

Kevin R. McClear
General Counsel

September 21, 2012

**Re: CFTC Part 22 “LSOC” Regulations
Rule Submission Pursuant to Section
5c(c)(1) of the Commodity Exchange Act
and Commission Regulation 40.5**

VIA E-MAIL

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Dear Mr. Stawick:

ICE Clear Credit LLC (“ICE Clear Credit” or “ICC”), a registered derivatives clearing organization (“DCO”) under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rule 40.5, amendments to its rules that implement the Commission’s Part 22 regulations for cleared swap customer collateral (commonly referred to as “LSOC”).

The proposed amendments (the “Amendments”) to ICE Clear Credit’s clearing rules (the “Rules”) are attached as an exhibit hereto. The Amendments are proposed to be effective no later than November 8, 2012, which is the compliance date established by the Commission for the Part 22 regulations. The Amendments have been approved by the ICE Clear Credit Board of Managers.

As set forth in more detail below, the Amendments would principally modify Chapters 4, 8, 20 and 20A of the Rules, together with related definitions in Chapter 1. Consistent with the requirements of LSOC, the Amendments would (i) provide for allocation of initial margin to the portfolio of positions carried for each customer on a customer-by-customer basis, as required by Commission Rule 22.15, (ii) introduce new procedures for calling for, holding and returning customer margin in light of the requirement to allocate initial margin on a customer-by-customer basis, and (iii) change the default “waterfall” to limit ICC’s ability to use customer margin in the event that an ICC clearing participant (a “Participant”) defaults, consistent with the requirements of Commission Rule 22.15. As part of ICC’s initial implementation of LSOC, ICC would not accept deposits of customer margin in excess of the clearinghouse requirement, and accordingly various provisions of the existing rules that deal with the holding by ICC of excess margin are proposed to be deleted.

Specifically, in Chapter 1 of the Rules, the definitions of “Custodial Asset Policies,” “Custodial Client Omnibus Margin Account,” “Eligible Custodial Assets,” “Excess Margin,” “Net Client Omnibus Margin Account,” “Net Margin Requirement,” and “Participant Excess Margin” have been deleted to reflect the implementation of LSOC and particularly the elimination of provisions relating to holding excess margin at ICC. New definitions for “Client Omnibus Margin Account” and “Non-Participant Party Portfolio” have been added to accommodate the LSOC model, including the customer-by-customer tracking of initial margin and positions.

Revised Chapter 4 of the Rules addresses the key new segregation requirements under LSOC. Existing Rule 402(a) has been revised so that it only applies to house margin. ICC proposes to adopt a new Rule 402(b) that governs customer margin (i.e., margin posted by a Participant in respect of Client-Related Positions (as defined in the Rules)). To comply with Part 22 (as interpreted by the Commission) as it relates to initial margin, under new Rule 402(b)(i), ICC will calculate the initial margin requirement separately for each Non-Participant Party Portfolio and compare it to the value of initial margin provided by the Participant and allocated by ICC to that portfolio in accordance with CFTC Rules. In each margin cycle, ICC will call for additional initial margin from the Participant for each Non-Participant Party Portfolio for which there is a shortfall. ICC will separately make available for return to the Participant any excess initial margin held with respect to a Non-Participant Party Portfolio.

For “mark-to-market margin,” under new Rule 402(b)(ii), ICC will continue to calculate a net amount for all Client-Related Positions in all Non-Participant Party Portfolios. For each margin cycle, ICC will make a net call or payment of mark-to-market margin, as appropriate, in respect of all Client-Related Positions. Under proposed revised Rule 402(h), ICC has incorporated the requirements of new CFTC Rule 22.15, which limits ICC’s use of the Initial Margin posted in respect of Client-Related Positions.

Revisions to Rule 406 eliminate various provisions that are now covered by CFTC regulations and are no longer necessary with the implementation of the LSOC framework. Further, under the proposed new Rule 406(l), ICC states that it will not accept the deposit of Margin from a Participant in respect of Client-Related Positions in excess of the amount required by ICC.

ICC proposes to revise Rule 20-605(c)(i)(A) in order to modify the default “waterfall” for application of resources in the closing-out process for Client-Related Positions upon a Participant default to reflect new CFTC Rule 22.15. The principal change to the rule is in subclause (C), which provides that ICC is only entitled to use initial margin allocated to a particular Non-Participant Party Portfolio to cover losses from that portfolio. Initial margin for Client-Related Positions would not otherwise be applied by ICC as part of the default waterfall. Rule 20-605(c)(i)(A) and (B) also contain various non-substantive drafting improvements and clarifications as compared to the existing Rule. Revisions to Rule 20-605(d) address ICC’s ability to allocate margin to a particular Non-Participant Party Portfolio for purposes of the default waterfall. ICC has also made conforming changes to Chapter 8 of the Rules, which addresses the use of the guaranty fund in the default waterfall. Finally, the proposed changes to Part 20A of the ICC Rules, which address transfer of positions, are also intended to conform to the changes in the default waterfall.

ICE Clear Credit believes that the Amendments properly implement the Part 22 regulations, as interpreted by the Commission and its staff, and will provide additional protections for cleared swaps customer collateral, as and to the extent required by the Part 22 rules. ICE Clear Credit does not believe that the Amendments will have anticompetitive effects on market participants or others.

Annexed as Exhibits hereto are the following:

A. Amendments to the ICE Clear Credit Rules

ICE Clear Credit has received no opposing views in relation to the Amendments.

ICE Clear Credit has posted a notice of pending rule and a copy of this submission on its website concurrent with the filing of this submission.

Accordingly, ICE Clear Credit hereby submits the Amendments for Commission approval pursuant to the procedures and review period provided in Commission Rule 40.5.

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 kevin.mcclear@theice.com or 312-836-6833.

Sincerely,



Kevin R. McClear
General Counsel

cc: John C. Lawton (by email)
Phyllis Dietz (by email)
Steve Greska (by email)
Kate Meyer (by email)
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Clearing Rules

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The U.S. Commodity Futures Trading Commission.

Chief Executive Officer

The Chief Executive Officer of ICE Clear Credit.

Client Omnibus Margin Account

Any account or accounts maintained by or on behalf of ICE Clear Credit with respect to a Participant for the purposes of holding on an omnibus basis Margin posted by a Participant in respect of Client-Related Positions (including margin of Non-Participant Parties posted to that Participant in respect of such margin requirement or property of a Participant posted in lieu thereof in accordance with these Rules).

Client-Related Initial Margin

Initial Margin (other than Physical Settlement Margin) with respect to Client-Related Positions.

Client-Related Position

An Open Position identified as such at the time the related Trade is submitted by an FCM Participant (in the case of a swap) or a Broker-Dealer Participant (in the case of a security-based swap) to ICE Clear Credit in accordance with Rules 301 and 302, where such related Trade, at the time established, is entered into by the Participant for a Non-Participant Party. ICE Clear Credit will rely on a Participant's designation of an Open Position as a Client-Related Position for purposes of these Rules. To the extent permitted by law, a Client-Related Position will include such an Open Position entered into by an FCM Participant or a Broker-Dealer Participant for another Person (which Person may, but need not, be an Affiliate of that Participant or of another Participant) that is itself acting for one or more Non-Participant Parties with respect to such Open Position (such Person in such case, a "**Client-Carrying Broker**").

Closing-out Process

In connection with the Default of a Participant, the process of termination of Open Positions, determination of amounts owing with respect thereto, netting of such amounts, liquidation and application of any Margin and/or Collateral and application of Default Portability Rules pursuant to Rule 20A-02, if applicable, in each case as contemplated by these Rules.

Collateral

At any time, such funds or other property Transferred by a Participant to ICE Clear Credit for the General Guaranty Fund pursuant to title transfer or pledge (and not released by ICE Clear Credit), in accordance with these Rules and the ICE Clear Credit Procedures.

Conforming Trade

The meaning specified in Rule 309.

Contracts

An agreement, contract, or transaction that is specifically identified in these Rules as a Contract.

Control

With respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

Custodial Asset Policies

~~Policies or procedures adopted from time to time by ICE Clear Credit with respect to the investment of assets in the Custodial Client Omnibus Margin Account and the assets permitted to be transferred to the Custodial Client Omnibus Margin Account.~~

Custodial Client Omnibus Margin Account

~~Any account or accounts maintained by or on behalf of ICE Clear Credit with respect to a Participant for the purposes of holding on an omnibus basis margin of Non-Participant Parties posted to that Participant in respect of their respective Minimum ICE Clear Credit Required Initial Margin (as defined in Rule 406, as applicable) and Participant Excess Margin requirements, as applicable, or property of a Participant posted in lieu thereof in accordance with these Rules. For the avoidance of doubt, ICE Clear Credit may establish a separate account or subaccount with respect to a portion of the Custodial Client Omnibus Margin Account corresponding to the Net Client Omnibus Margin Amount.~~

DCO/SCA Conversion Date

July 16, 2011 or such later date as is announced as such by ICE Clear Credit consistent with applicable legal requirements.

Default

Any event that would constitute a Default under Rule 20-605 or the corresponding Rule in any Market or Contract-specific Chapter of these Rules.

~~Eligible Custodial Assets~~

~~Instruments permitted to be transferred to the Custodial Client Omnibus Margin Account under the Custodial Asset Policies from time to time.~~

Eligible Margin

The meaning specified in Rule 401(ed).

Eligible Officer

Any officer of ICE Clear Credit designated by the Board from time to time for purposes of the applicable determination, decision or other action contemplated by these Rules.

Emergency

The meaning specified in Rule 601.

Excess Margin

~~With respect to a Non-Participant Party of a Participant, (i) the amount of initial margin held in the Custodial Client Omnibus Margin Account in respect of the Minimum ICE Clear Credit Required Initial Margin for Client-Related Positions of that Participant with respect to that Non-Participant Party, as reduced by the applicable Non-Participant Pro Rata Share of the Net Client Omnibus Margin Amount, plus (ii) the amount of any initial margin held in the Custodial Client Omnibus Margin Account in excess of the current Minimum ICE Clear Credit Required Initial Margin for such Non-Participant Party that has not been withdrawn, plus (iii) (without duplication) the amount of such Participant Excess Margin, if any, collected from such Non-Participant Party as the Participant may Transfer from time to time to the Custodial Client Omnibus Margin Account to be held as Excess Margin.~~

Excess Net Capital

For a Participant that is an FCM or a Broker-Dealer, its “excess net capital” as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12. For a Participant that is not an FCM or a Broker-Dealer, the amount, if any, by which its Adjusted Net Capital exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICE Clear Credit.

ICE Clear Credit

ICE Clear Credit LLC, a Delaware limited liability company (formerly ICE Trust U.S. LLC).

ICE Clear Credit Procedures

The policies, procedures and other provisions established by ICE Clear Credit relating to clearing of Contracts, as amended from time to time.

Initial Payment

The meaning specified in Rule 301(b).

Margin

Initial Margin (including Portfolio Risk Margin, Physical Settlement Margin and Super and Special Margin) and Mark-to-Market Margin (each as defined in Rule 403 or 404) Transferred or Transferable by or to a Participant to or by ICE Clear Credit.

Margin Accounts

Each Participant's House Margin Account and ~~Custodial~~ Client Omnibus Margin Account.

Margin Category

The meaning specified in Rule 401(a).

Margin Requirement

The meaning specified in Rule 401(a).

~~**Net Margin Requirement**~~

~~The meaning specified in Rule 401(a).~~

Markets

A market that is party to an agreement with ICE Clear Credit for the provision of clearing services and that is specifically identified in these Rules as a Market.

Net Client Omnibus Margin Amount

~~As of any relevant time for a Participant, the aggregate amount of Client-Related Initial Margin with respect to the Client-Related Positions of that Participant (determined on a net basis across all such Client-Related Positions).~~

Net Margin Requirement

~~The meaning specified in Rule 401(a).~~

Non-Participant Party

A Person that is not ICE Clear Credit, a Participant or an Affiliate of a Participant (provided that a Client-Carrying Broker (including a Client Carrying Broker that is an Affiliate of a Participant) acting in its capacity as such will be deemed a Non-Participant Party for purposes of the Rules). Non-Participant Parties include, without limitation, a "[cleared swaps](#) customer" as defined in CFTC Rule [1.322.1](#) (other than a holder of a [cleared swaps](#) proprietary account as defined in such rule).

Non-Participant ~~Pro Rata Share~~ [Party Portfolio](#)

~~For each Non-Participant Party of a Participant, a percentage equal to (i) the Minimum ICE Clear Credit Required Initial Margin for such Non-Participant Party with respect to~~ [The portfolio of rights and obligations under](#) Client-Related Positions ~~with that allocated to a particular Non-Participant~~ [divided by \(ii\) the aggregate Minimum](#) [Party in the books and records of](#) ICE Clear Credit ~~Required Initial Margin for all Non-Participant Parties with respect to Client-Related Positions with that Participant.~~ [for purposes of CFTC Rule 22.15.](#)

Novation Time

The meaning specified in Rule 309.

Obligations

All obligations of a Participant arising under these Rules or any agreements between such Participant and ICE Clear Credit, in each case however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

OFAC

The meaning specified in Rule 208.

Open Positions

A Participant's open positions in Contracts with ICE Clear Credit created pursuant to Rule 301 or as otherwise provided in these Rules and not offset pursuant to Rule 304 or closed pursuant to the Closing-out Process. Both Client-Related Positions and House Positions shall constitute Open Positions for the purposes of these Rules.

Parent

The meaning specified in Rule 205.

Participant

A person that has been approved by ICE Clear Credit for the submission of Contracts and that is party to an agreement with ICE Clear Credit specifically relating to transactions in Contracts (a **"Participant Agreement"**).

~~Participant Excess Margin~~

~~Any initial margin required by a Participant from a Non-Participant Party in respect of a Client-Related Position in excess of the Minimum ICE Clear Credit Required Initial Margin.~~

Participant's Required Segregated Customer Funds

The meaning specified in Rule 201.

Person

An individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

President

The President of ICE Clear Credit.

Retiring Participant

A Participant who has notified ICE Clear Credit pursuant to the terms of its Participant Agreement of its intention to terminate its status as a Participant or who has been notified by ICE Clear Credit pursuant to the terms of its Participant Agreement or these Rules of ICE Clear Credit's intention to terminate its status as a Participant.

Trading Activity Limitation

The meaning specified in Rule 203.

Transfer

- (a) With respect to any Margin, Collateral or other assets required to be delivered by a Participant to ICE Clear Credit (i) in the case of cash, payment or delivery by wire transfer into one or more bank accounts specified by ICE Clear Credit (which may be a relevant Margin Account), (ii) in the case of securities or other financial assets that can be paid or delivered by book-entry, the crediting of such securities or other financial assets to a securities account specified by ICE Clear Credit (which may be a Margin Account), and (iii) in the case of neither cash nor securities or other financial assets that can be paid or delivered by book-entry, in accordance with the instructions of ICE Clear Credit; and
- (b) With respect to any Margin, Collateral or other assets required to be delivered by ICE Clear Credit to a Participant, in any manner specified herein including, without limitation, (i) in the case of Mark-to-Market Margin, by crediting such Margin to such Participant's House Margin Account or ~~Custodial~~ Client Omnibus Margin Account, as applicable, deeming such Margin as having been Transferred by such Participant to ICE Clear Credit and making such Margin available for withdrawal by the Participant, in accordance with the ICE Clear Credit Procedures, (ii) in the case of Initial Margin, making such Margin in such Participant's House Margin Account or ~~Custodial~~ Client Omnibus Margin Account, as applicable, at ICE Clear Credit available for withdrawal by the Participant, in accordance with the ICE Clear Credit Procedures, and (iii) in the case of other property to be returned to a Participant from a ~~Custodial~~ Client Omnibus Margin Account in accordance with Rule 406, by making such property available for withdrawal in accordance with the ICE Clear Credit Procedures.

Value

The meaning specified in Rule 401(~~e~~d).

Client-Related Position or a House Position of the relevant Participant (including, if applicable, for purposes of Rule 304(c)), and failing such designation, such Trade will be presumed to be a House Position of that Participant.

303. Adjustments.

Upon the clearance of a Trade pursuant to Rule 301(b), (c) or (e), regardless of the terms of the bilateral agreement between the submitting Participants the Trade between ICE Clear Credit and each such Participant shall have an Initial Payment of zero.

304. Offsets.

- (a) Subject to subsection (b) below, where, pursuant to Rule 301, or as otherwise provided in these Rules, a Participant has entered into Trades that are House Positions or Client-Related Positions with ICE Clear Credit that constitute opposite positions which are identical in all material respects (other than notional or other reference amount and the application of Rule 613) in a single Contract, then at the applicable time and in the manner to be specified in the ICE Clear Credit Procedures, the second such Trade shall be deemed pro tanto a settlement or adjustment of the prior transaction and, therefore, a reduction in the relevant Open Position. Thereupon, such Participant shall possess no further rights and be under no further liability with respect thereto only to the extent of such settlement or adjustment.
- (b) In no event shall any Client-Related Position be offset against any House Position or any House Position be offset against any Client-Related Position, in either case pursuant to subsection (a) above, except as provided in subsection (c) below. Client-Related Positions ~~identified by a Participant to ICE Clear Credit as relating to~~that are part of the same Non-Participant Party Portfolio may be offset against each other pursuant to subsection (a) hereof. Client-Related Positions ~~identified by a Participant to ICE Clear Credit as relating to~~that are part of different Non-Participant ~~Parties~~Party Portfolios may not be offset against each other pursuant to subsection (a) hereof; provided that such Client-Related Positions shall be deemed to be offset against each other for purposes of determining the Participant's ~~net Margin requirements with respect thereto (including the~~Net Client-Related ~~Initial~~Mark-to-Market Margin ~~requirement)~~Requirement and any ~~obligation of net payment or settlement amount owed by~~ either ICE Clear Credit to the Participant or the Participant to ICE Clear Credit with respect ~~thereto at any time~~such Client-Related Positions under the Rules, and in addition such positions may be offset against each other by ICE Clear Credit following a Default as set forth in these Rules.

- (a) The Mark-to-Market Price of each Open Position,
- (b) The Margin Requirement,
- (c) The Margin then on deposit with respect to such Margin Category, and
- (d) The Net [House](#) Margin Requirement.
- (e) [The Net Client-Related Mark-to-Market Margin Requirement](#)

... **Interpretations and Policies:**

- .01 For the purposes of this Rule, the term “Open Positions” shall also include Trades that have been accepted by ICE Clear Credit pursuant to Rule 309 but not yet novated or established pursuant to Rule 301 because the Novation Time has not yet occurred.

308. Statement of Initial Margin.

At or around the time a Statement of Open Positions is made available pursuant to Rule 307, ICE Clear Credit shall also make available to each Participant a statement (separately for Client-Related Positions and House Positions) showing the following with respect to each Initial Margin Category, as described in the Chapter 4 Rules (or any corresponding Rules in any product-specific Chapter):

- (a) The Margin Requirement,
- (b) The Margin then on deposit with respect to such Margin Category, and
- (c) The Net [House](#) Margin Requirement.
- (d) [The Non-Participant Party Portfolio Margin Requirement for each Non-Participant Party Portfolio.](#)

309. Acceptance of Trades by ICE Clear Credit.

- (a) ICE Clear Credit shall accept the submission of Trades for clearance hereunder only from or on behalf of Participants (who may be acting for themselves or a Non-Participant Party). A Trade is accepted upon ICE Clear Credit’s notice, in accordance with the ICE Clear Credit Procedures, to the relevant Participant(s) that ICE Clear Credit has accepted a Trade submitted for clearance.

4. MARGIN

401. Margin Generally.

(a) House Margin.

ICE Clear Credit shall, following the close of business on each ICE Business Day, and may, at any other time or times selected by ICE Clear Credit, determine the Margin requirement for a Participant in respect of House Positions with respect to each category of Initial Margin and of Mark-to-Market Margin (each, a “**Margin Category**”, and the related Margin requirement, a “**Margin Requirement**”). For each Margin Category for a Participant and for a given ICE Business Day, ICE Clear Credit shall calculate a net amount (a “**Net House Margin Requirement**”) (i) in the case of an Initial Margin Category, equal to the Participant’s Margin Requirement for such Initial Margin Category as of such ICE Business Day minus the Value of the Participant’s Margin held by ICE Clear Credit as Margin for such Initial Margin Category and (ii) in the case of a Mark-to-Market Margin Category, equal to the Participant’s Margin Requirement for such Mark-to-Market Margin Category (expressed as a positive number if owed by the Participant and a negative number if owed by ICE Clear Credit) minus the Value of the Participant’s Margin held by ICE Clear Credit as Margin for such Mark-to-Market Margin Category or plus the Value of ICE Clear Credit’s Margin held or deemed held by the Participant as Margin for such Mark-to-Market Margin Category, as applicable. With respect to each Margin Category for a Participant:

- (i) if the Net House Margin Requirement is negative, ICE Clear Credit shall (unless the Participant is, or a determination by ICE Clear Credit is pending as to whether the Participant is, in Default), with respect to Eligible Margin having a Value as close as reasonably practicable to (but not to exceed) the absolute value of the Net House Margin Requirement, (A) in the case of Mark-to-Market Margin, Transfer such Eligible Margin to the Participant, which Eligible Margin would, as applicable, either be applied to a Net House Margin Requirement for an Initial Margin Category or be available for withdrawal by the Participant, in accordance with the ICE Clear Credit Procedures, to the extent there is any excess after satisfying the Margin Requirement for each Initial Margin Category or (B) in the case of Initial Margin, Transfer such Eligible Margin to the Participant, in accordance with the ICE Clear Credit Procedures, to the extent there is any excess after satisfying the Margin Requirement for each Initial Margin Category.
- (ii) if the Net House Margin Requirement is positive, the Participant shall Transfer to ICE Clear Credit, in accordance with the ICE Clear Credit Procedures, Eligible Margin having a Value at least equal to the Net

House Margin Requirement, with such Transfer required to be made prior to the time established by ICE Clear Credit in the ICE Clear Credit Procedures for this purpose on the ICE Business Day next following the ICE Business Day to which the close of business Net House Margin Requirement relates (or, if ICE Clear Credit notifies a Participant, in accordance with the ICE Clear Credit Procedures, of a Net House Margin Requirement other than in respect of its close of business determinations, within one ICE Clear Credit business hour of such notice); *provided that* (i) to the extent there is cash in a Participant's House Margin Account in the relevant currency, ICE Clear Credit may withdraw from such account such cash to satisfy a Net ~~Margin Requirement for a Mark-to-Market Margin Category for the relevant House Position(s), and (ii) to the extent there is cash in the Custodial Client Omnibus Margin Account in the relevant currency, ICE Clear Credit may withdraw from such account such cash (up to the amount of the outstanding Net Client Omnibus Margin Amount) to satisfy a Net~~House Margin Requirement for a Mark-to-Market Margin Category for the relevant ~~Client-Related~~House Position(s), ~~as applicable, and in either case~~ adjust the Participant's Net House Margin Requirements accordingly; or

- (iii) if the Net House Margin Requirement is zero, no Margin shall be required to be Transferred.

(b) **Client-Related Margin.**

ICE Clear Credit shall, following the close of business on each ICE Business Day, and may, at any other time or times selected by ICE Clear Credit, determine the Margin Requirement for a Participant in respect of Client-Related Positions with respect to each Margin Category.

(i) **Initial Margin.**

ICE Clear Credit shall calculate, in the case of an Initial Margin Category, the Participant's Margin Requirement for each Non-Participant Party Portfolio minus the Value of the Margin held by ICE Clear Credit as Margin for such Initial Margin Category allocated by ICE Clear Credit to such Non-Participant Party Portfolio (each, a the "**Non-Participant Party Portfolio Initial Margin Requirement**"); With respect to each Initial Margin Category for a Participant:

- (A) for each Non-Participant Party Portfolio Initial Margin Requirement that is positive, the Participant shall Transfer to ICE Clear Credit, in accordance with the ICE Clear Credit Procedures, Eligible Margin having a Value at least equal to such Non-Participant Party Portfolio Initial Margin Requirement, with such Transfer required to be made prior to the time established by ICE Clear Credit in the ICE Clear Credit Procedures for this

purpose on the ICE Business Day next following the ICE Business Day to which the close of business Non-Participant Party Portfolio Initial Margin Requirement relates (or, if ICE Clear Credit notifies a Participant, in accordance with the ICE Clear Credit Procedures, of a Non-Participant Party Portfolio Initial Margin Requirement other than in respect of its close of business determinations, within one ICE Clear Credit business hour of such notice);

- (B) following the settlement in full of all amounts due to be Transferred to ICE Clear Credit pursuant to clause (A) above, for each Non-Participant Party Portfolio Initial Margin Requirement that is negative, ICE Clear Credit shall (unless the Participant is, or a determination by ICE Clear Credit is pending as to whether the Participant is, in Default), with respect to Eligible Margin having a Value as close as reasonably practicable to (but not to exceed) the absolute value of such Non-Participant Party Portfolio Initial Margin Requirement, Transfer such Eligible Margin to the Participant, in accordance with the ICE Clear Credit Procedures;
- (C) if a Non-Participant Party Portfolio Initial Margin Requirement is zero, no Margin shall be required to be Transferred in respect thereof;

(ii) **Mark-to-Market Margin.**

ICE Clear Credit shall calculate, in the case of a Mark-to-Market Margin Category, a net amount equal to the Participant's net Margin Requirement for such Mark-to-Market Margin Category for all Client-Related Positions in all Non-Participant Party Portfolios (expressed as a positive number if owed by the Participant and a negative number if owed by ICE Clear Credit) minus the Value of the Participant's Margin held by ICE Clear Credit as Margin for such Mark-to-Market Margin Category or plus the Value of ICE Clear Credit's Margin held or deemed held by the Participant as Margin for such Mark-to-Market Margin Category, as applicable (the "**Net Client-Related Mark-to-Market Margin Requirement**"). With respect to each Mark-to-Market Margin Category for a Participant:

- (A) if the Net Client-Related Mark-to-Market Margin Requirement is positive, the Participant shall Transfer to ICE Clear Credit, in accordance with the ICE Clear Credit Procedures, Eligible Margin having a Value at least equal to the Net Client-Related Mark-to-Market Margin Requirement, with such Transfer required to be made prior to the time established by ICE Clear Credit in the ICE Clear Credit Procedures for this purpose on the ICE Business Day next following the ICE Business Day to which the close of business Net Client-Related Mark-to-Market Margin Requirement relates (or, if ICE Clear Credit notifies a Participant, in accordance with the ICE Clear Credit Procedures, of a Net Client-Related Mark-to-Market Margin

Requirement other than in respect of its close of business determinations, within one ICE Clear Credit business hour of such notice);

- (B) if the Net Client-Related Mark-to-Market Margin Requirement is negative, ICE Clear Credit shall (unless the Participant is, or a determination by ICE Clear Credit is pending as to whether the Participant is, in Default), with respect to Eligible Margin having a Value as close as reasonably practicable to (but not to exceed) the absolute value of the Net Client-Related Mark-to-Market Margin Requirement, Transfer such Eligible Margin to the Participant, in accordance with the ICE Clear Credit Procedures; and
- (C) if the Net Client-Related Mark-to-Market Margin Requirement is zero, no Margin shall be required to be Transferred in respect thereof.

Notwithstanding anything to the contrary herein, amounts required to be Transferred between a Participant and ICE Clear Credit pursuant to any of clauses (i)(A)-(C) and/or (ii)(A)-(C) above of this subsection (b) shall not be netted or offset, except to the extent such netting or offset may be permitted by applicable law (including CFTC regulation or interpretation thereof).

- (c) Notwithstanding anything to the contrary herein, in determining each Participant's Margin Requirement as described above, ICE Clear Credit shall make separate Margin Requirement calculations for a Participant's Client-Related Positions and for a Participant's House Positions, notwithstanding that such positions would otherwise be in the same Margin Category. In no event shall the Margin Requirements for a Participant's Client-Related Positions and House Positions be netted or offset against each other (except as specifically provided in these Rules), nor shall any ~~Excess~~ Margin held or released in respect of Client-Related Positions be applied at any time to any Margin Requirement in respect of House Positions.

The Margin Requirement in respect of Initial Margin for a Participant's Client-Related Positions shall be calculated on a gross basis across each Non-Participant Party Portfolio (i.e., on the basis that all Client-Related Positions related to different Non-Participant ~~Parties~~Party Portfolios have not been offset pursuant to Rule 304 ~~(i.e., on a "gross" margin basis), regardless of whether ICE Clear Credit or such Participant otherwise records such Client-Related Positions as being so offset for any other purposes. Participant shall Transfer the appropriate Excess Margin in respect of Client-Related Positions to ICE Clear Credit as provided in Rule 406.)~~

- (ed) **"Eligible Margin"** means (i) with respect to Initial Margin, (A) in the case of satisfaction of ~~a Net~~an Initial Margin ~~Requirement~~requirement, dollars or other currencies acceptable to ICE Clear Credit for this purpose and (B) in the case of substitutions of Initial Margin, assets, in the case of each of clauses (A) and (B),

as specified in Schedule 401 as in effect from time to time and (ii) with respect to Mark-to-Market Margin, the currency in which the Contracts for the applicable Mark-to-Market Margin Category are denominated. Currencies must be in immediately available funds to qualify as Eligible Margin.

- (de) **“Value”** means, (i) with respect to Eligible Margin consisting of dollars or another currency that qualifies as Eligible Margin for the applicable Margin Category, the amount thereof converted, if applicable, to the currency of the relevant ~~Net~~ Margin Requirement at such exchange rate as ICE Clear Credit in its discretion may determine from time to time pursuant to the ICE Clear Credit Procedures, (ii) with respect to Eligible Margin consisting of assets, other than currencies, that qualify as Eligible Margin for the applicable Margin Category, the value thereof as determined by ICE Clear Credit (or its agent or custodian) pursuant to a methodology established by ICE Clear Credit from time to time in the ICE Clear Credit Procedures, and (iii) with respect to any currency or asset that does not qualify as Eligible Margin for the applicable Margin Category, zero.
- (ef) ICE Clear Credit shall establish and maintain a House Margin Account and a ~~Custodial~~ Client Omnibus Margin Account for each Participant. All ~~Client-Related~~ Initial Margin ~~and Excess Margin~~ required with respect to a Participant’s Client-Related Positions shall be Transferred to such Participant’s ~~Custodial~~ Client Omnibus Margin Account. All Initial Margin required with respect to House Positions of such Participant shall be Transferred to such Participant’s House Margin Account.
- (fg) ICE Clear Credit shall charge a Participant interest for any net Mark-to-Market Margin Transferred by ICE Clear Credit to the Participant and shall pay a Participant interest for any net Mark-to-Market Margin Transferred by the Participant to ICE Clear Credit and for any cash Margin in such Participant’s Margin Accounts, in each case at an interest rate and on a frequency determined from time to time by ICE Clear Credit in the ICE Clear Credit Procedures.
- (gh) A Participant may substitute, in accordance with the ICE Clear Credit Procedures and applicable law, Eligible Margin for an amount of Margin in such Participant’s House Margin Account or ~~Custodial~~ Client Omnibus Margin Account, as applicable, having a Value not to exceed such substitute Eligible Margin.
- (hi) Margin ~~or Excess Margin~~ required to be provided by a Participant hereunder shall be provided at the time and in the manner specified in the ICE Clear Credit Procedures. Where ~~Margin or Excess~~ Margin is available for withdrawal by a Participant in accordance with these Rules, if such Participant requests such withdrawal on an ICE Business Day by the deadline established in the ICE Clear Credit Procedures, ICE Clear Credit will transfer such margin to the relevant account of the Participant on such ICE Business Day.

- (j) Notwithstanding anything to the contrary herein, if ICE Clear Credit determines one or more Non-Participant Party Portfolio Initial Margin Requirements or a Net Client-Related Mark-to-Market Margin Requirement in respect of a time other than its close of business determination (i.e., an intraday margin call) that would otherwise be required to be Transferred by a Participant in accordance with subsection (b) above, ICE Clear Credit may in lieu thereof increase the applicable Margin Requirement for House Positions for the applicable Margin Category.

. . . **Interpretations and Policies:**

- .01 Margin required to be Transferred by a Participant shall be considered timely Transferred to ICE Clear Credit if (i) such Participant's settlement bank guarantees, in a form acceptable to ICE Clear Credit, Transfer of such Margin prior to the time such Margin would be due in accordance with these Rules and (ii) such Margin is actually Transferred to ICE Clear Credit within a time period established by ICE Clear Credit.
- .02 For the purposes of Chapter 4, the term "Open Positions" shall also include Trades that have been accepted by ICE Clear Credit pursuant to Rule 309 but not yet novated or established because the Novation Time has not yet occurred.

402. Transfer of Title; Liens.

- (a) Each Participant (other than a Participant that is an FCM or a Broker-Dealer) agrees that all right, title and interest in and to any cash Transferred by such Participant to ICE Clear Credit under the terms of these Rules as ~~Margin, Excess Margin~~ or Collateral consisting of cash and all cash proceeds of any Margin, ~~Excess Margin~~ or Collateral (collectively, "**Cash Margin**") shall vest in ICE Clear Credit free and clear of any liens, claims charges or encumbrances. Upon the occurrence of a Default, ICE Clear Credit shall be entitled to apply such cash Transferred to ICE Clear Credit by such Defaulting Participant and any cash proceeds of the Margin and Collateral of such Defaulting Participant to the Obligations of such Defaulting Participant to ICE Clear Credit in accordance with the provisions herein; provided that cash Transferred in respect of Client-Related Positions and constituting ~~Margin or Excess~~ Margin and cash proceeds of ~~Margin or Excess~~ Margin provided in respect of Client-Related Positions may only be applied to Obligations in respect of Client-Related Positions as set forth herein and only subject to the limitation set forth in subsection (h) below. Prior to the completion of the requirements under these Rules for the occurrence of a Default, ICE Clear Credit shall also be entitled to apply such cash to the Obligations of a Participant (but subject to the proviso to the preceding sentence)

if such Participant has defaulted with respect to making a payment or delivery when due under these Rules or a Contract.

- (b) Each Participant hereby grants to ICE Clear Credit a continuing lien and security interest in and to and right of set-off against all of the Participant's right, title and interest, whether now owned or existing or hereafter acquired or arising, in and to (i) all securities, financial assets and other property (other than cash) Transferred by such Participant to ICE Clear Credit under the terms of these Rules as ~~Margin, Excess~~ Margin or Collateral not constituting cash, (ii) all non-cash proceeds of any of the foregoing and (iii) in the case of a Participant that is an FCM or a Broker-Dealer, any cash Transferred by such Participant to ICE Clear Credit under the terms of these Rules as ~~Margin, Excess~~ Margin or Collateral consisting of cash, and all cash proceeds of any ~~Margin, Excess~~ Margin or Collateral, in each case as security for the Obligations of such Participant to ICE Clear Credit (jointly, (i), (ii) and (iii), the "**Pledged Items**"); provided that Pledged Items Transferred in respect of Client-Related Positions and constituting ~~Margin or Excess~~ Margin shall only secure Obligations of such Participant in respect of Client-Related Positions and shall be subject to the limitation set forth in subsection (h) below and applicable law. Upon the withdrawal of Pledged Items by a Participant from its House Margin Account or ~~Custodial~~ Client Omnibus Margin Account, as applicable, in accordance with these Rules and the ICE Clear Credit Procedures, the security interest and lien granted hereunder on such Pledged Items will be released immediately without any further action by either party. With respect to Pledged Items in the form of cash credited to the House Account of a Participant and constituting Mark-to-Market Margin, ICE Clear Credit will have the right to sell, pledge, rehypothecate, assign, invest, use or otherwise dispose of or use in its business such Pledged Items, free from any claim or right of any nature whatsoever of the Participant, including any equity or right of redemption by the Participant, subject to any requirements of the Rules, and with respect to other Pledged Items credited to the House Account of a Participant constituting Initial Margin, ICE Clear Credit may use, invest or apply such Pledged Items as permitted by the Rules. With respect to Pledged Items credited to the ~~Custodial~~ Client Omnibus Margin Account of a Participant, the Clearing House will only have the right to use, invest or apply such Pledged Items as permitted by the Rules and applicable law.
- (c) Upon the occurrence of a Default, ICE Clear Credit may exercise all rights of a secured party under applicable law and under these Rules. ICE Clear Credit may, without being required to give any notice, except as may be required by law, sell or otherwise apply any Pledged Items Transferred to, or otherwise under the control of, ICE Clear Credit to satisfy the Participant's Obligations. Notwithstanding the foregoing, ICE Clear Credit may only exercise such rights with respect to, or otherwise dispose of or sell, Pledged Items Transferred in respect of Client-Related Positions and constituting Margin ~~or Excess Margin~~ (including Pledged Items Transferred to the ~~Custodial~~ Client Omnibus Margin

- (f) With respect to Pledged Items Transferred to the ~~Custodial~~ Client Omnibus Margin Account of a Participant under Rule 406, ICE Clear Credit agrees that such Pledged Items, together with any proceeds thereof, shall constitute customer property held for the benefit of the Non-Participant Parties of Participant in accordance with applicable law and Rule 406, subject to the security interest and lien of ICE Clear Credit pursuant to subsection (b). For the avoidance of doubt, each Participant shall be obligated to Transfer Margin ~~and Excess Margin~~ to ICE Clear Credit in respect of Client-Related Positions in accordance with these Rules notwithstanding any failure of a Non-Participant Party to provide such Participant with related margin in respect of such Client-Related Position.
- (g) Where a Participant makes a partial Transfer of the Margin required to be Transferred on any date to ICE Clear Credit in respect of both Client-Related Positions and House Positions, such Margin shall be applied first to the outstanding Margin Requirement in respect of the Client-Related Positions until satisfied and thereafter to the outstanding Margin Requirement in respect of the House Positions, notwithstanding any designation made by the Participant as to the application of such Margin.
- (h) Notwithstanding anything to the contrary herein, ICE Clear Credit shall only be permitted to use, apply or otherwise exercise rights pursuant to subsections (a), (b) and (c) above with respect to Cash Margin and Pledged Items (or the proceeds thereof) posted in respect of Client-Related Positions and constituting Initial Margin ~~or Excess Margin in an aggregate amount for any Default not to exceed the most recently calculated Net Client Omnibus Margin Amount as of the relevant time; provided that Excess Margin of a Non-Participant Party may also be used solely as provided in these Rules~~ to the extent permitted under applicable law, including without limitation CFTC Rule 22.15 (and any interpretations of the CFTC or its staff in respect thereof). For the avoidance of doubt, but subject to the foregoing sentence, ICE Clear Credit shall be permitted to select the specific assets so used or applied.

403. Initial Margin.

“Initial Margin” shall consist of the Margin Categories listed in this Rule (collectively, the “Initial Margin Categories”). With respect to each Initial Margin Category, ICE Clear Credit shall determine the Margin Requirement pursuant to one or more methodologies established by ICE Clear Credit from time to time in the ICE Clear Credit Procedures. To protect itself and the other Participants, ICE Clear Credit may deviate from applying the methodologies uniformly to each Participant if ICE Clear Credit determines it appropriate to do so for risk management purposes in accordance with the ICE Clear Credit Procedures. Margin Requirements with respect to an Initial Margin Category shall be expressed as a positive number or as zero, as applicable.

- (a) **“Portfolio Risk Margin”** means the Margin ICE Clear Credit requires related to the size and risk of a Participant’s Open Positions.
- (b) **“Physical Settlement Margin”** means the Margin ICE Clear Credit requires to secure a Participant’s obligations to another Participant pursuant to a bilateral agreement relating to a Contract that has been allocated to a pair of Participants for purposes of effecting physical settlement.
- (c) **“Super or Special Margin”** means additional Margin ICE Clear Credit may require for any purpose at any time and from time to time in its sole discretion.

404. Mark-to-Market Margin.

- (a) **“Mark-to-Market Margin”** means the Margin required as a result of the market value of a Participant’s Open Positions. Each currency in which Contracts are denominated shall be treated as a separate Margin Category (each, a **“Mark-to-Market Margin Category”**). With respect to a Participant, the Margin Requirement for a Mark-to-Market Margin Category shall be the sum of the value of each Open Position in such Margin Category, determined by ICE Clear Credit by the application of the Mark-to-Market Price for the relevant Contract (expressed as a positive number if owed by the Participant and a negative number if owed by ICE Clear Credit). Margin Requirements with respect to a Mark-to-Market Margin Category shall be expressed as a positive or negative number or as zero, as applicable.
- (b) **“Mark-to-Market Price”** means, for each Contract, the price determined in the manner designated by ICE Clear Credit for such Contract from time to time in the ICE Clear Credit Procedures. Notwithstanding the foregoing, when deemed necessary by ICE Clear Credit in order to protect the respective interests of ICE Clear Credit and Participants, ICE Clear Credit may set the Mark-to-Market Price for any Contract at a price deemed appropriate by ICE Clear Credit under the circumstances. When ICE Clear Credit determines that circumstances necessitate the application of the preceding sentence, the reasons for that determination and the basis for the establishment of the Mark-to-Market Price in such circumstances shall be recorded as provided in the ICE Clear Credit Procedures. To aid in the establishment of Mark-to-Market Prices, Participants are required to submit end of day prices in accordance with the ICE Clear Credit Procedures. The submission of those prices may result in a bilateral transaction which will subsequently be cleared in accordance with the ICE Clear Credit Procedures.

405. ~~Transition Rule for Non-Participant Contracts of Non-FCM Participants and Non-Broker-Dealer Participants.~~ Intentionally Omitted.

~~Effective as of the DCO/SCA Conversion Date, each Participant that had outstanding Client-Related Positions (and related Non-Participant Contracts) under Rule 405 of the ICE Trust Rules as in effect prior to such date shall, to the extent possible after making good faith efforts and acting in a commercially reasonable manner, transfer such positions to FCM Participants or to Broker-Dealer Participants, as the case may be, to be maintained in accordance with Rule 406 (in which case such Non-Participant Contracts will terminate upon such transfer). ICE Clear Credit may adopt additional procedures with respect to such transfer.~~

406. Certain Requirements with Respect to Client-Related Positions of FCM Participants and Broker-Dealer Participants.

The provisions of this Rule 406 shall apply to Participants that are FCMs and/or Broker-Dealers in respect of Client-Related Positions. Without limiting Rule 312, ICE Clear Credit shall have no obligation or liability to any Non-Participant Party in respect of a Client-Related Position or any transaction, agreement or arrangement between a Participant and any Non-Participant Party. For the avoidance of doubt, Participants carrying Client-Related Positions that are swaps must be FCMs, and Participants carrying Client-Related Positions that are security-based swaps must be Broker-Dealers.

- (a) The relationship between a Non-Participant Party and a Participant in respect of Client-Related Positions for that Non-Participant Party shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties ("**Customer Account Agreement**"), subject to the applicable provisions of the Rules.
- (b) A Participant shall require each Non-Participant Party to provide margin or collateral ("**Non-Participant Collateral**") in an amount no less than the amount of Margin of each applicable Margin Category required on a gross basis by ICE Clear Credit with respect to the relevant Client-Related Position(s); provided that ICE Clear Credit may require additional margin with respect to Non-Participant Parties (or certain categories of Non-Participant Parties) as determined by ICE Clear Credit from time to time as required by applicable law. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any offset of such Client-Related Positions against Client-Related Positions relating to the same Non-Participant Party, but without any offset of such Client-Related Positions against Client-Related Positions relating to a different Non-Participant Party. ~~With respect to Initial Margin, such minimum amount determined on a gross basis for Client-Related Positions (together with any additional amount required by ICE Clear Credit as provided above) related to a particular Non-Participant Party shall be referred to herein as the "**Minimum ICE Clear Credit Required Initial Margin**" for that Non-Participant Party. The Minimum ICE Clear Credit Required Initial Margin for a Non-Participant Party,~~

~~together with any Participant Excess Margin for such Non-Participant Party, shall be referred to herein as the “Non-Participant Initial Margin” for such party.~~

- (c) (i) A Participant shall receive, hold and use all Non-Participant Collateral only as permitted under CEA Section 4d(f) and the rules thereunder (including Part 22 of the CFTC Regulations and any interpretations thereof by the CFTC or its staff) and Securities Exchange Act ~~Section~~Sections 3E(b) and/or 15(c)(3) and the rules thereunder, as applicable, and to the extent not inconsistent with the foregoing, as set forth in these Rules and the ICE Clear Credit Procedures (the “**Swap Customer Segregation Requirements**”). All ~~customer~~ property Transferred to ICE Clear Credit by Participant on behalf of Non-Participant Parties shall be held in the ~~Custodial~~ Client Omnibus Margin Account of such Participant as cleared swaps customer property in accordance with the Swap Customer Segregation Requirements. Pursuant to this Rule, Participant shall satisfy the requirement to obtain any segregation acknowledgement letter from ICE Clear Credit under the Swap Customer Segregation Requirements.
- (ii) Without limiting subsection (c)(i) above, the Client-Related Positions (including, solely to the extent permitted by applicable rules, orders or exemptions of the CFTC and SEC, Client-Related Positions that are security-based swaps) and related Non-Participant Collateral shall be held in part of the cleared ~~swaps~~swaps account class for purposes of Part 190 of the CFTC regulations. ~~All Non-Participant Collateral Transferred to ICE Clear Credit by Participant on behalf of Non-Participant Parties shall be held in the Custodial Client Omnibus Margin Account as customer property separated from the proprietary positions and margin of such Participant. Such customer property shall be treated by ICE Clear Credit as belonging to the applicable Non-Participant Parties of Participant.~~
- (d) ~~Prior to the effectiveness of the Swap Customer Segregation Requirements, the Client-Related Positions and related Non-Participant Collateral shall be held in the cleared OTC derivative account class for purposes of Part 190 of the CFTC regulations. All Non-Participant Collateral Transferred to ICE Clear Credit by Participant on behalf of Non-Participant Parties shall be held in the Custodial Client Omnibus Margin Account as customer property separated from the proprietary positions and margin of such Participant. Such customer property shall be treated by ICE Clear Credit as belonging to the Non-Participant Parties of Participant. Subject to the foregoing and to any requirements in respect of the cleared OTC derivative account class that may be adopted by the CFTC, the Participant and ICE Clear Credit shall treat such customer property in the manner required for segregated customer property with respect to futures contracts under CFTC Rules 1.20-1.30; provided that such customer property shall be accounted for and held separately from, and not in any event commingled with, any such segregated customer property for futures contracts; provided, further, that such customer property may be commingled by Participant with customer property~~

~~segregated or sequestered for purposes of the cleared OTC derivatives account class under the rules of other derivatives clearing organizations to the extent such rules are not inconsistent with the requirements hereof.(e)~~

~~Non-Participant Collateral posted in respect of the ICE Clear Credit Minimum Required Initial~~

Property held in the Client Omnibus Margin Account may only be applied in respect of Client-Related Positions ~~for purposes of these Rules to the extent of the Net Client Omnibus Margin Amount or as otherwise provided herein. Accordingly, Non-Participant Collateral of Non-Participant Parties, whether or not such parties are themselves in default, is at risk as provided in the preceding sentence if there is a Default by a Participant affecting Client-Related Positions. ICE Clear Credit shall not be entitled to use or apply Excess Margin, to satisfy Obligations of a Participant except as expressly set forth herein; provided that ICE Clear Credit shall be entitled to transfer assets in the Custodial Client Omnibus Margin Account (including Excess Margin) as set forth in Chapter 20A of these Rules as~~ provided in these Rules and only to the extent permitted by the Swap Customer Segregation Requirements (including CFTC Rule 22.15).

- (f) ICE Clear Credit shall pass through to the relevant Participant the return on any assets in the ~~Custodial~~ Client Omnibus Margin Account (including any return provided by ICE Clear Credit on Cash therein), less administrative costs as determined by ICE Clear Credit.
- (g) ~~Each Participant will be required to identify in its books and records (i) the aggregate amount of the Minimum ICE Clear Credit Required Initial Margin Transferred that constitutes Excess Margin (the “Aggregate ICE Clear Credit Excess Margin”), (ii) the aggregate amount of Participant Excess Margin Transferred to the Custodial Client Omnibus Margin Account and (iii) the amount of assets in the Custodial Client Omnibus Margin Account representing Excess Margin of each applicable Non-Participant Party (for such party, its “Excess Margin Amount”), including amounts in respect of both the Minimum ICE Clear Credit Required Initial Margin and any Participant Excess Margin. (hf)~~ In connection with any Client-Related Position and related Non-Participant Collateral, Participant shall keep and maintain written records required by the Swap Customer Segregation Requirements ~~(or, prior to the effectiveness of such requirements, as required under CFTC regulations for positions subject to segregation under CFTC Rule 1.20).~~ Each Participant shall provide such reports to ICE Clear Credit with respect to Non-Participant Parties and their related Client-Related Positions and Non-Participant Collateral as and when required under the Swap Customer Segregation Requirements and otherwise upon request of ICE Clear Credit and upon such other basis, if any, as is provided in the ICE Clear Credit Procedures.

- (g) Without limiting Rule 312, but subject to any contrary requirements of law: ICE Clear Credit shall not be liable to any Participant, Non-Participant Party or other Person for any losses, claims, liabilities, damages or expenses arising out of or relating to the holding, investment or use of the ~~Custodial~~ Client Omnibus Margin Account or assets credited thereto from time to time (“**Custodial Losses**”), except to the extent such Custodial Losses result from the gross negligence or willful misconduct of ICE Clear Credit. No Participant shall be liable to any Non-Participant Party for any Custodial Losses, except to the extent such Custodial Losses result from the gross negligence or willful misconduct of the Participant. ICE Clear Credit shall have no duties or responsibilities with respect to the ~~Custodial~~ Client Omnibus Margin Accounts except as expressly set forth in these Rules and applicable law. ICE Clear Credit shall have no responsibility for any investment decisions by a Participant (or any other Person) with respect to assets in the ~~Custodial~~ Client Omnibus Margin Account or for the results of any such investments and shall have no obligation to monitor the value of the assets in the ~~Custodial~~ Client Omnibus Margin Account or any requirements set forth in any applicable agreement between Participant and a Non-Participant Party. ICE Clear Credit shall have no responsibility for the compliance by any Participant or Non-Participant Party with its obligations under any such agreement. ICE Clear Credit shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to the ~~Custodial~~ Client Omnibus Margin Account or the assets therein or transferred thereto or therefrom under these Rules received from a Person ICE Clear Credit believes to be authorized to act on behalf of the appropriate Participant. In no event shall a Non-Participant Party attempt to interfere with the ability of ICE Clear Credit to exercise its rights as set forth in the Rules.
- (h) Except with respect to Client-Related Positions resulting from transactions entered into on a designated contract market or national securities exchange, each Non-Participant Party for which a Participant clears a Client-Related Position must be an “eligible contract participant” as defined in the CEA.
- (i) Each Non-Participant Party consents to the disclosure by its Participant to ICE Clear Credit of such Non-Participant Party’s identity and information concerning the Client-Related Positions held by such Participant for such Non-Participant Party and related margin as set forth in the Rules.
- (j) Each Non-Participant Party consents and agrees that in the event a Default has occurred with respect to its Participant or in the event of the insolvency of the Participant, (i) the Participant (or its receiver, insolvency trustee or similar official) and/or ICE Clear Credit shall be entitled to attempt to transfer its Client-Related Positions in accordance with Part 190 of the CFTC regulations, other applicable law and the Default Portability Rules, (ii) such Non-Participant Party appoints ICE Clear Credit as its lawful agent and attorney-in-fact to take such actions on behalf of the Non-Participant Party as ICE Clear Credit determines necessary or appropriate in order to effectuate the Default Portability Rules with respect to the

Client-Related Positions carried by the Participant for such Non-Participant Party, including executing any document or instrument with respect to the transfer of the Client-Related Positions and/or exercising rights and remedies to transfer such positions; (iii) the Non-Participant Party shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Participant, any receiver, insolvency trustee or similar official, or ICE Clear Credit to take action contemplated by its Rules, including, without limitation, the transfer of positions and the transfer of related margin or collateral; (iv) any determination made by ICE Clear Credit with respect to the termination value of a Client-Related Position under the Rules shall be conclusive and binding absent manifest error and (v) any amount payable by such Non-Participant Party in respect of the termination of a Client-Related Position held by the Defaulting Participant for such Non-Participant Party shall not be netted or offset against any amount owed by such Participant to such Non-Participant Party under any other agreement or instrument and shall be paid directly to or as directed by ICE Clear Credit.

(mk) Each Participant shall be required to obtain the agreement of each Non-Participant Party to the provisions of the Rules applicable to or otherwise referring to Non-Participant Parties (including Rule 312 and this Rule 406) and hereby represents and warrants to ICE Clear Credit that it has obtained such agreement.

(l) ICE Clear Credit will not accept the deposit of Margin from a Participant in respect of Client-Related Positions in excess of the amount required by ICE Clear Credit, within the meaning of CFTC Rule 22.13(c). For the avoidance of doubt, any Margin deposited with ICE Clear Credit that subsequently exceeds the amount required by ICE Clear Credit as a result of a change in the amount required or a change in the Value of such Margin will become available for withdrawal in accordance with Rule 401.

407. UK and European Issues

(a) For the purposes of this Rule 407 only:

- (i) **“Offer to the Public”** in relation to any Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any Securities to be offered so as to enable an investor to decide to purchase or subscribe for those Securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State;
- (ii) **“PD Contract”** means any contract that is a Security and which is (A) a contract cleared or proposed to be cleared by ICE Clear Credit; or (B) a contract in relation to which ICE Clear Credit provides or proposes to

(as defined in Rule 803) (each, a “**Remaining Participant**”) equal to such Remaining Participant’s Required Contribution *divided by* the sum of all Remaining Participants’ Required Contributions *multiplied by* the number of Remaining Participants *multiplied by* the ICE Clear Credit Pro Rata Contribution (as adjusted, if applicable, by the proviso below); *provided* that if the sum of all Remaining Participants’ Required Contributions *divided by* the number of Remaining Participants (the “**Average Contribution**”) is less than the ICE Clear Credit Pro Rata Contribution, for the purposes of determining Tranche 1, the ICE Clear Credit Pro Rata Contribution shall be deemed to be the Average Contribution and the remainder of the ICE Clear Credit Pro Rata Contribution shall be applied, if at all, in accordance with Rule 802(b)(iv).

- (ii) “**Tranche 2**” shall consist of the excess of each Remaining Participant’s Required Contributions over the amounts thereof included in Tranche 1.

802. General Guaranty Fund Application.

- (a) If a Participant is in Default and, as a result thereof, ICE Clear Credit suffers any loss or expense in effecting the Closing-out Process, or a Participant shall fail to make any other payment or render any other performance required under these Rules or a Contract (such failure, an “**Obligation Failure**”), then ICE Clear Credit shall, after appropriate application of such Participant’s Margin (including, with respect to losses or expenses arising out of Client-Related Positions, Margin provided by such Participant in the Client Omnibus Margin Account solely to the extent such Margin is permitted to be used under the Rules and applicable law) and other funds in or payable to the accounts of such Participant and any amounts collected from any guarantor of such Participant ~~(other than Margin provided in respect of Client-Related Positions)~~, or may, prior to such application, charge to and apply against the Participant’s contributions to the General Guaranty Fund, in the manner and in the order of priority set forth below:
 - (i) **FIRST:** To the payment of the costs and expenses of any sale, collection or other realization of such Margin or Collateral or amounts deposited by others in the General Guaranty Fund, including, without limitation, fees and expenses of counsel, and all reasonable expenses, liabilities and advances made or incurred by ICE Clear Credit in connection therewith;
 - (ii) **SECOND:** To the payment of any Obligations relating to Open Positions or the Closing-out Process or any obligations of ICE Clear Credit, in either case, arising out of or in any way relating to such Participant’s Default or Obligation Failure (such obligations, together with the costs and expenses described in subparagraph (i), the

Fund by Participants pursuant to paragraph (d) of this Rule at the same proportionate rate of application as in Tranche 1 until the ICE Clear Credit Default Maximum is reached.

Notwithstanding anything to the contrary in these Rules, in no event shall more than the ICE Clear Credit Default Maximum be applied in the aggregate to the ICE Clear Credit Pro Rata Contribution in the case of a single Participant Default and any Obligation Failure resulting in such Default. **“ICE Clear Credit Default Maximum”** means, at any time of determination, the lesser of (A) (x) prior to the second anniversary of the Customer Integration Date, the actual amount of the ICE Clear Credit Pro Rata Contribution or (y) on or following the second anniversary of the Customer Integration Date, twenty-five million dollars and (B) the amount of the ICE Clear Credit Pro Rata Contribution that has been applied at the time all additional assets that Remaining Participants may be required to deposit in the General Guaranty Fund pursuant to paragraph (d) of this Rule have been applied.

As used herein, **“Remaining Reimbursement Obligations”** means those Reimbursement Obligations in respect of a Defaulting Participant that remain unsatisfied after application of available amounts pursuant to subsection (a) ~~and, in the case of Reimbursement Obligations in respect of Client-Related Positions only, after application of such Participant’s Margin in respect of Client-Related Positions and any Non-Participant Initial Margin of a defaulting Non-Participant Party in accordance with these Rules.~~ Available amounts pursuant to this subsection must be applied to Remaining Reimbursement Obligations in respect of Client-Related Positions and House Positions in proportion to the respective Initial Margin requirements of the Defaulting Participant in respect of such positions immediately prior to the Default, until the Remaining Reimbursement Obligations in respect of Client-Related Positions or House Positions are reduced to zero.

- (c) Any deficiency in respect of Obligations shall remain a liability of the Participant and any related guarantor to ICE Clear Credit, which ICE Clear Credit may collect from any Margin (to the extent permitted to be used under these Rules), Collateral or other assets of such Participant or such guarantor or by legal process. Any such collection by ICE Clear Credit shall be applied in the following order: (i) to the costs and expenses, including, without limitation, fees and expenses of counsel, of obtaining such collection, (ii) to any unreimbursed costs and expenses referred to in subparagraph (a)(i) of this Rule, (iii) to any deficiencies owed to Participants under Wound-up Contracts described in Rule 804, (iv) to the Participants and ICE Clear Credit whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to subparagraph (b)(iv) of this Rule (whether or not such Participant remains a Participant at the time of the collection), first to the Participants charged to the extent they were charged after the ICE Clear Credit Default Maximum was

reached and thereafter to the Participants and ICE Clear Credit, in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iv) of this Rule, up to the amount of such charge and application, (v) to the Participants whose contribution to Tranche 2 was charged and applied for such deficiency (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iii) of this Rule, up to the amount of such charge and application, (vi) to the Participants and ICE Clear Credit whose contribution to Tranche 1 was charged and applied for such deficiency (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(ii) of this Rule, up to the amount of such charge and application, (vii) to ICE Clear Credit in respect of the charge and application against the ICE Clear Credit Priority Contribution, up to the amount of such charge and application; *provided* that ICE Clear Credit shall contribute any amount recovered in respect of this clause to the General Guaranty Fund for credit to the ICE Clear Credit Priority Contribution; (viii) to the ~~Custodial Client Omnibus Margin Account (or to the Participant for distribution to the applicable Non-Participant Parties)~~, to the extent the Participant's Margin in respect of Client-Related Positions was applied to such deficiency; and (ix) to the payment of any other Obligations.

- (d) ***Additional Collateral Deposit.*** ICE Clear Credit shall notify Participants whenever an amount is charged to and applied against the General Guaranty Fund as provided in paragraphs (a) or (b) of this Rule (which notice will state the reason for such charge or application). If Reimbursement Obligations are charged to and applied against Collateral in the General Guaranty Fund pursuant to paragraph (a) or (b) of this Rule and, as a result, the amount of Collateral credited to a Participant is less than the amount it was required to maintain pursuant to Rule 801 immediately prior to such charge and application, the Participant shall Transfer to ICE Clear Credit additional Collateral for deposit into the General Guaranty Fund in an amount at least sufficient to restore that Participant's Required Contribution; *provided* that, if a Participant is a Retiring Participant or provides notice that causes it to become a Retiring Participant prior to the time such deposit is due, the Participant's additional Transfer required pursuant to this sentence shall be limited to the excess, if any, of (i) such Participant's Required Contribution on the date of the most recent application of Collateral from the General Guaranty Fund pursuant to paragraph (b) of this Rule over (ii) the aggregate Transfers of Collateral to ICE Clear Credit for deposit in the General Guaranty Fund made by such Participant after it became a Retiring Participant (other than in respect of increases to its Required Contribution for periodic adjustments permitted under Rule 801) and any contributions of the Participant to the General Guaranty Fund in excess (as determined by ICE Clear Credit) of its Required Contribution (with respect to such Participant, such excess of clause (i) over

- (B) Each of the parties, at their own expense, shall have the right to be represented by counsel in any aspect of the proceeding.
 - (C) Each of the parties shall be entitled to (1) prepare and present all relevant facts in support of the Claims and grievances, defenses or counterclaims, and to present rebuttal evidence to such Claims or grievances, defenses or counterclaims made by the other parties, (2) examine the other parties, (3) examine any witnesses appearing at the hearing, and (4) examine all relevant documents presented in connection with the Claim or grievance, or any defense or counterclaim applicable thereto.
 - (D) The formal rules of evidence shall not apply.
 - (E) No verbatim record shall be made of the proceedings, unless requested by a party who shall bear the cost of such record. If such a request is made, a stenographic transcript shall be taken, but not transcribed unless requested by a party who shall bear the cost of such transcription.
 - (F) Ex parte contacts by any of the parties with members of the Panel shall not be permitted.
 - (G) The Panel shall have the power, on the request of any party or on its own motion, to require any Person to testify and/or to produce documentary evidence in the proceedings as and to the extent provided for in Rule 904.
- (vii) The Panel shall, within sixty (60) days of the termination of the hearing, render its award in writing and deliver a copy thereof either in person or by first-class mail to each of the parties. The Panel, in its award, may grant any remedy or relief which it deems just and equitable, including, without limitation, the awarding of interest and the arbitration fee; provided, however, that any costs incurred as a result of having a Mixed Panel shall be ~~born~~borne by the Participant unless the Panel determines that the Non-Participant Party acted in bad faith in initiating or conducting the proceeding. The award of the Panel shall be final and binding upon each of the parties to the arbitration, and judgment upon such award may be entered by any court having jurisdiction. Any Participant who is a Respondent in an arbitration conducted pursuant to the Rules shall notify the Legal Department of ICE Clear Credit of any judicial proceeding based on the award. In addition, any award, if not complied with within the time specified in the award, shall be enforceable by disciplinary proceedings pursuant to Rules.
- (viii) Notwithstanding any other provision of this paragraph (a), including the right of a Non-Participant Party to elect a Mixed Panel pursuant to Rule 903(a)(iii), if a Notice of Arbitration sets forth Claims or grievances aggregating less than \$100,001, and the Answering Statement submitted by the Respondent either

- (E) the CDS Participant or guarantor fails to pay any sum due and payable, or is otherwise in default under the terms of any agreement or threatens to suspend payment or to default under the terms of any agreement, in each case other than (i) where such payment or other relevant obligation is the subject of a good faith dispute by the CDS Participant or guarantor or (ii) where such failure or default is the result of an administrative or operational error on the part of the CDS Participant or guarantor and the relevant party had the financial ability to make the relevant payment or perform the relevant obligation at the time due;
 - (F) any distress, execution or other process is levied or enforced or served upon or against any property of the CDS Participant or guarantor; and
 - (G) any representation made or repeated or deemed to have been made or repeated by the CDS Participant or guarantor hereunder or under its Participant Agreement (other than a representation made under Section 29.3.1 or 29.3.3 of the Participant Agreement) provides to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.
- (b) If ICE Clear Credit determines to effect the Closing-out Process, ICE Clear Credit shall (i) convene the CDS Default Committee for purposes of making recommendations as to any Initial Cover Transactions referred to in paragraph (c)(ii) of this Rule and the appropriate auction or other process referred to in paragraph (c)(vi) of this Rule and related Minimum Target Price(s) and (ii) provide notice of such Default, including the identity of the Defaulting CDS Participant, as soon as reasonably practicable (but in any event before ICE Clear Credit executes any transactions described in paragraph (c) of this Rule) to the CDS Participants and to the public generally, through a press release or in another manner determined by ICE Clear Credit.
- (c) In effecting the Closing-out Process as provided in paragraph (a) of this Rule, ICE Clear Credit shall, without limiting the generality of paragraph (a) of this Rule, have the right, in consultation with the CDS Default Committee:
- (i) (A) With respect to the Open CDS Positions that are Client-Related Positions in any account of such Defaulting CDS Participant, to liquidate, set off and/or apply the following resources, ~~as applicable, (1) in the following order: (a) any proceeds received by ICE Clear Credit from closing or replacing such Open CDS Positions or any related Initial Cover Transactions, (b) in the following order, without duplication, (i) any Mark-to-Market Margin provided to ICE Clear Credit with respect to such Client-Related Positions, (ii) any Non-Participant Initial Margin (including Excess Margin) of a defaulting Non-Participant Party (to the extent of its obligation to the related Participant) and any proceeds thereof~~

~~(“Defaulting Client Margin”), and (iii) any amounts or proceeds received by ICE Clear Credit from or on behalf of the relevant Non-Participant Party under or in respect of the Client-Related Positions, including margin applied in satisfaction of a Non-Participant Party’s obligations thereunder (“Non-Participant Party Proceeds”), (c) any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant’s House Positions, (d) the Defaulting Participant’s Required Contribution to the General Guaranty Fund as provided in Rule 802, (e) any other property of or delivered by the Defaulting CDS Participant (other than Margin for Client-Related Positions) within the possession or control of ICE Clear Credit (whether or not related to Open CDS Positions), and (f) to the extent permitted by applicable law, any other property or proceeds thereof deposited with or held by ICE Clear Credit as Initial Margin for such Defaulting Participant’s Client-Related Positions, subject to the limitation set forth in Rule 402(h), against (2) in the following order, to cover~~ any amounts paid by ICE Clear Credit in closing or replacing such Client-Related Positions or any related Initial Cover Transactions (or in making payments or providing Mark-to-Market Margin to other Participants in respect of corresponding positions), including any commissions, losses, costs or expenses incurred in connection therewith or in connection with the liquidation of applicable Margin applied thereto pursuant to this subclause:

(a) any proceeds received by ICE Clear Credit from closing or replacing such Client-Related Positions or any related Initial Cover Transactions,

(b) any Mark-to-Market Margin provided to ICE Clear Credit with respect to such Client-Related Positions,

(c) Initial Margin provided to ICE Clear Credit with respect to such Client-Related Positions; provided that Initial Margin allocated to a particular Non-Participant Party Portfolio and proceeds thereof shall only be used to satisfy obligations to ICE Clear Credit in respect of the Client-Related Positions in such Non-Participant Party Portfolio, in accordance with CFTC Rule 22.15; provided, further, that where ICE Clear Credit owes a net payment or Mark-to-Market Margin obligation to another Participant in respect of positions corresponding to Client-Related Positions of the defaulting Participant, ICE Clear Credit shall be entitled to apply the Initial Margin allocated to each Non-Participant Party Portfolio that owes a corresponding payment or Mark-to-Market obligation to ICE Clear Credit up to the amount of such payment or obligation,

(d) any payments actually received by ICE Clear Credit from or on behalf of the relevant Non-Participant Party under or in respect of the Client-Related Positions in its Non-Participant Party Portfolio,

(e) any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant's House Positions,

(f) the Defaulting Participant's Required Contribution to the General Guaranty Fund as provided in Rule 802, and

(g) any other property of or delivered by the Defaulting CDS Participant (other than Margin for Client-Related Positions) within the possession or control of ICE Clear Credit (whether ~~in the House Margin Account or Custodial Client Omnibus Margin Account~~ and any other obligations of the Defaulting CDS Participant to ICE Clear Credit in respect of Client-Related Positions, including any obligations arising from any other accounts maintained by the Defaulting CDS Participant with ICE Clear Credit in respect of Client-Related Positions, or not related to Open CDS Positions).

For purposes of the foregoing, ICE Clear Credit may, in its discretion use assets available pursuant to clause ~~(e)~~-(~~fg~~) prior to receipt of proceeds due pursuant to ~~clause~~clauses (b)(~~ii~~) or ~~(iii)-(d)~~, provided that any proceeds subsequently received pursuant to ~~clause~~clauses (b)-(~~iii~~) or ~~(iii)~~-(to the extent not applied by ICE Clear Credit) will be used to reimburse the sources of such other assets ~~(and, in the event assets were used pursuant to clause (f)), deposited in the Custodial Client Omnibus Margin Account for distribution pursuant to subsection (l) below.~~ For the avoidance of doubt, the provisions of this clause (c)(i)(A) will not apply to Client-Related Positions transferred to or replaced with a Replacement Participant without loss to ICE Clear Credit pursuant to Rule 20A-02;

(B) With respect to the Open CDS Positions that are House Positions in any account of such Defaulting CDS Participant, to liquidate, set off and/or apply the following resources, ~~as applicable, (1) in the following order: (a) any proceeds received by ICE Clear Credit from closing or replacing such Open CDS Positions or any related Initial Cover Transactions, (b) any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant's House Positions, (c) the Defaulting Participant's Required Contribution to the General Guaranty Fund as provided in Rule 802 and (d) any other property of or delivered by the Defaulting CDS Participant within the possession or control of ICE~~

~~Clear Credit (whether or not related to Open CDS Positions), other than any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin or Excess Margin for such Defaulting Participant's Client-Related Positions (including any amounts in the Custodial Client Omnibus Margin Account), against (2)~~in the following order, to cover any amounts paid by ICE Clear Credit in closing or replacing such House Positions or any related Initial Cover Transactions (or in making payments or providing Mark-to-Market Margin to other Participants in respect of corresponding positions), including any commissions, losses, costs or expenses incurred in connection therewith or in connection with the liquidation of ~~Margin in the House Margin Account~~applicable Margin applied thereto pursuant to this subclause, and any other obligations of the Defaulting CDS Participant to ICE Clear Credit, including any obligations arising from any other accounts maintained by the Defaulting CDS Participant with ICE Clear Credit;

(a) any proceeds received by ICE Clear Credit from closing or replacing such House Positions or any related Initial Cover Transactions,

(b) any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant's House Positions,

(c) the Defaulting Participant's Required Contribution to the General Guaranty Fund as provided in Rule 802, and

(d) any other property of or delivered by the Defaulting CDS Participant within the possession or control of ICE Clear Credit (whether or not related to Open CDS Positions), other than any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant's Client-Related Positions (including any amounts in the Client Omnibus Margin Account).;

(C) Notwithstanding the foregoing, to the extent any (i) property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant's House Positions or (ii) any other property of or delivered by the Defaulting CDS Participant within the possession or control of ICE Clear Credit, whether or not related to Open CDS Positions (other than any property or proceeds thereof deposited with or held by ICE Clear Credit as ~~Margin or Excess~~ Margin for such Defaulting Participant's Client-Related Positions and the Defaulting Participant's Required Contribution to the General Guaranty Fund as provided in Rule 802) is to be applied pursuant to both clauses (A) and (B) above, such property shall be applied first pursuant to clause (B) above in respect of House Positions until the relevant obligations are satisfied and thereafter pursuant to clause (A) above in respect of Client-Related Positions. The Defaulting

anything to the contrary in Rules 301 or 303, to make and receive “**Initial Payments**” with respect to such Trades; and

- (x) To take any other action as ICE Clear Credit may deem necessary or appropriate for its protection.
- (d) ICE Clear Credit shall effect the Closing-out Process separately in respect of Open CDS Positions that are Client-Related Positions and House Positions, and notwithstanding anything to the contrary herein but subject to the following sentence, Client-Related Positions and House Positions may not be netted or offset against each other as part of the Closing-out Process. Net amounts owed by a Defaulting Participant with respect to Client-Related Positions may be offset against net amounts owed to a Defaulting Participant with respect to House Positions; provided that net amounts owed by a Defaulting Participant with respect to House Positions may not be offset against net amounts owed to a Defaulting Participant with respect to Client-Related Positions. With respect to Client-Related Positions, the Closing-out Process shall be subject to the Default Portability Rules set forth in Rule 20A-02, if applicable. To the extent the Closing-out Process in respect of Client-Related Positions results in an amount owed by ICE Clear Credit to the Defaulting Participant, such amount ~~(the “ICE Clear Credit Client Termination Amount”)~~ will be credited to the ~~Custodial Client Omnibus Margin Account for distribution to Non-Participant Parties~~ as provided in subsection (k) below. Amounts recovered by or on behalf of ICE Clear Credit from a Non-Participant Party of a Defaulting Participant in respect of Client-Related Positions will be similarly be credited to the ~~Custodial Client Omnibus Margin Account for application pursuant to clause (c)(i)(A) above.~~ In effecting the Closing-out Process and/or the Default Portability Rules for Client-Related Positions (including the application of Margin posted in connection therewith under the Rules), ICE Clear Credit shall be entitled to rely conclusively on the allocation of Client-Related Positions to Non-Participant Party Portfolios, and the allocation of Margin to such Portfolios, as set forth in the books and records of ICE Clear Credit from time to time in accordance with CFTC Rule 22.15 (absent manifest error by ICE Clear Credit in making such allocation based on accurate information provided to ICE Clear Credit), without need for further inquiry by ICE Clear Credit as to the origin, source or ownership of any such Margin.

Without limiting ICE Clear Credit’s rights under the preceding sentence, if ICE Clear Credit applies Initial Margin allocated to a particular Non-Participant Party Portfolio pursuant to Rule 20-605(c)(i)(A)(c) above and subsequently determines that such Initial Margin was not the property of the relevant Non-Participant Party or the Defaulting CDS Participant (a “Reviewed Application”), ICE Clear Credit will seek, to the extent permitted by law, to apply any House Margin or Guaranty Fund Contribution of the Defaulting CDS Participant remaining after completion of the Closing-out Process to reimburse the Customer Omnibus Margin Account

up to the amount of the Reviewed Application. ICE Clear Credit shall have no obligation to rescind or otherwise refund any Reviewed Application or to apply any other assets (including, without limitation, any other assets in the Guaranty Fund) to any reimbursement pursuant to the preceding sentence.

- (e) In taking any action hereunder, ICE Clear Credit may cooperate, by sharing information or in any other manner it determines appropriate, with any Regulatory Body having jurisdiction over ICE Clear Credit or the Defaulting CDS Participant or its guarantor.
- (f) ICE Clear Credit may appoint any person to take or assist it in taking any action that it is allowed to take under this Rule.
- (g) (i) Before making any determination that a CDS Participant is in Default pursuant to paragraph (a) of this Rule, in the case of determinations under clause (i)(B)(z) and subparagraph (i)(C) of this paragraph (g) with respect to a Participant, ICE Clear Credit shall use its best efforts to consult with the Risk Committee, and, in the case of determinations under clauses (i)(B)(x) and (y) of this paragraph (g) with respect to any Participant, shall provide notice to the staff of the CFTC and SEC. A determination by ICE Clear Credit that a CDS Participant is in Default pursuant to paragraph (a) shall require:
 - (A) the decision of an Eligible Officer in the event the relevant Default is that such CDS Participant (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official; (3) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, in each case, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or (4) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;

other provisions of the Rules and additional agreements with the Defaulting CDS Participant, or any other source.

- (i) A Defaulting CDS Participant shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of ICE Clear Credit to take any action contemplated by this Rule, including, without limitation, to liquidate, set off and/or apply such Defaulting CDS Participant's Open CDS Positions, Margin or other property held by ICE Clear Credit, pursuant to these Rules or (ii) to set off amounts owed to such Defaulting CDS Participant against such Defaulting CDS Participant's Obligations.
- (j) If there is an Automatic Default, then ICE Clear Credit shall exercise its rights under this Rule in a manner consistent with the fact that all Open CDS Positions have automatically terminated in determining a single early termination amount in respect of Client-Related Positions and a single early termination amount in respect of House Positions, in each case payable by either ICE Clear Credit or the Defaulting CDS Participant pursuant to the Closing-out Process.
- (k) Upon the occurrence of a Default with respect to a CDS Participant that is an FCM or a Broker Dealer and completion of the Closing-out Process with respect thereto, ICE Clear Credit will return to the receiver, trustee or other applicable insolvency practitioner for such CDS Participant the amounts remaining in the ~~Custodial~~ Client Omnibus Margin Account (or the proceeds thereof) for distribution or application as provided by law.

20-617. CDS Default Committee.

- (a) ICE Clear Credit shall maintain a committee, governed by these Rules, responsible for taking certain actions provided in Rule 20-605 and Rule 20A-02 and the ICE Clear Credit Procedures upon the Default of a CDS Participant and as otherwise provided pursuant to these Rules (the "**CDS Default Committee**"). The CDS Default Committee shall be comprised of not more than three CDS Committee-Eligible Participants designated in accordance with Rule 20-617(b) (each, a "**CDS Default Committee Participant**"). Each CDS Default Committee Participant shall designate an employee of it or one of its Affiliates with credit default swap trading experience (an "**Eligible Employee**") to serve as its representative on the CDS Default Committee, along with one or more alternates in the event the designated employee is not available on a timely basis (the designated employee or alternate, as applicable, a "**CDS Default Committee Member**"). A CDS Default Committee Participant may replace its designated CDS Default Committee Member or alternate(s) with an Eligible Employee from time to time by notice to ICE Clear Credit.
- (b) ICE Clear Credit shall randomly order all CDS Committee-Eligible Participants into a list (the "**CDS Default Committee Participant List**"). For this purpose, if

20A. CDS PORTABILITY RULES

The rules in this Chapter 20A apply to the clearance of CDS Contracts.

20A-01. Portability Rules Where Participant is Not in Default.

- (a) Each Participant (other than a Defaulting Participant) (the “**Transferor Participant**”) that carries Client-Related Positions shall be required, upon request of a Non-Participant Party for whom such positions are carried to transfer such Participant’s rights and obligations with respect thereto to one or more other Participants (the “**Transferee Participants**”) designated by such Non-Participant Party, subject to the provisions of this Rule 20A-01 and, to the extent not inconsistent with this Rule 20A-01, to any terms agreed between such Participant and Non-Participant Party. Such transfer shall be effected as soon as practicable following satisfaction of the conditions set forth in subsection (b).
- (b) A transfer pursuant to subsection (a) shall be subject to the following conditions:
- (i) The Transferor Participant shall have no obligation to locate or obtain a Transferee Participant (which shall be the responsibility of the Non-Participant Party).
 - (ii) The transfer must be in accordance with any applicable legal requirements, including [CFTC Rule 39.15\(d\)](#) and applicable rules of the National Futures Association, and, to the extent permitted thereunder, any applicable agreement between the Transferor Participant and Non-Participant Party.
 - (iii) The Transferor Participant, Transferee Participant and Non-Participant Party shall have agreed and executed and submitted to ICE Clear Credit a transfer confirmation (the “**Transfer Confirmation**”) in a form approved by ICE Clear Credit (which may be written or electronic) specifying the following information:
 - (A) The Client-Related Positions to be transferred (the “**Transferred Transactions**”);
 - (B) The proposed transfer date (the “**Transfer Date**”), which shall be no earlier than the ICE Business Day of submission of the Transfer Confirmation to ICE Clear Credit and shall be an ICE Business Day;
 - (C) Whether relevant margin ~~of~~ [allocated to](#) the Non-Participant Party held in the ~~Custodial~~ Client Omnibus Margin Account is to be

transferred to the Transferee Participant or returned to the Transferor Participant for distribution to the Non-Participant Party;

- (D) The amount of such margin, if any, to be so moved or returned in respect of the transferred or novated contracts; and
 - (E) Such other matters as ICE Clear Credit may specify.
- (iv) Prior to the applicable transfer time determined by ICE Clear Credit on the Transfer Date (the “**Transfer Time**”), if required by ICE Clear Credit, each of the Transferor Participant and the Transferee Participant shall have Transferred additional Margin in the amount specified by ICE Clear Credit to satisfy any additional Margin Requirements as a result of the proposed adjustments in Client-Related Positions pursuant to clause (c) below.
 - (iv) ICE Clear Credit has accepted such Transfer Confirmation, and the Transferor Participant and Transferee Participant have satisfied such other conditions as ICE Clear Credit may have specified.
- (c) If such conditions are satisfied, then as of the Transfer Time, the transfer shall occur as set forth in the Transfer Confirmation and ICE Clear Credit shall (i) adjust the outstanding Client-Related Positions of the Transferor Participant to reflect the transfer of Client-Related Positions related to the Transferred Transactions; (ii) adjust the outstanding Client-Related Positions of the Transferee Participant to reflect the transfer of the Transferred Transactions; (iii) adjust the Margin Requirements of the Transferor Participant and Transferee Participant to reflect such adjustments of outstanding Client-Related Positions; and (iv) transfer the applicable margin from the ~~Custodial~~ Client Omnibus Margin Account of the Transferor Participant to that of the Transferee Participant or return such margin to the Transferor Participant for distribution to the Non-Participant Party, as specified in the Transfer Confirmation.
 - (d) Notwithstanding anything to the contrary herein, no Participant shall be required to accept transfer of any Client-Related Transaction as a Transferee Participant without its consent.
 - (e) Following the Transfer Time, each of the Transferor Participant and Transferee Participant must make appropriate submissions, in accordance with the ICE Clear Credit Procedures, to Deriv/SERV or another service specified by ICE Clear Credit to reflect the adjustments to its outstanding Client-Related Positions. The Non-Participant Party shall be required to make appropriate such submissions to reflect such novation.
 - (f) Notwithstanding anything to the contrary herein or in any Transfer Confirmation, if a Default occurs with respect to a Transferor Participant prior to the Transfer Time for a transfer, such transfer (and any related Transfer Confirmation) will be

of no effect and ICE Clear Credit will not adjust the related Client-Related Positions pursuant to this Rule 20A-01.

20A-02. Post-Default Portability Rules.

- (a) If ICE Clear Credit determines to effect the Closing-out Process in respect of Client-Related Positions of a Defaulting Participant, ICE Clear Credit shall determine the loss to it with respect to the Client-Related Positions pursuant to the Closing-out Process and any shortfall in ~~the Custodial Client Omnibus Margin Account (the “Net Client Omnibus Margin Shortfall”)~~ Margin allocated with respect to each Non-Participant Party Portfolio. The following additional provisions shall apply in respect of Client-Related Positions of such Defaulting Participant determined by ICE Clear Credit and the receiver, trustee or other insolvency practitioner for the Defaulting Participant to be eligible therefor (“**Eligible Transfer Positions**”):
- (i) To the extent permitted by law, ICE Clear Credit may (but will not be obligated to), on its own or in coordination with the receiver, trustee or other insolvency practitioner for such Defaulting Participant, transfer or arrange or facilitate the transfer of such Eligible Transfer Positions to other CDS Participants that will accept such positions. Except as required by law and without limiting the foregoing, ICE Clear Credit will have no obligation to permit any transfer of Eligible Transfer Positions if it would result in ICE Clear Credit being undermargined or undersecured with respect to any remaining ~~Eligible Transfer~~ Client-Related Positions or would raise other risk management concerns for ICE Clear Credit, in each case as determined by ICE Clear Credit in its sole discretion.
 - (ii) Such transfers of Eligible Transfer Positions may be made with respect to the entire portfolio of Eligible Transfer Positions or any relevant portion thereof (including, if applicable, on a client-by-client basis). Subject to the foregoing, ICE Clear Credit may take into consideration such other factors ICE Clear Credit determines to be relevant in making, arranging or facilitating any such transfer.
 - (iii) Following the transfer of Client-Related Positions related to a Non-Participant Party Portfolio, ICE Clear Credit ~~shall~~ may transfer any related margin ~~of~~ allocated to such Non-Participant Party Portfolio in the ~~Custodial Client Omnibus Margin Account (after deducting the applicable share of any Net Client Omnibus Margin Shortfall)~~ to the applicable such account of the transferee Participant, to serve as margin for the transferred ~~transaction~~ transactions, and Defaulting Participant agrees to such transfer and to take any necessary action to facilitate such transfer. Notwithstanding the foregoing, the transferee Participant shall remain obligated to satisfy any Margin Requirement resulting from its acceptance

of the transfer of Client-Related Positions. For the avoidance of doubt, ICE Clear Credit may recalculate ~~the Net Client Omnibus~~ Margin ~~Amount~~requirements to reflect any increase in the Initial Margin requirement as a result of the transfer of less than all of the Client-Related Positions of a Defaulting Participant. Any such movements of margin shall be determined by ICE Clear Credit on the basis of information most recently provided to ICE Clear Credit by the Defaulting Participant (or any receiver, trustee, insolvency practitioner or similar party therefor). Notwithstanding anything to the contrary herein, any such transfer of margin shall be subject to any requirements or limitations under applicable law, including Part 190 of the CFTC Regulations, and any approvals or consents that ICE Clear Credit may determine to be required or advisable under the circumstances.

- (iv) Nothing in these Rules shall require a Participant to accept transfer of Eligible Transfer Positions.
- (b) A Defaulting CDS Participant shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of ICE Clear Credit to take action contemplated by the Default Portability Rules, including, without limitation, the transfer or replacement of positions and the transfer of related margin or collateral.
- (c) Each CDS Participant hereby appoints ICE Clear Credit as its lawful agent and attorney-in-fact, as further security for the Obligations of the CDS Participant, to (i) take such actions on behalf of the CDS Participant in the event it becomes a Defaulting CDS Participant as ICE Clear Credit, in its discretion and in accordance with the Default Portability Rules, determines for the purposes of executing any document or instrument in order to effectuate the Default Portability Rules and/or (ii) exercise rights and remedies under any and all Open CDS Positions in such manner as ICE Clear Credit may, in its discretion and in accordance with the Default Portability Rules, determine. Each Participant hereby ratifies and confirms all acts or things ICE Clear Credit does or purports to do pursuant to this power of attorney.
- (d) Following the transfer or replacement of Eligible Transfer Positions pursuant to this Rule 20A-02, the Replacement Participant and, if applicable, the Non-Participant Party must make appropriate submissions, in accordance with the ICE Clear Credit Procedures, to Deriv/SERV or another service specified by ICE Clear Credit to reflect such transfer or replacement.

information required to be included in a Credit Event Notice and a Notice of Publicly Available Information shall be deemed to be delivery by a Notifying Party to the other party of a Credit Event Notice and Notice of Publicly Available Information under all relevant CDS Contracts only for the purposes of determining the Credit Event Backstop Date pursuant to Section 1.23 of the Credit Derivatives Definitions and as otherwise provided in these Rules; and

- (ii) a question presented to a Regional CDS Committee concerning whether or not an event constitutes a Succession Event with respect to such CDS Contract which includes a description in reasonable detail of the facts required to be included in a Succession Event Notice shall be deemed to be delivery by one party to the other party of a Succession Event Notice under all relevant CDS Contracts only for the purposes of determining the Succession Event Backstop Date pursuant to Section 2.2(i) of the Credit Derivatives Definitions and as otherwise provided in these Rules.

2101-03. Meetings of the Regional CDS Committee.

- (a) ICE Clear Credit or the Chairperson may, and at the request of any two Committee Members the Chairperson will, call a meeting of the Regional CDS Committee on no less than three hours' notice. Meetings may commence at any time between 10:00 a.m. and 6:00 p.m. local time on a CDS Regional Business Day. As part of the notice to Committee Members of the meeting, ICE Clear Credit or the Chairperson, as applicable, shall include a brief description of the circumstances, including (if applicable) which category described in Rule 2101-02(a) the Regional CDS Committee is being asked to consider. Meetings may be held in person or by telephone or videoconference.
- (b) There will be no quorum for holding a meeting of a Regional CDS Committee. The quorum for holding a binding or non-binding vote will be a number of Committee Members equal to the Standard Quorum Number, unless otherwise indicated in a CDS Committee Rule. "**Standard Quorum Number**" means the greater of (i) 5 and (ii) 50 percent of the Regional CDS Participants for the relevant Regional CDS Committee (rounded down to the nearest whole number).
- (c) Each Committee Member will have a single vote on all matters before the Regional CDS Committee. In addition, each Regional CDS Participant agrees that it will cause its Committee Member (or any other person voting on such Committee Member's behalf) to, when casting a ballot in a binding vote, vote for the answer that is, in such voter's good faith belief, the proper answer to the question, taking into account any ambiguities in the application of the terms of the CDS Contract to the particular question.
- (d) The voting standards used in these CDS Committee Rules have the following meanings:

The schedule for dispute resolution may be modified either (A) by a Quorum Stage 2 Supermajority vote of the Regional CDS Committee in favor of a modification or (B) by ICE Clear Credit as it determines appropriate in light of extenuating circumstances. The Regional CDS Committee or ICE Clear Credit, as applicable, shall as soon as reasonably practicable notify the other and the Dispute Resolver of any schedule modification.

2104-04. Dispute Resolution Procedures.

- (a) The Regional CDS Participants who support a particular Presented Position shall identify one or more persons to coordinate their activities, present their arguments to the Dispute Resolver, and participate in Oral Arguments (the “**Advocates**”) and shall notify ICE Clear Credit and the Dispute Resolver of the identity and contact details of their Advocates. Advocates may, but need not, be outside counsel selected by the relevant Regional CDS Participants.
- (b) Any expenses incurred in connection with the support of a Presented Position during the Stage 2 dispute resolution process, up to a maximum of \$50,000 per Presented Position (or such other amount specified by ICE Clear Credit) (the “**Reimbursement Amount**”), will be borne on a pro rata basis by the Regional CDS Participants for the relevant CDS Region. Any expenses in excess of the Reimbursement Amount shall be borne by the Regional CDS Participant incurring such expense unless the Regional CDS Participants supporting the relevant Presented Position agree otherwise.
- (c) In addition to the Administrative Meeting scheduled under Rule 2104-03(a)(ii), the Dispute Resolver may call other Administrative Meetings, in each case on no less than three hours’ notice. Administrative Meetings may be commenced at any time between 10:00 a.m. and 6:00 p.m. local time on a CDS Regional Business Day, or at any other time agreed to by the Dispute Resolver and all Advocates. All Advocates must be given the opportunity to be present at each Administrative Meeting. Administrative Meetings may be held in person or by telephone or videoconference.
- (d) At an Administrative Meeting or an Oral Argument, the Dispute Resolver may, subject to the schedule for dispute resolution provided in Rule 2104-03(a), do any of the following:
 - (i) schedule the time and CDS Regional Business Day of an Oral Argument;
 - (ii) establish or alter the place, duration, format or means of an Oral Argument;
 - (iii) alter the page limit of the Brief;