

## FORM OF CLEARING MEMBER CASH INSTRUCTIONS

These Clearing Member Cash Instructions are dated [ ] and are entered into as a deed by and between:

- (1) [Clearing Member] of [name and address] ("**Clearing Member**");
- (2) LCH.Clearnet Limited of Aldgate House, 33 Aldgate High Street, London, EC3N 1EA ("**LCH**"); and
- (3) ICE Clear Europe Limited of International House, 1 St. Katharine's Way, London, E1W 1UY ("**ICE Clear**").

### WHEREAS

- (A.) LCH currently provides central counterparty and clearing services for the ICE Futures and ICE OTC markets;
- (B.) ICE Clear will become clearing house for ICE Futures' and ICE Inc.'s markets at the Novation Time (as defined below);
- (B.) the parties have entered into a deed of novation (as amended, the "**Deed of Novation**") in order to provide for the novation of certain market contracts from LCH to ICE Clear and other connected matters; and
- (C) in connection with the Deed of Novation, the parties wish to make provision for the transfer of Transferring Cash (as defined below) relating to contracts to be novated from LCH to ICE Clear.

### THE PARTIES HEREBY AGREE AS FOLLOWS:

#### 1. DEFINITIONS

- 1.1 In these Clearing Member Cash Instructions, the following defined terms shall have the meanings given to them in this section:

"**Clearing Membership Agreement**" means the clearing membership agreement between the Clearing Member and ICE Clear.

"**Cash Collateral Transfer Form**" means a document substantially in the form set out in the Annex.

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

"**Escrow Agent**" means an escrow agent that will hold the Transferring Cash for ICE Clear after the Novation Time, in accordance with agreements between the Escrow Agent, LCH and ICE Clear.

"**ICE Cash Margin**" means an amount of cash equal to the Transferring Cash to be transferred by the Clearing Member to or to the account of ICE Clear (excluding cash held by LCH, any custodian or banker of LCH and any Escrow Agent).

**"Securities Collateral Transfer Form"** means a document provided by the Clearing Member in the form set out in the annex to the form of clearing member securities instructions approved by LCH and the Clearing House, including details of the ISINs and face amount of certain securities to be transferred from LCH to ICE Clear in connection with the Novation.

**"Transferring Cash"** means the amount of cash in U.S. Dollars, Euros and Pounds Sterling specified in a Cash Collateral Transfer Form which has been confirmed by LCH to be correct under Clause 2.3, including all rights, interests and titles in, to and under the same.

1.2 Defined terms used but not defined herein have the meanings set out in the Deed of Novation. To the extent that these Clearing Member Cash Instructions conflict with the Deed of Novation, these Clearing Member Cash Instructions shall prevail.

## **2. CASH COLLATERAL TRANSFER FORM**

2.1 The Clearing Member hereby undertakes that, to the extent it wishes any Transferring Cash to be subject to these Clearing Member Cash Instructions, it shall deliver a duly completed and duly authorised Cash Collateral Transfer Form to LCH and ICE Clear at or before 2:00 p.m. on the Saturday immediately prior to the Novation Time. If no valid Cash Collateral Transfer Form is received by ICE Clear or LCH prior to the time specified in this Clause 2.1, Clause 3 of these Clearing Member Cash Instructions shall be of no effect.

2.2 At the time that any Cash Collateral Transfer Form (or document updating or replacing any Cash Collateral Transfer Form) is provided by the Clearing Member to LCH or ICE Clear, the Clearing Member shall be deemed to represent and warrant to both LCH and ICE Clear that:

- (i) the Cash Collateral Transfer Form is accurate and complete in all material respects;
- (ii) all amounts of cash of any currency specified in the Cash Collateral Transfer Form represent an amount that will be available and held with LCH less than or equal to the amount of expected initial margin, buyer's security and seller's security held as cash relating to Novating Contracts plus surplus cash cover standing to the credit of the Clearing Member with LCH immediately prior to the Novation Time;
- (iii) the aggregate of all cash specified in Cash Collateral Transfer Forms plus any securities specified in Securities Collateral Transfer Forms does not exceed expected initial margin, buyer's security and seller's security relating to Novating Contracts plus surplus cash cover standing to the credit of the Clearing Member with LCH immediately prior to the Novation Time; and
- (iv) the Clearing Member will not give any instruction in relation to any Transferring Cash inconsistent with these Clearing Member Cash Instructions or any Cash Collateral Transfer Form.

All such representations and warranties shall be deemed to be repeated at the Novation Time.

2.3 LCH will confirm to ICE Clear and the Clearing Member whether or not the cash identified in any Cash Collateral Transfer Form provided by the Clearing Member is available to LCH as described in Clause 2.2(ii). If the cash identified in the Cash Collateral Transfer Form is not so available, neither these Clearing Member Cash Instructions nor the relevant Cash Collateral Transfer Form shall be valid unless the Cash Collateral Transfer Form is replaced with a valid Cash Collateral Transfer Form that is confirmed as acceptable by LCH prior to the time specified in Clause 2.1 or such later time as LCH and ICE Clear agree.

## **3. TRANSFERRING CASH AND ICE CASH MARGIN**

- 3.1 The Clearing Member hereby irrevocably directs (and LCH irrevocably, subject to Clause 3.6, agrees) that LCH shall, at the Novation Time, transfer an amount equal to the amount of the Transferring Cash to the Escrow Agent. At the Novation Time, notwithstanding any entry on any computer, clearing, trading or banking system to the contrary, the amount of 'cover' (as defined in the LCH Regulations) standing to the credit of the Clearing Member with LCH shall be reduced by the amount of the Transferring Cash and the amount of 'Permitted Cover' (as defined in the ICE Clear Rules) standing to the credit of the Clearing Member with ICE Clear shall be correspondingly increased. The transfer of Transferring Cash to the account of ICE Clear at the Novation Time pursuant to this Clause 3 will be subject to all the requirements of clause 4 of the Clearing Membership Agreement and relevant provisions of the ICE Clear Rules.
- 3.2 The Clearing Member irrevocably undertakes and agrees in favour of ICE Clear and LCH that, at or before 9:30 a.m. on the Tuesday immediately following the Novation Time, it shall transfer the ICE Cash Margin to or to the order of ICE Clear. The availability of Transferring Cash or any other 'Permitted Cover' to ICE Clear shall not affect or reduce this obligation and the Clearing Member shall have no right whatsoever of any nature or in any jurisdiction, howsoever arising, whether express or implied, of lien, set off, netting, combination of accounts, combination or appropriation (or to instruct any of the same) in respect of it.
- 3.3 Upon ICE Clear confirming receipt of the ICE Cash Margin (which the parties acknowledge will result in the Clearing Member having excess 'Permitted Cover' with ICE Clear), the Clearing Member hereby irrevocably directs (and ICE Clear irrevocably agrees) that ICE Clear shall direct the Escrow Agent to transfer an amount equal to the amount of the Transferring Cash to the Clearing Member in the manner contemplated in this Clause 3. Any transfer of Transferring Cash shall be to LCH's possession or control and the Clearing Member hereby irrevocably authorises LCH, in accordance with standing instructions that the Clearing Member has established with LCH in accordance with the LCH Regulations (LCH acting as agent for ICE Clear to the extent necessary) to give effect to a transfer of the relevant Transferring Cash to the Clearing Member or to its order by treating the Transferring Cash as cover standing to the credit of the Clearing Member under the LCH Regulations (which may, in whole or in part, to the extent that the Clearing Member is so entitled, be returned to the Clearing Member pursuant to the standing instructions).
- 3.4 The Clearing Member acknowledges that any transfer of Transferring Cash to it or for its account hereunder shall be subject to exercise by LCH of any right of lien, set off, netting, combination of accounts, combination or appropriation (or to instruct any of the same) available to it, in accordance with LCH's normal practices for dealing with collateral under the LCH Regulations. Accordingly, LCH may retain and apply any Transferring Cash in accordance with Clause 3.3 to LCH's own benefit or account, to the extent that any amount is due or owing by the Clearing Member to LCH.
- 3.5 Notwithstanding anything to the contrary in these Clearing Member Cash Instructions, if the Clearing Member is declared a "defaulter" by LCH for purposes of the LCH Regulations or by ICE Clear for the purposes of the ICE Clear Rules after the Novation Time but before the ICE Clear Margin is received by ICE Clear or if the ICE Clear Margin is not transferred to or to the account of ICE Clear at or prior to the required time:
- (i) the Clearing Member shall have no right to receive a transfer of any Transferring Cash in the manner described in these Clearing Member Cash Instructions (unless it is not a 'defaulter' and until it pays ICE Clear the ICE Clear Margin); and
  - (ii) if the Clearing Member is declared a 'defaulter', the rights and liabilities of the Clearing Member with respect to both LCH and ICE Clear shall be governed by

applicable default rules and default proceedings under the LCH Regulations and ICE Clear Rules.

3.6 Notwithstanding anything to the contrary in these Clearing Member Cash Instructions, if the Clearing Member is declared a "defaulter" by LCH for purposes of the LCH Regulations or by ICE Clear for the purposes of the ICE Clear Rules before the Novation Time, this Clause 3 shall be of no effect.

3.7 The parties agree that, as from the Novation Time, notwithstanding that the Transferring Cash is not 'cover' standing to the credit of the Clearing Member with LCH for the purposes of the LCH Regulations, LCH shall nonetheless be obliged to make payments to the Clearing Member in respect of interest accruing on the Transferring Cash in the same way as if the Transferring Cash were 'cover' standing to the credit of the Clearing Member under the LCH Regulations. Without prejudice to its obligations in relation to ICE Cash Margin, ICE Clear shall consequently have no obligation to make any payment in respect of any interest or other income on the Transferring Cash pursuant to the ICE Clear Rules or the Clearing Membership Agreement.

**4. MISCELLANEOUS**

Clauses 6, 7, 9 (except 9.3, to the extent that it refers to a trust) of the Deed of Novation shall apply to these Clearing Member Cash Instructions in the same way as such provisions apply in relation to the Deed of Novation, *mutatis mutandis*.

Executed as a deed by [CLEARING MEMBER] acting by:

By: _____	(Signature)
_____	(Print Name) Director
By: _____	(Signature)
_____	(Print Name) Director/Secretary

Executed as a deed by ICE CLEAR EUROPE LIMITED acting by:

By: _____	(Signature)
_____	(Print Name) Director
By: _____	(Signature)
_____	(Print Name) Director/Secretary

Executed as a deed by LCH.CLEARNET LIMITED acting by:

By: _____	(Signature)
_____	(Print Name) Director
By: _____	(Signature)
_____	(Print Name) Director/Secretary

SAMPLE