

Required fields are shown with yellow backgrounds and asterisks.

Filing by ICE Clear Europe Limited.
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The principal purpose of the proposed changes is to amend the ICE Clear Europe Clearing Rules to address non-default losses that may affect the clearinghouse.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Patrick Last Name * Davis

Title * Head of Legal and Company Secretary

E-mail * patrick.davis@theice.com

Telephone * (770) 857-4400 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 03/21/2014 Head of Legal and Company Secretary

By Patrick Davis [Signature Box]

(Name *)

Digitally Sign and Lock Form

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Form 19b-4 Information

1. Text of the Proposed Rule Change

- (a) The text of the proposed rule changes has been annexed as Exhibit 5 and consists of certain rule changes that have been proposed by ICE Clear Europe Limited (“ICE Clear Europe”). The principal purpose of the proposed changes is to amend the ICE Clear Europe Clearing Rules to address non-default losses (as described in more detail below) that may affect the clearinghouse.
- (b) Not applicable.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

- (a) The rule changes will be submitted to the ICE Clear Europe board for approval prior to the planned implementation as of May 1, 2014.
- (b) Please refer questions and comments regarding the rule changes to Patrick Davis, Head of Legal and Company Secretary, ICE Clear Europe Limited, 5th Floor, Milton Gate, 60 Chiswell Street, London, EC1Y 4SA, United Kingdom, +44 20 7065 7600.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe submits proposed amendments to its Rules in order to adopt new provisions relating to losses to the clearing house arising other than from a clearing member default (referred to herein as “non-default losses”), including losses from general business risk, investment and custody risk and operational risk. The amendments would (i) require ICE Clear Europe to apply a specified amount of its own assets to cover non-default losses (“non-default loss assets”) and (ii) provide for a separate category of contribution applicable to all clearing

members in all product categories to cover non-default losses that exceed the non-default loss assets (“non-default loss contributions”, and together with non-default loss assets, “non-default resources”), subject to a defined maximum contribution (which may be reset or extended with the approval of the ICE Clear Europe board and risk committees). The text of the proposed rule amendments are attached, with additions underlined and deletions in strikethrough text.

The Bank of England has indicated that ICE Clear Europe will be required to have rules addressing the allocation of non-default losses that threaten the clearing house’s solvency and to have plans to maintain continuity of services if such continuity is threatened as a result of such losses on May 1, 2014. Plans to address losses from general business risk are also an element of the CPSS-IOSCO Principles for Financial Market Infrastructures (the “PFMIs”).¹ The amendments are separate from the clearing house’s existing rules and planned rule changes that address allocation of losses resulting from clearing member defaults and related recovery and wind-down plans.

The proposed Rule amendments are described in detail as follows.

In Part 1 of the Rules, a new definition for “Custodian,” which is used in the Non-Default Loss definition has also been added. The proposed changes add a new definition of “Non-Default Losses”, which includes losses incurred or suffered by the clearing house arising in connection with (i) holding by the clearing house or a custodian of margin or guaranty fund contributions (including as a result of the failure or insolvency of a custodian), other than margin or guaranty fund contributions of a defaulting clearing member, (ii) investment or reinvestment by the clearing house of margin or guaranty fund contributions, other than margin or guaranty

¹ We also note in this regard that the Commodity Futures Trading Commission has adopted a similar requirement for systemically important derivatives clearing organizations and “subpart C” derivatives clearing organizations in CFTC Rule 39.33(b)(2), and that the Commission has proposed a similar requirement for systemically important clearing agencies in proposed Rule 17Ad-22(e)(15). Standards for Covered Clearing Agencies, Release No. 34-71699 (Mar. 12, 2014).

fund contributions of a defaulting clearing member, and (iii) any other event (other than a clearing member default) to the extent that the losses therefrom threaten the solvency of the clearing house. In addition, new definitions of “Non-Default Loss Assets” (assets of the clearing house itself that are available to be applied to Non-Default Losses under Rule 919 as described below) and “Non-Default Loss Contributions” (obligations of clearing members to pay additional amounts in respect of Non-Default Losses under Rule 919 as described below) have been added.

In Rules 111 and 905, conforming and clarifying changes to the description of various types of losses or liabilities that may be borne by the clearing house have been made, through addition of references to “claims” and “shortfalls,” in order to ensure consistent use of language throughout Rules where other references are made to losses. A conforming change has also been made in Rule 913 to the definition of “Available Non-Defaulter Resources” (which is used in the variation margin haircutting provisions of Rule 914 applicable to the F&O and FX product categories), to include in such available resources non-default loss contributions that cover non-default losses related to margin or guaranty fund contributions that would otherwise fall in that category.

The proposed changes would adopt new Rule 919, which includes the allocation rules for non-default losses and procedures for calling for non-default loss contributions. Under Rule 919(b), non-default losses will first be satisfied by applying the non-default loss assets provided by the clearing house itself. The amount of non-default loss assets provided by ICE Clear Europe is expected to be USD 90 million. If there is a non-default loss that exceeds the non-default loss assets, ICE Clear Europe will have the right to call for non-default loss contributions from all clearing members (other than defaulting clearing members). The amount of such

contributions is determined pursuant to Rule 919(c), and is based on the proportion of a clearing member's aggregate guaranty fund contributions (for all product categories) to the aggregate guaranty fund contributions of non-defaulting clearing members (for all product categories). Under Rule 919(d), the total amount of non-default resources (including both the ICE Clear Europe non-default loss assets and non-default loss contributions of clearing members) across all non-default loss events is USD one billion (under this cap, non-default loss contributions from clearing members thus would not exceed USD 910 million). The clearing house may increase that cap only with the approval of the ICE Clear Europe board and of the risk committee for each product category. A parallel limit on non-default loss contributions per clearing member is set forth in Rule 919(e). If the cap is increased, ICE Clear Europe will have an obligation to replenish its non-default loss assets to the previous level under Rule 919(k) (but ICE Clear Europe is not otherwise obligated to replenish the non-default loss assets if they are used). Pursuant to Rule 919(k), ICE Clear Europe may also replenish any regulatory capital as required to bring it in compliance with applicable laws at any time, including following a non-default loss. However, no such recapitalization will result in any obligation of any clearing member to pay non-default loss contributions, or the size of any non-default loss, being reduced. Non-default loss contributions are due within two business days of the call by the clearing house, under Rule 919(f). If the clearing house subsequently recovers amounts in respect of a non-default loss, Rule 919(g) implements a procedure for allocating the recovery to clearing members in proportion to their non-default loss contributions. Pursuant to Rule 919(h), the obligation of a clearing member to make non-default loss contributions is separate from, and does not reduce, its obligation to make guaranty fund contributions or guaranty fund assessment contributions under the existing rules. Rules 919(i) addresses the return of any excess non-default loss contributions.

Rule 919(j) provides for the clearing house to notify clearing members of the amount of non-default loss assets from time to time. Rule 919(l) provides that the obligation to provide non-default loss contributions under Rule 919 applies independently from the powers of assessment following clearing member defaults in other parts of the Rules, and notes for clarification that the limits on assessment in Rules 917 and 918 for the F&O and FX product categories do not affect the liability of clearing members for non-default loss contributions.

Other conforming changes are made in Parts 11 and 12 of the Rules. A conforming change is made in Rule 1103(e) to allow the non-default loss assets to be held together with other clearing house contributions to the guaranty fund (without affecting the limitations in the existing rules and Rule 919 on the use of such assets). Conforming changes to definitions relating to custodians are made in Rule 1201.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act² and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.³ Section 17A(b)(3)(F) of the Act⁴ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. Neither Section 17A nor Rule 17Ad-22 specifically addresses non-default losses of the type contemplated by the proposed rules. Nonetheless, ICE Clear Europe believes that the proposed rule changes are consistent with the Act and the regulations thereunder applicable to ICE Clear Europe, in particular, Section 17(A)(b)(3)(F)⁵,

² 15 U.S.C. 78q-1.

³ 17 C.F.R. § 240.17Ad-22.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

because ICE Clear Europe believes that the new rules will enhance the clearing house's ability to bear such losses. This will in turn further the clearing house's ability to continue operations if faced by non-default losses, which will facilitate prompt and accurate settlement of derivatives and contribute to the safeguarding of securities and funds associated with derivative transactions which are in the custody or control of ICE Clear Europe or for which it is responsible, as set forth herein.

ICE Clear Europe has developed the proposed rules to satisfy paragraphs 29A and 29B under the UK's Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, Schedule, as inserted by the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013. Rules addressing allocation of non-default losses are also contemplated under the PFMIs. Consistent with these requirements, the proposed rules are designed to allocate non-default losses (i.e., losses from general business risks, investment or custodial losses or other losses not resulting from clearing member default) to the clearing house and clearing members. ICE Clear Europe does not expect that these rules will affect the ordinary course operation of the clearing house or its existing protections for the securities and funds in its custody or control or for which it is responsible. ICE Clear Europe believes that the proposed rule changes will enhance the stability of ICE Clear Europe if it experiences significant non-default losses, by providing a new assessment resource to cover such losses. The proposed rules will also provide greater certainty for clearing members and the clearing house itself as to the scope of resources that will be available to cover such losses. Taken together, the amendments will thus promote the prompt and accurate clearance and

settlement of contracts cleared by ICE Clear Europe, consistent with the requirements of Section 17A(b)(3)(F).⁶

The amendments also are consistent with the relevant requirements of Rule 17Ad-22, and in particular the financial resources requirements of Rule 17Ad-22(b)(2-3).⁷ ICE Clear Europe does not propose to change the amount of financial resources (both pre-funded resources and potential assessment resources) currently available to support its clearing operations in any product category. The amendments would provide an additional financial resource to address non-default losses, which do not arise from clearing member default. In addition, ICE Clear Europe believes that the changes will enhance its ability to continue clearing operations following a non-default loss and provide it and market participants with greater certainty as to the financial resources that will be available to the clearing house following non-default losses.

Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any material impact, or impose any material burden, on competition not necessary or appropriate in furtherance of the purposes of the Act.

The rule amendments will by definition impose additional potential costs on clearing members in non-default loss scenarios, as they may be required to make non-default loss contributions, up to the defined maximum contribution. As discussed above, ICE believes this approach is warranted in light of the need to allocate non-default losses to clearing members and implement recovery and wind-down plans as a result of such losses, as required under applicable UK legislation. Moreover, ICE Clear Europe does not believe these costs are likely to have a

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 C.F.R. § 240.17Ad-22(b)(2)-(3)

material impact on the ordinary course operation of the clearing house, as they are relevant only under extreme non-default loss scenarios where the alternative could be clearinghouse failure or insolvency.

In terms of access to the clearing house, ICE Clear Europe is not proposing to change its standards for clearing membership or financial requirements for clearing membership. As such, ICE Clear Europe does not believe the changes will reduce access by clearing members to the clearing house. While there will be additional potential costs for clearing members, the cap on non-default loss contributions is intended to provide clearing members with greater certainty as to the extent of their financial obligations to the clearinghouse, and to limit their maximum potential liability. As a result, the amendments may make it easier for some market participants to become members, and a failure to adopt the amendments could, in ICE Clear Europe's view, dissuade some market participants from being members. As a result, ICE Clear Europe does not believe the amendments will reduce clearing member access to the clearing house. In addition, ICE Clear Europe does not believe the proposed amendments are likely to adversely affect competition among clearing members. The proposed rules will apply to all clearing members in the same way. Enhanced certainty, and greater stability of the clearing house in the event of non-default losses, may also benefit the market for cleared derivatives generally, which in turn may enhance competition.

In terms of the impact on customers of clearing members, it is possible that the added costs to clearing members of potential non-default loss contributions will result in higher costs for customers in some circumstances. As with the costs on clearing members themselves, ICE Clear Europe believes that the proposed rule changes are warranted in light of the UK requirements to allocate non-default losses, and benefits of enhanced financial resources and

stability for the clearing house. In addition, ICE Clear Europe does not believe that the potential additional costs will have a significant burden on competition, as they apply to all clearing members equally.

ICE Clear Europe also does not believe the rule amendments will adversely affect the ability of market participants to continue to clear transactions or otherwise limit market participants' choices for clearing transactions. ICE Clear Europe expects that, in light of the PFMIIs and applicable regulatory requirements in the US and EU, other clearing organizations will similarly need to develop procedures for addressing non-default losses. The rule amendments are intended to provide a stronger framework for the clearing house to deal with non-default loss events and keep clearing services in operation despite such losses. This should generally enhance the ability of market participants to continue to clear derivative products, reduce systemic effects on the cleared markets generally and reduce the risk of failure of a clearinghouse (which would generally be expected to have an adverse impact on competition). To the extent market participants have greater certainty as to how non-default losses would be handled by the clearing house, they may have greater confidence in clearing generally, which will also tend to enhance the stability and strength of the market for cleared products, consistent with the goals of the Act.

For the foregoing reasons, the proposed rules are, in ICE Clear Europe's view, appropriate in furtherance of the purposes of the Act and other legal requirements applicable to ICE Clear Europe. The clearing house does not believe that the proposed amendments will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

4. Self-Regulatory Organization's statement on Comments on the Proposed Rule Change Received from Members, participants, or Others

Written comments relating to the rule changes have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

5. Extension of Time Period for Commission Action

ICE Clear Europe does not consent to the extension of the time period listed in Section 19(b)(2) of the Securities Exchange Act of 1934 for Commission action.

6. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) ICE Clear Europe respectfully requests that the Commission grant accelerated effectiveness of the proposed rule changes under Section 19(b)(2). As noted above, the Bank of England has indicated that ICE Clear Europe will be required to implement rules addressing allocation of non-default losses, and related recovery and wind-down plans by May 1, 2014. The proposed rule changes are intended to address a particular loss scenario, involving losses that arise from reasons other than clearing member default, and accordingly are not expected to affect normal, ongoing clearing house operations for any product category. Within that loss scenario, the proposed rules are intended to provide additional resources to the clearing house and thereby enhance the stability of clearing house operations, while providing greater certainty to clearing members. ICE Clear Europe does not believe that the proposed rule changes raise issues that would warrant a longer period of review, or that the market or clearing members generally would

benefit from a delay in implementation of the rules. Accordingly, for the foregoing reasons, ICE Clear Europe believes there is good cause for the Commission to accelerate effectiveness of the rule change.

7. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or the Commission

The proposed rule changes are not based on the rules of another self-regulatory organization or the Commission.

8. Exhibits

List of exhibits to be filed, as specified in Instructions C and D:

<u>Exhibit 1.</u>	Notice of proposed rule change for publication in the <u>Federal Register</u>
<u>Exhibit 2.</u>	Not applicable
<u>Exhibit 3.</u>	Not applicable
<u>Exhibit 4.</u>	Not applicable
<u>Exhibit 5.</u>	Text of proposed rule change

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-_____; File No. SR-ICEEU-2014-06]

SELF-REGULATORY ORGANIZATIONS

Self-Regulatory Organizations; ICE Clear Europe Limited; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on _____, 2014, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed changes is to amend the ICE Clear Europe Clearing Rules to address non-default losses (as described in more detail below) that may affect the clearinghouse.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe submitted proposed amendments to its Rules in order to adopt new provisions relating to losses to the clearing house arising other than from a clearing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

member default (referred to herein as “non-default losses”), including losses from general business risk, investment and custody risk and operational risk. The amendments would (i) require ICE Clear Europe to apply a specified amount of its own assets to cover non-default losses (“non-default loss assets”) and (ii) provide for a separate category of contribution applicable to all clearing members in all product categories to cover non-default losses that exceed the non-default loss assets (“non-default loss contributions”, and together with non-default loss assets, “non-default resources”), subject to a defined maximum contribution (which may be reset or extended with the approval of the ICE Clear Europe board and risk committees).

The Bank of England has indicated that ICE Clear Europe will be required to have rules addressing the allocation of non-default losses that threaten the clearing house’s solvency and to have plans to maintain continuity of services if such continuity is threatened as a result of such losses on May 1, 2014. Plans to address losses from general business risk are also an element of the CPSS-IOSCO Principles for Financial Market Infrastructures (the “PFMIs”).³ The amendments are separate from the clearing house’s existing rules and planned rule changes that address allocation of losses resulting from clearing member defaults and related recovery and wind-down plans.

The proposed Rule amendments are described in detail as follows.

In Part 1 of the Rules, a new definition for “Custodian,” which is used in the Non-Default Loss definition has also been added. The proposed changes add a new definition of “Non-Default Losses”, which includes losses incurred or suffered by the clearing

³ We also note in this regard that the Commodity Futures Trading Commission has adopted a similar requirement for systemically important derivatives clearing organizations and “subpart C” derivatives clearing organizations in CFTC Rule 39.33(b)(2), and that the Commission has proposed a similar requirement for systemically important clearing agencies in proposed Rule 17Ad-22(e)(15). Standards for Covered Clearing Agencies, Release No. 34-71699 (Mar. 12, 2014).

house arising in connection with (i) holding by the clearing house or a custodian of margin or guaranty fund contributions (including as a result of the failure or insolvency of a custodian), other than margin or guaranty fund contributions of a defaulting clearing member, (ii) investment or reinvestment by the clearing house of margin or guaranty fund contributions, other than margin or guaranty fund contributions of a defaulting clearing member, and (iii) any other event (other than a clearing member default) to the extent that the losses therefrom threaten the solvency of the clearing house. In addition, new definitions of “Non-Default Loss Assets” (assets of the clearing house itself that are available to be applied to Non-Default Losses under Rule 919 as described below) and “Non-Default Loss Contributions” (obligations of clearing members to pay additional amounts in respect of Non-Default Losses under Rule 919 as described below) have been added.

In Rules 111 and 905, conforming and clarifying changes to the description of various types of losses or liabilities that may be borne by the clearing house have been made, through addition of references to “claims” and “shortfalls,” in order to ensure consistent use of language throughout Rules where other references are made to losses. A conforming change has also been made in Rule 913 to the definition of “Available Non-Defaulter Resources” (which is used in the variation margin haircutting provisions of Rule 914 applicable to the F&O and FX product categories), to include in such available resources non-default loss contributions that cover non-default losses related to margin or guaranty fund contributions that would otherwise fall in that category.

The proposed changes would adopt new Rule 919, which includes the allocation rules for non-default losses and procedures for calling for non-default loss contributions.

Under Rule 919(b), non-default losses will first be satisfied by applying the non-default loss assets provided by the clearing house itself. The amount of non-default loss assets provided by ICE Clear Europe is expected to be USD 90 million. If there is a non-default loss that exceeds the non-default loss assets, ICE Clear Europe will have the right to call for non-default loss contributions from all clearing members (other than defaulting clearing members). The amount of such contributions is determined pursuant to Rule 919(c), and is based on the proportion of a clearing member's aggregate guaranty fund contributions (for all product categories) to the aggregate guaranty fund contributions of non-defaulting clearing members (for all product categories). Under Rule 919(d), the total amount of non-default resources (including both the ICE Clear Europe non-default loss assets and non-default loss contributions of clearing members) across all non-default loss events is USD one billion (under this cap, non-default loss contributions from clearing members thus would not exceed USD 910 million). The clearing house may increase that cap only with the approval of the ICE Clear Europe board and of the risk committee for each product category. A parallel limit on non-default loss contributions per clearing member is set forth in Rule 919(e). If the cap is increased, ICE Clear Europe will have an obligation to replenish its non-default loss assets to the previous level under Rule 919(k) (but ICE Clear Europe is not otherwise obligated to replenish the non-default loss assets if they are used). Pursuant to Rule 919(k), ICE Clear Europe may also replenish any regulatory capital as required to bring it in compliance with applicable laws at any time, including following a non-default loss. However, no such recapitalization will result in any obligation of any clearing member to pay non-default loss contributions, or the size of any non-default loss, being reduced. Non-default loss contributions are due

within two business days of the call by the clearing house, under Rule 919(f). If the clearing house subsequently recovers amounts in respect of a non-default loss, Rule 919(g) implements a procedure for allocating the recovery to clearing members in proportion to their non-default loss contributions. Pursuant to Rule 919(h), the obligation of a clearing member to make non-default loss contributions is separate from, and does not reduce, its obligation to make guaranty fund contributions or guaranty fund assessment contributions under the existing rules. Rule 919(i) addresses the return of any excess non-default loss contributions. Rule 919(j) provides for the clearing house to notify clearing members of the amount of non-default loss assets from time to time. Rule 919(l) provides that the obligation to provide non-default loss contributions under Rule 919 applies independently from the powers of assessment following clearing member defaults in other parts of the Rules, and notes for clarification that the limits on assessment in Rules 917 and 918 for the F&O and FX product categories do not affect the liability of clearing members for non-default loss contributions.

Other conforming changes are made in Parts 11 and 12 of the Rules. A conforming change is made in Rule 1103(e) to allow the non-default loss assets to be held together with other clearing house contributions to the guaranty fund (without affecting the limitations in the existing rules and Rule 919 on the use of such assets). Conforming changes to definitions relating to custodians are made in Rule 1201.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act⁴ and the regulations thereunder applicable to it,

⁴ 15 U.S.C. 78q-1.

including the standards under Rule 17Ad-22.⁵ Section 17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. Neither Section 17A nor Rule 17Ad-22 specifically addresses non-default losses of the type contemplated by the proposed rules. Nonetheless, ICE Clear Europe believes that the proposed rule changes are consistent with the Act and the regulations thereunder applicable to ICE Clear Europe, in particular, Section 17(A)(b)(3)(F)⁷, because ICE Clear Europe believes that the new rules will enhance the clearing house's ability to bear such losses. This will in turn further the clearing house's ability to continue operations if faced by non-default losses, which will facilitate prompt and accurate settlement of derivatives and contribute to the safeguarding of securities and funds associated with derivative transactions which are in the custody or control of ICE Clear Europe or for which it is responsible, as set forth herein.

ICE Clear Europe has developed the proposed rules to satisfy paragraphs 29A and 29B under the UK's Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, Schedule, as inserted by the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013. Rules addressing allocation of non-default losses are also contemplated under the PFMI. Consistent with these requirements, the proposed rules are designed to allocate non-default losses (i.e., losses from general business risks, investment or custodial losses or

⁵ 17 C.F.R. § 240.17Ad-22.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

other losses not resulting from clearing member default) to the clearing house and clearing members. ICE Clear Europe does not expect that these rules will affect the ordinary course operation of the clearing house or its existing protections for the securities and funds in its custody or control or for which it is responsible. ICE Clear Europe believes that the proposed rule changes will enhance the stability of ICE Clear Europe if it experiences significant non-default losses, by providing a new assessment resource to cover such losses. The proposed rules will also provide greater certainty for clearing members and the clearing house itself as to the scope of resources that will be available to cover such losses. Taken together, the amendments will thus promote the prompt and accurate clearance and settlement of contracts cleared by ICE Clear Europe, consistent with the requirements of Section 17A(b)(3)(F).⁸

The amendments also are consistent with the relevant requirements of Rule 17Ad-22, and in particular the financial resources requirements of Rule 17Ad-22(b)(2-3).⁹ ICE Clear Europe does not propose to change the amount of financial resources (both pre-funded resources and potential assessment resources) currently available to support its clearing operations in any product category. The amendments would provide an additional financial resource to address non-default losses, which do not arise from clearing member default. In addition, ICE Clear Europe believes that the changes will enhance its ability to continue clearing operations following a non-default loss and provide it and market participants with greater certainty as to the financial resources that will be available to the clearing house following non-default losses.

(A) Self-Regulatory Organization's Statement on Burden on Competition

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 C.F.R. § 240.17Ad-22(b)(2)-(3)

ICE Clear Europe does not believe the proposed rule changes would have any material impact, or impose any material burden, on competition not necessary or appropriate in furtherance of the purposes of the Act.

The rule amendments will by definition impose additional potential costs on clearing members in non-default loss scenarios, as they may be required to make non-default loss contributions, up to the defined maximum contribution. As discussed above, ICE believes this approach is warranted in light of the need to allocate non-default losses to clearing members and implement recovery and wind-down plans as a result of such losses, as required under applicable UK legislation. Moreover, ICE Clear Europe does not believe these costs are likely to have a material impact on the ordinary course operation of the clearing house, as they are relevant only under extreme non-default loss scenarios where the alternative could be clearinghouse failure or insolvency.

In terms of access to the clearing house, ICE Clear Europe is not proposing to change its standards for clearing membership or financial requirements for clearing membership. As such, ICE Clear Europe does not believe the changes will reduce access by clearing members to the clearing house. While there will be additional potential costs for clearing members, the cap on non-default loss contributions is intended to provide clearing members with greater certainty as to the extent of their financial obligations to the clearinghouse, and to limit their maximum potential liability. As a result, the amendments may make it easier for some market participants to become members, and a failure to adopt the amendments could, in ICE Clear Europe's view, dissuade some market participants from being members. As a result, ICE Clear Europe does not believe the amendments will reduce clearing member access to the clearing house. In addition,

ICE Clear Europe does not believe the proposed amendments are likely to adversely affect competition among clearing members. The proposed rules will apply to all clearing members in the same way. Enhanced certainty, and greater stability of the clearing house in the event of non-default losses, may also benefit the market for cleared derivatives generally, which in turn may enhance competition.

In terms of the impact on customers of clearing members, it is possible that the added costs to clearing members of potential non-default loss contributions will result in higher costs for customers in some circumstances. As with the costs on clearing members themselves, ICE Clear Europe believes that the proposed rule changes are warranted in light of the UK requirements to allocate non-default losses, and benefits of enhanced financial resources and stability for the clearing house. In addition, ICE Clear Europe does not believe that the potential additional costs will have a significant burden on competition, as they apply to all clearing members equally.

ICE Clear Europe also does not believe the rule amendments will adversely affect the ability of market participants to continue to clear transactions or otherwise limit market participants' choices for clearing transactions. ICE Clear Europe expects that, in light of the PFMI and applicable regulatory requirements in the US and EU, other clearing organizations will similarly need to develop procedures for addressing non-default losses. The rule amendments are intended to provide a stronger framework for the clearing house to deal with non-default loss events and keep clearing services in operation despite such losses. This should generally enhance the ability of market participants to continue to clear derivative products, reduce systemic effects on the cleared markets generally and reduce the risk of failure of a clearinghouse (which would

generally be expected to have an adverse impact on competition). To the extent market participants have greater certainty as to how non-default losses would be handled by the clearing house, they may have greater confidence in clearing generally, which will also tend to enhance the stability and strength of the market for cleared products, consistent with the goals of the Act.

For the foregoing reasons, the proposed rules are, in ICE Clear Europe's view, appropriate in furtherance of the purposes of the Act and other legal requirements applicable to ICE Clear Europe. The clearing house does not believe that the proposed amendments will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(B) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Received from Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2014-05 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2014-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of

10:00 a.m. and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2014-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).



ICE Clear Europesm

Clearing Rules

[Non-default draft: 19 March 2014, based on the 28 February rules not including the "Continuing CDS Provisions".](#)

Table of Contents

Part 1	General Provisions.....	3
Part 2	Clearing Membership.....	64 <u>65</u>
Part 3	Financial Requirements and Payments.....	80 <u>81</u>
Part 4	Clearing Mechanism.....	86 <u>87</u>
Part 5	Margin.....	109 <u>110</u>
Part 6	Position Limits.....	117 <u>118</u>
Part 7	Settlement and Delivery of Futures.....	119 <u>120</u>
Part 8	Options.....	123 <u>124</u>
Part 9	Default Rules.....	129 <u>130</u>
Part 10	Disciplinary Proceedings.....	196 <u>199</u>
Part 11	Guaranty Funds.....	208 <u>211</u>
Part 12	Settlement Finality Regulations and Companies Act 1989.....	216 <u>219</u>
Part 13	[Not used].....	231 <u>234</u>
Part 14	Transition Rules for ICE Energy Markets in 2008 [No longer applicable: available on request.].....	231 <u>234</u>
Part 15	Credit Default Swaps.....	232 <u>235</u>
Part 16	FCM/BD Clearing Member Provisions.....	257 <u>260</u>
Part 17	Foreign Exchange.....	273 <u>276</u>
Part 18	Transition Rules for LIFFE in 2013.....	281 <u>284</u>
Exhibit 1:	Customer-CM CDS Transaction Standard Terms	
Exhibit 2:	Settlement and Notices Terms	

Part 1 General Provisions

Rule 101 *Definitions*

The term "**Account**" means a Customer Account or Proprietary Account, as the case may be, of a Clearing Member.

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 and any rules or regulations of any other Regulatory Authority.

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 for purposes of making and receiving cash transfers to and from the Clearing House and Payment Transfer Orders.

The term "**Approved CDS Trade Processing Platform**" has the meaning given to that term in the definition of Trade Processing Platform below.

The term "**Assessment Contribution**" means an F&O Assessment Contribution, a CDS Assessment Contribution or an FX Assessment Contribution.

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

The term "**Bankruptcy**" means, in relation to a Person, where that Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it, by a Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation

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)(ix).

The term "**Corresponding Contract**", means an transaction arising or as referred to in Rule 401(m) between a Non-FCM/BD Clearing Member and a Segregated Customer on economic terms similar to a corresponding Non-CDS Contract recorded in the Clearing Member's Non-CDS Customer Account (except, where applicable, the position of the Clearing Member as buyer or seller).

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 by ISDA on 14 July 2009) and the Credit Derivatives Determinations Committees Rules (published by ISDA and as amended 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 "**Credit Support Document**" means any guarantee or letter of credit or other security interest issued or granted to or for the benefit of the Clearing House that guarantees, covers or secures the Clearing Member's obligations under any Contract, but excluding any Pledged Collateral Addendum.

The term "**Credit Support Provider**" means, in respect of a Clearing Member each provider of a Credit Support Document in relation to that Clearing Member.

[The term "Custodian" means any bank, custodian, sub-custodian, nominee, agent, depository or settlement system.](#)

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, in respect of a Clearing Member, any one customer account of the various different Customer Account Categories and comprises in the case of each Customer Account the related Customer Position Account and Customer Margin Account.

The term "**Customer Account Category**" means: (i) in relation to an FCM/BD Clearing Member, any of the following categories of Customer Account: DCM Customer Account, Non-DCM/Swap Customer Account, Swap Customer Account, Non-CDS Customer Account and SBS Customer Account; and (ii) in relation to a Non-FCM/BD Clearing Member, any of the following categories of Customer Account: Non-CDS Customer Account and CDS Customer Account.

The term "**Customer Account Contract**" means a Contract recorded in a Customer Position Account of a Clearing Member.

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

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

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

The term "**Non-Default Loss Assets**" means assets of the Clearing House of a value specified pursuant to Rule 919(i) which are intended to be applied towards Non-Default Losses pursuant to Rule 919.

The term "**Non-Default Loss Contributions**" means obligations of Clearing Members arising pursuant to Rule 919 to pay the Clearing House to cover Non-Default Losses.

The term "**Non-Default Losses**" means losses, liabilities, damages, injuries, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House, to the extent that the same are not subjected to any power of assessment under Rules 909 to 911 or any mechanism under Rules 914 to 916, arising in connection with:

- (i) the holding by the Clearing House or any Custodian of the proceeds of Margin, Guaranty Fund Contributions or other Permitted Cover (including any such assets transferred by a Defaulter) or Clearing House Contributions, including resulting from the the failure to perform or Insolvency of a Custodian;
- (ii) any investment(s) or re-investment(s) by the Clearing House of assets representing the proceeds of Margin, Guaranty Fund Contributions or other Permitted Cover (including any such assets transferred by a Defaulter) or Clearing House Contributions; or
- (iii) any other event (other than an Event of Default, except as referred to in paragraphs (i) and (ii)) to the extent that such liabilities, damages, injuries, costs, claims, shortfalls or expenses threaten the Clearing House's solvency.

- (d) Any waiver of any right or consent given by the Clearing House under these Rules is only effective if it is in writing, applies only in the circumstances for which it is given and shall not prevent the Clearing House from subsequently relying on the relevant provision. No delay or failure to exercise by the Clearing House of any of its rights or pursuing any of its remedies hereunder shall constitute a waiver. No single or partial exercise of any right or remedy by the Clearing House shall prevent any further exercise of the same or any other right or remedy.
- (e) If any extension of any length of time is approved in respect of any payment, deposit, transfer or performance under this Rule 110, any notice given to the Clearing House prior to the end of such extension period shall be deemed not to have been given.
- (f) The Clearing House shall be entitled without breach of these Rules to delay the making of a payment to any Clearing Member in respect of a Variation Margin or Mark-to-Market Margin call in respect of all or any of a Clearing Member's accounts on an intra-day basis without following the procedure set out in Rule 110(a) to (e) in circumstances in which:
- (i) another Clearing Member or Clearing Members has or have been or will be asked to make payment in respect of a Variation Margin or Mark-to-Market Margin call occurring at or around the same time;
 - (ii) that other Clearing Member has, or those other Clearing Members have failed to pay the Clearing House (which term for purposes of this Rule 503(k) and Rule 503(l) includes a request for payment or planned request for payment not yet being made, confirmed or due including for technical or operational reasons); and
 - (iii) the total amount of such failure or failures to pay exceeds the Original Margin, Initial Margin or FX Original Margin for each Proprietary Account or Customer Account to which the unpaid call relates provided by the Clearing Member or Clearing Members that has or have failed to pay the Clearing House.²

Rule 111 *Liability*

- (a) Each Clearing Member shall indemnify and hold harmless the Clearing House against any and all losses, liabilities, damages, injuries, costs, claims, shortfalls and expenses (excluding any consequential losses, liabilities, damages, injuries, costs, claims, shortfalls or expenses) incurred or suffered by the Clearing House or any of its officers or employees arising out of or in connection with any of the following:
- (i) a breach (or an allegation made by the Clearing House or any Governmental Authority of a breach) by such Clearing Member of any of its obligations under these Rules, the Procedures, its Clearing Membership Agreement or any Contract;
 - (ii) such Clearing Member's conduct (excluding conduct attributed to a Clearing Member solely as a result of the conduct of a Customer under Rule 102(j)),

² Rule 110(f) does not apply to the CDS Contract Category.

Account or Proprietary Account of the Pledged Collateral Account (provided that the value of any Pledged Collateral returned directly to a Clearing Member or any Person on such Clearing Member's behalf will be excluded from the calculation of any relevant net sum); and (B) only to the extent that such applied amount is required to be included in the net sum calculation to ensure that the net sum for the Customer Account or Proprietary Account of the Pledged Collateral Account would not represent an amount payable by the Clearing Member to the Clearing House; or (ii) pursuant to the Default Portability Rules. 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, it shall be returned separately from any net sum certified by the Clearing House pursuant to Rule 905.

- (j) Without limiting Rule 111, but subject to any contrary requirements of law: The Clearing House shall not be liable to any Clearing Member, Customer or other Person for any losses, ~~claims,~~ liabilities, damages, injuries, costs, claims, shortfalls or expenses arising out of or relating to the holding of any Pledged Collateral or the assets in any Pledged Collateral Account ("**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 responsibility for any investment decisions made or directed by a Clearing Member (or any Representative thereof) with respect to assets representing Pledged Collateral or for the results of any such investments. The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any requests, instructions or directions with respect to Pledged Collateral or the assets in any Pledged Collateral Account under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate Clearing Member.
- (k) With respect to F&O Contracts, changes to the matters described in Rules 502(d) and (e) above, including assets eligible as Margin or Permitted Cover and the haircuts established with respect thereto, will be based on an analysis of appropriate factors as determined by the Clearing House, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spreads and correlations between relevant assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information.

the Defaulter was party shall be treated as having been closed out and terminated at the same price.

- (d) If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to close out or terminate all Contracts to which the Defaulter is party pursuant to Rule 905(b) or Rule 905(c), the Clearing House may close out or terminate such Contracts by taking opposite positions for F&O Contracts in Contracts in the current expiration period, for CDS Contracts in Contracts of a different series or version number or scheduled termination date or, for FX Contracts in Contracts of a different FX Settlement Date, and terminating the resultant terminated positions.
- (e) All terminations and closing out of Contracts pursuant to this Rule 905 shall be for the account and cost of the Defaulter.
- (f) Without prejudice to the generality of the indemnities in Rules 111 and 301, but without duplication of any other obligation under these Rules, the Defaulter, acting for its own account as principal, shall indemnify, hold harmless and be liable to the Clearing House in respect of all the losses, unpaid fees, liabilities, damages, injuries, taxes, costs, [claims](#), [shortfalls](#) and expenses (including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts or Margin and any amount payable by the Clearing House to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default), in the case of any such item whether relating to a Proprietary Account or Customer Account of the Defaulter, incurred or suffered by any of the Clearing House, any Market or any of their officers or employees or those of their Affiliates arising out of the Defaulter's conduct (whether such conduct took place prior to or after declaration of the Event of Default) or in connection with the Event of Default. Rule 111(b) shall apply in respect of this Rule 905(f) in the same way as it applies to Rule 111(a).

Rule 906 *Net Sums Payable*

- (a) Following discharge of a Defaulter's rights, obligations and liabilities under Contracts pursuant to this Part 9, the Clearing House shall carry out the following calculation separately in respect of the Proprietary Account and each different Customer Account of the Defaulter. The calculation set out below follows the requirements relating to default rules of recognised clearing houses set out in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995). The methodology involves aggregating or setting off various amounts (as applicable) so as to produce separate net sums for the Proprietary Account and each different Customer Account of the Defaulter (each such net sum, *N*) in each case defined by the formula:

$$N = L - A - D - C - M - GFC - SC - OA + OL$$

where such letters have the meanings set out below in this Rule 906(a):

908 used for the calculation of relevant Default Amounts shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Defaulter Resources.

- (iii) ~~(iii)~~ The term "**Available Non-Defaulter Resources**" means, following a particular Event of Default, the cash proceeds or equivalent cash value (as calculated by the Clearing House) of those Guaranty Fund Contributions, Clearing House Contributions and Assessment Contributions which are available to be applied pursuant to Rule 908, ~~provided that Assessment~~ plus any Non-Default Loss Contributions received by the Clearing House pursuant to Rule 919 solely to the extent that the same cover Non-Default Losses referable to the Margin, Guaranty Fund Contributions or other Permitted Cover provided by a Defaulter, provided that Assessment Contributions and such Non-Default Loss Contributions shall only count as Available Non-Defaulter Resources if they have been received by the Clearing House in cleared funds at the time the Clearing House performs a calculation of Available Non-Defaulter Resources. The principles in Rule 908 shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Non-Defaulter Resources.
- (iv) ~~(iv)~~ The term "**Available Product Funds**" means the amount of resources available to the Clearing House in respect of a Relevant Contract Category, as calculated in accordance with Rule 916(f).
- (v) ~~(v)~~ The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vi) ~~(vi)~~ The term "**Cash Gain**" means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.
- (vii) ~~(vii)~~ The term "**Cash Gainer**" means, in respect of each Contributing Clearing Member and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is greater than zero.
- (viii) ~~(viii)~~ The term "**Cash Gainer Adjustment**" has the meaning set out in Rule 914(c).
- (ix) ~~(ix)~~ The term "**Cash Loser**" means, in respect of each Contributing Clearing Member and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is equal to or less than zero.
- (x) ~~(x)~~ The term "**Cash Loser Adjustment**" has the meaning set out in Rule 914(d).

- (xi) ~~(xi)~~ The term "**Clearing House Event**" means a Failure To Pay or Insolvency occurring in respect of the Clearing House.
- (xii) ~~(xii)~~ The term "**Clearing Member Adjustment Amount**" means, in respect of all the Margin Account(s) of any Contributing Clearing Member and any Loss Distribution Day, an amount equal to the sum of the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Clearing Member less the sum of the Cumulative Actual Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Clearing Member, in each case in respect of the Loss Distribution Period in which such Loss Distribution Day falls.
- (xiii) ~~(xiii)~~ The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House, namely F&O Contracts, CDS Contracts and FX Contracts.
- (xiv) ~~(xiv)~~ The term "**Contractual Payments**" means, in respect of each Margin Account and any Business Day, any of the following connected to such Margin Account on such Business Day: for CDS Contracts: any Fixed Amounts, Initial Payment, Physical Settlement Amount, Auction Settlement Amount or any Cash Settlement Amount; and for F&O Contracts any Market Delivery Settlement Price, Option premium or other settlement amount, strike price, exercise price, settlement price or delivery price, exercise price or any other payment pursuant to the terms of a Contract. Where physical delivery or physical settlement of any Investment or Commodity is due to be made by way of final settlement under a Contract of a Relevant Contract Category from the Clearing House to any Clearing Member, and the Clearing House (including any non-defaulting Clearing Member or its Transferee acting as agent for the Clearing House) has not received delivery of an equivalent Investment or Commodity from the Defaulter, the Clearing House may attribute a reasonable value to its delivery obligations and treat such amount as a Contractual Payment for purposes of this definition.
- (xv) ~~(xv)~~ The term "**Contributing Clearing Member**" means a Clearing Member that is not a Defaulter in respect of whom the Estimated Payable Net Sum or total net sum would or does exceed the Available Defaulter Resources.
- (xvi) ~~(xvi)~~ The term "**Cooling-off Period**" means the period commencing on the date of the Cooling-off Period Trigger Event and terminating 30 Business Days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 30 or fewer Business Days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling 30 Business Days after the second such Cooling-off Period Trigger Event.
- (xvii) ~~(xvii)~~ The term "**Cooling-off Period Trigger Event**" in respect of a particular Contract Category, means: (i) any call for Assessment Contributions being made; (ii) the occurrence of a Sequential Guaranty Fund Depletion.

- [\(xviii\)](#) ~~(xviii)~~ The term "**Cooling-off Termination Period**" means the period commencing on the date of each Cooling-off Period Trigger Event and terminating 10 Business Days thereafter. A Cooling-off Termination Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 10 or fewer Business Days since the previous Cooling-off Period Trigger Event, until the date falling 10 Business Days after the second such Cooling-off Period Trigger Event.
- [\(xix\)](#) ~~(xix)~~ The term "**Cumulative Actual Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the aggregate amount, if any, actually paid by the Clearing House to such Clearing Member (expressed as a positive number) or by such Clearing Member to the Clearing House (expressed as a negative number) in respect of such Margin Account by way of Contractual Payments and MTM/VM, taking into account each Margin Account Adjustment from but excluding the relevant Last Call Prior To Default to and including such Business Day such that, to the extent that any payment of MTM/VM or Contractual Payment is netted or offset against any Margin Account Adjustment on any Loss Distribution Day, the amount actually paid for the purposes of this definition shall be used in calculating such aggregated amount.
- [\(xx\)](#) ~~(xx)~~ The term "**Cumulative Transfer Cost**" means, on any Business Day during any Loss Distribution Period, the sum of any Transfer Cost for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- [\(xxi\)](#) ~~(xxi)~~ The term "**Cumulative Unadjusted Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the sum of the Pre-Haircut Gains, Losses and Realised Cash Flows for such Margin Account for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- [\(xxii\)](#) ~~(xxii)~~ The term "**Default Auction**" means an auction which takes place in accordance with the Default Auction Procedures.
- [\(xxiii\)](#) ~~(xxiii)~~ The term "**Default Auction Procedures**" means the F&O Default Auction Procedures, CDS Default Auction Procedures or FX Default Auction Procedures, as applicable to the Relevant Contract Category in question.
- [\(xxiv\)](#) ~~(xxiv)~~ The term "**Distribution Haircut**" or "**DH**" means, on each Loss Distribution Day, the fraction determined by the Clearing House in accordance with the following formula:

$$DH_{(t)} = UL_{(t)} / ACG_{(t)}$$

where:

UL means the Uncovered Loss; and

ACG means the Aggregate Cash Gains,

[\(xxv\)](#) ~~(xxv)~~ The term "**Estimated Payable Net Sum**" means, following a particular Event of Default, an estimate by the Clearing House of the total of those net sums calculated using the methodology set out in Rule 906 which represent an amount payable by a Defaulter in respect of a particular Account, based on the cash or estimated value of items considered by the Clearing House to be sufficiently certain to be estimated as at the date of the estimation (including, in respect of Contracts, latest available MTM/VM Prices), without any netting or offsetting in respect of any other Estimated Payable Net Sum or actual net sum payable to a Defaulter in respect of a different Account of a Defaulter.

[\(xxvi\)](#) ~~(xxvi)~~ The term "**Haircutting Determination**" has the meaning set out in Rule 914(a).

[\(xxvii\)](#) ~~(xxvii)~~ The term "**Last Call Prior To Default**" means the most recent Business Day on which payments of MTM/VM required to be made by Clearing Members were paid in full.

[\(xxviii\)](#) ~~(xxviii)~~ The term "**Loss Distribution Day**" means a Business Day in the Loss Distribution Period.

[\(xxix\)](#) ~~(xxix)~~ The term "**Loss Distribution Period**" means, in relation to a Relevant Contract Category, the period commencing from and including the date specified by the Clearing House in a Circular following a Haircutting Determination and ending on a date specified by the Clearing House in the same or any subsequent Circular, as the same may be extended under Rule 914. A Loss Distribution Period shall end with immediate effect and without the need for any action on the part of any Clearing Member or the Clearing House upon any Clearing House Event.

[\(xxx\)](#) ~~(xxx)~~ The term "**Margin Account**" means each Proprietary Margin Account and Customer Margin Account of a Contributing Clearing Member, related to the Proprietary Position Account or Customer Position Account in which Contracts of a Relevant Contract Category are recorded.

[\(xxxi\)](#) ~~(xxxi)~~ The term "**Margin Account Adjustment**" means, in respect of each Margin Account and any Business Day, any Cash Gainer Adjustment or Cash Loser Adjustment as the case may be payable in connection with such Margin Account on such Business Day.

[\(xxxii\)](#) ~~(xxxii)~~ The term "**MTM/VM**" stands for mark-to-market/variation margin and means: (i) in relation to F&O Contracts, Variation Margin; (ii) in relation to CDS Contracts, Mark-to-Market Margin; and (iii) in relation to FX Contracts, FX Mark-to-Market Margin. References to the payment of MTM/VM shall be construed as including obligations to transfer cash or other Permitted Cover as a

result of changes to MTM/VM Prices (as the difference between MTM/VM Prices on different Business Days) following a recalculation of MTM/VM Price and not to the total amount of MTM/VM held by any Clearing Member or the Clearing House at any time.

[\(xxxiii\)](#) ~~(xxxiii)~~ The term "**MTM/VM Price**" means: (i) in relation to F&O Contracts, Market Delivery Settlement Price; (ii) in relation to CDS Contracts, Mark-to-Market Price; and (iii) in relation to FX Contracts, FX Mark-to-Market Price.

[\(xxxiv\)](#) ~~(xxxiv)~~ The term "**Negative Product Repayment Amounts**" means the negative single net sum determined in respect of a Clearing Member's Margin Account in respect of a Relevant Contract Category that is subject to a termination in accordance with Rule 916(e).

[\(xxxv\)](#) ~~(xxxv)~~ The term "**Original/Initial Margin**" means: (i) in relation to F&O Contracts, Original Margin (including buyer's security and seller's security); (ii) in relation to CDS Contracts, Initial Margin; and (iii) in relation to FX Contracts, FX Original Margin and, in any case (i), (ii) or (iii) includes Margin under Rule 502(g).

[\(xxxvi\)](#) ~~(xxxvi)~~ The term "**Outward MTM/VM Payments**", on any Business Day, means amounts in respect of MTM/VM that the Clearing House has calculated which would, but for Rule 914, be paid in full by the Clearing House to Contributing Clearing Members (whether relating to their Proprietary Account or any Customer Account) in respect of a particular Relevant Contract Category following the determination of MTM/VM Prices for Contracts of that Contract Category.

[\(xxxvii\)](#) ~~(xxxvii)~~ The term "**Positive Product Repayment Amounts**" means the positive single net sum determined in respect of a Clearing Member's Margin Account in respect of a Relevant Contract Category that is subject to a termination in accordance with Rule 916(e).

[\(xxxviii\)](#) ~~(xxxviii)~~ The term "**Pre-Haircut Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the amount which would be paid by the Clearing House to such Clearing Member (expressed as a positive number) or by such Clearing Member to the Clearing House (expressed as a negative number) by way of Contractual Payments or MTM/VM in respect of such Margin Account on such Business Day in the absence of the application of the Distribution Haircut. In connection with CDS Contracts and any other Contract which is not re-priced daily in connection with the establishment of a Mark-to-Market Price (or any other similar price, however described or defined), for the avoidance of doubt, the Pre-Haircut Gains, Losses and Realised Cash Flows are calculated taking into account MTM/VM that is paid by the Clearing House to the Clearing Member (or would have been payable to the Clearing Member but for Rule 914) and

Mark-to-Market Margin payable and paid by the Clearing Member to the Clearing House (without taking into account any reductions to such payments made pursuant to this Rule 914).

- [\(xxxix\)](#) ~~(xxxix)~~ The term "**Product Termination Amount**" means the Negative CDS Repayment Amounts and the Positive CDS Repayment Amounts in respect of Contracts of a Set subject to termination under Rule 916.
- [\(xl\)](#) ~~(xl)~~ The term "**Received MTM/VM**", on a particular Business Day following an Event of Default, means the amount that the Clearing House has actually received in cleared funds from Clearing Members (other than Defaulters) who were party to Contracts in a Relevant Contract Category in respect of MTM/VM.
- [\(xli\)](#) ~~(xli)~~ The term "**Relevant Assessment Contributions**" means those Assessment Contributions (being F&O Assessment Contributions, CDS Assessment Contributions or FX Assessment Contributions) which may be applied to losses relating to a Relevant Contract Category.
- [\(xlii\)](#) ~~(xlii)~~ The term "**Relevant Contract Category**" subject to Rule 914(h), means one of the three categories of Contract (F&O, CDS or FX) to which a Haircutting Determination or Termination Circular relates (as applicable in Rules 914 or 916 respectively), as designated by the Clearing House in the relevant Circular.
- [\(xliii\)](#) ~~(xliii)~~ The term "**Relevant Guaranty Fund**" means a Guaranty Fund (being the F&O Guaranty Fund, the CDS Guaranty Fund or the FX Guaranty Fund) in respect of which Guaranty Fund Contributions may be applied to losses relating to a Relevant Contract Category.
- [\(xliv\)](#) ~~(xliv)~~ The term "**Relevant Guaranty Fund Contributions**" means those Guaranty Fund Contributions (being F&O Guaranty Fund Contributions, CDS Guaranty Fund Contributions or FX Guaranty Fund Contributions) which may be applied to losses relating to a Relevant Contract Category.
- [\(xlv\)](#) ~~(xlv)~~ The term "**Relevant Membership Category**" means one of the three categories of membership (F&O, CDS or FX) to which a Haircutting Determination or Termination Circular relates (as applicable in Rules 914 or 916 respectively), as designated by the Clearing House in the relevant Circular.
- [\(xlvi\)](#) ~~(xlvi)~~ The term "**Relevant Post Default Period**" means the period starting at the time of declaration of an Event of Default of a Clearing Member which clears a particular Contract Category and ending at the time of declaration of net sums in respect of any Proprietary Account and each Certain Account of the Defaulter.
- [\(xlvii\)](#) ~~(xlvii)~~ The term "**Sequential CDS Guaranty Fund Depletion**" in respect of a particular CDS Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different CDS Clearing Members within a period of 30 or fewer Business Days; (ii) CDS Guaranty Fund Contributions have been applied in respect of at least two such

Events of Default; and (iii) the total amount that the CDS Clearing Member has as a result paid to the Clearing House to replenish its CDS Guaranty Fund Contributions exceeds the total amount of CDS Guaranty Fund Contributions standing to the credit of that CDS Clearing Member in the Clearing House's accounts prior to the first Event of Default.

(xlviii) ~~(xlviii)~~ The term "**Sequential F&O Guaranty Fund Depletion**" in respect of a particular F&O Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different F&O Clearing Members within a period of 30 or fewer Business Days; (ii) F&O Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the F&O Clearing Member has as a result paid to the Clearing House to replenish its F&O Guaranty Fund Contributions exceeds the total amount of F&O Guaranty Fund Contributions standing to the credit of that F&O Clearing Member in the Clearing House's accounts prior to the first Event of Default.

(xlix) ~~(xlix)~~ The term "**Sequential FX Guaranty Fund Depletion**" in respect of a particular FX Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different FX Clearing Members within a period of 30 or fewer Business Days; (ii) FX Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the FX Clearing Member has as a result paid to the Clearing House to replenish its FX Guaranty Fund Contributions exceeds the total amount of FX Guaranty Fund Contributions standing to the credit of that FX Clearing Member in the Clearing House's accounts prior to the first Event of Default.

(l) ~~(l)~~ The term "**Sequential Guaranty Fund Depletion**" means a Sequential CDS Guaranty Fund Depletion, a Sequential F&O Guaranty Fund Depletion, or a Sequential FX Guaranty Fund Depletion.

(li) ~~(li)~~ Intentionally omitted.

(lii) ~~(lii)~~ Intentionally omitted.

(liii) ~~(liii)~~ Intentionally omitted.

(liv) ~~(liv)~~ Intentionally omitted.

(lv) ~~(lv)~~ The term "**t**" means, in respect of any determination made in relation to a Business Day, such Business Day.

(lvi) ~~(lvi)~~ The term "**t-1**" means, in respect of any determination made in relation to a Business Day, the Business Day immediately prior to such Business Day.

- ([lvii](#)) ~~(lvii)~~ The term "**Termination**" in respect of a Contract means termination, close-out, exercise, abandonment, or expiry pursuant to its terms and under the Rules.
- ([lviii](#)) ~~(lviii)~~ The term "**Termination Circular**" has the meaning set out in Rule 916(a).
- ([lix](#)) ~~(lix)~~ The term "**Termination Price**" in respect of a Contract means the price determined by the Clearing House, which shall be applicable upon the termination, close-out, exercise, abandonment, or expiry of the Contract upon any termination pursuant to Rule 916.
- ([lx](#)) ~~(lx)~~ The term "**Total Cumulative Pre-Haircut Amount**" means, in respect of any Business Day, the sum of the Total Pre-Haircut Amount for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- ([lxi](#)) ~~(lxi)~~ The term "**Total Pre-Haircut Amount**" or "**TPHA**" means, in respect of any Business Day, the sum of the Pre-Haircut Gains, Losses and Realised Cash Flows in respect of all Margin Accounts of all Contributing Clearing Members on such Business Day.
- ([lxii](#)) ~~(lxii)~~ The term "**Transfer Cost**", on any Business Day, means the total amount payable by the Clearing House to Clearing Members that are not Defaulters as consideration for the entry into of replacement Contracts in a Relevant Contract Category to those to which a Defaulter was party (or otherwise Transferred Contracts), whether as a result of an auction, sale or otherwise pursuant to Part 9 plus any associated costs or expenses of the Clearing House.
- ([lxiii](#)) ~~(lxiii)~~ The term "**Uncovered Loss**" or "**UL**" means in respect of the Clearing House on any Loss Distribution Day:

- (A) where Rule 914(a)(ii)(A) applies, an amount calculated in accordance with the following formula:

$$\text{Uncovered Loss}_{(t)} = \text{TPHA}_{(t)} + \text{CTC}_{(t)} - \text{AR}$$

where:

TPHA means the Total Pre-Haircut Amount;

CTC means the Cumulative Transfer Cost;

AR means the Available Resources; and

the Uncovered Loss as at the Last Call prior to Default shall be zero,

provided that if the Uncovered Loss would be greater than zero, it shall be deemed to be equal to be zero.

- (B) where Rule 914(a)(ii)(B)(1) applies, the Estimated Payable Net Sum minus Available Non-Defaulter Resources; or
- (C) where Rule 914(a)(ii)(B)(2) applies, the total of relevant net sums payable by but not received from the Defaulter minus Available Non-Defaulter Resources;

provided that, where there is more than one Event of Default with overlapping Relevant Post Default Periods, the Uncovered Loss may be calculated with regard to Cumulative Transfer Cost and Available Resources for all relevant Defaulters and Events of Default at that time.

(lxiv) ~~(lxiv)~~ The term "**Under-priced Auction**" means a situation in which such number of Default Auctions as are provided for in the Default Auction Procedures have taken place but a full allocation of the auctioned Contracts has not occurred or the auction price determined in such Default Auctions falls below any minimum or reserve price or above any maximum or reserve price set by the Clearing House.

Rule 914 *Margin haircutting*⁹

- (a) This Rule 914 shall only apply if the Clearing House has published its determination (any such determination, a "**Haircutting Determination**") that the following five conditions are all satisfied:
 - (i) an Event of Default has been declared but the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of its Proprietary Account and all of its different Customer Accounts;
 - (ii) the Clearing House determines that one or more of the following circumstances has arisen:
 - (A) the sum of Outward MTM/VM Payments and Transfer Cost (if any) in respect of a particular Contract Category would, in its view, exceed Available Resources plus Received MTM/VM for the same Contract Category;
 - (B) Available Resources are insufficient to meet the shortfalls, losses or liabilities of the Clearing House on relevant Accounts of the Defaulter, which may be determined if, in its view:
 - (1) any Estimated Payable Net Sum would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, would be available to meet the losses of the Clearing House represented by any net sum payable by the Defaulter were such net sum to be of an amount equal to the Estimated Payable Net Sum; or

⁹ Rule 914 does not apply to the CDS Contract Category.

- (ii) there is an Event of Default or are Events of Default before the relevant Termination Date,

then the Clearing Member in question shall remain liable for the application of any then unapplied Relevant Guaranty Fund Contributions and unapplied Relevant Assessment Contributions (including those paid or which the Clearing Member is liable to pay under Rule 209(d)) for all such Events of Default (as if all such Events of Default had been declared by the Clearing House prior to the Termination Notice Time), subject to the general limits relating to particular Events of Default and all Events of Default referred to in this Rule 918.

- (c) Any Termination Notice issued by a Clearing Member shall be irrevocable by the Clearing Member and membership may only be reinstated pursuant to a new application for membership following the close-out of all its open Contracts of the Relevant Contract Category.
- (d) A Clearing Member whose membership in respect of the Relevant Membership Category has terminated shall, following the Termination Date, cease to be liable for Guaranty Fund Contribution replenishments under Rule 1102 in respect of Events of Default relating to the Relevant Contract Category or affected Membership Category that occur after the Termination Date.

Rule 919 **Non-Default Losses**

- (a) Powers of assessment in relation to Non-Default Loss Contributions and application of Non-Default Loss Assets may take place under this Rule 919 if a Non-Default Loss has arisen and has been declared by the Clearing House. Any Non-Default Loss in respect of any Account of a Defaulter shall not be governed by this Rule 919 nor be capable of being declared as part of a Non-Default Loss Amount, but shall instead be governed by Rules 906 to 918.
- (b) The first portion of any Non-Default Loss will be met by the Clearing House applying any available Non-Default Loss Assets which is so designated and available at the time the event giving rise to the Non-Default Loss occurs. Immediately upon the Clearing House certifying a Non-Default Loss Amount in a Circular of an amount greater than the available Non-Default Loss Assets, all Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay Non-Default Loss Contributions to the Clearing House in accordance with Rules 919(c)-(f).
- (c) The Non-Default Loss Contribution payable by each Clearing Member shall be the amount:

$$\frac{(NDLAm - NDLAS)}{\quad} \times \frac{GF(CM)}{GF(all)}$$

subject to the caps in Rules 919(d)-(e).

where:

NDLAm is the Non-Default Loss Amount certified by the Clearing House in a Circular;

NDLAs is the total amount of Non-Default Loss Assets of the Clearing House available and attributed to meet the Non-Default Loss Amount;

GF(CM) is the total required Guaranty Fund Contributions for all Contract Categories of the relevant Clearing Member at the time of the event giving rise to the Non-Default Loss; and

GF(all) is the total required Guaranty Fund Contributions for all Contract Categories of all Clearing Members at the time of the event giving rise to the Non-Default Loss (less Guaranty Fund Contributions of Defaulters and excluding the Clearing House Contributions and Non-Default Loss Assets).

(d) The total of all Non-Default Loss Amounts declared by the Clearing House in respect of all events occurring at any time shall be no greater than the cumulative cap of USD 1 billion. The Clearing House may only reset this cap or establish a new cap by issuing a Circular specifying that such resetting is to take place, which Circular shall not be issued except if the resetting of the cap on Non-Default Loss Amounts has been approved by an affirmative vote of both: (i) the Board; and (ii) the risk committees for all Contract Categories under applicable processes established pursuant to documents governing the internal governance of the Clearing House and its committees, in each case at quorate meetings at which the facts giving rise to the proposed resetting or establishment of the new cumulative cap on Non-Default Loss Amounts have been considered and at which the relevant body has decided that the cap should be reset or established at the new proposed amount. Such resetting or establishment may be in respect of prospective events only or in respect of past Non-Default Losses only or both.

(e) The total Non-Default Loss Contributions of any single Clearing Member shall be capped at the amount:

$$\frac{(\text{Cap} - \text{UNDLAs} - \text{CNDLC}) \times \text{GF(CM)}}{\text{GF(all)}}$$

where:

Cap is USD 1 billion or such other cap as applies from time to time pursuant to Rule 919(d).

UNDLAs is the amount of unapplied Non-Default Loss Assets;

CNDLC is the total amount of called Non-Default Loss Contributions since the introduction of this Rule 919 or the last resetting or establishment of the cap in Rule 919(d);

GF(CM) is the total required Guaranty Fund Contributions for all Contract Categories of the relevant Clearing Member from time to time; and

GF(all) is the total required Guaranty Fund Contributions for all Contract Categories of all Clearing Members from time to time (less Guaranty Fund Contributions of Defaulters and excluding the Clearing House Contributions and Non-Default Loss Assets).

- (f) All Non-Default Loss Contributions shall become due and payable 2 Business Days after the Clearing House notifies Clearing Members of the amounts that will be due. Non-Default Loss Contributions will be levied by the Clearing House pursuant to a call for additional cash and collected by the Clearing House pursuant to Part 3.
- (g) If, after any Non-Default Loss Contribution has been paid, the Clearing House collects amounts from a Custodian or otherwise so as to reduce the Non-Default Loss or receives Non-Default Loss Contributions in whole or in part from a Defaulter or a Person liable to pay unpaid Non-Default Loss Contributions, in either case in cleared funds, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any expenses incurred in connection with recovery) to other Clearing Members (excluding any Defaulter) *pro rata* in respect of paid Non-Default Loss Contributions relating to the event in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House (not being Non-Default Loss Assets) or other Persons applied to meet the Non-Default Loss following exhaustion of the assets specified in this Rule 919 or in substitution of any such assets. The amount of any such recovery shall result in total Non-Default Loss Contributions being deemed to have been reduced for purposes of the cap in Rule 919(d).
- (h) Neither the exercise of powers of assessment by the Clearing House nor the payment of Non-Default Loss Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.*, to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i) or to pay Assessment Contributions.
- (i) If the Clearing House determines that it has called Non-Default Loss Contributions in excess of that required or actually applied against a Non-Default Loss or makes a recovery, it shall credit any excess or recovered amounts due to the Clearing Member to the Clearing Member's Proprietary Account. If the Proprietary Account becomes over-collateralised, any resulting Surplus Collateral will be available for withdrawal under Part 3 and the Finance Procedures in the normal way.
- (j) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Finance Procedures, of the total amount of Non-Default Loss Assets.
- (k) The total amount of Non-Default Loss Assets applied in connection with any Non-Default Loss shall be notified to Clearing Members in a Circular prior to the same being applied. The Clearing House will replenish the Non-Default Loss Assets to its previous level within 2 Business Days of any time when the cap in Rule 919(d) is reset or re-established to its previous or a greater level (following the application of a total amount of applied Non-Default Loss Assets and Non-Default Loss Contributions exceeding the sum of at least the previously applicable cap). The Clearing House may also replenish any regulatory capital, using its or its Affiliates' resources or otherwise, as

is required to bring it in compliance with Applicable Laws at any time including following a Non-Default Loss. However, no such recapitalisation shall result in any obligation of any Clearing Member to pay Non-Default Loss Contributions, or the size of any Non-Default Loss, being reduced. The Clearing House may replenish Non-Default Loss Assets through re-applying retained earnings, where these are available.

- (l) Liabilities of Clearing Members to pay Non-Default Loss Contributions under this Rule 919 shall apply independently from any powers of assessment under Rules 909 to 911 and give rise to a separate and additional payment obligation for Clearing Members. For the avoidance of doubt, none of the caps on powers of assessment liabilities arising pursuant to Rule 917 or 918 shall restrict or limit any liability of a Clearing Member in respect of Non-Default Losses under this Rule 919. The conditions in Rule 916(a)(ii)(B)(2) shall not be considered satisfied to the extent that they are only satisfied as a result of any Non-Default Loss.

pledged, repledged or have any lien, interest or charge created over them at the Clearing House's discretion, in order to realise proceeds therefrom.

- (b) Any expense (including, without limitation, legal fees and expenses) incurred by the Clearing House in connection with the use, application or transfer of Guaranty Fund Contributions, or the return of equivalent assets to a Clearing Member, may, at the option and discretion of the Clearing House, be charged to the account of such Clearing Member.
- (c) A Clearing Member's entitlement to repayment of any Guaranty Fund Contribution or any part of it or interest thereon shall not be capable of assignment or transfer by the Clearing Member or being made subject to any Encumbrance whatsoever purporting to rank in priority over, *pari passu* with, or subsequent to, the rights of the Clearing House or in conflict with Rule 908. Any purported Encumbrance of a Clearing Member in respect of any Guaranty Fund Contribution shall be null and void.
- (d) Default insurance policies of which the Clearing House is the beneficiary (if any) may be subject to limits on claims applicable in respect of particular time periods (each such period, a "**Relevant Period**"). Furthermore, pursuant to the terms of any such insurance obtained by the Clearing House, it is possible that (i) insurance claims may be payable in excess of losses resulting from a Default or Defaults above a certain amount ("**Loss Threshold**") occurring within a Relevant Period as opposed to following the application of particular assets in respect of particular Defaults in the order set out in Rule 908; or (ii) default insurance policies may apply only in relation to losses occurring in relation to certain Sets of Contracts cleared by the Clearing House or particular Guaranty Funds. As a result, it is possible that: (A) insurance receipts may be available to (and applied by) the Clearing House at an earlier order to that specified in Rule 908 if the total available Guaranty Fund Contributions exceed the Loss Threshold or in respect of a second or subsequent Default where the limit on claims for the Relevant Period has not been exhausted; (B) no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period; (C) the insurance policies (if any) may not provide cover in respect of certain Events of Default; or (D) there may be no default insurance either generally or in respect of any particular products cleared by the Clearing House. The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contract or Guaranty Fund applicable to any default insurance obtained by the Clearing House. Neither this Rule 1103(d) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.
- (e) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Finance Procedures, of each of the Clearing House Contributions. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain amounts equal to the total of the Clearing House Contributions in a separate account from its other assets ([other than Non-Default Loss Assets](#)) and to use such amounts only for the purposes of meeting shortfalls arising directly or indirectly from Defaults in accordance with this Part 11. ~~The Clearing House undertakes to all~~

~~non-defaulting Clearing Members from time to time to maintain Clearing House F&O Contributions, Clearing House CDS Contributions and Clearing House FX Contributions in a separate account or accounts for each such contribution.~~ This Rule 1103(e) shall not restrict the Clearing House from investing such amounts in any way that it is able to invest Guaranty Fund Contributions made by Clearing Members.

- (f) The total amount of Guaranty Fund Contributions for each Guaranty Fund and any Clearing House Contributions applied in connection with any Event of Default shall be notified to Clearing Members in a Circular prior to the same being applied.

Part 12 Settlement Finality Regulations and Companies Act 1989

Rule 1201 *Introduction and Interpretation*

- (a) The Clearing House is the system operator of a Designated System for the purposes of the Settlement Finality Regulations in respect of Transfer Orders. In addition, Part VII of the Companies Act 1989 applies in respect of Contracts, the 'default rules' and 'default proceedings' of the Clearing House and certain other matters related to the Clearing House.
- (b) Clearing Members are subject to various obligations and requirements as a result of the Settlement Finality Regulations and Companies Act 1989. Clearing Members must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Regulations or the Companies Act 1989. Furthermore, various modifications to Applicable Laws relating to Insolvency affecting Clearing Members apply pursuant to the Settlement Finality Regulations and Companies Act 1989.
- (c) The term "**AFI Agreement**" means a payment services agreement between the Clearing House and an Approved Financial Institution.
- ~~(d) The term "**Custodian**" means any custodian, sub-custodian, nominee, agent, depository or settlement system used by a Clearing Member or the Clearing House for the holding or transfer of Non-Cash Collateral that is subject of a Collateral Transfer Order provided that such person 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, such a person).~~
- (d) ~~(e)~~ The term "**Default Arrangements**" means the Rules and Procedures relating to, or that can be exercised upon, an Event of Default including, without limitation, all of Part 9 and Part 11 and this Part 12 of the Rules and Procedures relating thereto and any and all actions, omissions, powers and arrangements of the Clearing House pursuant to such Rules or Procedures.
- (e) ~~(f)~~ The term "**Designated System**" means the system operated by the Clearing House consisting of the formal arrangements, between the Clearing House and Participants including the common rules (including the Rules and the Procedures) and the standardised arrangements (including the AFI Agreements, Clearing Membership Agreements and other agreements involving the Clearing House, Clearing Members and Approved Financial Institutions) and related functionality for the effecting of Transfer Orders between the Clearing House and Participants which, *inter alia*:
- (i) enable the Clearing House to give instructions and to place at the disposal of Clearing Members amounts of money on the account of Approved Financial Institutions;

- (ii) enable Clearing Members to give instructions and to place at the disposal of the Clearing House amounts of money on the accounts of Approved Financial Institutions;
- (iii) enable the Clearing House and Clearing Members to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
- (iv) enable transfers, assignments and novations of Contracts between Clearing Members or following a Default;
- (v) enable transfers of Non-Cash Collateral to or to the order of the Clearing House and Clearing Members;
- (vi) enable Bilateral CDS Transactions and CDS Trade Particulars to give rise to CDS Contracts;
- (vii) enable ICE Endex Block Transactions, ICE OTC Block Transactions, ICE Futures Europe Block Transactions, ICE Futures US Block Transactions and LIFFE Block Transactions to give rise to F&O Contracts;
- (viii) facilitate physical settlement obligations under CDS Contracts and obligations for the delivery of Deliverables that are SFD Securities under LIFFE Contracts;
- (ix) facilitate the transfer between the Clearing House and Participating Exchanges of Linked Incoming Contracts, Linked Outgoing Contracts and Participating Exchange Transactions pursuant to Rule 410; and
- (x) facilitate supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in respect of Contracts or Permitted Cover.

(f) ~~(g)~~ The term "**Indirect Participant**" means any Disclosed Principal Member or Customer, provided that: (i) it is an 'indirect participant', within the meaning of the Settlement Finality Regulations, in the Designated System; (ii) the identity of that Disclosed Principal Member or Customer has been notified to the Clearing House in 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.

(g) ~~(h)~~ The term "**Intermediary Financial Institution**" means any bank or branch used by an Approved Financial Institution, whether as banker, corresponding banker, intermediary or agent, for the fulfilment of a Payment Transfer Order, that 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, such a person).

- (h) ~~(h)~~ The term "**Non-Cash Collateral**" means any Permitted Cover that is in the form of an SFD Security.
- (i) ~~(i)~~ The term "**Participant**" means the Clearing House, each Clearing Member, each Participating Exchange 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).
- (j) ~~(j)~~ The term "**Payment Transfer Order**" means a payment transfer order (as defined in the Settlement Finality Regulations) that is a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order subject to this Part 12.
- (k) ~~(k)~~ The term "**Securities Transfer Order**" means a securities transfer order (as defined in the Settlement Finality Regulations) that is a Position Transfer Order, Collateral Transfer Order, F&O Block Clearing Order, CDS Clearing Order, CDS Physical Settlement Order, LIFFE Delivery Order, Linked Exchange Incoming Order or Linked Exchange Outgoing Order subject to this Part 12.
- (l) The term "**SFD Custodian**" means any Custodian used by a Clearing Member or the Clearing House for the holding or transfer of Non-Cash Collateral that is subject of a Collateral Transfer Order provided that such person 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, such a person).
- (m) The term "**SFD Security**" means a 'security', as defined in the Settlement Finality Regulations.
- (n) The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (o) The term "**ICE Post Trade and Clearing Systems**" or the "**ICE Systems**" means the trade registration, clearing processing and finance hardware and software used by the Clearing House and Clearing Members from time to time, as further described in the Procedures.
- (p) 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.
- (q) 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

- (C) the Clearing House.
- (v) in the case of a Collateral Transfer Order:
 - (A) the Clearing Member that is the transferor of the Non-Cash Collateral in question;
 - (B) any [SFD](#) Custodian of the Clearing Member or the Clearing House; and
 - (C) the Clearing House;
- (vi) in the case of an F&O Block Clearing Order:
 - (A) each Clearing Member that has submitted or confirmed details of the ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Transaction;
 - (B) any Affiliate of the Clearing Member that was party to an ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Block Transaction and which is an Indirect Participant (if any); and
 - (C) the Clearing House;
- (vii) in the case of a CDS Clearing Order:
 - (A) each Clearing Member that has submitted or confirmed details of the CDS Trade Particulars;
 - (B) any Affiliate of a Clearing Member that is or was party to a Bilateral CDS Transaction and which is an Indirect Participant (if any); and
 - (C) the Clearing House;
- (viii) in the case of a CDS Physical Settlement Order:
 - (A) each Clearing Member in the Matched Pair; and
 - (B) the Clearing House;
- (ix) in the case of a LIFFE Delivery Order:
 - (A) each Clearing Member that is party to a LIFFE Contract under delivery;
 - (B) any [SFD](#) Custodian of the Clearing Member or the Clearing House; and
 - (C) the Clearing House;

- (f) A Collateral Transfer Order shall become irrevocable at the earlier of the time when: (i) the Clearing House receives the Non-Cash Collateral; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which is a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.
- (g) An F&O Block Clearing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).
- (h) A CDS Clearing Order shall become irrevocable when the time specified pursuant to the CDS Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a).
- (i) A CDS Physical Settlement Order shall become irrevocable at the earliest of: (i) the time when the Matched CDS Buyer in the Matched Pair has submitted irrevocable instructions to a ~~securities system, depository, nominee or custodian~~ Custodian for the transfer of securities to or to the account of the Matched CDS Seller; (ii) the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or (iii) if the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the CDS Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.
- (j) A LIFFE Delivery Order shall become irrevocable at the earlier of the time when: (i) the Clearing House (or a Clearing Member that is due to receive delivery directly from another Clearing Member under Part 7) receives the SFD Security into its account; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which is a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.
- (k) A Linked Exchange Incoming Order or Linked Exchange Outgoing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(xiv).
- (l) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.

Rule 1204 *Variations to or Cancellation of Transfer Orders*

- (a) This Rule 1204 applies only to a Transfer Order that is not irrevocable and:
 - (i) in the case of any Transfer Order, it is affected by manifest or proven error or an error that is agreed so to be by all affected Participants;

EXHIBIT 1

ICE CLEAR EUROPE LIMITED

CUSTOMER-CM CDS TRANSACTIONS STANDARD TERMS

BACKGROUND:

- (1) Clearing Member is a Non-FCM/BD Clearing Member, as defined in the rules (the "**Rules**") of ICE Clear Europe Limited (the "**Clearing House**") and is thereby permitted to submit certain CDS Trade Particulars which, if an Acceptance Notice is issued, will result in a cleared CDS Contract arising in accordance with the Rules and the CDS Procedures of the Clearing House.
- (2) Clearing Member and Segregated CDS Customer desire to agree to the operation of the Rules and the Procedures in relation to any Customer-CM CDS Transactions that may arise following the submission of the related CDS Trade Particulars, as further provided for in these Customer-CM CDS Transactions Standard Terms (these "**Standard Terms**").
- (3) Clearing Member and Segregated CDS Customer have established a "master" futures account, clearing agreement or other master agreement (the "**Cleared Transactions Master Agreement**", as amended from time to time) and, if applicable, a related collateral arrangement, whether contained in the same or another agreement (the "**Cleared Transactions Margin Terms**", as amended from time to time) with respect to cleared transactions, including such Customer-CM CDS Transactions (which Cleared Transactions Master Agreement may be supplemented by a cleared derivatives addendum, or similar document, as agreed by Clearing Member and Segregated CDS Customer (together, the "**Customer-Clearing Member Agreement**") and as amended and supplemented by these Standard Terms).

STANDARD TERMS:

1. **Defined Terms.** Terms used but not otherwise defined in these Standard Terms shall have the meaning set forth in the Rules or the Procedures, as applicable.
2. **Exhibit to Rules.** These Standard Terms are published by the Clearing House as an Exhibit to the Rules but do not form part of the Rules. Clearing Member and Segregated CDS Customer agree that any amendments, modifications, restatements or supplements in respect of such Exhibit to the Rules (including the withdrawal of any part of these Standard Terms) may be effective if made by the Clearing House pursuant to the provisions of Rule 109 as if the Exhibit were Rules and as if Rule 109 applied to Segregated CDS Customers in addition to, and in the same way as it applies to, Clearing Members. At the request of Clearing Member or the Clearing House, Segregated CDS Customer will enter into a written confirmation of the terms of any such amendment, modification, supplement or restatement.

EXHIBIT 2
ICE CLEAR EUROPE LIMITED
SETTLEMENT AND NOTICES TERMS

1. APPLICATION AND INTERPRETATION

These settlement and notices terms (the "**Settlement and Notices Terms**") apply to all Customer-CM CDS Transactions and, where specified, to the clearing arrangements between an FCM/BD CDS Clearing Member and its FCM/BD Customers and, in each case, to the related CDS Contracts (the term "**CDS Contract**", as used in these Settlement and Notices Terms, is restricted to such CDS Contracts). Notwithstanding the previous sentence, a Clearing Member and its Customer may agree in their clearing arrangements or otherwise to vary or override the terms of these Settlement and Notices Terms in respect of Customer-CM CDS Transactions, in each case through their clearing arrangements or otherwise.

These Settlement and Notices Terms are published by the Clearing House as an exhibit to the Rules but do not form part of the Clearing House's Rules (the "**Rules**"), Procedures or Standard Terms. They constitute a separate document that is incorporated by reference in the Standard Terms and forms part of the terms of CDS Contracts and Customer-CM CDS Transactions (or, in relation to FCM/BD CDS Clearing Members, clearing agreements between FCM/BD CDS Clearing Members and their Customers). These Settlement and Notices Terms shall be governed by and construed in accordance with the law governing the CDS Contract, Customer-CM CDS Transaction or clearing arrangement to which they relate in any instance and subject to such dispute resolution mechanisms and procedures and such courts or other forum for hearing disputes as are applicable in respect of the CDS Contract, Customer-CM CDS Transaction or clearing arrangement to which they relate. Each Clearing Member and Customer to which these Settlement and Notices Terms apply hereby waives any right to object to any such choice of law or proceedings on the basis of *forum non conveniens*, that the governing law or forum is not specified on the face of this document or otherwise.

These Settlement and Notices Terms are intended to apply in their present form pending broader industry discussion of other possible solutions, possibly in connection with technological progress and may be amended as any further technological or industry developments take place. Any amendments, modifications, restatements or supplements in respect of these Settlement and Notices Terms shall be effective if made by the Clearing House pursuant to the provisions of Rule 109 as if these Settlement and Notices Terms were Rules and as if Rule 109 applied to Customers of CDS Clearing Members in addition to, and in the same way as it applies to, Clearing Members. At the request of a CDS Clearing Member or the Clearing House, a Customer of that CDS Clearing Member will enter into a written confirmation of the terms of these Settlement and Notices Terms or any amendment, modification, supplement or restatement made to them.