights and liabilities of each Clearing Member under CDS Contracts will be deemed discharged for the purposes of Rule 905 and a net sum or net sums payable by or to the Clearing Member to or from the Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 905 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member (provided that, for the avoidance of doubt: (A) Rules 1105 and 1106 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901(a) (rather than any Event of Default effectively deemed to occur pursuant to this provision); (B) Rules 901, 902, 903 and 904 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this provision); and (C) without prejudice to the generality of (B), Rule 903(a)(xii) shall apply only in relation to Contracts the counterparties to which are Clearing Members that are actually declared subject to an Event of Default (and not in relation to Contracts the counterparties to which are Clearing Members that are effectively deemed to be subject to an Event of Default pursuant to this provision) and provided further that the net sum or net sums required to be determined in these circumstances pursuant to Rule 905 in respect of a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member will be made separately in relation to the rights and liabilities of that Clearing Member as Energy Clearing Member and as CDS Clearing Member and Rule 905 shall be interpreted accordingly. Neither Rule 301(f)(ii)-(iii) nor Rule 301(l) shall apply to payments made or received after the Insolvency or an Event of Default as aforementioned in respect of the Clearing House.
- (d) Upon any termination of a Clearing Member's membership, the relevant Clearing Member shall remain liable to transfer, deposit, maintain and pay all Margin, make Guaranty Fund Contributions when due and make all other payments due pursuant to Contracts from time to time and shall be obliged to:
- (i) transfer, liquidate, make settlement in respect of and/or make delivery (as applicable) pursuant to all Contracts to which it is party in accordance with applicable Contract Terms; and

Part 3 Financial Requirements and Payments

Rule 301 *Fees, Margin, Contract and other payment obligations*

- (a) Clearing Members shall be liable to pay such fees and charges as are levied by the Clearing House in accordance with published rates from time to time. Unless otherwise provided and without limitation, fees shall be payable on each Contract cleared by the Clearing House and the Clearing House shall be entitled to levy fees in respect of Permitted Cover. The Clearing House may amend its fees and charges and the bases for its fees at any time and will notify Clearing Members of any such amendments by means of a Circular prior to the same taking effect.
- (b) Fees charged to Clearing Members by the Clearing House may include the fees of any one or more Markets. The Clearing House shall be entitled to collect fees due from Clearing Members on behalf of all Markets of which a Clearing Member is a member or participant.
- (c) Clearing Members shall be liable to make any payment to the Clearing House that is required pursuant to these Rules at the time and in the amount specified by the Rules or required in accordance with the Rules. In particular, Clearing Members shall be liable to make payment in respect of Margin and Guaranty Fund Contributions from time to time in accordance with Part 5, Part 6 and Part 11 of the Rules at the times and in the amounts that are required pursuant to the instructions of the Clearing House made pursuant to Rule 302.
- (d) Clearing Members shall be liable to pay all amounts due under the Contract Terms, upon entering into a Contract, as Margin and upon delivery or settlement, as further described in these Rules and the Contract Terms at the time and in such amounts as are required pursuant to the Contract Terms. Without prejudice to the generality of the foregoing:
 - (i) in relation to each Contract that is a Future, the parties to such Contract shall be liable to make such payments upon settlement and delivery as are required pursuant to Part 7 and the Procedures; and
 - (ii) in relation to each Contract that is an Option, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 8 and the Procedures.
- (e) Each Clearing Member will procure that the Clearing House has at all times the right to instruct that Clearing Member's Approved Financial Institution to debit its Proprietary Accounts and Customer Accounts (if any) and any other account designated by that Clearing Member for the purposes of this Rule 301, for payment in respect of fees, charges, fines, penalties, Margin, Guaranty Fund Contributions, amounts due pursuant to Contracts (whether upon their formation, settlement or delivery) and any other amounts due to the Clearing House or due to any Market.
- (f) All amounts payable to the Clearing House (except, with the prior written consent of the Clearing House, application fees) shall be payable by electronic transfer from an account at an Approved Financial Institution only. The Clearing Member shall continue to be liable for any amount due under these Rules ~~unless and until the~~

~~relevant electronic transfer of funds is actually received by the Clearing House in unencumbered, fully cleared and fully available funds.~~ and no payment obligation of a Clearing Member shall be treated as having been satisfied or discharged unless and until all of the following steps have taken place in respect of any payment of such amount:

- (i) the relevant electronic transfer of funds is actually received by the Clearing House in unencumbered, fully cleared and fully available funds in a Clearing House Account, being an account at an Approved Financial Institution which is not subject to an Insolvency;
- (ii) if the Approved Financial Institution used by the Clearing Member is not a Concentration Bank, such Approved Financial Institution has fully performed its concentration function in respect of the payment in question, by completing the transfer of funds from the Clearing House's account at such Approved Financial Institution to the Clearing House's concentration account at a Concentration Bank (which Concentration Bank is not subject to an Insolvency), in which account the Clearing House has received unencumbered, fully cleared and fully available funds, in respect of:
 - (A) in the case of a payment under Rule 302(a), a net amount reflecting all payments processed through that Approved Financial Institution in respect of all calls on or payments to all Clearing Members using that Approved Financial Institution under Rule 302(a) in respect of the Business Day in question; or
 - (B) in the case of a payment other than a payment under Rule 302(a) (such as a payment following an intra-day call for Margin or an *ad hoc* transfer of additional cash Permitted Cover to the Clearing House), the amount received from the Clearing Member that is seeking to make the payment in question; and
- (iii) in the case of a payment under Rule 302(a) only, that Approved Financial Institution (including if it is a Concentration Bank) has made all relevant payments under Rule 302(a) due to the Clearing Member and other Clearing Members (in its capacity as an Approved Financial Institution or Concentration Bank) in respect of the Business Day in question.

Nothing in this Rule 301(f) shall restrict or prevent the Clearing House or any Clearing Member from making any claim against an Approved Financial Institution which has failed to make a payment referred to under this Rule 301(f) . In particular: (I) the Clearing House shall not be deemed to have had any loss, liability or shortfall made good or whole vis-à-vis an Approved Financial Institution by virtue of any further payment by a Clearing Member in addition to an attempted payment not credited to its account as a result of this Rule 301(f); and (II) an Approved Financial Institution which has failed to make any payment referred to in this Rule 301(f) shall remain fully liable to the Clearing House or relevant Clearing Member for any such failed payment or account balance notwithstanding a reimbursement or additional payment as between a Clearing Member and the Clearing House. In the event that:

- (x) a payment is received into a Clearing House Account at an Approved Financial Institution but the requirements of Rule 301(f)(ii) or Rule 301(f)(iii) are not satisfied;
- (y) an affected Clearing Member has satisfied its payment obligations through an additional payment which complies with the requirements of this Rule 301(f); and
- (z) the Clearing House makes a recovery or irrevocably receives any part or full payment from the Approved Financial Institution into one of its accounts at a Concentration Bank (which Concentration Bank is not subject to an Insolvency),

then the Clearing House will make payment to affected Clearing Members in respect of the recovery or receipt actually made by the Clearing House, net of the Clearing House's costs and expenses, *pro rata* in proportion to the amounts of the original missed payments of each affected Clearing Member.

No Clearing Member shall be declared subject to an Event of Default as a result of failing to make any payment due to the operation of either Rule 301(f)(ii) or Rule 301(f)(iii), unless and until the Clearing House has notified the Clearing Member of the failed payment in question and requested that the payment be made using alternative means and the Clearing Member has defaulted in making the latter payment (other than solely due to the operation of either Rule 301(f)(ii) or Rule 301(f)(iii)).

- (g) Interest shall be charged to the Clearing Member on any unpaid but due amount from the date on which the amount becomes due and payable until the date of payment at 1% above the rate per annum which is the cost (without proof or evidence of any actual cost) to the Clearing House if it were to fund the relevant amount, compounded daily.
- (h) In the event that the Clearing House determines that it will suffer or has suffered (directly or indirectly) any loss, liability or cost for or on account of any tax in connection with any Contract, any amount payable to the Clearing House or in respect of any future obligation, or these Rules, the Clearing Member counterparty to such Contract, the Clearing Member by which such amount is payable, or such other Clearing Member whom the Clearing House at its discretion determines should be responsible for meeting the amount of such loss, liability, or cost, shall be liable to pay to the Clearing House, pursuant to Rule 302, an amount equal to such loss, liability, or cost.
- (i) All amounts set out in or expressed to be payable to the Clearing House in connection with any Contract or these Rules or otherwise and which constitute the consideration for a supply made by the Clearing House for the purposes of value added tax, and the value of any supply made by the Clearing House for value added tax purposes, shall be deemed to be exclusive of any value added tax which is chargeable on that supply and accordingly if value added tax is chargeable on any supply made by the Clearing House the relevant Clearing Member or such other Clearing Member whom the Clearing House at its discretion determines should be responsible for meeting the amount of such value added tax shall pay to the Clearing House (in addition to and at

the same time as the consideration is paid or provided, or if no consideration is due, at the time the supply is made or an appropriate value added tax invoice is issued, whichever is earlier) an amount equal to the amount of the value added tax and the Clearing House shall issue an appropriate value added tax invoice.

- (j) All amounts payable to the Clearing House in connection with any Contract or these Rules or otherwise shall be paid without any deduction or withholding for or on account of tax unless such deduction or withholding is required by Applicable Law. If a deduction or withholding for or on account of tax is required to be made, the amount of the payment due shall be increased to an amount which (after making the deduction or withholding) leaves an amount equal to the payment which would have been due if no such deduction or withholding had been required.
- (k) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation of the Clearing Member to make payment to the Clearing House shall be construed as an obligation of the Disclosed Principal Member, any right to receive payment of the Clearing Member shall be construed as a right of the Disclosed Principal Member and all other provisions of these Rules relating to payment shall be construed accordingly.
- (l) Any payment due to a Clearing Member from the Clearing House will be recognised as having been duly made, and the Clearing House's obligations in respect thereof shall be treated as having been satisfied and discharged, at the time that the relevant Credit/Debit Payment Transfer Order arises relating to such payment (or, if the Clearing Member or Approved Financial Institution is not a Participant, would have arisen were the Clearing Member or Approved Financial Institution to have been a Participant), provided that the Clearing House has reason to believe that the Clearing House Account from which payment is to be made has sufficient funds or credit on account.

Rule 302 *Mechanics for Payments*

- (a) The Clearing House shall advise each Clearing Member of amounts due to or from the Clearing Member in respect of its Proprietary Accounts and Customer Accounts (if any) on the following Business Day and:
 - (i) if the net amount for a Proprietary Account is due to the Clearing House, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Proprietary Account of the Clearing Member with the Approved Financial Institution to a Clearing House Account in an amount equal to the amount so due;
 - (ii) if the net amount for a Proprietary Account is due to the Clearing Member, the Clearing House shall instruct an Approved Financial Institution to transfer funds from a Clearing House Account to the relevant Nominated Proprietary Account of the Clearing Member with the Approved Financial Institution in an amount equal to the amount so due;
 - (iii) if the net amount for a Customer Account is due to the Clearing House, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Customer Account of

- (iii) following receipt of a request under Rule 1510(a)(ii), the Matched CDS Seller shall transfer the full Physical Settlement Amount relating to the Non DVP MP Amount to the Clearing House;
- (iv) following receipt of the full Physical Settlement Amount relating to the Non DVP MP Amount in ~~cleared funds~~ [accordance with Rule 301\(f\)](#), the Clearing House shall notify the Matched CDS Buyer that it is holding the full Physical Settlement Amount relating to such Non DVP MP Amount from the Matched CDS Seller;
- (v) following receipt of the notice under Rule 1510(a)(iv), the Matched CDS Buyer shall Deliver the relevant Non DVP Obligations to the Matched CDS Seller in an amount at least equal to the relevant Non DVP MP Amount;
- (vi) following its receipt of Delivery of the relevant Deliverable Obligations, the Matched CDS Seller shall deliver a Notice to the Clearing House in the form required by the Clearing House from time to time specifying that the Delivery has occurred, in full or, if in part, the percentage of the Non DVP MP Amount (the "**Delivered Percentage**") in respect of which Delivery has occurred;
- (vii) following its receipt of a valid notice under Rule 1510(a)(vi), the Clearing House shall pay an amount equal to the Physical Settlement Amount (or, where the Matched CDS Seller notified the Clearing House of Delivery in part only, an amount equal to the Delivered Percentage of the Physical Settlement Amount) received from the Matched CDS Seller in respect of the relevant Non DVP MP Amount to the Matched CDS Buyer; and
- (viii) if the Matched CDS Buyer does not Deliver the Non DVP Obligations in an amount at least equal to the relevant Non DVP MP Amount to the Matched CDS Seller within the required period under the Procedures for compliance with Rule 1510(a)(v) ("**Delivery Period**"), the Matched CDS Seller may request that the Clearing House repay to the Matched CDS Seller the Physical Settlement Amount in respect of the relevant Non DVP MP Amount, less the Delivered Percentage of the Physical Settlement Amount, if any, together with accrued interest on such amount for the period it has been held by the Clearing House calculated by reference to the Clearing House's rate for overnight deposits in the currency of the Physical Settlement Amount.

The process set out in this Rule 1510 may, subject to the relevant Contract Terms, be repeated in relation to any Non DVP Obligations not in fact delivered during a relevant Delivery Period.

Rule 1511 *Notice that Physical Settlement is complete*

Where, pursuant to their rights and obligations under Matched CDS Contracts, the Matched CDS Seller and Matched CDS Buyer in any Matched Pair settle any Matched CDS Contract which is to be settled in accordance with the Fallback Settlement Method, the relevant Matched CDS Seller and Matched CDS Buyer shall each deliver a notice to the Clearing House in the form required by the Clearing House from time to time specifying the payment and Delivery that have occurred in respect of such Matched CDS Contracts. Any such notice shall constitute a representation by the CDS Clearing Member delivering the notice to the