

ICE

Market Operations, Clearing, Settlement, Compliance, Risk and Services

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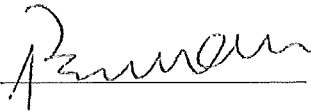
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OFFICE OF THE  
SECRETARIAT

**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 Commodity Futures Trading Commission, hereby certifies that the "Proposed Changes to the Clearing Rules" adopted on 5 May 2011 and effective on 31 May 2011, comply with the Commodity Exchange Act and the regulations thereunder.

In witness whereof, the undersigned has signed this Certification as of the 27<sup>th</sup> day of May 2011.

By: 

Name: Patrick Davis

Title: Company Secretary



ICE Clear Europe<sup>sm</sup>  
Clearing Rules

14 APRIL 2011

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## Part 1 General Provisions

### Rule 101 *Definitions*

The term "**Accounting Standards**" means applicable accounting standards and principles.

The term "**Affected FM Party**" means a Person prevented, hindered or delayed by a Force Majeure Event.

The term "**Affiliated Person**" or "**Affiliate**" means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person.

The term "**Appeals Panel**" means the panel at which an appeal of a decision of a Disciplinary Panel is heard pursuant to Rule 1005.

The term "**Applicable Law**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession, judgment or decision of a Governmental Authority and, for the avoidance of doubt, includes all the provisions of the FSA Rules.

The term "**Approved Financial Institution**" means a credit institution, bank, trust company or other institution which is an "institution" as defined in the Settlement Finality Regulations and which has been designated as an approved financial institution by the Clearing House.

The term "**Assessment Contribution**" means an Energy Assessment Contribution or a CDS Assessment Contribution.

The term "**Banking Consolidation Directive**" means Directive 2006/48/EC.

The term "**Bilateral CDS Transaction**" means: (i) a CDS transaction between two CDS Clearing Members or (ii) a CDS transaction between a CDS Clearing Member and an Affiliate of a different CDS Clearing Member or (iii) a CDS transaction between an Affiliate of a CDS Clearing Member and an Affiliate of a different CDS Clearing Member, (to which in either case, for the avoidance of doubt, the Clearing House is not a party).

The term "**Board**" means the board of Directors or any other body established thereunder (whether called a board, a committee or otherwise) of the Clearing House.

The term "**Business Day**" means a day on which the Clearing House is open for business or, in relation to deliveries, has the meaning given in the Procedures or, in relation to certain Contract Terms, has the meaning given in the Procedures or ICE Futures Europe Rules.

The term "**Buyer**" means, in relation to deliveries under Part 7, the Clearing Member or the Clearing House, whichever is obliged to receive delivery of a Commodity (whether itself or through another Person).

The term "**Buying Clearing Member**" means: (a) the Clearing Member that was, before formation of a Contract, party to the corresponding Transaction as buyer (or, in relation to CDS Contracts, protection buyer); (b) where a Clearing Member's Customer is a party to the corresponding Transaction as buyer or protection buyer, the Clearing Member that provides clearing services to that Customer in relation to the Transaction in question (or, for Energy

Committees, Auction Settlement and Restructuring Supplement to the Credit Derivatives Definitions (published on 14 July 2009) and the Credit Derivatives Determinations Committees Rules as published by ISDA from time to time, including as supplemented or modified by incorporation of any additional provisions thereto (howsoever described) under, and as amended by, the Contract Terms for any relevant CDS Contract from time to time.

The term "**Customer**" means a Person who is a client or customer of a Clearing Member.

The term "**Customer Account**" means an account (if any) with the Clearing House opened in the name of a Clearing Member relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Customers (whose transactions the Clearing Member requests be recorded in the Customer Account) and in which such Contracts are recorded and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers or may be designated for Energy Contracts only or for CDS Contracts only. Where a Clearing Member provides services for DCM Customers, it shall have a separate DCM Customer Account for Contracts and monies relating to DCM Customers and Non-DCM Customer Account for Contracts and monies relating to Non-DCM Customers. A Customer Account must be either a Non-DCM Customer Account or a DCM Customer Account.

The term "**DCM Customer**" means any Customer that is a customer (as defined in the U.S. Commodity Futures Trading Commission Regulation 1.3(k)) of a Clearing Member with respect to any Contract arising as a result of a Transaction in a Future or an Option traded on or subject to the rules of a U.S. designated contract market or derivatives transaction execution facility (as provided for in Sections 5 or 5a, respectively, of the U.S. Commodity Exchange Act). A Person may be a DCM Customer in relation to certain Contracts and a Non-DCM Customer in relation to other Contracts.

The term "**DCM Customer Account**" means an account (if any) with the Clearing House (in its capacity as a registered U.S. derivatives clearing organization clearing Contracts traded on a registered U.S. designated contract market), the books and records of which are located in the United States of America, opened in the name of the Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to DCM Customers where segregation of related collateral is required in accordance with Section 4d of the U.S. Commodity Exchange Act, as amended and insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and entering into market contracts in the capacity of a clearing member in relation only to transactions connected with the provision of services to DCM Customers) relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more DCM Customers (whose transactions the Clearing Member requests be recorded in the DCM Customer Account where the same is required in accordance with the segregation provisions of Section 4d of the U.S. Commodity Exchange Act, as amended and insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder) and in which such Contracts are recorded and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers.

The term "**Default Notice**" means a notice issued by the Clearing House under Rule 901(c).

The term "**Defaulter**" means a Person in respect of whom a Default Notice has been issued.

The term "**Market**" means ICE Futures Europe, ICE OTC and any other market for which the Clearing House provides or may provide Clearing services (and for the purposes of Clearing Membership Agreements for CDS Clearing Members only, also includes the over-the-counter market for CDS).

The term "**Market Delivery Settlement Price**" in respect of a Set of Energy Contracts or an Energy Contract, means the delivery or cash settlement price determined pursuant to Rule 701.

The term "**Market Rules**" means the rules, regulations, procedures of, and agreements governing, a Market, including the ICE Futures Europe Rules and ICE OTC Participant Agreements, ICE OTC Broker Agreements and the procedures of each of ICE Futures Europe and ICE Inc.

The term "**Master Agreement**" has the meaning given to that term in Rule 1502(a)(i).

The term "**Monetary Default**" means a Clearing Member failing to transfer, deposit with, or pay to, the Clearing House in full any Margin, Guaranty Fund Contribution, amount due under or in connection with any Contract or other amount due to the Clearing House or required by or pursuant to Market Rules.

The term "**Nominated Account**" means a Nominated Customer Account or a Nominated Proprietary Account.

The term "**Nominated Customer Account**" means an account (if any) of a Clearing Member at an Approved Financial Institution recognised by the Clearing House for administrative convenience only and used by the Clearing Member for the business of its segregated Customers.

The term "**Nominated Proprietary Account**" means an account of a Clearing Member at an Approved Financial Institution that is not a Nominated Customer Account.

The term "**Non-DCM Customer**" means a Customer that is not a DCM Customer with respect to a Contract.

The term "**Non-DCM Customer Account**" means a Customer Account that is not a DCM Customer Account in relation to which the Clearing Member: (i) acts in its capacity as a clearing member in relation to transactions connected with the provision of services to Non-DCM Customers where segregation of related collateral is required in accordance with Applicable Laws; and (ii) enters into market contracts in the capacity of a clearing member in relation only to transactions connected with the provision of services to Non-DCM Customers.

The term "**OFT**" means the UK's Office of Fair Trading and any successor thereto.

The term "**Open Contract Position**", in respect of each Set of Contracts for a Clearing Member from time to time, comprises the Contract Position and, for Energy Contracts only, the Net Amount Position, where:

(a) *Contract Position* means:

right of the Clearing Member to make a complaint pursuant to the Procedures and Part 10).

- (p) Without prejudice to the requirements of any Applicable Laws relating to clients' money made by the FSA under sections 138 and 139 of the FSMA and notwithstanding any other provision of these Rules, nothing in these Rules shall have the effect of enabling, requiring or implying that any Margin or other amounts deposited in relation to a Clearing Member's or Defaulter's Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Proprietary Account (which restriction, for the avoidance of doubt, shall not apply to any Guaranty Fund Contribution or Assessment Contribution):
- (i) Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Proprietary Account;
  - (ii) Non-DCM Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's DCM Customer Account; or
  - (iii) DCM Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Non-DCM Customer Account,
- (which restrictions, for the avoidance of doubt, shall not apply to any Guaranty Fund Contribution or Assessment Contribution).
- (q) The Rules shall at all times be observed, interpreted and given effect in the manner most conducive to the promotion and maintenance of:
- (i) recognition of the Clearing House as a recognised clearing house under the FSMA and any other legal or regulatory status it has from time to time under any other Applicable Law;
  - (ii) the good reputation of the Clearing House (and Clearing Members);
  - (iii) high standards of integrity and fair dealing in accordance with FSA Rules; and
  - (iv) proper protection for all Persons interested in the performance of Contracts.
- (r) These Rules and each Contract shall be governed by and construed in accordance with the laws of England and Wales.
- (s) These Rules may be supplemented by processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (t) References in these Rules to UK or English legislation or European Directives shall be interpreted as references to such legislation as implemented in England & Wales.

**Rule 103**     *Delay in performance by the Clearing House*

Subject to the provisions of the Contract Terms relating to deliveries, where an obligation of the Clearing House must be performed immediately, promptly or by or prior to a specified time or date but is not so performed, the Clearing House shall not be in breach of these Rules

Member. A Disclosed Principal Member shall be subject to and bound by all these Rules in every way as if it were a Clearing Member, subject to such modifications as are set out herein and acting at all times as disclosed principal for the Clearing Member that has appointed it.

- (i) In order to attain and maintain membership as a CDS Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a CDS Clearing Member, meet such additional requirements applicable to CDS Clearing Members as are specified in the Procedures.

**Rule 202**      *Obligations of Clearing Members*

- (a) In connection with these Rules, all and any Contracts, its membership of the Clearing House and its business and activities as a Clearing Member, each Clearing Member shall at all times:
  - (i) comply with these Rules and any agreement with the Clearing House;
  - (ii) comply with all Applicable Laws relating to its status and performance as a Clearing Member;
  - (iii) act in good faith in its dealings with the Clearing House;
  - (iv) continually satisfy the criteria for membership set out in Rule 201(a) and, if it is a CDS Clearing Member, Rule 201(i);
  - (v) respond promptly to any direction by the Clearing House to provide information or documentation;
  - (vi) maintain and, where applicable, procure that its Controller maintains, at least the amount of Capital required pursuant to Rule 206;
  - (vii) pay all fees and other charges when due in accordance with Part 3;
  - (viii) provide Margin and make Margin payments to the Clearing House in accordance with Part 3 and Part 5;
  - (ix) make all such payments to such Guaranty Funds as are required pursuant to Part 11;
  - (x) respond promptly to all enquiries or requests for information made by the Clearing House;
  - (xi) maintain accounts at an Approved Financial Institution for the deposit of funds in Eligible Currencies and the deposit of securities required to be transferred to and from the Clearing Member pursuant to these Rules (whether by way of Margin, Guaranty Fund Contributions, fees, amounts due under Contracts or otherwise) and have arrangements with such Approved Financial Institutions satisfactory to the Clearing House for electronic transfer of funds and securities into and out of such accounts (separately for Customer Account and Proprietary Account, if the Clearing Member has a Customer Account ~~and~~, separately for CDS Contracts and Energy Contracts, if applicable and



separately for Non-DCM Customer Accounts and DCM Customer Accounts, if applicable) on the order of the Clearing House and without the need to seek the consent of such Clearing Member or any of its Customers;

- (xii) [*Not used.*];
- (xiii) if the Clearing House at its discretion so directs, allow formal audits or system tests of its operations related to its business with the Clearing House during reasonable business hours and on reasonable notice no more than twice annually, at the expense of the Clearing Member;
- (xiv) have adequate systems and controls in place in order to ensure that:
  - (A) its internal affairs are organised and controlled in a responsible and effective manner;
  - (B) it has adequate risk management systems that are applied appropriately;
  - (C) its internal record-keeping is adequate;
  - (D) all of its Representatives are fit and proper, suitable, adequately trained and properly supervised;
  - (E) all clearing business conducted by it, including in relation to individual Contracts, complies with the Clearing Member's obligations under the Rules and Applicable Laws;
  - (F) it only enters into Contracts or accesses the Clearing House (through actions of its Representatives or otherwise) in or from jurisdictions on a list of acceptable jurisdictions published by the Clearing House from time to time and in accordance with all conditions and requirements as are specified by the Clearing House from time to time for entry into Contracts or access in or from that jurisdiction;
  - (G) it is able continuously to monitor communication facilities for receipt of communications from the Clearing House; and
  - (H) it is able promptly to review Circulars and other communications delivered or made available to the Clearing Member or its Representatives by the Clearing House;
- (xv) ensure that any power of attorney, appointment of any agent or Representative or other authorisation to transact business with the Clearing House given by a Clearing Member to any Person remains in effect on its original terms until not less than five Business Days after a written notice of change has been received by the Clearing House; and
- (xvi) keep accurate records showing the details of each Transaction submitted for Clearing by or on behalf of such Clearing Member and such other information, in such form, as shall be required by the Clearing House from time to time and in accordance with Applicable Laws and Accounting Standards.

**Rule 206**      *Minimum Capital*

- (a) Each Clearing Member shall maintain, or to the extent permitted pursuant to the Procedures shall procure that its Controller maintains, at all times the requisite types and amounts of Capital specified in the Procedures or otherwise as specified in writing by the Clearing House from time to time. The Clearing House may, at any time and at its discretion, require that a Clearing Member maintains additional Capital or procure a Controller to maintain additional Capital.
- (b) A Clearing Member must, upon request of the Clearing House, provide financial statements and other documentation supporting calculations of Capital and details of the terms and conditions of any documentation relating to any Capital (including, without limitation, subordinated loan agreements, legal opinions, information provided to Governmental Authorities and accounts and including in relation to any Controller) to the Clearing House.

**Rule 207**      *Clearing Member Status*

- (a) Each Clearing Member shall be authorised to enter into Contracts and hold an Open Contract Position with the Clearing House. Clearing Members may, at the Clearing House's discretion, be subject to restrictions in their business with the Clearing House, for example by reference to certain Contracts, Markets or the clearing of Contracts for Customers or using a Customer Account, Non-DCM Customer Account or DCM Customer Account. The Clearing House shall be entitled to publish lists of Clearing Members including details of their privileges and restrictions from time to time.
- (b) Each Clearing Member shall have the privileges, rights and obligations provided for in these Rules. Such privileges, rights and obligations may be terminated or altered in any respect at any time as provided in these Rules.
- (c) A Clearing Member may apply to clear additional categories of Contract by furnishing such information as is relevant to such request in accordance with Rule 201.
- (d) Each Clearing Member shall be liable to the Clearing House and responsible for all its obligations in respect of its Proprietary Accounts and Customer Accounts as principal. Any sub-accounts of a Customer Account are reported on by the Clearing House for administrative convenience of the Clearing Member only. Recognition by the Clearing House, and transfers between, to and from, a Clearing Member's Nominated Customer Accounts and Nominated Proprietary Accounts are for administrative convenience of the Clearing Member only. Neither any separate Customer Account or sub-accounts of a Customer Account recognised in the Clearing House's or any Clearing Member's books and records or those of any Approved Financial Institution nor any other Procedures or Rules of the Clearing House shall result in any obligation of the Clearing House towards any Customer of the Clearing Member, any other Person that is not a Clearing Member, whether under FSA Rules relating to client money, any other Applicable Laws or otherwise. It is the responsibility of the Clearing Member (and not the Clearing House) to ensure that its Nominated Proprietary Accounts and Nominated Customer Accounts are linked appropriately to its Proprietary Accounts and Customer Accounts and to ensure its

- (h) Where a Clearing Member has appointed a Disclosed Principal Member, the Disclosed Principal Member shall be the Buying Clearing Member or the Selling Clearing Member (as applicable) instead of the relevant Clearing Member in respect of all Contracts arising under this Rule 401 to which that Clearing Member would, but for the requirements of this Rule 401(h), otherwise be party. All provisions of these Rules relating to Contracts shall be construed accordingly.
- (i) In order for a Contract to arise pursuant to:
  - (i) Rule 401(a)(i), (ii), (iii), (iv), (v), (vii) or (viii); or
  - (ii) Rule 401(a)(vi) in relation to an Energy Contract,
 the Clearing Member in question must be an Energy Clearing Member.
- (j) In order for a Contract to arise pursuant to:
  - (i) Rule 401(a)(ix) or (x); or
  - (ii) Rule 401(a)(vi) in relation to a CDS Contract,
 the Clearing Member in question must be a CDS Clearing Member.
- (k) On each occasion that the Clearing House gives notice in relation to a CDS Contract pursuant to Rule 401(a)(ix) or Rule 401(a)(x), each affected Clearing Member and/or the Clearing House, as applicable, must submit, in accordance with the Procedures, the terms of the actual or proposed CDS Contract to Deriv/SERV or another service specified by the Clearing House with identical terms as the original submission for clearing or the CDS Contract arising under Rule 401(a)(x), as applicable, adjusted to take into account netting and aggregation of CDS Contracts pursuant to Rule 406.
- (l) Where an Energy Contract arises pursuant to Rule 401 as a result of trading, submission of trade data or other action by a Customer of a Clearing Member, an opposite corresponding contract shall arise between the Customer and that Clearing Member (and may be void or voided) and further corresponding contracts may arise between Customers in the manner specified by and in accordance with:
  - (i) in the case of Energy Contracts arising as a result of ICE Futures Europe Transactions, the ICE Futures Europe Rules; or
  - (ii) in the case of Energy Contracts arising as a result of ICE OTC Transactions, the Procedures.
- (m) When a Clearing Member enters into any Contract, it may do so in only one of the following three capacities:
  - (i) as a clearing member in relation to a transaction or transactions connected with the provision of services to Non-DCM Customers where segregation of related collateral is required, in which case the Contract shall be recorded by the Clearing Member in the Non-DCM Customer Account;

- (ii) as a clearing member in relation to a transaction or transactions connected with the provision of services to DCM Customers, in which case the Contract shall be recorded by the Clearing Member in the DCM Customer Account; or
- (iii) as a clearing member in any other capacity (including where the Clearing Member does not provide any services to any Customer or where the Clearing Member provides services in relation to a transaction or transactions where there is no requirement for segregation of related collateral) in which case the Contract shall be recorded by the Clearing Member in the Proprietary Account.
- (n) For the avoidance of doubt, for purposes of section 187 of the Companies Act 1989, a Clearing Member with both a Non-DCM Customer Account and a DCM Customer Account enters into Contracts recorded in its Non-DCM Account in a different capacity to that in which it enters into Contracts recorded in its DCM Customer Account.

**Rule 402      *Contracts only between Clearing Members and Clearing House***

- (a) Each Clearing Member that is party to a Contract shall act as principal and not as agent. In performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).
- (b) Upon the formation of a Contract in accordance with Rule 401, any Clearing Member that has any Transaction Rights or Obligations in relation to the original Transaction shall be automatically and immediately released and discharged from all and any such Transaction Rights or Obligations other than (i) any Transaction Rights or Obligations falling due for performance before the formation of such Contract and (ii) any Transaction Rights or Obligations relating to any Initial Payment under any Bilateral CDS Transaction submitted for Weekly Clearing.
- (b) The liabilities and obligations of the Clearing House pursuant to Contracts extend only to, and are enforceable only by, Clearing Members. Without limiting the generality of the foregoing, the Clearing House shall have no liability or obligation whatsoever to any Customer of a Clearing Member or any client of such a Customer.
- (c) The Clearing House shall have no liability or obligation in relation to any Transaction whatsoever, unless and until a Contract arises in accordance with Rule 401 that is not void; in which case its liabilities shall be pursuant to the Contract only. The Clearing House's obligations and liabilities under any Contract shall be limited to those pursuant to the Contract Terms and these Rules, and are subject to the Contract not being void pursuant to Rule 403 and to the Clearing House's rights in relation to voidable Contracts pursuant to Rule 404.
- (d) As between the Clearing House and each Clearing Member, all Contracts, these Rules, the relevant Clearing Membership Agreement and, if such Clearing Member is a CDS Clearing Member, the Master Agreement are entered into in reliance on the fact that all such documents constitute a single agreement between the Clearing

applicable Contract Terms and, for Energy Contracts, through the Clearing Processing System. The Clearing House shall have no obligation to notify any Clearing Member of Open Contract Positions or Contracts other than through the Clearing Processing System or otherwise in accordance with the Rules and Procedures.

- (b) If a Clearing Member so instructs the Clearing House in accordance with the Procedures, the Clearing House will net particular buy and sell positions (for a Set of Futures) or Long and Short positions (for a Set of Options) within the Clearing Member's Open Contract Position in respect of a Clearing Member's Customer Account.
- (c) Subject to its obligations under Rule 406(b), the Clearing House may at its discretion treat any Energy Contract pursuant to which a Clearing Member is the Buying Clearing Member and another Energy Contract of the same Set pursuant to which the same Clearing Member is the Selling Clearing Member simultaneously as being netted, set off and mutually closed out and terminated upon calculation of the Open Contract Position in respect of such Energy Contracts, subject to the Clearing Member having made all then due payments pursuant to the Contract Terms in respect of such Energy Contracts and to separate treatment of Open Contract Positions in the Clearing Member's Proprietary Account, Non-DCM Customer Account (if any) and DCM Customer Account (if any). Where the position as Buying Clearing Member is not of the same size as a position a Selling Clearing Member, the Contracts in question shall be closed out and terminated in part.
- (d) CDS Clearing Members shall elect in accordance with the Procedures between one of three different methods for the aggregation and netting of CDS Contracts (listed in paragraphs (i) to (iii) below), separately in respect of each of its CDS Sub-Accounts. If a CDS Clearing Member has only one CDS Sub-Account, then only one election under this Rule 406(d) is required. Any aggregation and netting of CDS Contracts pursuant to this Rule 406(d) shall take place pursuant to a novation, through termination of the relevant existing CDS Contract of the same Set or some or all of the relevant existing CDS Contracts of the same Set in the same CDS Sub-Account in consideration for the entry into of a new replacement single CDS Contract replacing those CDS Contracts so being aggregated and/or netted. Such aggregation and netting will take place at the times, and will affect those CDS Contracts, set out in or determined in accordance with the Procedures, which will provide for aggregation and netting in relation to each CDS Sub-Account at least weekly. The Clearing House and relevant CDS Clearing Member will reflect each aggregation and netting under this Rule 406(d) in the records of Deriv/SERV in accordance with Procedures. Subject to Rule 406(e):
  - (i) where a CDS Clearing Member elects to manage a CDS Sub-Account on a 'trade by trade' basis, there will be no netting, offsetting, consolidation, aggregation, novation, termination or replacement of CDS Contracts recorded in that CDS Sub-Account;
  - (ii) where a CDS Clearing Member elects to manage a CDS Sub-Account on a 'gross' basis:
    - (A) there shall be no netting or offsetting of CDS Contracts recorded in that CDS Sub-Account;

## Part 5 Margin

### Rule 501 *Approved Financial Institutions*

- (a) The Clearing House will maintain a list of Approved Financial Institutions. Only Approved Financial Institutions shall be permitted by the Clearing House:
  - (i) to open and operate, on behalf of Clearing Members, accounts from which the Clearing House can draw amounts pursuant to a direct debit mandate, for the collection of amounts due to the Clearing House from time to time; and
  - (ii) to issue and confirm letters of credit for Clearing Members. Approved Financial Institutions may also act in such other capacity as the Clearing House may approve from time to time.
- (b) All cash transfers made by Clearing Members to or to the order of the Clearing House must be made from an account at an Approved Financial Institution, unless the Clearing House gives its prior written consent to another method being used.
- (c) Clearing Members are given notice that the Clearing House may suspend or terminate the status of an Approved Financial Institution or attach, amend or revoke conditions to the continued status of an Approved Financial Institution. The Clearing House may take such steps if an institution no longer meets all of the requirements of the Clearing House or if the Clearing House determines that it would be advisable for the Clearing House's own protection, the protection of Clearing Members or the protection of a Market to do so.

### Rule 502 *Margin*

- (a) Each Clearing Member shall transfer Permitted Cover to the Clearing House in respect of Margin in such amounts, in such forms and at such times as are required pursuant to this Part 5 and otherwise as may be prescribed by the Clearing House from time to time.
- (b) At any time on which a requirement for Original Margin, Initial Margin or Margin under Rule 502(g) falls due and insufficient Permitted Cover is held, the Clearing Member must initially transfer cash in an Eligible Currency. Thereafter a Clearing Member may substitute such cash Margin with other Permitted Cover by delivery of the replacement Permitted Cover to the Clearing House. The amount of Original Margin or Margin under Rule 502(g) for any Business Day shall be calculated (and, if necessary, called) separately in respect of the relevant Proprietary Account, Non-DCM Customer Account (if any) and DCM Customer Account (if any) of a Clearing Member in accordance with the Procedures.
- (c) Variation Margin and Mark-to Market Margin payments may be made by the Clearing House or a Clearing Member only in cash in the Eligible Currency in which the Contract in question is to be or can be settled (for Energy Contracts) or which is the settlement currency (save where the Procedures require otherwise) (for CDS Contracts) pursuant to the Contract Terms.

- (e) The amount of Variation Margin for any Business Day shall be calculated (and, if necessary, called) separately in respect of the relevant Proprietary Account, Non-DCM Customer Account (if any) and DCM Customer Account (if any) of a Clearing Member in accordance with the Procedures. Each such Variation Margin call shall be:
- (i) in the case of an Open Contract Position, based on the prices at which Open Contract Positions in Energy Contracts are recorded on the Clearing House's books; and
  - (ii) in the case of Energy Contracts not reflected in a Clearing Member's Open Contract Position, represented by the difference between the Settlement Price and the price at which each such Energy Contract was bought or sold; provided, however, that in the case of any Energy Contract based on an index, the amount of the final Variation Margin payment shall be determined as specified in the rules of the Exchange on which the index is based.
- (f) Regular calls for Margin in respect of CDS Contracts will be made following the close of business on each Business Day as follows and in accordance with the Procedures:
- (i) For Portfolio Risk Margin and Physical Settlement Margin calls, the Clearing House shall calculate net amounts as due to or from the Clearing House from or to each CDS Clearing Member separately in respect of its Proprietary Account and Customer Account (if any). Such amounts shall in each case be calculated based on the difference between the CDS Clearing Member's requirement for Portfolio Risk Margin and Physical Settlement Margin and the value attributed by the Clearing House to assets accounted for by the Clearing House as Margin of that category, in accordance with the Procedures. Additional amounts in respect of Physical Settlement Margin may also be required pursuant to the Procedures or Rule 502(g).
  - (ii) For Mark-to-Market Margin calls, each currency in which a CDS Contract is denominated is treated as a separate category (each, a "**Mark-to-Market Margin Category**"). For each Mark-to-Market Margin Category of a CDS Clearing Member, the Clearing House shall calculate net amounts as due to or from the Clearing House from or to each CDS Clearing Member separately in respect of its Proprietary Account and Customer Account (if any) based on the change in Mark-to-Market Price from the last time at which a Mark-to-Market Margin call was made, in accordance with the Procedures.
- (g) The "**Mark-to-Market Price**" for CDS Contracts of a Set at any time is the price, expressed as a percentage of the Floating Rate Payer Calculation Amount for such a CDS Contract, determined by the Clearing House in accordance with the Procedures, such price being the amount that would be payable up front as an Initial Payment by the Buyer or Seller in order to enter into a CDS Contract of such a Set with a particular Floating Rate Payer Calculation Amount as at such time, divided by such Floating Rate Payer Calculation Amount. When such Initial Payment would be payable by a Buyer, the Mark-to-Market Price will be a negative percentage and when such Initial Payment would be payable by a Seller, the Mark-to-Market Price will be a positive percentage. When deemed at the Clearing House's discretion to be necessary

## Part 7 Settlement and Delivery of Futures

Part 7 of the Rules does not apply to CDS Contracts. References to Contracts in this section are to Energy Contracts. References to Customer Accounts and Proprietary Accounts in this section are references to such accounts as are designated for Energy Contracts.

### Rule 701 *Determination of Market Delivery Settlement Price*

- (a) The Clearing House will specify the Market Delivery Settlement Price for any Future Set.
- (b) The Market Delivery Settlement Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Market Delivery Settlement Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine a Market Delivery Settlement Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Market Delivery Settlement Price;
  - (iii) there is an error in data provided by a Market; or
  - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

### Rule 702 *Cash Settlement*

- (a) A Futures Contract shall be settled in cash if:
  - (i) pursuant to the applicable Contract Terms it can be settled only in cash; or
  - (ii) pursuant to the applicable Contract Terms it may be settled in cash and the Clearing Member opts to settle the Contract(s) in cash.
- (b) Cash settlement for a Set of Futures Contracts shall occur separately, and separate payment obligations shall accrue, in respect of a Clearing Member's:
  - (i) Proprietary Account;
  - (ii) gross buy positions under its Non-DCM Customer Account (if applicable);
  - (iii) gross sell positions under its Non-DCM Customer Account (if applicable);
  - (iv) ~~(ii)~~ gross buy positions under its DCM Customer Account (if applicable); and
  - (v) ~~(iii)~~ gross sell positions under its DCM Customer Account (if applicable).
- (c) Provided that all Margin payments in respect of the Set have been paid by the Clearing Member to the Clearing House or repaid by the Clearing House, the amount payable for cash settlement of any Future shall be the net gain or loss, as the case may be, based on the price at which Open Contract Positions are recorded on the Clearing House's books and the Market Delivery Settlement Price and, for Contracts not



settlement amount. The Clearing House shall be entitled to substitute an obligation to account for such settlement amount, or a proportion thereof, for the Clearing House's rights, liabilities and obligations in respect of performance of delivery obligations under other Contracts subject to tender with other Clearing Members (such Contracts and Clearing Members selected by the Clearing House at its discretion) of the same Set.

- (h) Where a Clearing Member has appointed a Disclosed Principal Member, any delivery or related obligation of the Clearing Member shall be construed as an obligation of the Disclosed Principal Member and terms 'Buyer,' 'Seller' and all other provisions of these Rules relating to deliveries shall be construed accordingly.

**Rule 704      *Credit and Debit of Accounts***

The Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Account and Customer Account, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3.

**Rule 705      *Settlement and Delivery Obligations only in respect of Open Contract Position and Termination of other Contracts***

- (a) The Clearing House and each Clearing Member shall make cash settlement or delivery only for such number of Contracts as are reflected in the Clearing Member's Open Contract Position plus any Contracts not included in the Open Contract Position, separately for each of the positions on the Clearing Member's ~~Proprietary Account, gross buy position on its Customer Account and gross sell position on its Customer Account. No such Open Contract Position (or additional Contracts) may be netted against another Open Contract Position on cash settlement or delivery without the prior written consent of the Clearing House, and subject always to Rule 102(p).~~

- (i) Proprietary Account;
- (ii) gross buy positions on its Non-DCM Customer Account (if applicable);
- (iii) gross sell positions on its Non-DCM Customer Account (if applicable);
- (iv) gross buy positions under its DCM Customer Account (if applicable); and
- (v) gross sell positions under its DCM Customer Account (if applicable).

No such Open Contract Position (or additional Contracts) may be netted against another Open Contract Position on cash settlement or delivery without the prior written consent of the Clearing House, and subject always to Rule 102(p).

- (b) Upon each of the parties to a Contract having made all necessary payments and deliveries in accordance with these Rules in respect of all Futures Contracts in a Set in relation to which a cash settlement or delivery obligation exists for each of a ~~Clearing Member's Proprietary Account, gross buy position on its Customer Account or gross sell position on its Customer Account~~ any account or positions specified in Rule 705(a), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Futures Contracts belonging to such Set ~~to the account of the Clearing Member's~~

~~Proprietary Account, gross buy position on its Customer Account or gross sell in respect of such account or position on its Customer Account (as applicable).~~

## Part 8 Options

Part 8 of the Rules does not apply to CDS Contracts. References to Contracts in this section are to Energy Contracts. References to Customer Accounts and Proprietary Accounts in this section are references to such accounts as are designated for Energy Contracts.

### Rule 801 *Payment of Premium*

- (a) A Buying Clearing Member that becomes party to an Option shall be obliged to pay to the Clearing House the premium for the Option at the time specified in the Contract Terms.
- (b) A Selling Clearing Member that becomes party to an Option will be credited by the Clearing House with an amount equal to the premium for the Option at the time specified in the Contract Terms.

### Rule 802 *Reference Prices*

- (a) The Clearing House will specify the Reference Price for any Option Set.
- (b) The Reference Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Reference Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine a Reference Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Reference Price;
  - (iii) there is an error in data provided by a Market; or
  - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

### Rule 803 *Exercise of Options*

- (a) An Option Contract may be exercised only by a Clearing Member with a Long Open Contract Position or by the Clearing House in respect of a Contract in which it is Long. Option Contracts may only be exercised by a Clearing Member for any Option Set for such number of Contracts as are reflected in the Clearing Member's Open Contract Position (plus any Contracts not included in the Open Contract Position), separately for each of the positions on the Clearing Member's :
  - (i) Proprietary Account;
  - (ii) gross Long positions on its ~~Customer Account and Non-DCM Customer Account~~ Account (if applicable);
  - (iii) gross Short positions on its ~~Customer Account, Non-DCM Customer Account~~ (if applicable);

- (iv) gross Long positions on its DCM Customer Account (if applicable);
  - (v) gross Short positions on its DCM Customer Account (if applicable).
- (b) Any exercise of an Option Contract shall be in accordance with the applicable Contract Terms. In particular, an Option Contract shall only be exercised:
- (i) if it is an Option Contract which in accordance with the applicable Contract Terms is automatically exercised, in which case it will be automatically exercised at the time and in the manner specified in the Contract Terms; or
  - (ii) if it is an Option Contract not falling in Rule 803(b)(i), at such time as is permitted pursuant to the applicable Contract Terms (whether on the day and by the time prescribed by the applicable Contract Terms or in such period as is prescribed by the applicable Contract Terms) and in such form and manner as is permitted pursuant to the Contract Terms and the Procedures (including, where permitted, by manual exercise or the establishment of settings in the Clearing House's systems for the exercise of Options).
- (c) An Option Contract may be abandoned by notice to the Clearing House in writing or such other form as is permitted pursuant to the Procedures.
- (d) The Clearing House shall be entitled to rely upon any form or electronic communication purporting to give notice of exercise or abandonment of an Option made in accordance with these Rules without any enquiry as to:
- (i) whether such form or electronic communication complies with the Contract Terms or the requirements of the Procedures; or
  - (ii) as to the authority of any Representative purporting to exercise an Option on behalf of a Clearing Member or due execution of the relevant form.
- (e) The Clearing House may reject any notice of exercise or abandonment of an Option if such notice does not, or appears not to, comply with the Contract Terms or the Procedures, notwithstanding any equivalent notice or other prescribed form of exercise that has been provided by the Clearing House to any Clearing Member in respect of the exercise of an Option Contract.
- (f) No notice or other form of exercise or abandonment of an Option received by the Clearing House may be cancelled or withdrawn once the deadline for exercise has passed.
- (g) Part 7 of these Rules shall not apply in relation to Options.

**Rule 804     *Notice of Assignment***

The Clearing House will assign exercise notices to Clearing Members which have or carry Short Open Contract Positions (and Short Contracts not in their Open Contract Position) in the Option Set being exercised, in accordance with the Procedures.

**Rule 805**      *Formation of new Futures Contracts*

- (a) Upon exercise of any Option, one or more Futures Contracts at the Strike Price (or such other price as is required pursuant to the Contract Terms) shall arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules.
- (b) Upon such Futures Contract or Contracts having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

**Rule 806**      *Termination of other Contracts*

Upon each of the parties to a Contract having made all necessary payments and becoming party to all resulting Futures Contracts in accordance with these Rules in respect of all Option Contracts in a Set ~~for each of a Clearing Member's Proprietary Account, gross Long position on its Customer Account or gross Short in relation to an account or position on its Customer Accounts specified in Rule 803(a),~~ the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Option Contracts belonging to such Set ~~to the account of the Clearing Member's Proprietary Account, gross Long position on its Customer Account or gross Short in respect of such account or position on its Customer Account (as applicable).~~

**Rule 807**      *Expiry and Abandonment*

- (a) If an Option Contract is not automatically exercised in accordance with Rule 803(b)(i) or exercised by the Clearing Member by the day and time referred to in Rule 803(b)(ii), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of any the Option shall lapse and the Option shall be terminated and be deemed to be abandoned.
- (b) If notice of abandonment of an Option Contract is given pursuant to Rule 803(c), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of any the Option shall lapse and the Option shall be terminated and be deemed to be abandoned upon the Clearing House updating its books and records in respect of such abandonment.

- (c) As soon as practicable after the Clearing House has declared that a Clearing Member is subject to an Event of Default, the Clearing House shall issue a Default Notice to the Defaulter and shall provide a copy of such Default Notice to any other party to an affected Contract (if any). The Clearing House will issue a Circular in respect of any Default Notice specifying the name of the Defaulter. The Clearing House may at its discretion publish a copy of the relevant Default Notice in or together with a Circular. The Clearing House shall, as soon as reasonably practicable after issuing a Default Notice, appoint a day on which any net sums certified under Rule 905 are to be paid.
- (d) The Clearing House may assume that the occurrence of any Event of Default means that a Clearing Member is unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract.

**Rule 902      *Liquidation following an Event of Default***

- (a) Where a Person is subject to an Event of Default, the Clearing House may take such steps pursuant to this Part 9 and Part 11 as appear in the circumstances to be necessary or expedient to discharge all the Defaulter's rights and liabilities under or in respect of Contracts to which it is party, to protect the Clearing House and its non-defaulting Clearing Members and to complete the process described in this Part 9 and Part 11. All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be liquidated in the manner set out in Rule 903 below unless and to the extent that:
  - (i) the Defaulter's rights and obligations under such Contracts are transferred or sold to and accepted by one or more other Clearing Members (each a "Transferee Clearing Member"), with the prior consent of the Clearing House and in the case of each transfer or sale at a price agreed between the Clearing House and the relevant Transferee Clearing Member that is the transferee or purchaser;
  - (ii) the Clearing House determines in its discretion that the protection of the financial integrity of the Clearing House does not require such a liquidation;
  - (iii) such liquidation is delayed because of the cessation or curtailment of trading on an Exchange which lists such Contracts; or
  - (iv) the Defaulter acts as Buying Clearing Member and Selling Clearing Member in respect of Contracts of the same Set, in which case the Clearing House shall be entitled to net, offset, mutually close out or terminate such Contracts up to the extent that, following such netting, offsetting, closing out or termination, Contracts representing in aggregate the Open Contract Position of the Defaulter in the relevant Set are recognised; and, in the case of CDS Contracts, the Clearing House shall be entitled (but shall not be required) to amend the records of trades recorded in Deriv/SERV accordingly, subject always to Rule 102(p).

The Clearing House shall be entitled, at its discretion, to take or arrange for any of the steps described in Rule 902(a)(i), (ii) or (iii) as part of its default proceedings. If any Contracts recorded in a Defaulter's Customer Account are subject to any transfer or sale pursuant to Rule 902(a)(i):

- (A) any Margin recorded in a Defaulter's Customer Account may, at the discretion of the Clearing House, be transferred from the Defaulter's Customer Account to the Transferee Clearing Member's Customer Account;
- (B) to the extent that any transfer of Margin takes place in accordance with Rule 902(a)(A), the Defaulter shall have no claim against the Clearing House for return of such Margin and the Clearing House shall be released from any liability or obligation to return such Margin (or any property in substitution thereof) to the Defaulter; and
- (C) as between the Transferee Clearing Member and the Clearing House, the Clearing House shall have all rights in relation to any Margin transferred pursuant to Rule 902(a)(A) as if the same were Margin delivered to the Clearing House directly by the Transferee Clearing Member.

Any transfer, sale or acceptance pursuant to Rule 902(a)(i) may take place pursuant to a termination of Contracts between the Clearing House and a Defaulter and the entry into of new Contracts with the ~~transferee~~Transferee Clearing Member, rather than as a transfer or sale, at the discretion of the Clearing House.

- (b) If it is determined pursuant to Rule 902(a) not to liquidate any Contracts to which the Defaulter is party, or if the Clearing House is unable for any reason to liquidate such Contracts, in a prompt and orderly fashion, the Clearing House may authorise the execution from time to time for the account of the Clearing House, for the purpose of an orderly unwind of any Contracts to which a Defaulter is party or reducing the risk to the Clearing House and the risk to Clearing Members (in the case of Clearing Members, except to the extent that reducing any risk to Clearing Members creates or increases any risk for the Clearing House) resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts. Any such hedging transactions that are executed shall be submitted by Clearing Members against whom they are executed to the Clearing House for Clearing on a daily basis. Any costs or expenses, including losses, sustained by the Clearing House in connection with transactions effected for its account pursuant to this Rule 902 shall be charged to the Defaulter and any gains (net of any costs and expenses) shall be credited to the Defaulter.
- (c) Upon an Event of Default being declared, any accrued or invoiced amounts shall be immediately due and payable by the Defaulter to the Clearing House.
- (d) If a CDS Contract is terminated pursuant to an automatic early termination provision or if a CDS Contract is terminated in circumstances in which the third sentence of Rule 209(c) applies, Rules 902(a), 902(b), 902(c), 903, 904 and 905 shall apply *mutatis mutandis* in relation to such terminated CDS Contract and rights, obligations and liabilities relating thereto. For the avoidance of doubt, in any case where this Rule 902(d) applies as a result of a CDS Contract being terminated in circumstances in which the third sentence of Rule 209(c) applies, Rules 903(a)(xii) and 904 shall not apply to the extent that the same are disapplied by Rule 209(c).

under *L* (i), (ii) or (iii) above but excluding, in respect of a Contract where the Defaulter acts as agent (if any), any rights attributable to the Defaulter arising out of the relationship of principal and agent and further excluding any amount included under *D*, *C*, *M*, *GFC* or *SC*; and the Clearing House may assess any one or more elements of such amount *A* in its discretion;

*D* = if the Clearing House so determines at its discretion, the aggregate amount of any sums in respect of a Commodity or Investment delivered, physically settled, to be delivered or to be physically settled under a Contract with the Defaulter or in respect of which cash settlement is to be made as calculated by the Clearing House at its discretion (if payable to the Clearing Member being a positive number and hence set off against any amount *L-A* if that amount is also a positive number or if payable to the Clearing House being a negative number and hence aggregated with any amount *L-A* if that amount is a positive number), in any case excluding any amount included under *C*, *M*, *GFC* or *SC*;

*C* = if relevant, any sum owed by or to the Clearing House to or from a recognised investment exchange or another recognised clearing house of which the Defaulter is or was a member, under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the Defaulter chose to participate (if payable to the Clearing Member being a positive number and hence set off against any amount *L-A-D* if that amount is also a positive number or if payable to the Clearing House being a negative number and hence aggregated with any amount falling under *L-A-D* if that amount is a positive number);

*M* = any property provided by or on behalf of the Defaulter as Original Margin, Initial Margin, Portfolio Risk Margin, Physical Settlement Margin or margin under Rule 502(g) or in satisfaction of such Margin requirements, including any such Margin transferred to the Clearing House by the Defaulter and any amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee entered into in favour of the Clearing House in satisfaction of such applicable Margin requirements, subject in any case to a deduction for any unsatisfied claims arising out of the default of the Defaulter before the Default in relation to which the calculation is being made, excluding any Margin that would otherwise fall under amount *M* transferred to a Transferee Clearing Member pursuant to Rule 902(a);

*GFC* = any property provided by or on behalf of the Defaulter as Guaranty Fund Contributions;

*SC* = any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral, including any amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee entered into in favour of the Clearing House surplus to applicable Margin requirements;

*OA* = the aggregate of any amounts not falling under *A*, *D*, *C*, *M*, *GFC* or *SC* standing to the credit of the Defaulter or payable to the Defaulter or any right or claim of the Defaulter against the Clearing House, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any amount payable to the Defaulter due to any breach by the Clearing House of these Rules), in any case at the discretion of the Clearing House; and



$OL$  = the aggregate of any other amounts not falling under  $L$  payable by the Defaulter to the Clearing House or any right or claim of the Clearing House against the Defaulter, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any fines payable pursuant to Part 10 and any other amounts payable in respect of any breach by the Defaulter of these Rules in either case not falling under  $L$ ), in any case at the discretion of the Clearing House,

provided that all such amounts specified above are aggregated, set off and applied in the order set out in the calculation above and in such order as is further required by Rules 102(p), 905(b) and 1103 and provided further that any amount is only included in respect of the relevant net sum to the extent allowed pursuant to Rule 905(b).

- (b) Where the Defaulter has one or more Customer Accounts, the process set out in Rule 905(a) shall, subject to Part 11, be completed separately in respect of:
- (i) the Defaulter's Non-DCM Customer Accounts and Contracts, rights, obligations and liabilities relating to the Defaulter's Non-DCM Customers; and
  - (ii) the Defaulter's DCM Customer Accounts and Contracts, rights, obligations and liabilities relating to the Defaulter's DCM Customers; and
  - (iii) ~~(ii)~~ the Defaulter's Proprietary Accounts and other Contracts, rights, obligations and liabilities not falling under Rule 905(b)(i) or (ii).

The Defaulter's Guaranty Fund Contributions, amounts under a Controller Guarantee or amounts payable under a letter of credit may be used for the purpose of calculating ~~either or both~~ any net sum (provided that any such amounts are not double counted), subject to the restrictions in Rule 1103 and to Rule 102(p). The aggregate sums finally payable shall be separately certified under Rule 905(d). The Clearing House may aggregate, set off or apply any Margin surplus available to it in relation to a Defaulter's Proprietary Account to meet a shortfall on any or both of the same Defaulter's relevant Customer AccountAccounts (and, if it does so, shall include any such amounts within the amount  $M$  or for the net sum to be calculated in relation to the Defaulter's Customer Account), provided that if any amounts are so aggregated, set off or applied, the net sum payable by the Clearing House in relation to the Defaulter's Proprietary Account shall be reduced by the same amount as is so included within the amount  $M$  for ~~the Defaulter's Customer~~ any of the Defaulter's Customer Accounts and provided further that, if there is a shortfall to both the DCM Customer Account and the Non-DCM Customer Account, any Proprietary Account surplus shall first be applied as between the Customer Accounts in proportion to the shortfalls for each Customer Account until there is no shortfall in respect of one or other of the Customer Accounts and thereafter shall be applied to the Customer Account which remains subject to a shortfall. The Clearing House shall not aggregate, set off or apply any Margin surplus available to it in relation to a Defaulter's Non-DCM Customer Account to meet a shortfall on any the same Defaulter's DCM Customer Account or vice versa. The Clearing House shall not aggregate, set off or apply any Margin surplus available to it in relation to a Customer Account to meet a shortfall on any Proprietary Account.

- (c) Where  $N$  is a positive number, the net sum equal to  $N$  shall be payable by the Defaulter to the Clearing House. Where  $N$  is a negative number, the net sum equal to the absolute value of  $N$  shall be payable by the Clearing House to the Defaulter, provided that if the Clearing House is required under any Applicable Law or pursuant to the order of any Governmental Authority to make payment in respect of any net sum to or to the account of a Person other than the Defaulter, the Defaulter's claim against the Clearing House shall be reduced by the amount paid to such Person and the amount payable by the Clearing House to the Defaulter shall be reduced accordingly. Where  $N$  is equal to zero, no amount shall be payable as between the Clearing House and the Defaulter pursuant to this Rule 905. Where there is more than one separately certified amount  $N$  certified under Rule 905(d) as a result of Rule 905(b), each amount so certified shall be treated as a separate obligation which cannot be netted off against another  $N$ .
- (d) Each amount  $N$  shall be certified by the Clearing House promptly upon its determination. Such determination may be delayed or withheld until such time as all relevant sums and components have been evaluated and until the value or sale proceeds of any non-cash Margin, Surplus Collateral, Guaranty Fund Contributions or other assets are determined, received or available. A certificate of the Clearing House made pursuant to this Rule 905 shall be conclusive as to the amount required to be paid by any Defaulter in discharge of its rights and liabilities in respect of the Contracts to which such certificate relates or by any other Person in relation to such Event of Default.
- (e) The Clearing House may co-operate, by the sharing of information and otherwise, with any Governmental Authority, Clearing Organisation, Exchange or Insolvency Practitioner having responsibility for any matter arising out of, or connected with, an Event of Default or the default of a recognised investment exchange or another recognised clearing house.
- (f) The Clearing House will report to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part 9.
- (g) Where a Defaulter enters into Contracts in more than one capacity for purposes of section 187 of the Companies Act 1989, separate net sums shall be calculated pursuant to Rule 905(a) and 905(b) in respect of each capacity in which the Defaulter acts. If a Disclosed Principal Member and the Clearing Member that appointed the Disclosed Principal Member are both Defaulters, the Clearing House shall be entitled to set off any amount or asset to the credit of either Defaulter against any liability or obligation of the other Defaulter for the purposes of calculating any net sum under this Rule 905 and may exercise any of its powers under this Part 9 accordingly.
- (h) For the purposes of calculating amounts  $L$  and  $A$  in Rule 905(a), the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:
- (i) the price of the Contract or Open Contract Position recorded in the Clearing House's books for the later of: (A) the last date on which a payment in respect of Variation Margin or Mark-to-Market Margin was successfully and fully made by the Clearing Member to or to the account of the Clearing House; or (B) the last date on which a return of amounts following a Variation Margin or

Mark-to-Market Margin call was successfully and fully made by the Clearing House to the Clearing Member or to the account of the Clearing Member; and

- (ii) the price at which the Contract or Open Contract Position was sold, transferred, terminated or liquidated pursuant to this Part 9.
  
- (i) In respect of any Contract to which a Defaulter and ICE Clear Europe are parties that arises pursuant to these Rules as a result of trading on an Exchange that is a designated contract market or derivatives transaction execution facility (as defined in the U.S. Commodity Exchange Act), any net sum certified by the Clearing House pursuant to Rule 905(b) as payable by the Clearing House to the Defaulter in respect of the Defaulter's DCM Customer Account in respect of such Contracts is intended to be treated in accordance with Applicable Laws of the United States of America including the U.S. Bankruptcy Code and the U.S. Commodity Exchange Act

including any court of law against any determination or ruling of the Summary Disciplinary Committee.

- (i) The Summary Disciplinary Committee shall, following the hearing, determine whether a Clearing Member has breached the Rules and shall determine what sanction or sanctions are to be imposed on the Clearing Member or Representative. Upon having determined in its absolute discretion whether a breach of the Rules has occurred, the Summary Disciplinary Committee shall communicate its findings and particulars of any sanction to the Clearing Member. The Summary Disciplinary Committee shall enjoy the full range of powers of sanction open to a Disciplinary Panel and may impose a combination of any such sanctions as it sees fit.
- (j) A determination or sanction imposed by the Summary Disciplinary Committee may be appealed under Rule 1005 to an Appeals Panel and shall not be referred to a Disciplinary Panel.

**Rule 1005**    *Appeals*

(a)

- (i) ~~(a)~~ Within 14 days of receiving notice in writing of a decision of a Disciplinary Panel, a determination in writing of a Summary Disciplinary Committee or a notice of sanction (whichever is the later), or such longer period as the chairman of the Disciplinary Panel or the Summary Disciplinary Committee may in his discretion direct, a Clearing Member (whether current or former in the case of expulsion) or the Clearing House, or both, may appeal to an Appeals Panel by lodging with the Clearing House a notice of appeal in writing and by delivering a copy thereof to any other party to the disciplinary proceedings.
- (ii) A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The grounds of the appeal may be any one or more of the following:
  - (A) the Disciplinary Panel or Summary Disciplinary Committee misdirected itself; or
  - (B) the Disciplinary Panel's or Summary Disciplinary Committee's decision was:
    - (1) one which no reasonable tribunal could have reached; or
    - (2) unsupported by the evidence or was against the weight of the evidence; or
    - (3) in the case of the Disciplinary Panel only, based on an error of law, or a misinterpretation of the Rules; or
  - (C) the sanction imposed by the Disciplinary Panel, Clearing House or Summary Disciplinary Committee was excessive or, in the case of an appeal by the Clearing House, was insufficient or inappropriate; or