



25 November 2011

By email to submissions@cftc.gov in pdf format

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Sir or Madam,

ICE Clear Europe Limited – Regulation 40.6 Self-Certification

ICE Clear Europe Limited (“ICE Clear”), a derivatives clearing organization and a private limited company organized under the laws of England and Wales, hereby submits rule amendments pursuant to CFTC Regulation 40.6, effective 12 December 2011.

Please find enclosed:

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

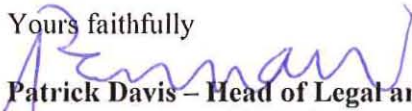
The proposed rule amendments relate to the compliance of ICE Clear Europe Limited with relevant requirements of the Dodd Frank Wall Street Reform and Consumer Protection Act.

ICE Clear hereby certifies that the proposed rule amendments comply with the applicable provisions of the Commodity Exchange Act, including the DCO core principles and the Commission’s regulations thereunder.

The proposed rule amendments have been provided to ICE Clear Clearing Members by Circular C11/112 (https://www.theice.com/publicdocs/clear_europe/circulars/C11112.pdf) and https://www.theice.com/publicdocs/clear_europe/circulars/C11112_Att1.pdf) in accordance with a consultation process. The comments that were received and accepted in response to the consultation process are highlighted in the enclosed rule amendments in yellow.

If you have any further questions, or require any further information, please feel free to call the undersigned at +44 (0)20 7065 7738.

Yours faithfully


Patrick Davis – Head of Legal and Company Secretary
ICE Clear Europe Limited
Tel: +44 (0) 20 7065 7738 | Fax: +44 (0) 20 7638 4964
patrick.davis@theice.com

Enclosures



ICE Clear Europesm

Clearing Rules

[DATE]

16 July 2011

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Part 1 General Provisions

Rule 101 *Definitions*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The term "**Clearing Member**" means a Person which has entered into a Clearing Membership Agreement with the Clearing House and which has been admitted as a clearing member pursuant to Part 2 of these Rules.

The term "**Clearing Membership Agreement**" means an agreement between the Clearing House and a Clearing Member under which, *inter alia*, the Clearing House agrees to provide Clearing in respect of Contracts to that Clearing Member and that Clearing Member agrees to be bound by and subject to these Rules. [Without prejudice to the generality of Rule 102\(b\) or to the effectiveness of any other agreement between a Clearing House and a Clearing Member, for the avoidance of doubt, for FCM Clearing Members that have executed a Pledged Collateral Addendum, the relevant Clearing Membership Agreement will be interpreted as amended by the applicable Pledged Collateral Addendum.](#)

The term "**Clearing Organisation**" means any clearing house duly authorised, regulated, recognised or licensed under Applicable Laws in any jurisdiction, including any recognised clearing house, recognised overseas clearing house, derivatives clearing organisation or similar entity.

The term "**Clearing Processing System**" means the clearing processing system used by the Clearing House and any Market from time to time.

The term "**Commodity**" means any kind of property which is capable of being delivered pursuant to an Energy Contract.

The term "**Complaints Procedures**" means the complaints procedures of the Clearing House from time to time.

The term "**Concentration Bank**" means an Approved Financial Institution at which the Clearing House has an account or accounts for the purpose of making transfers between Clearing House Accounts.

The term "**Contract**" means a contract between the Clearing House and a Clearing Member arising in accordance with these Rules, and as amended, subject to netting or aggregation in accordance with these Rules, the terms and conditions of which are the relevant Contract Terms.

For the definition of the term "**Contract Position**", see 'Open Contract Position' below.

The term "**Contract Terms**" means all the terms and conditions of a Contract, as applicable, in: (i) (in relation to Energy Contracts only) the general conditions set out in the Procedures; (ii) (in relation to ICE Futures Europe Contracts only) the ICE Futures Europe Rules; (iii) (in relation to ICE OTC Contracts only) the specific standard terms and eligibility criteria set out in the Procedures for the class of Contract involved, the ICE OTC Participant Agreement between the Clearing Member and the ICE OTC Operator and any relevant ICE OTC Broker Agreement; (iv) (except in relation to Energy Contracts which are settled only in cash) if such Energy Contract becomes deliverable, the relevant delivery Procedures for the class of

Energy Contract and ICE Futures Rules; and (v) for CDS Contracts, the terms specified pursuant to Rule 1502.

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

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

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

The term "**Credit Derivatives Definitions**" means the document of that name dated 2003 published by ISDA as supplemented by the 2009 ISDA Credit Derivatives Determination Committees, Auction Settlement and Restructuring Supplement to the Credit Derivatives Definitions (published on 14 July 2009) and the Credit Derivatives Determinations Committees Rules as published by ISDA from time to time, including as supplemented or modified by incorporation of any additional provisions thereto (howsoever described) under, and as amended by, the Contract Terms for any relevant CDS Contract from time to time.

The term "**Customer**" means a Person who is a client or customer of a Clearing Member, (which Customer may, subject to Applicable Law, be acting for one or more other clients or customers for purposes of the clearing of Contracts).

The term "**Customer Account**" means an account (if any) with the Clearing House opened in the name of a Clearing Member relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Customers (whose transactions the Clearing Member requests be recorded in the Customer Account) and in which such Contracts are recorded and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers or may be designated for Energy Contracts only or for CDS Contracts only. Where an FCM Clearing Member provides services for FCM Customers, it shall have a separate DCM Customer Account for Contracts and monies relating to DCM Customers, ~~FCM~~-Swap Customer Account for Contracts and monies relating to FCM Swap Customers, Non-DCM/Swap Customer Account for Contracts and monies relating to Non-DCM/Swap Customers and General Customer Account for Contracts and monies relating to General Customers. A Customer Account of an FCM Clearing Member must be a DCM Customer Account, ~~FCM~~-Swap Customer Account, Non-DCM/Swap Customer Account or General Customer Account. A Clearing Member which is not an FCM Clearing Member shall have only a single General Customer Account.

The term "**DCM Customer**" means any FCM Customer with respect to any Contract arising as a result of a Transaction in U.S. Futures. A Person may be a DCM Customer in relation to certain Contracts and another category of FCM Customer in relation to other Contracts.

The term "**DCM Customer Account**", in respect of an FCM Clearing Member, means an account (if any) with the Clearing House (in its capacity as a registered U.S. derivatives clearing organization clearing Contracts that are U.S. Futures), the books and records of which are located in the United States of America, opened in the name of the FCM Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to DCM Customers where segregation of related collateral is required in accordance with Section 4d(a) of the CEA insofar as applicable, and any

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

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

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

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

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

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

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

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

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

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

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

[The term "Exchange Act" means the U.S. Securities Exchange Act of 1934.](#)

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

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

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

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

The term "**Financial Emergency**" means, with respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member is not or is likely not to be, in either case determined at the discretion of the Clearing House, adequate

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

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

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

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

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

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

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

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

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

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

making an order pursuant to which any of that Person's securities, property, rights or liabilities are transferred; a Governmental Authority exercising one or more of its stabilisation powers under the Banking Act 2009 in respect of that Person; a trust deed granted by it becoming a protected trust deed (where the terms 'trust deed' and 'protected trust deed' are construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985) and, for CDS Clearing Members only, also any event not otherwise falling within this definition constituting a "Bankruptcy" in respect of such CDS Clearing Member as defined in the Master Agreement between the relevant CDS Clearing Member and the Clearing House; or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, change of Control or merger notified to the Clearing House in accordance with Rule 204(a)(i)).

The term "**Insolvency Practitioner**" means a receiver, administrator, bank administrator, manager or administrative receiver, trustee in bankruptcy, relevant office-holder (under the Companies Act 1989) or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

The term "**Intellectual Property**" means copyright, trade marks, design rights, patents, domain names, database rights and know-how, in each case whether registered or unregistered and including applications to register and rights to apply for registration, and all similar or equivalent rights which may subsist anywhere in the world.

The term "**Investment**" means any 'specified investment' as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or any loan, bond, obligation or debenture referenced in a CDS Contract.

The term "**Invoice Back**" means the process by which a Contract of the same Set as an existing Contract is created by the Clearing House pursuant to Rule 104 and Rule 401(a)(vi), with the role of Buying Clearing Member or Selling Clearing Member reversed and, at the Clearing House's discretion, a different price or premium and other terms as are determined by the Clearing House pursuant to Rule 104; and the terms "**Invoiced Back**", "**Invoicing Back**" and other similar expressions shall be construed accordingly.

The term "**LCIA**" means the London Court of International Arbitration or any successor thereto.

The term "**LCIA Rules**" means the arbitration rules of the London Court of International Arbitration.

The term "**Long**", in respect of an Option, refers to the positions of Persons entitled to exercise Options.

The term "**Margin**" means Original Margin, Variation Margin, Initial Margin, Portfolio Risk Margin, Physical Settlement Margin, Mark-to-Market Margin and other margin, security or collateral provided [\(by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum\)](#) to the Clearing House pursuant to the Rules or the Procedures and includes, where the context so requires, any proceeds of realisation of the same.

Member, subject in either case to any netting pursuant to Rule 406, provided that Matched CDS Contracts will be held and calculated on a gross basis;

in any case as calculated by the Clearing House from time to time based on data received by the Clearing House in respect of Contracts entered into by the Clearing Member up to the close of business on the immediately preceding Business Day (or such other period determined by the Clearing House at its discretion); and

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

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

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

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

The term "**Original Margin**" means the Permitted Cover required to be provided [\(by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum\)](#) to the Clearing House as security for the obligations of a Clearing Member in respect of Energy Contracts pursuant to Part 5 and includes, where the context so requires, any proceeds of realisation of the same.

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

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

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

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

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

version of such "Physical Settlement Matrix"; but which may differ, without limitation, as to any Initial Payment, the 'Trade Date' and any provisions relating to tax or the provision of forms relating to tax).

The term "**Settlement Finality Regulations**" means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

The term "**Settlement Price**" means the settlement price for any Energy Contract as determined in accordance with the ICE Futures Europe Rules (for Contracts traded on ICE Futures Europe) or by the Clearing House in coordination with the ICE OTC Operator (for Contracts traded on ICE OTC); except that if on any day an Energy Contract ceases to be traded, then the Clearing House may treat as the Settlement Price for such Energy Contract on such day a price determined by the Clearing House at its discretion (or by the relevant Market and accepted by the Clearing House at its discretion), as reflecting the fair market value of such Energy Contract as of the close of trading in such Energy Contract on such day.

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

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

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

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

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

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

The term "**Swap Customer Account**", in respect of an FCM Clearing Member, means an account (if any) with the Clearing House (in its capacity as a registered U.S. derivatives clearing organisation clearing Swaps), the books and records of which are located in the United States of America, opened in the name of the FCM Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to Swap Customers where segregation of related collateral is required in accordance with Section 4d(f) of the CEA and insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and entering into market contracts in the capacity of a clearing member in relation to transactions connected with the provision of services to Swap Customers) relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Swap Customers (whose transactions the Clearing Member requests be recorded in the Swap Customer Account where the same is required in accordance with

the segregation provisions of Section 4d(f) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder) and in which such Contracts are recorded and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Swap Customers or groups of Swap Customers.

The term "**Termination Date**" means the date on which a Clearing Member's membership of the Clearing House terminates.

The term "**Trade Date Clearing**" has the meaning given to it in the Procedures.

The term "**Transaction**" means an ICE Futures Europe Transaction, an ICE OTC Transaction or a Bilateral CDS Transaction.

The term "**Transaction Rights or Obligations**" means any rights, liabilities or obligations of a Clearing Member relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than a Customer of the Clearing Member in relation to the Transaction in question.

The term "**Transferee**" means a Person nominated by a Buyer to whom a transfer or delivery is to be made under an Energy Contract and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

The term "**Transferor**" means a Person nominated by a Seller by whom a transfer or delivery is to be made under an Energy Contract and includes reference to the Seller where transfer or delivery is to be made by the Seller.

The term "**Tribunal**" means an arbitral tribunal established under Rule 117.

The term "**USD**" means the lawful currency from time to time of the United States of America.

The term "**U.S. Future**" means a Future or an Option that is an option on a Future, in either case that is traded on or subject to the rules of a designated contract market under Section 5 of the CEA. For the avoidance of doubt, U.S. Futures will not include Swaps.

The term "**Variation Margin**" means the cash required to be provided (by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum) to the Clearing House by Clearing Members in respect of Energy Contracts pursuant to Rule 503(e) and the Procedures.

The term "**Weekly Clearing**" has the meaning given to it in the Procedures.

The term "**Withdrawal Date**" means, if at any time the Clearing House decides to terminate its services, either generally or in relation to a significant part of its business or certain categories of Contract, the date on which that termination will take effect.

Rule 102 *Interpretation*

- (a) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time

under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time amended, modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.

- (b) References to any rules or any agreement are references to such rules or agreement as amended or restated from time to time, provided that such amendments or restatements are made in accordance with these Rules.
- (c) The Interpretation Act 1978 shall apply to these Rules in the same way as it applies to an enactment.
- (d) When a reference is made in these Rules to a rule, part, paragraph or procedure, such reference is to a Rule, Part, paragraph, Procedure of, or made under these Rules, unless otherwise indicated.
- (e) The headings in these Rules are for reference purposes only and do not affect in any way the meaning or interpretation of these Rules.
- (f) To the extent there is any conflict between any of the provisions of these Rules, a Clearing Membership Agreement, the Master Agreement, the Procedures (including all exhibits, attachments and appendices thereto), any Guidance or Circular or Market Rules or between any of the foregoing, the provision of the first document specified in the paragraphs below shall prevail, control, govern and be binding upon the parties:
 - (i) these Rules (excluding the Procedures, Contract Terms and any other document incorporated by reference) (except Rules 301(h), (i), (j) or (k) only in the event of any conflict between any such provision on the one hand and any provision of the Contract Terms of a CDS Contract relating to tax on the other hand, in which case the relevant provision of the Contract Terms of the CDS Contract shall prevail; and except as provided in Rule 1518);
 - (ii) the Clearing Membership Agreement;
 - (iii) in the case of CDS Contracts only, the CDS Procedures;
 - (iv) in the case of CDS Contracts only, the Master Agreement;
 - (v) in the case of Energy Contracts traded on ICE Futures Europe only, in relation to those aspects of the ICE Futures Europe Rules that include Contract Terms only, the Market Rules;
 - (vi) in the case of Energy Contracts only, the Contract Terms other than those set out in these Rules or Market Rules (except as set out in Rule 102(f)(i)) (excluding the Rules and any other document incorporated by reference);
 - (vii) in the case of Energy Contracts only, the Procedures (excluding any Contract Terms set out in the Procedures);

- (ii) if it is an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more DCM Customers, in which case the Contract shall be recorded by the Clearing Member in the DCM Customer Account;
 - (iii) if it is an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Swap Customers, in which case the Contract shall be recorded by the Clearing Member in the Swap Customer Account;
 - (iv) if it is an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more General Customers, in which case the Contract shall be recorded by the Clearing Member in the General Customer Account;
 - (v) if it is not an FCM Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Customers where segregation of related collateral is required or agreed, in which case the Contract shall be recorded by the Clearing Member in the General Customer Account; or
 - (vi) as a clearing member in any other capacity (including where the Clearing Member does not provide any services to any Customer or where the Clearing Member provides services in relation to a transaction or transactions where there is no requirement or agreement for segregation of related collateral) in which case the Contract shall be recorded by the Clearing Member in the Proprietary Account.
- (n) For the avoidance of doubt, for purposes of section 187 of the Companies Act 1989, a Clearing Member with one or more of a Proprietary Account, Non-DCM/Swap Customer Account, Swap Customer Account, DCM Customer Account or General Customer Account enters into Contracts recorded in its each such account in a different capacity to that in which it enters into Contracts recorded in any other account.

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

- (a) Each Clearing Member that is party to a Contract shall act as principal and not as agent. In performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).
- (b) Upon the formation of a Contract in accordance with Rule 401, any Clearing Member that has any Transaction Rights or Obligations in relation to the original Transaction shall be automatically and immediately released and discharged from all and any such Transaction Rights or Obligations other than (i) any Transaction Rights or Obligations falling due for performance before the formation of such Contract and (ii) any Transaction Rights or Obligations relating to any Initial Payment under any Bilateral CDS Transaction submitted for Weekly Clearing.

provided by the Clearing House to any Market, Deriv/SERV or any other data entry facility for CDS Contracts and any member of the ICE Group and used by the Clearing House or such other Persons for any commercial or other purpose, subject in each case to the restrictions in Rule 106(a). Each Clearing Member's rights in such Intellectual Property shall be automatically assigned to the Clearing House by virtue of this provision as such rights arise. This Rule 406(f) is subject, in relation to CDS, to any further restrictions in any agreement in writing between the Clearing House and a CDS Clearing Member.

Rule 407 *Reporting of Open Contract Positions Carried by Other Clearing Members*

If a Clearing Member (for the purposes of this Rule 407 only, the "**Relevant Clearing Member**") has Customer or proprietary positions in respect of any Contract carried for it by another Clearing Member (for the purposes of this Rule 407 only, the "**Position Holder**"), the Relevant Clearing Member shall give written notice to the Clearing House of the name of the Position Holder and the extent of its position on the Business Day following the Business Day on which a position was carried by the Position Holder.

Rule 408 *Transfer of Contracts*

- (a) A Clearing Member shall not assign, allocate or transfer, or create any Encumbrance whatsoever in relation to, any of its rights, liabilities or obligations under a Contract except:
- (i) that all rights and obligations of a Clearing Member pursuant to a Contract may be transferred from one Clearing Member to another Clearing Member with the agreement of each of the two Clearing Members involved (and, if required under Applicable Law for Open Contract Positions in a Customer Account, the consent of the relevant Customers), and the consent of the Clearing House and relevant Market (if any), subject to such conditions as the Clearing House at its discretion stipulates;
 - (ii) as a result of an allocation resulting in a Clearing Member being the 'Buying Clearing Member' or 'Selling Clearing Member' as such terms are defined in Rule 101;
 - (iii) as a result of an allocation pursuant to Rule 401(a)(viii);
 - (iv) as a result of a CDS Contract arising pursuant to Rule 903(a)(xii) and Rule 401(a)(x); or
 - (v) as a result of a sale or transfer of Contracts pursuant to Rule 902(a)(i).
- (b) Any purported transfer of any rights, liabilities or obligations under a Contract other than in accordance with Rule 408(a) shall be null and void.

Rule 409 *Amendment of Contract Terms*

- (a) The terms of any Contract may only be amended, waived or varied with the prior written consent of the Clearing House.

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

Rule 902 *Liquidation following an Event of Default*

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

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

- (g) Where a Defaulter enters into Contracts in more than one capacity for purposes of section 187 of the Companies Act 1989, separate net sums shall be calculated pursuant to Rule 905(a) and 905(b) in respect of each capacity in which the Defaulter acts. If a Disclosed Principal Member and the Clearing Member that appointed the Disclosed Principal Member are both Defaulters, the Clearing House shall be entitled to set off any amount or asset to the credit of either Defaulter against any liability or obligation of the other Defaulter for the purposes of calculating any net sum under this Rule 905 and may exercise any of its powers under this Part 9 accordingly.
- (h) For the purposes of calculating amounts *L* and *A* in Rule 905(a), the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:
 - (i) the price of the Contract or Open Contract Position recorded in the Clearing House's books for the later of: (A) the last date on which a payment in respect of Variation Margin or Mark-to-Market Margin was successfully and fully made by the Clearing Member to or to the account of the Clearing House; or (B) the last date on which a return of amounts following a Variation Margin or Mark-to-Market Margin call was successfully and fully made by the Clearing House to the Clearing Member or to the account of the Clearing Member; and
 - (ii) the price at which the Contract or Open Contract Position was sold, transferred, terminated or liquidated pursuant to this Part 9.
- (ei) The Clearing House and each Clearing Member with a Pledged Collateral Account acknowledge and agree that Pledged Collateral: (i) is provided pursuant to a charge over property provided as margin in respect of market contracts entered into by the Clearing House; and (ii) is provided to secure the obligation to pay the Clearing House any sum due to the Clearing House in respect of unsettled market contracts to which the FCM Clearing Member is party [as set forth in these Rules](#). Accordingly, the Clearing House and each such Clearing Member intend and agree that the Pledged Collateral provided to the Clearing House is provided pursuant to a "market charge" for purposes of the Companies Act 1989.

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

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

"Settlement Method" and "Undeliverable Obligations" each have the meaning given to those terms in the Credit Derivatives Definitions.

- (aa) The terms "CDS Default Committee", "Dispute Resolver", "Dispute Resolution Panel", "External Reviewer", "Regional CDS Committee", "Regional CDS Committee Credit Event Announcement", "Sovereign Contract" and "Trade Date Clearing" each have the meaning given to those terms in the CDS Procedures.
- (bb) Any term used but not defined in this Part 15 or elsewhere in the Rules shall have the meaning given to that term in the CDS Procedures.

Rule 1502 *Incorporation of ISDA Master Agreement and Initial Payments*

- (a) The terms of each CDS Contract shall be as follows:
 - (i) those of the ISDA 2002 Master Agreement, as published by ISDA (as amended) between the Clearing House and the relevant Clearing Member ("**Master Agreement**");
 - (ii) in relation to a CDS Contract other than a Restructuring CDS Contract, such quantity, notional and other economic terms (as determined pursuant to the Procedures) as were applicable to the Bilateral CDS Transaction (or portion thereof) that gave rise to the CDS Contract and in relation to a Restructuring CDS Contract, such quantity, notional and other economic terms as result from the operation of these Rules and the Procedures, subject to the provisions of Rule 401(a)(ix); and
 - (iii) the applicable terms set out in the Rules (including, without limitation, the CDS Procedures and the Credit Derivatives Definitions).
- (b) No CDS Contract arising pursuant to Weekly Clearing shall contain any rights or obligations in respect of any Initial Payment. If any Bilateral CDS Transaction submitted for Clearing contains any obligation for payment or performance falling due before a CDS Contract arises pursuant to Rule 401(a)(ix), the obligation for such payment or performance shall remain a direct obligation of the relevant CDS Buyer or CDS Seller (as applicable) to the other party to the relevant Bilateral CDS Transaction. The Clearing House shall have no obligation to make or guarantee any Initial Payment in respect of a Bilateral CDS Transaction, other than an Initial Payment under a CDS Contract arising from Trade Date Clearing of any such Bilateral CDS Transaction, or to make or guarantee any payment or performance falling due before a CDS Contract arises pursuant to Rule 401(a)(ix). For the avoidance of doubt, each CDS Contract arising from Trade Date Clearing will include an obligation to pay an Initial Payment constituting a payment obligation of the relevant party thereto reflecting the Initial Payment, if any, under the Bilateral CDS Transaction submitted for Trade Date Clearing and CDS Contracts arising in other circumstances (other than pursuant to Weekly Clearing) may include an obligation to pay an Initial Payment constituting a payment obligation of the relevant party thereto.
- (c) [For the avoidance of doubt, a Clearing Member that does not clear CDS Contracts is not required to execute a Master Agreement with the Clearing House.](#)

Rule 1516 *Customer Accounts*

- (a) Until further notice by the Clearing House, there will be no Customer Account available to Clearing Members in respect of CDS Contracts or Margin relating to CDS Contracts. As a result, all CDS Clearing Members must ensure that any Margin provided to the Clearing House in relation to CDS Contracts is capable of being received by the Clearing House only in circumstances in which no acknowledgement by the Clearing House pursuant to the second sentence of Clause 5.3 of Clearing Membership Agreements applies in respect of the Margin. Accordingly, until such further notice:
 - (i) the third and fourth sentences of Clause 5.3 of the Clearing Membership Agreement shall not apply in relation to CDS Contracts;
 - (ii) Circular no. C08/032 is inapplicable in relation to CDS Contracts and Margin relating to CDS Contracts;
 - (iii) [Part 16 of the Rules does not apply to CDS Clearing Members;](#)
 - (iv) [Pledged Collateral Accounts are not available to CDS Clearing Members;](#) and
 - (v) ~~(iii)~~ notwithstanding any other provision of these Rules, the Rules shall be construed accordingly.

Rule 1517 *Supplemental Default Rules*

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

Rule 1518 *CDS Committees and Dispute Panels*

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

Part 16 FCM Clearing Member Provisions

Rule 1601 *Scope*

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

Rule 1602 *Definitions*

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

Rule 1603 *FCM Contracts*

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

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

- (b) ~~(b)~~ Each FCM Clearing Member shall have a Proprietary Account and one or more Customer Accounts in which its Contracts shall be registered. Except as provided herein, references in the Rules to a Customer Account of an FCM Clearing Member or to a “class” of Customer Account shall refer to one or more of the DCM Customer Account, Swap Customer Account, Non-DCM/Swap Customer Account or General Customer Account, as applicable, each such account being of a different “class”. Notwithstanding anything to the contrary herein, to the extent that pursuant to a CFTC rule, order or exemption (or a Rule of the Clearing House approved thereunder) it is permissible under Applicable Law for Contracts in U.S. Futures, Swaps and/or Non-DCM/Swaps (or related Margin or Permitted Cover) to be co-mingled in a single class of Customer Account, the Clearing House may permit such co-mingling in such class of Customer Account, and references herein to the relevant Customer Account and FCM Customer shall thereupon be construed accordingly. Without limiting the foregoing, Permitted Co-mingled Contracts shall be treated as Swaps, and not as Non-DCM/Swaps, and the appropriate classes of Customer Account shall be construed accordingly.
- (c) ~~(e)~~ Each Customer Account of an FCM Clearing Member that has executed a Pledged Collateral Addendum shall be a Pledged Collateral Account. Margin (or Permitted Cover in respect thereof) to be provided by such an FCM Clearing Member in respect of a Customer Account shall be provided in the form of Pledged Collateral, but in all other respects shall be provided in the forms, amounts, times and manners required under Rule 502 and Rule 503.
- (d) ~~(d)~~ The first sentence of Rule 402(a) and the whole of Rule 405(a)(i) shall not apply to an FCM Clearing Member in respect of a Transaction or Contract where it is acting for an FCM Customer. Notwithstanding the characterisation of the relationship between an FCM Clearing Member and its FCM Customer as an agency relationship as between such parties, where an FCM Clearing Member clears a Contract for an FCM Customer, such FCM Clearing Member becomes liable to the Clearing House, and the Clearing House becomes liable to the FCM Clearing Member, on such Contract as though the Contract were for the FCM Clearing Member’s own account ~~as principal~~, subject in all cases to the provisions of this Part 16. ~~The second sentence of Rule 504(b) is amended to read as follows:—~~Except as provided by Applicable Law and Rule 1605 with respect to a Customer Account, ~~the Clearing House will take no account of any right or interest which~~ (and further to the second sentence of Rule 402(a), in performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights as against the Clearing House pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance (without affecting the rights of Customer as against the FCM Clearing Member with respect to such Contracts under Applicable Law) in favour of any Person other than the Clearing ~~Member may have in any Margin furnished by such Clearing Member to the Clearing House.~~ House (other than pursuant to the Contract Terms).
- (e) Neither Rule 402(a), Rule 405(d), Rule 408 nor clause 3.4 of a Clearing Membership Agreement shall be deemed to preclude an FCM Clearing Member from acting for an FCM Customer in connection with a Contract or Transaction. No such provision

shall negate in any manner an FCM Customer's rights with respect to customer property held by an FCM Clearing Member (and not by the Clearing House).

- (f) Where the FCM Clearing Member acts for a Customer, Rule 405(c)(ii) shall not apply to any contracts, rights, obligations or liabilities as between that Customer and the FCM Clearing Member.
- (g) ~~(e)~~ For purposes of Rule 303 and Rule 406(c), and for the avoidance of doubt Rule 905, Contracts and other obligations in any class of Customer Account of an FCM Clearing Member shall not be netted or offset against Open Contract Positions or other obligations in the Proprietary Account of that Clearing Member, and Open Contracts or other obligations in any class of Customer Account of any FCM Clearing Member may not be netted or offset against Open Contract Positions or other obligations in any other class of Customer Account of that FCM Clearing Member.
- (h) ~~(f)~~ Notwithstanding anything to the contrary in Rule 502 and Rule 503, for each Customer Account if required by Applicable Law, Margin shall be calculated and called for on a “gross” basis across all positions of FCM Customers.
- (i) The first sentence of Rule 504(b) is deleted. The second sentence of Rule 504(b) is amended to read as follows: Except as provided by Applicable Law and Rule 1605 with respect to a Customer Account, the Clearing House will take no account of any right or interest which any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House. For purposes of the representation in Rule 504(c)(ii) in respect of Margin furnished with respect to a Pledged Collateral Account and for purposes of section 2.7 of each Pledged Collateral Addendum, the definition of “Encumbrances” shall be amended by deleting the phrase “retention of title.” Neither Rule 504(c)(ii) nor any Pledged Collateral Addendum, in either case as modified hereby, shall preclude an FCM Clearing Member from providing Pledged Collateral to the Clearing House that was provided to the FCM Clearing Member by an FCM Customer and in which the FCM Customer has granted the FCM Clearing Member a security interest to secure the FCM Customer's obligations to the FCM Clearing Member in respect of Contracts; provided that FCM Clearing Member hereby agrees that any such security interest in favor of FCM Clearing Member is in all respects subject to the rights of the Clearing House in respect of such Pledged Collateral hereunder and FCM Clearing Member shall not, and shall not attempt to (i) exercise any rights or remedies or bring any proceeding or action with respect to such Pledged Collateral until such Pledged Collateral is released from the lien and security interest of the Clearing House hereunder or (ii) otherwise interfere with, delay the exercise of or take any action to affect the Clearing House's rights hereunder with respect to such Pledged Collateral.
- (j) For purposes of Rule 504(d), in the case of Pledged Collateral provided by an FCM Clearing Member, the reference therein to “perfecting the title” shall be deemed amended to “perfecting the security interest”.
- (k) ~~(g)~~ Without limiting Rule 111, the Clearing House shall have no obligation or liability to any FCM Customer in respect of an Open Contract Position in a Customer Account of an FCM Clearing Member or any transaction, agreement or arrangement between an FCM Clearing Member and an FCM Customer.

- (l) ~~(h)~~ With respect to any Open Contract Position carried by an FCM Clearing Member for a Customer Account, all terms of the position, as carried in the customer account on the books of the FCM Clearing Member, must conform to the terms of the Open Contract Position under the Rules as in effect from time to time (including any changes therein or actions by the Clearing House in relation thereto).
- (m) Where the FCM Clearing Member is acting for a Customer, clause 3.2(i) of the Clearing Membership Agreement shall not apply in respect of that Customer.
- (n) This Rule 1603 is without prejudice to and shall not restrict or exclude any of the other obligations of Clearing Members under the Rules.

Rule 1604 *Additional Default Rules for FCM Clearing Members*

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

- (a) Any right of the Clearing House pursuant to Rule 902 or Rule 903 to transfer Open Contracts and related Margin (or Permitted Cover in respect thereof) of an FCM Clearing Member that is a Defaulter will be subject to Applicable Law, including without limitation Part 190 of the CFTC Regulations.
- (b) Where an FCM Clearing Member wishes to terminate or close out an Open Contract Position in any class of Customer Account with respect to an FCM Customer because of a default or similar event with respect to that FCM Customer ~~and~~, the relevant FCM Clearing Member ~~has so notified the Clearing House in writing, the FCM Clearing Member may elect, in a manner to be specified by the Clearing House, to~~ must, in accordance with Rule 406 and the Procedures, offset such Open Contract Position against a Contract or Contracts entered into by such FCM Clearing Member for such Customer Account (linked with a separate Contract or Contracts entered into at the same time for its Proprietary Account) for the specific purpose of liquidating such Customer Account position. Nothing in this Rule 1604(b) is intended to create a condition precedent to any step being taken under any agreement between a Clearing Member and its Customer. However, a Clearing Member shall continue to be liable to the Clearing House in respect of any Contracts until such time as they are offset in accordance with this Rule 1604(b) or otherwise terminated in accordance with the Rules and the Procedures.
- (c) Each FCM Customer ~~consents and agrees that~~ whose transactions are cleared through an FCM Clearing Member with the Clearing House will be deemed to have consented to the actions taken in accordance with the following provisions if an Event of Default has occurred with respect to its FCM Clearing Member or in the event of the insolvency of the FCM Clearing Member:
- (i) the FCM Clearing Member (or its Insolvency Practitioner) and/or the Clearing House shall be entitled to transfer Open Contract Positions recorded in a Customer Account in accordance with Applicable Law;
- (ii) such FCM Customer appoints the Clearing House as its lawful agent and attorney-in-fact to take such actions on behalf of the FCM Customer as the Clearing House determines necessary or appropriate in order to effectuate such transfer with respect to the Open Contract Positions carried by the FCM

Clearing Member for such FCM Customer, including executing any document or instrument with respect to the transfer of the Open Contract Positions and/or exercising rights and remedies to transfer such positions;

- (iii) the FCM Customer shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the FCM Clearing Member, any Insolvency Practitioner for such FCM Clearing Member, or the Clearing House to take action contemplated by these Rules, including, without limitation, the transfer or close-out of positions and the transfer or application of related Margin or Permitted Cover in respect thereof;
 - (iv) any determination made by the Clearing House with respect to the termination value of a Contract under the Rules or the value of any other asset or liability under Rule 905 shall be conclusive and binding; and
 - (v) any amount payable by such FCM Customer in respect of the termination of a Contract of a Defaulter in respect of its Customer Account shall not be netted or offset against any amount owed by such FCM Clearing Member to such FCM Customer under any other agreement or instrument and shall be paid directly to or as directed by the Clearing House.
- (d) In respect of any Contract to which a Defaulter that is or was an FCM Clearing Member and ICE Clear Europe is or was a party, any net sum certified by the Clearing House pursuant to Rule 905(b) as payable by the Clearing House to the Defaulter in respect of any class of Customer Account of the Defaulter is intended to be treated in accordance with Applicable Laws of the United States of America, including the U.S. Bankruptcy Code and the CEA. With respect to any FCM Clearing Member, the Clearing House and such FCM Clearing Member intend that:
- (i) for purposes of the relevant provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991:
 - (A) the Clearing House is a 'clearing organization';
 - (B) the Clearing House and each Clearing Member is a 'member';
 - (C) the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts together constitute a 'netting contract' between those parties and include 'security agreements or arrangements or other credit enhancements related to such netting contract';
 - (D) an obligation of a Clearing Member to make a payment to the Clearing House, or of the Clearing House to make a payment to a Clearing Member, subject to a netting agreement, is a 'covered clearing obligation' and a 'covered contractual payment obligation';
 - (E) an entitlement of a Clearing Member to receive a payment from the Clearing House, or of the Clearing House to receive a payment from a

Clearing Member, subject to a netting contract, is a 'covered contractual payment entitlement':

(E) the amount by which the covered contractual payment entitlements of a Clearing Member or the Clearing House exceed the covered contractual payment obligations of such Clearing Member or the Clearing House after netting under a netting contract is its 'net entitlement'; and

(G) the amount by which the covered contractual payment obligations of a Clearing Member or the Clearing House exceed the covered contractual payment entitlements of such Clearing Member or the Clearing House after netting under a netting contract is its 'net obligation':

(ii) for purposes of the Title 11 of the United States Code (the "U.S. Bankruptcy Code"), each Contract or Open Contract Position is a 'commodity contract' and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'commodity contract'; and

(iii) for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, each Open Contract Position is a 'swap agreement' and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'swap agreement'.

(e) Any Pledged Collateral recorded in a Pledged Collateral Account is transferred to the Clearing House as contingent cover for Margin on the basis that it may only be converted and applied by the Clearing House: (i) pursuant to Rule 905 as cover for Margin against a liability of the Clearing Member relating to the relevant Pledged Collateral Account in respect of which it was provided; and (ii) only to the extent that such applied amount is required to be included in the net sum calculation to ensure that a net sum for the same Pledged Collateral Account would not represent an amount payable by the Clearing Member to the Clearing House. Any Pledged Collateral not applied in accordance with this provision and which is not transferred to a Transferee Clearing Member in accordance with Part 9 of the Rules shall be returned to the relevant Clearing Member for its applicable proprietary or customer account, as the case may be, subject to Applicable Law as a result of such Clearing Member's or its customers' entitlements to such Pledged Collateral and not as part of the net sum process arising pursuant to Part 9 of the Rules. Any such return by the Clearing House of Pledged Collateral outside of the net sum calculation shall discharge and satisfy in full the Clearing House's obligations to return such Pledged Collateral to the Clearing Member or any of its Customers and no Customer or Clearing Member shall have any further claim in respect of such Pledged Collateral. To the extent any Pledged Collateral is, or is required under Applicable Law to be, returned to a Defaulter separately from any net sum certified by the Clearing House

pursuant to Rule 905, the value of such returned Pledged Collateral will be excluded from the calculation of any related net sum.

Rule 1605 *Margin and Segregation Rules*

- (a) ~~(a)~~ An FCM Clearing Member shall require each FCM Customer to provide Margin (or Permitted Cover in respect thereof) (such assets, “**FCM Customer Collateral**”) in an amount no less than the amount of Margin of each relevant type required on a gross basis by the Clearing House with respect to the relevant Open Contract Position(s), separately for each relevant class of Customer Account (regardless of whether the FCM Clearing Member is required to provide such Margin to the Clearing House on a gross basis pursuant to Rule 503). For this purpose, “gross basis” shall mean that the margin requirement will be determined giving effect to any offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set of the same FCM Customer in the same class of Customer Account, but without giving effect to any offset or permitted offset of such Open Contract Positions against Open Contract Positions relating to a different FCM Customer.
- (b) ~~(b)~~ With respect to FCM Customer Collateral transferred to the Clearing House in respect of Contracts registered in the DCM Customer Account arising from U.S. Futures (“**FCM U.S. Futures Customer Collateral**”), the Clearing House shall receive and hold such collateral in the Clearing House DCM Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Section 4d(a) and (b) of the CEA and the regulations of the CFTC thereunder. By means of this Rule, the FCM Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under CFTC regulations.
- (c) With respect to FCM Customer Collateral in respect of Contracts registered in the Swap Customer Account arising from Swaps (including for the avoidance of doubt Permitted Co-mingled Contracts) (“**FCM Swap Customer Collateral**”):
- (i) ~~(c) With respect to FCM Customer Collateral transferred to the Clearing House in respect of Contracts registered in the Swap Customer Account arising from Swaps (including for the avoidance of doubt Permitted Co-mingled Contracts) (“**FCM Swap Customer Collateral**”), an~~ An FCM Clearing Member shall receive, hold and use all FCM Customer Collateral only as permitted under CEA Section 4d(f) and the regulations of the CFTC thereunder (and, to the extent applicable, Securities Exchange Act Section 3E(b) and the regulations or any orders of the SEC thereunder) and as further set forth in these Rules and the Procedures (the “**Swap Customer Segregation Requirements**”). The Clearing House shall receive and hold such collateral transferred to the Clearing House in the Clearing House Swap Segregated Account and shall segregate, hold and use all such FCM Swap Customer Collateral as customer property in accordance with the Swap Customer Segregation Requirements. By means of this Rule, FCM Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under the Swap Customer Segregation Requirements.

(ii) Prior to the effectiveness of the Swap Customer Segregation Requirements, Contracts registered in the Swap Customer Account and related FCM Swap Customer Collateral shall be held in the cleared OTC derivative account class for purposes of Part 190 of the CFTC regulations. The Clearing House shall receive and hold such FCM Swap Customer Collateral transferred to the Clearing House in the Clearing House Swap Segregated Account as customer property separated from the proprietary positions and margin of the FCM Clearing Member and shall treat FCM Swap Customer Collateral as belonging to the FCM Customers of the FCM Clearing Member. Subject to the foregoing, the FCM Clearing Member and the Clearing House shall treat such FCM Swap Customer Collateral 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; and provided, further, that such customer property may be commingled by the FCM Clearing Member with customer property segregated or sequestered for purposes of the cleared OTC derivatives account class under the rules of other derivatives clearing organisations to the extent such rules are not inconsistent with the requirements hereof. With respect to Open Contract Positions and related FCM Swap Customer Collateral, the records required to be maintained under Rule 1605(e) will be those that would be required under CFTC regulations for positions subject to segregation under CFTC Rule 1.20 (including pursuant to CFTC Rules 1.32 and 1.36). The provisions of this Rule 1605(c)(ii) shall apply equally to any FCM that is a Customer of a Clearing Member but clears Contracts registered in the Swap Customer Account through an FCM Clearing Member on behalf of the customers of such FCM.

(d) ~~(d)~~ With respect to FCM Customer Collateral transferred to the Clearing House in respect of Contracts registered in the Non-DCM/Swap Customer Account arising from Non-DCM/Swaps (other than Permitted Co-mingled Contracts) (“**FCM Other Transaction Collateral**”), the Clearing House shall hold such FCM Customer Collateral as constituting the foreign futures or foreign options secured amount subject to the requirements of CFTC Rule 30.7. By means of this Rule, the FCM Clearing Member shall have satisfied the requirement to obtain an acknowledgement letter of such status from the Clearing House under CFTC regulations.

(e) ~~(e)~~ In connection with any Open Contract Position and related FCM U.S. Futures Customer Collateral, FCM Swap Customer Collateral or FCM Other Transaction Collateral provided to the Clearing House, the FCM Clearing Member shall keep and maintain written records with respect thereto as required under Applicable Law. Each FCM Clearing Member shall provide such records to the Clearing House upon request and upon such other basis, if any, as may be provided in the Procedures.

Rule 1606 *Additional FCM Clearing Membership Requirements*

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

Rule 1607 *Additional FCM Requirements for Customer Transactions*

- (a) The relationship between an FCM Customer and an FCM Clearing Member in respect of Open Contract Positions for that FCM Customer shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties, subject to the applicable provisions of these Rules and provided that no such agreement may be inconsistent with these Rules or the Clearing Membership Agreement.
- (b) Without limiting Rule 111, but subject to any contrary requirements of law: The Clearing House shall not be liable to any FCM Clearing Member, FCM Customer or other Person for any losses, claims, liabilities, damages or expenses arising out of or relating to the holding, investment or use of any Clearing House FCM Segregated Account or assets credited thereto from time to time (“**Custodial Losses**”), except to the extent such Custodial Losses result from the gross negligence or wilful misconduct of the Clearing House. The Clearing House shall have no duties or responsibilities with respect to any Clearing House FCM Segregated Account except as expressly set forth in these Rules and applicable law. The Clearing House shall have no responsibility for any investment decisions made or directed by an FCM Clearing Member (or any other Person) with respect to assets in a Clearing House FCM Segregated Account or for the results of any such investments and shall have no obligation to monitor any requirements set forth in any applicable agreement between FCM Clearing Member and an FCM Customer. The Clearing House shall have no responsibility for the compliance by any FCM Clearing Member or FCM Customer with its obligations under any such agreement. The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to a Clearing House FCM Segregated Account or the assets therein or transferred thereto or therefrom under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate FCM Clearing Member.
- (c) Each FCM Customer for which an FCM Clearing Member clears a Swap must be an “eligible contract participant” as defined in the CEA.
- (d) Each FCM Customer ~~consents~~ whose transactions are cleared by an FCM Clearing Member with the Clearing House will be deemed to have consented to the disclosure by its FCM Clearing Member to the Clearing House of such FCM Customer’s identity and information concerning the Open Contract Positions held by such FCM Clearing Member for such FCM Customer and related Margin as set forth in these Rules and as may be required by Applicable Law and, if the FCM Customer is itself an FCM, to the operation of Rule 1605(c)(ii).
- (e) Each FCM Clearing Member shall be required to obtain the agreement of each FCM Customer to the provisions of the Rules applicable to or otherwise referring to FCM Customers (including Rule 111, Rule 1604(c) and this Rule 1607) and to Clause

[3.2\(ii\) of the Clearing Membership Agreement \(which agreement may be obtained through a general obligation in a customer agreement to comply with applicable clearing organisation rules\)](#) and hereby represents and warrants to the Clearing House that it has obtained such agreement.

Rule 1608 *Governing Law and Dispute Resolution*

- (a) Solely as between an FCM Clearing Member and the Clearing House, those provisions of Parts 3, 5 and 16 of the Rules inasmuch as they relate solely to an issue or matter concerning:
- (i) the pledging, transfer, holding, use and segregation of Pledged Collateral (or other property recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided); and/or
 - (ii) the application of any net sum owed in favour of the FCM Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided

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

- (b) For the avoidance of doubt, Rule 1608(a) is an exception to Rule 102(r) which provides that the Rules and Contracts shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding Rule 1608(a), the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:
- (i) all of the provisions of the Rules concerning the calculation and determination of any net sum (except to the extent expressly provided in Rule 1604(d)) and the other default rules of the Clearing House, including all the provisions of Parts 9 and 11 of the Rules;
 - (ii) all of the provisions of the Rules relating to the Designated System, including all the provisions of Part 12 of the Rules;
 - (iii) any Dispute or issue arising as between a Clearing Member that is not an FCM Clearing Member on the one hand and the Clearing House on the other hand;
 - (iv) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided; and
 - (v) the Contract Terms of all Contracts.

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