



Atlanta Calgary Chicago Houston London New York Singapore

8 May 2012

By email to [submissions@cftc.gov](mailto: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 on 23 May 2012.

Please find enclosed:

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

The proposed rule amendments confirm to CDS Clearing Members details in relation to minimum capital requirements of CDS Clearing Members.

The amendment confirms ICE Clear Europe's compliance with its obligation as a Derivatives Clearing organisation under CFTC Rule 39.12(a)(2)(iii).

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: (C) Participant and Product Eligibility; and, (L) Public information.

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

The proposed rule amendment has been provided to ICE Clear Clearing Members by Circular C12/042: [https://www.theice.com/publicdocs/clear\\_europe/circulars/C12051.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C12051.pdf); and, [https://www.theice.com/publicdocs/clear\\_europe/circulars/C12051%20attach.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C12051%20attach.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

**Patrick Davis – Head of Legal and Company Secretary**  
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Enclosures

## 1. ADDITIONAL DEFINITIONS

- 1.1 The term "**Excess Net Capital**" (i) in respect of a CDS Clearing Member or applicant that is or would become an FCM Clearing Member shall equal its "excess net capital" as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12 or (ii) in respect of any other CDS Clearing Member or applicant that is or would become a US CDS Clearing Member, the amount, if any, by which its Capital (determined as set forth in paragraph 2.2(b)(i)) exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to the Clearing House.
- 1.2 The term "US CDS Clearing Member" means a CDS Clearing Member or applicant that would become a CDS Clearing Member that is (i) an FCM or (ii) any other Person organised or incorporated under the laws of the United States of America or a state thereof.

## 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) If it is not or would not be a ~~US CDS~~ FCM Clearing Member:
- (i) it must have 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;
  - (ii) at the time of admission, it must have 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; and
  - (iii) after the time of admission, it (or, if applicable, under paragraph 2.2(a)(ii), the relevant Controller) must not 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) (provided that any such requirement, at the discretion of the Clearing House, may be treated as not being met if any such rating agency suspends or withdraws a 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(a)(ii) applies, the CDS Clearing Member (or, if applicable under paragraph 2.2(a)(ii), the relevant Controller) ceases to satisfy objective criteria established by the Clearing House at its discretion).

- (b) If it is or would be an ~~FCM-US CDS~~ Clearing Member:
- (i) it must have a minimum of \$50 million of 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. For purposes of the application of this clause to a US CDS Clearing Member that is not an FCM, Capital shall be its net capital as determined pursuant to a risk adjusted capital calculation methodology acceptable to the Clearing House;
  - (ii) it must, at the time of admission, demonstrate to the Clearing House that it satisfies, in the discretion of the Clearing House, the internal stringent credit criteria established by the Clearing House, 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~~
  - (iii) after the time of admission, it (or, if applicable, under paragraph 2.2(b)(ii), its relevant Controller(s)) must not cease to satisfy the internal credit criteria established by the Clearing House pursuant to paragraph 2.2(b)(ii); and
  - ~~(iii)~~(iv) it is regulated for capital adequacy (the "Regulatory Capital Requirement") by a competent authority such as the FSA, CFTC, SEC, Banque de France, Bundesbank, Bundesanstalt für Finanzdienstleistungsaufsicht, Swiss Federal Banking Commission, U.S. Federal Reserve Board, U.S. Office of the Comptroller of the Currency, or any other Regulatory Authority the Clearing House designates from time to time for this purpose, or it is an Affiliate of an entity that satisfies the Regulatory Capital Requirement and is subject to consolidated holding company group supervision.
- (c) It demonstrates operational competence in CDS contracts substantially similar (as determined by the Clearing House) to CDS Contracts;
- (d) 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;
- (e) 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;
- (f) If it is incorporated or registered in the United States of America, it is an eligible contract participant, as defined in Section 1a of the Commodity Exchange Act;
- (g) It has executed an agreement concerning Intellectual Property (as referred to in Rule 406(d)) in a form acceptable to the Clearing House;
- (h) 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;
- (i) 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

- (j) 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(a) or 2.2(b).

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.

2.6 In the case of a ~~US CDS~~ ~~FCM~~ Clearing Member, if at any time and for so long as it has a required contribution to the CDS Guaranty Fund that exceeds 25% of its Excess Net Capital, the Clearing House may (in addition to imposing any other applicable restrictions under Part 2 of the Rules or otherwise under the Rules or Procedures) require such ~~FCM-US CDS~~ Clearing Member to provide additional Margin under Rule 502(g) and/or prepay and maintain with the Clearing House an additional contribution (the "Prepaid Contribution") to the CDS Guaranty Fund equal to the maximum CDS Assessment Contribution under Rule 1106 that would be applicable to it at such time if it were terminating its membership of the Clearing House following an Event of Default or Events of Default where CDS Guaranty Fund Contributions have been applied. Payment of the Prepaid Contribution shall not limit such ~~FCM-US CDS~~ Clearing Member's obligations to make additional contributions to the CDS Guaranty Fund as otherwise required by the Rules, provided that if such a ~~US CDS~~ ~~FCM~~ Clearing Member terminates its membership of the Clearing House it may apply the Prepaid Contribution to its obligation to make CDS Assessment Contributions up to its maximum contribution under Rule 1106. Notwithstanding anything to the contrary herein, except in the case of an Event of Default with respect to such a ~~US CDS~~ ~~FCM~~ Clearing Member, the Prepaid Contribution will not be deemed to be part of the CDS Guaranty Fund for purposes of the application of funds therefrom until such time as it is applied to the ~~FCM-US CDS~~ Clearing Member's obligations to make additional contributions to the CDS Guaranty Fund as provided in the preceding sentence.

2.7 For purposes of Rule 205(a)(iii), a US CDS Clearing Member that is not an FCM Clearing Member shall provide to the Clearing House a copy of such forms as the Clearing House may determine to be necessary on a comparable schedule to that which an FCM Clearing Member would be required to follow in filing such forms with its Regulatory Authorities.