



**ICE Clear Europe Limited -
Derivatives Clearing Organization Application**

8 May 2009 (as amended)

23 July 2009

ICE Clear Europe Limited
Derivatives Clearing Organization
Application

1. BACKGROUND

- 1.1 ICE Clear Europe Limited (the “Clearing House”) is a Recognised Clearing House (“RCH”) in the United Kingdom (“UK”) under the UK’s Financial Services and Markets Act 2000 (“FSMA”) and supervised by the UK Financial Services Authority (“FSA”). A recognition order was granted on 12 May 2008. The Clearing House is also a “designated system” under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.
- 1.2 The Clearing House previously requested that the Commodity Futures Trading Commission (“CFTC”) issue an Order pursuant to Section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act 1991 (codified as 12 U.S.C. §§4422) (“FDICIA”) determining that the UK legal and regulatory regime operated by the FSA in the recognition and subsequent supervision of the Clearing House satisfies appropriate standards thereby permitting the Clearing House to operate a multilateral clearing organization (“MCO”) for the clearing of United States (“US”) over-the-counter (“OTC”) derivative instruments, or otherwise to engage in activities that constitute such a MCO. This Order was granted by the CFTC on 23 July 2008.
- 1.3 As a private limited company organized under the laws of England and Wales, the Clearing House must meet the statutory annual audit requirements applicable to such companies.

2. APPLICATION

- 2.1 The Clearing House hereby submits this Application for Registration as a Derivatives Clearing Organization (“DCO”) pursuant to Sections 5b(b) and 5b(c)(1) of the Commodity Exchange Act (the “CEA”) and CFTC Regulation 39.3.
- 2.2 The Clearing House’s provision of clearing services to US markets currently only comprise clearing the IntercontinentalExchange, Inc. (“ICE, Inc.”) OTC exempt commercial market (“ECM”) and similar cleared only OTC contracts, but it is making this application for the scope of the Clearing House’s clearing activities under its status as a DCO to include both clearing OTC contracts (as current), together with futures and options traded on or subject to the rules of a designated contract market (“DCM”), derivatives transaction execution facility (“DTEF”) and/or exempt boards of trade.¹
- 2.3 In support of this Application, the Clearing House has provided certain information, including:
- (a) Description of the Clearing House and clearing services.
 - (b) Analysis of the means by which the Clearing House demonstrates compliance with the Core Principles for registration as a DCO as set out in the CEA.
- 2.4 The following documents are included as annexes to this request:

¹ See also paragraph 5.4(c).

Annex No.	Document
1	Memorandum and Articles of Association of ICE Clear Europe
2	List of current directors of ICE Clear Europe
3	Charter of the Audit Committee of ICE, Inc.
4	Audited financial statements of ICE, Inc. Group for the year ending 31 December 2008
5	Organogram
6	Process agent agreement
7	ICE Clear Europe Rules dated 23 December 2008
8	ICE Clear Europe Procedures dated 10 March 2009
9	List of current Approved Financial Institutions
10	Memorandum of Shearman & Sterling (London) LLP dated 8 May 2009 entitled "Ring-fencing of US Accounts"

- 2.5 The Clearing House is proposing to launch a credit default swap (“CDS”) clearing service in July 2009. The Clearing House is not requesting that its CDS clearing service be included within the scope of any DCO order the CFTC may grant; but for completeness has annexed hereto a summary of its proposed CDS service.
- 2.6 The Clearing House is willing and able to co-operate with the CFTC in the provision of information relevant to this application and in other ways. If the CFTC would like any further information in respect of matters referred to in this application or copies of procedural or other documents produced by the Clearing House, please let us know.
- 2.7 Capitalized terms used but not defined herein have the meanings given to such terms in the Clearing House Rules.

1. DESCRIPTION OF THE CLEARING HOUSE

- 1.1 The Clearing House is part of the ICE Group, and was incorporated in England and Wales on 19 April 2007 as a private limited company under the Companies Act 1985 (as amended) with registered number 06219884. The Clearing House's registered office is at: 5th Floor, Milton Gate, 60 Chiswell Street, London EC1Y 4SA. The Clearing House's operations are provided from its registered address.
- 1.2 The Clearing House was formed to provide clearing services to certain markets within the ICE Group and for over-the-counter contracts. The provision of clearing services commenced on 3 November 2008. The markets comprise the markets operated by ICE Futures Europe ("ICE Futures") (a UK recognised investment exchange or "RIE") and ICE Inc. (a US ECM).
- 1.3 Details relating to the ICE Group and its markets and clearing services can be found at www.theice.com.

2. STRUCTURE AND CONSTITUTION

- 2.1 The Clearing House is part of the ICE Group, being an indirect subsidiary of a US company, ICE Inc.
- 2.2 ICE Inc. is a NYSE-listed public company and is therefore subject to various US legal and reporting obligations, including: the Sarbanes-Oxley Act; public company reporting obligations; and duties under Delaware corporation law.
- 2.3 The ICE Group runs on a for-profit basis. Companies in its group include three derivatives exchanges: (i) ICE Futures, a UK RIE supervised by the FSA; (ii) ICE Futures US, a US DCM supervised by the CFTC and recognized as an overseas RIE in the UK ("ROIE"); and (iii) ICE Futures Canada, supervised by the Manitoba Securities Commission, as well as ICE Inc., a US Exempt Commercial Market. In addition, there are five clearing houses in the group: (i) ICE Clear US, a US DCO supervised by the CFTC and recognised as an overseas clearing house in the UK ("ROCH"); (ii) ICE Clear Europe, discussed in this application; (iii) ICE Clear Canada, supervised by the Manitoba Securities Commission; (iv) ICE Trust U.S. LLC, which is a member bank of the Federal Reserve System and approved by the New York Banking Department; and (v) The Clearing Corporation, a US DCO supervised by the CFTC.
- 2.4 ICE Inc. is headquartered in Atlanta, Georgia. ICE Futures is headquartered in London, UK. ICE Futures US, ICE Clear US and ICE Trust U.S. are headquartered in New York, N.Y and The Clearing Corporation is headquartered in Chicago, Illinois.
- 2.5 The Clearing House is directed by its Board comprising a minimum of six members, being:
 - (a) Non-executive Chairman (Sir Bob Reid).
 - (b) President and Chief Operating Officer (Paul Swann).
 - (c) ICE Inc. representatives (Jeffrey C. Sprecher, ICE, Inc. Chairman; and Scott Hill, ICE, Inc. Chief Financial Officer).
 - (d) Three independent non-executive directors (Lord Fraser of Carmyllie, Christopher Moorhouse, and Andrew Lamb).

- 2.6 The Board has two standing committees: the Risk Committee (which includes user representatives) and the Audit Committee.
- 2.7 The constitution of the Clearing House is set out in its Memorandum and Articles of Association (see Annex 1), which, *inter alia*, contain details of:
- (a) the structure and appointment of the Board of Directors; and
 - (b) procedures in relation to general and extraordinary company and Board meetings (including quorum).

3. MEMBERSHIP

- 3.1 An applicant to become a clearing member (“Clearing Member”) of the Clearing House must meet certain membership criteria (detailed in Rule 201(a)) at the time of making its application and thereafter whilst a Clearing Member which include, among other things:
- (a) holding sufficient capital;
 - (b) being party to a Clearing Membership Agreement;
 - (c) holding all necessary regulatory authorizations, licenses, permissions and approvals;
 - (d) it and its directors and officers being fit and proper;
 - (e) having appropriate technical and operational systems and controls;
 - (f) having appropriate business continuity procedures;
 - (g) being able to meet Margin requirements;
 - (h) having contributed to the Guaranty Fund as appropriate; and
 - (i) not being subject to an insolvency or other event of default.
- 3.2 An application for clearing membership must be made in writing in the prescribed form.
- 3.3 Prior to a formal application being processed, the Clearing House’s Membership Department will liaise with the applicant to ensure that the application form and supporting documentation are complete (Membership Procedures, para. 1.1). Each application is considered by the Risk Committee which have been delegated authority from the Board to approve or reject such application with a right of appeal due to the applicant in the event of a rejection (Membership Procedures, para. 1.3).
- 3.4 Each Clearing Member is obliged to sign a Clearing Membership Agreement with the Clearing House which includes provisions pursuant to which the Clearing House’s Rules become contractually binding on both the Clearing Member and Clearing House. In addition, specific obligations relating to the transfer of collateral and certain other matters that for technical English law reasons need to be agreed to by deed are dealt with in this document.
- 3.5 At the date hereof, the Clearing House has forty four Clearing Members.

4. OUTLINE OF CLEARING SERVICE (INCLUDING STRUCTURE OF TRANSACTIONS)

Background

- 4.1 The Clearing House currently provides clearing services in relation to the ICE Futures and ICE Inc. markets. The clearing services include, *inter alia*:
- (a) Trade registration and management;
 - (b) Position Management, Margin and collateral;
 - (c) Treasury, cash payment/receipt and billing;
 - (d) Risk management;
 - (e) Guaranty Fund; and
 - (f) Contract expiry and deliveries.
- 4.2 The Clearing House accepts transactions on the basis of an open offer mechanism, pursuant to which contracts arise automatically on the occurrence of certain events. Essentially, at the point an open buy order matches with an open sell order at the relevant market, the Clearing House will become the buyer to the seller and the seller to the buyer (Rule 401). For off-screen trades which are registered with the Clearing House for clearing (i.e. Block Trades, Exchange for Physical and Exchange for Swaps for ICE Futures and Block Trades for ICE OTC) a contract will form upon complete details being sent to ICE Futures or ICE Inc. and accepted through their systems (see Rule 401 for more detail). The liabilities and obligations of the Clearing House will extend only to, and be enforceable only by, Clearing Members (Rule 111(f)). However, some contracts will be void from inception (see Rule 403), and some are voidable pursuant to Rule 404, resulting in a ‘filter mechanism’ to enable the Clearing House to avoid clearing certain transactions. The Clearing House can also request additional Margin or restrict a Clearing Member from increasing its open position, *inter alia*, if a Clearing Member exceeds its Position Limit (Rule 602).
- 4.3 Clearing Members have rights and obligations set out in the Rules and a Clearing Membership Agreement. Every Clearing Member agrees to be bound by the Rules as a result of becoming a Clearing Member. The Clearing House does not have any category of “non-clearing membership”.
- 4.4 Data in relation to matched trades automatically passes to a Trade Registration System (“TRS”), the post-trade administration system owned and operated by NYSE Technologies Limited (“NYX”) and licensed to the Clearing House. TRS receives details of transactions in real-time from the ICE Platform and provides functions to Clearing Members and authorized parties to perform the following functions:
- (a) account allocation;
 - (b) splitting trades between accounts;
 - (c) the allocation of transactions or split transactions between one or more Clearing Member(s) or trading participants of Clearing Members (trade allocation); and
 - (d) the entry of position settlement instructions.

- 4.5 In accordance with the Contract Terms for ICE Futures and ICE OTC contracts, open positions are settled to market daily using prices taken from relevant markets and validated by the Clearing House. The Clearing House may, at its discretion, make further settlements-to-market whether on a routine or *ad hoc* basis.
- 4.6 The Clearing House maintains, at various banks, a cash deposit account and a securities custodian account separately in respect of Customer Accounts and Proprietary Accounts that its Clearing Members hold with the Clearing House and each Guaranty Fund Contribution of each Clearing Member. Each Clearing Member is further required to maintain accounts with a financial institution approved by the Clearing House (an “Approved Financial Institution” or “AFI”).
- 4.7 The settlement and delivery requirements arising after contract expiry are detailed in the ICE Futures and ICE OTC Contract specifications and the Clearing House’s delivery procedures. Settlement and delivery occurs as follows for contracts which remain open at contract expiry:
- (a) cash-settled products are settled by payment or receipt of the difference between the price at which the position is recorded at the Clearing House and the applicable reference settlement price at ICE Futures or for ICE OTC products in accordance with relevant procedures calculated in accordance with the Rules (Part 7). Following payment, all contract obligations are deemed to have been met and contract performance is final (Rule 705(b));
 - (b) contracts that result in the physical delivery of a commodity (or title to a commodity), are settled by the delivery of the commodity or title to that commodity against the payment of an amount being the difference between the price at which the position is recorded at the Clearing House and the reference settlement price (Rule 703; Delivery Procedures).
- 4.8 Clearing Members must provide collateral to the Clearing House as Margin (Rule 502(a)) and Guaranty Fund Contributions (Rule 1101(d)). All collateral deposited with the Clearing House is held at regulated custodian and deposit-taking banks who themselves are regulated in the conduct of such activities by the FSA or other appropriate regulators.
- 4.9 Clearing Members are obliged to contribute to a Guaranty Fund which may be used in the event of default. The value of the Guaranty Fund is currently USD 480 million. The Clearing House itself contributes USD 100 million to the Guaranty Fund.

5. DCO CORE PRINCIPLES: COMPARATIVE ANALYSIS WITH UK REQUIREMENTS

5.1 *Core Principle A: IN GENERAL*

To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

An entity preparing to submit to the Commission an application to operate as a derivatives clearing organization is encouraged to contact Commission staff for guidance and assistance in preparing its application. Applicants may submit a draft application for review prior to the submission of an actual application without triggering the application review procedures of §39.3 of the Commission's regulations. The Commission also may require a derivatives clearing organization to demonstrate to the Commission that it is operating in compliance with one or more core principles.

Analysis

- (a) The general statements in core principle A are acknowledged and agreed. The Clearing House believes it has responded to these principles in the totality of this Application.
- (b) The Clearing House has been granted a Recognition Order as a UK RCH by the FSA.² As a UK RCH, the Clearing House is subject to FSMA and the Recognition Requirements made thereunder and the FSA Guidance and Notification Rules set out in its REC Sourcebook. Therefore, in respect of each Core Principle, a reference to any comparable UK regulatory requirements has been included.
- (c) The Clearing House is happy to provide such further information as the Commission may request for the purpose of demonstrating compliance with the core principles.

5.2 *Core Principle B: FINANCIAL RESOURCES*

The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

In addressing Core Principle B, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. The resources dedicated to supporting the clearing function:

a. The level of resources available to the clearing organization and the sufficiency of those resources to assure that no material adverse break in clearing operations will occur in a variety of market conditions; and

b. The level of member/participant default such resources could support as demonstrated through use of hypothetical default scenarios that explain assumptions and variables factored into the illustrations.

2. The nature of resources dedicated to supporting the clearing function:

² Section 288 et seq. FSMA.

a. The type of the resources, including their liquidity, and how they could be accessed and applied by the clearing organization promptly;

b. How financial and other material information will be updated and reported to members, the public, if and when appropriate, and to the Commission on an ongoing basis; and

c. Any legal or operational impediments or conditions to access.

Analysis

(a) Comparable UK regulatory requirements include:

- (i) Financial Resources;³
- (ii) Systems and Controls.⁴
- (iii) Access to facilities.⁵

Financial Resources

(b) FSA rules require the Clearing House to have net capital and liquid financial assets both in excess of six months' operating costs.⁶ The Clearing House complies with this requirement.

(c) At the date hereof, the Clearing House has paid-up share capital of USD 110.1 million in the form of 110,100,000 ordinary shares of \$1 each. The Clearing House also has a subordinated loan of USD 20 million. Holding of shares in the Clearing House is not a requirement for clearing membership.

(d) A copy of the audited financial statements of the ICE Inc. Group for the year ended 31 December 2008 are attached as Annex 4.

(e) The Clearing House confirmed to Clearing Members by Circular 08/033 dated 1 November 2008⁷ its contribution of USD 100 million of the Clearing House's capital to the Guaranty Fund. In accordance with its contractual obligations under Rule 1104(e) this contribution is held exclusively on deposit by the Clearing House alongside cash margins and other cash amounts. This USD 100 million is solely for the use of the Guaranty Fund (details of which are provided in section 5.4 of this Application). The Clearing House is further contractually obliged to apply its contribution in accordance with the provisions of Rules 1103(d) and 1103(e)(ii).

(f) In accordance with Rule 209(c) in the event of the insolvency of the Clearing House, the rights and liabilities of each Clearing Member will be determined as if each Clearing Member were a Defaulter pursuant to Part 9 and without the need for the prior occurrence or declaration of an Event of Default. In such circumstances, Part VII of the Companies Act 1989 will ensure the safeguarding of the operation of the Clearing House's default proceedings consequent upon the insolvency of the Clearing

³ REC 2.3.

⁴ REC 2.5.

⁵ REC 2.7.

⁶ REC 2.3.7G.

⁷ https://www.theice.com/publicdocs/clear_europe/circulars/C08033%20Guaranty%20Fund%20levels%20and%20Insurance.pdf

House as prescribed by the Clearing House's default rules. The proceedings of the Clearing House under its default rules take precedence over general insolvency law, such as claims of general creditors of the Clearing House. Rules 209(c) and 1104(e) would amount to "default rules" for these purposes, (provided that the Clearing House's insolvency is caused by the default of a Clearing Member).

- (g) The Clearing House makes its financial information public as part of the ICE Group disclosure requirements. Accordingly, quarterly earnings reports,⁸ and annual reports are publicly available on both the ICE and the US Securities and Exchange Commission ("SEC") websites. The Clearing House also reports to the FSA on a regular basis to show satisfaction of the FSA's financial resources requirements.
- (h) The Clearing House Board has two standing committees: a risk committee; and an audit committee. The risk committee is comprised primarily of Clearing Member representatives, and amongst other things, has responsibility for considering the Clearing House's risk policies.
- (i) For treasury management purposes, the Clearing House maintains a USD credit line. The Clearing House ensures its liquidity through prudent management of customer cash, deposited with it as margin collateral.⁹
- (j) The Clearing House's Guaranty Fund is designed to meet the risk management standard proposed by the European Association of Central Counterparty Clearing Houses and CPSS-IOSCO Recommendation 5 for central counterparties: the Guaranty Fund will be of a size that covers the largest exposure over and above Margin held amongst the membership, with that exposure being defined as the largest stress-test modeled (hypothetical) loss amongst the membership (see also section 5.4(j) of this Application).
- (k) The Clearing House stress tests include historical and parametric simulations.
- (l) The amount and calculation of the Guaranty Fund is reported to Clearing Members by means of a Clearing House Circular, copies of which are publicly available on the ICE website.¹⁰
- (m) Original Margin requirements are calculated at the close of business on a daily basis, for both Proprietary Accounts and Customer Accounts, using the SPAN®¹¹ algorithm (Clearing Procedures 4.2(d)). The Clearing House's current Margin parameters are publicly available on the ICE website and can be found at https://www.theice.com/clear_europe_span_parameters.jhtml.
- (n) The Clearing House SPAN®¹¹ risk array files are publicly available (www.theice.com / www.cme.com).

⁸ Form 10-Q.

⁹ See <http://www.sec.gov/Archives/edgar/data/1174746/000095014409003167/0000950144-09-003167-index.idea.htm>.

¹⁰ See, for example, Circular C08/033 dated 1 November 2008 https://www.theice.com/publicdocs/clear_europe/circulars/C08033%20Guaranty%20Fund%20levels%20and%20Insurance.pdf.

¹¹ "SPAN" is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc., assumes no liability in connection with the use of SPAN by any person or entity.

- (o) Admission criteria (and conditions for access) for clearing membership of the Clearing House are dealt with in detail in the analysis of Core Principle C (participant and product eligibility) at section 5.3(c). The Clearing House currently has Clearing Members from the US and European Economic Area, and has undertaken legal due diligence in respect of its regulatory status and the enforceability of its agreements in relevant jurisdictions. Applications from outside these countries would only be accepted subject to appropriate due diligence and satisfactory legal opinions. The Clearing House considers membership applications with reference to the US Department of Treasury Office of Foreign Asset Control (OFAC), which restricts the countries from which the Clearing House could accept Clearing Members and certain specified individuals from having access to the Clearing House's facilities.

Managerial Resources

- (p) Copies of resumes summarising general experience and expertise of various functions are available on the Clearing House's website at https://www.theice.com/publicdocs/clear_europe/Clear_Europe_Governance.pdf.
- (q) A chart showing the organizational structure of each department responsible for the operations of the Clearing House which includes: (i) membership; (ii) risk management (e.g., monitoring of markets and Clearing Members); (iii) treasury; (iv) product review; and (v) Rule enforcement; which includes the number of individuals staffing each department is attached at Annex 5. System safeguards are the responsibility of each department head and separately, ICE, Inc. Vice President, Information Security (see below for details). Record keeping is the responsibility of each department head (see below for details).
- (r) In summary:
 - (i) Membership: the head of membership manages the membership department of the Clearing House. There are in addition two membership coordinators.
 - (ii) Risk Management: the head of risk manages the risk department. There are in addition five risk managers and a graduate intern.
 - (iii) Treasury: the head of treasury manages the treasury department. There are in addition two other treasury roles.
 - (iv) Product Review: the Director of Corporate Development is responsible for coordinating the development of new products and maintenance of existing products in cooperation with the heads of regulation, risk, treasury and operations (respectively) and the business development departments at ICE Futures and ICE Inc. All new products are subject to the approval of the Clearing House Risk Committee.
 - (v) Rule enforcement: on a day-to-day basis, compliance with the Rules is monitored and managed within the relevant departments mentioned above. In the event of a serious or persistent problem, breaches are escalated within the Clearing Member, and, if unresolved, the matter may result in disciplinary action under Part 10 of the Rules.
 - (vi) System safeguards: the Clearing House is subject to the ICE Information Security Policy which is the overall control on all aspects of security, including all IT systems. ICE security strategy is the responsibility of the ICE, Inc. Vice President, Information Security.

- (vii) Record keeping: the audit trail for cleared transactions consists of two main elements:
 - (A) Information recorded by the ICE Group trading platform(s) and passed to TRS/CPS on a transaction by transaction basis; and
 - (B) Reference (static) data held in the ICE Group trading platform systems and in the TRS/CPS Administration Systems, defining the basic characteristics of each instrument traded.

Thereafter records are maintained within and by each department. Further information about TRS / CPS is provided in section 5.10(c).

- (s) All department heads ultimately report to the President and Chief Operating Officer. In addition, risk management has a reporting line to the risk committee; membership, as part of the regulatory function, has a reporting line to the independent non-executive director with special responsibility for and experience in regulation; and treasury, as part of the finance department, has a reporting line to the audit committee. Both the audit and risk committees are committees of the Clearing House Board, chaired by independent non-executive directors.

Operational Resources

- (t) Based on the Clearing House's current business plan, the majority of its operations are located within the UK.
- (u) The Clearing House, has, however, outsourced some of its services, which can be summarized (by outsourced service provider) as:
 - (i) ICE Inc.: IT development and support; IT helpdesk; and internal audit; and banking system (development and support).
 - (ii) ICE Futures: membership; legal, regulatory and compliance resources and expertise; finance resources and expertise.

5.3 Core Principle C: PARTICIPANT AND PRODUCT ELIGIBILITY

The applicant shall establish (i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and (ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

In addressing Core Principle C, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Member/participant admission criteria:

a. How admission standards for its clearing members/participants would contribute to the soundness and integrity of operations; and

b. Matters such as whether these criteria would be in the form of organization rules that apply to all clearing members/participants, whether different levels of membership/participation would relate to different levels of net worth, income, and creditworthiness of members/participants, and whether margin levels, position limits and other controls would vary in accordance with these levels.

2. Member/participant continuing eligibility criteria:

- a. A program for monitoring the financial status of its members/participants; and*
- b. Whether and how the clearing organization would be able to change continuing eligibility criteria in accordance with changes in a member's/participant's financial status.*

3. Criteria for instruments acceptable for clearing:

- a. The criteria, and the factors considered in establishing the criteria, for the types of agreements, contracts, or transactions it will clear; and*
- b. How those criteria take into account the different risks inherent in clearing different agreements, contracts, or transactions and how they affect maintenance of assets to support the guarantee function in varying risk environments.*

4. The clearing function for each instrument the organization undertakes to clear.

Analysis

- (a) Comparable UK regulatory requirements include:
 - (i) Access to facilities.¹²
 - (ii) Systems and controls;¹³ and
 - (iii) Conflicts of interest.¹⁴

Membership Criteria and Requirements

- (b) The Clearing House currently accepts applications for clearing membership from firms based in the US, the European Economic Area and Switzerland only. Clearing Members must demonstrate to the Clearing House that they have the legal authority to engage in derivatives transaction by providing various documents and information, including evidence of regulatory permissions by an appropriate regulatory body to offer and/or undertake clearing services. To clear the ICE Futures exchange, a Clearing Member must also be a member of the exchange; to clear the ICE, Inc. OTC market a Clearing Member must also be a participant in the OTC market. A Clearing Member may, subject to meeting the eligibility criteria applicable in each case, clear either or both of these markets. Failure by a Clearing Member to comply with membership requirements is capable of amounting to an event of default under the Clearing House's default rules.
- (c) Under the Clearing House membership criteria, all Clearing Members are required to:
 - (i) Hold sufficient capital, as specified by the Clearing House from time to time (Rule 201(a)(v); Rule 206). The minimum capital requirement is USD 20 million or currency equivalent (Membership Procedures, paragraph 3.1). The Risk Committee has authority to grant membership to applicants with capital greater than USD 10 million but less than 20 million – such approval will be

¹² REC 2.7.

¹³ REC 2.5.

¹⁴ REC 2.5.9G.

at the sole authority of the risk committee. The Clearing House follows rules on regulatory capital established in Basel II (as implemented in the Banking Consolidation Directive and Capital Adequacy Directive) to define eligible capital and the proportions in which it can be held (Rule 206; Rule 101 definition of “Capital”). This approach adopts international standards and ensures that there will be no duplication of capital requirement calculations for Clearing Members that are financial institutions. The Clearing House has the right to require any Clearing Member to provide capital in excess of the minimum requirement (Rule 206(a)), and to inspect details and financial statements supporting Clearing Members’ statements of Capital (Rule 206(b)).

- (ii) Have demonstrated to the Clearing House the ability to make available to the Clearing House sufficient Original Margin and make Variation Margin payments as required (Rule 201(a)(xiii); Rule 202(a)(viii); Rule 204(a)(vi); Part 5) and sufficient contributions to the Guaranty Fund (Rule 201(a)(xiv); Rule 202(a)(ix); Part 11). Further detail in respect of Margin is provided in section 5.4 on risk management. A Clearing Member can be required to provide additional resources by way of collateral (Rule 206(a)).
 - (iii) Enter into a standard form of Clearing Membership Agreement with the Clearing House (Rule 201(a)(vii)), which will, *inter alia*, bind the Clearing Member to the Clearing House’s Rules and make provision in respect of collateral.
 - (iv) Have such facilities, equipment, operational capability, personnel, hardware and software systems as are capable of supporting its business as a Clearing Member, including such IT links to the Clearing House and software as are necessary for acting as a Clearing Member and as are necessary or desirable in order properly to perform the function of clearing contracts (Rule 202(a)(x)).
 - (v) Hold an account or accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favor of the Clearing House (Rule 201(xxii); Rule 202(a)(xi)).
 - (vi) If non-cash assets are to be used as collateral, to have executed all necessary documentation relating to the transfer of such assets and not to be in dispute with the Clearing House in relation to the ownership over or rights relating to such non-cash assets (Rule 201(xxii)).
- (d) Clearing Members and applicants must provide information or documentation evidencing their compliance with the above criteria (Rule 201(c)). In addition, Clearing Members are required to comply with various ongoing notification obligations which are designed to ensure that the Clearing House is notified of events that might affect a Clearing Member’s financial standing (and, hence, the Clearing House’s counterparty risks). In particular, each Clearing Member must notify the Clearing House of anything relating to the Clearing Member of which the Clearing House would reasonably expect notice (including of any matter, circumstance, change or occurrence which would cause any information supplied in connection with the Clearing Member’s application for membership or otherwise to be inaccurate, incomplete or superseded) (Rule 204(a)(xiii)).

- (e) Clearing Members are required to provide the Clearing House with copies of their quarterly financial statements within 30 days after the end of each financial quarter, and of their annual audited accounts within 90 days of the end of their fiscal year (Rules 205(a)(i) and (ii)). Clearing Members regulated by the FSA and the CFTC must, if requested by the Clearing House, also provide the Clearing House with copies of the regulatory returns filed with the respective regulator (Rule 205(a)(iii)).

Criteria for listing instruments

- (f) As noted above, the Clearing House currently provides clearing services to both ICE Inc. and ICE Futures. Both of these markets offer trading in energy and energy related derivatives contracts including exchange-traded futures and options on futures.
- (g) The Clearing House accepts new transactions on the basis of an open offer mechanism, pursuant to which contracts arise automatically on the occurrence of certain events. Essentially, at the point an open buy order matches with an open sell order, the Clearing House will become the buyer to the seller and the seller to the buyer. For off-screen trades which are registered with the Clearing House for clearing (i.e. Block Trades, Exchange for Physical and Exchange for Swaps for ICE Futures and Block Trades for ICE OTC) a Contract will form upon complete details being sent to ICE Futures or ICE Inc. and accepted through their systems. The liabilities and obligations of the Clearing House will extend only to, and be enforceable only by, Clearing Members which are required to enter into such contracts as principal, not as agent.
- (h) The Clearing House does not have any contractual relationship with non-clearing members of the markets for which it clears, or with other clients of its Clearing Members. All exchange and OTC trades effected by a non-clearing member of a market cleared by the Clearing House must be attributed to a Clearing Member with whom the non-clearing member has a contractual relationship. All contracts where the Clearing House acts as central counterparty are therefore between the Clearing House and its Clearing Members only: Principal-to-Principal clearing.
- (i) The Clearing House has separate clearing services agreements with ICE, Inc. and ICE Futures for the provision of clearing services. These contracts, *inter alia*, establish the terms of the Clearing House's appointment and *inter alia* set out service levels and information sharing arrangements.
- (j) Admission of instruments to trading is primarily a matter determined by the markets to which the Clearing House provides clearing services. However, the Clearing House reviews all instruments before deciding whether they are acceptable for clearing. Such a determination is necessary prior to clearing being introduced. Currently, all instruments cleared are of a similar type, namely energy derivatives contracts and therefore admission criteria are primarily a matter of reviewing risk management, margining matters and operational impacts (see further in section 5.4 below). All new instruments must also be reviewed and approved by the Clearing House's risk committee.

5.4 Core Principle D: RISK MANAGEMENT

The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

In addressing Core Principle D, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Use of risk analysis tools and procedures:

a. How the adequacy of the overall level of financial resources would be tested on an ongoing periodic basis in a variety of market conditions;

b. How the organization would use specific risk management tools such as stress testing and value at risk calculations; and

c. What contingency plans the applicant has for managing extreme market events.

2. Use of collateral:

a. What forms and levels of collateral would be established and collected;

b. How amounts would be adequate to secure prudentially obligations arising from clearing transactions and, where applicable, performing as a central counterparty;

c. The factors considered in determining appropriate margin levels for an instrument cleared and for clearing members/participants;

d. The appropriateness of required or allowed forms of margin given the liquidity and related requirements of the clearing organization;

e. How the clearing organization would value open positions and collateral assets; and

f. The proposed margin collection schedule and how it would relate to changes in the value of market positions and collateral values.

3. Use of credit limits:

If systems would be implemented that would prevent members/participants and other market participants from exceeding credit limits and how they would operate.

Analysis

(a) Comparable UK regulatory requirements include:

(i) Systems and controls and conflicts of interest.¹⁵

(b) In drafting its Default Rules and procedures, the Clearing House has sought the protection available from insolvency provisions set out in Part VII of the UK Companies Act 1989, the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (“the Settlement Finality Regulations”)¹⁶ and Financial Collateral Arrangements (No 2) Regulations 2003 (the “Financial Collateral Regulations”).¹⁷ In summary, Part VII provides that the default rules and procedures of an RCH take precedence over insolvency laws that would otherwise restrict action thereunder. Part

¹⁵ REC 2.5.

¹⁶ SI 1999/2979.

¹⁷ SI 2003/3226.

VII protection applies to both on-exchange and OTC positions. The Settlement Finality Regulations in summary provide that payment orders which have been instructed but not completed will take effect notwithstanding an insolvency. They also provide similar protections to the default rules and collateral of a Clearing House to the Companies Act but extend such protection throughout Europe. The Financial Collateral Regulations allow financial collateral to be realized and close-out netting to be applied on the insolvency of the collateral provider.

- (c) The scope of the products the Clearing House wishes to be able to clear pursuant to its registration as a DCO are contracts similar to the OTC energy contracts currently admitted to trading by ICE, Inc.; and OTC energy contracts currently submitted by clearing members to the Clearing House for clearing. These may include other commodity derivatives such as chemicals, currency, freight, metals, minerals, rubber and/or weather contracts.¹⁸
- (d) The Clearing House takes a pro-active stance with respect to Clearing Member defaults by establishing minimum capital requirements applicable to its Clearing Members, and undertaking due diligence in respect, *inter alia*, of the financial condition of applicants for clearing membership. These and the Margin requirements applicable to each Clearing Member (details of which are set out in section 5.4(c) below) are regularly monitored taking into account the Clearing Member's financial position and the size of the Clearing Member's open positions. In the event such monitoring indicates that a particular Clearing Member may be experiencing or could experience financial difficulty, the Clearing House is authorised to take a variety of actions to mitigate the risks identified. The procedures constituting the due diligence and monitoring the Clearing House undertakes are categorized into the following groupings:
 - (i) Market Risk

The following market risk indicators are monitored:

 - (A) The daily accumulated Variation Margin relative to the capital of the Clearing Member;
 - (B) The daily accumulated Variation Margin relative to the Original Margin requirement; and
 - (C) The Original Margin coverage of extreme market scenarios determined by stress testing covered by Original Margin held.
 - (ii) Liquidity Risk

The following liquidity risk indicators are monitored for each Clearing Member:

 - (A) The number and nature of participants and/or exchange members for whom the Clearing Member provides clearing services;
 - (B) The structure and collateral types used by the Clearing Member to cover liabilities with the Clearing House;

¹⁸ See also paragraph 2.2 on page 2 of this Application.

- (C) The complexity of the positions cleared by the Clearing Members;
and
- (D) The relative size of the position held by the Clearing Member and its overall share of the market.

(iii) Credit Risk Measures

The following credit risk measures are used by the Clearing House:

- (A) If available, external credit ratings of the Clearing Member or of members of its corporate group;
- (B) The availability of explicit parental support for the Clearing Member;
- (C) The net capital of the Clearing Members and the frequency at which the capital figures are updated. Clearing Members are required to report on their financial position at least quarterly (Rule 205(a)(ii)) or in the event of a material adverse change (10% or more) (Rule 204(a)(iv));
- (D) If publicly listed, the performance of the issued stock of the Clearing Member or its parent company is compared to overall market performance; and
- (E) The Clearing Member's ratio of capital to Margin requirement.

(iv) Operational Risk

The following indicators are used by the Clearing House to monitor Clearing Member operational risk:

- (A) If applicable, and where information sharing arrangements are in place, the regulatory status of the Clearing Member is monitored.
- (B) Non-compliance with administrative procedures are monitored and, if necessary, raised with the operations departments of Clearing Members. If problems are not rectified they are escalated to the compliance and / or risk departments of the Clearing Member.
- (C) The Clearing House monitors market information and where appropriate seeks clarification from Clearing Members.

In addition, membership applicants are interviewed to determine operations experience, preparedness and understanding of the Clearing House Rules and Procedures.

(e) Margin:

- (i) Positions recorded in the accounts of Clearing Members are subject to daily mark-to, or settlement to, market and Original Margin (Rule 503(b)). Calls for Margin may also be made intra-day at the discretion of the Clearing House (Rule 503(c)), an event which is likely to be driven by market movements. Market risk is mitigated by way of margin collateral provided by Clearing Members pursuant to Part 5 of the Rules (together with the

Guaranty Fund Contributions required under Part 11 of the Rules – details of which are set out below). In the event of a temporary deficiency in the level of collateral held by the Clearing House in a Clearing Member’s Margin account, a Margin call will be made which must be settled immediately at the time and on the date that the obligation to pay arises or at such other time as is specified by the Clearing House in writing (Rule 302(b)). The Clearing House monitors contract price changes. Generally, the Clearing House considers making discretionary calls if a contract price exceeds 66% of its scanning range (further details of the scanning range are set out in paragraph (iv) below).

- (ii) The Clearing House has introduced an intra-day margining system which will replace the discretionary call procedure. The system is available as an intra-day risk management tool and will be available as an intra-day margining system subject to Clearing Members being in a position to implement the necessary changes in their back office and treasury functions. This will allow the Clearing House to adjust original margin if internal risk limits are breached.
- (iii) Original Margin requirements are calculated by the CME SPAN®¹⁹ algorithm. The SPAN®¹⁹ parameters are continuously reviewed by the Clearing House and adjusted periodically to reflect changing market conditions.
- (iv) The methodologies the Clearing House employs to set SPAN®¹⁹ parameters (e.g., the price scan range and the volatility scan range) are as follows:
 - (A) The Clearing House uses statistical analysis to determine an appropriate modelled range for the SPAN®¹⁹ parameter being set.
 - (B) The Clearing House reviews the results of its statistical analysis to determine whether the standard modelled outcome is appropriate.
 - (C) The Clearing House uses parametric VaR (Value at Risk) to calculate the scanning range and inter-month spread charges.
 - (D) In general, parameters are set to cover a confidence interval of 99% over a one or two day holding period. The worst case of the two being taken as the basis for the Margin parameter.
 - (E) The model observes, as available, 60, 250 and 1,000 day price histories. Typically, emphasis is given to the 60 day price history in setting Margin parameters. However, longer price history or relevant price periods may be used, for example, for seasonal products.
- (v) Variation Margin is collected and paid based on the difference between the settlement price on such day of each traded contract in the account and the price at which each such contract was bought or sold or, in the case of open positions, the price at which the position is recorded on the Clearing House’s books (Rule 503(e)). The Clearing House may also require that a Clearing Member reduce or increase positions or post additional Original Margin if it determines that market integrity requires it (Rule 502(b)).

¹⁹ “SPAN” is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc., assumes no liability in connection with the use of SPAN by any person or entity.

- (vi) After the close of trading on each business day, the Clearing House will advise each Clearing Member of the amount of Original Margin, Variation Margin and option premium margin owing to or from such Clearing Member and daily payments of amounts required by way of Margin will proceed (Rule 302(a)):
- (vii) Monitoring of Margin requirements on an ongoing basis may include:
 - (A) Daily Review of pay and collects;
 - (B) Daily Review of price movements and market volatility;
 - (C) Margin calls;
 - (D) Collateral adjustment;
 - (E) Monitoring of Clearing Members identified as high-risk; and
 - (F) Monitor the positions of the Clearing Members.
- (f) The Clearing House's current Margin parameters can be found at https://www.theice.com/clear_europe_span_parameters.jhtml.
- (g) In order to ensure that liquidity and market risks (as well as counterparty risks) are reduced, only certain assets are acceptable as collateral. Details of the Clearing House's current Permitted Cover can be found in Circular C09/015 dated April 2009.²⁰
- (h) In addition to setting Margin rates, the Clearing House undertakes Clearing Member monitoring. The focus of the Clearing House's Clearing Member (and position) monitoring is to detect events that may adversely affect the ability of a Clearing Member to continue to meet its obligations to the Clearing House. The risk department within the Clearing House coordinates information on a Clearing Member's creditworthiness and general financial condition.
- (i) The Clearing House, on an ongoing basis, undertakes a range of stress tests, including weekly and *ad hoc* checks of key variables of Clearing Members' portfolios and comparison of modeled losses to the adequacy of Clearing Members' Original Margin requirements and Guaranty Fund Contributions. The scenarios or parameters employed by the Clearing House when stress testing these portfolios are:
 - (i) The Clearing House uses a range of parametric and historically based stress test scenarios. The scenarios are determined to be relevant and reasonable in relation to the products cleared.
 - (ii) In reviewing results, the Clearing House may determine that a specific scenario may not be relevant to specific prevailing market conditions and therefore disregard the result. The stress tests are used to scale the Guaranty Fund and to identify accounts which may have concentrated exposure.
 - (iii) The specific stress tests are kept under review and may vary to reflect new market information or changing market conditions.

²⁰

https://www.theice.com/publicdocs/clear_europe/circulars/C09015.pdf
https://www.theice.com/publicdocs/clear_europe/circulars/C09015_att.pdf

- (j) The Clearing House determines an internal rating in relation to each legal entity approved for membership. The internal rating reflects the standing and financial resources of the legal entity which has been admitted to membership and the parent of the legal entity. Where a public rating is available for either the Clearing Member or, if applicable, its parent, it is used in the determination of the internal rating. The Clearing Member's internal rating is used in daily exposure monitoring of each Clearing Member, whereby lower rated Clearing Members are subject to Clearing House management scrutiny and oversight at lower multiples of Original Margin to available financial resources. The procedures or methodology the Clearing House employs to generate an internal rating for each Clearing Member are:
- (i) The internal rating takes into account a range of parameters which are designed to capture the following risk categories: credit, market, operational and liquidity risk.
 - (ii) Where applicable, statistical modelling is used to determine the input parameter to the rating model. Where statistical modelling can not be applied, the judgement of the risk manager is used. Each parameter within the model is weighted and used to determine the overall rating.
 - (iii) The public rating of a Clearing Member or parent company is only one of the many inputs to the rating model and is not a key determinant of the overall rating. The Clearing House has Clearing Members that do not subscribe to rating agencies and therefore do not have a public rating attributed.
- (k) Where the Clearing House has concerns about a particular Clearing Member, it may require it to provide additional resources by way of collateral (Rule 502(d)). The Clearing House is likely to exercise its discretion to require additional Margin if:
- (i) the standard requirement would not be commensurate with the volume of business the Clearing Member intends to clear;
 - (ii) the Clearing House became aware that a capital restructuring was planned that would diminish capital and the applicant would no longer meet the Capital requirement;
 - (iii) in the event of financial difficulties of a Clearing Member; or
 - (iv) the Clearing House believed it prudent to require an amount greater than the minimum requirement.
- (l) Guaranty Fund: The Clearing House is committed to ensuring that its post-default backing is of appropriate size. The Clearing House has established its Guaranty Fund in accordance with its Procedures (see Annex 8) and maintains a Guaranty Fund that currently stands at USD 480 million. The stress test scenarios and adequacy of the Guaranty Fund is reviewed and approved by the Risk Committee at least twice annually.
- (i) The total amount required in the Guaranty Fund is calculated by using the principle of the potential cost to the Clearing House of closing out a defaulting Clearing Member's position during a period of extreme market conditions where the Original Margin held in respect of the defaulting Clearing Member is insufficient (the extreme market conditions are based on a number of established and accepted stress test scenarios). Clearing Member's contributions to the Guaranty Fund are based on each Clearing

Member's activity i.e. average Original Margin over three months (75% weighting) and share of new contract volumes (25% weighting); with the minimum contribution for any Clearing Member currently set at USD 2 million (Rule 1102(b)).

- (ii) The Guaranty Fund's first tranche of USD 50 million is provided by the Clearing House; USD 380 million is provided by the Clearing Members; a further amount of up to USD 50 million is provided by the Clearing House - which ranks *pari passu* with Clearing Member contributions (ICE Clear Europe Circular C08/033 dated 1 November 2008).²¹
- (iii) The Clearing House currently has default insurance of USD 100 million and powers of assessment (two times the original Guaranty Fund Contribution) available to it in the event that the Guaranty Fund should be exhausted.²²
- (iv) In the event of a Clearing Member default, the Clearing House would first apply that Clearing Member's Original Margin; excess Permitted Cover they may have lodged; and Guaranty Fund Contribution to cover losses and costs arising from its default (Rule 1103). In the event that such sums proved insufficient, the Clearing House would currently apply the following funds in order of recourse (Rule 1103):
 - (A) Any other asset of the Defaulter which the Clearing House is entitled to realise or liquidate, and any other right or claim of the Clearing House against the Defaulter or amount due to the Clearing House from the defaulter;
 - (B) USD 50 million contributed by the Clearing House;
 - (C) Guaranty Fund Contributions of non-defaulting Clearing Members; together with up to USD 50 million from the Clearing House (ranking *pari passu* with Clearing Member contributions) applied in accordance with Rule 1103(e);
 - (D) Claims under default insurance policies of USD 100 million (deductible of USD 450 million) of which the Clearing House is the beneficiary (Rule 1103(f));²³ and
 - (E) Assessment contributions (of up to two times the remaining solvent Clearing Members' Guaranty Fund requirements) levied by the Clearing House on Clearing Members pursuant to Rule 1105.
- (m) Market and liquidity risks are considered by the Clearing House through monitoring of market price changes. As discussed in paragraph 5.4(d)(i) and (ii), the Clearing House will determine whether an intra-day *ad hoc* Original Margin call is necessary and will, as appropriate, instruct treasury to assess whether adequate Original Margin collateral is already held to satisfy a call. In the event of a Clearing Member holding insufficient collateral to cover an *ad hoc* call, the Clearing House will determine whether an immediate call for additional collateral should be made.

²¹ https://www.theice.com/publicdocs/clear_europe/circulars/C08033%20Guaranty%20Fund%20levels%20and%20Insurance.pdf

²² See Rules 1103(f) and 1104(d).

²³ This insurance policy will terminate in September 2009.

- (n) The Guaranty Fund and stress testing models described above contemplate extreme market events.
- (o) In addition to stress testing Clearing Member portfolios (as described above) and its Guaranty Fund, the Clearing House conducts stress tests and produces stress testing results daily.

5.5 **Core Principle E: SETTLEMENT PROCEDURES**

The applicant shall have the ability to (i) complete settlements on a timely basis under varying circumstances; (ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and (iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

In addressing Core Principle E, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Settlement timeframe:

a. Procedures for completing settlements on a timely basis during times of normal operating conditions; and

b. Procedures for completing settlements on a timely basis in varying market circumstances including during a period when one or more significant members/participants have defaulted.

2. Recordkeeping:

a. The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

b. How such information would be recorded, maintained and accessed.

3. Interfaces with other clearing organizations:

How compliance with the terms and conditions of netting or offset arrangements with other clearing organizations would be met, including, among others, common banking or common clearing programs.

Analysis

- (a) Comparable UK regulatory requirements include:
 - (i) Systems and controls and conflicts of interest.²⁴
 - (ii) Settlement and clearing services.²⁵
 - (iii) Transaction recording.²⁶
 - (iv) Custody.²⁷

²⁴ REC 2.5.

²⁵ REC 2.8.

²⁶ REC 2.9.

- (b) As central counterparty, the Clearing House is responsible for the performance of contracts through to final settlement. In the case of most of the futures and options contracts the Clearing House currently clears, this final settlement takes the form of a cash payment from one Clearing Member (via the Clearing House) to another. All such payments are made through the Clearing House's Assured Payment System ("APS"), which is an arrangement to effect payments operated by the Clearing House and its approved financial institutions ("AFIs"), a list of which can be found at Annex 9, who act as bankers to the Clearing House's Clearing Members.
- (c) Consolidation banking services are provided to the Clearing House by JP Morgan. These services include banking and investment services.
- (d) Details of the settlement operations at the Clearing House are set out in detail in the Procedures (see Annex 8), and the finance procedures in particular. In summary:
 - (i) The Clearing House supports transactions and account holdings in three currencies: USD, GBP and EUR. Each Clearing Member must as a minimum maintain the following accounts at one or more AFIs:
 - (A) three Nominated Proprietary Accounts (also known as 'house' accounts), denominated in USD, and GBP and EUR, if contracts in those currencies are cleared;
 - (B) if a Clearing Member clears segregated Customer business, three Nominated Customer Accounts (also known as 'client' accounts), denominated in USD, and GBP and EUR, if contracts in those currencies are cleared; and
 - (C) Guaranty Fund account, denominated in USD, which may be the same account as the USD Nominated Proprietary Account.
 - (ii) The Clearing House collects all Clearing Member Guaranty Fund Contributions through its account at its consolidation bank, JPMorgan. The cash received is then invested on the Clearing House's behalf by JPMorgan. This ensures that each Clearing Member is maintaining the required Guaranty Fund Contribution at all times.
 - (iii) Clearing Members and AFI's are required to have in place at all times a standard debit mandate, allowing the Clearing House to call funds from its Nominated Accounts. The Clearing House has various powers, including to take any action as it determines in the Clearing Member's or the Clearing House's name in connection with a Clearing Member's Nominated Accounts pursuant to a third party authority executed by the Clearing Member and under Clause 5 of the Clearing Membership Agreement.
 - (iv) Clearing Members are advised of debits from or credits to their physical accounts by the standard SWIFT advices of debit and credit (MT202 and MT202R respectively) or otherwise in accordance with arrangements established with AFIs. Payment is confirmed by AFIs by receipt of MT910's. Settlement Finality designation and Part 12 of the Rules provide for such instructions to have effect notwithstanding an insolvency or administration affecting a Clearing Member or AFI.

- (v) Approved Financial Institutions must make payment to the Clearing House within the following time periods:

Type of Instruction	Time for receipt of instruction	Latest time for AFI to make payment of amount specified in Instruction and send SWIFT MT900/MT910
Routine end-of-day instruction	On or after 00:00:00 London Time on Business Day X+1 but on or before 07:59:59 on Business Day X+1	Before 09:00:00 London time on Business Day X+1
Intra-day instruction (contingency)	On or after 08:00:00 on Business Day X but on or before Cut-Off Time on Business Day X	Within one hour of instruction on Business Day X.

In the event that no payment notification is received from an AFI by the time specified above, the Clearing House is permitted to act as if the funds have not and will not be received, which includes the declaration of an Event of Default in respect of any affected Clearing Member (Rule 901(a)(i) – event of default for breach of the Rules/Procedures). In such circumstances, the Clearing House will use its reasonable endeavours to determine the cause of the late notification with the relevant AFI. The Clearing House monitors Clearing Member payment obligations on a daily basis. If considered necessary, the Clearing Member will be contacted to confirm whether arrangements are in place to make necessary payments.

- (e) The settlement and delivery requirements arising after contract expiry are set out fully in the contract specifications, and further detail can be found in the Procedures (see Annex 8). As counterparty to all contracts, the Clearing House is obliged to make final settlement to all its counterparties even if a particular Clearing Member defaults in its obligations. Settlement and delivery will occur as follows for Contracts which remain open at contract expiry:
- (i) cash-settled products are settled by payment or receipt of the difference between the price at which the position is recorded at the Clearing House and the applicable reference settlement price at ICE Futures or for ICE OTC products in accordance with relevant procedures calculated in accordance with the Rules. Following payment, all contract obligations are deemed to have been met and contract performance will be final (Rule 705(b));
 - (ii) contracts that result in the physical delivery of a commodity (or title to a commodity), are settled by the delivery of the commodity or title to that commodity against the payment of:
 - (A) an amount being the difference between the price at which the position is recorded at the Clearing House and the reference settlement price (Rule 703; Delivery Procedures); and
 - (B) the value of the commodity being delivered.
- (f) If a Clearing Member defaults because it cannot meet a payment due to the Clearing House, the Clearing House will make all daily settlement payments due to other Clearing Members, using the defaulter's assets (Margin and Guaranty Fund

Contribution) if they are immediately available, or using its own balances or credit lines if they are not (ahead of realization of the defaulter's Margin cover).

- (g) The Clearing House's payment system is subject to insolvency provisions established by the Settlement Finality Regulations, as set out in Part 12 of the Rules.
- (h) Record keeping: the Clearing House's records include financial records, rules, circulars, procedures and reports of activities and operations, including but not limited to clearing, settlement, Clearing Members' accounts and Margin requirements, which are maintained for a minimum of 5 years. Clearing Members are also required to keep records of transactions in such form as may be required by the Clearing House from time to time (Rule 202(a)(xvi)). In addition, Clearing Members are required to keep copies of any documentation that they provide to the Clearing House for at least five years (Rule 108(a)). Where Clearing Members are authorised and regulated by the FSA, they are deemed to satisfy this requirement by complying with all applicable FSA Rules relating to record-keeping in relation to their activities connected with the Clearing House (Rule 108(a)).
- (i) The Clearing House does not currently operate any permitted netting or offset arrangements with other clearing organisations.

5.6 **Core Principle F: TREATMENT OF FUNDS**

The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

In addressing Core Principle F, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Safe custody:

a. The safekeeping of funds, whether in accounts, in depositories, or with custodians, and how it would meet industry standards of safety;

b. Any written terms regarding the legal status of the funds and the specific conditions or prerequisites for movement of the funds; and

c. The extent to which the deposit of funds in accounts in depositories or with custodians would limit concentration of risk.

2. Segregation between customer and proprietary funds:

Requirements or restrictions regarding commingling customer funds with proprietary funds, obligating customer funds for any purpose other than to purchase, clear, and settle the products the clearing organization is clearing, or procedures regarding customer funds which are subject to cross-margin or similar agreements, and any other aspects of customer fund segregation.

3. Investment standards:

a. How customer funds would be invested consistent with high standards of safety; and

b. How the organization will gather and keep associated records and data regarding the details of such investments.

Analysis

- (a) Comparable UK regulatory requirements and compliance:
- (i) Default: The Recognition Requirements Regulations require that the Clearing House's default rules provide that in the event of a default, Margin provided by the defaulter for its own account is not to be applied to meet a shortfall on a client account.²⁸
 - (ii) Clearing Members which are UK financial institutions regulated by the FSA are subject to separate FSA rules in respect of the segregation of client and house assets when such assets are deposited with a third party, such as a clearing house.²⁹
- (b) The Clearing House currently aims to facilitate compliance by its Clearing Members with applicable laws requiring client funds to be segregated from a Clearing Member's own funds through its operation of separate accounts and its default rules. The Clearing House makes segregated client accounts available for its Clearing Members that have trading clients that are required by applicable law or exchange regulation to segregate client funds from house funds. Non-segregated client positions and Clearing Member proprietary positions are maintained in the house accounts held with the Clearing House. A Clearing Member is entitled to instruct the Clearing House as to whether any transaction or collateral is in respect of its customer account or proprietary account and is responsible for ensuring that collateral and contracts are booked to the correct account (Rule 207(d)). In the event of a Clearing Member's default, the Clearing House is not permitted to offset positions in the Clearing Member's house account against those held in the Clearing Member's segregated client account and vice versa (Rule 905(b)), nor can it apply Margin cover held in relation to positions registered in one such account to meet shortfalls with respect to positions in the Clearing Member's other account (Rule 102(p)).
- (c) As set out more fully in section 5.5(d) each Clearing Member is required to hold accounts with a Clearing House AFI - an account for proprietary business and a further account for customer business, if applicable. The Clearing House will have two bank accounts at each AFI, one for funds related to a Clearing Member's proprietary business and one for funds related to Clearing Members' customer business, if required. All funds transfers are between like accounts, e.g. a Clearing Member's house account and the Clearing House's house account. Furthermore, when the Clearing House chooses to consolidate its funds into a single AFI, this will also be into one of two accounts, house or client. Again, all funds transfers are between like accounts.
- (d) FSA rules applicable to financial institutions regulated in the UK require the Clearing House to acknowledge in writing to Clearing Members that hold segregated client money that the customer account will not be combined with the proprietary account, nor will any right of set-off be exercised by the Clearing House against money credited to the customer account in respect of any sum owed to the Clearing House in relation to the proprietary account.³⁰ This acknowledgement is contained in the

²⁸ Paragraph 28 of the Schedule to the Recognition Requirements.

²⁹ FSA Handbook, Client Assets Sourcebook (CASS).

³⁰ CASS 7.8.2R.

Clearing Membership Agreement (Clause 5.3), and an acknowledgement was also issued to Clearing Members by Circular C08/032 dated 31 October 2008.³¹

(e) Custody³²

- (i) All assets and cash deposited with the Clearing House are held at regulated custodian and deposit-taking banks which themselves are regulated in the conduct of custody and related arrangements by the FSA or other regulators.
- (ii) The Clearing House currently accepts Margin cover and Guaranty Fund Contributions in the form of cash (USD, GBP and EUR) and specific types of collateral, known as Permitted Cover (Rules 502(b) and 1102(d)). A list of the Permitted Cover acceptable to the Clearing House in respect of Margin and Guaranty Fund Contributions was circulated to Clearing Members by Circular C09/015 dated 15 April 2009.³³ The Circular also confirms details in relation to the use of standby Letters of Credit and Certificates of Deposit. The Clearing House accepts Letters of Credit and Certificates of Deposit on a case by case basis based on an assessment of each individual request. The Clearing House carries out these assessments to manage the counterparty risk of the issuers of the Letters of Credit and Certificates of Deposit. Further information in relation to provision of Margin and Guaranty Fund Contribution can be found in the Clearing House Procedures (see Annex 8).

(f) Letters of Credit

- (i) Clearing Members that intend to lodge a Letter of Credit to cover their Margin obligation are required to pre-notify the Clearing House so that it can make an assessment of the acceptability of the issuing bank. The Clearing House will assess each request individually and confirm or decline acceptance on a case by case basis (Finance Procedures, para 9.1).
- (ii) In assessing a request the Clearing House will take into account the following:
 - (A) Capital of the Clearing Member.
 - (B) Credit rating of issuing bank.
 - (C) Capital and market capitalization of issuing bank.
- (iii) Payment under the Clearing House's standard form of Letter of Credit will be due and payable pursuant to its terms upon an Event of Default being declared by the Clearing House and the Clearing House presenting to the issuing bank a written certificate stating that a certain amount has not been paid by the Clearing Member. The issuing bank is liable to pay, up to the maximum amount specified in the Letter of Credit (Finance Procedures, para 9.1).

³¹ http://theice.com/publicdocs/clear_europe/circulars/C08032%20IOCE%20Clear%20Europe_Client%20Assets.pdf.

³² REC 2.11.

³³ https://www.theice.com/publicdocs/clear_europe/circulars/C09015.pdf
https://www.theice.com/publicdocs/clear_europe/circulars/C09015_att.pdf.

- (iv) Each Letter of Credit is on standard terms which are specified by the Clearing House and incorporate by reference UCP600 (Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600). Under the Clearing House's standard terms for Letters of Credit, payment is due upon presentation by the Clearing House of a signed statement that an Event of Default (as defined in the Rules) has been declared (Finance Procedures, para 9.3), i.e. payment is due on demand.
- (g) Certificates of Deposit
 - (i) Clearing Members which intend to lodge a Certificate of Deposit to cover their Margin obligation are required to pre-notify the Clearing House so that it can make an assessment of the acceptability of the issuing bank (Finance Procedures, para 7.2). The Clearing House will assess each request individually and confirm or decline acceptance on a case by case basis. Similar considerations as for Letters of Credit will apply.
 - (ii) Should the Certificate of Deposit be drawn upon in an Event of a Default, the Clearing House's default broker will be tasked with liquidating the Certificate of Deposit in the market. At the date of this Application no Certificates of Deposit had been accepted by the Clearing House, but as a general principle, the Clearing House works on the basis of a two-day holding period, so would expect Certificates of Deposit to be liquidated within two days.
- (h) In accordance with the terms of the Clearing Membership Agreement, Permitted Cover is lodged with the Clearing House by means of a 'title transfer financial collateral arrangement' under the EU's Financial Collateral Directive³⁴ (Clause 4 of the Clearing Membership Agreement). Therefore, Permitted Cover placed with the Clearing House in respect of Margin and Guaranty Fund Contributions no longer belongs to the transferring Clearing Member. The Clearing House holds the transferred Permitted Cover in accordance with its contractual obligations prescribed within the Clearing House Clearing Rules, including the obligation to return any excess Permitted Cover if requested (Rule 503(f)).
- (i) All Clearing Members have user ID and passwords to access the Clearing House's electronic collateral management system ("ECS") and are able to view and process instructions related to transferred Permitted Cover at the Clearing House. When an instruction is received to return excess collateral to the transferring Clearing Member, the system will check to ensure that there is enough excess collateral on deposit, and then generate an appropriate instruction to return the asset to a pre-defined account location. The transfer is processed by the Clearing House and recorded. The Clearing House will reconcile collateral movement activity with the bank and custodian account activity.
- (j) The Clearing House's current arrangements for the holding of collateral are in accordance with applicable laws, including those that apply to U.S. FCMs for Regulation 30.7 accounts under the CFTC's FORM 1-FR-FCM, Chapter 12-8. In the event that the Clearing House starts to clear a US DCM or DTEF, acting in its capacity as a US DCO, the Clearing House acknowledges that the provisions of CEA Section 4d and applicable CFTC Regulations promulgated thereunder relating to

³⁴

Directive 2002/47/EC; the Financial Collateral Arrangements.

customer funds segregation would apply, including CFTC Regulations 1.20, 1.25, 1.26, 1.27, 1.36 and 1.49.

- (k) Consistent with CFTC Regulation 1.27, the Clearing House keeps the following records showing separately for each Clearing Member from whom the Clearing House receives documents representing investments of customer segregated funds:
 - (i) The date on which such documents were received from the Clearing Member;
 - (ii) A description of such documents, including the ISIN numbers; and
 - (iii) The date on which such documents were returned by the Clearing House to the Clearing Member of the details of disposition by other means.
- (l) Consistent with CFTC Regulation 1.36, the Clearing House maintains records of all securities and other property held at the Clearing House or at its custodian banks that are received from its Clearing Members to Margin customer positions. Such records show, separately for each Clearing Member, the date of receipt of such property, the identity of the depository, the date such property was returned to the Clearing Member or otherwise disposed of together with the facts and circumstances of such disposition including the authorization to return or dispose of such property.

5.7 **Core Principle G: DEFAULT RULES AND PROCEDURES**

The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

In addressing Core Principle G, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Definition of default:

a. The events that will constitute member or participant default;

b. What action the organization would take upon a default and how the organization would otherwise enforce the definition of default; and

c. How the organization would address situations related to but which may not constitute an event of default, such as failure to comply with certain rules, failure to maintain eligibility standards, actions taken by other regulatory bodies, or other events.

2. Remedial action:

The authority pursuant to which, and how, the clearing organization may take appropriate action in the event of the default of a member/participant which may include, among other things, closing out positions, replacing positions, set-off, and applying margin.

3. Process to address shortfalls:

Procedures for the prompt application of clearing organization and/or member/participant financial resources to address monetary shortfalls resulting from a default.

4. Use of cross-margin programs:

How cross-margining programs would provide for clear, fair, and efficient means of covering losses in the event of a program participant default.

5. Customer priority rule:

Rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting members/participants and, where applicable, in the context of specialized margin reduction programs such as cross-margining or trading links with other exchanges.

Analysis

- (a) Comparable UK regulatory requirements include:
- (i) Systems and controls and conflicts.³⁵
 - (ii) Settlement and clearing services.³⁶
 - (iii) Recognition requirements relating to the default rules of UK recognised bodies.³⁷ Pursuant to provisions of Part VII of the Companies Act 1989 by virtue of section 155(3) of that Act (“the Part VII Provisions”), and the Settlement Finality Regulations 1999, various mandatory insolvency laws applicable in the UK and Europe are disapplied in favor of the default rules and proceedings of a clearing house, payment instructions made by a clearing house, contracts with clearing members for the transfer of a security and the use of collateral by a clearing house pursuant to its default rules. The Financial Collateral Regulations allow financial collateral to be realised and close-out netting to be applied on the insolvency of the collateral provider. The Recognition Requirements Regulations applicable to default rules are prescriptive and designed to ensure that the default rules of the Clearing House are capable of being effective in light of the Part VII Provisions, the Settlement Finality Regulations and UK insolvency laws.³⁸
- (b) Clearing Members consist of banks, brokers and some energy companies. Each Clearing Member must enter into a contractually binding Clearing Membership Agreement in the prescribed form. The Clearing Membership Agreement binds Clearing Members to the Clearing House Rules (including the default rules) and Procedures and establishes the Clearing House’s proprietary rights to Margin provided by the Clearing Member.
- (c) Section 1 of the Clearing House Procedures (see Annex 8) provides the operational detail in relation to the various systems and processing arrangements in relation to clearing, position management, risk management and margining, and banking which represent the implementation and operation of the relevant sections of the Clearing House Rules, including Part 4 (Clearing Mechanism) and Part 5 (Margin). Details of

³⁵ REC 2.5.

³⁶ REC 2.8.

³⁷ REC 2.17.

³⁸ REC 2.17.4G – 2.17.5G.

Margin rates and parameters are communicated to Clearing Members as appropriate by Clearing Member Circular.³⁹

- (d) Part 9 of the Clearing House Rules deals with Events of Default, described as the Default Rules. Rule 901(a) lists the relevant events which constitute a default under the Clearing House Rules, if declared as an Event of Default by the Clearing House. The relevant events include among other things, breach of the Clearing House's Rules, financial default, a failure to pay under prescribed forms of indebtedness, and/or the commencement of insolvency or similar proceedings. In the event that the Clearing House has declared an Event of Default, then the Clearing House may suspend or terminate such defaulting Clearing Member's membership and take actions reserved to the Clearing House under Part 9, principally in Rule 902. However, the Clearing House may choose not to suspend or terminate a Clearing Member in such circumstances if it determines that any such suspension or termination would either, (i) not be in the best interests of the Clearing House; or, (ii) be likely to adversely affect the operation of a relevant market.
- (e) The Clearing House's powers under Rule 902 include the power to close-out and settle open positions of the Clearing Member in default, to transfer open positions to another Clearing Member (subject to the latter's consent), to enter into new contracts in order to hedge the market risk of the open positions of the Clearing Member in default, with or without associated Margin cover. Pursuant to the Clearing Membership Agreement, the Clearing House is granted a power of attorney enabling it to carry out any such step under its default rules.
- (f) In the event that the Clearing House determines under Rule 902 that certain contracts must be liquidated, then the Clearing House shall take such action specified under Rule 903, and further, calculate net sums payable subsequent to such close out in accordance with Rule 905.
- (g) From the perspective of any customers of a defaulting Clearing Member, under the Clearing House's Rules and in accordance with English insolvency law, the Clearing House cannot commingle proprietary and customer account positions or Margin. If a transfer of segregated customer Contracts has not occurred in accordance with Rule 902 then the Clearing House may separately close out some or all of these customer and proprietary Contracts as appropriate under Rule 903 and calculate net sums payable separately in respect of relevant customer and proprietary positions in accordance with Rule 905(b).
- (h) Actions taken by the Clearing House under Part 9 will benefit from UK insolvency law protections. Further, the Clearing House has received designation under the Settlement Finality Regulations, which ensures that the systems through which the various payments are made also enjoy protection from unwinding by an insolvency practitioner.
- (i) Under Rule 1102, Clearing Members are required to make Guaranty Fund Contributions in the amounts and at the times specified by the Clearing House. Contributions are calculated by the Clearing House and provided by Clearing Members on a quarterly basis. Further detail is set out in section 5.4(j).

³⁹ For examples, see https://www.theice.com/publicdocs/clear_europe/circulars/C09017.pdf; https://www.theice.com/publicdocs/clear_europe/circulars/C09013.pdf; https://www.theice.com/publicdocs/clear_europe/circulars/C09007.pdf.

- (j) Rule 1103 confirms the order in which relevant assets must be applied by the Clearing House to meet the losses sustained as a result of an Event of Default. The order of recourse is first to the Defaulter's Original Margin, second to the Defaulter's Guaranty Fund Contribution and third to other relevant assets of the Defaulter, fourth to an amount contributed by the Clearing House to the Guaranty Fund, fifth to a *pro rata* call on all Guaranty Fund Contributions by non-Defaulting Members and the Clearing House, sixth, currently, to relevant insurance policies, and finally to Assessment Contributions levied on Clearing Members as a result of the relevant Event of Default (limited for each Clearing Member at two times its Guaranty Fund Contributions).
- (k) Rule 1102(i) confirms the manner in which the Clearing House will specify the amount by which the Guaranty Fund has been reduced as a consequence of the application of funds consequent on an Event of Default, and further the means by which the Guaranty Fund shall be replenished by Guaranty Fund Contributions by Clearing Members.
- (l) There are no cross-margining programs.

5.8 **Core Principle H: RULE ENFORCEMENT**

The applicant shall (i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and (ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

In addressing Core Principle H, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Surveillance:

Arrangements and resources for the effective monitoring of compliance with rules relating to clearing practices and financial surveillance.

2. Enforcement:

Arrangements and resources for the effective enforcement of rules and authority and ability to discipline and limit or suspend a member's/participant's activities pursuant to clear and fair standards.

3. Dispute resolution:

Where applicable, arrangements and resources for resolution of disputes between customers and members/participants, and between members/participants.

Analysis

- (a) Comparable UK regulatory requirements include:
 - (i) Access to facilities.⁴⁰
 - (ii) Discipline.⁴¹

⁴⁰

REC 2.7.

- (b) The Clearing House monitors the use of the Clearing House's facilities. Pursuant to Rule 1002(a), the Clearing House may authorize investigations into alleged infringements of the Rules or acts of misconduct. The Clearing Member concerned will be notified that an investigation is taking place and given a brief description of the matter being investigated (Rule 1002(b)).
- (c) In order to supplement the Clearing House's own monitoring processes, Clearing Members have a general obligation, pursuant to Rule 204(a)(xii), to immediately notify the Clearing House of any infringement of the Rules or applicable laws or of any financial or commercial difficulty on the part of themselves or any Clearing Member and, as soon as practicable thereafter, give the Clearing House full particulars of the infringement or difficulty.
- (d) Clearing Members are required to report various specific other matters to the Clearing House including failure to be in compliance with any applicable financial requirements of any regulatory authority, exchange, clearing organisation or delivery facility (Rule 202(a)(vii)); the insolvency of the Clearing Member or any controller or affiliate of that Clearing Member (Rule 204(a)(viii)); any default affecting it (Rule 204(a)(ix)); any breach by it of the Rules (Rule 204(a)(xii)); and any breach by it of any Applicable Law (Rule 204(a)(xii)).
- (e) The Clearing House Rules contain detailed complaints, disciplinary and appeals procedures in Part 10 of the Rules and Complaints Procedures, which empower the Clearing House to take appropriate action against Clearing Members that have breached its Rules.
- (f) The majority of the provisions for which the Clearing House monitors Clearing Member performance comprise payment obligations i.e. daily Margin requirements, Guaranty Fund Contributions, and settlement obligations (payments and delivery). Non-compliance with these obligations is quickly visible to the Clearing House and results in corrective action (e.g. escalation of requirement for payment obligations to be met); or the declaration of an event of default if the breach is not remediable. The Clearing House commenced clearing operations on 3 November 2008 and has to date taken no formal disciplinary action.⁴²
- (g) Disciplinary proceedings could be taken by the Clearing House in respect of a breach by a Clearing Member of the Rules.
- (h) If a Clearing Member is, or appears likely to become, unable to fulfill its obligations or, is in breach of an Applicable Law or rule of an exchange or clearing house or has been suspended or expelled from membership of such an exchange or clearing house, this does not of itself give rise to formal disciplinary proceedings but would allow action to be taken by the Clearing House under its default rules (under Part 9 of the Rules) in addition to disciplinary proceedings (under Part 10 of the Rules). The default rules are described further in Section 5.7 (Default Rules) of this application.
- (i) Rule 1003(r) specifies the penalties available to an independent disciplinary panel. These include issue of a warning, reprimand or notice of censure (Rule 1003(r)(i) and (ii)); disqualification (either indefinitely or for a fixed term) from being a Director or

⁴¹ REC 2.15; REC 2.7.3G(1)(a).

⁴² Lehman Brothers International (Europe) was declared a defaulter and suspended by the Clearing House on 31 October 2008, prior to the commencement of clearing services. Lehman never was party to any contracts with the Clearing House but had posted some collateral in advance of launch, which was returned under the default rules.

member of a committee or any panel of the Clearing House (Rule 1003(r)(iii)); and a fine (Rule 1003(r)(v)).

- (j) Rule 208(a) further provides the Clearing House with the right to suspend a Clearing Member if one or more of the conditions set out in Rule 209(a) are satisfied or the Clearing House considers that any such condition is likely to be satisfied. Such a suspension may occur in relation to the Clearing Member's status as a Clearing Member or in respect of certain classes of contracts only (Rule 208(b)). Any Clearing Member suspended as a Clearing Member may be reinstated at the Clearing House's discretion (Rule 208(c)). The circumstances set out in Rule 209(a) under which suspension is permitted include default or disciplinary proceedings.
- (k) The Clearing House is permitted to notify any member of the ICE Group, any Exchange or Clearing Organisation and any of their or the Clearing House's Representatives, Delivery Facilities, auditors, advisors or lawyers of any suspension or disciplinary proceedings pursuant to Rule 106(a)(iv).
- (l) Termination of clearing membership can occur for any of the reasons in Rule 209 (described above) or upon advance written notice by the Clearing House or a Clearing Member. Rule 209(e) ensures that the Clearing House retains authority over any Clearing Member whose membership is terminated.
- (m) Where the Clearing House has concerns about a particular Clearing Member, it may require it to take various actions including making information requests (Rule 202(a)(v) and (x)), invoking inspection and audit rights (Rule 202(a)(xiii)) or, in the case of any breach, declaring an event of default (Rule 901(a)(i)) or taking disciplinary action (Part 10 of the Rules).
- (n) Delivery failures are covered by ICE Futures's contract terms in its Regulations, reinforced by the Clearing House Rules and Delivery Procedures. Under ICE Futures's regulations, financial penalties may apply; and the exchange may take disciplinary action. To assist in ensuring that Clearing Members meet their settlement obligations and improve the settlement performance of the Clearing House, various sanctions may be imposed for breaches of delivery procedures (Rules, Part 7 and Delivery Procedures).
- (o) At the end of the lifecycle of a Contract, settlement and delivery occurs, extinguishing the parties' rights. Settlement and delivery procedures are in accordance with ICE Futures' Regulations and ICE OTC's participant agreement. There are some circumstances under which arbitration may occur following a dispute over delivery. Such procedures are set out in detail for each Contract in the Clearing House's Delivery Procedures in Annex 8 hereto and in ICE Futures's regulations.

5.9 ***Core Principle I: SYSTEM SAFEGUARDS***

The applicant shall demonstrate that the applicant (i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and (ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

In addressing Core Principle I, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Oversight/risk analysis program:

a. Whether a program addresses appropriate principles and procedures for the oversight of automated systems to ensure that its clearing systems function properly and have adequate capacity and security. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 and adopted by the Commission on November 21, 1990 (55 FR 48670), as supplemented in October 2000, are appropriate guidelines for an automated clearing system to apply.

b. Emergency procedures and a plan for disaster recovery; and

c. Periodic testing of back-up facilities and ability to provide timely processing, clearing, and settlement of transactions.

2. Appropriate periodic objective system reviews/testing:

a. Any program for the periodic objective testing and review of the system, including tests conducted and results; and

b. Confirmation that such testing and review would be performed or assessed by a qualified independent professional.

Analysis

- (a) Comparable UK regulatory requirements include systems and controls and conflicts of interest.⁴³
- (b) ICE network security policies establish the standards applying to the ICE Group network and its security and performance and resilience.
- (c) IT security in relation to all internal system operations of the Clearing House includes the following elements: secure firewalls; encryption for all critical communications; anti-virus products; vendor operating systems patches reviewed for impact and relevance and tested before being applied.
- (d) Clearing House system testing is divided into:
 - (i) *Functional Testing.*
 - (ii) *Business Cycle Testing.*
 - (iii) *User Interface Testing.*
- (e) The Clearing House systems and controls for problem management and system change for in-house IT systems are based on the current ICE Group processes for the trading platform.
- (f) The Clearing House BCP is a comprehensive and integrated plan covering both the recovery of trading operations and clearing operations, from a systems and a personnel perspective. The plan includes the following:
 - (i) Notification of a significant business disruption;

⁴³

Paragraph 18 of the Schedule to the Recognition Requirements Regulations; and REC 2.5.

- (ii) Defining the scenario and severity;
 - (iii) Notification to staff and Clearing Members of operational status;
 - (iv) Response strategies;
 - (v) Recovery strategies;
 - (vi) Recovery facilities;
 - (vii) Plan activation procedures;
 - (viii) Response and support procedures;
 - (ix) Damage assessment and restoration;
 - (x) Return to “business as usual”;
 - (xi) Preparedness procedures (maintenance and testing of plan);
 - (xii) Department specific procedures and data; and
 - (xiii) IT plan.
- (f) The Clearing House tests its BCP to determine the ability of staff to connect to backup servers from remote locations. In addition, BCP testing is undertaken to determine the ability of Clearing Members to connect to the backup servers. The Clearing House participates in industry-wide testing.
- (g) The Clearing House has in place procedures to deal with business continuity events affecting Clearing Members and the Clearing House, set out in the Business Continuity Procedures.
- (i) Where a business continuity event affects a Clearing Member, they must contact the Clearing House, providing certain specified information. The Clearing House is not obliged to give any assistance to the Clearing Member in this situation. The Clearing Member must notify the Clearing House when they are no longer affected by a business continuity event.
 - (ii) Where a business continuity event affects the Clearing House, this event is classified as a ‘Partial Business Continuity Event’, a ‘Full Business Continuity Event’, or an ‘Evacuation’. The Clearing House must take reasonable endeavours to inform Clearing Members about the business continuity event through one or more of the specified media, and must notify Clearing Members if and when the business continuity event ceases to apply.

On the occurrence of a business continuity event, provisions of the Clearing Rules still apply. However, at the discretion of the Clearing House, any procedure or practice of the Clearing House or Clearing Members may be amended or deferred and contract terms may be amended.

5.10 ***Core Principle J: REPORTING***

The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

In addressing Core Principle J, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Information available to or generated by the clearing organization that will be made routinely available to the Commission, upon request and/or as appropriate, to enable the Commission to perform properly its oversight function, including information regarding counterparties and their positions, stress test results, internal governance, legal proceedings, and other clearing activities;

2. Information the clearing organization will make available to the Commission on a non-routine basis and the circumstances which would trigger such action;

3. The information the organization intends to make routinely available to members/participants and/or the general public; and

4. Provision of information:

a. The manner in which all relevant routine or non-routine information will be provided to the Commission, whether by electronic or other means; and

b. The manner in which any information will be made available to members/participants and/or the general public.

Analysis

(a) Comparable UK regulatory requirements include:

(i) The Clearing House must be able and willing to cooperate, by the sharing of information or otherwise, with the FSA, with any other authority, body or person having responsibility in the UK for the supervision or regulation of any regulated activity or any other financial service, or with an overseas regulator as defined in section 195 of FSMA (the promotion and maintenance of standards Requirement).⁴⁴

(ii) The Clearing House must also comply with notification rules made by the FSA under section 293 of FSMA.

(iii) Systems and Controls and Conflicts (Transmission of Information).⁴⁵

(b) The Clearing House will provide the CFTC on a non-routine, *ad hoc*, basis with information of any declaration of an event of default in respect of a Clearing Member, whether or not the Clearing Member in question is active in the products relevant to this Application.

(c) The Clearing House clearing system comprises the TRS/CPS (Trade Registration System/Clearing Processing System) system for post trade administration and clearing (also discussed in section 5.2(r)). CPS can be accessed by all Clearing Members (subject to appropriate security arrangements) and holds and administers the positions resulting from ICE Futures and cleared ICE OTC transactions for all of the following:

⁴⁴ Paragraph 20 of the Schedule to the Recognition Requirements Regulations.

⁴⁵ REC 2.7; REC 2.5.5G.

- (i) settlement/close out instructions;
 - (ii) delivery or final settlement of the positions (cash or physical); and
 - (iii) option exercise, expiry or assignment.
- (d) Information available to the public (including Clearing Members) on the Clearing House website includes the Rules, the Procedures, Margin parameters, Business Days, Permitted Cover, Circulars and other relevant information.

5.11 **Core Principle K: RECORDKEEPING**

The applicant shall maintain records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

In addressing Core Principle K, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. The different activities related to the entity as a clearing organization for which it must maintain records; and

2. How the entity would satisfy the performance standards of Commission regulation 1.31 (17 CFR 1.31), reserved in this part 39 and applicable to derivatives clearing organizations, including:

a. What “full” or “complete” would encompass with respect to each type of book or record that would be maintained;

b. The form and manner in which books or records would be compiled and maintained with respect to each type of activity for which such books or records would be kept;

c. Confirmation that books and records would be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

d. How long books and records would be readily available and how they would be made readily available during the first two years; and

e. How long books and records would be maintained (and confirmation that, in any event, they would be maintained for at least five years).

Analysis

(a) Comparable UK regulatory requirements include:

- (i) Transaction recording.⁴⁶ The Clearing House must ensure that satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities (the transaction recording requirement).⁴⁷

⁴⁶ REC 2.9.

⁴⁷ Paragraph 19(2)(c) of the Schedule to the Recognition Requirements Regulations.

This should include arrangements for maintaining an audit trail of a minimum of five years.⁴⁸ Such data must be made available to the FSA.

- (ii) Clearing Members carrying on MiFID business that are authorised and regulated by the FSA are also under an obligation to keep records for 5 years.⁴⁹ Similar rules apply to regulated entities throughout Europe.⁵⁰
- (b) The Clearing House has an audit trail of all transactions, including:
 - (i) originating trade and linkage back to order placement;
 - (ii) all post trade changes that have been affected to that trade such as allocations; splits; account references; assignments and
 - (iii) settlement and close-out instructions.
- (c) Both ICE Futures and ICE OTC cleared transactions are submitted to the Clearing House's TRS/CPS trade registration and counterparty position management systems.
- (d) The audit trail for cleared transactions consists of two main elements:
 - (i) Information recorded by the ICE trading platform(s) and passed to TRS/CPS on a transaction by transaction basis; these records may also link to:
 - (ii) Reference (static) data held in the ICE trading platform systems and in TRS/CPS, defining the basic characteristics of each instrument traded.
- (e) CPS holds and administers the positions resulting from ICE Futures and cleared ICE OTC transactions, and creates an audit trail including all of the following events:
 - (i) settlement/close out instructions;
 - (ii) delivery or final settlement of the positions (cash or physical);
 - (iii) option exercise, expiry or assignment; and
 - (iv) transfers of positions from one Clearing Member to another.
- (f) TRS/CPS retains the entire post trade management and position history for all active contracts from initial trade until expiry. This information is made available to Clearing Members and the Clearing House through standard secure user interfaces.
- (g) ICE Futures regulation F.3 and Trading Procedures 3.1.3 mandate that all ICE Futures members maintain a full audit trail of transactions and instructions submitted to the Exchange and hence to the Clearing House, for a minimum period of five years. ICE Futures regulation G18.8 specifies a minimum retention period of five years for transaction information submitted during the operation of a telephone market. Clearing House Rule 108 further requires all Clearing Members to maintain records of all information submitted to the Clearing House for a period of at least five years.

⁴⁸ REC 2.9.3G.

⁴⁹ FSA Handbook, SYSC 9.1.

⁵⁰ Article 13(6) of Directive 2004/39/EC: the Markets in Financial Instruments Directive.

- (h) ICE Futures and the Clearing House (Rule 208(a)(xvi) and Rule 108) require all Clearing Members to keep a record showing the details and terms of all ICE Futures transactions and related cash transactions. These must be kept in such form as shall be required by the Clearing House from time to time, and would include details such as the parties to the transactions, any assignments or transfers thereof with the parties thereto, and the manner in which the transactions are fulfilled, discharged or terminated. The Clearing House applies the same minimum requirements to ICE OTC transactions submitted by Clearing Members.
- (i) TRS/CPS retains the entire post-trade management and position history for all active contracts from initial trade until expiry, as is currently the case for clearing for ICE Futures and ICE OTC markets. This information is made available to Clearing Members and the Clearing House through standard secure user interfaces.
- (j) ICE, Inc. and NYX perform regular backups of clearing transaction data.
- (k) The Clearing House's books and records relevant to its status as a DCO will be made open to inspection by any representative of the Commission or of the U.S. Department of Justice.

5.12 ***Core Principle L: PUBLIC INFORMATION***

The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

In addressing Core Principle L, applicants and registered derivatives clearing organizations may describe or otherwise document:

Disclosure of information regarding rules and operating procedures governing clearing and settlement systems:

- a. Which rules and operating procedures governing clearing and settlement systems should be disclosed to the public, to whom they would be disclosed, and how they would be disclosed;*
- b. What other information would be available regarding the operation, purpose and effect of the clearing organization's rules;*
- c. How members/participants may become familiar with such procedures before participating in operations; and*
- d. How members/participants will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options and obligations of the clearing organization preceding and upon the member's/participant's default.*

Analysis

- (a) Comparable UK regulatory requirements include:
 - (i) systems and controls;⁵¹

⁵¹

REC 2.5.

- (ii) conflicts of interest;⁵²
 - (iii) transaction reporting;⁵³ and
 - (iv) rules and consultation.⁵⁴
- (b) Clearing Members receive a wide range of information from the Clearing House, including:
- (i) The website⁵⁵ contains general information about the ICE Group and further has a dedicated section relating to the Clearing House. The Clearing House section contains details of Clearing Members, margin rates, operational, technological and risk arrangements and information, and copies of all circulars and the Clearing House's Rules and Procedures.
 - (ii) The Rules and Procedures are publicly available and contain information relating to the operation of the Clearing House, both from the perspective of the Clearing House in terms of its rights, obligations and processes and, further, from the perspective of the Clearing Members in terms of their rights and obligations. As an example, the Clearing House Procedures contains dedicated sections relating to Clearing, Finance, Membership, Deliveries, Business Continuity, Complaints and the Contracts Rules relating to products for which the Clearing House provides clearing services.
 - (iii) Circulars: the website retains a record of all Clearing House Circulars issued to Clearing Members (and appropriate third parties) on matters such as Rule changes, opening hours, fee changes, defaults, margin requirement, permitted collateral and other practices and procedures.⁵⁶ Circulars are the principal means by which the Clearing House will communicate rule or procedural changes to the market at large.
- (c) The Clearing House has various arrangements for dealing with queries from Clearing Members, namely via:
- (i) the membership department;
 - (ii) the IT helpdesk; and,
 - (iii) the risk, treasury and operations teams.

Ultimately, if a Clearing Member is not satisfied with the way in which a query has been dealt with, it may invoke the Clearing House's complaints procedure described in Section VI of the Clearing House's Procedures.

⁵² REC 2.5.

⁵³ REC 2.9.

⁵⁴ REC 2.14.

⁵⁵ https://www.theice.com/homepage.jhtml/https://www.theice.com/clear_europe.jhtml.

⁵⁶ REC 2.6.27G(3).

- (d) In order to ensure user input where possible, a formal consultation process will usually be undertaken in respect of proposed amendments to the Rules except in limited cases where an exception applies (Rule 109). In such cases, prior to any proposed Rule change taking effect, the Clearing House will typically have undertaken a consultation process involving Clearing Members where relevant comments on draft Rule proposals circulated are considered prior to finalising, approving and publishing relevant changes.
- (e) Section III of the Clearing House Procedures provides details of the relevant Membership Procedures. The application process will involve the interaction of the Clearing House Membership Department with any relevant applicant ensuring that the application process is completed appropriately and that all relevant and required information accompanies an application. Compliance with the eligibility criteria will ensure that applicants have appropriate experience and familiarity with relevant clearing processes and operations.
- (f) The Clearing House Default Rules are contained within Part 9 of the Clearing House Clearing Rules, which when considered together with Rule 1103 (Application of Assets upon an Event of Default) provide confirmation of the operation of default and close out arrangements. These sections contain confirmation of the rights and obligations of both Clearing Members and the Clearing House in such circumstances. On signing the Clearing Membership Agreement the Clearing Member accedes to the provision of the Clearing House Clearing Rules and will thereby have accepted the relevant default arrangements.

5.13 **Core Principle M: INFORMATION SHARING**

The applicant shall (i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and (ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

In addressing Core Principle M, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Applicable appropriate domestic and international information-sharing agreements and arrangements including the different types of domestic and international information-sharing arrangements, both formal and informal, which the clearing organization views as appropriate and applicable to its operations.

2. How information obtained from information-sharing arrangements would be used to carry out risk management and surveillance programs:

a. How information obtained from any information-sharing arrangements would be used to further the objectives of the clearing organization's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its members/participants;

b. How accurate information is expected to be obtained and the mechanisms or procedures which would make timely use and application of all information; and

c. The types of information expected to be shared and how that information would be shared.

Analysis

- (a) Comparable UK regulatory requirements include promotion and maintenance of standards.⁵⁷ The Clearing House must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities by persons in the course of using the facilities provided by the Clearing House; and must be able and willing to cooperate, by the sharing of information or otherwise, with the FSA, with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator (the promotion and maintenance of standards Requirement).⁵⁸
- (b) The Clearing House is a member of the European Association of Clearing Houses (“EACH”) and has been invited to participate in international fora such as CCP12. The Clearing House would like to sign the post-Barings Boca information sharing accord.
- (c) The Clearing House provides information to the FSA and may provide information to appropriate Regulatory Authorities, including the CFTC, pursuant to Rule 106. In addition, the FSA is party to various information sharing arrangements with other regulatory bodies, including the CFTC.
- (d) Detail on information provided by Clearing Members in relation to risk management and monitoring is discussed in section 5.4 above.

5.14 ***Core Principle N: ANTITRUST CONSIDERATIONS***

Unless appropriate to achieve the purposes of this Act, the derivatives clearing organization shall avoid (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anticompetitive burden on trading on the contract market.

Pursuant to section 5b(c)(3) of the Act, a registered derivatives clearing organization or an entity seeking registration as a derivatives clearing organization may request that the Commission issue an order concerning whether a rule or practice of the organization is the least anticompetitive means of achieving the objectives, purposes, and policies of the Act. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

Analysis:

- (a) The Clearing House acknowledges that Core Principle N would apply to it as a DCO.
- (b) Comparable UK Requirements:
 - (i) On receiving the Clearing House’s application for Recognition the FSA was required to send to HM Treasury and the Office of Fair Trading (the UK’s anti-trust regulator) (“OFT”) a copy of the Clearing House’s regulatory provisions together with such information as the FSA possessed as a result of the application that the FSA considered would assist the OFT in discharging its functions in connection with the application. The OFT is required to issue a report as to whether any of these provisions have a significantly adverse

⁵⁷ REC 2.13.

⁵⁸ REC 2.13.3G – REC 2.13.6 G.

effect on competition (alone or in combination).⁵⁹ Following the granting of Recognition, the OFT must keep the Clearing House's regulatory provisions and practices under review.⁶⁰

FSA Competition Oversight

- (c) In discharging its functions, which includes the supervision and regulation of clearing houses, the FSA is required to have regard to a number of matters. These matters include “*the need to minimize the adverse effects on competition that may arise from anything done in the discharge of [its] functions*” and “*the desirability of facilitating competition between those who are subject to any form of regulation by the [FSA]*”.⁶¹

FSA Review of New Rules

- (d) Under section 300A et seq. of the FSMA, the FSA has the right to disallow “excessive regulatory provisions” of a clearing house. This power applies if it appears to the authority that a proposed provision will impose a requirement on persons affected directly or indirectly by it; and that requirement is “excessive”. A requirement is regarded as excessive for these purposes if:
- (i) it is not required under European Community law or any enactment or rules of law in the UK; and
 - (ii) either: (A) it is not justified as pursuing a reasonable regulatory objective; or (B) it is disproportionate to the end to be achieved.⁶²
- (e) In considering whether a requirement is excessive, the FSA must have regard to all the relevant circumstances, including the effect of existing legal and other requirements, the global character of financial services and markets and the international mobility of activity, the desirability of facilitating innovation and the impact of the proposed provision on market confidence.⁶³

General Powers of the OFT

- (f) In addition to the procedures described above in respect of the Clearing House's regulatory provisions, the OFT and European Commission have general powers under UK and European competition (anti-trust) laws to take action in respect of matters that do not form part of the regulatory provisions.

⁵⁹ Section 302 FSMA provides that “regulatory provisions” means – the rules of the clearing house; any guidance issued by the clearing house; the particulars of any arrangements it has with a Recognised Investment Exchange (and, if the clearing house proposes to provide clearing services for persons other than Recognised Investment Exchange's, particulars of the criteria which it will apply when determining to whom it will provide those services); and “practices” means – the practices of the clearing house in respect of its clearing arrangements.

⁶⁰ Section 304 FSMA.

⁶¹ Section 2(3) FSMA.

⁶² Section 300A(3) FSMA.

⁶³ Section 300A(4) FSMA.

6. UNDERTAKINGS

- 6.1 In connection with this Application, the Clearing House is making the changes to Rules 902(a) and 905(a) appended hereto. The Clearing House further commits that, in the event that it seeks to clear a U.S. Designated Contract Market (“DCM”) it will:
- (a) Hold all funds held in US customer accounts in accordance with Section 4d of the CEA and applicable CFTC Regulations regarding segregation and location of customer funds; and
 - (b) Introduce the Rule amendments to Rule 905(h) appended hereto.

7. CONCLUSION

- 7.1 This Application demonstrates in detail the Clearing House’s compliance with each of the core principles for registration as a DCO. As set out above, the Clearing House is subject to a comparable regulatory regime in the UK, including oversight by its primary regulator, the FSA.
- 7.2 Should you have any queries in respect of the Application, please feel free to contact Paul Swann, President and COO of the Clearing House (Paul.Swann@theice.com) or Dee Blake, Head of Regulation at the Clearing House (Dee.Blake@theice.com). Representatives of the Clearing House will make themselves available to meet with the CFTC in Washington should the CFTC decide it necessary.

Appendix: Proposed Amendments to Rules

Rule 902(a)

Where a Person is subject to an Event of Default, the Clearing House may take such steps pursuant to this Part 9 as appear in the circumstances to be necessary or expedient to discharge all the Defaulter's rights and liabilities under or in respect of Contracts to which it is party, to protect the Clearing House and its non-defaulting Clearing Members and to complete the process described in this Part 9. All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Rule 902(a)(ii)) shall be liquidated in the manner set out in Rule 903 below unless and to the extent that:

- (i) such Contracts are transferred or sold to and accepted by one or more other Clearing Members **(each, a "Transferee Clearing Member")**, with the prior consent of the Clearing House **in the case of each transfer or sale** at a price agreed between the Clearing House and the **relevant Transferee Clearing Member** ~~that is the transferee or purchaser~~;
- (ii) the Clearing House determines in its discretion that the protection of the financial integrity of the Clearing House does not require such a liquidation; or
- (iii) such liquidation is delayed because of the cessation or curtailment of trading on an Exchange which lists such Contracts.

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

(A) any Margin recorded in the Defaulter's Customer Account may, at the discretion of the Clearing House, be transferred from the Defaulter's Customer Account to the Transferee Clearing Member's Customer Account;

(B) to the extent that any transfer of Margin takes place in accordance with Rule 902(a)(A), the Defaulter shall have no claim against the Clearing House for return of such Margin and the Clearing House shall be released from any liability or obligation to return such Margin (or any property in substitution thereof) to the Defaulter; and

(C) as between the Transferee Clearing Member and the Clearing House, the Clearing House shall have all rights in relation to any Margin transferred pursuant to Rule 902(a)(A) as if the same were Margin transferred to the Clearing House directly from the Transferee Clearing Member.

Any transfer, sale or acceptance of Contracts pursuant to Rule 902(a)(i) may take place pursuant to a termination of Contracts between the Clearing House and a Defaulter and the entry into of new Contracts with the Transferee Clearing Member, rather than as a transfer or sale, at the discretion of the Clearing House.

Rule 905(a)

Item *M*, add as exclusion from Margin included in calculating the net sum payable to or from a Defaulter: **"but excluding any Margin transferred to a Transferee Clearing Member pursuant to Rule 902(a)"**

Rule 905h

In respect of any Contract to which a Defaulter and ICE Clear Europe is a party that arises pursuant to these Rules as a result of trading on an Exchange that is a designated contract market (as defined in the U.S. Commodity Exchange Act), any net sum certified by the Clearing House pursuant to Rule 905(b) as payable by the Clearing House to the Defaulter in respect of the Defaulter's Customer Account in respect of such Contracts is intended to be treated in accordance with Applicable Laws of the United States of America including the U.S. Bankruptcy Code and the U.S. Commodity Exchange Act.