



Atlanta Calgary Chicago Houston London New York Singapore

17 April 2012

By email to submissions@cftc.gov in pdf format
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Sir or Madam,

ICE Clear Europe Limited – Regulation 40.6 Self-Certification

ICE Clear Europe Limited ("ICE Clear"), a derivatives clearing organization and a private limited company organized under the laws of England and Wales, hereby submits rule amendments pursuant to CFTC Regulation 40.6, effective not before 30 April 2012.

Please find enclosed:

1. A submission cover sheet; and,
2. the text of proposed rule amendments.

The proposed rule amendments relate to certain of the ICE Clear Europe CDS Procedures, Finance Procedures and Rules.

The amendments to the ICE Clear Europe CDS Procedures, Finance Procedures and Rules relate to two CDS operational matters, firstly with respect to the calculation and payment of interest on mark-to-market margin on CDS Contracts, and secondly with respect to the initial payment date of CDS Contracts changing to be the first business day immediately following the Trade Date (as defined in the ICE Clear Europe CDS Procedures) ("T+1"), as opposed to the third business day following the Trade Date.

ICE Clear hereby certifies that the proposed rule amendments comply with the applicable provisions of the Commodity Exchange Act, including the DCO core principles and the Commission's regulations thereunder.

Specifically, the following Core Principles are potentially impacted by these proposed rule amendments: (E) Settlement Procedures: and (L) Public information.

ICE Clear has received no opposing views in relation to the proposed rule amendment.

The proposed rule amendments have been provided to ICE Clear Clearing Members by Circulars C12/039 and C12/040:

https://www.theice.com/publicdocs/clear_europe/circulars/C12039.pdf
https://www.theice.com/publicdocs/clear_europe/circulars/C12039_attach%201.pdf
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https://www.theice.com/publicdocs/clear_europe/circulars/C12040_attach%203.pdf

If you have any further questions, or require any further information, please feel free to call the undersigned at +44 (0)20 7065 7738.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Patrick Davis', written in a cursive style.

Patrick Davis – Head of Legal and Company Secretary

ICE Clear Europe Limited

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Enclosures

The term "**ICE OTC Matched Contract**" means a Contract resulting from an ICE OTC Matched Transaction.

The term "**ICE OTC Matched Transaction**" means a transaction that occurs or occurred on ICE OTC in accordance with applicable ICE OTC Participant Agreements and, where applicable, any ICE OTC Broker Agreement.

The term "**ICE OTC Operator**" means either: (i) ICE Commodity Markets, in connection with any Contract entered into, transaction submitted or other circumstance relating to ICE OTC occurring on or after the ICE OTC Changeover Time; or (ii) ICE Inc., in connection with any Contract entered into, transaction submitted or other circumstance relating to ICE OTC occurring prior to the ICE OTC Changeover Time. For the purposes of this definition, the term "ICE OTC Changeover Time" means the time notified as such by the Clearing House in a Circular, at which ICE Inc. will cease to be the ICE OTC Operator and ICE Commodity Markets will become the new ICE OTC Operator.

The term "**ICE OTC Participant**" means a Clearing Member or Customer that has entered into an ICE OTC Participant Agreement.

The term "**ICE OTC Participant Agreement**" means an agreement between the ICE OTC Operator and an ICE OTC Participant, in the form approved by the ICE OTC Operator from time to time, relating to the ICE OTC Participant's access to ICE OTC.

The term "**ICE OTC Transaction**" means an ICE OTC Matched Transaction or an ICE OTC Block Transaction.

The term "**ISDA**" means the International Swaps and Derivatives Association, Inc. and any successor thereto.

The term "**Initial Margin**" means Portfolio Risk Margin, Physical Settlement Margin or other margin transferred in relation to CDS Contracts, including pursuant to Rule 502(f).

The term "**Initial Payment**" means, in relation to a CDS Contract, the payment, if any, specified as the "Initial Payment Amount" ~~(or, in relation to certain CDS Contracts relating to indices, as the "Additional Amount")~~ under the Contract Terms for such CDS Contract and, in relation to a Bilateral CDS Transaction, the payment, usually described therein as the "Initial Payment Amount" or "Additional Amount", payable by one party thereto to the other ~~or usually not later than~~ the third business day after the trade date of such Bilateral CDS Transaction.

The term "**Insolvency**" means, in relation to any Person: a bankruptcy or winding-up petition being presented; a bankruptcy order being made; a voluntary arrangement being approved; an Insolvency Practitioner being appointed or petition or order being made for such an appointment; a composition or scheme of arrangement being approved by a court or other Governmental Authority; an assignment, compromise or composition being made or approved for the benefit of any creditors or significant creditor; an order being made or resolution being passed for winding up; dissolution; the striking off of that Person's name from a register of companies or other corporate bodies; a distress process being levied or enforced or served upon or against property of that Person; a Governmental Authority making an order pursuant to which any of that Person's securities, property, rights or liabilities are transferred; a Governmental Authority exercising one or more of its

- (B) if (1) a Succession Event Resolution Request Date occurs or (2) a Succession Event Notice is deemed delivered pursuant to paragraph 6.2(f), in either case before June 20, 2009,

the Succession Event Backstop Date with respect to such Reference Entity shall be deemed to be the Effective Date.

(c) **Terms of iTraxx Contracts Governed by Standard iTraxx CDS Supplement**

With respect to each iTraxx Contract for which the iTraxx Confirmation and the Standard iTraxx CDS Supplement forms the Relevant iTraxx Terms Supplement, the following terms will apply:

- (i) The terms of the Standard iTraxx CDS Supplement are hereby amended as follows:
- (A) by the deletion of paragraph 2 thereof in relation to CDS Contracts arising pursuant to Weekly Clearing;
 - (B) by the addition in paragraph 2 thereof, in relation to CDS Contracts arising other than pursuant to Weekly Clearing, of the line entry: "Initial Payment Date: the first Business Day immediately following the Trade Date or, if later, the first Business Day immediately following the issuance of the TD Acceptance Notice by the Clearing House in relation to this Transaction";
 - (C) ~~(B)~~—the provisions of paragraph 7.3(a) thereof relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 7 hereof) by the Clearing House permitted or authorised by the Rules;
 - (D) ~~(C)~~—the provisions of paragraph 7.3(b)(ii) thereof shall be amended by adding at the end, immediately after "(such new Transaction, a **New Trade**)" the following: "and except that the Reference Obligation for the purposes of the New Trade will be the preferred SNEC Contract Reference Obligation for the Restructured Entity in question, as specified by the Clearing House following consultation with the CDS Risk Committee."
 - (E) ~~(D)~~—by adding the following as a new sub-paragraph (c) at the end of Paragraph 7.3 (*Transfer and Termination of Component Transactions*):

"(c) If a Credit Event Announcement is made by the Regional CDS Committee in respect of an Applicable Credit Event, then from and including the calendar day immediately following the date of such Credit Event Announcement, the parties shall take such actions (if any) as shall be necessary to implement the RCE Solution (as defined in the CDS Procedures) published by the Regional CDS Committee in relation to such Credit Event Announcement."; and
 - (F) ~~(E)~~—by the deletion of paragraph 7.7 (*De Minimis Cash Settlement*).
- (ii) The terms of the iTraxx Confirmation are hereby amended as follows:
- (A) Deleting the words "ISDA Master Agreement" in the fourth line of the first paragraph and replacing it with "CDS Master Agreement";
 - (B) Deleting the fourth paragraph thereof and replacing it with the following: "This Confirmation supplements, forms a part of and is subject to the CDS

CDS CLEARING

- (i) by deleting, in the second paragraph, the phrase "as supplemented by each of the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions" and replacing it with the phrase "as supplemented by each of the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)";
 - (ii) by deleting, in the third paragraph, the square brackets and deleting, in the third paragraph, the phrase "the ISDA Master Agreement dated as of [date]" and replacing it with the phrase "CDS Master Agreement";
 - (iii) in part numbered 2:
 - (A) in relation to CDS Contracts arising other than pursuant to Weekly Clearing, by adding, immediately after the line entry "Initial Payment Amount", the line entry: "Initial Payment Date: the first Business Day immediately following the Trade Date or, if later, the first Business Day immediately following the issuance of the TD Acceptance Notice by the Clearing House in relation to this Transaction"; and
 - (B) (iii) in part numbered 2, in relation to CDS Contracts arising pursuant to Weekly Clearing, by deleting references to the Initial Payment Payer and the Initial Payment Amount in relation to CDS Contracts arising pursuant to Weekly Clearing and by deleting the square brackets in such part;
 - (iv) by deleting parts numbered 4, 5, 6 and 7 in their entirety; and
 - (v) by including a new part 4 as follows: "4. Additional Term: Section 2.31 (*Merger of Reference Entity and Seller*) of the Credit Derivatives Definitions shall not apply."
- (c) The provisions specified below of the Standard SNEC Confirmation for each SNEC Contract shall be completed as follows:
- (i) The "Transaction Type" is Standard European Corporate.
 - (ii) The "Matrix Publication Date" is the date of publication of the Relevant Physical Settlement Matrix.
 - (iii) The "Reference Obligation(s)" are the SNEC Contract Reference Obligation(s) specified in the List of Eligible SNEC Reference Entities with respect to the relevant Eligible SNEC Reference Entity.
 - (iv) The "Calculation Agent" is the Clearing House, except as provided in the Rules.
 - (v) The "Fixed Rate Payer Payment Dates" are March 20, June 20, September 20 and December 20.
- (d) For each SNEC Contract, the following terms will be determined according to the particular Bilateral CDS Transaction submitted for clearing, subject to paragraph 12.4 or, with respect to each SNEC Contract arising pursuant to Rule 401(a)(vi), (x) or (xi), according to the data provided by the Clearing House to the Clearing Member prior to the time at which such CDS Contract arose:
- (i) Which of the Eligible SNEC Reference Entities is the "Reference Entity".

is that CDS Clearing Member or one of its Affiliates, while endeavouring, as far as is reasonably practicable in the circumstances without prejudicing the achievement of the primary aim, to avoid materially and adversely affecting the Affected CDS Clearing Member. The Clearing House shall determine the timing and other particular characteristics of each SR Auction in consultation with the CDS Default Committee, including determining the size of the bid/offer spread and/or of the CDS Contracts to be auctioned, whether one or more SR Auctions are to be held and the timing and structure of such auctions (including the frequency at which firm bid and firm offer Quotations will be requested and the transaction size (that is, the Floating Rate Payer Calculation Amount)) and whether CDS Clearing Members (excluding the Affected CDS Clearing Member) will be required (as opposed to requested) to submit actionable quotations in an SR Auction, provided that CDS Clearing Members will not be notified of whether the Open Contract Position to be terminated pursuant to such process is for a CDS Clearing Member as CDS Buyer or CDS Seller.

The Clearing House will enter into CDS Contracts with the CDS Clearing Member(s) and in the amount and at the prices determined pursuant to the SR Auction, at which time the corresponding CDS Contracts of the Affected CDS Clearing Member shall be terminated by reference to the prices at which the Clearing House enters into such new CDS Contracts. The Affected CDS Clearing Member and the other CDS Clearing Members shall submit to Deriv/SERV the terms of such termination or new CDS Contract, as applicable, and the Affected CDS Clearing Member will bear the cost of the associated bid/offer spread and any reasonable, out-of-pocket costs and expenses of the Clearing House in connection with such SR Auction(s) and its entering into such new CDS Contracts. Amounts owed by the Affected CDS Clearing Member to (or receivable by it from) the Clearing House in connection with any such reduction or termination shall be determined by the Clearing House by reference to the SR Auction(s). In addition, any Initial Payments, Margin, or other payments or deliveries owed (including the dates of settlement with respect thereto) relating to the Open Contract Positions increased, created, reduced or terminated pursuant to this paragraph 13.4 shall be as determined by the Clearing House with reference to the SR Auction(s) in accordance with the Procedures and, notwithstanding any other provision of the Rules, Initial Payments may be owed in respect to CDS Contracts entered into by the Clearing House pursuant to an SR Auction.

If an Affected Clearing Member is a Defaulter, this paragraph 13.4 shall not restrict the rights of the Clearing House to close out, terminate or liquidate any Contract in any other manner in accordance with Part 9 of the Rules.

13.5 Terms of the Cleared Sovereign Contract.

- (a) The CDS Region for each Sovereign Contract is the European Region.
- (b) The Standard Sovereign Confirmation for each Sovereign Contract shall be amended as follows:
 - (i) by deleting, in the second paragraph, the phrase "as supplemented by each of the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions" and replacing it with the phrase "as supplemented by each of the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)";
 - (ii) by deleting, in the third paragraph, the square brackets and deleting, in the third paragraph, the phrase "the ISDA Master Agreement dated as of [date]" and replacing it with the phrase "CDS Master Agreement";
 - (iii) in part numbered 2,2:
 - (A) in relation to CDS Contracts arising other than pursuant to Weekly Clearing, by adding, immediately after the line entry "Initial Payment Amount", the line entry: "Initial Payment Date: the first Business Day immediately following the Trade Date or, if later, the first Business Day

immediately following the issuance of the TD Acceptance Notice by the Clearing House in relation to this Transaction"; and

(B) in relation to CDS Contracts arising pursuant to Weekly Clearing, by deleting references to the Initial Payment Payer and the Initial Payment Amount in relation to CDS Contracts arising pursuant to Weekly Clearing and by deleting the square brackets in such part;

- (iv) by deleting parts numbered 4, 5, 6 and 7 in their entirety; and
- (v) by including a new part 4 as follows:

"4. Additional Terms: Section 2.31 (*Merger of Reference Entity and Seller*) of the Credit Derivatives Definitions shall not apply."

(c) The provisions specified below of the Standard Sovereign Confirmation for each Sovereign Contract shall be completed as follows:

- (i) The "Transaction Type" is Standard Western European Sovereign.
- (ii) The "Matrix Publication Date" is the date of publication of the Relevant Physical Settlement Matrix.
- (iii) The "Reference Obligation(s)" are the Sovereign Contract Reference Obligation(s) specified in the List of Eligible Sovereign Reference Entities with respect to the relevant Eligible Sovereign Reference Entity.
- (iv) The "Calculation Agent" is the Clearing House, except as provided in the Rules.
- (v) The "Fixed Rate Payer Payment Dates" are March 20, June 20, September 20 and December 20.

(d) For each Sovereign Contract, the following terms will be determined according to the particular Bilateral CDS Transaction submitted for clearing or, with respect to each Sovereign Contracts arising pursuant to Rule 401(a)(vi), (x) or (xi), according to the data provided by the Clearing House to the Clearing Member prior to the time at which such CDS Contract arose:

- (i) Which of the Eligible Sovereign Reference Entities is the "Reference Entity".
- (ii) Which of the eligible Scheduled Termination Dates specified for the Reference Entity in the List of Eligible Sovereign Reference Entities is the "Scheduled Termination Date".
- (iii) The "Floating Rate Payer Calculation Amount".
- (iv) The "Floating Rate Payer".
- (v) The "Fixed Rate Payer".
- (vi) The "Fixed Rate".
- (vii) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to Weekly Clearing; and
- (viii) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to Weekly Clearing.

granted by it becoming a protected trust deed (where the terms 'trust deed' and 'protected trust deed' are construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985) and, for CDS Clearing Members only, also any event not otherwise falling within this definition constituting a "Bankruptcy" in respect of such CDS Clearing Member as defined in the Master Agreement between the relevant CDS Clearing Member and the Clearing House; or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, change of Control or merger notified to the Clearing House in accordance with Rule 204(a)(i)).

The term "**Insolvency Practitioner**" means a receiver, administrator, bank administrator, manager or administrative receiver, trustee in bankruptcy, relevant office-holder (under the Companies Act 1989) or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

The term "**Intellectual Property**" means copyright, trade marks, design rights, patents, domain names, database rights and know-how, in each case whether registered or unregistered and including applications to register and rights to apply for registration, and all similar or equivalent rights which may subsist anywhere in the world.

The term "**Investment**" means any 'specified investment' as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or any loan, bond, obligation or debenture referenced in a CDS Contract.

The term "**Invoice Back**" means the process by which a Contract of the same Set as an existing Contract is created by the Clearing House pursuant to Rule 104 and Rule 401(a)(vi), with the role of Buying Clearing Member or Selling Clearing Member reversed and, at the Clearing House's discretion, a different price or premium and other terms as are determined by the Clearing House pursuant to Rule 104; and the terms "**Invoiced Back**", "**Invoicing Back**" and other similar expressions shall be construed accordingly.

The term "**LCIA**" means the London Court of International Arbitration or any successor thereto.

The term "**LCIA Rules**" means the arbitration rules of the London Court of International Arbitration.

The term "**Long**", in respect of an Option, refers to the positions of Persons entitled to exercise Options.

The term "**Margin**" means Original Margin, Variation Margin, Initial Margin, Portfolio Risk Margin, Physical Settlement Margin, Mark-to-Market Margin and other margin, security or collateral provided (by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum) to the Clearing House pursuant to the Rules or the Procedures and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Mark-to-Market Margin**" means the Permitted Cover required to be provided by a Clearing Members Member to the Clearing House or by the Clearing House to a Clearing Member related to the market value of a Clearing Member's Open Contract Positions relating to CDS Contracts, as determined pursuant to Rule 503(f)(ii) and the Procedures.

may be divided for administrative convenience only into sub-accounts relating to different Swap Customers or groups of Swap Customers.

The term "**Termination Date**" means the date on which a Clearing Member's membership of the Clearing House terminates.

The term "**Trade Date Clearing**" has the meaning given to it in the Procedures.

The term "**Transaction**" means an ICE Futures Europe Transaction, an ICE OTC Transaction or a Bilateral CDS Transaction.

The term "**Transaction Rights or Obligations**" means any rights, liabilities or obligations of a Clearing Member relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than a Customer of the Clearing Member in relation to the Transaction in question.

The term "**Transferee**" means a Person nominated by a Buyer to whom a transfer or delivery is to be made under an Energy Contract and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

The term "**Transferor**" means a Person nominated by a Seller by whom a transfer or delivery is to be made under an Energy Contract and includes reference to the Seller where transfer or delivery is to be made by the Seller.

The term "**Tribunal**" means an arbitral tribunal established under Rule 117.

The term "**USD**" means the lawful currency from time to time of the United States of America.

The term "**U.S. Future**" means a Future or an Option that is an option on a Future, in either case that is traded on or subject to the rules of a designated contract market under Section 5 of the CEA. For the avoidance of doubt, U.S. Futures will not include Swaps.

The term "**Variation Margin**" means the cash required to be provided (by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum) by a Clearing Member to the Clearing House or by the Clearing Members Member to a Clearing Member in respect of Energy Contracts pursuant to Rule 503(e) and the Procedures.

The term "**Weekly Clearing**" has the meaning given to it in the Procedures.

The term "**Withdrawal Date**" means, if at any time the Clearing House decides to terminate its services, either generally or in relation to a significant part of its business or certain categories of Contract, the date on which that termination will take effect.

Rule 102 *Interpretation*

- (a) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as

and payments will ordinarily be executed in the currency of the relevant Contracts (or underlying Contracts). Liabilities resulting from Original Margin and Initial Margin requirements will be included in the overnight call or return.

Intra-day Calls: Original Margin and Initial Margin may also be subject to *ad hoc* intra-day recalculations and calls. Affected Clearing Members will be informed (not in writing) by the Clearing House in the event of an intra-day call being applicable. If the call affects a significant number of Clearing Members, the Clearing House will issue a Circular. Intra-day Original Margin and Initial Margin calls will be executed via a direct debit from the Clearing Member's Nominated Account at an Approved Financial Institution. Payment must be made within one hour.

Clearing Members can specify the currency in which Original Margin deficits are called. In order to enable this facility Clearing Members will have to complete and return the ICE Clear Europe Margin Deficit Currency Form.

As explained in the Clearing Procedures, in the event that an intra-day Margin call is anticipated, the Clearing House will contact the Clearing Member by phone to notify them of the requirement. This will be followed by written notification distributed by email. Intra-day Margin calls can be made between 09:00 and 19:00 London Time and must be met within 60 minutes of notification by the Clearing House. Clearing Members will be able to answer the call by reducing positions (e.g. reallocation of trades/clearing give-ups), generating profits through trading activities or submitting new cash and/or collateral. Margin calls are not rounded to the nearest major currency unit.

(iii) *Guaranty Fund adjustments*

Each relevant Guaranty Fund Period, the total value of the Guaranty Funds and required Guaranty Fund Contributions of Clearing Members are reviewed and may be amended. Clearing Members will be informed of the total Guaranty Fund Contribution requirements at each Guaranty Fund Period end by Circular. The Clearing House's contributions to the Guaranty Funds (if any) will also be specified in such Circulars. Adjustments to Guaranty Fund Contributions will be notified to individual Clearing Members by e-mail to a nominated e-mail account of each Clearing Member the Business Day after the end of the relevant Guaranty Fund Period. For the Energy Guaranty Fund, adjustments will be made ten Business Days after the date of notification unless the relevant Circular specifies otherwise. For the CDS Guaranty Fund, adjustments will be made two Business Days after the date of notification unless the relevant Circular specifies otherwise. Other than in exceptional circumstances, any additional required Guaranty Fund Contribution payments will be included together with overnight calls and details will be included in daily reports provided to Clearing Members through ECS.

(iv) *Interest*

The Clearing House will notify Clearing Members of its interest rate in each currency on the Business Day following the day to which the rate applies. The Clearing House rates payable on Original Margin or Initial Margin are referred to as the ICE Deposit Rate (IDR). Interest rates payable on Mark-to-Market Margin for CDS Contracts are specified as referred to in the CDS Operational Procedures.

Payments in respect of interest will be made to Clearing Members in respect of cash, assets and securities in the guarantee fund held by the Clearing House as Margin, Guaranty Fund Contributions or Permitted Cover. The rate of return may vary for different cash and asset classes and between types of cover. IDR and accumulated

interest over each month will be available to Clearing Members through the ECS-GUI.

Interest on Mark-to-Market Margin for CDS Contracts will be calculated and payable as set out in the CDS Procedures. Other interest will be calculated on a simple daily basis and will become available for payment to Clearing Members, subject to any required deduction or withholding tax, monthly, on the fourth Business Day after the end of each month. Once credited, the interest is available to meet Margin payments or may be withdrawn by Clearing Members. If used to meet Margin payments, the interest then itself becomes eligible to accrue interest.

(v) *Income (interest and collateral) and Redemption*

The Clearing House will make payment to Clearing Members in respect of income and redemptions on non-cash assets transferred to the Clearing House as Margin, Guaranty Fund Contributions or Permitted Cover. Distributions will be executed direct to the Clearing Member by the relevant custodian pursuant to a standing instruction made by the Clearing House based on account information provided by the Clearing Member. Clearing Members are required to provide account details in relation to accounts in all applicable currencies to the Clearing House. Changes in account details must be notified at least five Business Days in advance.

Payments in respect of income on non-cash assets will be paid to Clearing Members in the same currency as the income is distributed by the relevant issuer or payment agent to the Clearing House. Any required foreign exchange transaction following payment must be arranged by the Clearing Member and the costs of the same must be met by the Clearing Member. No currency exchange will be arranged by the Clearing House or its custodian.

If there is a failed payment in respect of income or redemption (e.g. as a result of account details being unavailable or incorrect), income may be retained by the Clearing House or custodian but will not be treated by the Clearing House as Permitted Cover. The Clearing House makes no representation or warranty to Clearing Members in respect of the promptness of payment by any issuer or payment agent, the custodian or any of its sub-custodians or agents (save for any liability which by law may not be excluded).

(vi) *Fees*

All Market fees, OTC Participant fees, Clearing House fees, delivery fees, rebates and other fees payable to the Clearing House or a Market will be calculated and charged to each Clearing Member as such fees accrue (typically on a monthly basis). Fee invoices will be made available via ECS on the fourth Business Day of each month. Fees will be included in the overnight call or return on the fifth Business Day after the end of each month. All fees are collected through a Clearing Member's Nominated Proprietary Account.

Clearing Members that wish to query a fee invoice should contact the Clearing House Finance department on or before the 10th Business Day of the relevant month. Any required amendments will be reflected in the next billing cycle.

(vii) *Other Amounts*

Any amount payable by the Clearing Member to the Clearing House (or *vice versa*) pursuant to the Rules or any Contract, including CDS Contract coupon payments, may be included within an end-of-day or *ad hoc* payment. This may include

delivery-related payments (e.g. Buyer's Security and Seller's Security), fines, damages, amounts payable as a result of arbitration or disciplinary proceedings and other amounts payable under the Rules. ~~Without prejudice to the Clearing House's ability to introduce other ad hoc procedures within ECS, CDS Contract coupon payments will be made in the manner set out in the CDS Operational Procedures.~~

(viii) *Holidays*

Before the start of each calendar year, the Clearing House will publish a Circular setting out details of bank holidays relevant to the currencies supported by the Clearing House (each, a "**Currency Holiday**"). Transfer of funds in a currency will not take place on a Currency Holiday for that currency.

If, due to a Currency Holiday or otherwise, a transfer of funds of a currency is not possible, the Clearing House may call and obtain Original Margin or Initial Margin payments in another currency. The sequence of alternative currencies to be used for Energy Contracts is as follows: USD, GBP, EUR, CAD, CHF and SEK. The sequence of alternative currencies to be used for CDS Contracts is as follows: EUR, USD and GBP.

Payments of Margin will not be netted against obligations in a currency other than that of the underlying Contract, nor paid in another currency. For Variation Margin and Mark-to-Market Margin, Currency Holidays will result in a delay of payments to the next possible day on which payment may be made. Any obligation to pay Variation Margin or Mark-to-Market Margin where payment is delayed will result in an additional Original Margin or Initial Margin requirement, which must be covered with cash or non-cash collateral (which may be of, or be denominated in, a different currency).

Transactions in collateral on bank holidays will not necessarily be rejected upon instruction but will be cancelled at the end of day and must be re-instructed by Clearing Members on a day which is not a bank holiday.

7. CUSTODY ACCOUNTS

7.1 Pursuant to Rule 502, Original Margin and Initial Margin requirements are payable initially in cash but a Clearing Member may substitute such cash Original Margin or Initial Margin with other Permitted Cover by delivery of the replacement Permitted Cover to the Clearing House. Guaranty Fund Contribution requirements may also be satisfied through non-cash assets to the extent allowed under the Rules and these Procedures.

7.2 Pursuant to Clearing Membership Agreements, the Clearing House receives all non-cash assets provided to it for accounts that are not Pledged Collateral Accounts pursuant to title transfer. For Pledged Collateral Accounts, pursuant to the relevant Pledged Collateral Addendum, the Clearing House is beneficiary of a pledge over such assets. The Clearing House holds all non-cash assets provided to it as Permitted Cover with a third party custodian (which may in turn use sub-custodians). Non-cash assets transferred to the Clearing House by way of title transfer cease to belong to the Clearing Member upon transfer to the Clearing House. The Clearing House will operate up to six custody accounts in respect of each Clearing Member at its custodian in respect of Energy Contracts: a house account (in respect of Proprietary Account margin), up to four client accounts (one in respect of each separate Customer Account) and a Guaranty Fund account. In addition, the Clearing House will operate up to two further custody accounts in respect of each Clearing Member at its custodian in respect of CDS Contracts: a house account and a Guaranty Fund account. Such accounts are labelled by the custodian with the name of the relevant Clearing Member, for administrative convenience only in the case of accounts that are not Pledged Collateral Accounts. Client accounts will not be maintained for Clearing Members undertaking only Proprietary Account business. This structure is

(VIII) CDS PROCEDURES

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CDS CLEARING

- 1.13 The term "**CDS Default Committee**" means a committee established pursuant to paragraph 5.1.
- 1.14 The term "**CDS Default Committee Member**" has the meaning set out in paragraph 5.1.
- 1.15 The term "**CDS Default Committee Participant**" has the meaning set out in paragraph 5.1.
- 1.16 The term "**CDS Default Committee Participant List**" has the meaning set out in paragraph 5.2.
- 1.17 The term "**CDS Master Agreement**" means, in relation to any CDS Contract between a CDS Clearing Member and the Clearing House, the Master Agreement between that CDS Clearing Member and the Clearing House.
- 1.18 The term "**CDS Region**" means a region for which CDS Contracts are cleared by the Clearing House, as determined by the Clearing House.
- 1.19 The term "**CDS Regional Business Day**" means, with respect to a CDS Region, any day determined in accordance with the location and other parameters designated by the Clearing House as a day on which the business of clearing CDS Contracts may occur in the particular CDS Region.
- 1.20 The term "**CDS Risk Committee**" means the committee of that name established by the board of the Clearing House.
- 1.21 The term "**CEN Triggering Period**" means, in relation to any CDS Contracts of a Set in respect of which a Restructuring Credit Event has occurred, the period during which a CDS Buyer or CDS Seller may deliver a Restructuring Credit Event Notice in relation to all or part of such CDS Contract in accordance with the Contract Terms. Such period will start on the earliest of:
- (a) the date and time at which the RMP Matched Table is uploaded to Deriv/SERV (as referred to in paragraph 8.4(e)(vi)); and
 - (b) the day after the RMP Deadline Time,
- and will end on the relevant Exercise Cut-off Date.
- 1.22 The term "**Chairperson**" has the meaning set out in paragraph 6.1(d).
- 1.23 The term "**CM1**" has the meaning set out in paragraph 4.1.
- 1.24 The term "**CM2**" has the meaning set out in paragraph 4.1.
- 1.25 The term "**Committee Member**" has the meaning set out in paragraph 6.1(b).
- 1.26 The term "**Confidential Material**" has the meanings set out in paragraphs 5.8 and 6.12(a)(i).
- 1.27 The term "**Convened DC Voting Member**" has the meaning given to such term in the DC Rules as published by ISDA from time to time.
- 1.28 The term "**Covered Party**" has the meanings set out in paragraphs 5.8 and 6.12(a).
- 1.29 The term "**Customer Integration Date**" means the first date on which the restrictions in the Rules on the Clearing of Bilateral CDS Transactions and CDS Contracts for Customers cease to apply.
- 1.30 The term "**Daily Aggregate MTM Interest Amount**" means, for any CDS Clearing Member for each currency on any day, the sum of the Mark-to-Market Margin Balances in such currency for that day in respect of that CDS Clearing Member. The Daily Aggregate MTM Interest Amount will be determined separately in respect of the CDS Clearing Member's Proprietary Account and any relevant Customer Account. Where the Daily Aggregate MTM Interest Amount is positive, it will be owed by

the Clearing House to the relevant CDS Clearing Member; where it is negative, the relevant CDS Clearing Member will owe the absolute value of the Daily Aggregate MTM Interest Amount to the Clearing House.

- 1.31 ~~1.30~~-The term "**DC Restructuring Announcement Date**" means the date on which the DC Credit Event Announcement of a Restructuring Credit Event is made, provided that where such DC Credit Event Announcement is made after 6.30 p.m. on a Business Day or on a day which is not a Business Day, the DC Restructuring Announcement Date (only) will, for the purposes of the Rules, be the first following Business Day.
- 1.32 ~~1.31~~-The term "**DC Rules**" means the Credit Derivatives Determinations Committees Rules, as defined as the "Rules" in Section 1.22 of the Credit Derivatives Definitions. For the avoidance of doubt, the term "Rules" as defined in the Rules shall not replace, or otherwise affect the interpretation of, the term "Rules" in the Credit Derivatives Definitions.
- 1.33 ~~1.32~~-The term "**Dispute Resolution Panel**" has the meaning set out in paragraph 6.5(a).
- 1.34 ~~1.33~~-The term "**Dispute Resolver**" has the meaning set out in paragraph 6.5(b).
- 1.35 ~~1.34~~-The term "**DTCC**" means The Depository Trust and Clearing Corporation or any successor thereto.
- 1.36 ~~1.35~~-The term "**DTCC Accounts**" means the accounts in Deriv/SERV for the recording of transaction data in relation to CDS Contracts.
- 1.37 ~~1.36~~-The term "**DTCC Failure**" means any circumstances in which DTCC is unable to process all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option relating to a particular Restructuring Credit Event in the DTCC Accounts in a timely manner, where such failure affects all or substantially all CDS Clearing Members or the Clearing House.
- 1.38 ~~1.37~~-The term "**DTCC Reversioning Date**" means the date on which DTCC completes its reversioning process in Deriv/SERV in respect of all Old Index CDS transactions to separate out, from the remainder, the component transaction relating to a Reference Entity in respect of which a Restructuring Credit Event has occurred.
- 1.39 ~~1.38~~-The term "**Effectiveness Convention**" has the meaning set out in paragraph 6.3(g).
- 1.40 ~~1.39~~-The term "**Effectiveness Supermajority**" has the meaning set out in paragraph 6.3(d)(v).
- 1.41 ~~1.40~~-The term "**Electronic Notice**" means an MP Notice which is a Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered pursuant to the Electronic Notice Process.
- 1.42 ~~1.41~~-The term "**Electronic Notice Process**" means the process for the delivery and receipt of Restructuring Credit Event Notices and Notices to Exercise Movement Option pursuant to paragraphs 8.4(f)(i) and 8.4(f)(ii).
- 1.43 ~~1.42~~-The term "**Eligible Employee**" has the meaning set out in paragraph 5.1.
- 1.44 ~~1.43~~-The term "**Exhibits**" has the meaning set out in paragraph 6.8(o)(ii).
- 1.45 ~~1.44~~-The term "**Existing Supplements**" has the meaning set out in paragraph 10.1(c).
- 1.46 ~~1.45~~-The term "**External RMP**" means all Matched Pairs matched and notified by the Clearing House pursuant to Rule 1508 other than Internal RMPs.
- 1.47 ~~1.46~~-The term "**Fitch**" has the meaning set out in paragraph 2.2(b).

- 1.48 ~~1.47~~-The term "**Fungibility Date**" has the meaning set out in paragraph 11.5(a).
- 1.49 ~~1.48~~-The term "**Internal RMP**" means a Matched Pair matched and notified by the Clearing House pursuant to Rule 1508 in which the same CDS Clearing Member is matched with itself, as a result of one CDS Sub-Account of a CDS Clearing Member being matched with another CDS Sub-Account of the same CDS Clearing Member.
- 1.50 ~~1.49~~-The term "**Issue**" has the meaning set out in paragraph 6.7(a).
- 1.51 The term "**Mark-to-Market Interest**" means interest calculated daily in accordance with the market convention for the relevant currency by applying the applicable overnight rate referred to in paragraph 3.1 to the Mark-to-Market Margin Balance for the relevant period.
- 1.52 The term "**Mark-to-Market Margin Balance**", in respect of CDS Contract(s) on any day, means the sum of all Mark-to-Market Margin delivered up to but excluding that day by the relevant CDS Clearing Member in respect of such CDS Contract(s) to the Clearing House less all Mark-to-Market Margin delivered up to but excluding that day by the Clearing House in respect of such CDS Contract(s) to such CDS Clearing Member, as determined at the close of business on such day.
- 1.53 ~~1.50~~-The term "**Mandatory Voting Member**" has the meaning set out in paragraph 6.4(a).
- 1.54 ~~1.51~~-The term "**Manual CDS Clearing Member**" has the meaning set out in paragraph 8.4.
- 1.55 ~~1.52~~-The term "**Manual MP Notice**" means an MP Notice delivered pursuant to the Manual Notice Process.
- 1.56 ~~1.53~~-The term "**Manual Notice Process**" means the process for the delivery, receipt and copying to the Clearing House of notices pursuant to paragraph 8.4(g).
- 1.57 ~~1.54~~-The term "**MCA/STS Changeover Time**" means midnight on 29 November 2010.
- 1.58 ~~1.55~~-The term "**Moody's**" has the meaning set out in paragraph 2.2(b).
- 1.59 ~~1.56~~-The term "**NEMO Triggering Period**" means, in relation to any CDS Contracts of a Set in respect of which a Restructuring Credit Event has occurred and for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, the period starting as follows:
- (a) where, in relation to the related CEN Triggering Period, a Restructuring Credit Event Notice was given pursuant to the Manual Notice Process at a time before the "Notify" function to be provided by Deriv/SERV has been made generally available to CDS Clearing Members, at 9 a.m. on the day falling one Business Day prior to the relevant Movement Option Cut-off Date for the Set of CDS Contracts; and
 - (b) otherwise at 9 a.m. on the Business Day immediately following the end of the related CEN Triggering Period,
- and ending on the Movement Option Cut-off Date.
- 1.60 ~~1.57~~-The term "**New Trade**" has the meaning set out in paragraph 11.3(c)(i)(L).
- 1.61 ~~1.58~~-The term "**Notification Cut-Off Time**" means
- (a) (i) with respect to delivery of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, 5:00 p.m. on the Exercise Cut-off Date;

- (ii) with respect to raising a dispute in respect of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, the later of: (A) one hour after the Clearing House notifies the Clearing Members of the Restructuring Credit Event Notices they have served or had served on them; or (B) 7:00 p.m. on the Exercise Cut-off Date;
- (b) (i) with respect to delivery of a Notice to Exercise Movement Option, 5:00 p.m. on the Movement Option Cut-off Date;
- (ii) with respect to raising a dispute in respect of a Notice to Exercise Movement Option, the later of: (A) one hour after the Clearing House notifies the Clearing Members of the Notices to Exercise Movement Option they have served or had served on them; or (B) 7:00 p.m. on the Movement Option Cut-off Date; and
- (c) with respect to delivery of a Notice of Physical Settlement or a NOPS Amendment Notice in relation to a Set of CDS Contracts, 4:30 p.m. on the second Business Day after the last date on which a Notice of Physical Settlement or a NOPS Amendment Notice, as applicable, may be served in respect of the Credit Event in question, pursuant to Section 3.2(c) of the Credit Derivatives Definitions.

1.62 ~~1.59~~-The term "**Old Index CDS**" means a CDS transaction based on an index where an applicable Credit Event has occurred in relation to a component transaction.

1.63 ~~1.60~~-The term "**Oral Argument**" has the meaning set out in paragraph 6.8(q).

1.64 ~~1.61~~-The term "**Original Notional Amount**", in relation to any CDS Contract, has the meaning given to that term in the Contract Terms.

1.65 ~~1.62~~-The term "**Panel Member**" has the meaning set out in paragraph 6.5(b).

1.66 ~~1.63~~-The term "**Permissible Deliverable Obligation**" means a Deliverable Obligation that satisfies Section 2.32(a) or 2.33(a) of the Credit Derivatives Definitions, if applicable.

1.67 ~~1.64~~-The terms "**Presented Position**" and "**Presented Positions**" have the meaning set out in paragraph 6.8(b).

1.68 ~~1.65~~-The term "**Primary Panel Member**" has the meaning set out in paragraph 6.6(b)(i).

1.69 ~~1.66~~-The term "**Provider**" has the meaning set out in paragraph 6.12(b).

1.70 ~~1.67~~-The term "**Quorum Majority**" has the meaning set out in paragraph 6.3(d)(i).

1.71 ~~1.68~~-The term "**Quorum Stage 2 Supermajority**" has the meaning set out in paragraph 6.3(d)(iii).

1.72 ~~1.69~~-The term "**Quorum Supermajority**" has the meaning set out in paragraph 6.3(d)(ii).

1.73 ~~1.70~~-The term "**Regional CDS Clearing Member**" means a CDS Clearing Member that is party to CDS Contracts relevant to a CDS Region.

1.74 ~~1.71~~-The term "**Regional CDS Committee**" has the meaning set out in paragraph 6.1(a).

1.75 ~~1.72~~-The term "**Regional CDS Committee Credit Event Announcement**" means with respect to a Reference Entity, an announcement by the Clearing House in a Circular that the relevant Regional CDS Committee has determined that an event that constitutes a Credit Event with respect to a CDS Contract and a Reference Entity (or an Obligation thereof) has occurred in accordance with paragraph 6.2(a)(iii) and has made the other determinations envisaged by that paragraph.

1.76 ~~1.73~~-The term "**Reimbursement Amount**" has the meaning set out in paragraph 6.8(l).

- 1.77 ~~1.74~~-The term "**Relevant CDS Default Committee Period**" has the meaning set out in paragraph 5.3.
- 1.78 ~~1.75~~-The term "**Relevant Period**" has the meaning set out in paragraph 6.6(b)(iii).
- 1.79 ~~1.76~~-The terms "**Resolve**", "**Resolved**" and "**Resolves**" have the meaning set out in paragraph 6.10(a) provided that in relation to a resolution of the Credit Derivatives Determinations Committee, such terms shall have the meaning given to them in the Credit Derivatives Definitions.
- 1.80 ~~1.77~~-The term "**Restructuring Matched Pair**" or "**RMP**" means a Matched Pair created pursuant to Rule 1508 in respect of a Restructuring Credit Event.
- 1.81 ~~1.78~~-The term "**Revocation Right**" will apply in respect of the submission of a Bilateral CDS Transaction for Clearing (a) if one of the Clearing Members for whose account the submission for Clearing is made is a Defaulter or (b) if and to the extent that either CDS Contract which would arise on Clearing would have been void under Rule 403 (if Rule 403 applied to CDS Contracts in addition to Energy Contracts) or capable of being treated as voidable under Rule 404(a) (if Rule 404(a) applied to CDS Contracts in addition to Energy Contracts and the latter being read for purposes of this definition as if the words "in relation only to Energy Contracts," were not set out in any part of Rule 404(a) and "Energy Clearing Members" were read as "CDS Clearing Members") or Rule 404(b).
- 1.82 ~~1.79~~-The term "**RMP Deadline Time**" means:
- (a) subject to (b) and (c) below, 11.59 p.m. on the latest of:
 - (i) the fourth Business Day following the DC Restructuring Announcement Date;
 - (ii) the third Business Day following the DTCC Reversioning Date, if any; and
 - (iii) the date of publication by ISDA of the Final List.
 - (b) subject to (c) below, if a Regional CDS Committee Credit Event Announcement has occurred, 11.59 p.m. on the ninth calendar day following the date of the actual decision by the relevant Regional CDS Committee to Resolve that a Restructuring Credit Event has occurred for which there is Publicly Available Information, as described in paragraph 6.2(a)(iii);
 - (c) either:
 - (i) with respect to a Set of CDS Contracts for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a No Auction Announcement Date has been announced pursuant to section 12.12(a) of the Credit Derivatives Definitions, the later of:
 - (A) 11.59 p.m. on the ninth calendar day following the No Auction Announcement Date; and
 - (B) the third Business Day following the DTCC Reversioning Date, if any; or
 - (ii) with respect to a Set of CDS Contracts for which neither "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" nor "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a No Auction Announcement Date has been announced pursuant to section 12.12 of the Credit Derivatives Definitions, the later of:
 - (A) 11.59 p.m. on the ninth calendar day following the No Auction Announcement Date; and

(B) the third Business Day following the DTCC Reversioning Date, if any.

- 1.83 ~~1.80~~-The term "**RMP Matched Table**" means the data file, in computer-readable format, containing details of all RMPs, Matched Pairs and MP Amounts and the CDS Contracts and CDS Clearing Members to which they relate and reflecting the RMP Matching Reports, all in relation to the allocation of Matched Pairs pursuant to Rule 1508 following a Restructuring Credit Event.
- 1.84 ~~1.81~~-The term "**RMP Matching Report**" means the report given by the Clearing House, as referred to in paragraph 8.4(e), to each CDS Clearing Member identifying the RMPs and allocations of Matched Pairs and the associated MP Amounts affecting the Open Contract Position of that CDS Clearing Member, which report comprises Matched Pair Notices for purposes of Rule 1508 in respect of each Matched Pair.
- 1.85 ~~1.82~~-The term "**S&P**" has the meaning set out in paragraph 2.2(b).
- 1.86 ~~1.83~~-The term "**Single Name Contract**" means a SNEC Contract or a Sovereign Contract, as the case may be.
- 1.87 ~~1.84~~-The term "**SNEC Contract**" has the meaning set out in paragraph 12.2(g).
- 1.88 ~~1.85~~-The term "**Sovereign Contract**" has the meaning set out in paragraph 13.2(g).
- 1.89 ~~1.86~~-The term "**Standard Quorum Number**" has the meaning set out in paragraph 6.3(b).
- 1.90 ~~1.87~~-The term "**Submission Deadline**" has the meaning set out in paragraph 6.8(j)(iii).
- 1.91 ~~1.88~~-The term "**Tax**" has the same meaning as that given to the term in the relevant Master Agreement.
- 1.92 ~~1.89~~-The term "**TD Acceptance Notice**" has the meaning set out in paragraph 4.4(a).
- 1.93 ~~1.90~~-The term "**Tier 1**" has the meaning given to that term in Banking Consolidation Directive.
- 1.94 ~~1.91~~-The term "**Trade Date Clearing**" means the submission of a Bilateral CDS Transaction on the date on which it is entered into (the "**Bilateral CDS Transaction Trade Date**"), provided that is a Business Day, or on the immediately following Business Day for Clearing on the day of submission.
- 1.95 ~~1.92~~-The term "**Trade Processing Platform**" means a person that has satisfied the Clearing House's requirements to act as an agent of one or more CDS Clearing Members in the submission of Bilateral CDS Transactions for Trade Date Clearing, including having entered into an agreement with the Clearing House to act as an "Approved CDS Trade Processing Platform" in relation to such submissions and, in relation to any CDS Clearing Member for which (and, as the case may be, for whose Affiliate) it acts as agent, has obtained that CDS Clearing Member's authorisation in writing to submit Bilateral CDS Transactions for Trade Date Clearing as agent for that CDS Clearing Member and accordingly, such a Trade Processing Platform will be a Representative of such CDS Clearing Member for that purpose until the expiry of not less than one Business Days' written notice to the Clearing House given by such CDS Clearing Member that such Trade Processing Platform is no longer, or is not, authorised to act as its agent and/or Representative. Where an Affiliate of a CDS Clearing Member may submit Bilateral CDS Transactions for the account of that CDS Clearing Member as referred to in paragraph 4.6, any person which, as a Trade Processing Platform, is a Representative of such CDS Clearing Member shall be deemed to be additionally a Representative of such Affiliate for these purposes.
- 1.96 ~~1.93~~-The term "**Triggering Period**" means the CEN Triggering Period or NEMO Triggering Period, as applicable.
- 1.97 ~~1.94~~-The term "**Weekly Acceptance Notice**" has the meaning set out in paragraph 4.4(b).

- 1.98 ~~1.95~~ The term "**Written Materials**" has the meaning set out in paragraph 6.8(o).
- 1.99 ~~1.96~~ The term "**Weekly Clearing**" means the submission of a Bilateral CDS Transaction for Clearing other than pursuant to Trade Date Clearing.
- 1.100 ~~1.97~~ Capitalised terms used in these Procedures but not defined in this paragraph ~~01~~ shall have the meaning given to such terms in the Rules, the relevant CDS Contract (including Credit Derivatives Definitions and the Master Agreement as amended) or elsewhere in these Procedures (in that order of priority in the event of any conflict).

2. **ADDITIONAL MEMBERSHIP REQUIREMENTS FOR CDS CLEARING MEMBERS**

- 2.1 Rule 201(i) provides that CDS Clearing Members must meet such additional requirements applicable to CDS Clearing Members as are specified in the Procedures.
- 2.2 The following additional requirements are specified for the purposes of Rule 201(i):
- (a) It has a minimum of \$5 billion of Tier 1 Capital; provided that this requirement may, at the discretion of the Clearing House, be met by a Controller if such Controller provides a guarantee in accordance with the Finance Procedures.
 - (b) At the time of admission, it has a minimum long-term senior unsecured debt rating of at least the following from each of the following rating agencies (or any successor to the rating business thereof) that provides such a rating (with a minimum of one such rating): (A) "A2" from Moody's Investors Service ("**Moody's**"), (B) "A" from Standard & Poor's Ratings Services ("**S&P**"), a division of The McGraw-Hill Companies, Inc., (C) "A" from Fitch Ratings ("**Fitch**") or (D) the equivalent rating from any other rating agency that the Clearing House designates from time to time for this purpose; provided that, if such applicant does not have such a rating from any of the foregoing rating agencies, it demonstrates to the Clearing House that it otherwise satisfies, in the discretion of the Clearing House, stringent credit criteria, such satisfaction to be confirmed by an examination of its books and records; provided further that this requirement may, at the discretion of the Clearing House, be met by a Controller of the Clearing Member if such Controller provides a guarantee in accordance with the Finance Procedures; and provided further that this condition may be waived by the Clearing House at the recommendation of the CDS Risk Committee;
 - (c) At no time after admission, does it (or, if applicable under paragraph 2.2(b), the relevant Controller) have a long-term senior unsecured debt rating below the following from any of the following rating agencies (or any successor to the rating business thereof) or, at the discretion of the Clearing House, does any such rating agency suspend or withdraw such rating: (A) "Baa2" from Moody's, (B) "BBB" from S&P, (C) "BBB" from Fitch or (D) the equivalent rating from any other rating agency the Clearing House designates from time to time for this purpose (or, if the first proviso of paragraph 2.2(b) applies, it (or, if applicable under paragraph 2.2(b), the relevant Controller) ceases to satisfy objective criteria established by the Clearing House at its discretion);
 - (d) It demonstrates operational competence in CDS contracts substantially similar (as determined by the Clearing House) to CDS Contracts;
 - (e) It is a member of industry organisations related to CDS, as designated by the Clearing House from time to time for this purpose, which as at the date of launch of CDS Clearing by the Clearing House are ISDA and Deriv/SERV;
 - (f) It has executed a Master Agreement with the Clearing House substantially in the form specified by the Clearing House from time to time, only with such modifications as are acceptable to the Clearing House at its discretion;

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- (g) If it is incorporated or registered in the United States of America, it is an eligible contract participant, as defined in Section 1a(12) of the Commodity Exchange Act (other than paragraph (C) thereof);
 - (h) It has executed an agreement concerning Intellectual Property (as referred to in Rule 406(d)) in a form acceptable to the Clearing House;
 - (i) If any Bilateral CDS Transactions are registered at Deriv/SERV in the name of an Affiliate of the Clearing Member, it has provided an executed authority, in a form acceptable to the Clearing House, from the relevant Affiliate, pursuant to which the Clearing House is authorised to issue a termination notice to Deriv/SERV in respect of Bilateral CDS Transactions to which the Affiliate is party;
 - (j) It is a member of, or has access to, at least one physical settlement system that is customary for the settlement of all potentially applicable Deliverable Obligations under all CDS Contracts of all Sets which it is authorised to enter into, where such a physical settlement system exists; and
 - (k) If it is not incorporated in England and Wales, it has appointed a service of process agent pursuant to Rule 113(e).
- 2.3 If a Controller Guarantee has been provided, the Clearing Member to which the Controller Guarantee relates shall procure that the Controller:
- (a) at all times complies with the requirements of Rules 202(a)(iii), 202(a)(v), 202(a)(vi), 202(a)(x) and 202(a)(xiii) as if the Controller were a Clearing Member, *mutatis mutandis*;
 - (b) would not breach any of the requirements of Rule 203, were the Controller to be a Clearing Member subject to the requirements of Rules 203, *mutatis mutandis*; and
 - (c) makes all notifications that would be required under Rule 204 if the Controller were a Clearing Member, *mutatis mutandis*.
- 2.4 A CDS Clearing Member shall notify the Clearing House if any relevant rating falls below that specified in paragraph 2.2(b) or (c).
- 2.5 Clearing Members shall notify the Clearing House from time to time in accordance with the Procedures of details of an account at DTCC to which any cash settlement in respect of CDS Contracts are to be made.

3. CERTAIN PROVISIONS RELATING TO MARGIN AND OTHER PROCEDURES

- 3.1 Mark-to-Market Interest will be calculated daily, including in respect of weekends and currency holidays, based upon the applicable overnight rate notified by the Clearing House from time to time to CDS Clearing Members for each of the currencies in which Mark-to-Market Margin is paid.
- 3.2 Mark-to-Market Interest will be calculated by the Clearing House in respect of Mark-to-Market Margin Balance relating to CDS Contracts as recorded by the Clearing House (on a 'trade by trade', 'gross' or 'net' basis) as referred to in Rule 406(d).
- 3.3 The Daily Aggregate MTM Interest Amount, if any, in any currency will be payable by the Clearing House (if positive) or the Clearing Member (as to the absolute value thereof if negative), as the case may be, in accordance with Part 3 of the Rules and the Finance Procedures.
- 3.4 3.1–The Finance Procedures, Membership Procedures, Business Continuity Procedures, Complaints Procedures and CDS Operational Procedures also apply in relation to CDS Contracts and to CDS Clearing Members.

(b) Terms of the Cleared iTraxx Contract

- (i) Any capitalised term used in paragraph 11.2 but not defined in paragraph 11.2 or elsewhere in the Rules or Procedures shall have the meaning provided in the Relevant iTraxx Terms Supplement.
- (ii) For purposes of these CDS Procedures, the CDS Region for each iTraxx Contract is the European Region.
- (iii) Each iTraxx Contract will be governed by the Relevant iTraxx Terms Supplement, as modified by this paragraph 11.2, whether or not the relevant Bilateral CDS Transaction was in a form comprising the Relevant iTraxx Terms Supplement. In the event of any inconsistency between the Relevant iTraxx Terms Supplement or the Confirmation (including in electronic form) for an iTraxx Contract and this paragraph 11.2, this paragraph 11.2 will govern.
- (iv) For the purposes of any determination as to whether a Credit Event has occurred in respect of a Reference Entity or an Obligation thereof:
 - (A) at any time up to but excluding June 20, 2009; or
 - (B) if (1) a Credit Event Resolution Request Date occurs or (2) a Credit Event Notice and a Notice of Publicly Available Information are deemed delivered pursuant to paragraph 6.2(f) by a Notifying Party, in either case before June 20, 2009,

the Credit Event Backstop Date with respect to such determination shall be deemed to be the Effective Date.
- (v) For the purposes of any determination as to whether a Succession Event has occurred in respect of a Reference Entity:
 - (A) at any time up to but excluding June 20, 2009; or
 - (B) if (1) a Succession Event Resolution Request Date occurs or (2) a Succession Event Notice is deemed delivered pursuant to paragraph 6.2(f), in either case before June 20, 2009,

the Succession Event Backstop Date with respect to such Reference Entity shall be deemed to be the Effective Date.

(c) Terms of iTraxx Contracts Governed by Standard iTraxx CDS Supplement

With respect to each iTraxx Contract for which the iTraxx Confirmation and the Standard iTraxx CDS Supplement forms the Relevant iTraxx Terms Supplement, the following terms will apply:

- (i) The terms of the Standard iTraxx CDS Supplement are hereby amended as follows:
 - (A) by the deletion of paragraph 2 thereof in relation to CDS Contracts arising pursuant to Weekly Clearing;
 - (B) the provisions of paragraph 7.3(a) thereof relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 7 hereof) by the Clearing House permitted or authorised by the Rules;

Member) will be required (as opposed to requested) to submit actionable quotations in an SR Auction, provided that CDS Clearing Members will not be notified of whether the CDS Contract(s) to be terminated pursuant to such process is for a CDS Clearing Member as CDS Buyer or CDS Seller.

The Clearing House will enter into CDS Contracts with the CDS Clearing Member(s) and in the amount and at the prices determined pursuant to the SR Auction, at which time the corresponding CDS Contracts of the Affected CDS Clearing Member shall be terminated by reference to the prices at which the Clearing House enters into such new CDS Contracts. The Affected CDS Clearing Member, the Clearing House, and the other CDS Clearing Members shall submit to Deriv/SERV the terms of such reduction, termination or new CDS Contract, as applicable and the Affected CDS Clearing Member will bear the cost of the associated bid/offer spread and any reasonable, out-of-pocket costs and expenses of the Clearing House in connection with such SR Auction(s) and its entering into such new CDS Contracts. Amounts owed by the Affected CDS Clearing Member to (or receivable by it from) the Clearing House in connection with any such reduction or termination shall be determined by the Clearing House by reference to the SR Auction(s). In addition, any Initial Payments, Margin, or other payments or deliveries owed (including the dates of settlement with respect thereto) relating to the Open Contract Positions increased, created, reduced or terminated pursuant to this paragraph 12.4 shall be as determined by the Clearing House with reference to the SR Auction(s) in accordance with the Procedures and, notwithstanding any other provision of the Rules, Initial Payments may be owed in respect to CDS Contracts entered into by the Clearing House pursuant to an SR Auction.

If an Affected Clearing Member is a Defaulter, this paragraph 12.4 shall not restrict the rights of the Clearing House to close out, terminate or liquidate any Contract in any other manner in accordance with Part 9 of the Rules.

12.5 Terms of the Cleared SNEC Contract.

- (a) The CDS Region for each SNEC Contract is the European Region.
- (b) The Standard SNEC Confirmation for each SNEC Contract shall be amended as follows:
 - (i) by deleting, in the second paragraph, the phrase "as supplemented by each of the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions" and replacing it with the phrase "as supplemented by each of the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)";
 - (ii) by deleting, in the third paragraph, the square brackets and deleting, in the third paragraph, the phrase "the ISDA Master Agreement dated as of [date]" and replacing it with the phrase "CDS Master Agreement";
 - (iii) in part numbered 2, by deleting references to the Initial Payment Payer and the Initial Payment Amount in relation to CDS Contracts arising pursuant to Weekly Clearing, and by deleting the square brackets in such part;
 - (iv) by deleting parts numbered 4, 5, 6 and 7 in their entirety; and
 - (v) by including a new part 4 as follows: "4. Additional Term: Section 2.31 (*Merger of Reference Entity and Seller*) of the Credit Derivatives Definitions shall not apply."
- (c) The provisions specified below of the Standard SNEC Confirmation for each SNEC Contract shall be completed as follows:
 - (i) The "Transaction Type" is Standard European Corporate.