



CONFIDENTIAL TREATMENT
REQUESTED

August 31, 2012

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

By Email: submissions@cftc.gov

Re: ICE Clear Europe Submission Pursuant to Rules 39.15(b) and 40.5 for
Commingling of Customer Funds in Connection with Futures and Cleared
Swaps

Dear Mr. Stawick:

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) is a registered derivatives clearing organization (“DCO”) under the Commodity Exchange Act, as amended (the “Act”). ICE Clear Europe hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rules 39.15(b)(2)(i) and 40.5, amendments to rules and clearing procedures that would permit ICE Clear Europe and its clearing members (“Clearing Members”) that are registered futures commission merchants (“FCMs”)¹ (i) to hold in a cleared swap account subject to Section 4d(f) of the Act customer² money, securities and property (“customer property”) used to margin, secure or guarantee certain energy futures contracts traded on or subject to the rules of ICE Futures U.S., Inc. (collectively, “energy futures”) and (ii) to provide for portfolio margining of energy futures with cleared swaps and, to the extent held in a cleared swaps account, other energy contracts that constitute foreign futures and foreign options under Commission Rule 30.1.

ICE Clear Europe is making this submission in order to permit its FCM Clearing Members and their customers a means of continuing the current market practice of holding cleared energy derivatives contracts in a single account and permitting

¹ Clearing Members that are FCMs are referred to herein as “FCM Clearing Members”.

² As used herein, “customer” has the meaning set forth in Commission Rule 39.2.

portfolio margining and margin offsets between such positions,³ while allowing customers to take advantage of the additional protections afforded by the Section 4d(f) cleared swaps account.⁴

As discussed below, IntercontinentalExchange, Inc. intends to transition its existing OTC energy derivative contracts to futures contracts traded on ICE Futures U.S. Inc. ("ICE Futures US") and cleared through ICE Clear Europe, and ICE Clear Europe intends to permit FCM Clearing Members to commingle such energy futures with energy contracts that are cleared swaps or foreign futures. ICE Clear Europe has previously requested⁵ permission from the Commission to commingle foreign futures and cleared swaps in the Section 4d(f) cleared swap account. Requiring FCM Clearing Members to hold energy futures, cleared swaps and foreign futures cleared on behalf of customers through ICE Clear Europe in separate customer accounts, even where the positions are related, and accordingly to margin such positions separately, would result in significant additional (and, in the Clearing House's view, unnecessary) costs and inefficiencies for both FCM Clearing Members and their customers. It would also likely prove disruptive to current clearing and trading activities of market participants and be a disincentive for market participants to clear contracts in situations where they may not be required to do so.

I. Background

ICE Clear Europe is a DCO registered with the Commission and a recognized clearing house supervised by the U.K. Financial Services Authority (the "FSA"). It is also the operator of a "designated system" for purposes of the EU Settlement Finality Directive and an "inter-bank payment system" supervised by the Bank of England. The Clearing House is incorporated under the laws of England and Wales.

ICE Clear Europe currently clears both exchange-traded foreign futures and OTC, or swap, products. Specifically, ICE Clear Europe serves as the clearing house for all transactions conducted on the ICE Futures Europe market, a UK recognized investment exchange and EU regulated market licensed and supervised by the FSA and subject to the terms of a CFTC foreign board of trade no-action letter in respect of US participants. ICE Futures Europe has obtained Commission staff foreign board of trade no-action relief to permit direct access to the exchange by U.S. persons,⁶ and expects to register as a "foreign board of trade" for purposes of the Act. ICE Futures Europe contracts currently cleared by ICE Clear Europe include 89 separate energy

³ ICE Clear Europe intends to continue to permit proprietary account positions of Clearing Members, as well as positions of non-U.S. customers that clear through non-U.S., non-FCM Clearing Members, to be held in a single account and to provide for portfolio margining of such positions. For this purpose, "proprietary account" will have the meaning set forth in Commission Rule 1.3(y).

⁴ We note in this regard that the Commission has adopted the Part 22 regulations governing the Section 4d(f) account, which are to become effective November 8, 2012. Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 Fed. Reg. 6336 (Feb. 7, 2012).

⁵ See Letter from Paul Swann, Preside & Chief Operating Officer, ICE Clear Europe, to Mr. David Stawick, Secretary (March 8, 2012), available at: <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/icecleareuropetiti on3-8-12.pdf>.

⁶ See Commission No-Action Letters 99-69 (Nov. 12, 1999), 08-09 (June 17, 2008).

futures and options contracts representing a significant portion of global crude oil and refined products futures trading.

ICE Clear Europe currently clears a range of energy contracts, both for proprietary and customer accounts of Clearing Members offered by the ICE OTC exempt commercial market. In light of the close relationship between OTC and exchange-traded energy contracts, ICE Clear Europe currently offers margin offsets between such products.

As it has separately announced, ICE intends to transition certain of its cleared ICE OTC energy swap products to energy futures and options contracts traded on ICE Futures US, a designated contract market registered with the CFTC. ICE Clear Europe intends to continue to clear those energy products (as futures and options) following that transition. Other ICE OTC energy swap products will transition to foreign futures traded on ICE Futures Europe (which will also continue to be cleared by ICE Clear Europe). Accordingly, the existing ICE OTC energy contracts cleared through ICE Clear Europe will, following the transition, be treated as either futures or foreign futures for purposes of this submission.

ICE Clear Europe also currently clears OTC credit default swap (“CDS”) transactions. At present, ICE Clear Europe does not offer customer clearing for such contracts, although it expects to do so in the future. The Clearing House may in the future offer clearing of other swap transactions as well. Consistent with the requirements of the Dodd-Frank Act, ICE Clear Europe anticipates that cleared CDS and other cleared non-energy swaps for customers will be held in the cleared swaps account.

ICE Clear Europe has adopted, pursuant to self-certification under Commission Rule 40.6, rules implementing the three relevant categories of account class for FCM Clearing Members under the Act as amended by the Dodd-Frank Act: the futures or Section 4d(a) account class, the cleared swap or Section 4d(f) account class, and the foreign futures or Rule 30.7 account class.

II. Purpose of Submission

ICE Clear Europe is hereby submitting amendments to rules and clearing procedures to:

- (i) permit the Clearing House to hold in the cleared swaps account class (together with cleared swaps) Covered Futures Contracts (as defined below) traded on ICE Futures US, and customer property used to margin, secure or guarantee such contracts, that would otherwise fall within the futures account class;
- (ii) calculate margin for Covered Products (as defined below) in the commingled cleared swaps account on a portfolio basis in accordance with ICE Clear Europe’s risk management framework, under which ICE Clear Europe could offer margin offsets for Covered Products that are correlated on a risk management and economic basis when calculating margin requirements; and

(iii) permit similar commingling and portfolio margining by FCM Clearing Members of ICE Clear Europe that clear on behalf of customers in Covered Products.

ICE Clear Europe is submitting certain changes to its rules and clearing procedures to implement the commingling of Covered Futures Contracts in the cleared swaps account class as described herein. A copy of such amendments is attached as Exhibit A hereto.

As used herein, the "Covered Futures Contracts" that will be subject to commingling will include (i) the following contracts to be listed on ICE Futures US: Henry Financial Index Futures, Henry Financial LD1 Fixed Price Futures, Henry Financial LD1 Fixed Price ICE Lots Futures, Henry Financial LD1 Fixed Price Same Day Futures, Henry Financial LD1 Fixed Price Same Day Options, Henry Financial LD4 Fixed Price Futures, Henry Financial LD4 Fixed Price Option, Henry Financial Penultimate 1-Month Calendar Spread Option, Henry Financial Penultimate 3-Month Calendar Spread Option, Henry Financial Penultimate 6-Month Calendar Spread Option, Henry Financial Penultimate Equity Options, Henry Financial Penultimate Fixed Price, Henry Financial Swing, Henry Financial Swing Options, Henry Physical Basis LD1 Futures, Henry Physical Fixed Price Monthly Futures, Henry Physical Fixed Price Spot Futures, Henry Physical Gas Daily Monthly Futures, Henry Physical Gas Daily Spot Futures, Henry Physical Inside FERC Futures; and (ii) such other ICE Futures US energy contracts constituting futures or option contracts as may be listed after the date hereof and accepted for clearing through ICE Clear Europe.

As used herein, "Covered Products" will mean Covered Futures Contracts and energy contracts that are cleared swaps and (to the extent permitted) foreign futures cleared by ICE Clear Europe and held in the Section 4d(f) account.

The Commission is authorized, pursuant to Section 4d(f)(3)(B) of the Act, to permit by rule, regulation or order the commingling of customer property held in connection with cleared swaps with other customer property required by the Commission to be separately accounted for and treated and dealt with as belonging to the swap customer of an FCM. Commission Rule 39.15(b)(2)⁷ establishes standards and procedures for the submission pursuant to Commission Rule 40.5 of clearing organization rules under which futures, options and swap positions may be held in the cleared swaps account subject to the requirements of Section 4d(f) of the Act and Commission regulations thereunder.⁸

⁷ See Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69334 (Nov. 8, 2011).

⁸ We also note that the Commission has previously by order permitted the commingling of exchange-traded futures listed on a foreign board of trade with exchange-traded futures listed on a designated contract market. See, e.g., Order of the Commission regarding "Treatment of Funds Held in Connection with the Clearing by The Clearing Corporation of Euro-Denominated Contracts Executed on Eurex Deutschland AG" (Oct. 21, 2004); Order of the Commission regarding "Treatment of Funds Held in Connection with Clearing by the New York Mercantile Exchange of Contracts Traded on NYMEX Europe (Sept. 6, 2005). The Commission has similarly permitted by order the commingling of exchange-traded futures and cleared swaps. See, e.g., Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The-Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and

Covered Futures Contracts being commingled pursuant to the rules and clearing procedures submitted hereby would be subject to the same segregation and other legal requirements applicable to cleared swaps under the Part 22 regulations,⁹ and in addition would be treated as part of the cleared swaps account class for purposes of the Commission's Part 190 bankruptcy rules in the event of the insolvency of the carrying FCM.

As a policy matter, as both Congress and the Commission have recognized, commingling and portfolio margining across positions in futures and swaps can bring important benefits to market participants, including more efficient use of capital through potential margin reductions for correlated positions. Such portfolio margining promotes sound risk management by allowing the clearing organization, FCMs and customers to view a portfolio of positions based on its overall economic substance, as opposed to dividing a portfolio based on regulatory distinctions that may not reflect commercial or economic realities. In addition, portfolio margining, with its greater capital efficiency, would provide an incentive for market participants to use clearing services, even in situations where they are not mandated by law to do so. This would further the goals of the Dodd-Frank Act and stated Commission policies. This submission is thus consistent with these policy goals as well as the statutory authority given to the Commission to permit portfolio margining and longstanding Commission precedent to allow commingling of positions and portfolio margin between futures and swaps.

III. Informational Requirements

Commission Rule 39.15(b)(2) identifies twelve categories of information that should be included in a DCO's rule submission to permit commingling and portfolio margining. We address each category in turn.

A. Identification of the Contracts to be Commingled

Pursuant to the rules and clearing procedures submitted hereby, ICE Clear Europe would provide for commingling of the Covered Futures Products with cleared swaps and (to the extent permitted) foreign futures in the cleared swaps account. At present, Covered Futures Contracts comprise certain energy futures and options relating to the Henry Hub natural gas complex of contracts traded on or subject to the rules of ICE Futures US and cleared with the Clearing House. These contracts have previously been cleared by the Clearing House on an OTC basis. The Clearing House contemplates that any other energy futures or options contracts that may be traded on ICE Futures US would also be treated as Covered Futures Contracts.¹⁰

(2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated Property To Be Commingled With Other Property Held in Segregated Accounts, 73 Fed. Reg. 77015 (Dec. 18, 2008).

⁹ See Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 Fed. Reg. 6336 (Feb. 7, 2012).

¹⁰ The list of Covered Futures Contracts is set forth above, and the contract specifications will be included in the ICE Futures US rules, which are available at the following website: <https://www.theice.com>.

OTC swaps cleared through ICE Clear Europe will, of course, also be held in the cleared swaps account in accordance with the Act. Pursuant to its prior petition to the Commission, energy contracts traded on ICE Futures Europe and constituting foreign futures may, to the extent permitted by the Commission, also be held in the cleared swaps account.

B. Analysis of Risk Characteristics of the Commingled Products

ICE Clear Europe has considerable experience with clearing and managing the risks of the Covered Products. Notably, the Clearing House has managed the risk of these contracts, on a commingled, portfolio basis, since the inception of clearing in these products (including the clearing of economically equivalent predecessor contracts as OTC contracts).

As discussed in further detail in subsection G below, the principal risk characteristics of the commingled products, which are taken into consideration in the Clearing House's risk management framework, include the following: (i) market risk, (ii) liquidity risk, (iii) credit risk and (iv) operational risk. Full details concerning the risk management framework were provided in connection with ICE Clear Europe's DCO application, and remain unchanged.

Although each cleared product raises a slightly different set of risks, as a general matter the energy contracts that would be commingled have broadly similar risk profiles. For example, ICE Clear Europe clears futures contracts, foreign futures and swaps relating to the same or related underlying energy reference assets, resulting in similar sensitivities to market prices and other energy market events. The products have similar open interest and liquidity profiles. Clearing participant credit risk and operational risk are also similar across both categories of contracts. In fact, these risks, and operational risk in particular, would tend to be reduced by commingling the contracts in a single account rather than having to develop additional infrastructure to support multiple accounts for similar products.

C. Description of Manner of Execution

Covered Futures Contracts would be executed and traded on or subject to the rules of ICE Futures US in accordance with its trading protocols. Foreign futures commingled in the cleared swaps account would be executed and traded on or subject to the rules of ICE Futures Europe. Both exchanges will also permit execution of contracts through "exchange of futures for swaps" or similar transactions. Other cleared swaps would be expected to be executed bilaterally or on one or more swap execution facilities once such entities are registered and in operation.

D. Analysis of Liquidity of Commingled Products

Attached as Exhibits B and C, respectively, are historical volume and current open interest data for the OTC energy contracts that will be transitioned to Covered Futures Contracts.

Attached as Exhibits B and D, respectively, are historical volume and open interest data for the foreign futures contracts and other cleared energy swaps that are also expected to be commingled in the cleared swap account.

As a general matter, contract liquidity is part of ICE Clear Europe's risk management framework, and the Clearing House considers liquidity among other factors in determining whether to accept a contract for clearing.

ICE Clear Europe believes that the liquidity of cleared contracts is such that it, and its Clearing Members, have the ability to offset or mitigate the risk of commingled contracts in a timely manner and without compromising the financial integrity of the customer account. FCM Clearing Members are required to satisfy regulatory capital requirements as well as those of the Clearing House. In addition, as discussed below, FCM Clearing Members are required to have sufficient operational competence to manage the risks of their positions and participate in default management.

In the case of a default of an FCM Clearing Member, the Clearing House has the ability to conduct an orderly close out of positions, including through the use of such techniques as the sale or auction of the FCM Clearing Member's book of positions to a solvent Clearing Member, temporary hedging arrangements, entering into offsetting transactions (both on exchanges or SEFs and in the over-the-counter market) and other actions it deems appropriate, as set out in the ICE Clear Europe Rules. These procedures are designed to permit the Clearing House to manage its risk even if liquidity in the relevant contracts is lower than is normal or expected in the market.

E. Analysis of the Availability of Reliable Prices for Commingled Products

Prices for Covered Futures Contracts will usually be available from trading activity on ICE Futures US. Prices for foreign futures commingled in the cleared swap account will usually be available from trading activity on ICE Futures Europe. With respect to other cleared swaps, ICE Clear Europe will obtain pricing data from the ICE OTC trading platform or any other relevant swap execution facility or other market on which such products are traded in the future. Where appropriate, ICE Clear Europe may obtain prices from market participants or other sources, or use prices from related products for which there is a more active trading market.

F. Description of the Financial, Operational and Managerial Standards for FCM Clearing Members

Under the rules and clearing procedures submitted hereby, FCM Clearing Members would be permitted to commingle customer positions in Covered Products in the cleared swaps account. As set forth in ICE Clear Europe's rules and procedures and as described in ICE Clear Europe's application for registration as a DCO, FCM Clearing Members are subject to extensive requirements as to financial, operational, managerial and other standards.

1. Financial Standards

All FCM Clearing Members will be required to maintain the minimum capital requirements under applicable law (including Commission regulations), as well as any

additional requirements imposed by the Clearing House. Currently, Clearing Members are required under Clearing House rules to have (or provide a guarantee from an affiliate with) minimum capital of \$20 million for energy clearing activities (\$10 million is permissible subject to review and approval by the Risk Committee). (Clearing other asset categories may require higher minimum capital levels.) Clearing Members are required to provide financial statements and other financial information to the Clearing House. Clearing Members must also meet Clearing House standards of financial responsibility and creditworthiness.

2. Operational and Managerial Standards

FCM Clearing Members, like all Clearing Members of ICE Clear Europe, must demonstrate operational competence to perform the duties of a Clearing Member, including (i) having all necessary regulatory or other authorizations to perform their business, (ii) having sufficient qualities of operational capacity, business integrity, reputation and competence as determined by the Clearing House, (iii) having facilities, personnel and systems capable of supporting its clearing functions, and (iv) having sufficient knowledge about the types of contracts that it intends to clear and the related risks.¹¹ The Clearing House may impose additional objective conditions on Clearing Members in order for them to obtain or maintain membership and may require additional information as part of the membership application process.

G. Description of Clearing House Systems and Procedures Used to Oversee Clearing Member Risk Management of Commingled Positions

1. Risk Management Framework

The Clearing House has developed a comprehensive risk management framework applicable to its clearing business, including for the Covered Products. ICE Clear Europe has developed this framework in connection with its current operations, in which the risks of foreign futures and OTC products are commingled. It believes that this framework will be equally effective if positions are commingled in the cleared swaps account under the rules and clearing procedures submitted hereby.

The risk management framework includes the following elements:

- *Membership Criteria.* As noted above, the membership admission process requires Clearing Members to demonstrate financial responsibility (including creditworthiness) and operational capabilities.
- *Initial Margin.* The Clearing House requires Clearing Members to post initial or original margin on a daily (or more frequent) basis to collateralize potential losses under distressed market conditions.
- *Variation/Mark-to-Market Margin.* The Clearing House determines the settlement value of each contract on a daily basis and assesses daily variation or mark-to-market margin on Clearing Members to reflect changes in such value.

¹¹ See ICE Clear Europe Rules 201-202.

- *Risk Monitoring.* The Clearing House assesses portfolio and position risk and market movements on a continual intraday basis and can make intraday margin calls on Clearing Members to protect against unusual market movements or conditions.
- *Guaranty Fund.* The Clearing House collects required Guaranty Fund contributions for Clearing Members, which are available to provide additional resources for, and to mutualize, additional losses under extreme, but plausible, market scenarios.¹²
- *Assessments.* In extreme loss scenarios, the Clearing House can make an assessment on Clearing Members to replenish the applicable Guaranty Fund as set forth in the ICE Clear Europe rules, in an amount of up to two times the Guaranty Fund contributions as of the time of default of an energy Clearing Member.¹³

The Clearing House uses these tools to manage the risks presented by the trading activity and positions of Clearing Members. As noted above, in the context of the Covered Products, the risk management framework focuses on market risk, liquidity risk, credit risk and operational risk.

Market Risk: ICE Clear Europe addresses market risk on its cleared contracts through a combination of margin (both initial and variation) and Guaranty Fund contributions, as well as its ongoing risk monitoring and market surveillance.

Liquidity Risk: ICE Clear Europe addresses liquidity risks through its Clearing Member eligibility standards and management of margin and Guaranty Fund assets, including through the definitions of acceptable margin and permitted cover, valuation haircuts, and limitations on the investment of cash margin.

Credit Risk: The Clearing House addresses credit risk of its Clearing Members through its membership eligibility standards, including its internal analysis of Clearing Member creditworthiness. Credit risk is regularly monitored by the Clearing House, including through required reporting of capital levels and other reporting requirements applicable to Clearing Members.

Operational Risk: The Clearing House mitigates operational risk through implementation of risk management and other policies and procedures and monitoring of Clearing Members' compliance with them. As noted above, the Clearing House examines operational experience, preparedness and understanding of Clearing House Rules and procedures in connection with the membership application process. ICE Clear Europe has procedures in place for escalating operational failures to appropriate levels within each Clearing Member organization. It has a series of investigative and disciplinary powers. The Clearing House also monitors regulatory status of Clearing Members and is in close contact with regulatory authorities as necessary.

¹² See Part 11 of the ICE Clear Europe Rules.

¹³ ICE Clear Europe Rule 1105.

2. Risk Management Staff Organization

ICE Clear Europe's risk management functions are led by its risk department. The Head of Risk manages the risk department, which, including the Head of Risk, consists of 9 risk managers.

H. Description of Financial Resources of the Clearing Organization

ICE Clear Europe maintains and will maintain adequate financial resources to discharge its financial obligations as a DCO and a UK recognized clearing house under applicable law. These resources will be available to cover its obligations in respect of commingled contracts to the same extent as under its current operations.

Pursuant to its rules, ICE Clear Europe can apply several forms of financial resources to cover losses in connection with a default by a Clearing Member. With respect to the defaulting Clearing Member itself, these include margin posted by the defaulting Clearing Member (subject to prohibitions on the use of customer account margin to cover proprietary account losses and on the use of margin of non-defaulting customers, as required by the Part 22 regulations and other applicable law) and the Guaranty Fund contribution of the defaulting Clearing Member. To the extent necessary, the Clearing House can also apply contributions to its Guaranty Fund from non-defaulting Clearing Members and, in extreme cases, can make an assessment on Clearing Members to cover additional losses. ICE Clear Europe maintains separate Guaranty Funds in respect of its energy and CDS businesses, such that Guaranty Fund contributions of non-defaulting Clearing Members with respect to energy contracts cannot be used to cover losses on CDS contracts, and vice versa.

I. Description of the Margin Methodology Applied to Commingled Positions

ICE Clear Europe intends to continue to use its existing margin methodology with respect to commingled positions, which permits certain offsets between related Covered Futures Contracts and other cleared energy contracts.

ICE Clear Europe uses London SPAN™ to calculate margin offsets for the suite of contracts included in this submission. London SPAN™ (SPAN™) is ostensibly the same as CME SPAN 4™. SPAN™ provides features which are utilized to recognize product correlations. The correlations themselves are monitored and assessed outside of SPAN™ using standard statistical analysis. Where a stable correlation is evidenced by the statistical analysis, it is recognized in SPAN™ through a reduction to the margin which would otherwise be required if no correlation benefit was provided. The correlation benefits recognized by SPAN™ include intra-product correlations such as trading strategies and maturity curve. This submission involves "inter product offsets" which recognize correlations between products which displaying stable price relationships. Inter-product offsets are fully described in the SPAN™ technical documentation. Where a margin correlation offset is provided, ICE Clear Europe routinely monitors the level of the offset and makes adjustment to the SPAN™ parameters to reflect changes to the correlations which may occur over time.

ICE Clear Europe's margin methodology will otherwise conform to the applicable requirements under the Part 39 regulations.

J. Analysis of Clearing House Ability to Manage a Potential Default With Respect to Commingled Products

ICE Clear Europe is confident in its ability to manage a potential default with respect to a commingled product. ICE Clear Europe intends to use the same default procedures and methodologies that exist and that function effectively today under its existing rules for both the contracts that will become Covered Futures Contracts and other cleared contracts (including foreign futures). Such contracts are currently carried in the same account, and ICE Clear Europe does not anticipate any incremental difficulties in handling such a default when the positions are carried in the cleared swaps account.

In particular, the Clearing House believes that its default procedures, as discussed in subsection K below, together with its margin, Guaranty Fund and other financial resources, as discussed in subsections H and I above, are sufficient to permit the Clearing House to manage a potential default and comply with its obligations in respect thereof under applicable law.

K. Discussion of Default Procedures

As discussed in more detail in its DCO application and as set forth in the Clearing House Rules, ICE Clear Europe has a detailed and tested set of procedures for handling the default of a Clearing Member. Upon the occurrence of a default, the Clearing House is entitled to close out all open contract positions of the defaulting Clearing Member, and has broad flexibility in the manner of doing so.¹⁴ It is expected that Covered Futures Contracts of a defaulting Clearing Member would generally be liquidated through transactions on ICE Futures US, where possible, that foreign futures carried in the cleared swaps account would generally be liquidated through transactions on ICE Futures Europe, where possible, and that other cleared swaps would be liquidated either in the bilateral market or through transactions on a SEF. If positions could not be unwound through market transactions, ICE Clear Europe would be permitted under its rules to auction the relevant position among its non-defaulting Clearing Members or take other actions in its discretion to unwind or settle the position.

Following completion of the close-out of all positions in the cleared swaps account, ICE Clear Europe would calculate a net sum under its rules taking into account the close-out loss or gain to the Clearing House, the available margin and Guaranty Fund contribution of the defaulting Clearing Member and, if necessary, Guaranty Fund contributions of non-defaulting Clearing Members in the relevant product category (energy or CDS).¹⁵ The net sum calculated in respect of the commingled cleared swaps account would, under the Clearing House rules, be determined separately from any other customer account class or from the proprietary account of the defaulting Clearing Member.

¹⁴ See Clearing House Rules 902-903.

¹⁵ See Clearing House Rule 904.

In the case of a customer default, the Clearing Member would be entitled to exercise the remedies agreed between the Clearing Member and customer under the applicable customer documentation. Typically, for an FCM Clearing Member, this would allow the FCM Clearing Member to liquidate the open positions of that customer. Provided that the FCM Clearing Member continues to perform its obligations to the Clearing House, the default of a customer of a Clearing Member would not generally involve the Clearing House default management procedures.

L. Description of Arrangement for Obtaining Daily Position Data from each Beneficial Owner of Commingled Positions

ICE Clear Europe's risk department actively monitors the positions of Clearing Members throughout the trading day, including with respect to the concentration of a Clearing Member's positions. To the extent required by applicable law or otherwise required in the performance of its clearing functions, ICE Clear Europe will obtain beneficial owner level position data.

IV. Terms and Conditions

The ICE Clear Europe rules and clearing procedures permitting commingling of Covered Products in the cleared swaps account would be subject to the following terms, conditions and representations:

- (i) The rules and clearing procedures will only apply to Covered Products cleared by ICE Clear Europe.
- (ii) Subject to these terms and conditions and notwithstanding anything to the contrary in the Commission's regulations, ICE Clear Europe and its FCM Clearing Members that clear on behalf of customers may hold all Covered Products in ICE Clear Europe's Section 4d(f) cleared swaps account and FCM customer cleared swaps accounts, as applicable, to margin, secure or guarantee Covered Products cleared by ICE Clear Europe.
- (iii) ICE Clear Europe will hold all customer property deposited with it by FCM Clearing Members that clear on behalf of customers to margin, guarantee or secure Covered Products in its cleared swaps account in accordance with Section 4d(f) of the Act and Commission regulations promulgated thereunder.
- (iv) All customer property received by FCM Clearing Members to margin, guarantee or secure trades or positions of customers in Covered Products will be accounted for and treated and dealt with as belonging to the customers of the FCM Clearing Member consistent with Section 4d(f) of the Act and Commission regulations promulgated thereunder.
- (v) Subject to the terms and conditions herein and notwithstanding any provision to the contrary in the Commission's regulations, ICE Clear Europe may implement a portfolio margining program for FCM Clearing Members that clear on behalf of customers under which it will offset contracts in Covered Products that are correlated on a risk management and economic basis when calculating margin requirements.

- (vi) ICE Clear Europe will apply appropriate risk management procedures to transactions in Covered Products. ICE Clear Europe will conduct financial surveillance and oversight of FCM Clearing Members clearing Covered Products and manage risks relating to clearing Covered Products.
- (vii) Each Covered Product will be marked-to-market, and final settlement prices will be established, on a daily basis.
- (viii) ICE Clear Europe will make available settlement price information for Covered Products on a daily basis.
- (ix) The rules and clearing procedures will not provide any exemption from any provision of the Act or Commission regulations not specified herein.
- (x) All customer property received by FCM Clearing Members that clear on behalf of customers to margin, guarantee or secure Covered Products will be subject to the same protections set forth in the Commission's Part 190 bankruptcy rules that are applicable to customer property held in respect of cleared swaps generally.

V. Conclusion

Pursuant to Commission Rules 40.5 and 39.15(b)(2)(i), ICE Clear Europe hereby submits rules and clearing procedures permitting ICE Clear Europe and its FCM Clearing Members to hold Covered Futures Contracts, and customer property used to margin, secure or guarantee such positions, in the Section 4d(f) cleared swaps account, together with other cleared swaps and foreign futures permitted to be held therein, and to calculate margin for such customer account on a portfolio basis as described herein.

ICE Clear Europe believes that the rules and procedures will facilitate clearing by market participants in these products by allowing them to continue to take advantage of economically appropriate margin offsets between related cleared swap and foreign futures positions, while enabling them to obtain the benefits of the enhanced segregation provided by the Section 4d(f) account. The commingling rules and clearing procedures will also avoid the significant additional costs, and market disruptions, that would be caused by requiring market participants to hold these related positions in separate accounts with separate margin requirements.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at paul.swann@theice.com or +44 20 7065 7700 or Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752.

Very truly yours,



Paul Swann
President & Chief Operating Officer

Exhibits

cc: Chairman Gary Gensler
Commissioner Jill E. Sommers
Commissioner Bart Chilton
Commissioner Scott D. O'Malia
Commissioner Mark P. Wetjen
Mr. Ananda K. Radhakrishnan, Director, Division of Clearing & Risk
Mr. Robert B. Wasserman, Associate Director, Division of Clearing & Risk

CONFIDENTIAL TREATMENT REQUESTED BY
ICE CLEAR EUROPE LIMITED

List of Exhibits

Exhibit A	Commingling Amendments to Rules and Clearing Procedures
Confidential Exhibit B	Historical Trading Volume for Covered Futures Contracts and Other Covered Products*
Confidential Exhibit C	Current Open Interest Data for Covered Futures Contracts*
Confidential Exhibit D	Current Open Interest Data for Other Covered Products*

* Confidential Treatment is requested for each of Exhibits B through D (inclusive).



ICE Clear Europesm

Clearing Rules

~~26 April~~ October 2012

Member up to the close of business on the immediately preceding Business Day (or such other period determined by the Clearing House at its discretion); and

- (b) *Net Amount Position* for Energy Contracts, means the price at which the Open Contract Position is recorded on the Clearing House's books based on Settlement Prices for each Contract.

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 (by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum) to the Clearing House 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, (i) 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; and (ii) a Contract that would otherwise be a U.S. Future pursuant to paragraph (i) of the definition thereof but which has been designated by the Clearing House by Circular or the second following sentence and which in accordance with Applicable Laws may be recorded in the Swap Customer Account rather than the DCM Customer Account. The term "Co-mingled Futures/Options Contracts" means Contracts referred to in paragraph (ii) of the preceding sentence. Initially, the Co-mingled Futures/Options Contracts shall, to the extent permissible under Applicable Laws, include Contracts of such Sets as are specified in the Procedures.

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).

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, in either case that is traded on or subject to the rules of a designated contract market under Section 5 of the CEA, other than Co-mingled Futures/Options Contracts. For the avoidance of doubt, U.S. Futures will not include Swaps.

The term "**Variation Margin**" means the cash required to be provided (by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum) 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.

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 or U.S. Futures, as applicable, and the appropriate classes of Customer Account shall be construed accordingly.
- (c) Each Customer Account of an FCM Clearing Member that has executed a Pledged Collateral Addendum shall be a Pledged Collateral Account. Margin (or Permitted Cover in respect thereof) to be provided by such 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 an agency relationship 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, subject in all cases to the provisions of this Part 16. Except as provided by Applicable Law and Rule 1605 with respect to a Customer Account (and further to the second sentence of Rule 402(a)), in performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights as against the Clearing House pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance (without affecting the rights of Customer as against the FCM Clearing Member with respect to such Contracts under Applicable Law) in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).
- (e) Neither Rule 402(a), Rule 405(d), Rule 408 nor clause 3.4 of a Clearing Membership Agreement shall be deemed to preclude an FCM Clearing Member from acting for an FCM Customer in connection with a Contract or Transaction. No such provision shall negate in any manner an FCM Customer's rights with respect to customer property held by an FCM Clearing Member (and not by the Clearing House).

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 (regardless of whether the FCM Clearing Member is required to provide such Margin to the Clearing House on a gross basis pursuant to Rule 503). 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, (other than Co-mingled Futures/Options Contracts) (“**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 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**”):
 - (i) 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 transferred to the Clearing House 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.

 - (ii) Prior to the effectiveness of the Swap Customer Segregation Requirements, Contracts registered in the Swap Customer Account and related FCM Swap Customer Collateral shall be held in the cleared OTC derivative account class for purposes of Part 190 of the CFTC regulations. The Clearing House shall receive and hold such FCM Swap Customer Collateral transferred to the Clearing House in the Clearing House Swap Segregated Account as customer property separated from the proprietary positions and margin of the FCM Clearing Member and shall treat FCM Swap Customer Collateral as belonging

(I) CLEARING PROCEDURES

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- (g) Where an ICE OTC Transaction is submitted by a Clearing Member that is an Affiliate of an FCM in accordance with section 6(h) of an ICE OTC Participant Agreement and any applicable ICE OTC Broker Agreement and the FCM is in turn acting for one of its customers, the FCM shall be treated as the Customer of the Clearing Member for purposes of this section 6.4 and shall enter into a Corresponding Contract or Agency Relationship with the Clearing Member in question. In such circumstances, an agency relationship shall arise between the FCM and its customer on equivalent terms to the Corresponding Contract or Agency Relationship between the Clearing Member and the FCM, subject to such amended or different terms and conditions as are or have been agreed between the FCM and its customer.

6.5 ICE OTC Participant representations

Each ICE OTC Participant is hereby deemed to acknowledge, represent and agree that:

- (a) as further detailed in Rule 111, the Clearing House has no obligation or liability to an ICE OTC Participant that is not a Clearing Member (except any liability for fraud, death or personal injury or any other liability which under Applicable Laws may not be excluded);
- (b) in accordance with the Rules, the Clearing House has the right to suspend or terminate the clearing of Eligible Transactions, either generally or in relation to a particular Clearing Member, without notice; and
- (c) the ICE OTC Participant has read and understood this section 6 of the Clearing Procedures, the Rules, the rest of the Procedures and the ICE OTC Participant Agreement and agrees to comply with all such provisions in relation to Corresponding Contracts and Eligible Transactions that are submitted for clearing.

7. CO-MINGLED FUTURES/OPTIONS CONTRACTS

7.1 All Contracts of the following Sets, solely where traded on or through the facilities of ICE Futures U.S. Inc., are hereby specified as being included within the definition of "Co-mingled Futures/Options Contracts" (to the extent permissible under Applicable Laws) for purposes the definition of that term in Rule 10L:

- (a) Henry Financial Index Futures;
- (b) Henry Financial LD1 Fixed Price Futures;
- (c) Henry Financial LD1 Fixed Price ICE Lots Futures;
- (d) Henry Financial LD1 Fixed Price Same Day Futures;
- (e) Henry Financial LD1 Fixed Price Same Day Options;
- (f) Henry Financial LD4 Fixed Price Futures;
- (g) Henry Financial LD4 Fixed Price Options;
- (h) Henry Financial Penultimate 1-Month Calendar Spread Options;
- (i) Henry Financial Penultimate 3-Month Calendar Spread Options;
- (j) Henry Financial Penultimate 6-Month Calendar Spread Options;
- (k) Henry Financial Penultimate Equity Options;
- (l) Henry Financial Penultimate Fixed Price;

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- (m) Henry Financial Swing;
- (n) Henry Financial Swing Options;
- (o) Henry Physical Basis LDI Futures;
- (p) Henry Physical Fixed Price Monthly Futures;
- (q) Henry Physical Fixed Price Spot Futures;
- (r) Henry Physical Gas Daily Monthly Futures;
- (s) Henry Physical Gas Daily Spot Futures;
- (t) Henry Physical Inside FERC Futures; and
- (u) such other Sets as are specified by the Clearing House by Circular, in accordance with Applicable Laws.

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CONFIDENTIAL TREATMENT
REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUEST

August 31, 2012

Via Federal Express and E-mail

Assistant Secretary of the Commission for
FOI, Privacy and Sunshine Acts Compliance
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
201-418-5000

Re: FOIA Confidential Treatment Request in Connection with ICE Clear Europe
Rule Submission.

Dear Sir or Madam:

On behalf of ICE Clear Europe Limited ("Submitter"), the undersigned hereby respectfully requests that the Commodity Futures Trading Commission (the "CFTC") accord confidential treatment under 17 C.F.R. §145.9 to Confidential Exhibits B, C and D of the enclosed submission of ICE Clear Europe Limited pursuant to CFTC Rules 39.15(b)(2) and 40.5, dated August 31, 2012, and all information derived therefrom (collectively, the "Confidential Information").

This request for confidential treatment is made pursuant to 17 C.F.R. §145.9(d)(1) because Submitter believes that the Confidential Information is covered by one or more exemptions in the Freedom of Information Act (the "FOIA") (5 U.S.C. §552(b)) and is therefore exempt from the CFTC's public disclosure requirements pursuant to 17 C.F.R. §145.5. In particular, 5 U.S.C. §552(b)(4) and 17 C.F.R. §145.9(d)(1)(ii) exempts disclosure that would reveal the Submitter's trade secrets or confidential commercial or financial information. Submitter believes that the Confidential Information contains confidential commercial and financial information as well as proprietary information regarding business procedures and systems that should be protected from public disclosure pursuant to this exemption. Confidential treatment is requested for a period of five years.

ABU DHABI | BEIJING | BRUSSELS | DÜSSELDORF | FRANKFURT | HONG KONG | LONDON | MILAN | MUNICH | NEW YORK
PALO ALTO | PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

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This request is not to be construed as a waiver of any other protection from disclosure or confidential treatment accorded by law, and Submitter will rely on and invoke any such confidentiality protection. Submitter requests that the CFTC advise the undersigned, pursuant to 17 C.F.R. §145.9(e)(1), in advance of any disclosure of the Confidential Information pursuant to the FOIA, so that this request for confidential treatment may be substantiated.

If you should have any questions or comments or require further information, please do not hesitate to contact the undersigned at 212-848-4867.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Geoffrey B. Goldman', with a stylized flourish at the end.

Geoffrey B. Goldman

cc: Mr. David Stawick, Office of the Secretariat

Enclosures