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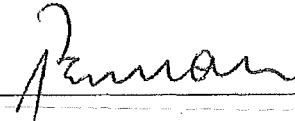
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OFFICE OF THE
SECRETARIAT

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 9 June 2011 and effective on 16 July 2011, comply with the Commodity Exchange Act and the regulations thereunder.

In witness whereof, the undersigned has signed this Certification as of the 13th day of July 2011.

By: 

Name: Patrick Davis

Title: Company Secretary



ICE Clear Europesm

Clearing Rules

31 MAY 2011 [DATE]

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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

Contracts, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); or (c) in relation to Energy Contracts only, where one Clearing Member that would be the Buying Clearing Member in accordance with (a) or (b) above has allocated an Energy Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Energy Transaction is allocated.

The term "Call" means an Option pursuant to which a Person with a Long position has the right to buy a Future or Futures from a Person with a Short position at the Strike Price and at a specified time.

The term "Capital":

- (a) with respect to a Clearing Member that is not an FCM Clearing Member, has the same meaning as the term "own funds", as such term is defined in the Banking Consolidation Directive and applicable on a stand-alone (non-consolidated) basis and subject to the limits and deductions set out therein and, in relation to matters reserved for member states, as implemented in the United Kingdom, whether or not the relevant Clearing Member is subject to the Banking Consolidation Directive or the supervision of the FSA ; or
- (b) with respect to an FCM Clearing Member, means its "adjusted net capital" as defined in CFTC Rule 1.17,

and, in either case, such other classes of Capital as are permitted at the Clearing House's discretion pursuant to the Procedures.

The term "CDS" means credit default swap.

The term "CDS Assessment Amount" means the total amount of all CDS Assessment Contributions payable by CDS Clearing Members pursuant to Rule 1106 in respect of an Event of Default.

The term "CDS Assessment Contribution" has the meaning set out in Rule 1106.

The term "CDS Clearing Member" means a Clearing Member that is authorised by the Clearing House to become party to CDS Contracts.

The term "CDS Contract" means a Contract that is a CDS that is cleared in accordance with the Procedures or is otherwise described as a CDS Contract under the Procedures and may be in the form of a CDS relating to an index or a single reference entity or in the form of a Component Transaction (as defined in Part 15).

The term "CDS Default Amount" has the meaning set out in Rule 1103(d)(i).

The term "CDS Guaranty Fund" means the guaranty fund established and maintained pursuant to Part 11 relating to the Clearing of CDS Contracts.

The term "CDS Guaranty Fund Contribution" means a Guaranty Fund Contribution relating to the CDS Guaranty Fund.

The term "**CDS Sub-Account**" means, in relation to a CDS Clearing Member, each account at the Clearing House with a unique identification number used by that CDS Clearing Member in accordance with an election under Rule 406(d) for the recording of details of CDS Contracts with the Clearing House, which account is linked to an account at Deriv/SERV for the recording of details of trades relating to such CDS Contracts and which account is further linked to the CDS Clearing Member's Proprietary Account or Customer Account.

The term "**CEA**" means the U.S. Commodity Exchange Act.

The term "**CFTC**" means the Commodity Futures Trading Commission of the United States of America, or any successor thereto.

The term "**Chairman**" means the chairman of the Board from time to time.

The term "**Circular**" means a publication issued by the Clearing House for the attention of all Clearing Members and posted on the Clearing House's website in accordance with Rule 109(g).

The term "**Clearing**" means the central counterparty, risk, Open Contract Position, Margin, settlement, delivery, administrative, acceptance, transaction data, settlement price establishment and other functions of the Clearing House pursuant to these Rules.

The term "**Clearing House**" means ICE Clear Europe Limited, a company registered in England & Wales with registered number 06219884.

The term "**Clearing House Account**" means an account of the Clearing House at an Approved Financial Institution.

The term "**Clearing House CDS Contributions**" means the Clearing House CDS GF Contribution and the Clearing House CDS Initial Contribution.

The term "**Clearing House CDS GF Contribution**" means amounts allocated by the Clearing House as being applicable following an Event of Default in accordance with Rule 1103(c)(v)(B) or 1103(f)(v)(C) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House CDS Initial Contribution**" means amounts allocated by the Clearing House as being applicable following an Event of Default in accordance with Rule 1103(c)(iv) or 1103(f)(iv)(B) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Contributions**" means the Clearing House CDS Contributions and the Clearing House Energy Initial Contribution.

The term "**Clearing House Energy Contributions**" means the Clearing House Energy GF Contribution and the Clearing House Energy Initial Contribution.

The term "**Clearing House Energy GF Contribution**" means amounts allocated by the Clearing House as being applicable following an Event of Default in accordance with Rule 1103(b)(v)(B) or 1103(f)(v)(B) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Control**" means the rights and powers exercised over a Person by a Controller and its cognate terms shall be construed accordingly.

The term "**Controller**" has the meaning given to that term in section 422 of the FSMA.

The term "**Controller Guarantee**" means a guarantee given by a Controller of a Clearing Member under Rule 201(a)(vi).

The term "**Credit Derivatives Definitions**" means the document of that name dated 2003 published by ISDA as supplemented by the 2009 ISDA Credit Derivatives Determination 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 ~~an FCM~~ Clearing Member provides services for ~~DCMFCM~~ Customers, it shall have a separate DCM Customer Account for Contracts and monies relating to DCM Customers and ~~Non-DCM, FCM Swap~~ Customer Account for Contracts and monies relating to ~~Non-DCMFCM Swap Customers, Non-DCM/Swap~~ Customer Account for Contracts and monies relating to ~~Non-DCM/Swap Customers and General Customer Account~~ for Contracts and monies relating to General Customers. A Customer Account of an FCM Clearing Member must be either a ~~DCM Customer Account, FCM Swap Customer Account, Non-DCM/Swap~~ Customer Account or a ~~DCM General~~ 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~~ A Clearing Member which is not an FCM Clearing Member ~~shall have only a single General Customer Account.~~

~~The term "DCM Customer" means any FCM Customer 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) U.S. Futures. A Person may be a DCM Customer in relation to certain Contracts and a Non-DCM another category of FCM Customer in relation to other Contracts.~~

The term "**DCM Customer Account**", ~~in respect of an FCM Clearing Member,~~ 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~~ that are U.S. Futures), the books and records of which are located in the United States of America, opened in the name of the FCM 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(a) of the U.S. Commodity Exchange Act, as amended and CEA 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(a) of the U.S. Commodity Exchange Act, as amended and CEA 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 DCM Customers or groups of DCM 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 "**Delivery Facility**" means any Person or facility used for the delivery of Commodities (excluding Transferors and Transferees).

The term "**Deriv/SERV**" means The Depository Trust & Clearing Corporation's system for storage and processing of trade information in relation to CDS, currently known as Deriv/SERV, or any successor thereto.

The term "**Director**" means a director of the Clearing House.

The term "**Disciplinary Panel**" means a disciplinary panel established pursuant to Rule 1003.

The term "**Disclosed Principal Member**" means, where a Clearing Member acts as agent for a disclosed principal in respect of its Energy Contract clearing business and such principal has been admitted by the Clearing House as a Disclosed Principal Member, that principal.

The term "**Dispute**" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with these Rules or any Contract, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of these Rules or any Contract.

The term "**EFPs**" means 'exchange for physicals' under the ICE Futures Europe Rules.

The term "**EFs**" means 'exchange for swaps' under the ICE Futures Europe Rules.

The term "**Eligible Complaint**" means a complaint which is eligible pursuant to the Complaints Procedures.

The term "**Eligible Currencies**" means USD, EUR, GBP and such other currencies as are specified as such by the Clearing House from time to time.

The term "**Encumbrance**" means any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing.

The term "**Energy Assessment Amount**" means the total amount of all Energy Assessment Contributions payable by Energy Clearing Members pursuant to Rule 1105(a) in respect of an Event of Default.

The term "**Energy Assessment Contribution**" has the meaning set out in Rule 1105(b).

The term "**Energy Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to Energy Contracts.

The term "**Energy Contracts**" means Contracts that are not CDS Contracts.

The term "**Energy Default Amount**" has the meaning set out in Rule 1103(d)(ii).

The term "**Energy Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating only to Energy Contracts.

The term "**Energy Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the Energy Guaranty Fund.

The term "**Energy Transaction**" means an ICE Futures Europe Transaction or an ICE OTC Transaction.

The term "**EUR**" means the euro, or any other lawful currency that is a successor to it.

The term "**Event of Default**" has the meaning set out in Rule 901 and the term "**Default**" shall be construed accordingly.

The term "**Exchange**" means any exchange or similar body duly authorised, regulated, recognised or licensed (to the extent necessary) under Applicable Laws in any jurisdiction, including, but not limited to, any recognised investment exchange, recognised overseas investment exchange, designated investment exchange, designated contract market, exempt commercial market, regulated market, alternative trading system, multilateral trading facility or similar entity.

The term "**FCM**" means a futures commission merchant registered as such with the CFTC.

The term "**FCM Clearing Member**" means a Clearing Member that is an FCM.

The term "**FCM Customer**" means any Customer that is a customer (as defined in CFTC Rule 1.3(k)) of an FCM Clearing Member within the meaning of CFTC Rule with respect to any Contract in one or more account classes (as defined in CFTC Rule 190.01) (other than a non-public customer as defined in CFTC Rule 1.3(bb)).

The term "**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements).

The term "**Financial Emergency**" means, with respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member is not or is likely not to be, in either case determined at the discretion of the Clearing House, adequate for such Clearing Member to meet its obligations (including, without limitation, its obligations to comply with these Rules) or to engage in business, or is such that it would not

The term "**Future**" means an Energy Contract subject to Clearing by the Clearing House that is a 'future' or 'contract for differences etc.' under articles 84 or 85 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**GBP**" means the lawful currency from time to time of the United Kingdom.

The term "**General Customer**" means either: (i) a Customer of a Clearing Member that is not an FCM Clearing Member; or (ii) for an FCM Clearing Member, a Customer that is not a DCM Customer, FCM Swap Customer or Non-DCM/Swap Customer.

The term "**General Customer Account**" means either: (i) the Customer Account of a Clearing Member that is not an FCM Clearing Member; or (ii) for an FCM Clearing Member, a Customer Account used for Contracts or monies that do not relate to DCM Customers, FCM Swap Customers or Non-DCM/Swap Customers. A Person may be a General Customer of an FCM Clearing Member in relation to certain Transactions or Contracts and another category of FCM Customer of an FCM Clearing Member in relation to other Transactions or Contracts.

The term "**Governmental Authority**" means any Regulatory Authority and any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction.

The term "**Guaranty Funds**" means the Energy Guaranty Fund and the CDS Guaranty Fund.

The term "**Guaranty Fund Contribution**" means Permitted Cover transferred by a Clearing Member to the Clearing House as a contribution to the Guaranty Fund pursuant to Part 11 that has not been applied pursuant to Part 11 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Guaranty Fund Period**" for the Energy Guaranty Fund, means a three-month period for which the total amount of Energy Guaranty Fund Contributions for the Energy Guaranty Fund is fixed (subject to any termination or suspension of any Energy Clearing Member's membership or status as an Energy Clearing Member, new Energy Clearing Members making Energy Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11); or, for the CDS Guaranty Fund, means a period for which the total amount of CDS Guaranty Fund Contributions for the CDS Guaranty Fund is fixed pursuant to the Procedures (subject to any termination or suspension of any CDS Clearing Member's membership or status as a CDS Clearing Member, new CDS Clearing Members making CDS Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11).

The term "**Guidance**" means guidance issued by the Clearing House pursuant to Rule 109(f).

The term "**HM Treasury**" means Her Majesty's Treasury in the UK and any successor thereto.

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./~~**Swap**" means, in relation to an FCM Clearing Member, a Transaction or Contract that is not a U.S. Future or a Swap (as described in paragraphs (i) or (ii) of the definition thereof), which will include without limitation an ICE Futures Europe Transaction, an ICE Futures Europe Contract and any other Transaction or Contract made on or subject to the rules of any other "foreign board of trade" as defined in the CEA and will not include transactions in "security-based swaps" as defined in the CEA.

The term "**Non-DCM/Swap Customer**", in respect of an FCM Clearing Member, means a Customer that is not a DCM Customer or a Swap Customer with respect to a Transaction or Contract and which is required to be treated or is otherwise treated by the FCM Clearing Member as a Non-DCM/Swap Customer. A Person may be a Non-DCM/Swap Customer in relation to certain Transactions or Contracts and another category of FCM Customer in relation to other Transactions or Contracts.

The term "**Non-DCM/Swap Customer Account**", in respect of an FCM Clearing Member, means a Customer Account that is not a DCM Customer Account or Swap Customer Account in relation to which the Clearing Member: (i) acts in its capacity as a clearing member in relation to ~~transactions~~Non-DCM/ Swaps (other than Permitted Co-mingled Contracts) connected with the provision of services to Non-DCM/Swap 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/Swap Customers.

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

The term "**Opening Days**" means the days upon which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Opening Hours**" means the hours during which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Option**" means an Energy Contract subject to Clearing by the Clearing House that is an 'option' under article 83 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**Original Margin**" means the Permitted Cover required to be provided to the Clearing House as security for the obligations of a Clearing Member in respect of Energy Contracts pursuant to Part 5 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Permitted Co-mingled Contract**" means, with respect to an FCM Clearing Member, a Contract that is a Non-DCM/Swap which has been designated by the Clearing House by Circular and approved by the appropriate Regulatory Authority or Regulatory Authorities to be recorded in the Swap Customer Account rather than the Non-DCM/Swap Customer Account.

The term "**Permitted Cover**" means assets or cash determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions, including cash in Eligible Currencies and includes, where the context so requires, any such assets transferred to the Clearing House and any proceeds of realisation of the same.

The term "**Person**" means any individual, partnership, firm, body corporate, association, trust, unincorporated organisation or other entity.

The term "**Physical Settlement Margin**" means the Permitted Cover required to be provided by Clearing Members related to the risk and size of a Clearing Member's obligations relating to physical settlement of a CDS Contract, as determined pursuant to Rule 503(f)(i).

The term "**Pledged Collateral**" means Margin (or Permitted Cover in respect thereof) provided by a Clearing Member in respect of a Pledged Collateral Account by way of security interest pursuant to a Pledged Collateral Addendum.

The term "**Pledged Collateral Account**" means a Proprietary Account or Customer Account in respect of which the Clearing House has designated that Margin (or Permitted Cover in respect thereof) is to be provided by a Clearing Member by way of security interest in accordance with a Pledged Collateral Addendum rather than by way of title transfer pursuant to the Clearing Membership Agreement.

The term "**Pledged Collateral Addendum**" means a Pledged Collateral Addendum to the Clearing Membership Agreement entered into between a Clearing Member and the Clearing House.

The term "**Portfolio Risk Margin**" means the Permitted Cover required to be provided by Clearing Members to the Clearing House related to the size and risk of a Clearing Member's

accepted by the Clearing House at its discretion), as reflecting the fair market value of such Energy Contract as of the close of trading in such Energy Contract on such day.

The term "**Short**", in respect of an Option, refers to the positions of Persons against whom Put Options and Call Options may be exercised.

The term "**Strike Price**" in respect of an Option, means the price of the relevant Future upon exercise of the Option.

The term "**Summary Disciplinary Committee**" means a summary disciplinary committee established pursuant to Rule 1004(c).

The term "**Surplus Collateral**" means any Permitted Cover transferred to the Clearing House by a Clearing Member that is not required to satisfy the Clearing Member's current or most recently calculated requirements in respect of Margin and Guaranty Fund Contributions.

The term "**Swap**" means (i) a "swap" as defined in the CEA, (ii) to the extent permitted to be held in an account with Swaps under Applicable Law, a "security-based swap" as defined in the CEA, and (iii) Permitted Co-mingled Contracts.

The term "**Swap Customer**", in respect of an FCM Clearing Member, means any FCM Customer with respect to any Contract arising as a result of a Transaction that is a Swap. A Person may be a Swap Customer in relation to certain Contracts and another category of FCM Customer in relation to other Contracts.

The term "**Swap Customer Account**", in respect of an FCM Clearing Member, means an account (if any) with the Clearing House (in its capacity as a registered U.S. derivatives clearing organisation clearing Swaps), the books and records of which are located in the United States of America, opened in the name of the FCM Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to Swap Customers where segregation of related collateral is required in accordance with Section 4d(f) of the CEA 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 to transactions connected with the provision of services to Swap Customers) relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Swap Customers (whose transactions the Clearing Member requests be recorded in the Swap Customer Account where the same is required in accordance with the segregation provisions of Section 4d(f) of the CEA 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 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 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 to the Clearing House by Clearing Members 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 from time to time modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.
- (b) References to any rules or any agreement are references to such rules or agreement as amended or restated from time to time, provided that such amendments or restatements are made in accordance with these Rules.
- (c) The Interpretation Act 1978 shall apply to these Rules in the same way as it applies to an enactment.

any part of the Rule and may make or authorise different directions, arrangements or procedures in relation to different Clearing Members and may make or authorise such directions, arrangements or procedures generally or in relation to a particular Clearing Member or particular occasion and in all cases subject to such conditions as it may think fit. Any action taken at the discretion of the Clearing House may not be challenged by a Clearing Member (subject to the requirements of Rule 111(c) and the 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:
- (i) Customer Account of any class be used to meet a shortfall on that Clearing Member's or Defaulter's Proprietary Account;
 - (ii) Non-DCM/Swap Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's DCM Customer Account, Swap Customer Account or General Customer Account; or
 - (iii) DCMSwap Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Non-DCMDCM Customer Account, Non-DCM/Swap Customer Account or General Customer Account;
 - (iv) DCM Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Non-DCM/Swap Customer Account, Swap Customer Account or General Customer Account; or
 - (v) General Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Non-DCM/Swap Customer Account, DCM Customer Account or Swap 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~~Subject to Rule 1608, 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 if, having used all reasonable endeavours to perform such obligation by such specified time or date, it performs the relevant obligation promptly after such specified time or date.

Rule 104 *Invoicing Back and Specification of Terms*

- (a) The Clearing House shall have the right in consultation with the relevant Market (if any), to Invoice Back a Contract with a Clearing Member, including a Contract that is subject to delivery or tender, upon the occurrence of a Force Majeure Event or a Financial Emergency, provided that the Invoicing Back is, subject to Rule 109(c), approved in advance by an affirmative vote of the Board at a quorate meeting, at which meeting the facts giving rise to the Force Majeure Event or the Financial Emergency, as the case may be, will be considered and the meeting shall decide whether it would be appropriate to use this Invoicing Back power, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (b) The Clearing House shall have the right in consultation with the relevant Market, to specify or over-ride the price or other terms of any Energy Contract or Energy Transaction, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (c) Provided that any power exercised under this Rule 104 is exercised in accordance with its terms, any Invoicing Back, specification or over-riding by the Clearing House shall be final and binding for the purposes of these Rules and not be subject to challenge by any Person under these Rules or otherwise, except in the case of manifest error, negligence or fraud.
- (d) Where the Clearing House deems it necessary to exercise its powers under paragraph (a) or (b) above, it will do so in good faith and in accordance with Rule 102(pg).
- (e) The Clearing House will not exercise its powers under paragraph (a) or (b) to avoid or amend the terms of any Contract to which a Clearing Member is party unless there is an objective justification for it doing so and such an approach is applied objectively. The price at which any Invoicing Back is executed shall be determined in a commercially reasonable manner.

pre-judgment attachment) that results from any judicial or administrative proceedings commenced pursuant to this Rule 117.

- (l) The rights and obligations of a Clearing Member under the Rules and in relation to any Contract are of a commercial and not a governmental nature.
- (m) No Clearing Member shall raise or in any way whatsoever assert a defence of sovereign immunity in relation to any claim or enforcement proceedings arising from a Dispute under this Agreement.
- (n) All Permitted Cover standing to the credit of a Clearing Member who is party to one or more Contracts subject to a Dispute or difference to which this Rule 117 or Market Rules applies, whether or not such Permitted Cover is held with respect to a disputed Contract, may be retained by the Clearing House until the Dispute in question is finally disposed of.
- (o) This Rule 117 is subject to Rule 1608.

House and software as in the judgment of the Clearing House are necessary or desirable;

- (xi) have in place business continuity procedures that satisfy the Clearing House's minimum requirements;
- (xii) have a sufficient level of knowledge about the types of Contracts that it intends to clear and any risks involved in relation to the same;
- (xiii) have demonstrated its ability to make available to the Clearing House sufficient Margin and make Margin payments as required pursuant to these Rules;
- (xiv) have made the required Guaranty Fund Contributions;
- (xv) not be subject to an Insolvency;
- (xvi) be either a Person that is not a natural person or a Person that is subject to business taxation for the purposes of Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments;
- (xvii) if it is a Clearing Member in respect of ICE OTC Transactions, be an 'eligible commercial entity' (as defined in Section 1a(11) of the U.S. Commodity Exchange Act) or an 'eligible contract participant' (as defined in Section 1a(12) of the U.S. Commodity Exchange Act);
- (xviii) not be subject to any circumstances pursuant to which an Event of Default could be declared were the applicant to be a Clearing Member;
- (xix) have provided details of an office which is staffed during normal business hours and sufficient for its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive officer of the Clearing Member (who need not be physically located at such office) to which all notices, orders and other communications from the Clearing House may be transmitted or delivered;
- (xx) satisfy the Clearing House that it, its officers, directors and Controllers would each meet the requirements for an 'approved person' (for individuals) or 'controller' (for partnerships, companies and other bodies corporate) under the FSA Rules;
- (xxi) hold an account or accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House;
- (xxii) if non-cash assets are to be used as Permitted Cover, have executed all necessary documentation relating to the transfer of such assets and not be in dispute with the Clearing House in relation to the ownership over or rights relating to such non-cash assets; and
- (xxiii) either (A) be a Person in respect of whom 'simplified due diligence' may be applied pursuant to the Money Laundering Regulations 2007; or (B) have been

subject to customer due diligence measures under the Money Laundering Regulations 2007 to the Clearing House's satisfaction;

(xxiv) be organised (and any relevant branch or establishment outside its home jurisdiction must be organised) in a jurisdiction whose insolvency laws are acceptable to the Clearing House, and comply with any additional restrictions or requirements imposed by the Clearing House as a result of activities in any such jurisdictions; and

(xxv) not be subject to statutory disqualification under Applicable Law.

- (b) The Clearing House may at its discretion attach further objective conditions to any application for Clearing Member status prior to such status being granted. The Clearing House may grant approval to an applicant conditional upon satisfying certain requirements, provided that the applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.
- (c) Applicants for membership must provide information or documentation to the Clearing House evidencing compliance (or lack thereof) with each of the criteria set out in or required pursuant to Rule 201(a) and, for CDS Clearing Member applicants only, Rule 201(i). Failure by an applicant to supply such information or documentation may result in an application being rejected.
- (d) All information supplied to the Clearing House in respect of an application for membership shall be deemed to have been provided by the Clearing Member to the Clearing House on the day on which that Clearing Member becomes a Clearing Member, save to the extent that such information has been amended or revoked at least two Business Days prior to membership being granted.
- (e) If the Clearing House determines that an application for membership should be denied, the applicant will be given notice of such denial. In such an event, the applicant may request an opportunity to be heard by the Clearing House's Board (or an appropriately constituted sub-committee of the Board) in relation to the matter and to present evidence as to why its application should not be denied or may raise a complaint which the Clearing House will deal with in the same way as if Part 10 applied to such complaint (notwithstanding that the Rules do not apply to the complaint).
- (f) Membership of the Clearing House does not entitle any Clearing Member to any shareholding or other similar interest in the Clearing House or any of the Clearing House's Controllers or Affiliates. Nothing in these Rules is intended to, or shall be deemed to, establish any partnership or joint venture between any Clearing Members or between the Clearing House and any other person. Except for any provision relating to Disclosed Principal Members or Representatives that are agents, nothing in these Rules constitutes any Clearing Member or the Clearing House as the agent or principal of any other Person. Nothing in these Rules authorises any Person to make or enter into any commitments for or on behalf of any other Person (save in the case of a Clearing Member acting on behalf of and being liable for a Customer or as otherwise expressly provided herein).

- (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, separately for CDS Contracts and Energy Contracts, if applicable and separately for Swap Customer Account, Non-DCM/Swap Customer Accounts and Account, DCM Customer Accounts Account and General Customer Account, 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;

to satisfy the membership criteria in Rule 201(a) or Rule 201(i) (in the case of the Rule 201(i), only if it is a CDS Clearing Member);

- (xviii) assign any of its rights or transfer by novation any of its rights and obligations under these Rules to a third party (or purport to do so) unless the Clearing House provides its prior written consent (which consent shall not unreasonably be withheld or delayed); or
- (xix) breach any Contract Terms.

Rule 204 *Notifications by Clearing Members*

- (a) Each Clearing Member shall notify the Clearing House in writing without delay providing full particulars known to it:
 - (i) in relation to any change of Control, as soon as it becomes aware of that change or proposed change of Control and it is not prevented from disclosing the change of Control by Applicable Laws;
 - (ii) if it breaches any applicable Position Limit that has been notified to it;
 - (iii) if it ceases to have sufficient Capital;
 - (iv) if its Capital for any reason is reduced by more than 10% from that shown on the latest financial statement filed by it with the Clearing House;
 - (v) prior to any payment, loan, distribution or redemption causing a reduction in Capital of the nature described in Rule 204(a)(iv), detailing the payment, loan, distribution or redemption involved and a description of the effect that the same will have on the Capital of the Clearing Member;
 - (vi) in the event that it fails to meet any obligation to transfer, deposit or pay any Margin when and as required by any Clearing Organisation of which it is a member (other than the Clearing House), excluding any matter subject to a dispute (where the Clearing Member is not in default) or resulting from manifest error;
 - (vii) in the event that it fails to comply with any applicable financial requirements of any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility;
 - (viii) of an Insolvency affecting it or any of its Controllers or Affiliates (and must provide a copy of such notice to the FSA and the Bank of England pursuant to Part 12);
 - (ix) of any Event of Default affecting it;
 - (x) of any financial or commercial difficulty such as would give rise to a risk of an Event of Default occurring;
 - (xi) [Not used]; of any "early warning" or similar matter required to be notified to a Regulatory Authority under Applicable Law, within the time and in the

manner specified in Applicable Law for such notification to such Regulatory Authority:

- (xii) of any breach by it of any Applicable Law relating to its status and performance as a Clearing Member or of the Rules, including full particulars of the breach; or
 - (xiii) of anything relating to the Clearing Member of which Clearing House would reasonably expect notice (including of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded).
- (b) Where a Clearing Member is regulated by the FSA:
- (i) Notifications under Rule 204(a)(i) shall only be required where a change of Control is notifiable to the FSA; and in such cases the Clearing Member should provide the Clearing House contemporaneously with a copy of all submissions sent to the FSA relating to the change of Control; and
 - (ii) Notifications under Rule 204(a)(xiii) (other than notifications of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded) shall only be required if a notification is also required to the FSA under the Principles for Business in the FSA Rules.

Rule 205 *Financial Reporting*

- (a) Each Clearing Member must file with the Clearing House in relation to the Clearing Member and, if so notified by the Clearing House at its discretion, any Controller:
- (i) an audited financial statement including profit and loss accounts and balance sheet, with the auditor's report, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House within 90 days of the end of the Clearing Member's or relevant Controller's fiscal year;
 - (ii) a quarterly financial statement including management profit and loss accounts and balance sheet, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House, within 30 days of the end of each quarter; and
 - (iii) in the case of Clearing Members or their Controllers that are licensed, authorised or regulated by a Regulatory Authority, a copy of all financial returns, reports, statements and notices provided to the relevant Regulatory Authority as soon as so provided and, if any such material is other than a routine periodic financial return, statement or report required under Applicable Laws, a written statement setting out (to the extent known) the reasons why such Clearing Member or relevant Controller is filing it.

- (b) In the case of Clearing Members authorised and regulated by the FSA, the Clearing House shall be authorised, at its discretion, to obtain copies of financial filings, returns and reports directly from the FSA rather than from the Clearing Member. The Clearing Member will not be relieved of any of its obligations to the extent that the Clearing House does not obtain, or is unable to verify the accuracy of, any financial return or report obtained by it from the FSA.
- (c) Each Clearing Member shall file with the Clearing House such financial or other relevant information, in addition to what is explicitly required by this Rule 205, as may be requested by the Clearing House at its discretion from time to time.
- (d) All qualifications and reports of Clearing Members' auditors in any financial report must be satisfactory to the Clearing House.

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 Non-DCM/Swap Customer Account, Non-Swap Customer Account, DCM Customer Account or DCM General 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

- (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) if it is an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Non-DCM/Swap Customers, in which case the Contract shall be recorded by the Clearing Member in the Non-DCM/Swap Customer Account;

- (ii) if it is an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more DCM Customers, in which case the Contract shall be recorded by the Clearing Member in the DCM Customer Account;
 - (iii) if it is an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Swap Customers, in which case the Contract shall be recorded by the Clearing Member in the Swap Customer Account;
 - (iv) if it is an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more General Customers, in which case the Contract shall be recorded by the Clearing Member in the General Customer Account;
 - (v) ~~(i) as a clearing member in relation to a transaction or transactions connected with the provision of services to Non-DCM~~ if it is not an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Customers where segregation of related collateral is required, in which case the Contract shall be recorded by the Clearing Member in the Non-DCM General Customer Account; or
 - (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~~
 - (vi) ~~(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 one or more of a Proprietary Account, Non-DCM/Swap Customer Account and a DCM, Swap Customer Account, DCM Customer Account or General Customer Account~~ enters into Contracts recorded in its ~~Non-DCM Account~~ each such account in a different capacity to that in which it enters into Contracts recorded in its ~~DCM Customer Account~~ any other 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).

- (iii) any contracts giving rise to the Transaction were, immediately prior to the formation of a Contract pursuant to Rule 401(a), legally valid, binding and enforceable under Applicable Laws.
- (d) Clearing Members will become party to, and liable under, Contracts each and every time a Transaction that gives rise to a Contract arises as a result of the action or omission of its Representatives, regardless of any circumstance in relation to such Transaction, including without limitation whether the person placing the Transaction was authorised to do so by the Clearing Member or its Representative or whether the Transaction caused a Representative to exceed the Clearing House's credit or other parameters set for such Representative, the Clearing House's Position Limits or otherwise was in breach of the Rules or any of the Clearing Member's or Clearing House's policies, procedures or controls.

Rule 406 *Open Contract Positions*

- (a) At the end of each day or at such other frequency as the Clearing House determines at its discretion either generally or in respect of any Clearing Member, the Clearing House will calculate Open Contract Positions in its books and records. Settlement or revaluation of Open Contract Positions and Contracts will take place pursuant to the 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/Swap Customer Account (if any), Swap Customer Account (if any), DCM Customer Account (if any) and DCM General 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

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/Swap Customer Account (if any), Swap Customer Account (if any), DCM Customer Account (if any) and DCM General 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.

- (d) Details of Eligible Currencies and other Permitted Cover that may be used to satisfy Margin obligations will be notified to Clearing Members from time to time by a Circular. The Clearing House may, at its discretion, vary or alter the standard Margin requirements, nature or types of acceptable Eligible Currencies and Permitted Cover, specify proportions or maximum proportions of asset classes or modify any valuation procedures or haircuts set out in the Procedures. Any general changes to requirements for Margin or Permitted Cover will be notified to Clearing Members by a Circular.
- (e) Certain classes of Permitted Cover may be subject to haircuts, as specified in the Procedures, pursuant to which certain classes of Permitted Cover do not count for their full face or market value in the determination of Margin for the account of a Clearing Member.
- (f) The Clearing House may require a Clearing Member or Clearing Members to transfer cash in other Eligible Currencies or Permitted Cover with the Clearing House in substitution for any Permitted Cover already transferred to the Clearing House.
- (g) The Clearing House may impose, amend or withdraw additional Margin requirements in respect of any Clearing Member at any time and at its discretion.
- (h) The Clearing House may designate that a Proprietary Account or Customer Account of a Clearing Member shall be a Pledged Collateral Account and consequently that Margin (or Permitted Cover in respect thereof) to be provided by such Clearing Member with respect to such account shall be provided by way of Pledged Collateral. In the absence of such express designation (whether pursuant to these Rules or otherwise), a Proprietary Account or Customer Account will not be a Pledged Collateral Account.

Rule 503 *Margin Calls and Return of Excess Margin*

- (a) Margin shall be and become due and payable at the times specified by the Clearing House pursuant to Rule 302.
- (b) Regular Margin calculations will be made by the Clearing House on each Business Day. Any such calculation may result in a call for additional Permitted Cover pursuant to Part 3.
- (c) The Clearing House shall be entitled, at its discretion, to make an intra-day call for Margin or any other amount payable to it. In the event of such a call being made, the Clearing House will:
 - (i) give notice to each Clearing Member which is required to make payment to the Clearing House of the amount payable by such Clearing Member and time by which payment must be made; and
 - (ii) immediately after giving or making reasonable efforts to give the notice described in Rule 503(c)(i), instruct the relevant Approved Financial Institution to transfer funds equal to the amount due to the Clearing House from the account of such Clearing Member to an account of the Clearing House.

- (d) For regular calls relating to Energy Contracts, Margin shall be calculated with reference to a Clearing Member's Open Contract Position in accordance with the Procedures. For any intra-day Margin call relating to Energy Contracts, Margin shall be calculated with reference to a Clearing Member's Open Contract Position and gross number of Contracts in relation to any Contracts not included in Open Contract Positions in accordance with the Procedures.
- (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/Swap Customer Account (if any), Swap Customer Account (if any), DCM Customer Account (if any) and DCM General 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,

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/Swap Customer Account (if applicable);
 - (iii) gross sell positions under its Non-DCM/Swap Customer Account (if applicable);
 - (iv) gross buy positions under its Swap Customer Account (if applicable);
 - (v) gross sell positions under its Swap Customer Account (if applicable);
 - (vi) gross buy positions under its DCM Customer Account (if applicable);
 - (vii) gross sell positions under its DCM Customer Account (if applicable);

- (viii) ~~(iv) gross buy positions under its DCM~~ gross buy positions under its General Customer Account (if applicable); and
 - (ix) ~~(v) gross sell positions under its DCM~~ General 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 reflected in a Clearing Member's Open Contract Position, the difference between the Market Delivery Settlement Price and the price at which each new relevant Contract not in the Clearing Member's Open Contract Position was bought or sold. Each cash settlement shall occur in accordance with the Contract Terms.
- (d) Neither those parts of the Procedures relating to delivery nor the requirements of Rule 703 shall apply to any Contract which is settled in cash in accordance with this Rule 702.

Rule 703 *Delivery*

- (a) In relation only to Futures which are not settled in cash pursuant to Rule 702, those parts of the Procedures relating to delivery and the requirements of this Rule 703 shall apply.
- (b) The Buyer and Seller shall each make such payments and deliveries and deliver such tenders, notices and invoices as are required pursuant to the Procedures and Market Rules.
- (c) Full compliance with the Procedures applicable to the Contract in question and, where applicable, Market Rules shall amount to a good discharge of the rights, liabilities and obligations of the parties under such Contract (but shall be without prejudice to any rights, liabilities or obligations of any party to a Contract in relation to breach of warranty, representation, damaged goods, under-delivery, over-delivery or otherwise).
- (d) The Clearing House may, at its discretion, direct a Clearing Member who is a Seller under a Contract subject to delivery to deliver the Commodity the subject matter of such Contract to another Clearing Member that is a Buyer. The Seller and Buyer shall each be bound by any such direction. Delivery in accordance with any such direction shall be deemed to constitute delivery by the Seller to the Clearing House and from the Clearing House to the Buyer for the purposes of the Contract or Contracts in question (but title shall not pass unless and until specified in the Procedures). All payments in relation to such Contracts shall nonetheless be made only to and from the Clearing House by the Clearing Members concerned.
- (e) If a Buyer under a Contract rejects a Commodity delivered to it, the Clearing House as Buyer under the similar (effectively, back to back) Contract shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under the equivalent Contract and the Clearing House

shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.

- (f) If an invoice has not been prepared or delivered when payment becomes due pursuant to a Contract, payment shall be made and received on account, pending the issue of that invoice.
- (g) Where a Clearing Member that is a Buyer or Seller under a Contract subject to delivery is subject to an Event of Default or Force Majeure Event, the rights, liabilities and obligations of any Clearing Member that is not a Defaulter in respect of such performance shall be discharged and there shall arise in place of the same an obligation to account as between the Clearing Member and the Clearing House for a 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~~ Accounts, 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:
 - (i) Proprietary Account;
 - (ii) gross buy positions ~~on~~ under its Non-DCM/Swap Customer Account (if applicable);
 - (iii) gross sell positions ~~on~~ under its Non-DCM/Swap Customer Account (if applicable);
 - (iv) gross buy positions under its Swap Customer Account (if applicable);
 - (v) gross sell positions under its Swap Customer Account (if applicable);
 - (vi) gross buy positions under its DCM Customer Account (if applicable);

(vii) gross sell positions under its DCM Customer Account (if applicable):

(viii) ~~(iv)~~ gross buy positions under its DCMGeneral Customer Account (if applicable); and

(ix) ~~(v)~~ gross sell positions under its DCMGeneral 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 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 in respect of such account or position.

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~~under its Non-DCM/Swap Customer Account (if applicable);
 - (iii) gross Short positions ~~on~~under its Non-DCM/Swap Customer Account (if applicable);

- (iv) gross Long positions ~~on~~under its DCM Swap Customer Account (if applicable);
 - (v) gross Short positions ~~on its DCM~~under its Swap Customer Account (if applicable);
 - (vi) gross Long positions under its DCM Customer Account (if applicable);
 - (vii) gross Short positions under its DCM Customer Account (if applicable);
 - (viii) gross Long positions under its General Customer Account (if applicable); and
 - (ix) gross Short positions under its General 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.

- (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 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 disappplied by Rule 209(c).

- (e) Where a Clearing Member that is a Defaulter has a Pledged Collateral Account, the Clearing House shall be entitled, in addition to its other rights and remedies under Rule 902, to exercise the rights of a secured party and collateral-taker under Applicable Law with respect to any Pledged Collateral and the rights set forth in the Pledged Collateral Addendum to liquidate such Pledged Collateral, and shall thereupon apply the proceeds thereof to the applicable obligations of the Defaulter in respect of the relevant Customer Account or Proprietary Account in determining the net sum under Rule 905.

Rule 903 *Method of Closing Out*

- (a) Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) to which a Defaulter is party which, pursuant to Rule 902 are required to be liquidated in accordance with this Rule 903 (and any contracts to which the Defaulter is party referred to in Rule 902(b) including those arising from hedging transactions made pursuant to Rule 902(b), which shall be treated as if they were "Contracts" subject to this Rule 903), shall be liquidated in such manner as the Clearing House in its discretion may direct for the purposes of discharging all the rights, obligations and liabilities of the Defaulter (provided that in respect of Contracts, this does not include, where the Defaulter acts as agent, any rights or liabilities attributable to the Defaulter arising out of the relationship of principal and agent), including pursuant to such powers as are granted pursuant to the Clearing Membership Agreement. Without prejudice to the generality of the foregoing, at the Clearing House's discretion:
- (i) Any such liquidation may be effected by placing, with one or more members of an Exchange, Clearing Organisation or over-the-counter marketplace upon which the relevant category of Contract is traded, orders for the purchase, grant, exercise or sale of Contracts. The Clearing House may designate and authorise an individual to be responsible for the placement of such orders or may enter into Contracts with non-defaulting Clearing Members by way of auction.
 - (ii) Contracts on opposite sides of the market, for Energy Contracts having different expiration months or for CDS Contracts having different series or version numbers or scheduled termination dates, may be liquidated by any transactions, Invoicing Back or the creation of new Contracts at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise.
 - (iii) Any Contracts (including for the Defaulter's Customer Accounts) which are sale and purchase Contracts of the same Set may be terminated by way of off-set.
 - (iv) An Option may be liquidated by closing transactions, exercise or abandonment, at the discretion of the Clearing House, and in any case where an Option is exercised, the Clearing House may liquidate the underlying Future, if any, resulting from such exercise in accordance with the provisions of this Rule 903.

including any costs and expenses of the Clearing House, including, without limitation, legal and accountancy expenses and disbursements, the costs of liquidation and any amount payable by the Clearing House to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default; but excluding, in respect of a Contract where the Defaulter acts as agent (if any), any liabilities attributable to the Defaulter arising out of the relationship of principal and agent; and the Clearing House may assess any one or more elements of such amount L in its discretion;

A = the aggregate amount of all sums payable to the Defaulter in respect of Contracts as calculated in accordance with Rule 905(h), taking into account any of the actions 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) and further excluding any Pledged Collateral returned to an FCM Clearing Member or any of its Customers pursuant to Rule 1604(e);

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 but excluding any Pledged Collateral returned to an FCM Clearing Member or any of its Customers pursuant to Rule 1604(e);

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, but excluding any Pledged Collateral returned to an FCM Clearing Member or any of its Customers pursuant to Rule 1604(e); 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—Rule 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/Swap Customer ~~Accounts~~Account and Contracts, rights, obligations and liabilities relating to the Defaulter's Non-DCM/Swap Customers;
 - (ii) the Defaulter's DCM/Swap Customer ~~Accounts~~Account and Contracts, rights, obligations and liabilities relating to the Defaulter's DCM/Swap Customers; and
 - (iii) the Defaulter's DCM Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's DCM Customers;
 - (iv) the Defaulter's General Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's General Customers; and
 - (v) ~~(iii)~~ the Defaulter's Proprietary ~~Accounts~~Account and other Contracts, rights, obligations and liabilities not falling under Rule 905(b)(i) ~~or to (iii)~~.

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 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 Accounts (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 any of the Defaulter's Customer Accounts and provided further that, if there is a shortfall to ~~both more than one class of the DCM Defaulter's Customer Account and the Non-DCM Customer Account~~ Account, any Proprietary Account surplus shall first be applied as between the classes of Customer Accounts in proportion to the shortfalls for each class of Customer Account until there is no shortfall in respect of one or other of the classes of 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 one class of Customer Account of a Defaulter to meet a shortfall on any other class of Customer Account of the same Defaulter's DCM Customer Account or vice versa, as further set out in Rule 102(p)~~. 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~~
- (e) The Clearing House and each Clearing Member with a Pledged Collateral Account acknowledge and agree that Pledged Collateral: (i) is provided pursuant to a charge over property provided as margin in respect of market contracts entered into by the Clearing House; and (ii) is provided to secure the obligation to pay the Clearing House any sum due to the Clearing House in respect of unsettled market contracts to which the FCM Clearing Member is party. Accordingly, the Clearing House and each such Clearing Member intend and agree that the Pledged Collateral provided to the Clearing House is provided pursuant to a "market charge" for purposes of the Companies Act 1989.

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

- (f) The term "**Participant**" means the Clearing House, each Clearing Member and each Approved Financial Institution, in the case of a Clearing Member or Approved Financial Institution to the extent that it is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, a Participant).
- (g) The term "**Payment Transfer Order**" means a payment transfer order (as defined in the Settlement Finality Regulations) that is an Open Offer Payment Transfer Order, Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order, CB-AFI Payment Transfer Order or Insufficient Funds Payment Transfer Order subject to this Part 12.
- (h) The term "**Securities Transfer Order**" means a securities transfer order (as defined in the Settlement Finality Regulations) that is a Position Transfer Order subject to this Part 12.
- (i) The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (j) The term "**ICE Post Trade and Clearing Systems**" or the "**ICE Systems**" means the trade registration and clearing processing hardware and software used by the Clearing House and Clearing Members from time to time, as further described in the Procedures.
- (k) No transfer orders (as defined in the Settlement Finality Regulations) shall arise, enter the Designated System or become irrevocable under these Rules except as set out in this Part 12.
- (l) The Clearing House and each Clearing Member with a Pledged Collateral Account that is a Participant in the Designated System acknowledge and agree that: (i) all forms of Permitted Cover provided as Pledged Collateral constitute "realisable assets"; and (ii) Pledged Collateral is provided under a charge, repurchase or similar agreement for the purpose of securing rights and obligations potentially arising in connection with a designated system. Accordingly, the Clearing House and each such Clearing Member that is a Participant in the Designated System intend and agree that: (a) Pledged Collateral constitutes both "collateral security" and "collateral security in connection with participation in a designated system" for purposes of the Settlement Finality Regulations; and (b) the Clearing Membership Agreement, Pledged Collateral Addendum, Rules and Contracts insofar applicable to Pledged Collateral constitute a "collateral security charge" in respect of the Pledged Collateral, for purposes of the Settlement Finality Regulations.

Rule 1516 *Customer Accounts*

- (a) Until further notice by the Clearing House, there will be no Customer Account available to Clearing Members in respect of CDS Contracts or Margin relating to CDS Contracts. As a result, all CDS Clearing Members must ensure that any Margin provided to the Clearing House in relation to CDS Contracts is capable of being received by the Clearing House only in circumstances in which no acknowledgement by the Clearing House pursuant to the second sentence of Clause 5.3 of Clearing Membership Agreements applies in respect of the Margin. Accordingly, until such further notice:
 - (i) the third and fourth sentences of Clause 5.3 of the Clearing Membership Agreement shall not apply in relation to CDS Contracts;
 - (ii) Circular no. C08/032 is inapplicable in relation to CDS Contracts and Margin relating to CDS Contracts; and
 - (iii) notwithstanding any other provision of these Rules, the Rules shall be construed accordingly.

Rule 1517 *Supplemental Default Rules*

- (a) If an Event of Default occurs affecting a CDS Clearing Member, the Clearing House shall convene the CDS Default Committee. The CDS Default Committee shall have the competences specified in the Procedures.
- (b) The provisions of the CDS Procedures relevant to a default shall apply if the Defaulter is or was a CDS Clearing Member and shall amount to default rules for the purposes of these Rules and Applicable Laws.

Rule 1518 *CDS Committees and Dispute Panels*

Rule 117 and Part 10 (and equivalent provisions of any Clearing Membership Agreement) are hereby disapplied only to the extent that any matter is eligible for determination by a CDS Default Committee, Regional CDS Committee, Dispute Resolver, Dispute Resolution Panel, Credit Derivatives Determinations Committee, External Reviewer or ISDA in accordance with the CDS Procedures. This Rule applies in respect of a Person mentioned in the foregoing sentence unless and until any such Person resolves not to determine the matter concerned.

Part 16 FCM Clearing Member Provisions

Rule 1601 Scope

This Part 16 of the Rules shall apply solely to FCM Clearing Members. Except as provided in this Part 16 or to the extent inconsistent with this Part 16, all other provisions of the Rules applicable to Clearing Members shall apply to FCM Clearing Members, and FCM Clearing Members shall constitute Clearing Members for all purposes of the Rules.

Rule 1602 Definitions

- (a) The term “Clearing House DCM Segregated Account” means an omnibus account located in the United States maintained by the Clearing House with respect to DCM Customers of an FCM Clearing Member, which is segregated in accordance with Applicable Law and contains Margin (or the Permitted Cover in respect thereof) or proceeds thereof deposited by such FCM Clearing Member on behalf of its DCM Customers in connection with Contracts that are U.S. Futures. The Clearing House DCM Segregated Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (b) The term “Clearing House Non-DCM/Swap Account” means an omnibus account maintained by the Clearing House with respect to Non-DCM/Swap Customers of an FCM Clearing Member, which is maintained in accordance with Applicable Law and contains Margin (or Permitted Cover in respect thereof) or the proceeds thereof deposited by such FCM Clearing Member on behalf of its FCM Other Customers in connection with Non-DCM/Swaps. The Clearing House FCM Other Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (c) The term “Clearing House Swap Segregated Account” means an omnibus account located in the United States maintained by the Clearing House with respect to Swap Customers of an FCM Clearing Member, which is segregated in accordance with Applicable Law and contains Margin (or Permitted Cover in respect thereof) or proceeds thereof deposited by such FCM Clearing Member on behalf of its Swap Customers in connection with Contracts that are Swaps. The Clearing House Swap Segregated Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (d) The term “Clearing House FCM Segregated Account” means the Clearing House Swap Segregated Account, the Clearing House DCM Segregated Account or the Clearing House Non-DCM/Swap Account, as the case may be.

Rule 1603 FCM Contracts

- (a) A Contract that arises under Rule 401 between the Clearing House and an FCM Clearing Member shall be subject to this Part 16, regardless of whether any offsetting

Contract between the Clearing House and another Clearing Member is subject to this Part 16.

- (b) Each FCM Clearing Member shall have a Proprietary Account and one or more Customer Accounts in which its Contracts shall be registered. Except as provided herein, references in the Rules to a Customer Account of an FCM Clearing Member or to a "class" of Customer Account shall refer to one or more of the DCM Customer Account, Swap Customer Account, Non-DCM/Swap Customer Account or General Customer Account, as applicable, each such account being of a different "class". Notwithstanding anything to the contrary herein, to the extent that pursuant to a CFTC rule, order or exemption (or a Rule of the Clearing House approved thereunder) it is permissible under Applicable Law for Contracts in U.S. Futures, Swaps and/or Non-DCM/Swaps (or related Margin or Permitted Cover) to be co-mingled in a single class of Customer Account, the Clearing House may permit such co-mingling in such class of Customer Account, and references herein to the relevant Customer Account and FCM Customer shall thereupon be construed accordingly. Without limiting the foregoing, Permitted Co-mingled Contracts shall be treated as Swaps, and not as Non-DCM/Swaps, and the appropriate classes of Customer Account shall be construed accordingly.
- (c) Each Customer Account of an FCM Clearing Member shall be a Pledged Collateral Account. Margin (or Permitted Cover in respect thereof) to be provided by an FCM Clearing Member in respect of a Customer Account shall be provided in the form of Pledged Collateral, but in all other respects shall be provided in the forms, amounts, times and manners required under Rule 502 and Rule 503.
- (d) The first sentence of Rule 402(a) and the whole of Rule 405(a)(i) shall not apply to an FCM Clearing Member in respect of a Transaction or Contract where it is acting for an FCM Customer. Notwithstanding the characterisation of the relationship between an FCM Clearing Member and its FCM Customer as between such parties, where an FCM Clearing Member clears a Contract for an FCM Customer, such FCM Clearing Member becomes liable to the Clearing House, and the Clearing House becomes liable to the FCM Clearing Member, on such Contract as though the Contract were for the FCM Clearing Member's own account as principal, subject in all cases to the provisions of this Part 16. The second sentence of Rule 504(b) is amended to read as follows: Except as provided by Applicable Law and Rule 1605 with respect to a Customer Account, the Clearing House will take no account of any right or interest which any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House.
- (e) For purposes of Rule 303 and Rule 406(c), Contracts and other obligations in any class of Customer Account of an FCM Clearing Member shall not be netted or offset against Open Contract Positions or other obligations in the Proprietary Account of that Clearing Member, and Open Contracts or other obligations in any class of Customer Account of any FCM Clearing Member may not be netted or offset against Open Contract Positions or other obligations in any other class of Customer Account of that FCM Clearing Member.
- (f) Notwithstanding anything to the contrary in Rule 502 and Rule 503, for each Customer Account, Margin shall be calculated and called for on a "gross" basis across all positions of FCM Customers.

- (g) Without limiting Rule 111, the Clearing House shall have no obligation or liability to any FCM Customer in respect of an Open Contract Position in a Customer Account of an FCM Clearing Member or any transaction, agreement or arrangement between an FCM Clearing Member and an FCM Customer.
- (h) With respect to any Open Contract Position carried by an FCM Clearing Member for a Customer Account, all terms of the position, as carried in the customer account on the books of the FCM Clearing Member, must conform to the terms of the Open Contract Position under the Rules as in effect from time to time (including any changes therein or actions by the Clearing House in relation thereto).

Rule 1604 *Additional Default Rules for FCM Clearing Members*

The following provisions constitute default rules for purposes of the Companies Act 1989.

- (a) Any right of the Clearing House pursuant to Rule 902 or Rule 903 to transfer Open Contracts and related Margin (or Permitted Cover in respect thereof) of an FCM Clearing Member that is a Defaulter will be subject to Applicable Law, including without limitation Part 190 of the CFTC Regulations.
- (b) Where an FCM Clearing Member wishes to terminate or close out an Open Contract Position in any class of Customer Account with respect to an FCM Customer because of a default or similar event with respect to that FCM Customer and the relevant FCM Clearing Member has so notified the Clearing House in writing, the FCM Clearing Member may elect, in a manner to be specified by the Clearing House, to offset such Open Contract Position against a Contract or Contracts entered into by such FCM Clearing Member for such Customer Account (linked with a separate Contract or Contracts entered into at the same time for its Proprietary Account) for the specific purpose of liquidating such Customer Account position.
- (c) Each FCM Customer consents and agrees that if an Event of Default has occurred with respect to its FCM Clearing Member or in the event of the insolvency of the FCM Clearing Member:
 - (i) the FCM Clearing Member (or its Insolvency Practitioner) and/or the Clearing House shall be entitled to transfer Open Contract Positions recorded in a Customer Account in accordance with Applicable Law;
 - (ii) such FCM Customer appoints the Clearing House as its lawful agent and attorney-in-fact to take such actions on behalf of the FCM Customer as the Clearing House determines necessary or appropriate in order to effectuate such transfer with respect to the Open Contract Positions carried by the FCM Clearing Member for such FCM Customer, including executing any document or instrument with respect to the transfer of the Open Contract Positions and/or exercising rights and remedies to transfer such positions;
 - (iii) the FCM Customer shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the FCM Clearing Member, any Insolvency Practitioner for such FCM Clearing Member, or the Clearing House to take action contemplated by these Rules.

including, without limitation, the transfer or close-out of positions and the transfer or application of related Margin or Permitted Cover in respect thereof;

- (iv) any determination made by the Clearing House with respect to the termination value of a Contract under the Rules or the value of any other asset or liability under Rule 905 shall be conclusive and binding; and
- (v) any amount payable by such FCM Customer in respect of the termination of a Contract of a Defaulter in respect of its Customer Account shall not be netted or offset against any amount owed by such FCM Clearing Member to such FCM Customer under any other agreement or instrument and shall be paid directly to or as directed by the Clearing House.
- (d) In respect of any Contract to which a Defaulter that is or was an FCM Clearing Member and ICE Clear Europe, 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 any class of Customer Account of the Defaulter is intended to be treated in accordance with Applicable Laws of the United States of America, including the U.S. Bankruptcy Code and the CEA,
- (e) Any Pledged Collateral recorded in a Pledged Collateral Account is transferred to the Clearing House as contingent cover for Margin on the basis that it may only be converted and applied by the Clearing House: (i) pursuant to Rule 905 as cover for Margin against a liability of the Clearing Member relating to the relevant Pledged Collateral Account in respect of which it was provided; and (ii) only to the extent that such applied amount is required to be included in the net sum calculation to ensure that a net sum for the same Pledged Collateral Account would not represent an amount payable by the Clearing Member to the Clearing House. Any Pledged Collateral not applied in accordance with this provision and which is not transferred to a Transferee Clearing Member in accordance with Part 9 of the Rules shall be returned to the relevant Clearing Member for its applicable proprietary or customer account, as the case may be, subject to Applicable Law as a result of such Clearing Member's or its customers' entitlements to such Pledged Collateral and not as part of the net sum process arising pursuant to Part 9 of the Rules. Any such return by the Clearing House of Pledged Collateral outside of the net sum calculation shall discharge and satisfy in full the Clearing House's obligations to return such Pledged Collateral to the Clearing Member or any of its Customers and no Customer or Clearing Member shall have any further claim in respect of such Pledged Collateral. To the extent any Pledged Collateral is, or is required under Applicable Law to be, returned to a Defaulter separately from any net sum certified by the Clearing House pursuant to Rule 905, the value of such returned Pledged Collateral will be excluded from the calculation of any related net sum.

Rule 1605 ***Margin and Segregation Rules***

- (a) An FCM Clearing Member shall require each FCM Customer to provide Margin (or Permitted Cover in respect thereof) (such assets, "FCM Customer Collateral") in an amount no less than the amount of Margin of each relevant type required on a gross basis by the Clearing House with respect to the relevant Open Contract Position(s), separately for each relevant class of Customer Account. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any

offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set of the same FCM Customer in the same class of Customer Account, but without giving effect to any offset or permitted offset of such Open Contract Positions against Open Contract Positions relating to a different FCM Customer.

- (b) With respect to FCM Customer Collateral transferred to the Clearing House in respect of Contracts registered in the DCM Customer Account arising from U.S. Futures (“FCM U.S. Futures Customer Collateral”), the Clearing House shall receive and hold such collateral in the Clearing House DCM Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Section 4d(a) and (b) of the CEA and the regulations of the CFTC thereunder. By means of this Rule, the FCM Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under CFTC regulations.
- (c) With respect to FCM Customer Collateral transferred to the Clearing House in respect of Contracts registered in the Swap Customer Account arising from Swaps (including for the avoidance of doubt Permitted Co-mingled Contracts) (“FCM Swap Customer Collateral”), an FCM Clearing Member shall receive, hold and use all FCM Customer Collateral only as permitted under CEA Section 4d(f) and the regulations of the CFTC thereunder (and, to the extent applicable, Securities Exchange Act Section 3E(b) and the regulations or any orders of the SEC thereunder) and as further set forth in these Rules and the Procedures (the “Swap Customer Segregation Requirements”). The Clearing House shall receive and hold such collateral in the Clearing House Swap Segregated Account and shall segregate, hold and use all such FCM Swap Customer Collateral as customer property in accordance with the Swap Customer Segregation Requirements. By means of this Rule, FCM Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under the Swap Customer Segregation Requirements.
- (d) With respect to FCM Customer Collateral transferred to the Clearing House in respect of Contracts registered in the Non-DCM/Swap Customer Account arising from Non-DCM/Swaps (other than Permitted Co-mingled Contracts) (“FCM Other Transaction Collateral”), the Clearing House shall hold such FCM Customer Collateral as constituting the foreign futures or foreign options secured amount subject to the requirements of CFTC Rule 30.7. By means of this Rule, the FCM Clearing Member shall have satisfied the requirement to obtain an acknowledgement letter of such status from the Clearing House under CFTC regulations.
- (e) In connection with any Open Contract Position and related FCM U.S. Futures Customer Collateral, FCM Swap Customer Collateral or FCM Other Transaction Collateral provided to the Clearing House, the FCM Clearing Member shall keep and maintain written records with respect thereto as required under Applicable Law. Each FCM Clearing Member shall provide such records to the Clearing House upon request and upon such other basis, if any, as may be provided in the Procedures.

Rule 1606 *Additional FCM Clearing Membership Requirements*

Each FCM Clearing Member that has a Customer Account shall execute and deliver to the Clearing House a Pledged Collateral Addendum to its Clearing Membership Agreement, in the form specified by the Clearing House.

Rule 1607 *Additional FCM Requirements for Customer Transactions*

- (a) The relationship between an FCM Customer and an FCM Clearing Member in respect of Open Contract Positions for that FCM Customer shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties, subject to the applicable provisions of these Rules and provided that no such agreement may be inconsistent with these Rules or the Clearing Membership Agreement.
- (b) Without limiting Rule 111, but subject to any contrary requirements of law: The Clearing House shall not be liable to any FCM Clearing Member, FCM Customer or other Person for any losses, claims, liabilities, damages or expenses arising out of or relating to the holding, investment or use of any Clearing House FCM Segregated Account or assets credited thereto from time to time (“Custodial Losses”), except to the extent such Custodial Losses result from the gross negligence or wilful misconduct of the Clearing House. The Clearing House shall have no duties or responsibilities with respect to any Clearing House FCM Segregated Account except as expressly set forth in these Rules and applicable law. The Clearing House shall have no responsibility for any investment decisions made or directed by an FCM Clearing Member (or any other Person) with respect to assets in a Clearing House FCM Segregated Account or for the results of any such investments and shall have no obligation to monitor any requirements set forth in any applicable agreement between FCM Clearing Member and an FCM Customer. The Clearing House shall have no responsibility for the compliance by any FCM Clearing Member or FCM Customer with its obligations under any such agreement. The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to a Clearing House FCM Segregated Account or the assets therein or transferred thereto or therefrom under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate FCM Clearing Member.
- (c) Each FCM Customer for which an FCM Clearing Member clears a Swap must be an “eligible contract participant” as defined in the CEA.
- (d) Each FCM Customer consents to the disclosure by its FCM Clearing Member to the Clearing House of such FCM Customer’s identity and information concerning the Open Contract Positions held by such FCM Clearing Member for such FCM Customer and related Margin as set forth in these Rules and as may be required by Applicable Law.
- (e) Each FCM Clearing Member shall be required to obtain the agreement of each FCM Customer to the provisions of the Rules applicable to or otherwise referring to FCM Customers (including Rule 111, Rule 1604(c) and this Rule 1607) and hereby represents and warrants to the Clearing House that it has obtained such agreement.

Rule 1608 ***Governing Law and Dispute Resolution***

(a) Solely as between an FCM Clearing Member and the Clearing House, those provisions of Parts 3, 5 and 17 of the Rules inasmuch as they relate solely to an issue or matter concerning:

(i) the pledging, transfer, holding, use and segregation of Pledged Collateral (or other property recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided); and/or

(ii) the application of any net sum owed in favour of the FCM Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided.

and, solely to the extent relevant to interpreting the foregoing provisions in such circumstances, relevant definitions and interpretative provisions in Part 1 of the Rules (such provisions, together or separately "Pledged Collateral Matters") shall be governed by and construed in accordance with the laws of the State of New York and, as applicable, the federal law of the United States of America.

(b) For the avoidance of doubt, Rule 1608(a) is an exception to Rule 102(r) which provides that the Rules and Contracts shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding Rule 1608(a), the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:

(i) all of the provisions of the Rules concerning the calculation and determination of any net sum (except to the extent expressly provided in Rule 1604(d)) and the other default rules of the Clearing House, including all the provisions of Parts 9 and 11 of the Rules;

(ii) all of the provisions of the Rules relating to the Designated System, including all the provisions of Part 12 of the Rules;

(iii) any Dispute or issue arising as between a Clearing Member that is not an FCM Clearing Member on the one hand and the Clearing House on the other hand;

(iv) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided; and

(v) the Contract Terms of all Contracts.

(c) Where a dispute between an FCM Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that

if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "New York Courts"). Consistent with the preceding sentence, the Clearing Member and each of the Clearing Members hereby:

- (i) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
 - (ii) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.
- (d) All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to Rule 1608(c), does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) heard in the New York Courts.
- (e) Nothing in this Rule 1608 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.
- (f) EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE RULES OR ANY CONTRACT OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:
- (i) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND
 - (ii) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Rule 1608(f).