

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="80"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="03"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by ICE Clear Credit LLC.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

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

The principal purpose of the proposed change is to amend the ICC Clearing Rules in order to adopt new procedures for clearing house resolution and recovery in the event of the exhaustion of clearing house resources following a clearing participant default.

**Contact Information**

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

First Name * <input type="text" value="Kevin"/>	Last Name * <input type="text" value="McCleaar"/>
Title * <input type="text" value="General Counsel"/>	
E-mail * <input type="text" value="kevin.mccleaar@theice.com"/>	
Telephone * <input type="text" value="(312) 836-6833"/>	Fax <input type="text"/>

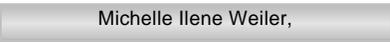
**Signature**

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

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

(Title \*)

Date <input type="text" value="03/06/2013"/>	<input type="text" value="Assistant General Counsel"/>
By <input type="text" value="Michelle Weiler"/>	<input type="text"/>
(Name *)	



Michelle Ilene Weiler,

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

Add Remove View

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

## **Form 19b-4 Information**

### 1. Text of the Proposed Rule Change

(a) The text of the proposed rule changes has been annexed as Exhibit 5 and consists of certain rule changes that have been proposed by ICE Clear Credit LLC (“ICC”). The principal purpose of the proposed change is to amend the ICC Clearing Rules (the “Rules”) in order to adopt new procedures for clearinghouse resolution and recovery in the event of the exhaustion of clearinghouse resources following a clearing participant (“Participant”) default.

(b) Not applicable.

(c) Not applicable.

### 2. Procedures of the Self-Regulatory Organization

(a) Comments from Participants have not been solicited or received. ICC’s Risk Committee recommended approval of these rule changes on February 20, 2013. ICC’s Board approved the rule changes on February 28, 2013.

(b) Please refer questions and comments on the proposed rule change to Kevin McClear, General Counsel, ICE Clear Credit LLC, 353 North Clark Street, Suite 3100, Chicago, IL 60654, (312) 836-6833.

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

#### (a) Purpose

ICC submits proposed amendments to its Rules relating to clearinghouse resolution and recovery following the exhaustion of available resources after a Participant default or series of

Participant defaults. The amendments would, among other matters, (i) establish a “cooling-off period” in cases of certain Participant defaults that result in guaranty fund depletion, in which case the liability of Participants and ICC for additional guaranty fund assessments would be capped for all defaults during that period; (ii) establish new procedures under which a Participant may terminate its status as a Participant, both in the ordinary course of business and during a cooling-off period, and related procedures for unwinding all positions of such a Participant and capping its continuing liability to ICC, (iii) provide for “haircutting” of mark-to-market margin gains and other outgoing payments by ICC in situations where ICC determines, following a Participant default, that it is unlikely to have sufficient resources to make all such payments; (iv) permit ICC to temporarily suspend payments on cleared contracts where ICC determines that mark-to-market margin haircutting of gains will not be sufficient to address a shortfall in resources, or where there has been a failed auction of positions of a defaulting Participant; (v) revise procedures for the termination of clearing and wind-up of outstanding contracts; and (vi) eliminate rules permitting the forced allocation of CDS positions to non-defaulting Participants in the case of a failed default auction, and provide for the use of guaranty fund contributions of Participants that fail to participate in default auctions prior to guaranty fund contributions of other Participants. The text of the proposed rule amendments is attached, with additions underlined and deletions in strikethrough text.

(b) Statutory Basis

The proposed amendments are intended to address clearinghouse recovery and resolution arrangements. ICC submits the revised Chapters of its Rules. The proposed Rule amendments are described in detail as follows.

In Rule 102, new definitions of “Account,” “Client Origin Account” and “House Account” are added, and certain definitions no longer used in the Rules were removed. Rules 207 (“Termination of Participant Status”) and 209 (“Risk-Based Capital Requirement”) have been revised to conform to the new termination provisions in Rule 807. Further conforming changes and corrections were made in, and certain obsolete references have been removed from, Rules 312(b), 402, 406(g) and 503(a). A new subsection (b) has been added to Rule 604 which permits ICC to delay making outgoing mark-to-market margin payments on an intra-day basis in certain circumstances where a Participant has failed to make a mark-to-market margin payment to ICC on such day.

In addition to various conforming changes, Chapter 8 of the Rules has been revised to incorporate the new resolution and recovery provisions discussed above. Obsolete references to procedures for initial contributions by ICC to the guaranty fund have been removed from Rule 801 as they are no longer relevant. Rule 801(b)(vi) has been revised to cap ICC’s obligation to contribute additional assets to the guaranty fund at \$25 million in respect of any single Participant default and \$75 million in respect of all defaults during any cooling-off period. Rule 801(c)(iii) and Rule 802(b) add an additional tranche to the guaranty fund waterfall to provide for use of guaranty fund contributions of Participants that fail to participate in or perform their obligations in connection with default auctions prior to the use of guaranty fund contributions of other Participants. Additional collateral deposits of such Participants are similarly applied before additional collateral deposits of other Participants. Conforming changes have been made to Rules 802(a) and (c).

Rule 802(d) has been revised to provide that additional collateral deposits may be called from Participants in anticipation of any charge against the general guaranty fund following a

default, rather than only after a charge. In addition, under the revised Rule, a Participant is not required to post an additional collateral deposit of more than 100% of its required guaranty fund contribution for any single default. (A Participant is still liable for additional collateral deposits in respect of any specific wrong-way risk guaranty fund contribution.) In addition, a retiring Participant is only obligated to make additional collateral deposits for defaults occurring prior to its termination date or, if applicable, during the cooling-off period. Rule 802(f) is modified to provide that ICC may pledge assets in the guaranty fund to support borrowings to be used for default management purposes.

Rule 803 addressing the return of the guaranty fund has been revised to conform to the new termination of Participant status provisions in Rule 807. Rule 804 has been revised to conform to the new termination and final settlement provisions in Rule 810. The revised rule also clarifies that the single net amount owed by or owed to each Participant following termination shall take into account and be offset against available mark-to-market margin posted by ICC or the Participant.

New Rule 806 implements the “cooling-off period” concept. A “cooling-off period” is triggered by certain calls for additional collateral deposits or by sequential guaranty fund depletion within a 30-day period. Liability of Participants for additional collateral deposits is capped during the cooling-off period at three times the required guaranty fund contribution, regardless of the number of defaults during the period.

New procedures for termination of Participant status are added in new Rule 807. These apply both to ordinary course terminations outside of a default scenario and termination during a cooling-off period. Participants may retire from ICC during a cooling-off period by providing an irrevocable notice of termination in the first 10 business days of the period and must close out all

positions within 30 days of such termination notice. A retiring Participant (other than during a cooling-off period) must make a deposit of three times its required guaranty fund contribution at the time of notice and will remain liable for defaults occurring prior to its termination date.

Together with Rule 803, Rule 807(b)(viii) provides for the return of guaranty fund contributions to a retiring Participant within 5 business days of the termination date, or at the end of the month in which the termination date occurs, whichever is later.

Rule 808(a) contains various new definitions used in the haircutting provisions in Rule 808, the suspension provisions of Rule 809 and the termination provisions of Rule 810. New Rule 808 establishes the mark-to-market margin haircutting mechanism. The core of Rule 808 is a procedure for “haircutting” the mark-to-market margin and certain other contractual payments owed by ICC to Participants. A determination to impose such haircutting may be made, once certain conditions are satisfied, including the following:

- (i) one or more Participant defaults have occurred but ICC has not yet determined and either paid or submitted a claim in respect of all the net amount due to or from the defaulter in respect of its proprietary account and its customer origin account; and
- (ii) ICC determines, based on one of several relevant tests, that its available resources are insufficient to pay all relevant outward mark-to-market margin and contractual payments and/or its available resources would be insufficient to cover the losses or shortfalls to ICC from close-out of the defaulter’s positions.

A haircutting determination will not be made if a determination to suspend clearing has been made under Rule 809, clearing is being terminated under Rule 810 or an ICC insolvency or failure to pay has occurred. In the event of a haircutting determination, on each day during the “loss distribution period” specified by ICC, the net amount owed on such day to each Participant

that is deemed to be a “cash gainer” in respect of its house or customer origin account (i.e., a member that would otherwise be entitled to receive mark-to-market margin or other payments in respect of such account) will be subject to a percentage haircut. Corresponding adjustments are also made for “cash losers” (i.e., those who owe any amounts to ICC) to the extent amounts previously owed to them have been haircut. Haircuts are applied separately for the house and customer origin accounts, and on a net basis within those accounts.

New Rule 809 authorizes ICC to make a “suspension determination” for contracts where (i) its obligations to meet mark-to-market margin payments or the cost of auctioning off the positions of a defaulting Participant will not be satisfied through the haircutting procedure in Rule 808, (ii) following the determination of all net amounts owed in respect of a particular default, ICC may be rendered insolvent if it does not suspend clearing, or (iii) there has been a failed auction. In such case, during the suspension period, which is initially up to 2 business days, payments in respect of suspended contracts will be suspended.

New Rule 810 permits ICC to terminate contracts if, at the end of a suspension period under Rule 809, the conditions for suspension are still satisfied, or if conditions for suspension are satisfied but ICC does not commence a suspension. Rule 810 provides a procedure for determining the termination price for all contracts of the same type. To the extent the termination value payable by ICC for the terminated contracts exceeds available resources for those contracts, ICC’s obligations will be limited to the available resources.

Rule 20-605(c)(vii), which permitted the forced allocation of CDS contracts to Participants in the event of a failed auction or other inability to close-out or transfer relevant positions, has been removed following extensive discussions with Participants. ICC believes that the risks of this scenario are now addressed through the haircutting, suspension and termination

procedures discussed above, as well as the revisions to Rule 802(b) that permit the use of guaranty fund contributions of Participants that fail to participate in a default auction prior to the contributions of other Participants.

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule changes are consistent with the Act and the regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), because ICC believes that the new resolution and recovery rules will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody or control of ICC or for which it is responsible. ICC has developed the new resolution and recovery rules in response to issues raised by, and following extensive consultation with, its Participants. Specifically, ICC believes that the proposed rule changes will enhance the stability of ICC following the default of one or more Participants and reduce the risk of ICC failure or insolvency. The revisions will in particular facilitate the orderly wind-down or termination of contracts affected by a default. The amendments also provide clearer limitations on the liability of Participants for assessments following defaults, and a clearer procedure for termination of Participant status.

#### 4. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition.

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

Written comments relating to the rule changes have not been solicited or received from Participants as part of the rule change process. ICC will notify the Commission of any written comments received by ICC.

6. Extension of Time Period for Commission Action

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

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

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

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

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

9. Exhibits

- Exhibit 1. Notice of proposed rule change for publication in the Federal Register
- Exhibit 2. Not applicable

- Exhibit 3. Not applicable
- Exhibit 4. Not applicable
- Exhibit 5. Text of proposed rule change

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-ICC-2013-03)

March 6, 2013

Self-Regulatory Organizations; ICE Clear Credit LLC; Rules Relating to Recovery and Resolution Arrangements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 6, 2013, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I, II and III below, which Items have been primarily prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

ICC submits proposed amendments to its clearing rules (the “Rules”) relating to clearinghouse resolution and recovery following the exhaustion of available resources after a clearing participant (a “Participant”) default or series of Participant defaults. The amendments would, among other matters, (i) establish a “cooling-off period” in cases of certain Participant defaults that result in guaranty fund depletion, in which case the liability of Participants and ICC for additional guaranty fund assessments would be capped for all defaults during that period; (ii) establish new procedures under which a Participant may terminate its status as a Participant, both in the ordinary course of business and during a cooling-off period, and related procedures for unwinding all

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

positions of such a Participant and capping its continuing liability to ICC, (iii) provide for “haircutting” of mark-to-market margin gains and other outgoing payments by ICC in situations where ICC determines, following a Participant default, that it is unlikely to have sufficient resources to make all such payments; (iv) permit ICC to temporarily suspend payments on cleared contracts where ICC determines that mark-to-market margin haircutting of gains will not be sufficient to address a shortfall in resources, or where there has been a failed auction of positions of a defaulting Participant; (v) revise procedures for the termination of clearing and wind-up of outstanding contracts; and (vi) eliminate rules permitting the forced allocation of CDS positions to non-defaulting Participants in the case of a failed default auction, and provide for the use of guaranty fund contributions of Participants that fail to participate in default auctions prior to guaranty fund contributions of other Participants. The text of the proposed rule amendments is attached, with additions underlined and deletions in strikethrough text.

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

The proposed amendments are intended principally to address clearinghouse recovery and resolution arrangements. ICC submits the revised Chapters of its Clearing Rules. The proposed Rule amendments are described in detail as follows.

In Rule 102, new definitions of “Account,” “Client Origin Account” and “House Account” were added, and certain definitions no longer used in the Rules were removed. Rules 207 (“Termination of Participant Status”) and 209 (“Risk-Based Capital Requirement”) have been revised to conform to the new termination provisions in Rule 807. Further conforming changes and corrections are made in, and certain obsolete references have been removed from, Rules 312(b), 402, 406(g) and 503(a). A new

subsection (b) has been added to Rule 604 which permits ICC to delay making outgoing mark-to-market margin payments on an intra-day basis in certain circumstances where a Participant has failed to make a mark-to-market margin payment to ICC on such day.

In addition to various conforming changes, Chapter 8 of the Rules has been revised to incorporate the new resolution and recovery provisions discussed above. Obsolete references to procedures for initial contributions by ICC to the guaranty fund have been removed from Rule 801 as they are no longer relevant. Rule 801(b)(vi) has been revised to cap ICC's obligation to contribute additional assets to the guaranty fund at \$25 million in respect of any single Participant default and \$75 million in respect of all defaults during any cooling-off period. Rule 801(c)(iii) and Rule 802(b) add an additional tranche to the guaranty fund waterfall to provide for use of guaranty fund contributions of Participants that fail to participate in or perform their obligations in connection with default auctions prior to the guaranty fund contributions of other Participants. Additional collateral deposits of such Participants are similarly applied before additional collateral deposits of other Participants. Conforming changes have been made to Rules 802(a) and (c).

Rule 802(d) has been revised to provide that additional collateral deposits may be called from Participants in anticipation of any charge against the general guaranty fund following a default, rather than only after a charge. In addition, under the revised Rule, a Participant is not required to post an additional collateral deposit of more than 100% of its required guaranty fund contribution for any single default. (A Participant is still liable for additional collateral deposits in respect of any specific wrong-way risk guaranty fund contribution.) In addition, a retiring Participant is only obligated to make additional

collateral deposits for defaults occurring prior to its termination date or, if applicable, during the cooling-off period. Rule 802(f) is modified to provide that ICC may pledge assets in the guaranty fund to support borrowings to be used for default management purposes.

Rule 803 addressing the return of the guaranty fund has been revised to conform to the new termination of Participant status provisions in Rule 807. Rule 804 has been revised to conform to the new termination and final settlement provisions in Rule 810. The revised rule also clarifies that the single net amount owed by or owed to each Participant following termination shall take into account and be offset against available mark-to-market margin posted by ICC or the Participant.

New Rule 806 implements the “cooling-off period” concept. A “cooling-off period” is triggered by certain calls for additional collateral deposits or by sequential guaranty fund depletion within a 30-day period. Liability of Participants for additional collateral deposits is capped during the cooling-off period at three times the required guaranty fund contribution, regardless of the number of defaults during the period.

New procedures for termination of Participant status are added in new Rule 807. These apply both to ordinary course terminations outside of a default scenario and termination during a cooling-off period. Participants may retire from ICC during a cooling-off period by providing an irrevocable notice of termination in the first 10 business days of the period and must close out all positions within 30 days of such termination notice. A retiring Participant (other than during a cooling-off period) must make a deposit of three times its required guaranty fund contribution at the time of notice and will remain liable for defaults occurring prior to its termination date. Together with

Rule 803, Rule 807(b)(viii) provides for the return of guaranty fund contributions to a retiring Participant within 5 business days of the termination date, or at the end of the month in which the termination date occurs, whichever is later.

Rule 808(a) contains various new definitions used in the haircutting provisions in Rule 808, the suspension provisions of Rule 809 and the termination provisions of Rule 810. New Rule 808 establishes the mark-to-market margin haircutting mechanism. The core of Rule 808 is a procedure for “haircutting” the mark-to-market margin and certain other contractual payments owed by ICC to Participants. A determination to impose such haircutting may be made, once certain conditions are satisfied, including the following:

- (i) one or more Participant defaults have occurred but ICC has not yet determined and either paid or submitted a claim in respect of all the net amount due to or from the defaulter in respect of its proprietary account and its customer origin account; and
- (ii) ICC determines, based on one of several relevant tests, that its available resources are insufficient to pay all relevant outward mark-to-market margin and contractual payments and/or its available resources would be insufficient to cover the losses or shortfalls to ICC from close-out of the defaulter’s positions.

A haircutting determination will not be made if a determination to suspend clearing has been made under Rule 809, clearing is being terminated under Rule 810 or an ICC insolvency or failure to pay has occurred. In the event of a haircutting determination, on each day during the “loss distribution period” specified by ICC, the net amount owed on such day to each Participant that is deemed to be a “cash gainer” in respect of its house or customer origin account (i.e., a member that would otherwise be entitled to receive mark-

to-market margin or other payments in respect of such account) will be subject to a percentage haircut. Corresponding adjustments are also made for “cash losers” (i.e., those who owe any amounts to ICC) to the extent amounts previously owed to them have been haircut. Haircuts are applied separately for the house and customer origin accounts, and on a net basis within those accounts.

New Rule 809 authorizes ICC to make a “suspension determination” for contracts where (i) its obligations to meet mark-to-market margin payments or the cost of auctioning off the positions of a defaulting Participant will not be satisfied through the haircutting procedure in Rule 808, (ii) following the determination of all net amounts owed in respect of a particular default, ICC may be rendered insolvent if it does not suspend clearing, or (iii) there has been a failed auction. In such case, during the suspension period, which is initially up to 2 business days, payments in respect of suspended contracts will be suspended.

New Rule 810 permits ICC to terminate contracts if, at the end of a suspension period under Rule 809, the conditions for suspension are still satisfied, or if conditions for suspension are satisfied but ICC does not commence a suspension. Rule 810 provides a procedure for determining the termination price for all contracts of the same type. To the extent the termination value payable by ICC for the terminated contracts exceeds available resources for those contracts, ICC’s obligations will be limited to the available resources.

Rule 20-605(c)(vii), which permitted the forced allocation of CDS contracts to Participants in the event of a failed auction or other inability to close-out or transfer relevant positions, has been removed following extensive discussions with Participants.

ICC believes that the risks of this scenario are now addressed through the haircutting, suspension and termination procedures discussed above, as well as the revisions to Rule 802(b) that permit the use of guaranty fund contributions of Participants that fail to participate in a default auction prior to the contributions of other Participants.

Section 17A(b)(3)(F) of the Act<sup>3</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule changes are consistent with the Act and the regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F)<sup>4</sup>, because ICC believes that the new resolution and recovery rules will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody or control of ICC or for which it is responsible. ICC has developed the new resolution and recovery rules in response to issues raised by, and following extensive consultation with, its Participants. Specifically, ICC believes that the proposed rule changes will enhance the stability of ICC following the default of one or more Participants and reduce the risk of ICC failure or insolvency. The revisions will in particular facilitate the orderly wind-down or termination of contracts affected by a default. The amendments also provide clearer limitations on the liability of Participants for assessments following defaults, and a clearer procedure for termination of Participant status.

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

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<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(B) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

ICC has not solicited or received written comments relating to the proposed rule change. ICC will notify the Commission of any written comments received by ICC.

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

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

(A) by order approve such proposed rule change, or

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2013-03 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ICC-2013-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at [https://www.theice.com/publicdocs/regulatory\\_filings/ICEClearCredit\\_20130306.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_20130306.pdf).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-ICC-2013-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Elizabeth M. Murphy  
Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).



# Clearing Rules

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## 1. INTERPRETATION

### 101. Scope and Interpretation.

- (a) The Rules set forth herein are applicable to Trades and related obligations arising out of Contracts. In the event of a conflict between these Rules generally and the Rules adopted by ICE Clear Credit specifically governing Trades and related obligations made on a particular Market or with respect to particular Contracts, the Rules specifically governing such Market or Contracts will prevail. More particularly:
- (i) The Rules in Chapters 1 – 8 are supplemented for specific Markets and Contracts by the Rules in Chapters 20 *et seq.* (Thus, for example, the definitions in Rule 102 are supplemented, for purposes of Chapter 20, by the additional definitions in Rule 20-102.) The Rules in Chapters 20 *et seq.* shall apply only to the Market or Contracts specified in the caption to such Chapter.
  - (ii) Where the numbering of a Rule in Chapters 20 *et seq.* corresponds to that of a Rule in Chapters 1 – 8, the Rule in Chapters 1 – 8 is superseded to the extent applicable by the correspondingly numbered Rule in Chapter 20 *et seq.* (Thus, for example, references in Chapter 20 to the term “Default” mean a Default established in accordance with Rule 20-605.)
  - (iii) Where a Rule in Chapter 20 *et seq.* is “[Reserved],” the correspondingly numbered Rule in Chapters 1 – 8 is made expressly inapplicable to the Market or Contracts that are the subject of such Chapter.
- (b) In these Rules, unless a clear contrary intention appears, (i) the singular number includes the plural number and vice versa, (ii) reference to the masculine, feminine or neuter gender includes each other gender, (iii) any reference to a number of days shall mean calendar days unless ICE Business Days or other business days are specified, (iv) any reference to a time shall mean the time in New York, New York and (v) any reference to “dollars” or “\$” shall mean U.S. dollars. Except as otherwise specifically provided in these Rules, an act that otherwise would be required or permitted by these Rules to be performed on a day that is not an ICE Business Day may be performed on the next day that is an ICE Business Day.

### 102. Definitions.

#### **Account**

**The House Account or the Client Origin Account, as applicable.**

The U.S. Commodity Futures Trading Commission.

## **Chief Executive Officer**

The Chief Executive Officer of ICE Clear Credit.

## **Client Omnibus Margin Account**

Any account or accounts maintained by or on behalf of ICE Clear Credit with respect to a Participant for the purposes of holding on an omnibus basis Margin posted by a Participant in respect of Client-Related Positions (including margin of Non-Participant Parties posted to that Participant in respect of such margin requirement or property of a Participant posted in lieu thereof in accordance with these Rules).

## **Client Origin Account**

The Client-Related Positions and Client Omnibus Margin Account of a Participant, as the context may require.

## **Client-Related Initial Margin**

Initial Margin (other than Physical Settlement Margin) with respect to Client-Related Positions.

## **Client-Related Position**

An Open Position identified as such at the time the related Trade is submitted by an FCM Participant (in the case of a swap) or a Broker-Dealer Participant (in the case of a security-based swap) to ICE Clear Credit in accordance with Rules 301 and 302, where such related Trade, at the time established, is entered into by the Participant for a Non-Participant Party. ICE Clear Credit will rely on a Participant's designation of an Open Position as a Client-Related Position for purposes of these Rules. To the extent permitted by law, a Client-Related Position will include such an Open Position entered into by an FCM Participant or a Broker-Dealer Participant for another Person (which Person may, but need not, be an Affiliate of that Participant or of another Participant) that is itself acting for one or more Non-Participant Parties with respect to such Open Position (such Person in such case, a "**Client-Carrying Broker**").

## **Closing-out Process**

In connection with the Default of a Participant, the process of termination of Open Positions, determination of amounts owing with respect thereto, netting of such amounts, liquidation and application of any Margin and/or Collateral and application of Default Portability Rules pursuant to Rule 20A-02, if applicable, in each case as contemplated by these Rules.

## **Collateral**

At any time, such funds or other property Transferred by a Participant to ICE Clear Credit for the General Guaranty Fund pursuant to title transfer or pledge (and not released by ICE Clear Credit), in accordance with these Rules and the ICE Clear Credit Procedures.

## **Conforming Trade**

The meaning specified in Rule 309.

## **Contracts**

An agreement, contract, or transaction that is specifically identified in these Rules as a Contract.

## **Control**

With respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

## **~~DCO/SCA Conversion Date~~**

~~July 16, 2011 or such later date as is announced as such by ICE Clear Credit consistent with applicable legal requirements.~~

## **Default**

Any event that would constitute a Default under Rule 20-605 or the corresponding Rule in any Market or Contract-specific Chapter of these Rules.

## **Eligible Margin**

The meaning specified in Rule 401(d).

## **Eligible Officer**

Any officer of ICE Clear Credit designated by the Board from time to time for purposes of the applicable determination, decision or other action contemplated by these Rules.

## **Emergency**

The meaning specified in Rule 601.

### **Excess Net Capital**

For a Participant that is an FCM or a Broker-Dealer, its “excess net capital” as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12. For a Participant that is not an FCM or a Broker-Dealer, the amount, if any, by which its Adjusted Net Capital exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICE Clear Credit.

### **FCM**

A futures commission merchant registered with the CFTC.

### **General Guaranty Fund**

At any time, funds or other property set aside and recorded on the books of ICE Clear Credit in support of the Obligations of Participants in respect of all Contracts.

### **House Account**

The House Positions and House Margin Account of a Participant, as the context requires.

### **House Margin Account**

Any account or accounts maintained by or on behalf of ICE Clear Credit with respect to a Participant for the purposes of holding Margin for House Positions of that Participant.

### **House Position**

An Open Position of a Participant that is not a Client-Related Position. For the avoidance of doubt, Open Positions resulting from Trades submitted for the account of an Affiliate of a Participant shall be House Positions.

### **ICE Business Day**

Any day (other than Saturdays, Sundays and holidays observed by ICE Clear Credit) on which ICE Clear Credit is open for business. References in these Rules to a “day” or “ICE Business Day” shall, unless the context otherwise requires, mean the “ICE Business Day” corresponding to the trading day declared by the relevant Market, if applicable.

## **Non-Participant Party Portfolio**

The portfolio of rights and obligations under Client-Related Positions allocated to a particular Non-Participant Party in the books and records of ICE Clear Credit for purposes of CFTC Rule 22.15.

## **Novation Time**

The meaning specified in Rule 309.

## **Obligations**

All obligations of a Participant arising under these Rules or any agreements between such Participant and ICE Clear Credit, in each case however created, arising or evidenced, whether direct or indirect, absolute or contingent, existing, due or to become due.

## **OFAC**

The meaning specified in Rule 208.

## **Open Positions**

A Participant's open positions in Contracts with ICE Clear Credit created pursuant to Rule 301 or as otherwise provided in these Rules and not offset pursuant to Rule 304 or closed pursuant to the Closing-out Process. Both Client-Related Positions and House Positions shall constitute Open Positions for the purposes of these Rules.

## **Parent**

The meaning specified in Rule 205.

## **Participant**

A person that has been approved by ICE Clear Credit for the submission of Contracts and that is party to an agreement with ICE Clear Credit specifically relating to transactions in Contracts (a "**Participant Agreement**").

## **~~Participant's Required Segregated Customer Funds~~**

~~The meaning specified in Rule 201.~~

## **Person**

An individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

... **Interpretations and Policies:**

- .01 As used in this Rule, the term "Participant" shall be deemed to include any Parent of the Participant providing a guarantee pursuant to Rule 205 and the Participant and such Parent shall be jointly obligated to deliver all notices required by this Rule relating to events occurring with respect to the Participant or such Parent.

**207. Termination of Participant Status.**

- (a) Upon the occurrence of a Termination Event (as defined herein), ICE Clear Credit may, in its sole discretion, impose limitations, conditions and restrictions upon a Participant or, subject to the requirements of Rule 615(b), terminate the status of the Participant. In such circumstances, ICE Clear Credit may, in its sole discretion, (i) decline to accept new Trades in the case of Termination Events described in subparagraphs (b)(i), (b)(ii) (provided such Retiring Participant has no remaining Open Positions) or (b)(v) of this Rule, (ii) cause Open Positions to be transferred to another clearing organization designated by the Market, if applicable, or that provides clearing services for agreements equivalent to Contracts, with such security against claims and liabilities as ICE Clear Credit shall deem necessary for its protection, (iii) impose a Trading Activity Limitation (as defined in Rule 203), (iv) prior to the occurrence of a Default, require the Participant to cause all Open Positions to be closed out (or, in the case of Client-Related Positions, transferred to another Participant in accordance with Chapter 20A-01 of these Rules by a date specified by ICE Clear Credit (which, in the case of a Retiring Participant, shall be no later than such Retiring Participant's ~~Scheduled Return Date (as defined in Rule 803)),~~Termination Close-Out Deadline Date), with the failure of the Participant to do so constituting a default under the Participant's Contracts with ICE Clear Credit, and (v) otherwise take or omit to take such actions, or any combination thereof, as it deems necessary or appropriate in the circumstances; *provided* that nothing in this paragraph (a) shall limit the rights granted to ICE Clear Credit upon the Default of a Participant- or the rights and obligations of ICE Clear Credit and such Participant under Rule 807.
- (b) As used herein, "**Termination Event**" shall mean the occurrence of any of the following:
- (i) The expiration or termination of the agreement for clearing services between ICE Clear Credit and the relevant Market;
- (ii) The Participant becomes a Retiring Participant by delivery to ICE Clear Credit of a Termination Notice;

- (iii) (A) A representation or warranty made by the Participant (or any Parent of Participant providing a guarantee pursuant to Rule 205) to ICE Clear Credit under or in connection with any agreement between ICE Clear Credit and the Participant (or such Parent) shall be false or misleading in any material respect as of the date on which made;
- (B) an Eligible Officer determines that the Participant (or, if applicable, such Parent) has failed to satisfy the ongoing requirements to retain its status as a Participant under Rule 201(b)(i), (ii), (iv), (v), (viii), (ix), (x) or (xi); or
- (C) the Board determines, by a two-thirds majority of those voting, in a vote excluding members of the Board who are employees of such Participant or any Affiliate and with a quorum of at least fifty percent of the remaining members of the Board, that (1) the Participant (or, if applicable, such Parent) has failed to satisfy any other ongoing requirements to retain its status as a Participant, including under Rule 201(b)(vi) or (vii), or (2) it appears, in the Board's judgment, that the Participant (or, if applicable, such Parent) is likely to fail to satisfy any ongoing requirements to retain its status as a Participant if any proposed material change in the organizational or ownership structure or senior management of the Participant (or, if applicable, such Parent) referred to in Rule 206(b)(ii) were effected;
- (iv) The material breach by the Participant of the Rules or any of the terms or provisions of any agreement between ICE Clear Credit and the Participant which is not remedied promptly after notice from ICE Clear Credit; or
- (v) The Participant is in Default.
- (vi) The Participant becomes subject to statutory disqualification under Section 8a(2) of the CEA or Section 3(a)(39) of the Securities Exchange Act, or otherwise applicable CFTC or SEC regulations.
- (c) A Retiring Participant's status as a Participant hereunder shall be terminated ~~no later than upon~~ the Retiring Participant's Retirement Termination Date ~~determined pursuant to Rule 803.~~

## 208. AML Compliance.

- (a) **Anti-Money Laundering and Customer Identification Program.** As of each ICE Business Day, regardless of whether Participant submits Contracts to be cleared by ICE Clear Credit, each Participant that is subject to the Bank Secrecy

## 209. Risk-Based Capital Requirement.

If at any time and for so long as a Participant has a Required Contribution to the General Guaranty Fund that exceeds 25% of its Excess Net Capital, ICE Clear Credit may (in addition to imposing the Trading Activity Limitations provided for in Rule 203(b)) require such Participant to prepay and maintain with ICE Clear Credit an additional contribution (the “**Prepaid Contribution**”) to the General Guaranty Fund equal to the ~~amount of the Additional Assessment Limit~~ Termination Deposit that would be applicable to it under Rule 807 at such time if it were a Retiring Participant. Payment of the Prepaid Contribution shall not limit such Participant’s obligations to make additional contributions to the General Guaranty Fund as otherwise required by the Rules, provided that if such a Participant becomes a Retiring Participant it may apply the Prepaid Contribution to its obligation to make additional contributions to the General Guaranty Fund up to ~~its Additional Assessment Limit~~ the limits set forth in Rules 806 and 807, as applicable. Notwithstanding anything to the contrary herein, except in the case of a Default with respect to such Participant, the Prepaid Contribution will not be deemed to be part of the General Guaranty Fund for purposes of Rule 802(b) until such time as it is applied to the Participant’s obligations to make additional contributions to the General Guaranty Fund as provided in the preceding sentence.

ICE Clear Credit shall not be responsible for any of the actions or inactions of any of its agents, any Participant, a Market, an Authorized Trade Execution/Processing Platform or any other Person, including, without limitation, the failure of a Participant to perform any of its direct obligations to another Participant, the cessation, suspension or other change in the activities of any of ICE Clear Credit's agents, any Authorized Trade Execution/Processing Platform or any Market, or the failure of linkages or communications between ICE Clear Credit and any other party. Absent bad faith or willful misconduct, or a violation of federal securities laws for which there is a private right of action, ICE Clear Credit shall not be liable to any Participant or other Person for any determination ICE Clear Credit is required or authorized to make under these Rules, or any exercise by ICE Clear Credit of its discretion under these Rules or decision not to exercise any such discretion, including, without limitation, determining Margin requirements, determining the Value of deposited Margin, determining the Mark-to-Market Price of any Contract, and any actions or inactions relating to an emergency or force majeure, the decision that a Participant is in Default or the Closing-out Process. Without limiting the foregoing, ICE Clear Credit shall have no liability or obligation to any Non-Participant Party in respect of a Client-Related Position or otherwise (without prejudice to ICE Clear Credit's obligation under these Rules to return collateral and distributions thereon to a Participant in accordance with these Rules).

- (b) **In no event shall the amount of ICE Clear Credit's liability arising out of or relating to payment or delivery obligations with respect to Contracts or these Rules (whether direct or indirect, in contract, tort or otherwise) exceed the sum of (A) the amount then on deposit in the General Guaranty Fund (including any additional General Guaranty Fund deposits actually collected from Participants (subject to the applicable Additional Assessment Limits, as defined limitations set forth in Rule 802(d), the Rules), the ICE Clear Credit Priority Contribution and the ICE Clear Credit Pro Rata Contribution (subject to the ICE Clear Credit Default Maximum as defined in Rule 802(b)(v)),vii)), (B) any unpaid ICE Clear Credit Priority Contribution or ICE Clear Credit Pro Rata Contribution (subject to the ICE Clear Credit Default Maximum) that is past due, and (C) any amounts actually collected by ICE Clear Credit (reduced by all costs and expenses of collection) from a Participant or its guarantor in respect of Obligations, as described in Rule 802(a) or Rule 802(c), or from other Participants or their guarantors in respect of Wound-up Contracts, as described in Rule 804; provided that amounts received or collected as Margin in respect of Client-Related Positions may only be applied as set forth in these Rules. In no event shall the amount of ICE Clear Credit's liability to a Participant not arising out of or relating to payment or delivery obligations with respect to Contracts or these Rules (whether direct or indirect, in contract, tort or otherwise) exceed the aggregate amount paid to ICE Clear Credit by such**

and constituting Margin shall only secure Obligations of such Participant in respect of Client-Related Positions and shall be subject to the limitation set forth in subsection (h) below and applicable law. Upon the withdrawal of Pledged Items by a Participant from its House Margin Account or Client Omnibus Margin Account, as applicable, in accordance with these Rules and the ICE Clear Credit Procedures, the security interest and lien granted hereunder on such Pledged Items will be released immediately without any further action by either party. With respect to Pledged Items in the form of cash credited to the House Margin Account of a Participant and constituting Mark-to-Market Margin, ICE Clear Credit will have the right to sell, pledge, rehypothecate, assign, invest, use or otherwise dispose of or use in its business such Pledged Items, free from any claim or right of any nature whatsoever of the Participant, including any equity or right of redemption by the Participant, subject to any requirements of the Rules, and with respect to other Pledged Items credited to the House Margin Account of a Participant constituting Initial Margin, ICE Clear Credit may use, invest or apply such Pledged Items as permitted by the Rules. With respect to Pledged Items credited to the Client Omnibus Margin Account of a Participant, ~~the Clearing House~~ICE Clear Credit will only have the right to use, invest or apply such Pledged Items as permitted by the Rules and applicable law.

- (c) Upon the occurrence of a Default, ICE Clear Credit may exercise all rights of a secured party under applicable law and under these Rules. ICE Clear Credit may, without being required to give any notice, except as may be required by law, sell or otherwise apply any Pledged Items Transferred to, or otherwise under the control of, ICE Clear Credit to satisfy the Participant's Obligations. Notwithstanding the foregoing, ICE Clear Credit may only exercise such rights with respect to, or otherwise dispose of or sell, Pledged Items Transferred in respect of Client-Related Positions and constituting Margin (including Pledged Items Transferred to the Client Omnibus Margin Account) for the purposes of satisfying any outstanding Obligations of a Defaulting Participant in respect of Client-Related Positions and subject to the limitation set forth in subsection (h) below. Upon any such sale, ICE Clear Credit shall have the right to deliver, assign and transfer to the purchaser thereof the Pledged Items so sold. Each purchaser at any such sale shall hold the Pledged Items so sold to it absolutely and free from any claim or right of whatsoever kind, including any equity or right of redemption of the Participant which may be waived, and the Participant, to the extent permitted by law, hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted.
- (d) Each Participant represents that it is the sole owner of or otherwise has the right to Transfer to ICE Clear Credit the Pledged Items subject to the foregoing lien and security interest, free and clear of any security interest, lien, encumbrance or other restrictions in favor of any other person, and agrees not to create or permit to exist any such security interest, lien, encumbrance or other restrictions. The

or assets credited thereto from time to time (“**Custodial Losses**”), except to the extent such Custodial Losses result from the gross negligence or willful misconduct of ICE Clear Credit. No Participant shall be liable to any Non-Participant Party for any Custodial Losses, except to the extent such Custodial Losses result from the gross negligence or willful misconduct of the Participant. ICE Clear Credit shall have no duties or responsibilities with respect to the Client Omnibus Margin ~~Accounts~~Account except as expressly set forth in these Rules and applicable law. ICE Clear Credit shall have no responsibility for any investment decisions by a Participant (or any other Person) with respect to assets in the Client Omnibus Margin Account or for the results of any such investments and shall have no obligation to monitor the value of the assets in the Client Omnibus Margin Account or any requirements set forth in any applicable agreement between Participant and a Non-Participant Party. ICE Clear Credit shall have no responsibility for the compliance by any Participant or Non-Participant Party with its obligations under any such agreement. ICE Clear Credit shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to the Client Omnibus Margin Account or the assets therein or transferred thereto or therefrom under these Rules received from a Person ICE Clear Credit believes to be authorized to act on behalf of the appropriate Participant. In no event shall a Non-Participant Party attempt to interfere with the ability of ICE Clear Credit to exercise its rights as set forth in the Rules.

- (h) Except with respect to Client-Related Positions resulting from transactions entered into on a designated contract market or national securities exchange, each Non-Participant Party for which a Participant clears a Client-Related Position must be an “eligible contract participant” as defined in the CEA.
- (i) Each Non-Participant Party consents to the disclosure by its Participant to ICE Clear Credit of such Non-Participant Party’s identity and information concerning the Client-Related Positions held by such Participant for such Non-Participant Party and related margin as set forth in the Rules.
- (j) Each Non-Participant Party consents and agrees that in the event a Default has occurred with respect to its Participant or in the event of the insolvency of the Participant, (i) the Participant (or its receiver, insolvency trustee or similar official) and/or ICE Clear Credit shall be entitled to attempt to transfer its Client-Related Positions in accordance with Part 190 of the CFTC regulations, other applicable law and the Default Portability Rules, (ii) such Non-Participant Party appoints ICE Clear Credit as its lawful agent and attorney-in-fact to take such actions on behalf of the Non-Participant Party as ICE Clear Credit determines necessary or appropriate in order to effectuate the Default Portability Rules with respect to the Client-Related Positions carried by the Participant for such Non-Participant Party, including executing any document or instrument with respect to the transfer of the Client-Related Positions and/or exercising rights and remedies to transfer such positions; (iii) the Non-Participant Party shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the

### 503. Composition of the Risk Committee; Confidentiality.

- (a) The composition of the Risk Committee shall be as follows:
- (i) The Risk Committee shall consist of twelve members.
  - (ii) Each member of the Risk Committee shall have risk management experience and expertise and shall be subject to the approval of the Board, such approval not to be unreasonably withheld, conditioned or delayed.
  - (iii) Three of the members of the Risk Committee shall be comprised of (A) a member of the Board who is independent in accordance with the requirements of each of the New York Stock Exchange listing standards, the U.S. Securities Exchange Act of 1934, as amended, and IntercontinentalExchange, Inc.'s Board of Director Governance Principles (such requirements, the "**Independence Requirements**" and such member, the "**Independent ICE Manager**") and (B) two officers of ICE Clear Credit from among the Chief Executive Officer, President, Chief Financial Officer and Chief Risk Officer, each appointed by ICE US Holding Company L.P. (including any successor, the "**ICE Parent**"), a Cayman Islands exempted limited partnership, by written notice to the Board;
  - (iv) The other nine members of the Risk Committee will be appointed as specified below (the "**Participant Appointees**");
  - ~~(v) The nine Participant Appointees will include one member appointed by each Participant Group that includes or is Affiliated with one of the following: Bank of America, N.A.; Barclays Bank PLC; Citibank, N.A.; Credit Suisse Securities (USA) LLC; Deutsche Bank AG; Goldman Sachs International; JPMorgan Chase Bank, N.A.; Morgan Stanley Capital Services, Inc. and UBS AG.~~ (v) "**Participant Group**" means a Participant and its Affiliates, if any, such that, if two or more Participants are Affiliates, collectively they shall constitute a Participant Group.
  - (vi) The composition of the Participant Appointees shall be reconstituted on March 14, 2012 and each one year anniversary thereafter (or if any such day is not an ICE Business Day, the next ICE Business Day) as follows (each such anniversary date, a "**Risk Committee Reconstitution Date**," and the twelve full consecutive calendar months (including March through February) ending at the calendar month-end prior to a Risk Committee Reconstitution Date, an "**Eligibility Determination Period**") (subject to paragraph (ii) above):

not an Affiliate of such Participant (or any Person that Controls such other Participant) or a Participant (or any Person that Controls such Participant) is merged with another Participant that was previously not an Affiliate of such Participant (or any Person that Controls such other Participant).

(vii) Intentionally omitted.

~~(viii) Notwithstanding anything to the contrary herein, if at any time on or after the DCO/SCA Conversion Date but prior to the first Risk Committee Reconstitution Date, there is a Combination involving Participants where more than one of the relevant Participant Groups had the right to appoint a member of the Risk Committee, then, as of the date of consummation of such Combination, (A) such Participant Groups shall, collectively, have the right to appoint only one member of the Risk Committee and the Participant Group resulting from such Combination shall take all actions necessary to remove all but one of their previously appointed members effective as of the date of consummation of the Combination and (B) the vacanc(ies) of the Risk Committee will be filled by the Participant Group(s) that had the highest Participant Activit(ies) (over the 12-month period from and including March 2010 to and including February 2011) among those Participants that, as of the date of consummation of such Combination, did not have the right to appoint a member to the Risk Committee (in order of the level of such Participant Activity, from highest to lowest) effective as of the date of consummation of such Combination.~~

(viii) Intentionally omitted.

(ix) Notwithstanding anything to the contrary herein, if at any time on or after the first Risk Committee Reconstitution Date, there is a Combination involving Participants where more than one of the relevant Participant Groups had the right to appoint a member of the Risk Committee, then, as of the date of consummation of such Combination, (A) such Participant Groups shall, collectively, have the right to appoint only one member of the Risk Committee and the Participant Group resulting from such Combination shall take all actions necessary to remove all but one of their previously appointed members effective as of the date of consummation of the Combination and (B) the vacanc(ies) of the Risk Committee will be filled by Participant Group(s) that had the highest Participant Activit(ies) (over the immediately preceding Eligibility Determination Period) among those Participants that, as of the date of consummation of such Combination, did not have the right to appoint a member to the Risk Committee (in order of the level of such Participant Activity, from highest to lowest) effective as of the date of consummation of such Combination.

- (x) Notwithstanding anything to the contrary herein, if at any time all Participants in a Participant Group with the right to appoint a member of the Risk Committee are in Default or have had their status as Participant terminated as a result of being a Retiring Participant, (A) such Participant Group shall immediately lose the right to appoint a member to the Risk Committee and (B) at the date of such Default or termination, the Participant Group that had the highest Participant Activity (over the ~~period from and including March 2010 to and including February 2011 or, if on or after the first Risk Committee Reconstitution Date, over the~~ immediately preceding Eligibility Determination Period) among those Participants that, as of the date of such Default or termination, did not have the right to appoint a member to the Risk Committee, shall have the right to appoint a member to the Risk Committee effective as of the date of such Default or termination.
- (xi) A Participant Group may appoint an individual to be a member of the Risk Committee only if such individual is an employee of one of the Participants in such Participant Group or an Affiliate thereof. Any member of the Risk Committee may be removed at any time, with or without cause, by the Participant Group that appointed such member pursuant to this Rule 503. In the event a vacancy occurs on the Risk Committee as a result of the retirement, removal, resignation or death of a member thereof, such vacancy shall be filled by an individual designated by the relevant Participant Group.
- (xii) Within five ICE Business Days of the end of each Eligibility Determination Period, ICE Clear Credit shall, based on its books and records, deliver to each Participant Group a good faith determination of the identity of (A) the Top Six Incumbent Participant Groups and (B) the Eligible Participant Groups, and shall inform each of the Top Six Incumbent Participant Groups and the Eligible Participant Groups of its right to appoint a member to the Risk Committee as of the next Risk Committee Reconstitution Date pursuant to this Rule; *provided, however*, that ICE Clear Credit and its Affiliates, Board and officers shall have no liability with respect to the delivery of such good faith determination. For the sake of clarity, such good faith determination shall identify only the Participant Groups mentioned above, and shall not set forth the Participant Activity levels of such Participant Groups. In the event any Participant Group disputes in good faith ICE Clear Credit's good faith determination of the Top Six Incumbent Participant Groups or the Eligible Participant Groups, the disputing Participant Group and the Risk Committee shall submit such dispute for resolution to PricewaterhouseCoopers LLP (or, if such firm shall decline or is unable to act or is not, at the time of such submission, independent of ICE Clear Credit, the disputing Participant Group or any member of the Risk Committee, to another independent accounting firm of

Participant relating to Contracts, or to compensate any person for losses occasioned by any delay or failure of performance, to the extent such delay or failure is the result of acts of God, lightning, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, flood, nuclear radiation, act of a public enemy or blockade, insurrection, riot or civil disturbance, strike or labor disturbance, or any other cause beyond ICE Clear Credit's reasonable control (whether or not similar to any of the foregoing).

If ICE Clear Credit shall, as a result of any of the above-described events, fail to perform any of its obligations, such failure shall be excused for a period equal to the period of delay caused by such event. In such an event, ICE Clear Credit shall give written notice thereof to the affected Market or such Participant, as the case may be, as soon as it is reasonably practicable and attempt diligently to remove such condition.

#### **604. Suspension of Rules.**

(a) Except as otherwise provided in Chapter 5 of these Rules, the time frames fixed by these Rules, interpretations or policies of ICE Clear Credit for the doing of any act or acts may be extended, or the doing of any act or acts required by these Rules or any interpretations or policies of ICE Clear Credit may be waived, and any provision of these Rules or any interpretations or policies of ICE Clear Credit may be suspended by the Board or by any Eligible Officer whenever, in the judgment of the Board or such Eligible Officer, as applicable, such extension, waiver or suspension is necessary or expedient; *provided* that ICE Clear Credit may not take any action pursuant to this Rule that would, as determined by the Board or such Eligible Officer, as applicable, have a material adverse effect on the majority of Participants and; *provided, further*, that in the event of an Emergency, ICE Clear Credit may not take any action under this Rule and any such extension, waiver or suspension may occur only in accordance with the requirements of Rule 601. Any such extension, waiver or suspension under this Rule may continue in effect after the event or events giving rise thereto but shall not continue in effect for more than three ICE Business Days after the date thereof unless it shall be approved by the Board within such period.

(b) ICE Clear Credit shall be entitled without breach of these Rules to delay the payment to any Participant of any amount in respect of Mark-to-Market Margin with respect to such Participant's House Account and/or Customer Origin Account on an intra-day basis without following the procedure set forth in Rule 604(a) in circumstances in which:

(i) another Participant or Participants has or have been or will be asked to make payment to ICE Clear Credit in respect of Mark-to-Market Margin in respect of the same margin cycle; and

(ii) that other Participant or Participants has or have failed to pay ICE Clear Credit (including as a result of technical or operation reasons).

**605. [Intentionally Omitted].**

**606. Fees; Fines and Charges.**

- (a) Clearing fees and other charges for ICE Clear Credit services shall be as fixed from time to time by ICE Clear Credit with the approval of the Board.
- (b) ICE Clear Credit shall have the power to assess fines and charges against Participants for the failure to comply with these Rules or the ICE Clear Credit Procedures; *provided* that such fines or charges may be assessed only in accordance with the process described in Chapter 7 of these Rules.

**607. Trading by Employees Prohibited.**

- (a) No employee of ICE Clear Credit shall:
  - (i) trade or participate directly or indirectly in any transaction in any Contract, except to the extent necessary to carry out the provisions of Rule 20-605 or any other Rule that specifies the rights of ICE Clear Credit upon the Default of a Participant, or as otherwise permitted pursuant to an exemption granted in accordance with this Rule; or
  - (ii) disclose any material, non-public information obtained as a result of such Person's employment with ICE Clear Credit where the employee has or should have a reasonable expectation that the information disclosed may assist another Person in trading any Contract or any similar transaction, underlying asset or any other interest in respect thereof; *provided* that an employee is not prohibited from making disclosures in the course of the employee's duties, or to another self-regulatory organization, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.
- (b) From time to time, ICE Clear Credit may adopt additional Rules which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (a)(i) will be granted. The effectiveness of such rules and the procedures for administration of such rules shall be governed by applicable law and/or regulations.

**608. Forms; Transmission of Data to ICE Clear Credit.**

- (a) In connection with any transaction or matter handled through, with or by ICE

## 8. GENERAL GUARANTY FUND

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### 801. General Guaranty Fund Contribution.

- (a) (i) Each Participant shall Transfer to ICE Clear Credit, and thereafter maintain so long as it is a Participant, Collateral for deposit in the General Guaranty Fund in the form and in such amounts as may be determined by ICE Clear Credit as provided herein and in accordance with the ICE Clear Credit Procedures as in effect from time to time (“**Required Contribution**”); ~~provided that, following the determination by ICE Clear Credit that a Participant is in Default (or the automatic occurrence of a Default, as applicable), (x) ICE Clear Credit shall not be entitled to adjust such Defaulting Participant’s Required Contribution and (y) until such time as ICE Clear Credit has completed the Closing-out Process with respect to such Defaulting Participant, ICE Clear Credit shall not be entitled to adjust any other Participant’s Required Contribution except for periodic adjustments of Participants’ Required Contributions contemplated by the ICE Clear Credit Procedures; provided, further, that ICE Clear Credit shall not be entitled to increase a Retiring Participant’s Required Contribution following the first date on which such Retiring Participant no longer has any Open Positions.”);~~ subject to the limitations in Rule 806 and 807. ICE Clear Credit shall cause appropriate entries to be made in its books and records to reflect the deposit of Collateral, the ICE Clear Credit Priority Contribution and the ICE Clear Credit Pro Rata Contribution into the General Guaranty Fund. ICE Clear Credit shall have the sole right to withdraw cash, securities or other property from, and to authorize the sale or other disposition of any securities or other property held in, the General Guaranty Fund, subject to the limitations imposed in subparagraph (b)(v) of this Rule. A Participant may request, in accordance with the ICE Clear Credit Procedures, that ICE Clear Credit withdraw Collateral from the General Guaranty Fund and return it to the Participant to the extent the Participant’s contributions to the General Guaranty Fund exceed its Required Contribution and any Specific Wrong Way Risk (“**WWR**”) Guaranty Fund Contribution (as defined below) at that time. A Participant may substitute, in accordance with the ICE Clear Credit Procedures, Collateral for an amount of Collateral currently on deposit in the General Guaranty Fund and credited to such Participant having a value, determined in accordance with the ICE Clear Credit Procedures, not to exceed that of such substitute Collateral. ICE Clear Credit shall pay a Participant interest for any net cash Collateral of such Participant in the General Guaranty Fund, at an interest rate and on a frequency determined from time to time by ICE Clear Credit in the ICE Clear Credit Procedures. The eligible forms of Collateral will be as set forth in

Guaranty Fund Contributions shall be subject to the provisions of the first paragraph of Rule 801(a)(i) and Rule 801(a)(ii) applicable to Required Contributions.

(b) ICE Clear Credit shall contribute and maintain deposit(s) of capital in the General Guaranty Fund in such form and amount(s) and at such time(s) as follows:

(i) ~~On or before the first date that Participants are required to Transfer Collateral to ICE Clear Credit for deposit in the General Guaranty Fund pursuant to these Rules or the ICE Clear Credit Procedures, ICE Clear Credit shall contribute to the General Guaranty Fund ten million dollars. Thereafter, ICE Clear Credit may make additional contributions to the General Guaranty Fund from time to time and shall be obligated to have made aggregate contributions (including the initial ten million dollars) a contribution~~ to the General Guaranty Fund of twenty-five million dollars ~~on or prior to the first anniversary of the Customer Integration Date (from time to time,~~ (the aggregate amount of dollars so contributed by ICE Clear Credit pursuant to this subparagraph, reduced by any charge applied to such amount pursuant to Rule 802(b) and not reimbursed under Rule 802(a) or (c), the “**ICE Clear Credit Priority Contribution**”). ICE Clear Credit may invest the ICE Clear Credit Priority Contribution only in accordance with the investment guidelines in the ICE Clear Credit Procedures. ~~If on or after the first anniversary of the Customer Integration Date,~~ if the value, determined in accordance with the ICE Clear Credit Procedures, of the assets constituting the ICE Clear Credit Priority Contribution is below the required amount of the ICE Clear Credit Priority Contribution because of a decrease in the value of such ICE Clear Credit Priority Contribution (including ~~such decreases that occurred prior to such first anniversary or~~ as the result of investments of the ICE Clear Credit Priority Contribution, but excluding decreases resulting from a charge to such amount pursuant to Rule 802(b)), ICE Clear Credit shall be required, by the open of business on the following ICE Business Day, to contribute an additional amount of assets to the General Guaranty Fund sufficient to cause the assets constituting the ICE Clear Credit Priority Contribution to have a value, determined in accordance with the ICE Clear Credit Procedures, of at least the required amount of the ICE Clear Credit Priority Contribution.

(ii) ~~Following~~ In addition to the aggregate contribution to the General Guaranty Fund by ICE Clear Credit of twenty-five million dollars as described in subparagraph (i), ICE Clear Credit ~~may make additional contributions to the General Guaranty Fund pursuant to this subparagraph (ii) and, by the second anniversary of the Customer Integration Date, shall be obligated to~~ shall have made an additional contribution to the General Guaranty

Fund pursuant to this subparagraph (ii) (~~net of any charge applied to such amount pursuant to Rule 802(b) on or before such second anniversary and~~ exclusive of the ICE Clear Credit Priority Contribution) of ~~at least~~ twenty-five million dollars (from time to time, the aggregate amount of dollars contributed to the General Guaranty Fund by ICE Clear Credit pursuant to this subparagraph, reduced by any charge applied to such amount pursuant to Rule 802(b), the **“ICE Clear Credit Pro Rata Contribution”**, ~~it being understood that on and after the second anniversary of the Customer Integration Date, the required amount of the ICE Clear Credit Pro Rata Contribution shall be twenty-five million dollars).~~). ICE Clear Credit may invest the ICE Clear Credit Pro Rata Contribution only in accordance with the investment guidelines in the ICE Clear Credit Procedures. ~~If, prior to the second anniversary of the Customer Integration Date, an amount is charged to the ICE Clear Credit Pro Rata Contribution pursuant to Rule 802(b), ICE Clear Credit shall be required, by the open of business on the following ICE Business Day, to contribute an additional amount of dollars to the General Guaranty Fund equal to the amount of such charge and such additional amount shall constitute part of the ICE Clear Credit Pro Rata Contribution. If, on or after the second anniversary of the Customer Integration Date,~~ if the value, determined in accordance with the ICE Clear Credit Procedures, of the assets constituting the ICE Clear Credit Pro Rata Contribution is below the required amount of the ICE Clear Credit Pro Rata Contribution because of a decrease in the value of such ICE Clear Credit Pro Rata Contribution, an investment of the ICE Clear Credit Pro Rata Contribution or a charge to such amount pursuant to Rule 802(b), ICE Clear Credit shall be required, by the open of business on the following ICE Business Day, to contribute an additional amount of assets to the General Guaranty Fund sufficient to cause the assets constituting the ICE Clear Credit Pro Rata Contribution to have a value, determined in accordance with the ICE Clear Credit Procedures, of at least the required amount of the ICE Clear Credit Pro Rata Contribution.

- (iii) For the purposes of allocating the application of any charge to the General Guaranty Fund pursuant to Rule 802(b), the amount of the ICE Clear Credit Priority Contribution and the ICE Clear Credit Pro Rata Contribution shall be determined as of the date of such application. Subject to the ICE Clear Credit Default Maximum, any deficiency of the actual ICE Clear Credit Priority Contribution or ICE Clear Credit Pro Rata Contribution relative to the required amount thereof at the time of application shall remain the liability of ICE Clear Credit, notwithstanding anything to the contrary in these Rules.

~~(iv) “Customer Integration Date” shall mean December 14, 2009.~~ (iv)  
[Intentionally omitted.]

- (v) ICE Clear Credit may make withdrawals from the General Guaranty Fund in respect of the ICE Clear Credit Priority Contribution and the ICE Clear Credit Pro Rata Contribution only to the extent the value of the assets constituting such contribution exceeds the required amount thereof and for purposes of application of any charge to the General Guaranty Fund pursuant to Rule 802(b). ICE Clear Credit may substitute assets constituting the ICE Clear Credit Priority Contribution or the ICE Clear Credit Pro Rata Contribution in accordance with the investment guidelines in the ICE Clear Credit Procedures.
- (vi) ICE Clear Credit's obligation under this Rule 801(b) to contribute additional assets to the General Guaranty Fund shall cease upon the occurrence of one of the reasons for commencing the winding up of Open Positions, as described in Rule 804(a), except for any due and unpaid amounts at the time of such occurrence. In addition, notwithstanding anything to the contrary herein, ICE Clear Credit shall not be required to contribute additional assets in respect of the ICE Clear Credit Pro Rata Contribution in an amount of more than (x) twenty-five million dollars in respect of any single Participant Default, or (y) seventy-five million dollars in respect of all Defaults occurring or declared during any Cooling-Off Period, regardless of how many Defaults take place in such period.
- (c) For the purposes of the application of amounts charged to the General Guaranty Fund pursuant to Rule 802(b) and recoveries related thereto pursuant to Rule 802(a) or (c), the General Guaranty Fund (excluding the ICE Clear Credit Priority Contribution, the General Guaranty Fund contribution of the relevant Participant whose Default or Obligation Failure results in such application (such Participant, the **"Excluded Participant"**) and the Remaining Aggregate Specific WWR Contribution (as defined below)) shall be separated from time to time into two tranches as follows:
- (i) **"Tranche 1"** shall consist of (A) the ICE Clear Credit Pro Rata Contribution (as adjusted, if applicable, by the proviso below) and (B) a portion of the Required Contribution of each Participant other than the Excluded Participant and any Retiring Participant if the relevant Obligation Failure or Default occurred after such Retiring Participant's ~~Scheduled Return Date (as defined in Rule 803)~~Termination Date (each, a **"Remaining Participant"**) equal to such Remaining Participant's Required Contribution *divided by* the sum of all Remaining Participants' Required Contributions *multiplied by* the number of Remaining Participants *multiplied by* the ICE Clear Credit Pro Rata Contribution (as adjusted, if applicable, by the proviso below); *provided* that if (A) the sum of all Remaining Participants' Required Contributions plus the ICE Clear Credit Pro Rata Contribution

divided by (B) the number of Remaining Participants plus one (the “**Average Contribution**”) is less than the ICE Clear Credit Pro Rata Contribution, for the purposes of determining Tranche 1, the ICE Clear Credit Pro Rata Contribution shall be deemed to be the Average Contribution and the remainder of the ICE Clear Credit Pro Rata Contribution shall be applied, if at all, in accordance with Rule 802(b)(~~iv~~)-vii). The Required Contribution of any Participant that is included in the Non-Auction-Participating Junior Tranche will not be included in Tranche 1, but will be taken into account in the formula above for purposes of calculating the portion of each other Participant’s Required Contribution that is included in Tranche 1.

(ii) “**Tranche 2**” shall consist of the excess of (i) each Remaining Participant’s Required Contributions over (ii) the sum of the amounts thereof included in Tranche 1 and the Non-Auction-Participating Junior Tranche, if any.

(iii) “Non-Auction-Participating Junior Tranche” shall consist of the Required Contribution of each Participant (other than an Excluded Participant) that failed to comply with any of its obligations in the Default Auction Procedures as applicable to a Default Auction for the relevant Default or Obligation Failure or chose not to participate in any such Default Auction.

## 802. General Guaranty Fund Application.

(a) If a Participant is in Default and, as a result thereof, ICE Clear Credit suffers any loss or expense in effecting the Closing-out Process, or a Participant shall fail to make any other payment or render any other performance required under these Rules or a Contract (such failure, an “**Obligation Failure**”), then ICE Clear Credit shall, after appropriate application of such Participant’s Margin (including, with respect to losses or expenses arising out of Client-Related Positions, Margin provided by such Participant in the Client Omnibus Margin Account solely to the extent such Margin is permitted to be used under the Rules and applicable law) and other funds in or payable to the accounts of such Participant and any amounts collected from any guarantor of such Participant, or may, prior to such application, charge to and apply against ~~the~~such Participant’s contributions to the General Guaranty Fund (including any Specific WWR Guaranty Fund Contribution of such Participant), in the manner and in the order of priority set forth below:

(i) **FIRST:** To the payment of the costs and expenses of any sale, collection or other realization of such Margin or Collateral or amounts deposited by others in the General Guaranty Fund, including, without limitation, fees and expenses of counsel, and all reasonable expenses, liabilities and advances made or incurred by ICE Clear Credit in

connection therewith;

- (ii) SECOND: To the payment of any Obligations relating to Open Positions or the Closing-out Process or any obligations of ICE Clear Credit, in either case, arising out of or in any way relating to such Participant's Default or Obligation Failure (such obligations, together with the costs and expenses described in subparagraph (i), the "**Reimbursement Obligations**");
- (iii) THIRD: To the extent any amount has been charged to or applied against the General Guaranty Fund pursuant to subparagraph (b)(~~viii~~) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants whose contribution to the General Guaranty Fund was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~viii~~) of this Rule, up to the amount of such charge and application;
- (iv) FOURTH: To the extent any amount has been charged to or applied against the General Guaranty Fund pursuant to subparagraph (b)(~~vii~~) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants and ICE Clear Credit whose contribution to the General Guaranty Fund was charged and applied (whether or not such Participant remains a Participant at the time of the collection), first to the Participants charged to the extent they were charged after the ICE Clear Credit Default Maximum was reached and thereafter to the Participants and ICE Clear Credit, in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~vii~~) of this Rule, up to the amount of such charge and application;
- (v) FIFTH: To the extent any amount has been charged to or applied against ~~Tranche 2~~ the General Guaranty Fund pursuant to subparagraph (b)(~~vi~~) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants whose contribution to ~~Tranche 2~~ the General Guaranty Fund was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~vi~~) of this Rule, up to the amount of such charge and application;
- (vi) SIXTH: To the extent any amount has been charged to or applied against Tranche ~~4~~ 2 pursuant to subparagraph (b)(~~iv~~) of this Rule on

account of such Participant's Default or Obligation Failure, to the Participants ~~and ICE Clear Credit~~ whose contribution to Tranche ~~42~~ was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~iii~~iv) of this Rule, up to the amount of such charge and application;

(vii) SEVENTH: To the extent any amount has been charged to or applied against ~~the ICE Clear Credit Priority Contribution~~ Tranche 1 pursuant to subparagraph (b)(~~iii~~iv) of this Rule on account of such Participant's Default or Obligation Failure, to ~~ICE Clear Credit~~ the Participants and ICE Clear Credit whose contribution to Tranche 1 was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iv) of this Rule, up to the amount of such charge and application; ~~provided that ICE Clear Credit shall contribute any amount recovered in respect of this subparagraph to the General Guaranty Fund for credit to the ICE Clear Credit Priority Contribution;~~

(viii) EIGHTH: To the extent any amount has been charged to or applied against the ~~Remaining Aggregate Specific WWR Contribution~~ Non-Auction-Participating Junior Tranche pursuant to subparagraph (b)(~~iii~~iv) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants whose contribution to the ~~Remaining Aggregate Specific WWR Contribution~~ Non-Auction-Participating Junior Tranche was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~iii~~iv) of this Rule, up to the amount of such charge and application; ~~and~~

(ix) NINTH: To the extent any amount has been charged to or applied against the ICE Clear Credit Priority Contribution pursuant to subparagraph (b)(ii) of this Rule on account of such Participant's Default or Obligation Failure, to ICE Clear Credit up to the amount of such charge and application; provided that ICE Clear Credit shall contribute any amount recovered in respect of this subparagraph to the General Guaranty Fund for credit to the ICE Clear Credit Priority Contribution;

(x) TENTH: To the extent any amount has been charged to or applied against the Remaining Aggregate Specific WWR Contribution pursuant to subparagraph (b)(i) of this Rule on account of such Participant's Default or Obligation Failure, to the Participants whose contribution to

the Remaining Aggregate Specific WWR Contribution was charged and applied (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(i) of this Rule, up to the amount of such charge and application; and

- (ixxi) **NINTELEVENTH:** To ICE Clear Credit or to whomsoever may be lawfully entitled to receive any surplus then remaining from such proceeds (including, without limitation, any insurer, surety or guarantor of the obligations of ICE Clear Credit) or as a court of competent jurisdiction may direct, of any such surplus or, if neither ICE Clear Credit nor any other Person is lawfully entitled to receive any such surplus, to or upon the order of the relevant Participant; *provided that*, if such Participant is a Defaulting Participant, then until such Defaulting Participant's ~~Retirement~~Termination Date ~~determined pursuant to Rule 803~~, no such surplus shall be available for distribution under this subparagraph (vixxi) and any such surplus shall remain in the General Guaranty Fund and be subject to charge and application under paragraph (b) of this Rule.

Reimbursement Obligations shall include obligations in respect of a Defaulting Participant's House Positions and Client-Related Positions. To the extent such Reimbursement Obligations cannot be satisfied in full pursuant to this subsection (a), amounts available pursuant to this subsection (a) shall be applied to Reimbursement Obligations in respect of House Positions and Client-Related Positions in proportion to the respective Initial Margin requirements of the Defaulting Participant in respect of such positions immediately prior to the Default, until the Reimbursement Obligations in respect of House Positions or Client-Related Positions are reduced to zero.

- (b) Following the occurrence of an Obligation Failure, the determination by ICE Clear Credit that a Participant is in Default or the occurrence of an Automatic Default with respect to a Participant, ICE Clear Credit shall be entitled, from time to time, to charge to and apply against the General Guaranty Fund with respect to any of such Participant's Remaining Reimbursement Obligations, in the following order:
- (i) where the Defaulting Participant is a Specific WWR CDS Participant, the aggregate remaining Specific WWR Guaranty Fund Contributions of all other Specific WWR CDS Participants (the "**Remaining Aggregate Specific WWR Contribution**");

- (ii) the ICE Clear Credit Priority Contribution;

(iii) the Non-Auction-Participating Junior Tranche, pro rata from the

contributions thereto of the Participants contributing thereto, based on the relative size of such contributions;

(iv) Tranche 1, pro rata from the contributions thereto of the Remaining Participants and ICE Clear Credit, based on the relative size of such contributions;

(~~ivv~~) Tranche 2, pro rata from the contributions thereto of the Remaining Participants, based on the relative size of such contributions;

~~(v)~~ any additional assets(vi) any Additional Collateral Deposits deposited in the General Guaranty Fund pursuant to paragraph (d) of this Rule (other than any such assets deposited in respect of a Participant's Specific WWR Guaranty Fund Contribution) by Participants whose Required Contributions are included in the Non-Auction-Participating Junior Tranche;

(vii) any other Additional Collateral Deposits deposited in the General Guaranty Fund pursuant to paragraph (d) of this Rule (other than any such assets deposited in respect of a Participant's Specific WWR Guaranty Fund Contribution), pro rata from each Remaining Participant's contributions, based on the relative size of such contributions; *provided* that, for the purposes of this subparagraph, if the entire ICE Clear Credit Pro Rata Contribution was not included in Tranche 1 pursuant to the proviso in Rule 801(c)(i), the excess of the ICE Clear Credit Pro Rata Contribution over the amount thereof included in Tranche 1 shall be applied pursuant to this subparagraph (~~vii~~), along with additional amounts deposited in the General Guaranty Fund by Participants pursuant to paragraph (d) of this Rule at the same proportionate rate of application as in Tranche 1 until the ICE Clear Credit Default Maximum is reached; and

~~(viii)~~ (A) the Remaining Aggregate Specific WWR Contribution (where the Defaulting Participant is not a Specific WWR CDS Participant); and (B) in any case any Additional assetsCollateral Deposits deposited in the General Guaranty Fund pursuant to paragraph (d) of this Rule in respect of a Participant's Specific WWR Guaranty Fund Contribution.

Notwithstanding anything to the contrary in these Rules, in no event shall more than the ICE Clear Credit Default Maximum be applied in the aggregate to the ICE Clear Credit Pro Rata Contribution in the case of a single Participant Default and any Obligation Failure resulting in such Default. **"ICE Clear Credit Default Maximum"** means, at any time of determination, the lesser of (A) ~~(x) prior to the second anniversary of the Customer Integration Date, the actual amount of the ICE Clear Credit Pro Rata Contribution or~~ (y) on or following the

~~second anniversary of the Customer Integration Date~~, twenty-five million dollars and (B) the amount of the ICE Clear Credit Pro Rata Contribution that has been applied at the time all additional assets that Remaining Participants may be required to deposit in the General Guaranty Fund pursuant to paragraph (d) of this Rule have been applied.

As used herein, “**Remaining Reimbursement Obligations**” means those Reimbursement Obligations in respect of a Defaulting Participant that remain unsatisfied after application of available amounts pursuant to subsection (a). Available amounts pursuant to this subsection must be applied to Remaining Reimbursement Obligations in respect of Client-Related Positions and House Positions in proportion to the respective Initial Margin requirements of the Defaulting Participant in respect of such positions immediately prior to the Default, until the Remaining Reimbursement Obligations in respect of Client-Related Positions or House Positions are reduced to zero.

- (c) Any deficiency in respect of Obligations shall remain a liability of the Participant and any related guarantor to ICE Clear Credit, which ICE Clear Credit may collect from any Margin (to the extent permitted to be used under these Rules), Collateral or other assets of such Participant or such guarantor or by legal process. Subject to Rule 807 in respect of a Loss Distribution Period, any such collection by ICE Clear Credit shall be applied in the following order: (i) to the costs and expenses, including, without limitation, fees and expenses of counsel, of obtaining such collection, (ii) to any unreimbursed costs and expenses referred to in subparagraph (a)(i) of this Rule, (iii) to any deficiencies owed to Participants under Wound-up Contracts described in Rule 804, (iv) to the Participants whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to subparagraph (b)(~~viii~~) of this Rule (whether or not such Participant remains a Participant at the time of the collection), in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(viii) of this Rule, up to the amount of such charge or application; (v) to the Participants and ICE Clear Credit whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to subparagraph (b)(vii) of this Rule (whether or not such Participant remains a Participant at the time of the collection), first to the Participants charged to the extent they were charged after the ICE Clear Credit Default Maximum was reached and thereafter to the Participants and ICE Clear Credit, in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~v~~) of this Rule, up to the amount of such charge and application, (vii) of this Rule, up to the amount of such charge and application; (vi) to the Participants whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to subparagraph (b)(vi) of this Rule (whether or not such Participant remains a Participant at the time of the collection), in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(vi) of this Rule, up to

the amount of such charge or application; (vii) to the Participants whose contribution to Tranche 2 was charged and applied for such deficiency (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~iv~~) of this Rule, up to the amount of such charge and application, ~~—(vii); (viii)~~ to the Participants and ICE Clear Credit whose contribution to Tranche 1 was charged and applied for such deficiency (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(~~iv~~) of this Rule, up to the amount of such charge and application; (ix) to the Participants whose contribution to the Non-Auction-Participating Junior Tranche was charged and applied for such deficiency (whether or not such Participant remains a Participant at the time of the collection), in proportion to the amount each was charged and applied in accordance with subparagraph (b)(iii) of this Rule, up to the amount of such charge and application, ~~—(viii); (x)~~ to ICE Clear Credit in respect of the charge and application against the ICE Clear Credit Priority Contribution, up to the amount of such charge and application; *provided* that ICE Clear Credit shall contribute any amount recovered in respect of this clause to the General Guaranty Fund for credit to the ICE Clear Credit Priority Contribution; ~~(ix)~~ to the Participants whose contribution to the General Guaranty Fund was charged and applied for such deficiency pursuant to subparagraph (b)(i) of this Rule (whether or not such Participant remains a Participant at the time of the collection), in each case in proportion to the amount each was charged and applied in accordance with subparagraph (b)(i) of this Rule, up to the amount of such charge or application; ~~(xii)~~ to the Client Omnibus Margin Account to the extent the Participant's Margin in respect of Client-Related Positions was applied to such deficiency; and ~~(xiii)~~ to the payment of any other Obligations.

- (d) ***Additional Collateral Deposit.*** ICE Clear Credit shall notify Participants whenever an amount is charged to and applied against the General Guaranty Fund as provided in paragraphs (a) or (b) of this Rule (which notice will state the reason for such charge or application). If Reimbursement Obligations are charged to and applied against Collateral in the General Guaranty Fund pursuant to paragraph (a) or (b) of this Rule and, as a result, the amount of Collateral credited to a Participant is less than the amount it was required to maintain pursuant to Rule 801 immediately prior to such charge and application, the Participant shall Transfer to ICE Clear Credit additional Collateral for deposit into the General Guaranty Fund (an “Additional Collateral Deposit”) in an amount at least sufficient to restore that Participant's Required Contribution and any Specific WWR Guaranty Fund Contribution; ~~provided that, if a Participant is a Retiring Participant or provides notice that causes it to become a Retiring Participant prior to the time such deposit is due, the Participant's additional Transfer required pursuant to this sentence shall be limited to the excess, if any, of (i) such Participant's Required~~

~~Contribution and any Specific WWR Guaranty Fund Contribution on the date of the most recent application of Collateral from the General Guaranty Fund pursuant to paragraph (b) of this Rule over (ii) the aggregate Transfers of Collateral to ICE Clear Credit for deposit in the General Guaranty Fund made by such Participant after it became a Retiring Participant (other than in respect of increases to its Required Contribution or Specific WWR Guaranty Fund Contribution for periodic adjustments permitted under Rule 801) and any contributions of the Participant to the General Guaranty Fund in excess (as determined by ICE Clear Credit) of its Required Contribution and Specific WWR Guaranty Fund Contribution (with respect to such Participant, such excess of clause (i) over clause (ii) from time to time, the “**Additional Assessment Limit**”); provided that, if a Participant was not obligated to make a Transfer to ICE Clear Credit of additional Collateral for deposit in the General Guaranty Fund because its Additional Assessment Limit was reduced to zero and, thereafter, its Required Contribution or Specific WWR Guaranty Fund Contribution increases, the Participant shall Transfer to ICE Clear Credit such additional Collateral for deposit in the General Guaranty Fund to the extent of its Additional Assessment Limit (determined using such increased Required Contribution or Specific WWR Guaranty Fund Contribution, as applicable) on the ICE Business Day following the effectiveness of such increase. All such additional Collateral shall be Transferred to ICE Clear Credit prior to ICE Clear Credit’s opening of business on the first ICE Business Day following such notice or such later time as ICE Clear Credit shall determine in its sole discretion, subject to the limitations set forth in Rules 806 and 807; provided that ICE Clear Credit may at any time following the occurrence of a Default and in anticipation of any charge against the General Guaranty Fund require Participants to post Additional Collateral Deposits, subject to the limitations set forth herein in respect of such Default. A Participant that fails to Transfer the full amount of such additional Collateral, shall be in Default, and ICE Clear Credit may, in addition to any other remedies it may have, debit such Participant’s House Margin Account for any or all of such unpaid amount and assess fines and charges against such Participant as provided in Rule 606. No Participant (other than a Defaulting Participant, which shall be liable as set forth in subparagraph (c) above) shall be liable to provide Additional Collateral Deposits as a result of charges or applications against the General Guaranty Fund in respect of a single Default of a Participant in an amount exceeding its Required Contribution immediately preceding such Default. Notwithstanding the foregoing, a Participant shall continue to be liable to provide Additional Collateral Deposits in respect of its Specific WWR Guaranty Fund Contribution notwithstanding the limitations applicable to Additional Collateral Deposits in respect of a Default or the occurrence of a Cooling-Off Period. Except as provided in Rules 806 and 807, a Retiring Participant that has served a Termination Notice shall only be obligated to provide Additional Collateral Deposits in respect of Defaults occurring or declared prior to such Participant’s Termination Date.~~

hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter adopted.

(iii) Each Participant represents that it is the sole owner of or otherwise has the right to Transfer to ICE Clear Credit the Pledged Guaranty Collateral subject to the foregoing lien and security interest, free and clear of any other security interest, lien, encumbrance or other restrictions, and agrees not to create or permit to exist any such security interest, lien, encumbrance or other restrictions. Each Participant agrees to take any action reasonably requested by ICE Clear Credit that may be necessary or desirable for ICE Clear Credit to create, preserve, perfect or validate the foregoing lien and security interest or to enable ICE Clear Credit to exercise or enforce its rights with respect thereto. With respect to any Pledged Guaranty Collateral consisting of securities and other financial assets Transferred by ICE Clear Credit in accordance with these Rules, each Participant agrees it will accept securities and financial assets of the same issuer, type, nominal value, description and amount as those securities and financial assets initially Transferred by such Participant to ICE Clear Credit.

(iv) Each Participant agrees that ICE Clear Credit may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in, the General Guaranty Fund and/or the cash, securities and other property held in the General Guaranty Fund to secure the repayment of funds borrowed by ICE Clear Credit (plus interest, fees and other amounts payable in connection therewith). Any such borrowing shall be on terms and conditions deemed necessary or advisable by ICE Clear Credit (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Participant to ICE Clear Credit for which such cash, securities or other property was pledged to or deposited with the ICE Clear Credit. Any funds so borrowed shall be used and applied by ICE Clear Credit solely for the purposes for which cash, securities and other property held in the General Guaranty Fund are authorized to be used pursuant to these Rules; provided that the failure of ICE Clear Credit to use such funds in accordance with this subsection shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest. Cash, securities and other property held in the General Guaranty Fund, subject to the rights and powers of ICE Clear Credit with respect thereto as set forth in these Rules and any agreements between any Participant and ICE Clear Credit, and subject to the rights and powers of any person to which the General Guaranty Fund or any cash, securities or other property held therein shall have been assigned,

pledged, repledged or otherwise subjected to a lien or security interest, shall remain the property of the respective Participants depositing such cash securities and other property.

- (g) A Participant shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of ICE Clear Credit (i) to take any action contemplated by this Rule, including, without limitation, to liquidate, set off and/or apply such Participant's Open Positions, Collateral or other assets, pursuant to these Rules or (ii) to set off amounts owed to such Participant against such Participant's Obligations or any other Participant's Reimbursement Obligations.

### **803. Return of General Guaranty Fund Contributions.**

ICE Clear Credit shall return a Retiring Participant's contributions to the General Guaranty Fund, to the extent not charged to or applied against pursuant to Rule 802 or Rule 804, ~~no later than the later of (i) the Retiring Participant's Scheduled Return Date and (ii) the earlier of (A) the date that ICE Clear Credit determines that any Default that occurred on or prior to such Scheduled Return Date will not result in a charge against such Retiring Participant's contribution to the General Guaranty Fund or that there was no such Default and (B) the date that is 90 calendar days from such Scheduled Return Date (the later of clause (i) and (ii), the "Retirement Date").~~ or otherwise under these Rules, following its Termination Date as set forth in Rule 807. Upon such return, the Retiring Participant shall have no further obligation to make contributions to the General Guaranty Fund, ~~notwithstanding any remaining Additional Assessment Limit. With respect to a Retiring Participant, the "Scheduled Return Date" shall be the last ICE Business Day of the first calendar quarter that has at least sixty calendar days remaining as of the first date on which such Retiring Participant no longer has any Open Positions.~~

### **804. Exhaustion of General Guaranty Fund; Winding Up.**

- (a) ~~If (i) the application of the General Guaranty Fund in accordance with Rule 802(b) is insufficient to discharge in full the Remaining Reimbursement Obligations of the relevant Participant, taking into account (subject to the Additional Assessment Limit) additional deposits made in accordance with Rules 801 or 802~~ If (i) ICE Clear Credit determines to terminate all outstanding Contracts in accordance with Rule 810, (ii) the Board determines, by virtue of the number of Retiring Participants or otherwise, that a winding up of outstanding Contracts is prudent or (iii) an ICE Clear Credit Default occurs pursuant to Rule 805, ~~the Board~~ ICE Clear Credit shall determine the Termination Time and determine the close-out values for all Open Positions (the "**Wound-up Contracts**") ~~on a date and at prices determined by the Board in its discretion, acting in good faith in accordance with Rule 810(d), and a commercially reasonable manner, and shall determine~~ a single net amount

owed by or owed to each Participant in respect of House Positions and a single net amount owed by or owed to each Participant in respect of Client-Related Positions. shall be determined, which net amount for the avoidance of doubt shall take into account and be offset against available Mark-to-Market Margin posted by such Participant to ICE Clear Credit and available Mark-to-Market Margin posted by ICE Clear Credit to such Participant. In such case, net amounts owed by a Participant with respect to Client-Related Positions may be offset and netted against net amounts owed to a Participant with respect to House Positions; provided that net amounts owed by a Participant with respect to House Positions may not be offset or netted against net amounts owed to a Participant with respect to Client-Related Positions. In that case, ICE Clear Credit shall apply all amounts collected from Participants who owe ICE Clear Credit a net amount under the Wound-up Contracts (directly or through Margin deposited by such Participant and other funds in or payable to the accounts of the Participant or from any applicable guarantor, provided that Margin provided in respect of Client-Related Positions may only be applied to the extent net amounts are owed in respect of Client-Related Positions), plus all available amounts in the General Guaranty Fund, to pay all net amounts owed by ICE Clear Credit to Participants under the Wound-up Contracts, subject to the limitation of liability set forth in Rule 312, and, to the extent the amounts owed by ICE Clear Credit exceed the amounts available for payment, the amounts available for payment shall be prorated based on the relative net amounts owed by ICE Clear Credit to Participants under Wound-up Contracts. To the extent amounts available for payment exceed the amounts owed by ICE Clear Credit, such excess shall be applied in accordance with Rule 802(a)(iii)-(ixxi).

- (b) For the sake of clarity, if ICE Clear Credit and some or all of the Retiring Participants agree to establish a new General Guaranty Fund (the “**New General Guaranty Fund**”) and to have ICE Clear Credit accept for clearing replacements for some or all of the Wound-up Contracts, the limitation of liability set forth in Rule 312 shall continue to apply to the Wound-up Contracts, ICE Clear Credit shall be liable only to the extent set forth in such Rule 312, and the New General Guaranty Fund shall not be available to satisfy any obligations in respect of the Wound-up Contracts.

#### **805. ICE Clear Credit Default.**

If any of the events listed in this Rule occur (an “**ICE Clear Credit Default**”), all Open Positions with all Participants shall be terminated and cash settled in accordance with Rule 804.

- (a) **Failure to Pay or Deliver.** Failure by ICE Clear Credit to (i) make, when due, any payment or delivery with respect to any Participant’s Open Positions required to be made by it (determined without regard to the limitation of liability set forth in Rule 312) or (ii) make, when due, a contribution to the General Guaranty Fund

required of it by Rule 801 or 802, in the case of each of clauses (i) and (ii) if such failure is not remedied on or before the third ICE Business Day after notice of such failure is given to ICE Clear Credit by any Participant; or

- (b) **Bankruptcy.** ICE Clear Credit (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) institutes a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or presents a petition for its winding-up or liquidation; (iii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, in each case, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or (iv) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets.

... **Interpretations and Policies:**

- .01 As used in this Chapter 8, "Participant" includes a Participant that has had its clearing privileges suspended or revoked, or its status as a Participant terminated, by ICE Clear Credit or whose privileges in respect of Trades and Contracts have been restricted pursuant to Rules 203 or 207.

**806. Cooling-Off Periods.**

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

**Cooling-off Period**

The period commencing on the date of the Cooling-off Period Trigger Event and terminating 30 ICE Business Days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 30 or fewer ICE Business Days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling 30 ICE Business Days after such subsequent Cooling-off Period Trigger Event.

**Cooling-off Period Trigger Event**

(i) Any call for an Additional Collateral Deposit to be made pursuant to Rule 802(d) in respect of Remaining Reimbursement Obligations arising from a Default or Defaults for which amounts have been or are expected

to be charged against the General Guaranty Fund; or (ii) the occurrence of a Sequential Guaranty Fund Depletion.

### **Cooling-off Termination Period**

The period commencing on the date of each Cooling-off Period Trigger Event and terminating 10 ICE Business Days thereafter. A Cooling-off Termination Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 10 or fewer ICE Business Days since the previous Cooling-off Period Trigger Event, until the date falling 10 ICE Business Days after such subsequent Cooling-off Period Trigger Event. If a Suspension Period is announced during a Cooling-Off Termination Period, then the Cooling-off Termination Period shall be extended by the total time of the Suspension Period.

### **Sequential Guaranty Fund Depletion**

In respect of a particular Participant that is not a Defaulting Participant, the occurrence of circumstances in which: (i) there have been two or more Defaults relating to different Participants within a period of 30 or fewer ICE Business Days; (ii) contributions to the General Guaranty Fund from non-Defaulting Participants have been applied in respect of at least two such Defaults; and (iii) the total amount of Additional Collateral Deposits that the Participant has as a result paid to ICE Clear Credit to replenish its contributions to the General Guaranty Fund exceeds its Required Contribution to the General Guaranty Fund prior to the first such Default.

- (b) Upon the occurrence of any Cooling-off Period Trigger Event, ICE Clear Credit shall issue a notice to Participants of the commencement of the Cooling-off Period, setting out the date on which such period is scheduled to end (and the date on which the Cooling-off Termination Period is scheduled to end).
- (c) From the commencement of, and solely for the duration of, the Cooling-off Period:
- (i) The last sentence of Rule 802(d) shall not apply to a Participant until the end of the Cooling-off Period;
  - (ii) Additional Collateral Deposits due under 802(d) from a Participant for all Defaults occurring or declared during the Cooling-off Period shall not exceed three times the amount of the Participant's Required Contribution to the General Guaranty Fund immediately prior to the commencement of the Cooling-off Period (with any Additional Collateral Deposits payable in respect of the Default or Defaults as a result of which the Cooling-Off Period commenced being counted towards reducing such maximum amount), *provided* that a Participant shall in addition continue to be liable

for Additional Collateral Deposits in respect of its Specific WWR Guaranty Fund Contribution notwithstanding the Cooling-Off Period. A Participant in a Cooling-off Period that has made Additional Collateral Deposits in such maximum amount shall not be liable for any further replenishments of its contributions to the General Guaranty Fund or Additional Collateral Deposits in respect of such Cooling-Off Period, regardless of how many additional Defaults take place in such period;

(iii) for the avoidance of doubt, the per Default cap on Additional Collateral Deposits set forth in the penultimate sentence of Rule 802(d) shall apply in respect of each Default occurring or declared during the Cooling-off Period;

(iv) there shall be no rebalancing, re-setting or recalculation of Required Contributions to the General Guaranty Fund or the total required contribution amount for purposes of determining liability for replenishment of contributions to the General Guaranty Fund or Additional Collateral Deposits;

provided that the limits set out in this Rule 806(c) shall only apply with respect to a Participant if such Participant continues during the Cooling-off Period to pay ICE Clear Credit all other amounts when owed by it due (subject to the limitations set out in this Rule 806(c)).

(d) At any time during the Cooling-off Termination Period, a Participant may give a Termination Notice to ICE Clear Credit.

(e) At the end of the Cooling-off Period, the restrictions and requirements of Rule 806(c) shall cease to apply, subject to Rule 807, going forward to each Participant that has not served a Termination Notice during or prior to the Cooling-off Termination Period.

(f) Nothing in this Rule 806 shall alter ICE Clear Credit's right to call for Margin from any Participant.

## **807. TERMINATION OF PARTICIPANT STATUS**

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

### **Termination Close-Out Deadline Date**

(i) Unless clause (ii) or (iii) applies, in respect of the termination of Participant status of a Participant under Rule 207, the date falling 30 Business Days after the Termination Notice Time (or, if ICE Clear Credit has terminated the Participant's status under Rule 207, the date so

designated by ICE Clear Credit); (ii) in respect of termination of clearing membership under Rule 806(d), the date falling 20+x ICE Business Days after the Termination Notice Time where x= the total number of unexpired ICE Business Days in the Cooling-Off Termination Period; or (iii) notwithstanding (i) and (ii), in any case, such later date as the ICE Clear Credit may at its discretion permit and notify in writing to the affected Participant.

### **Termination Date**

In respect of the termination of Participant status for a Retiring Participant, the later of (i) where applicable, the Termination Close-Out Deadline Date and (ii) the date as of which all of the Retiring Participant's Open Positions in respect of its House Account and Client Origin Account have been terminated or closed out in full and all obligations of the Retiring Participant in respect thereof have been satisfied and performed in full.

### **Termination Notice Time**

The time of service by a Participant of a Termination Notice.

### **Termination Notice**

A notice served by the Participant on ICE Clear Credit indicating that such Participant intends to withdraw from being a Participant (and thereby becomes a Retiring Participant).

(b) A Participant that has delivered a Termination Notice (including under Rule 806(d)) or (if so designated by ICE Clear Credit) that is otherwise terminated under Rule 207 is subject to the following requirements, obligations and provisions:

(i) it must use all reasonable endeavors, unless and until such time as there is a subsequent ICE Clear Credit Default, to close out all of its Open Positions prior to the Termination Close-Out Deadline Date;

(ii) if it closes out all of its Open Positions prior to the Termination Close-Out Deadline Date and complies with the other requirements of this Rule 807, it shall maintain the benefit of the protections set out in Rule 806(c), if then applicable, and such provisions shall continue in effect for such Participant following the end of the Cooling-off Period;

(iii) after the Termination Notice Time, it shall only be entitled to submit Transactions for clearing which it can demonstrate have the overall effect of reducing Open Positions in any Contracts or risks to ICE Clear Credit associated with the Contracts, whether by hedging, novating, Transferring, terminating, liquidating or otherwise closing out such Contracts;

- (iv) ICE Clear Credit may call for additional Initial Margin until such time as all of its Open Positions have been terminated, and such Participant shall provide such additional Initial Margin to ICE Clear Credit as is requested in a timely manner;
- (v) it shall be obliged to participate in Default Auctions pursuant to the Default Auction Procedures in the same way as any other Participant that is not a Defaulting Participant and subject to the provisions of these Rules in respect of all Defaults occurring prior to or during the Cooling-off Period during which the Participant served its Termination Notice (or, if Rule 806(d) does not apply, all Defaults occurring prior to the Termination Notice Time);
- (vi) except as provided in clause (vii) below, there shall be no rebalancing, re-setting or recalculation of the General Guaranty Fund contribution requirements or the total required amount for purposes of determining liability for General Guaranty Fund contributions or Additional Collateral Deposits of the Participant that has served a Termination Notice;
- (vii) if it has any Open Positions with ICE Clear Credit (whether House Positions or Client-Related Positions) after the Termination Close-Out Deadline Date (and notwithstanding any provision in this Chapter 8 of the Rules to the contrary), the Participant shall as from the Termination Close-Out Deadline Date until its Termination Date:
  - (A) become liable to make any Additional Collateral Deposit to the General Guaranty Fund that would have fallen due but has not been paid and become liable to have applied any contribution to the General Guaranty Fund that would have been applied but was not so applied, in each case to the extent that the same would have been payable or applied but for its service of a Termination Notice and in each case in respect of any Default affecting a Participant that has occurred subsequent to the Termination Notice Time;
  - (B) become liable for further obligations to have any contributions to the General Guaranty Fund applied or pay Additional Collateral Deposits in the same way as any other Participant in respect of any Default occurring prior to the Termination Date; and
  - (C) be subject to ICE Clear Credit exercising rights in Rule 20-605 or Part 8 of the Rules to liquidate or Transfer the Open Positions of the Participant and otherwise deal with the Participant's Contracts and property in the same way as if the Participant were a Defaulting Participant.

(viii) following termination of all Open Positions to which a Retiring Participant was party in relation to its House Account and Client Origin Account and satisfaction in full by such Retiring Participant of all Obligations in respect thereof, ICE Clear Credit shall return the Retiring Participant's unused contributions to the General Guaranty Fund and any unused Termination Deposit, as well as any other assets of the Retiring Participant not previously returned on the later of:

- (1) five ICE Business Days after the date on which the termination of the Retiring Participant's Open Positions and the satisfaction in full of all Obligations in respect thereof is completed; or
- (2) the end of the monthly period in which such Retiring Participant's Termination Date occurs.

Notwithstanding anything in these Rules:

- (1) ICE Clear Credit may at its discretion return amounts due to the Retiring Participant in different currencies or by way of transfer or return of non-cash Margin to the Retiring Participant;
- (2) ICE Clear Credit may further pay any net amount payable to the Retiring Participant in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and
- (3) ICE Clear Credit may make partial payment of any amounts due excluding the General Guaranty Fund contribution prior to the time specified in this Rule 807; and

(c) If:

- (i) a Participant has served a Termination Notice under 806(d); and
- (ii) there is a Default or are Defaults before the relevant Termination Date,

then the Participant in question shall remain liable for the application of any then unapplied General Guaranty Fund contributions and unapplied Additional Collateral Deposits (including those paid or which the Participant is liable to pay) for all such Defaults (as if all such Defaults had been declared by ICE Clear Credit prior to the Termination Notice Time), subject to the general limits relating to particular Defaults and all Defaults referred to in Rules 802, 806 and 807.

- (d) Any Termination Notice issued by a Participant shall be irrevocable by the Participant and membership may only be reinstated pursuant to a new application for membership following the close-out of all its open Contracts.
- (e) A Participant whose membership has terminated shall, following the Termination Date, cease to be liable for replenishments of contributions to the General Guaranty Fund under Rule 801 or 802 in respect of Defaults that occur after the Termination Date.
- (f) This Rule 807 shall not apply to a Defaulting Participant.
- (g) Unless it served such notice during a Cooling-off Termination Period, a Participant that gives a Termination Notice shall be liable immediately upon delivery of the Termination Notice to provide Additional Collateral Deposits in an amount equal to three times its Required Contribution and required Specific WWR Guaranty Fund Contribution (each as in effect immediately prior to the Termination Notice Time), such amounts to be held by ICE Clear Credit until the Termination Date and applied only as permitted in accordance with Chapter 8 of the Rules (a "Termination Deposit"). Any references in these Rules to Additional Collateral Deposits being called or to Required Contributions to the General Guaranty Fund being replenished or applied, in respect of a Participant which has provided such a Termination Deposit, shall be interpreted as a reference to such Termination Deposit being applied in satisfaction of such requirements, and a Participant that has served a Termination Notice and made such Termination Deposit shall not be liable for any further Additional Collateral Deposits, regardless of how many Defaults take place (subject to the proviso to Rule 806(c)).

#### **808. Margin Haircutting.**

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

##### **Account Adjustment**

In respect of each Account and any ICE Business Day, any Cash Gainer Adjustment or Cash Loser Adjustment as the case may be in connection with such Account on such ICE Business Day.

##### **Aggregate Cash Gains or ACG**

In respect of any ICE Business Day, the sum of the Cash Gain in respect of all Cash Gainers on such ICE Business Day.

##### **Available Defaulter Resources**

Following a particular Default, all the quantifiable and certain resources on any particular date that are available to ICE Clear Credit to be used under the Rules and applicable law (including, as applicable, CFTC Rule 22.15) to meet losses and liabilities resulting from the Default to the extent that the same represent the cash proceeds or equivalent cash value (as calculated by ICE Clear Credit) of Margin or contributions to the General Guaranty Fund provided to ICE Clear Credit by the Defaulting Participant or other amounts, credits or assets that would otherwise be due to the Defaulting Participant in the calculation of the amounts due and payable which have been evaluated as cash obligations (as calculated by ICE Clear Credit). Available Defaulter Resources exclude for the avoidance of doubt all Available Non-Defaulter Resources, ICE Clear Credit's own assets and capital and any assets or rights representing Margin or contributions to the General Guaranty Fund provided by Participants that are not Defaulting Participants or proceeds thereof.

### **Available Non-Defaulter Resources**

Following a particular Default, the cash proceeds or equivalent cash value (as calculated by ICE Clear Credit) of those contributions to the General Guaranty Fund (of both ICE Clear Credit and Participants), which are available to be applied pursuant to Rule 802(b), provided that Additional Collateral Deposits shall only count as Available Non-Defaulter Resources if they have been received by ICE Clear Credit in immediately available funds at the time ICE Clear Credit performs a calculation of Available Non-Defaulter Resources.

### **Available Resources or AR**

Following any Default, the Available Defaulter Resources plus the Available Non-Defaulter Resources.

### **Cash Gain**

In respect of any Cash Gainer and any Loss Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.

### **Cash Gainer**

In respect of each Contributing Participant and any Loss Distribution Date, each Account in respect of which the Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Loss Distribution Day is greater than zero.

### **Cash Gainer Adjustment**

The meaning set out in Rule 808(d).

### **Cash Loser**

In respect of each Contributing Participant and any Loss Distribution Date, each Account in respect of which the Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Loss Distribution Day is equal to or less than zero.

### **Cash Loser Adjustment**

The meaning set out in Rule 808(e).

### **Contractual Payments**

In respect of each Account and any ICE Business Day, any of the following connected to such Account on such ICE Business Day: any fixed amounts, Initial Payment, physical settlement amount, auction settlement amount or any cash settlement amount (provided that in the case of a physical settlement amount, only the portion thereof in excess of the market value of any obligations delivered in exchange therefor (as determined by ICE Clear Credit) shall constitute a Contractual Payment). Where physical delivery or physical settlement is due to be made by way of final settlement under a CDS Contract from ICE Clear Credit to any Participant, and ICE Clear Credit (including any non-defaulting Participant acting as agent for the Clearing House) has not received a corresponding delivery from a Defaulting Participant, ICE Clear Credit may attribute a reasonable value to its delivery obligations and treat such amount as a Contractual Payment for purposes of this definition.

### **Contributing Participant**

A Participant (other than a Defaulting Participant in respect of whom the Estimated Payable Net Sum is positive or the total net amount owed by such Defaulting Participant to ICE Clear Credit would or does exceed the Available Defaulter Resources).

### **Cumulative Actual Gains, Losses and Realized Cash Flows**

In respect of each Account of each Contributing Participant and any ICE Business Day, the aggregate amount, if any, actually paid by ICE Clear Credit to such Participant (expressed as a positive number) or by such Participant to ICE Clear Credit (expressed as a negative number) in respect of such Account by way of Contractual Payments and MTM, taking into account each Account Adjustment from but excluding the

relevant Last Call Prior To Default to and including such ICE Business Day such that, to the extent that any payment of MTM or Contractual Payment is netted or offset against any Account Adjustment on any Loss Distribution Day, the net amount actually paid for the purposes of this definition shall be used in calculating such aggregated amount.

### **Cumulative Transfer Cost**

On any ICE Business Day during any Loss Distribution Period, the sum of any Transfer Costs for each ICE Business Day from but excluding the relevant Last Call Prior To Default to and including such ICE Business Day.

### **Cumulative Unadjusted Gains, Losses and Realized Cash Flows**

In respect of each Account of each Contributing Participant and any ICE Business Day, the sum of the Pre-Haircut Gains, Losses and Realized Cash Flows for such Account for each ICE Business Day from but excluding the relevant Last Call Prior To Default to and including such ICE Business Day.

### **Default Auction**

An auction that takes place in accordance with the Default Auction Procedures.

### **Default Auction Procedures**

The Default Auction Procedures adopted by ICE Clear Credit, as in effect from time to time.

### **Distribution Haircut or DH**

On each Loss Distribution Day, the fraction determined by ICE Clear Credit in accordance with the following formula:

$$\text{DH}(t) = \text{UL}(t) / \text{ACG}(t)$$

where:

UL means the Uncovered Loss; and

ACG means the Aggregate Cash Gains.

### **Estimated Payable Net Sum**

Following a particular Default, an estimate by ICE Clear Credit of the total of the net amount that would be payable by a Defaulting Participant to ICE Clear Credit (expressed as a positive number) in respect of a particular

Account after application of Available Defaulter Resources available to be applied to the payment thereof under the Rules and applicable law, based on the cash or estimated value of items considered by ICE Clear Credit to be sufficiently certain to be estimated as at the date of the estimation (including, in respect of Contracts, latest available MTM Prices), without any netting or offsetting in respect of any other Estimated Payable Net Sum or actual net amount payable to a Defaulting Participant in respect of a different Account of a Defaulting Participant. If such net amount would be payable to a Defaulting Participant by ICE Clear Credit, the Estimated Payable Net Sum will be deemed to be zero.

### **Haircutting Determination**

The meaning set out in Rule 808(b).

### **Last Call Prior To Default**

The most recent ICE Business Day on which payments of MTM required to be made by Participants were paid in full.

### **Loss Distribution Day**

An ICE Business Day in the Loss Distribution Period.

### **Loss Distribution Period**

The period commencing from and including the date specified by ICE Clear Credit in a notice following a Haircutting Determination and ending on a date specified by ICE Clear Credit in the same or any subsequent notice, as the same may be extended under Rule 808(c). A Loss Distribution Period shall end with immediate effect and without the need for any action on the part of any Participant or ICE Clear Credit upon any ICE Clear Credit Default or other determination to terminate all Contracts under Rule 804.

### **MTM**

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

### **MTM Price**

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

### **Outward MTM Payments**

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

### **Participant Adjustment Amount**

In respect of an Account of any Contributing Participant and any Loss Distribution Day, an amount equal to the Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Account of such Participant less the Cumulative Actual Gains, Losses and Realized Cash Flows in respect of such Account of such Participant, in each case in respect of the Loss Distribution Period in which such Loss Distribution Day falls.

### **Post Default Period**

The period starting at the time of declaration of a Default of a Participant and ending at the time ICE Clear Credit determines the net amount payable to or by such Defaulting Participant in respect of each Account of the Defaulting Participant following completion of the Closing-Out Process.

### **Pre-Haircut Gains, Losses and Realized Cash Flows**

In respect of each Account of each Contributing Participant and any ICE Business Day, the net amount which would be payable by ICE Clear Credit to such Participant (expressed as a positive number) or by such Participant to ICE Clear Credit (expressed as a negative number) by way of Contractual Payments or MTM in respect of such Account on such ICE Business Day in the absence of the application of the Distribution Haircut. In connection with any Contract which is not re-priced daily in connection with the establishment of a Mark-to-Market Price (or any other similar price, however described or defined), for the avoidance of doubt, the Pre-Haircut Gains, Losses and Realized Cash Flows are calculated taking into account MTM that is paid by ICE Clear Credit to the Participant (or would have been payable to the Participant but for Rule 808) and Mark-to-Market Margin payable and paid by the Participant to ICE Clear Credit (without taking into account any reductions to such payments made pursuant to this Rule 808).

### **Received MTM**

On a particular ICE Business Day following a Default, the amount that ICE Clear Credit has actually received in immediately available funds from Participants (other than Defaulting Participants) who are party to Contracts in respect of MTM.

### **Suspended Contracts**

The meaning set out in Rule 809.

### **Suspension Circular**

The meaning set out in Rule 809.

### **Suspension Determination**

The meaning set out in Rule 809.

### **Suspension Period**

The meaning set out in Rule 809.

### **t**

In respect of any determination made in relation to an ICE Business Day, such ICE Business Day.

### **t-1**

In respect of any determination made in relation to an ICE Business Day, the ICE Business Day immediately prior to such ICE Business Day.

### **Termination**

In respect of a Contract means termination, liquidation, close-out, exercise, abandonment, or expiry pursuant to its terms and under the Rules.

### **Termination Circular**

The meaning set out in Rule 810.

### **Termination Price**

In respect of a Contract, the price determined by ICE Clear Credit, which shall be applicable upon any termination pursuant to Rule 810.

### **Total Cumulative Pre-Haircut Amount**

In respect of any ICE Business Day, the sum of the Total Pre-Haircut Amount for each ICE Business Day from but excluding the relevant Last Call Prior To Default, to and including such ICE Business Day.

### **Total Pre-Haircut Amount or TPHA**

In respect of any ICE Business Day, the sum of the Pre-Haircut Gains, Losses and Realized Cash Flows in respect of all Accounts of all Contributing Participants on such ICE Business Day.

### **Transfer Cost**

On any ICE Business Day, the total amount payable by ICE Clear Credit to Participants that are not Defaulting Participants as consideration for the entry into of replacement Contracts to which a Defaulting Participant was party (or otherwise transferred Contracts), whether as a result of an auction, Default Auction, sale or otherwise pursuant to these Rules plus any associated costs or expenses of ICE Clear Credit in respect thereof.

### **Uncovered Loss or UL**

In respect of ICE Clear Credit on any Loss Distribution Day:

(A) where Rule 808(b)(ii)(A) applies, an amount calculated in accordance with the following formula:

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

where:

TPHA means the Total Pre-Haircut Amount;

CTC means the Cumulative Transfer Cost;

AR means the Available Resources; and the Uncovered Loss as at the Last Call prior to Default shall be zero,

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

(B) where Rule 808(a)(ii)(B)(1) applies, the sum of each positive Estimated Payable Net Sum of the Defaulting Participant minus Available Non-Defaulter Resources; or

(C) where Rule 808(a)(ii)(B)(2) applies, the total of relevant net amounts payable by but not received from the Defaulting Participant (after application of applicable Available Defaulter Resources) minus Available Non-Defaulter Resources;

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

### **Unsuccessful Auction**

A situation in which such number of Default Auctions as are provided for in the Default Auction Procedures have taken place but a full allocation of the auctioned Contracts has not occurred or the auction price determined in such Default Auctions falls below any minimum or minimum reserve price or above any maximum or maximum reserve price set by ICE Clear Credit.

(b) This Rule 808 shall only apply if ICE Clear Credit has determined (any such determination, a "**Haircutting Determination**") that the following conditions are all satisfied in respect of both the House Account and the Client Origin Account of a Defaulting Participant:

(i) a Default has occurred or been declared but ICE Clear Credit has not yet determined (and either paid or submitted a claim in respect of) the net amount owing to or from the Defaulting Participant in respect of its House Account or Client Origin Account following the completion of the Closing-Out Process;

(ii) ICE Clear Credit determines that one or more of the following circumstances has arisen:

(A) the sum of Outward MTM Payments, Contractual Payments and Transfer Cost (if any) in respect of either or both Accounts would, in its view, exceed Available Resources plus Received MTM;

(B) Available Resources are insufficient to meet the shortfalls, losses or liabilities of ICE Clear Credit, which may be determined if, in its view:

(1) any Estimated Payable Net Sum or the aggregate of Estimated Payable Net Sums would exceed the Available Non-Defaulter Resources which, pursuant to Rule 802,

would be available to meet the losses of ICE Clear Credit represented by such net amounts; or

(2) any net amounts owed by the Defaulting Participant to ICE Clear Credit (to the extent that the same have not been satisfied through applicable Available Defaulter Resources or otherwise received by ICE Clear Credit in immediately available funds from the Defaulting Participant) in total would exceed the Available Non-Defaulter Resources which, pursuant to Rule 802 are to be applied to meet the losses of ICE Clear Credit represented by such net amounts;

provided that, where there is more than one Default with overlapping Post Default Periods, such determinations may be made with regard to the Available Resources, Transfer Cost, Estimated Payable Net Sums and net sums relating to all relevant Defaulting Participants and Defaults at that time;

(iii) no Suspension Determination has been made which remains in effect;

(iv) no Termination Circular has been issued; and

(v) there has been no ICE Clear Credit Default.

(c) If there is a Haircutting Determination, ICE Clear Credit shall issue a notice to Participants to that effect specifying:

(i) the date of commencement of any Loss Distribution Period; and

(ii) such other matters as ICE Clear Credit considers are relevant, which may (but are not required to) include a date on which the Loss Distribution Period is expected to end.

If any expected end date for the Loss Distribution Period is specified in the notice, the Loss Distribution Period may nonetheless be extended by the publication of a further notice and any expiry of a Loss Distribution Period arising as a result of a particular Default shall not preclude there being any additional Loss Distribution Period at a later stage arising as a result of the same Default.

(d) *Adjustment of MTM payments for Cash Gainers.* On each Loss Distribution Day for each Account of each Contributing Participant that is deemed to be a Cash Gainer, the amount payable by ICE Clear Credit on such day in respect of the Pre-Haircut Gains, Losses and Realized Cash Flows for such Account shall be reduced by an amount equal to any positive amount determined in accordance with the following formula separately for each of its Accounts or, as applicable, increased by the absolute value of any negative amount determined in

accordance with the following formula (in each case, such amount the "**Cash Gainer Adjustment**"):

$$\text{Cash Gainer Adjustment}(t) = \text{PHG}(t) - ((\text{CUG}(t) \times (1 - \text{DH}(t))) - \text{CAG}(t-1))$$

where:

PHG means the Pre-Haircut Gains, Losses and Realized Cash Flows;

CUG means the Cumulative Unadjusted Gains, Losses and Realized Cash Flows;

DH means the Distribution Haircut, expressed as a decimal provided that it shall be no greater than 1; and

CAG means the Cumulative Actual Gains, Losses and Realized Cash Flows and where CAG as at the Last Call Prior to Default shall be zero.

Any Transfer Cost due to any Participant that has won a Default Auction shall be paid in full and not be subject to any Cash Gainer Adjustment nor included in amounts PHG, CUG or CAG.

- (e) Adjustment of MTM Payments for Cash Losers. On each Loss Distribution Day for each Account of each Contributing Participant that is deemed to be a Cash Loser, the amount payable by such Contributing Participant on such day in respect of the Pre-Haircut Gains, Losses and Realized Cash Flows for such Account shall be reduced by the absolute value of an amount (the "**Cash Loser Adjustment**") determined in accordance with the following formula separately for each of its Accounts:

$$\text{Cash Loser Adjustment}(t) = \text{PHG}(t) - (\text{CHG}(t) - \text{CAG}(t-1))$$

where:

PHG means the Pre-Haircut Gains, Losses and Realized Cash Flows;

CHG means the Cumulative Unadjusted Gains, Losses and Realized Cash Flows; and

CAG means the Cumulative Actual Gains, Losses and Realized Cash Flows and where CAG as at the Last Call Prior to Default shall be zero.

- (f) On each Loss Distribution Day, ICE Clear Credit shall apply any Account Adjustment as set forth above as an offset against any payments from or receivable by the relevant Participant or aggregate it with any required payment to ICE Clear Credit for the relevant Account. MTM obligations and related adjustments pursuant to this Rule 808 of Contributing Participants that are not

Defaulting Participants shall then be paid and collected following such netting with other payment obligations.

(g) Notwithstanding the effects of this Rule 808 during a Loss Distribution Period:

(i) Participants shall remain liable to pay, and shall continue to make timely payment of, all amounts other than in respect of MTM or Contractual Payments falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, ICE Clear Credit in accordance with the Rules and Procedures, including obligations to pay Initial Margin, General Guaranty Fund contributions and Additional Collateral Deposits (in the latter case, subject always to the relevant limits set out in the Rules); and

(ii) ICE Clear Credit will remain liable to pay or release Margin to Participants in the usual way, subject to netting to take account of any applicable Account Adjustment.

(iii) All such other payments shall be made without regard to whether any payment which would have fallen due (were it not for the Haircutting Determination) has been made and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.

(h) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by ICE Clear Credit in respect of Contracts affected by the arrangements during the Loss Distribution Period shall not be applicable during any Loss Distribution Period. Action by ICE Clear Credit under this Rule 808 shall not constitute an ICE Clear Credit Default.

(i) Where ICE Clear Credit determines that none of the situations under which a Haircutting Determination could be made persists or is likely to persist or otherwise wishes to end any Loss Distribution Period, it shall issue a notice specifying the final date of the Loss Distribution Period. After the end of the Loss Distribution Period, the adjustments, modifications and limited recourse provisions specified in this Rule 808 shall no longer apply and ICE Clear Credit shall resume calculating, collecting and paying MTM payments and Contractual Payments in the ordinary course. The end of the Loss Distribution Period shall not preclude ICE Clear Credit from making a further Haircutting Determination in respect of the same Default to the extent that any open Contracts of the Defaulting Participant have not been Terminated and the other conditions of the Haircutting Determination are satisfied.

(j) This Rule 808(j) shall apply where ICE Clear Credit (1) receives amounts from a Defaulting Participant or another Participant that would, had they been paid on time, have increased ICE Clear Credit's Available Resources or Received MTM

on an ICE Business Day on which any Account Adjustment was made pursuant to this Rule 808 during a Loss Distribution Period; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher; or (3) determines an actual net amount payable to or from a Defaulting Participant in circumstances in which an Estimated Payable Net Sum had previously been used as a basis for invoking its rights under this Rule 808 where the actual net amount payable to ICE Clear Credit is less than the last Estimated Payable Net Sum (or such net amount is payable by ICE Clear Credit and the Estimated Payable Net Sum was payable to ICE Clear Credit). Where this Rule 808(j) applies, ICE Clear Credit shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of ICE Clear Credit, including, without limitation, the costs of recovering or recalculating any such amounts):

- (i) first to Contributing Participants who are not then Defaulting Participants (irrespective of whether they remain Participants at the time of the recovery) who became subject to Cash Gainer Adjustments in respect of an Account during the Loss Distribution Period to which the receipts relate, with the payments determined on a pro rata basis based on each Participant's applicable Participant Adjustment Amount for such Account;
- (ii) secondly, as set forth in Rule 802(c).
- (k) This Rule 808 is without prejudice to ICE Clear Credit's rights to set off or net any sum owed by a Participant to ICE Clear Credit against any sum payable by ICE Clear Credit to a Participant or to any other powers of ICE Clear Credit under the Rules, but ICE Clear Credit may not take any such action to the extent inconsistent with the provisions of this Rule 808.
- (l) Nothing in this Rule 808 shall require ICE Clear Credit to pursue any litigation, claim or other action against a Participant or Defaulting Participant in respect of any amount, obligation or asset (not being Available Resources or Available Defaulter Resources) which is owed or due but unpaid or unsatisfied by such Participant or Defaulting Participant.
- (m) In carrying out any calculations or making any determinations pursuant to this Rule 808, ICE Clear Credit may convert any amounts denominated in one currency into another currency chosen by ICE Clear Credit in its discretion and at a rate of exchange chosen by ICE Clear Credit in its discretion, provided ICE Clear Credit shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (n) During a Loss Distribution Period, ICE Clear Credit shall apply all Received MTM and Available Resources solely to meet Outward MTM Payments, Contractual Payments and Transfer Costs, to make other payments envisaged under Chapters 8, 20 and 20A of the Rules and the Default Auction Procedures, to

make reimbursement to Participants under Rule 808(j) and to fund its obligations to meet any shortfall, loss or liability incurred by it under Contracts or these Rules as permitted under the Rules.

- (o) For the avoidance of doubt, all calculations under this Rule 808 in respect of the Customer Account shall be determined on a net basis among all Non-Participant Parties in such Account, including without limitation for purposes of the calculation of any Cash Gainer Adjustment or Cash Loser Adjustment.
- (p) Where Physical Settlement is applicable to any CDS Contract, on any Business Day during a Loss Distribution Period, ICE Clear Credit may make such adjustments as are necessary to the calculation of Cash Gainer Adjustment or Cash Loser Adjustment to reflect the payment flows arising from such Physical Settlement, based on the principle that the calculation of Cash Gainer Adjustment and Cash Loser Adjustment is designed to capture all profits and/or losses on Open Positions during the relevant Loss Distribution Period.

#### **809. Suspension of Clearing.**

- (a) Without prejudice to the provisions of Rule 604, this Rule 809 shall only apply if ICE Clear Credit has determined (any such determination, a "**Suspension Determination**") that the following conditions are all satisfied:
  - (i) a Default has been declared but ICE Clear Credit has not yet determined (and either paid or submitted a claim in respect of) the net amount payable to or from Defaulting Participant in respect of its House Margin Account and Client Omnibus Margin Account following the completion of the Closing-Out Process;
  - (ii) ICE Clear Credit determines that one or more of the following circumstances has arisen:
    - (A) its obligations to meet Outward MTM Payments, Contractual Payments or the Transfer Cost, in its view, may not be satisfied by applying Available Resources and Received MTM and the provisions set out in Rule 808;
    - (B) following either the determination of all net amounts owed by or to a Defaulting Participant in respect of a particular Default or, where any such net amount has not been declared, based on the calculation of an Estimated Payable Net Sum, ICE Clear Credit, in its view, may either:
      - (1) become unable to pay its debts as they fall due; or

- (2) have total liabilities which exceed its total assets,  
in either case if it does not invoke the provisions set out in this Rule 809; or
- (C) there has been an Unsuccessful Auction;
- (iii) no Termination Circular has been issued; and
- (iv) there has been no ICE Clear Credit Default.
- (b) If there is a Suspension Determination, ICE Clear Credit shall issue a notice to Participants that effect (a "**Suspension Circular**") specifying:
- (i) that the Suspension Determination has been made;
- (ii) the start and initial end date of the Suspension Period; and
- (iii) such other matters as ICE Clear Credit considers are relevant.
- (c) From the moment of issue of a Suspension Circular, for an initial period of up to two ICE Business Days as may be specified by ICE Clear Credit in the notice (the "**Suspension Period**):
- (i) payment in respect of all Contracts ("**Suspended Contracts**") or other obligations relating to Suspended Contracts which are owed by or to ICE Clear Credit that have been instructed by ICE Clear Credit or Participants prior to the commencement of the Suspension Period but which have not been completed at the commencement of the Suspension Period, shall be completed (subject to Rule 808, if applicable) in accordance with the Rules, notwithstanding the Suspension Determination or Suspension Period;
- (ii) subject to Rule 809(c)(i) and (iv), neither party to a Suspended Contract shall be required to pay, deliver or perform any other obligation under such Contract (nor to pay Margin in respect of such a Contract); and neither ICE Clear Credit nor any Participant shall be deemed to have committed or been subject to an ICE Clear Credit Default or Default respectively nor taken any action giving rise to termination rights under the Rules as a result of any such non-performance nor shall any Participant be capable of being declared a Defaulting Participant solely as a result of any such non-performance;
- (iii) ICE Clear Credit shall suspend the calculation of MTM Prices for Suspended Contracts, but Participants shall remain obliged to provide pricing data in the same way as if there were no suspension and ICE Clear Credit may, if it so decides, publish or distribute indicative MTM

Prices and indicative information concerning what would otherwise be Initial Margin requirements to Participants solely for information, risk and monitoring purposes;

- (iv) the exercise of rights under Suspended Contracts and related operational processes that are already in the course of performance or operation at the time of the issue of the Suspension Circular or contractual lifecycle events that are due to occur after that time, such as option exercise or abandonment, services of notices (including Credit Event Notices and other notices under Contracts) and expirations, shall be completed in accordance with the terms of those Contracts and the Rules and ICE Clear Credit Procedures (subject to ICE Clear Credit directing otherwise in accordance with the Rules and ICE Clear Credit Procedures) but any obligation on either party to a Suspended Contract to pay any amount, enter into any new Contract or deliver any property shall remain suspended until the end of the Suspension Period;
- (v) no further Trades may be submitted for Clearing and no Contracts may be transferred to another Participant or closed out;
- (vi) subject to Rules 806 and 807 , Participants shall remain liable to have their General Guaranty Fund contributions applied and obliged to make timely payments in respect of Additional Collateral Deposit relating to each Default that occurs or is declared prior to or during the Suspension Period and the Suspension Period shall have no effect on the time of performance of such obligations or the time or conditions of exercise of ICE Clear Credit's right to apply General Guaranty Fund contributions or call for Additional Collateral Deposits;
- (vii) any other obligations of Participants to make any General Guaranty Fund contribution which fall due for performance during the Suspension Period shall be suspended; and
- (viii) any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by ICE Clear Credit (whether for itself or on behalf of any Market) in respect of Contracts affected by the arrangements during the Suspension Period shall not be applicable during any Suspension Period.
- (d) Prior to the expiry of a Suspension Period, ICE Clear Credit may at any time terminate the Suspension Period early by issuing a notice specifying the time at which the Suspension Period will cease to take effect.
- (e) Subject to Rule 808 and 810, upon the expiry or termination of the Suspension Period, unless ICE Clear Credit has issued a Termination Circular, the suspensions referred to in Rule 809(c)(ii) shall cease to have effect and

payments shall be made as between ICE Clear Credit and each Participant in order to restore the position between ICE Clear Credit and each Participant affected by the Suspension Period to what it would have been had there been no Suspension Period.

(f) Any suspension of obligations of ICE Clear Credit and Participants during a Suspension Period pursuant to this Rule 809 shall not give rise to any claim for breach of contract or duty or otherwise against ICE Clear Credit or a Participant. Action by ICE Clear Credit under this Rule 809 shall not constitute any kind of ICE Clear Credit Default.

(g) In carrying out any calculations or making any determinations pursuant to this Rule 809, ICE Clear Credit may convert any amounts denominated in one currency into another currency chosen by ICE Clear Credit in its discretion and at a rate of exchange chosen by ICE Clear Credit in its discretion, provided ICE Clear Credit shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.

#### **810. Termination of Clearing.**

(a) If:

(i) at the end of the Suspension Period, any of the conditions set out in Rule 809(a)(ii)(A) or (B) are still satisfied; or

(ii) the conditions for issuance of a Suspension Circular (except Rule 809 (a)(iii)) are satisfied but ICE Clear Credit does not commence a suspension;

and there has been no ICE Clear Credit Default, then ICE Clear Credit may issue a Termination Circular in respect of all outstanding Contracts.

(b) If ICE Clear Credit is to terminate Contracts under this Rule 810, it must issue a notice (a "**Termination Circular**") stating:

(i) ICE Clear Credit's intention to rely upon and apply Rule 810;

(ii) the applicable Termination Price for each Contract type that is to be terminated;

(iii) the date and time on which termination will take place ("**Termination Time**"); and

(iv) such other matters as ICE Clear Credit considers are relevant.

- (c) Upon and with effect immediately as from the Termination Time, every Open Position shall be automatically terminated at the Termination Price, without the need for any further step by any party to such Contract. Final settlement with respect to such terminated contracts will be made pursuant to Rule 804.
- (d) The Termination Price for purposes of any termination and final settlement pursuant to Rule 804 shall be the same for all Contracts of the same type and shall be the same for all Participants that are party to Contracts of such type. Termination Prices shall be based upon the value of Contracts as at the Termination Time in accordance with the principles set out in this Rule 810(d) but without reference to the Loss Distribution Process in Rule 808. Such Termination Prices shall be calculated based on:
- (i) the latest established Mark-to-Market Price for each relevant set as at the Termination Time, determined using the methodology customarily applicable for determining Mark-to-Market Prices;
- provided that, prior to or around the time of giving effect to the termination, ICE Clear Credit may, following consultation with the Risk Committee, determine that it should conduct a final price submission and price determination process to determine a Mark-to-Market Price for purposes of termination in which it shall use its standard processes and procedures to determine the price and which Participants shall participate in fully, in good faith, using their standard processes and procedures and in accordance with applicable laws.
- (ii) if no price described in Rule 810(d)(i) exists or is determined, the last market quotation or settlement price established or published by another exchange or clearing organization (that is not subject to an insolvency) selected by ICE Clear Credit for an economically similar contract immediately prior to the Termination Time; or
- (iii) if no price described in Rule 810(d)(i) or (ii) exists or is determined, at a commercially reasonable price as reasonably determined by ICE Clear Credit by reference to objective and observable market prices at the relevant Termination Time, the mean settlement price for the Termination Time based on a survey of market participants active in Contracts similar to the set or otherwise on such basis as ICE Clear Credit determines with a view to obtaining a fair valuation.
- (iv) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by ICE Clear Credit (whether for itself or on behalf of any Market) in respect of Contracts to be terminated under this Rule 810 shall not be applicable in respect of such Contracts.

- (e) No action or omission by ICE Clear Credit pursuant to this Rule 810 shall constitute an ICE Clear Credit Default.
- (f) In carrying out any calculations or making any determinations pursuant to this Rule 810, ICE Clear Credit may convert any amounts denominated in one currency into another currency chosen by ICE Clear Credit in its discretion and at a rate of exchange chosen by ICE Clear Credit in its discretion, provided ICE Clear Credit shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (g) Nothing in this Rule 810 shall require ICE Clear Credit to pursue any litigation, claim or other action against a Participant or Defaulting Participant in respect of any amount, obligation or asset (not being Available Resources or Available Defaulter Resources) which is owed or due but unpaid or unsatisfied by such Participant or Defaulting Participant.

Mark-to-Market Price for such Contracts, or at such other price or prices reflecting the current market as ICE Clear Credit, in consultation with the CDS Default Committee in accordance with the ICE Clear Credit Procedures, may deem fair and reasonable in the circumstances;

- (v) To take any action or refrain from taking any action on behalf of the Defaulting CDS Participant with respect to any Open CDS Position of the Defaulting CDS Participant, which, in the judgment of ICE Clear Credit and subject to the terms of the relevant CDS Contract and applicable law, would be advisable to preserve the value of such Open CDS Position, including, without limitation, exercising any rights or remedies therein; tendering or accepting for tender any securities, loans or other obligations; making or receiving any payments; making or providing any election or notice or otherwise performing any other act or obligation contemplated therein;
- (vi) Subject to Rule 20A-02, if applicable, to enter into Trades with other CDS Participants that replace or mitigate the risk of all or part of the Open CDS Positions of the Defaulting CDS Participant and any Initial Cover Transactions, pursuant to one or more auctions or other process established taking into account recommendations of the CDS Default Committee and consistent with the Default Auction Procedures, but any such Trades shall not be at a price less favorable to ICE Clear Credit than a target price (a “**Minimum Target Price**”) for all or a portion of the Open CDS Positions of the Defaulting CDS Participant and any Initial Cover Transactions with respect thereto, established by ICE Clear Credit in consultation with the CDS Default Committee and taking into account the results of any prior auctions, which shall be the least favorable price that would be, in the judgment of ICE Clear Credit, reasonable to accept for such Trades;
- ~~(vii) To the extent that ICE Clear Credit does not enter into Trades that replace or otherwise close all of the Open CDS Positions of the Defaulting CDS Participant and all Initial Cover Transactions (if any), to enter into Trades with other CDS Participants (who shall be obligated to enter into such Trades in accordance with this subparagraph and to submit, in accordance with the ICE Clear Credit Procedures, the terms of such Trades with ICE Clear Credit to Deriv/SERV or another service specified by ICE Clear Credit) that replace any remaining Open CDS Positions of the Defaulting CDS Participant and any remaining Initial Cover Transactions at a price (the “**Allocation Price**”) reflecting the current market as determined by ICE Clear Credit in consultation with the CDS Default Committee in accordance with the ICE Clear Credit Procedures, taking into account the Minimum Target Price (as adjusted by ICE Clear Credit in consultation with the CDS Default Committee for market changes from the time of the initial determination of the Minimum Target Price to~~

~~the time such Trades are entered into) on a pro rata basis (or as near as practicable, with odd lots determined by ICE Clear Credit and assigned randomly) in proportion to the size of each CDS Participant's Required Contribution to the General Guaranty Fund relative to the aggregate of the Required Contributions to the General Guaranty Fund of all CDS Participants other than the Defaulting CDS Participant. For the avoidance of doubt, ICE Clear Credit shall not be permitted to enter into a Trade with a CDS Participant pursuant to this clause (vii), and a CDS Participant will not be obligated to enter into any such Trade, unless ICE Clear Credit pays to the CDS Participant the applicable Allocation Price, if any, owed to such CDS Participant for entering into such Trade, and accordingly following exhaustion of the General Guaranty Fund (including any additional Collateral deposit pursuant to Rule 802(d)), no Trades will be entered into pursuant to this subclause (vii);~~

~~(vii) [Intentionally omitted.]~~

- (viii) To defer the Closing-out Process if, in its discretion, it determines that the Closing-out Process would not be in the best interests of ICE Clear Credit or other CDS Participants, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by ICE Clear Credit, and such other circumstances as it deems relevant; and
  - (ix) For the purposes of entering into Initial Cover Transactions or other Trades with CDS Participants pursuant to this Rule, notwithstanding anything to the contrary in Rules 301 or 303, to make and receive **"Initial Payments"** with respect to such Trades; and
  - (x) To take any other action as ICE Clear Credit may deem necessary or appropriate for its protection.
- (d) ICE Clear Credit shall effect the Closing-out Process separately in respect of Open CDS Positions that are Client-Related Positions and House Positions, and notwithstanding anything to the contrary herein but subject to the following sentence, Client-Related Positions and House Positions may not be netted or offset against each other as part of the Closing-out Process. Net amounts owed by a Defaulting Participant with respect to Client-Related Positions may be offset against net amounts owed to a Defaulting Participant with respect to House Positions; provided that net amounts owed by a Defaulting Participant with respect to House Positions may not be offset against net amounts owed to a Defaulting Participant with respect to Client-Related Positions. With respect to Client-Related Positions, the Closing-out Process shall be subject to the Default Portability Rules set forth in Rule 20A-02, if applicable. To the extent the Closing-out Process in respect of Client-Related Positions results in an amount owed by ICE Clear Credit to the Defaulting Participant, such amount will be