



DCO Rules

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Maria Zyskind
Staff Attorney

July 11, 2018

**Re: Updates to ICC Rules Pursuant to
Section 5c(c)(1) of the Commodity Exchange
Act and Commission Regulation 40.6(a)**

VIA ELECTRONIC PORTAL

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

Dear Mr. Kirkpatrick:

ICE Clear Credit LLC (“ICC”) hereby submits, pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), a self-certification of changes to the ICC Clearing Rules (the “Rules”) to more clearly characterize Mark-to-Market Margin payments as settlement payments (“settled-to-market”) rather than collateral (“collateralized-to-market”). ICC is registered with the Commission as a derivatives clearing organization (“DCO”). ICC intends to implement the changes no sooner than the tenth business day following the filing of this submission with the Commission at its Washington, D.C. headquarters and with its Chicago regional office.

ICC proposes revisions to Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settled-to-market rather than collateralized-to-market. This submission includes a description of the changes to the ICC Rules. Certification of the changes pursuant to Section 5c(c)(1) of the Act and Commission Regulation 40.6(a) is also provided below.

Under the settled-to-market model, the transfer of Mark-to-Market Margin constitutes a settlement of the contract’s outstanding exposure, with the receiving party taking outright title to the Mark-to-Market Margin and the transferring party retaining no rights to such margin. Under the collateralized-to-market model, the transfer of Mark-to-Market Margin constitutes a pledge of collateral, such that the transferring party has a right to reclaim the collateral and the receiving party has an obligation to return the collateral.¹

ICC previously revised the Rules in 2015 to clarify that Mark-to-Market Margin constituted a settlement payment. Such revisions did not result in a change in the manner in which Mark-to-Market Margin was calculated, paid or collected, and were intended to provide further clarity regarding the finality of ICC’s settlement cycle.² ICC is proposing additional clarifying changes to the Rules. As with the prior changes, the proposed amendments do not change the manner in which Mark-to-Market Margin is calculated, or other current ICC operational practices. Rather, such changes consist of additional revisions to

¹ Use of a settled-to-market model, rather than a collateralized-to-market model, is consistent with requirements applicable to a DCO, as interpreted by the Commission staff. Commission Interpretive Letter No. 17-51 (Oct. 12, 2017) (“Commission Letter”). Use of a settled-to-market model also may result in more favorable capital treatment for positions in cleared derivatives for market participants that are subject to regulations of U.S. banking supervisors implementing the Basel III capital framework. See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Regulatory Capital Treatment of Certain Centrally-cleared Derivative Contracts Under Regulatory Capital Rules (Aug. 14, 2017).

² ICC filing submitted to the Commission on April 16, 2015.

terminology to further clarify the legal characterization that payments of Mark-to-Market Margin represent settlement rather than collateral payments. These clarifying changes result from further legal analysis with respect to ICC's characterization of Mark-to-Market Margin payments as settlement rather than as posting of collateral, as requested by its Clearing Participants ("CPs"). The proposed revisions are described in detail as follows.

ICC proposes revising Rule 401 to reference Mark-to-Market Margin Balance, a new term that is defined in Rule 404 and refers to the aggregate amount of Mark-to-Market Margin paid or received. The term is used in several calculations, avoids the need to repeat the definition, and allows ICC to more clearly and fully describe specifics pertaining to its Mark-to-Market Margin calculation in a single section without combining it with other concepts. ICC proposes adding language to Rule 401(a), which governs House Margin, to state that ICC calculates a net amount of Mark-to-Market Margin by subtracting a CP's Mark-to-Market Margin Balance from a CP's Mark-to-Market Margin Requirement. ICC proposes corresponding changes referencing Mark-to-Market Margin Balance in Rule 401(b)(ii), which covers Client-Related Mark-to-Market Margin. Such changes are not intended to modify the current calculation of Mark-to-Market Margin, or other operational practices, but, instead, replace certain specifics relating to ICC's Mark-to-Market Margin calculation with the defined term. The amendments do not change the manner in which Initial Margin is calculated, posted and held.

Further, ICC proposes to specify that a CP's Mark-to-Market Margin Balance is adjusted by an amount called the price alignment amount in revised Rule 401(g). Specifically, ICC proposes to state that it will pay or charge a CP price alignment amounts on any Mark-to-Market Margin and interest on any cash Initial Margin at a rate that may be negative. A price alignment amount is economically equivalent to the "interest" that ICC pays or charges a CP for any net Mark-to-Market Margin transferred between the parties under current Rule 401(g). However, since the term interest may be more typically associated with collateral, ICC proposes to refer to such an amount as price alignment to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments.³ Such change will not affect operations, since ICC will continue to pay or charge a CP an amount, which serves the same purpose and is calculated identically, for any net Mark-to-Market Margin transferred between the parties. ICC also proposes separate clarifying language to note that the rate at which it pays or charges such an amount may be negative, to more clearly address the possibility of negative market rate environments.

ICC proposes to specifically reference the applicable category of margin to avoid confusion over the proper characterization of Mark-to-Market Margin under the ICC Rules. ICC proposes to update Rule 401(h) to refer to substitutions of Initial Margin, and Rule 401(l) to refer to settlement finality in relation to Mark-to-Market Margin. The proposed changes to Rule 402, which governs ICC's rights with respect to the use of margin, exclude Mark-to-Market Margin from subsections (a) and (b), remove details relating to Mark-to-Market Margin from subsection (b), and specify subsection (c)'s applicability to Initial Margin. ICC proposes adding language to Rule 402(e) to more clearly state that Mark-to-Market Margin payments constitute a settlement. Further, ICC proposes adding new subsection (c) to Rule 404 to define Mark-to-Market Margin Balance as a sum equal to the Mark-to-Market Margin value transferred by the CP to ICC minus the Mark-to-Market Margin value transferred by ICC to the CP. To avoid uncertainty, ICC also proposes to specifically reference the applicable category of margin in Rule 406(c). Namely, ICC proposes to clarify that the requirements set forth in Rule 406(c) regarding Client-Related Positions apply to Initial Margin.

ICC proposes clarifications and conforming changes to Chapters 8 and 20 of the ICC Rules. ICC proposes clarifying language in Rule 801(a)(i) to refer to the transfer of Mark-to-Market Margin to avoid confusion over the proper characterization of Mark-to-Market Margin as settlement payments, since ICC considers the loss after the application of Initial Margin and taking into account settlement of Mark-to-Market Margin to be uncollateralized loss. Under the proposed updates, Rule 808 includes a conforming reference to Mark-to-Market Margin Balance. The proposed changes to Rule 810(e) replace terminology that is commonly used in conjunction with collateral to avoid confusion over the proper characterization of

³ See Commission Letter, *supra*, for a discussion of the use of price alignment amount instead of price alignment interest.

Mark-to-Market Margin as settlement payments. ICC proposes to clarify in Rule 20-605(c)(i)(B), which specifies the resources to be used to cover losses with respect to Client-Related Positions, that ICC will use the defaulting CP's Client-Related Mark-to-Market Margin, to the extent not previously applied to pay Mark-to-Market Margin to other CPs.

Core Principle Review:

ICC reviewed the DCO core principles ("Core Principles") as set forth in the Commodity Exchange Act. During this review, ICC identified the following Core Principle as being impacted:

Settlement Procedures: The revisions to the ICC Rules are intended to provide additional clarity regarding ICC's settlement procedures and thus are consistent with the requirements of Core Principle E.

Amended Rules:

The proposed changes consist of changes to Chapters 4, 8, and 20 of the ICC Rules to more clearly characterize Mark-to-Market Margin payments as settled-to-market rather than as collateralized-to-market.

Annexed as an Exhibit hereto is the following:

- A. Proposed amendments to the ICC Rules

Certifications:

ICC hereby certifies that the changes comply with the Act and the regulations thereunder. There were no substantive opposing views to the changes.

ICC further certifies that, concurrent with this filing, a copy of the submission was posted on ICC's website, and may be accessed at: <https://www.theice.com/clear-credit/regulation>

ICC would be pleased to respond to any questions the Commission or the staff may have regarding this submission. Please direct any questions or requests for information to the attention of the undersigned at (312) 836-6854.

Sincerely,



Maria Zyskind
Staff Attorney



Clearing Rules

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4. MARGIN

401. Margin Generally.

(a) House Margin

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

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

Procedures for this purpose on the ICE Business Day next following the ICE Business Day to which the close of business Net House Margin Requirement relates (or, if ICE Clear Credit notifies a Participant, in accordance with the ICE Clear Credit Procedures, of a Net House Margin Requirement other than in respect of its close of business determinations, within one ICE Clear Credit business hour of such notice); *provided* that (i) to the extent there is cash in a Participant's House Margin Account in the relevant currency, ICE Clear Credit may withdraw from such account such cash to satisfy a Net House Margin Requirement for a Mark-to-Market Margin Category for the relevant House Position(s), and adjust the Participant's Net House Margin Requirements accordingly; or

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

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

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

(i) **Initial Margin.**

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

(A) for each Non-Participant Party Portfolio Initial Margin Requirement that is positive, the Participant shall Transfer to ICE Clear Credit, in accordance with the ICE Clear Credit Procedures, Eligible Margin having a Value at least equal to such Non-Participant Party Portfolio Initial Margin Requirement, with such Transfer required to be made prior to the time established by ICE Clear Credit in the ICE Clear Credit Procedures for this purpose on the ICE Business Day next following the ICE Business Day to which the close of business Non-Participant Party Portfolio Initial Margin Requirement relates (or, if ICE Clear Credit notifies a Participant, in accordance with the ICE Clear Credit Procedures, of a Non-Participant Party Portfolio Initial Margin Requirement other than in respect of its close of business determinations, within one ICE Clear Credit business hour of such notice);

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

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

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

- (A) if the Net Client-Related Mark-to-Market Margin Requirement is positive, the Participant shall Transfer to ICE Clear Credit, in accordance with the ICE Clear Credit Procedures, Eligible Margin having a Value at least equal to the Net Client-Related Mark-to-Market Margin Requirement, with such Transfer required to be made prior to the time established by ICE Clear Credit in the ICE Clear Credit Procedures for this purpose on the ICE Business Day next following the ICE Business Day to which the close of business Net Client-Related Mark-to-Market Margin Requirement relates (or, if ICE Clear Credit notifies a Participant, in accordance with the ICE Clear Credit Procedures, of a Net Client-Related Mark-to-Market Margin Requirement other than in respect of its close of business determinations, within one ICE Clear Credit business hour of such notice);
- (B) if the Net Client-Related Mark-to-Market Margin Requirement is negative, ICE Clear Credit shall (unless the Participant is, or a determination by ICE Clear Credit is pending as to whether the

Participant is, in Default), with respect to Eligible Margin having a Value as close as reasonably practicable to (but not to exceed) the absolute value of the Net Client-Related Mark-to-Market Margin Requirement, Transfer such Eligible Margin to the Participant, in accordance with the ICE Clear Credit Procedures; and

- (C) if the Net Client-Related Mark-to-Market Margin Requirement is zero, no Margin shall be required to be Transferred in respect thereof.

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

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

The Margin Requirement in respect of Initial Margin for a Participant's Client-Related Positions shall be calculated on a gross basis across each Non-Participant Party Portfolio (i.e., on the basis that all Client-Related Positions related to different Non-Participant Party Portfolios have not been offset pursuant to Rule 304).

- (d) “**Eligible Margin**” means (i) with respect to Initial Margin, (A) in the case of satisfaction of an Initial Margin requirement, dollars or other currencies acceptable to ICE Clear Credit for this purpose and (B) in the case of substitutions of Initial Margin, assets, in the case of each of clauses (A) and (B), as specified in Schedule 401 as in effect from time to time and (ii) with respect to Mark-to-Market Margin, the currency in which the Contracts for the applicable Mark-to-Market Margin Category are denominated. Currencies must be in immediately available funds to qualify as Eligible Margin.
- (e) “**Value**” means, (i) with respect to Eligible Margin consisting of dollars or another currency that qualifies as Eligible Margin for the applicable Margin Category, the amount thereof converted, if applicable, to the currency of the relevant Margin Requirement at such exchange rate as ICE Clear Credit in its discretion may

determine from time to time pursuant to the ICE Clear Credit Procedures, (ii) with respect to Eligible Margin consisting of assets, other than currencies, that qualify as Eligible Margin for the applicable Margin Category, the value thereof as determined by ICE Clear Credit (or its agent or custodian) pursuant to a methodology established by ICE Clear Credit from time to time in the ICE Clear Credit Procedures, and (iii) with respect to any currency or asset that does not qualify as Eligible Margin for the applicable Margin Category, zero.

- (f) ICE Clear Credit shall establish and maintain a House Margin Account and a Client Omnibus Margin Account for each Participant. All Initial Margin required with respect to a Participant's Client-Related Positions shall be Transferred to such Participant's Client Omnibus Margin Account. All Initial Margin required with respect to House Positions of such Participant shall be Transferred to such Participant's House Margin Account.
- (g) ICE Clear Credit shall pay or charge, as applicable, a Participant ~~interest for any net price alignment amounts on any~~ Mark-to-Market Margin ~~Transferred by ICE Clear Credit to the Participant and shall pay a Participant interest for any net Mark-to-Market Margin Transferred by the Participant to ICE Clear Credit and for~~ Balance and pay or charge interest on any cash Margin (other than Mark-to-Market Margin) in such Participant's Margin Accounts, in each case at ~~an interest~~ a rate (which may be negative) and on a frequency determined from time to time by ICE Clear Credit in the ICE Clear Credit Procedures.
- (h) A Participant may substitute, in accordance with the ICE Clear Credit Procedures and applicable law, Eligible Margin for an amount of Initial Margin in such Participant's House Margin Account or Client Omnibus Margin Account, as applicable, having a Value not to exceed such substitute Eligible Margin.
- (i) Margin required to be provided by a Participant hereunder shall be provided at the time and in the manner specified in the ICE Clear Credit Procedures. Where Margin is available for withdrawal by a Participant in accordance with these Rules, if such Participant requests such withdrawal on an ICE Business Day by the deadline established in the ICE Clear Credit Procedures, ICE Clear Credit will transfer such margin to the relevant account of the Participant on such ICE Business Day.
- (j) Notwithstanding anything to the contrary herein, if ICE Clear Credit determines one or more Non-Participant Party Portfolio Initial Margin Requirements or a Net Client-Related Mark-to-Market Margin Requirement in respect of a time other than its close of business determination (i.e., an intraday margin call) that would otherwise be required to be Transferred by a Participant in accordance with subsection (b) above, ICE Clear Credit may in lieu thereof increase the applicable Margin Requirement for House Positions for the applicable Margin Category.

- (k) Each Transfer of Mark-to-Market Margin shall constitute a settlement (within the meaning of CFTC Rule 39.14) and shall be final as of the time ICE Clear Credit's accounts are debited or credited with the relevant payment.
- (l) Once settlement of a Transfer of Mark-to-Market Margin in respect of the Margin Requirement for a Mark-to-Market Margin Category is final, the fair value of the outstanding exposures for the relevant Contracts in that Mark-to-Market Margin Category (taking into account the Mark-to-Market Margin provided in respect of such Margin Requirement) will be reset to zero.

... **Interpretations and Policies:**

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

402. Transfer of Title; Liens.

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

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

absolutely and free from any claim or right of whatsoever kind, including any equity or right of redemption of the Participant which may be waived, and the Participant, to the extent permitted by law, hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted.

- (d) Each Participant represents that it is the sole owner of or otherwise has the right to Transfer to ICE Clear Credit the Pledged Items subject to the foregoing lien and security interest, free and clear of any security interest, lien, encumbrance or other restrictions in favor of any other person, and agrees not to create or permit to exist any such security interest, lien, encumbrance or other restrictions. The preceding sentence shall not preclude a Participant from Transferring to ICE Clear Credit Pledged Items that were provided to Participant by a Non-Participant Party and in which the Non-Participant Party has granted the Participant a security interest to secure the Non-Participant Party's obligations to the Participant in respect of Client-Related Positions; provided that Participant agrees that any such security interest in favor of Participant is in all respects subject to the rights of ICE Clear Credit in respect of such Pledged Items hereunder and Participant shall not, and shall not attempt to (i) exercise any rights or remedies or bring any proceeding or action with respect to such Pledged Items until such Pledged Items are released from the lien and security interest of ICE Clear Credit hereunder or (ii) otherwise interfere with, delay the exercise of or take any action to affect ICE Clear Credit's rights hereunder with respect to such Pledged Items. Each Participant agrees to take any action reasonably requested by ICE Clear Credit that may be necessary or desirable for ICE Clear Credit to create, preserve, perfect or validate the foregoing lien and security interest or to enable ICE Clear Credit to exercise or enforce its rights with respect thereto. With respect to any Pledged Items consisting of securities and other financial assets Transferred by ICE Clear Credit under the terms of these Rules, each Participant agrees it will accept securities and financial assets of the same issuer, type, nominal value, description and amount as those securities and financial assets initially Transferred by such Participant to ICE Clear Credit.

- (e) (i) Each Participant agrees that all right, title and interest in and to any cash Transferred by such Participant to ICE Clear Credit under the terms of these Rules as Mark-to-Market Margin shall vest in ICE Clear Credit free and clear of any liens, claims, charges or encumbrances, and shall constitute a settlement payment for all purposes under the Rules as provided in Rule 401(k) in respect of the relevant Contracts; provided that with respect to such cash Transferred in respect of Client-Related Positions, ICE Clear Credit shall only use such cash in accordance with applicable law.

(ii) Subject to subsection (f) below, ICE Clear Credit agrees that all right, title and interest in and to any cash Transferred by ICE Clear Credit to a Participant under the terms of these Rules and not used by or on behalf of the Participant to satisfy a Margin Requirement shall vest in such Participant free and clear of any liens, claims, charges or encumbrances.

- (f) With respect to Pledged Items Transferred to the Client Omnibus Margin Account of a Participant under Rule 406, ICE Clear Credit agrees that such Pledged Items, together with any proceeds thereof, shall constitute customer property held for the benefit of the Non-Participant Parties of Participant in accordance with applicable law and Rule 406, subject to the security interest and lien of ICE Clear Credit pursuant to subsection (b). For the avoidance of doubt, each Participant shall be obligated to Transfer Margin to ICE Clear Credit in respect of Client-Related Positions in accordance with these Rules notwithstanding any failure of a Non-Participant Party to provide such Participant with related margin in respect of such Client-Related Position.
- (g) Where a Participant makes a partial Transfer of the Margin required to be Transferred on any date to ICE Clear Credit in respect of both Client-Related Positions and House Positions, such Margin shall be applied first to the outstanding Margin Requirement in respect of the Client-Related Positions until satisfied and thereafter to the outstanding Margin Requirement in respect of the House Positions, notwithstanding any designation made by the Participant as to the application of such Margin.
- (h) Notwithstanding anything to the contrary herein, ICE Clear Credit shall only be permitted to use, apply or otherwise exercise rights pursuant to subsections (a), (b) and (c) above with respect to Cash Margin and Pledged Items (or the proceeds thereof) posted in respect of Client-Related Positions and constituting Initial Margin to the extent permitted under applicable law, including without limitation CFTC Rule 22.15 (and interpretations of the CFTC or its staff in respect thereof). For the avoidance of doubt, but subject to the foregoing sentence, ICE Clear Credit shall be permitted to select the specific assets so used or applied.
- (i) Intentionally omitted.
- (j) ICE Clear Credit may (i) invest Initial Margin in the form of cash in accordance with its investment policies and applicable law and (ii) in connection with a Participant default, use any Participant's cash, securities or other property (whether or not such Participant is itself in default) constituting Initial Margin for its House Account from time to time to support liquidity arrangements (including borrowing, repurchase transactions, exchange of Initial Margin for other assets or similar transactions) of ICE Clear Credit relating to payment obligations of ICE Clear Credit, in a manner consistent with ICE Clear Credit's Procedures and applicable law, including by way of assignment, transfer, exchange, pledge, repledge or creation of a lien on or security interest in such Initial Margin, under which equivalent value is provided for such Initial Margin and such equivalent value will be held as Initial Margin and used or applied by ICE Clear Credit solely for the purposes for which Initial Margin in the House Account may be used pursuant to these Rules. Without limiting the foregoing, ICE Clear Credit may on a temporary basis and in connection with a Participant default (A) exchange any Participant's Initial Margin in its House Account held in the form of cash for securities of equivalent value, and/or (B) exchange a Participant's Initial Margin

in its House Account held in the form of cash in one currency for cash of equivalent value in a different currency, in each case on such terms as ICE Clear Credit may determine in accordance with ICE Clear Credit Procedures. ICE Clear Credit will reverse any such exchange involving a Participant's Initial Margin in its House Account as soon as practicable following the conclusion of the event requiring the exchange of a Participant's Initial Margin for liquidity purposes. Prior to the occurrence of a Default with respect to a Participant, ICE Clear Credit may use, invest or apply the Initial Margin of such Participant only as set forth in this Rule 402(j) or the last sentence of Rule 402(a). This Rule 402(j) shall not be deemed to limit ICE Clear Credit's rights to use or apply a Participant's Initial Margin as permitted in the Rules, under applicable law or otherwise following the occurrence of a Default of that Participant.

403. Initial Margin.

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

- (a) **"Portfolio Risk Margin"** means the Margin ICE Clear Credit requires related to the size and risk of a Participant's Open Positions.
- (b) **"Physical Settlement Margin"** means the Margin ICE Clear Credit requires to secure a Participant's obligations in respect of a CDS Contract that is subject to Physical Settlement.
- (c) **"Super or Special Margin"** means additional Margin ICE Clear Credit may require for any purpose at any time and from time to time in its sole discretion.

The methodology for determining Initial Margin shall incorporate, among other relevant factors, and as more fully set out in the ICE Clear Credit Procedures from time to time, (i) a minimum 5-day time horizon for the liquidation period (for both House Positions and Client-Related Positions) and (ii) one or more measures designed to limit procyclicality, including by avoiding when possible disruptive or big step changes in margin requirements and by establishing transparent and predictable procedures for adjusting margin requirements in response to changing market conditions. At all times, the measures designed to limit procyclicality will demonstrably meet or exceed the requirements of measures designed to limit procyclicality that either: (i) incorporate a ten year historical look-back period for computing Initial Margin; or (ii) assign at least 25% weight to stressed observations in a look-back period beginning on April 1, 2007.

404. Mark-to-Market Margin.

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

405. Intentionally Omitted.

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

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

Participant and any Non-Participant Party. For the avoidance of doubt, Participants carrying Client-Related Positions that are swaps must be FCMs, and Participants carrying Client-Related Positions that are security-based swaps must be Broker-Dealers.

- (a) The relationship between a Non-Participant Party and a Participant in respect of Client-Related Positions for that Non-Participant Party shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties (“**Customer Account Agreement**”), subject to the applicable provisions of the Rules.
- (b) A Participant shall require each Non-Participant Party to provide margin or collateral (“**Non-Participant Collateral**”) in an amount no less than the amount of Margin of each applicable Margin Category required on a gross basis by ICE Clear Credit with respect to the relevant Client-Related Position(s); provided that ICE Clear Credit may require additional margin with respect to Non-Participant Parties (or certain categories of Non-Participant Parties) as determined by ICE Clear Credit from time to time as required by applicable law. For this purpose, “gross basis” shall mean that the margin requirement will be determined giving effect to any offset of such Client-Related Positions against Client-Related Positions relating to the same Non-Participant Party, but without any offset of such Client-Related Positions against Client-Related Positions relating to a different Non-Participant Party.
- (c)
 - (i) A Participant shall receive, hold and use all Non-Participant Collateral only as permitted under CEA Section 4d(f) and the rules thereunder (including Part 22 of the CFTC Regulations and any interpretations thereof by the CFTC or its staff) and Securities Exchange Act Sections 3E(b) and/or 15(c)(3) and the rules thereunder, as applicable, and to the extent not inconsistent with the foregoing, as set forth in these Rules and the ICE Clear Credit Procedures (the “**Swap Customer Segregation Requirements**”). All property Transferred to ICE Clear Credit by Participant on behalf of Non-Participant Parties as Initial Margin shall be held in the Client Omnibus Margin Account of such Participant as cleared swaps customer property in accordance with the Swap Customer Segregation Requirements. Pursuant to this Rule, Participant shall satisfy the requirement to obtain any segregation acknowledgement letter from ICE Clear Credit under the Swap Customer Segregation Requirements.
 - (ii) Without limiting subsection (c)(i) above, the Client-Related Positions (including, solely to the extent permitted by applicable rules, orders or exemptions of the CFTC and SEC, Client-Related Positions that are security-based swaps) and related Non-Participant Collateral shall be part of the cleared swaps account class for purposes of Part 190 of the CFTC regulations.
- (d) Property held in the Client Omnibus Margin Account may only be applied in respect of Client-Related Positions as provided in these Rules and only to the

extent permitted by the Swap Customer Segregation Requirements (including CFTC Rule 22.15).

- (e) ICE Clear Credit shall pass through to the relevant Participant the return on any assets in the Client Omnibus Margin Account (including any return provided by ICE Clear Credit on Cash therein), less administrative costs as determined by ICE Clear Credit.
- (f) In connection with any Client-Related Position and related Non-Participant Collateral, Participant shall keep and maintain written records required by the Swap Customer Segregation Requirements. Each Participant shall provide such reports to ICE Clear Credit with respect to Non-Participant Parties and their related Client-Related Positions and Non-Participant Collateral as and when required under the Swap Customer Segregation Requirements and otherwise upon request of ICE Clear Credit and upon such other basis, if any, as is provided in the ICE Clear Credit Procedures.
- (g) Without limiting Rule 312, but subject to any contrary requirements of law: ICE Clear Credit shall not be liable to any Participant, Non-Participant Party or other Person for any losses, claims, liabilities, damages or expenses arising out of or relating to the holding, investment or use of the Client Omnibus Margin Account or assets credited thereto from time to time (“**Custodial Losses**”), except to the extent such Custodial Losses result from the gross negligence or willful misconduct of ICE Clear Credit or from the investment of such assets by ICE Clear Credit in its discretion within the meaning of CFTC Rule 1.29(b). No Participant shall be liable to any Non-Participant Party for any Custodial Losses, except to the extent such Custodial Losses result from the gross negligence or willful misconduct of the Participant. ICE Clear Credit shall have no duties or responsibilities with respect to the Client Omnibus Margin Account except as expressly set forth in these Rules and applicable law. ICE Clear Credit shall have no responsibility for any investment decisions by a Participant (or any other Person) with respect to assets in the Client Omnibus Margin Account or for the results of any such investments and shall have no obligation to monitor the value of the assets in the Client Omnibus Margin Account or any requirements set forth in any applicable agreement between Participant and a Non-Participant Party. ICE Clear Credit shall have no responsibility for the compliance by any Participant or Non-Participant Party with its obligations under any such agreement. ICE Clear Credit shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to the Client Omnibus Margin Account or the assets therein or transferred thereto or therefrom under these Rules received from a Person ICE Clear Credit believes to be authorized to act on behalf of the appropriate Participant. In no event shall a Non-Participant Party attempt to interfere with the ability of ICE Clear Credit to exercise its rights as set forth in the Rules.
- (h) Except with respect to Client-Related Positions resulting from transactions entered into on a designated contract market or national securities exchange,

each Non-Participant Party for which a Participant clears a Client-Related Position must be an “eligible contract participant” as defined in the CEA.

- (i) Each Non-Participant Party consents to the disclosure by its Participant to ICE Clear Credit of such Non-Participant Party’s identity and information concerning the Client-Related Positions held by such Participant for such Non-Participant Party and related margin as set forth in the Rules.
- (j) Each Non-Participant Party consents and agrees that in the event a Default has occurred with respect to its Participant or in the event of the insolvency of the Participant, (i) the Participant (or its receiver, insolvency trustee or similar official) and/or ICE Clear Credit shall be entitled to attempt to transfer its Client-Related Positions in accordance with Part 190 of the CFTC regulations, other applicable law and the Default Portability Rules, (ii) such Non-Participant Party appoints ICE Clear Credit as its lawful agent and attorney-in-fact to take such actions on behalf of the Non-Participant Party as ICE Clear Credit determines necessary or appropriate in order to effectuate the Default Portability Rules with respect to the Client-Related Positions carried by the Participant for such Non-Participant Party, including executing any document or instrument with respect to the transfer of the Client-Related Positions and/or exercising rights and remedies to transfer such positions; (iii) the Non-Participant Party shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Participant, any receiver, insolvency trustee or similar official, or ICE Clear Credit to take action contemplated by its Rules, including, without limitation, the transfer of positions and the transfer of related margin or collateral; (iv) any determination made by ICE Clear Credit with respect to the termination value of a Client-Related Position under the Rules shall be conclusive and binding absent manifest error and (v) any amount payable by such Non-Participant Party in respect of the termination of a Client-Related Position held by the Defaulting Participant for such Non-Participant Party shall not be netted or offset against any amount owed by such Participant to such Non-Participant Party under any other agreement or instrument and shall be paid directly to or as directed by ICE Clear Credit.
- (k) Each Participant shall be required to obtain the agreement of each Non-Participant Party to the provisions of the Rules applicable to or otherwise referring to Non-Participant Parties (including Rule 312 and this Rule 406) and hereby represents and warrants to ICE Clear Credit that it has obtained such agreement.
- (l) ICE Clear Credit will not accept the deposit of Margin from a Participant in respect of Client-Related Positions in excess of the amount required by ICE Clear Credit, within the meaning of CFTC Rule 22.13(c). For the avoidance of doubt, any Margin deposited with ICE Clear Credit that subsequently exceeds the amount required by ICE Clear Credit as a result of a change in the amount required or a change in the Value of such Margin will become available for withdrawal in accordance with Rule 401.

8. GENERAL GUARANTY FUND

801. General Guaranty Fund Contribution.

(a) Participant Contributions.

- (i) Each Participant shall Transfer to ICE Clear Credit, and thereafter maintain so long as it is a Participant, Collateral for deposit in the General Guaranty Fund in the form and in such amounts as may be determined by ICE Clear Credit as provided herein and in accordance with the ICE Clear Credit Procedures as in effect from time to time (“**Required Contribution**”), subject to the limitations herein and in Rules 802, 803, 806 and 807. ICE Clear Credit shall cause appropriate entries to be made in its books and records to reflect the deposit of Collateral, the ICE Clear Credit Initial Contribution and the ICE Clear Credit Continuing Contribution into the General Guaranty Fund. ICE Clear Credit shall have the sole right to withdraw cash, securities or other property from, and to authorize the sale or other disposition of any securities or other property held in, the General Guaranty Fund, subject to the limitations imposed in subparagraph (b)(v) of this Rule. A Participant may request, in accordance with the ICE Clear Credit Procedures, that ICE Clear Credit withdraw Collateral from the General Guaranty Fund and return it to the Participant to the extent the Participant’s contributions to the General Guaranty Fund exceed its Required Contribution and any Specific WWR Guaranty Fund Contribution (as defined below) at that time. A Participant may substitute, in accordance with the ICE Clear Credit Procedures, Collateral for an amount of Collateral currently on deposit in the General Guaranty Fund and credited to such Participant having a value, determined in accordance with the ICE Clear Credit Procedures, not to exceed that of such substitute Collateral. ICE Clear Credit shall pay a Participant interest for any net cash Collateral of such Participant in the General Guaranty Fund, at an interest rate and on a frequency determined from time to time by ICE Clear Credit in the ICE Clear Credit Procedures. The eligible forms of Collateral will be as set forth in Schedule 401 as in effect from time to time. Collateral provided by Participant may be invested only in accordance with the investment guidelines in the ICE Clear Credit Procedures.

Subject to the foregoing, the Required Contribution for a Participant as of any date of determination shall be the greater of (x) such Participant’s proportionate share of the aggregate Participant Loss Exposure, which will be calculated as the two largest Participant Loss Exposures; and (y) \$20,000,000. As used herein, “**Participant Loss Exposure**” means with respect to a Participant, the amount determined by ICE Clear Credit using stress test methodology, calculated on a net exposure basis separately within the House Positions and Client-Related Positions of that Participant, equal to the expected losses to ICE Clear Credit associated with the

default of that Participant taking into account both (a) the uncollateralized loss (i.e., the loss after application of Initial Margin (and, for the avoidance of doubt, taking into account Mark-to-Market Margin Transferred in respect of such positions)) given default and (b) the uncollateralized loss from contracting or widening credit spreads.

ICE Clear Credit shall establish the aggregate amount of the Required Contributions to the General Guaranty Fund such that at a minimum ICE Clear Credit will maintain pre-funded financial resources sufficient to enable it to meet its financial obligations to Participants notwithstanding a default by the two Participants (including any of their affiliated Participants) creating the largest combined loss to ICE Clear Credit in extreme but plausible market conditions, consistent with the requirements of CFTC Rules 39.11 and 39.33.

808. Reduced Gains Distribution.

(a) The following terms will have the indicated meanings:

MTM

Mark-to-Market Margin as defined in Rule 404(a). References in this Rule 808 to the payment of MTM shall be construed as including obligations to transfer cash or other Eligible Margin as a result of changes in MTM Prices (as the difference between MTM Prices on different ICE Business Days) following a recalculation of the MTM Price and not to the total ~~amount of MTM held by any Participant or ICE Clear Credit~~ Mark-to-Market Margin Balance at any time.

MTM Price

The Mark-to-Market Price as defined in Rule 404(b).

Outward MTM Payments

On any ICE Business Day, amounts in respect of MTM that ICE Clear Credit has calculated which would, but for this Rule 808, be payable in full by ICE Clear Credit to Contributing Participants (whether relating to their House Account or Client Origin Account) following the determination of MTM Prices for Contracts.

809. Partial Tear-Up

(d) Upon and with effect from the Partial Tear-Up Time, every Tear-Up Position shall be automatically terminated at the Partial Tear-Up Price, without the need for any further step by any party to such Contract. Upon such termination, either ICE Clear Credit or the relevant Participant, as the case may be, shall be obligated to pay to the other the applicable Partial Tear-Up Price (which, in either case, shall

be satisfied only through application of any applicable Mark-to-Market Margin for such Tear-Up Position, determined for this purpose as though all Mark-to-Market Margin payments had been made in any relevant Loss Distribution Period without regard to any Cash Gainer Adjustments). Upon the termination of a Tear-Up Position, the corresponding Open Position of the Defaulting Participant shall be deemed terminated at the Partial Tear-Up Price.

- (e) The Partial Tear-Up Price for each Tear-Up Position shall equal the Mark-to-Market Price established for such position as of the Partial Tear-Up Time, determined using the methodology customarily applicable for determining Mark-to-Market Prices. Such Partial Tear-Up Price shall be determined without regard to any Adjustment Amounts applied pursuant to Reduced Gains Distributions under Rule 808.

810. Termination of Clearing.

- (d) Upon and with effect immediately as from the Termination Time, every Open Position (other than, for the avoidance of doubt, any such Open Position that has been terminated or transferred prior to the Termination Time) shall be automatically terminated at the Termination Price, without the need for any further step by any party to such Contract.

- (i) The termination price (the “**Termination Price**”) per unit of notional amount for purposes of any termination and final settlement pursuant to Rule 810 shall be the same for all Contracts of the same type and shall be the same for all Participants that are party to Contracts of such type. Termination Prices shall be based upon the value of Contracts as at the Termination Time in accordance with the principles set out in this Rule 810(c) but without regard to any Adjustment Amounts applied pursuant to Reduced Gains Distributions under Rule 808. Such Termination Prices shall be calculated based on the latest established Mark-to-Market Price for each relevant Contract as at the Termination Time, determined using the methodology customarily applicable for determining Mark-to-Market Prices;

provided that, ICE Clear Credit may, following consultation with the Risk Committee, determine that it should conduct a final price submission and price determination process to determine a Mark-to-Market Price for purposes of termination prior to or around the Termination Time in which it shall use its standard processes and procedures to determine the price and which Participants shall participate in fully, in good faith, using their standard processes and procedures and in accordance with applicable laws;

provided, further, that ICE Clear Credit may determine instead to use the last market quotation or settlement price established or published by another exchange, swap execution facility or clearing organization (that is

not subject to an insolvency) selected by ICE Clear Credit for an economically similar contract immediately prior to the Termination Time.

- (ii) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by ICE Clear Credit (whether for itself or on behalf of any Market) in respect of Contracts to be terminated under this Rule 810 shall not be applicable in respect of such Contracts.
 - (iii) In carrying out any calculations or making any determinations pursuant to this Rule 810, ICE Clear Credit may convert any amounts denominated in one currency into another currency chosen by ICE Clear Credit in its discretion and at a prevailing market rate of exchange reasonably determined by ICE Clear Credit (using a third party source, if practicable).
- (e) Final settlement with respect to such terminated contracts (the “**Wound-Up Contracts**”) will be made as follows. ICE Clear Credit shall determine a single net amount owed by or owed to each Participant in respect of House Positions and a single net amount owed by or owed to each Participant in respect of Client-Related Positions shall be determined, which net amount for the avoidance of doubt shall take into account ~~and be offset against~~ Mark-to-Market Margin ~~posted~~Transferred by such Participant to ICE Clear Credit and Mark-to-Market Margin ~~posted~~Transferred by ICE Clear Credit to such Participant, as applicable (in each case determined for this purpose as though all Mark-to-Market Margin payments had been made in any relevant Loss Distribution Period without regard to any Cash Gainer Adjustments). For purpose of this calculation, net amounts owed by a Participant with respect to Client-Related Positions may be offset and netted against net amounts owed to a Participant with respect to House Positions; provided that net amounts owed by a Participant with respect to House Positions may not be offset or netted against net amounts owed to a Participant with respect to Client-Related Positions.

ICE Clear Credit shall apply all amounts collected from Participants who owe ICE Clear Credit a net amount under the Wound-up Contracts (directly or through Margin deposited by such Participant (without duplication of Mark-to-Market Margin amounts taken into consideration in calculating such net amount) and other funds in or payable to the accounts of the Participant or from any applicable guarantor, provided that Margin provided in respect of Client-Related Positions may only be applied to the extent net amounts are owed in respect of Client-Related Positions), plus all available amounts in the General Guaranty Fund in accordance with Rule 802, to pay all net amounts owed by ICE Clear Credit to Participants under the Wound-up Contracts, subject to the limitation of liability set forth in Rule 312. To the extent the amounts owed by ICE Clear Credit exceed the amounts available for payment, the amounts available for payment shall be prorated based on the relative net amounts owed by ICE Clear Credit to Participants under Wound-up Contracts.

20-605. CDS Participant Default.

- (c) In effecting the Closing-out Process as provided in this Rule and satisfying any Reimbursement Obligations with respect to the Defaulting CDS Participant, ICE Clear Credit shall apply the Margin and other assets provided by the Defaulting CDS Participant, as follows:
- (i) With respect to the Open CDS Positions that are Client-Related Positions in any account of such Defaulting CDS Participant, to liquidate, set off and/or apply the following resources, in the following order, to cover any amounts paid by ICE Clear Credit in closing or replacing such Client-Related Positions or any related Initial Cover Transactions (or in making payments or providing Mark-to-Market Margin to other Participants in respect of corresponding positions), including any commissions, losses, costs or expenses incurred in connection therewith or in connection with the liquidation of applicable Margin applied thereto pursuant to this subclause :
- (A) any proceeds received by ICE Clear Credit from closing or replacing such Client-Related Positions or any related Initial Cover Transactions,
- (B) any Mark-to-Market Margin provided to ICE Clear Credit with respect to such Client-Related Positions (to the extent not previously applied to pay Mark-to-Market Margin to other Participants),
- (C) Initial Margin provided to ICE Clear Credit with respect to such Client-Related Positions; *provided* that Initial Margin allocated to a particular Non-Participant Party Portfolio and proceeds thereof shall only be used to satisfy obligations to ICE Clear Credit in respect of the Client-Related Positions in such Non-Participant Party Portfolio, in accordance with CFTC Rule 22.15; *provided, further*, that where ICE Clear Credit owes a net payment or Mark-to-Market Margin obligation to another Participant in respect of positions corresponding to Client-Related Positions of the defaulting Participant, ICE Clear Credit shall be entitled to apply the Initial Margin allocated to each Non-Participant Party Portfolio that owes a corresponding payment or Mark-to-Market obligation to ICE Clear Credit up to the amount of such payment or obligation,
- (D) any payments actually received by ICE Clear Credit from or on behalf of the relevant Non-Participant Party under or in respect of the Client-Related Positions in its Non-Participant Party Portfolio,

- (E) any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant's House Positions,
- (F) the Defaulting Participant's Required Contribution and Specific WWR Guaranty Fund Contribution, if any, to the General Guaranty Fund as provided in Rule 802(a), and
- (G) any other property of or delivered by the Defaulting CDS Participant (other than Margin for Client-Related Positions) within the possession or control of ICE Clear Credit (whether or not related to Open CDS Positions).

For purposes of the foregoing, ICE Clear Credit may, in its discretion use assets available pursuant to clause (E)-(G) prior to receipt of proceeds due pursuant to clauses (B)-(D), provided that any proceeds subsequently received pursuant to clauses (B)-(D) (to the extent not applied by ICE Clear Credit) will be used to reimburse the sources of such other assets used pursuant to clauses (E)-(G). For the avoidance of doubt, the provisions of this clause (c)(i) will not apply to Client-Related Positions transferred to or replaced with a Transferee Participant without loss to ICE Clear Credit pursuant to Rule 20A-02;

- (ii) With respect to the Open CDS Positions that are House Positions in any account of such Defaulting CDS Participant, to liquidate, set off and/or apply the following resources, in the following order, to cover any amounts paid by ICE Clear Credit in closing or replacing such House Positions or any related Initial Cover Transactions (or in making payments or providing Mark-to-Market Margin to other Participants in respect of corresponding positions), including any commissions, losses, costs or expenses incurred in connection therewith or in connection with the liquidation of applicable Margin applied thereto pursuant to this subclause, and any other obligations of the Defaulting CDS Participant to ICE Clear Credit, including any obligations arising from any other accounts maintained by the Defaulting CDS Participant with ICE Clear Credit:
 - (A) any proceeds received by ICE Clear Credit from closing or replacing such House Positions or any related Initial Cover Transactions,
 - (B) any property or proceeds thereof deposited with or held by ICE Clear Credit as Margin for such Defaulting Participant's House Positions,

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