



Mumbai Frankfurt Chicago London New York Singapore

RECEIVED
CFTC

2011 APR -5 AM 10: 07

OFFICE OF THE
SECRETARIAT

CERTIFICATION:
COMPLIANCE THAT THE ADOPTED RULES COMPLY WITH THE COMMODITY
EXCHANGE ACT (CEA) AND THE REGULATIONS THEREUNDER

ICE Clear Europe Limited, a derivatives clearing organization registered with the Commodities Futures Trading Commission, hereby certifies that the "Proposed Changes to the Clearing Rules" relating to the Clearing House's designated payments system for the purposes of the Settlement Finality Regulations adopted on 29 March 2011 and effective on 6 April 2011, comply with the Commodity Exchange Act and the regulations thereunder.

In witness whereof, the undersigned has signed this Certification as of the 4th day of April 2011.

By: 

Name: Patrick Davis

Title: Company Secretary



ICE Clear Europesm

Clearing Rules

[CURRENT PUBLISHED VERSION 2011 SFD CHANGES]

Part 12 Settlement Finality Regulations and Companies Act 1989

Rule 1201 Introduction and Interpretation

- (a) The Clearing House is the system operator of a Designated System for the purposes of the Settlement Finality Regulations in respect of Transfer Orders. In addition, Part VII of the Companies Act 1989 applies in respect of Contracts, the 'default rules' and 'default proceedings' of the Clearing House and certain other matters related to the Clearing House.
- (b) Clearing Members are subject to various obligations and requirements as a result of the Settlement Finality Regulations and Companies Act 1989. Clearing Members must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Regulations or the Companies Act 1989. Furthermore, various modifications to Applicable Laws relating to Insolvency affecting Clearing Members apply pursuant to the Settlement Finality Regulations and Companies Act 1989.
- (c) The term "**Default Arrangements**" means the Rules and Procedures relating to, or that can be exercised upon, an Event of Default including, without limitation, all of Part 9 and Part 11 and this Part 12 of the Rules and Procedures relating thereto and any and all actions, omissions, powers and arrangements of the Clearing House pursuant to such Rules or Procedures.
- (d) The term "**Designated System**" means the standardised formal arrangements, common rules and procedures, as set out in the Rules and the Procedures, and related functionality which, *inter alia*:
- (i) enable the Clearing House to give instructions and to place at the disposal of Clearing Members amounts of money on the account of Approved Financial Institutions;
 - (ii) enable Clearing Members to give instructions and to place at the disposal of the Clearing House amounts of money on the accounts of Approved Financial Institutions;
 - (iii) enable the Clearing House and Clearing Members to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
 - (iv) enable transfers, assignments and novations of Contracts between Clearing Members or following a Default; and
 - (v) facilitate supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in respect of Contracts or Permitted Cover.
- (e) The term "~~Participants~~" means ~~Clearing Members and Approved Financial Institutions that are participants~~ **Indirect Participant** means any Disclosed Principal Member or Customer, provided that: (i) it is an 'indirect participant', within the meaning of the Settlement Finality Regulations, in the Designated System; (ii) the

identity of that Disclosed Principal Member or Customer has been notified to the Clearing House in writing by the Clearing Member; (iii) the Clearing House has accepted such notification and treatment as an indirect participant in writing (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, an Indirect Participant); and (iv) such Disclosed Principal Member or Customer has executed such agreement as is prescribed by the Clearing House from time to time in order for it to become contractually bound by these Rules and this Part 12 in particular.

- (f) The term "**Participant**" means the Clearing House, each Clearing Member and each Approved Financial Institution, in the case of a Clearing Member or Approved Financial Institution to the extent that it is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, a Participant).
- (g) ~~(f)~~ The term "**Payment Transfer Order**" means a payment transfer order (as defined in the Settlement Finality Regulations) that is an Open Offer Payment Transfer Order, Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order, CB-AFI Payment Transfer Order or Insufficient Funds Payment Transfer Order subject to this Part 12.
- (h) ~~(g)~~ The term "**Securities Transfer Order**" means a securities transfer order (as defined in the Settlement Finality Regulations) that is a Position Transfer Order subject to this Part 12.
- (i) ~~(h)~~ The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (j) ~~(i)~~ The term "**Trading & Clearing IT**" means the trade registration and clearing processing hardware and software used by the Clearing House from time to time, as further described in the Procedures, including TRS/CPS (trade registration system / clearing processing system).
- (k) ~~(j)~~ No transfer orders (as defined in the Settlement Finality Regulations) shall arise, enter the Designated System or become irrevocable under these Rules except as set out in this Part 12.

Rule 1202 *Transfer Orders Arising*

- (a) Subject to regulation 20 of the Settlement Finality Regulations, a Payment Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) in relation to a Contract that forms in accordance with Rule 401, at the point that a Contract arises under Rule 401 ("**Open Offer Payment Transfer Order**");
- (ii) the Clearing House sending an instruction pursuant to Rule 302 ("**Credit/Debt Payment Transfer Order**");

- (iii) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank ("**AFI-CB Payment Transfer Order**");
 - (iv) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the Concentration Bank to a Clearing House Account ("**CB-AFI Payment Transfer Order**"); or
 - (v) the Clearing House receiving a notification pursuant to Rule 1205(b) ("**Insufficient Funds Payment Transfer Order**").
- (b) Subject to regulation 20 of the Settlement Finality Regulations and only if both of the Clearing Members affected are Participants, a Securities Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) if either:
 - (A) the Clearing House, the relevant Market and the two Clearing Members involved have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another Clearing Member pursuant to Rule 408(a)(i); or
 - (B) the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member pursuant to the Clearing House's powers under Rule 902(a)(i), Rule 903 or otherwise,

in either case, instructions for settlement of the transfer, assignment or novation in question being effected through the Trading & Clearing IT at the relevant settlement transfer deadline for the relevant Contract ("**Position Transfer Order**").
- (c) If two or more Transfer Orders exist in respect of the same obligation prior to becoming irrevocable, all such Transfer Orders shall be valid. No duplication of an obligation to pay shall arise as a result of two or more Transfer Orders existing in respect of the same obligation.
- (d) The status of a Transfer Order shall not be affected by any calculation of Open Contract Position, netting, set off or closing out of a Contract to which it relates.
- (e) Each Payment Transfer Order shall apply and have effect in respect of the following amounts:
- (i) in the case of an Open Offer Payment Transfer Order, the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the

Contract to which the confirmation referred to in Rule 1202(a)(i) relates arising;

- (ii) in the case of a Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order, the amount specified in the relevant instruction referred to in Rule 1202(a);
 - (iii) in the case of an Insufficient Funds Payment Transfer Order, the amount determined pursuant to Rule 1205(b).
- (f) Each Position Transfer Order shall apply and have effect in respect of the Contracts to be transferred, assigned or novated.
- (g) Transfer Orders shall apply to, and have effect as between, each of the following Persons, in respect of any particular Person only to the extent that such Person is a Participant or an Indirect Participant:
- (i) in the case of an Open Offer Payment Transfer Order, the affected Clearing Member (if it is a Participant) and the Clearing House and, as from and after the time of irrevocability only, the affected Approved Financial Institution;
 - (ii) in the case of a Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order, the affected Clearing Member (if it is a Participant), the affected Approved Financial Institutions and the Clearing House;
 - (iii) in the case of an AFI-CB Payment Transfer Order, CB-AFI Payment Transfer Order, the affected Approved Financial Institution, the Concentration Bank and the Clearing House;
 - (iv) in the case of a Position Transfer Order~~;~~
 - (A) the Clearing Members (that are the transferor, assignor or person whose rights, liabilities and obligations are novated and the transferee, assignee or person that assumes rights, liabilities and obligations pursuant to a novation)~~and;~~
 - (B) each Customer and Disclosed Principal Member affected by the Position Transfer Order which is an Indirect Participant (if any); and
 - (C) the Clearing House;
- (h) Where a Transfer Order applies additionally to an Indirect Participant, the liability of any Participant pursuant to the same Transfer Order shall not be affected.

Rule 1203 *Transfer Orders Becoming Irrevocable*

- (a) A Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.

- (b) An AFI-CB Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.
- (c) A CB-AFI Payment Transfer Order shall become irrevocable at the time when the Concentration Bank sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.
- (d) Subject to Rule 1207(c) and Rule 1207(d), an Open Offer Payment Transfer Order shall become irrevocable upon an Approved Financial Institution sending a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be made.
- (e) A Position Transfer Order shall become irrevocable at the time when the definitive record of the long or short position of the Clearing Member (that is the assignee, transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the Trading & Clearing IT to reflect the transfer of Contracts given effect to pursuant to the Position Transfer Order.
- (f) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.

Rule 1204 Variations to Payment Transfer Orders

- (a) This Rule 1204 applies if an Open Offer Payment Transfer Order, Credit/Debit Payment Transfer Order, Insufficient Funds Payment Transfer Order or Position Transfer Order that is not irrevocable relates to a Contract which is:
 - (i) void *ab initio* pursuant to Rule 403;
 - (ii) avoided pursuant to Rule 404; or
 - (iii) amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules,
- (b) Neither the validity nor the irrevocability of any Transfer Order shall be affected by any event described in Rule 1204(a) occurring.
- (c) The terms of all Open Offer Payment Transfer Orders, Credit/Debit Payment Transfer Orders, Insufficient Funds Payment Transfer Orders and Position Transfer Orders that have not become irrevocable shall each include the condition that the relevant Transfer Order does not relate to a Contract described in Rule 1204(a)(i) to (iii). The amount payable or Contracts to be transferred pursuant to any such Transfer Order relating to such a Contract and that has not become irrevocable may at the discretion of the Clearing House be reduced or increased, as necessary, to reflect the payments or transfers, assignments or novations of Contracts that would have been required:
 - (i) in the case of Rule 1204(a)(i) or Rule 1204(a)(ii) applying, had no Contract or Transaction ever arisen or occurred; or

- (ii) in the case of Rule 1204(a)(iii) applying, had the Contract always been subject to such amended terms as are agreed or determined,

(each a "Transfer Order Variation").

- (d) A Transfer Order Variation may be effected only by the Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants.
- (e) This Rule 1204 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof in the event of any of the events described in Rule 1204(a) occurring.

Rule 1205 *Insufficient Funds*

- (a) If an Approved Financial Institution notifies the Clearing House prior to a Credit/Debit Payment Transfer Order becoming irrevocable otherwise than pursuant to this Rule 1205 that there are insufficient funds in the relevant Nominated Account, the Credit/Debit Payment Transfer Order shall nonetheless become irrevocable and shall bind all relevant Participants but only in respect of such amount as that Approved Financial Institution notifies to the Clearing House is available in the relevant Nominated Account (or such other amount, if greater, as is notified by the Approved Financial Institution).
- (b) If a Credit/Debit Payment Transfer Order becomes irrevocable pursuant to this Rule 1205, the affected Clearing Member shall notify (or shall cause the relevant Approved Financial Institution to notify) the Clearing House immediately if any other amount is deposited in the Nominated Account. Upon the Clearing House receiving any such notification, an Insufficient Funds Payment Transfer Order shall arise in respect of such amount or the amount outstanding in respect of the original Credit/Debit Payment Transfer Order, whichever is the smaller amount. Insufficient Funds Payment Transfer Orders shall arise upon any further amounts being received in the Nominated Account and notification being made from time to time until the amount due pursuant to the original Credit/Debit Payment Transfer Order has been paid to the Clearing House in full.
- (c) This Rule 1205 shall not affect the obligation of the Clearing Member to make payment to the Clearing House in respect of the full amount to which the original Credit/Debit Payment Transfer Order related or the validity of any Open Offer Payment Transfer Order or Contract.

Rule 1206 *Cancellation of Transfer Orders*

- (a) All Transfer Orders that have not become irrevocable shall be subject to the condition that they are not affected by manifest or proven error. A Transfer Order that is affected by manifest or proven error and that has not become irrevocable may be cancelled by the Clearing House. Any such cancellation may be effected only by the Clearing House serving a notice of cancellation on all affected Participants.
- (b) This Rule 1206 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof in cases of manifest error.

Rule 1207 Termination of Transfer Orders

- (a) Each Payment Transfer Order shall terminate immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in cleared funds or full satisfaction of the relevant underlying obligations is otherwise made, in either case not subject to any Encumbrances.
- (b) Each Position Transfer Order shall terminate immediately and automatically at the same time that it becomes irrevocable under Rule 1203(e) (whereupon, without prejudice to the foregoing, all Contracts arising in connection with the Position Transfer Order will have arisen pursuant to the Rules).
- (c) If a Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order becomes irrevocable in respect of the same obligation to which an Open Offer Payment Transfer Order relates, the Open Offer Payment Transfer Order shall automatically be terminated and shall not become irrevocable.
- (d) An Open Offer Payment Transfer Order shall terminate immediately and automatically if and at the point that the relevant Transaction is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii).

Rule 1208 Provision of Information by the Clearing House and Clearing Members

- (a) The Clearing House and any Participant must provide, upon payment of a reasonable charge, the following information to any person who requests it, save where the request is frivolous or vexatious, within 14 days of a request being made:
 - (i) details of the Designated System; and
 - (ii) information about the Rules relevant to the functioning of the Designated System.
- (b) The Clearing House will provide a copy of information referred to in Rule 1208 (a) to any Clearing Member upon request.

Rule 1209 Notice to the FSA and Bank of England

- (a) Any notice which under Rule 204(a)(viii) must be copied to the FSA and Bank of England, shall be sent to the following addresses:
- (b) FSA:
Manager, Clearing/Settlement
Markets and Exchanges Division
Financial Services Authority
25 The North Collonade
London E14 5HS
Fax: 020 7676 9735
- (c) Bank of England:

The Senior Manager, Payment Systems Oversight
Financial Resilience Division, HO-3
Bank of England
Threadneedle Street
London EC2R 8AH
Fax: 020 7601 3217

- (d) Any such notice will only be effectively served, filed, made or provided and delivered to the FSA and Bank of England:
 - (i) if sent by post, on the fifth Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope;
 - (ii) if delivered in person to the officer or department specified, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day.
- (e) Any notice by fax shall not be effective until hard copy confirmation is served pursuant to Rule 1209(d).

Document comparison by Workshare Professional on 22 March 2011 13:53:59

Input:	
Document 1 ID	PowerDocs://LNDOCS01/690128/1
Description	LNDOCS01-#690128-v1-ICE_Clear_SFD_amendments_(new_reg_requirements)
Document 2 ID	PowerDocs://LNDOCS01/690128/2
Description	LNDOCS01-#690128-v2-ICE_Clear_SFD_amendments_(new_reg_requirements)
Rendering set	Unsaved rendering set

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	18
Deletions	9
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	27