

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

### 1. Text of the Proposed Rule Change

- (a) The Text of the proposed change has been annexed as Exhibit 5 and consists of certain operational rule changes that have been agreed to by ICE Clear Europe Limited (“ICE Clear Europe”) and its Clearing Members (as defined in the ICE Clear Europe Rules). The principal purpose of the proposed change is to implement changes to Part 12 of the Rules of ICE Clear Europe (“Rules”), which set out how certain transfer, clearing and settlement orders are treated for purposes of non-U.S. insolvency legislation: the U.K.’s Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the “U.K. Settlement Finality Rules”) and the EU Settlement Finality Directive (Directive 98/26/EC), together with the U.K.. Settlement Finality Rules, the “Settlement Finality Legislation”).
- (b) Not applicable.
- (c) Not applicable.

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

- a) ICE Clear Europe carried out a public consultation process in respect of all proposed rule changes, as it was required to do under applicable U.K. law.
- (b) Please refer questions and comments on the proposed rule change to Patrick Davis, Head of Legal and Company Secretary, ICE Clear Europe Limited, 5th Floor, Milton Gate, 60 Chiswell Street, London, EC1Y 4SA, United Kingdom, +44 20 7065 7600.

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

- (a) Purpose

The proposed rule changes are designed to modify the Rules to reflect technical details relating to the treatment of certain transfer, clearing and settlement orders for purposes of the Settlement Finality Legislation. The proposed changes therefore bring the Rules into harmony with the requirements of ICE Clear Europe home country and home region legislation.

(b) Statutory Basis

ICE Clear Europe proposes these changes to the Rules following extensive consultation with its Clearing Members, and following public consultation in relation to these changes, as is required under U.K. legislation.

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

ICE Clear Europe does not believe the proposed rule change 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 proposed rule change have been solicited. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

6. Extension of Time Period for Commission Action

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

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) This filing is made pursuant to Section 19(b)(1) of the Act and shall become effective upon approval by the Commission. ICE Clear Europe believes there is good cause to grant this filing on an accelerated basis. ICE Clear Europe believes this for three reasons. First, these changes are required pursuant to the Settlement Finality Legislation. Specifically, these changes reflect modifications to ICE Clear Europe's clearing and payment systems that have been proposed following designation by U.K. authorities as a 'designated system' for purposes of such legislation; the proposed changes follow various meetings and discussions with the relevant U.K. authorities. Failure to approve the changes would raise the possibility of ICE Clear Europe being found to be in contravention of home country and home region legislation. Second, the proposed changes are non-controversial, having been discussed with and agreed to by the Clearing Members. Third, the proposed changes have already been subject to a public consultation process in accordance with U.K. law, during which process no comments were received. The public consultation process included the publication of these proposed changes on a publicly accessible portion of the Internet website of ICE Clear Europe.

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

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

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-ICEEU-2012-03]

**SELF-REGULATORY ORGANIZATIONS**

Proposed Rule Change by ICE Clear Europe Limited to Revise Rules Related to Certain Operational Changes Relating to Timing, Effectiveness and Operation of Transfer Orders for Purposes of Compliance With Non-U.S. Legislation

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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 \_\_\_\_\_, 2012, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

ICE Clear Europe is in regular communication with representatives of its Clearing Members, as that term is defined in the Rules of ICE Clear Europe<sup>3</sup> (the “Rules”) in relation to the operation of clearing processes and arrangements. From time-to-time, ICE Clear Europe must amend its Rules with reference to its home country and home region

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

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

<sup>3</sup> See ICE Clear Europe Rule 101. The Rules of ICE Clear Europe are available on-line at: <https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=>.

regulation. These changes follow recent amendments and changes to home country and home region regulation. Following consultation with its applicable home country regulators ICE Clear Europe has published these proposed rule changes, has carried out a public consultation process in respect of all of the changes described below, and has presented and agreed to the changes described below with its Clearing Members. These changes seek to clarify the timing and operation of various clearing processes, for existing clearing activities. Specifically, ICE Clear Europe is making changes to Part 12 of its Rules, which set out how certain transfer, clearing and settlement orders are treated for purposes of non-U.S. insolvency legislation, namely the U.K. Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the “U.K. settlement Finality Rules”) and the EU Settlement Finality Directive (Directive 98/26/EC) together with the U.K. Settlement Finality Rules, the “Settlement Finality Legislation”). These proposed changes reflect changes to ICE Clear Europe's clearing and payment systems that have been proposed following designation by U.K. authorities as a ‘designated system’ for purposes of such legislation; the proposed changes follow various meetings and discussions with the relevant U.K. authorities. These changes were published in ICE Clear Europe circular no. C11/169 on November 25, 2011, available at:

[https://www.theice.com/publicdocs/clear\\_europe/circulars/C11169\\_att1.pdf](https://www.theice.com/publicdocs/clear_europe/circulars/C11169_att1.pdf). All capitalized terms not defined herein are defined in the Rules.

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

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted above, the principal purpose of the proposed rule change is for applicable provisions of the Rules to be updated to reflect technical details relating to the treatment of certain transfer, clearing and settlement orders for purposes of the Settlement Finality Legislation.

The Rule changes affect Part 12 of the ICE Clear Europe Rules. In general, the rule changes create specific rules regarding: the creation of various Transfer Orders, which include certain Clearing Orders, and Settlement Orders (each as defined for purposes of the ICE Clear Europe Rules); the times at which such orders become irrevocable; the manner by which non-irrevocable Transfer Orders may be varied; the manner by which Transfer Orders may be satisfied. Finally, certain definitions found in Part 12 of the Rules are amended to account for the Settlement Finality Legislation, and to correspond to other changes to Part 12. Each of these changes is described in detail as follows.

Part 12 of the ICE Clear Europe Rules sets forth Rules that are designed to comply with the Settlement Finality Legislation. In order to update those rules to comply with the Settlement Finality Legislation, Rule 1202 is modified to change the manner by which immediate and automatic entry of various Payment Transfer Orders occurs.

In this regard, various changes are made to Rule 1202.

Rule 1202(a)(i) gives rise to a Payment Transfer Order at any time that a Contract is formed by virtue of the operation of ICE Clear Europe Rule 401. Under the rule changes, such Open Offer Payment Transfer Orders are renamed “New Contract Payment Transfer Orders”. Rule 1202(a)(i) is also modified to exclude energy contracts arising under Rule 401(a)(vii), and any CDS Contract arising pursuant to Rule 401(a)(x) pursuant to a Bilateral CDS Transaction submitted for Weekly Clearing.

Rule 1202(a)(ii) gives rise to a Payment Transfer Order upon the Clearing House sending an instruction pursuant to Rule 302. Such Payment Transfer Orders are renamed “Debit Payment Transfer Orders”.

Rule 1202(a)(iii) gives rise to a Payment Transfer Order if and when the Clearing House sends an instruction by means of an electronic, telephone or other message means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank. Under the rule changes, such Payment Transfer Orders are renamed “AFI-CB Payment Transfer Orders”.

Rule 1202(a)(iv) creates a Payment Transfer Order where the Clearing House sends an instruction by means of an electronic, telephone or other message means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the Concentration Bank to a Clearing House Account. Under the rule changes, such Payment Transfer Orders are renamed “CB-AFI Payment Transfer Orders”.

Rule 1202(a)(v) gives rise to a Payment Transfer Order in the event that the Clearing House receives a notification pursuant to Rule 1205(b). This form of Payment Transfer Order is called an “Insufficient Funds Payment Transfer Order”. Under the rule

changes, Rule 1202(a)(v) is deleted, as are other references to Insufficient Funds Payment Transfer Orders that exist elsewhere in Part 12.

Rule 1202(e) sets forth the scope of Payment Transfer Orders. Under that Rule, (i) in the case of an Open Offer Payment Transfer Order, the Payment Transfer Order applies and has effect in the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the Contract to which the confirmation referred to in Rule 1202(a)(i) relates arising. For any CDS Contract arising as a result of Trade Date Clearing, this will be the Initial Payment. In the case of a Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order, the Payment Transfer Order applies and has effect in the amount specified in the relevant instruction referred to in Rule 1202(a). This Rule is amended to specify the change in name from “Open Offer Payment Transfer Order” to “New Contract Payment Transfer Order”. No substantive change is made to Rule 1202(e).

Rule 1202(b) sets forth the circumstances under which a Securities Transfer Order arises. Under Rule 1202(b)(i), a Position Transfer Order, which is a form of Securities Transfer Order, arises only if both of the Clearing Members are Participants. Under the rule changes, Rule 1202(b)(i)(A) is modified such that the Securities Transfer Order arises if the Clearing House, the relevant Market, and the two Clearing Members involved have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another pursuant to Rule 408(a)(i). Rule 1202(b)(i)(a) is modified to include parenthetical text that both Clearing Members must be Participants for purposes of this Rule 1202(b)(i). This change is not substantive. Rule 1202(b)(i)(B) permits a Securities Transfer Order to arise if the Clearing House has declared an Event of Default

under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member pursuant to the Clearing House's powers under Rule 902, Rule 903 or otherwise. Rule 1202(b)(i)(B) is modified to specify that solely the Clearing Member to whom the Defaulter's position is being transferred must be a Participant for purposes of the creation of a Securities Transfer Order. The scope of Position Transfer Orders under Rule 1202(f) is unchanged: each Position Transfer Order applies and has effect in respect of the Contracts to be transferred, assigned or novated.

Additional means of creating Securities Transfer Orders are added at Rules 1202(b)(ii) through (b)(vi). These Securities Transfer Orders are new to Part 12 of the Rules.

Under Rule 1202(b)(ii) a "Collateral Transfer Order" arises if and when the Clearing House accepts, through the ICE Systems, that a Clearing Member has validly requested either the transfer of Non-Cash Collateral to the order of the Clearing House, or a transfer to that Clearing Member or to its order of Non-Cash Collateral. Under Rule 1202(g), a Collateral Transfer Order applies and has effect in respect of the Non-Cash Collateral to be transferred to or to the order of the Clearing House or Clearing Member.

Under Rule 1202(b)(iii), a Securities Transfer Order arises when the Clearing House has received full, complete and correct information in relation to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction from the relevant Market. Such Securities Transfer Orders are designated "Energy Block Clearing Orders". In accordance with Rule 1202(h) Energy Block Clearing Orders apply and have effect in

respect of the ICE OTC Transaction or ICE Futures Europe Transaction in question and any resulting Energy Contract.

A Securities Transfer Order arises under Rule 1202(b)(iv) in respect of a Bilateral CDS Transaction submitted for Weekly Clearing if the Clearing House provides a report of such transaction to a Clearing Member after it has checked whether a Bilateral CDS Transaction submitted for Clearing is consistent with the records submitted by another Clearing Member and with the records in Deriv/SERV. Such a Securities Transfer Order is designated a “Weekly CDS Clearing Order”.

Under Rule 1202(b)(v), a Securities Transfer Order arises in respect of a Bilateral CDS Transaction that is submitted for Trade Date Clearing if the Clearing House issues an acceptance notice in accordance with Rule 401(a)(ix) to a Clearing Member through the ICE System. Such a Securities Transfer Order is designated a “Trade Date CDS Clearing Order”. Trade Date CDS Clearing Orders and Weekly CDS Clearing Orders are together designated as “CDS Clearing Orders”. Under Rule 1202(i), each CDS Clearing Order shall apply and have effect in respect of the Bilateral CDS Transaction in question and any resulting CDS Contract.

Under Rule 1202(b)(vi), a “CDS Physical Settlement Order” arises in one of two situations. Under Rule 1202(b)(vi)(A), a CDS Physical Settlement Order arises if the Clearing House is provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a Notice of Physical Settlement in respect of Matched CDS Contracts, where the Notice of Physical Settlement specifies an instrument to be delivered that is an SFD Security. Under Rule 1202(b)(vi)(B), a CDS Physical Settlement Order will arise when the Clearing House is provided with a copy of a notice

delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a NOPS Amendment Notice in respect of Matched CDS Contracts, where the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security but where the Notice of Physical Settlement (including, as amended by any previous NOPS Amendment Notice) had specified an instrument that is not an SFD Security as the instrument that was to be delivered. Since CDS Physical Settlement Orders, as described in Rule 1202(b)(vi), arise in respect of Matched Pairs, then, correspondingly, under Rule 1202(j), two separate CDS Physical Settlement Orders apply and have effect separately in respect of each of the CDS Contracts in the Matched Pair that are subject to a physical settlement obligation, and the instrument to be delivered pursuant thereto.

Rule 1202(k) sets forth the scope of each Transfer Order in respect of the persons against whom such Transfer Order has effect. In this respect, Existing Rule 1202(g) (now renumbered Rule 1202(k)) is unchanged in respect of New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, AFI-CB Payment Transfer Orders or CB-AFI Payment Transfer Orders. This Rule is, however, amended to specify the change in name from “Open Offer Payment Transfer Order” to “New Contract Payment Transfer Order”.

Rule 1202(k) is also amended to set forth the scope (in respect of the persons against whom such Transfer Order has effect) of Collateral Transfer Orders, Energy Block Clearing Transfer Orders, CDS Clearing Orders, and CDS Physical Settlement Orders. Each of these Rules 1202(k)(v) through (viii) is new text.

Under Rule 1202(k)(v), a Collateral Transfer Order has effect against and between each of the following Persons: (A) the Clearing Member that is the transferor of

the Non-Cash Collateral in question; (B) any Custodian of the Clearing Member or the Clearing House; and (C) the Clearing House.

Under Rule 1202(k)(vi), in the case of an Energy Block Clearing Order, such Energy Block Clearing Order has effect against and between each of the following Persons: (A) each Clearing Member that has submitted or confirmed details of the ICE OTC Block Transaction or ICE Futures Europe Block Transaction; (B) any Affiliate of the Clearing Member that was party to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction and which is an Indirect Participant (if any); and (C) the Clearing House.

Under Rule 1202(k)(vii), a CDS Clearing Order has effect against and between the following Persons: (A) each Clearing Member that has submitted or confirmed details of the Bilateral CDS Transaction; (B) any Affiliate of a Clearing Member that is or was party to a Bilateral CDS Transaction and which is an Indirect Participant (if any); and (C) the Clearing House.

Under Rule 1202(k)(viii), a CDS Physical Settlement Order will have effect against and between the following Persons: (A) each Clearing Member in the Matched Pair; and (B) the Clearing House.

In order to ensure that Intermediary Financial Institutions are also subject to any Transfer Order, new Rule 1202(l) sets forth that where a Transfer Order applies to an Approved Financial Institution, it also applies to and is effective against any Intermediary Financial Institution used by that Approved Financial Institution.

Rule 1203 sets forth the time(s) at which a Transfer Order becomes irrevocable. With respect to Credit/Debit Payment Transfer Orders, AFI-CB Payment Transfer

Orders, and CB-AFI Payment Transfer Orders, no substantial change is made: Rules 1203(a) through (c) specify that such Transfer Orders become irrevocable at the time that the specified party sends a message confirming that the relevant payment will be made. These Rules are amended solely to add, in each case, that such Transfer Orders also become irrevocable at the time that the specified party sends a message confirming that the relevant payment has been made.

Under Rule 1203(d) as it read prior to amendment, an Open Offer Payment Transfer Order becomes irrevocable upon an Approved Financial Institution sending specified form of message confirming that the relevant payment will be made. This Rule is amended to specify the change in name from Open Offer Payment Transfer Order to New Contract Payment Transfer Order, and to specify that such Transfer Order becomes irrevocable when the specified party sends a specified form of message confirming that amount to which the New Contract Payment Transfer Order relates (as specified in Rule 1202(e)(i), described above) will be or has been made.

Rule 1203(e) sets forth when a Position Transfer Order becomes irrevocable. Under that Rule, prior to amendment, a Position Transfer Order shall become irrevocable at the time when the definitive record of the long or short position of the Clearing Member (that is the assignee, transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the ICE Systems to reflect the transfer of Contracts given effect to pursuant to the Position Transfer Order. This Rule is amended to change the designation from “long or short position” to the defined term “Open Contract Position”, and it is also amended to ensure that the definitive record referenced may be updated to show

assignment or novation in addition to transfer of Contracts which are given effect pursuant to the Position Transfer Order.

Rules 1203(f) through (j) set forth the irrevocability standards for Collateral Transfer Orders, Energy Block Transfer Orders, CDS Clearing Orders, and CDS Physical Settlement Orders. These Rules 1203(f) through (j) are new text.

Under Rule 1203(f), a Collateral Transfer Order becomes irrevocable at the earlier of two times: either when the Clearing House receives the Non-Cash Collateral, or when any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which a securities transfer order in a designated system for purposes of the Settlement Finality Legislation which is not the Designated System) becomes irrevocable.

Under Rule 1203(g), an Energy Block Clearing Order becomes irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).

Under Rule 1203(h), a CDS Clearing Order shall become irrevocable when the time specified pursuant to the Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a)(x).

Under Rule 1203(i), a CDS Physical Settlement Order shall become irrevocable at the earliest of three times: first, when the Matched CDS Buyer in the Matched Pair has submitted irrevocable instructions to a securities system, depository, nominee or custodian for the transfer of securities to or to the account of the Matched CDS Seller; second, at the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or third, if

the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.

Rule 1204 sets forth the rules regarding cancellation and variation of Transfer Orders. The following amendments are made to Rule 1204 to correspond to the amendments noted above.

Rule 1204(a)(i) provides a residual category of rules for determination of cancellation. That residual category is where the Transfer Order in question is affected by manifest or proven error. While Rule 1204(a)(i) is new text, it generally tracks the circumstances permitted cancellation of Transfer Orders found in Rule 1206 (as the same is written prior to amendment). Rule 1206 is now deleted, as cancellation and variation of Transfer Orders is consolidated into Rule 1204.

Rule 1204(a)(ii) through (v) set forth cancellation and variation rules for New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, Position Transfer Orders, Weekly CDS Clearing Orders, CDS Clearing Orders, Physical Settlement Orders, or Energy Block Clearing Orders.

Under Rule 1204(a)(ii), New Contract Payment Transfer Orders, Credit/Debit Payment Transfer Orders, or Position Transfer Orders may be cancelled or varied if they are void ab initio pursuant to Rule 403, avoided pursuant to Rule 404; or amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules.

Without prejudice to the generality of Rule 1204(a)(i), Rule 1204(a)(iii) sets forth that cancellation or variation, in the case of a Weekly CDS Clearing Order, may occur if an error or omission is noted by or notified to the Clearing House prior to the Acceptance Time or the data relating to any Bilateral CDS Transaction to which the Weekly CDS Clearing Order relates is otherwise capable of being amended in accordance with the Procedures. Rule 1204(a)(iii) is new text.

Under Rule 1204(a)(iv), variation or cancellation may occur, in the case of a CDS Physical Settlement Order, if a NOPS Amendment Notice is validly delivered by the Matched CDS Buyer in accordance with Rule 1505 and Rule 1509. Rule 1204(a)(iv) is new text.

Without prejudice to the generality of Rule 1204(a)(i), (ii) or (iii), under Rule 1204(a)(v), variation or cancellation may occur, in the case of an Energy Block Clearing Order or CDS Clearing Order, if such Order relates to a Transaction which is not eligible for Clearing or which is not accepted for Clearing by the Clearing House. Rule 1204(a)(v) is new text.

Under Rule 1204(b) prior to amendment, neither the validity nor the irrevocability of any Transfer Order shall of itself be affected by any event described in Rule 1204(a) occurring. This Rule is amended to ensure that it is subject to new Rules 1205(d), (f), and (g) relating to termination of Transfer Orders. Rules 1205(d), (f), and (g) are described below.

Rule 1204(c) states that the terms of all Transfer Orders that have not become irrevocable shall each be subject to a condition (which, if not satisfied, shall enable the

Clearing House to exercise its rights under Rule 1204) that the circumstances described above in Rule 1204(a) have not occurred. Rule 1204(c) is new text.

Rule 1204(d) describes the procedure for Transfer Order Variation. Under that Rule, If any of the circumstances described in Rule 1204(a) has occurred, then the amount payable, Contracts to be transferred or to arise or SFD Securities or Non-Cash Collateral to be delivered pursuant to the affected Transfer Order may at the discretion of ICE Clear Europe be increased, decreased or otherwise varied (as necessary) to reflect payments, transfers, Contracts, assignments, novations, SFD Securities, Non-Cash Collateral or deliveries that would have been required under specified circumstances. Specifically, the variation permitted by ICE Clear Europe is that which would have been required: (i) in the case of Rule 1204(a)(i) applying, had there been no error; (ii) in the case of Rule 1204(a)(ii)(A), Rule 1204(a)(ii)(B) or Rule 1204(a)(v) applying as described above, had no Contract or Transaction ever arisen or occurred; (iii) in the case of Rule 1204(a)(ii)(C) applying as described above, had the Contract always been subject to such amended terms as are agreed or determined; (iv) in the case of Rule 1204(a)(iii) applying as described above, had the details of the Bilateral CDS Transaction always been corrected or amended as permitted in accordance with the Procedures; or (v) in the case of Rule 1204(a)(iv) applying as described above, and the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security, as if the Notice of Physical Settlement had been originally issued as amended pursuant to the NOPS Amendment Notice. This text replaces the earlier procedure for variation by ICE Clear Europe, which permitted variation to amounts that would have been required, in the case of the application of Rule 1204(a)(i) or (ii), had no Contract or Transaction ever arisen or

occurred, and in the case of application of Rule 1204(a)(iii), had the Contract always been subject to such amended terms as are agreed or determined.

Rule 1204(e) is unchanged in that a Transfer Order Variation may be effected only by the Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants. However, the rule amendments clarify that valid delivery of a NOPS Amendment Notice in accordance with Rules 1505 and 1509 by a Matched CDS Buyer in a Matched Pair is deemed to constitute notice by the Clearing House for purposes of Rule 1204(e) in respect of a Transfer Order Variation to a CDS Physical Settlement Order, if the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security.

Rule 1204(f) replaces former Rule 1206(a) relating to cancellation of Transfer Orders in lieu of Variation. Under Rule 1204(f), if any of the circumstances described in Rule 1204(a) has occurred, then the Transfer Order in question may at the discretion of the Clearing House alternatively be cancelled. Any such cancellation may under Rule 1204(f) be effected by the Clearing House serving a notice of cancellation on all affected Participants. Rule 1204(f) also clarifies that in respect of an Energy Block Clearing Order or CDS Clearing Order, such notice shall be deemed to have been given if the Clearing House (or, in the case of an Energy Block Clearing Order, any Market) rejects a Transaction for Clearing.

Under Rule 1204(g), which is new text, a CDS Physical Settlement Order shall be cancelled immediately and automatically if and when a copy is provided to the Clearing House of a validly delivered NOPS Amendment Notice specifying an instrument for delivery which is not an SFD Security.

Rule 1204(h) replaces former Rule 1206(b) relating to the ability of ICE Clear Europe to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order that is subject to the events of Rule 1204(a). Rule 1204(h) retains the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof if any of the events described in Rule 1204(a) occur. However, the Rule as amended states that no Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by the Clearing House, and also that the ability of the Clearing House to cancel a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

Rule 1205 sets forth the provisions for termination (satisfaction) of Transfer Orders. Rules 1205(a) and (b), which are formerly designated Rules 1207(a) and (b), are unchanged, except that the term “terminate” is replaced with “be satisfied” to denote the satisfaction (rather than “termination”) of such Orders. Also, the provisions of Rule 1205(b) are sharpened to clarify that each Position Transfer Order shall be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1203 (whereupon all Contracts to which the Transfer Order in question relates will have been transferred, assigned or novated pursuant to the Rules).

Rules 1205(c) through (g) describe satisfaction of Collateral Transfer Orders, CDS Clearing Orders, Energy Block Clearing Orders, CDS Physical Settlement Orders, Credit/Debit Payment Transfer Orders, and New Contract Payment Transfer Orders.

Rule 1205(c) sets out the procedures for satisfaction of Collateral Transfer Orders. This Rule comprises new text. Under the Rule, each Collateral Transfer Order shall be

satisfied immediately and automatically at the later of two times: either when the Clearing House receives the Non-Cash Collateral in its account, or when the definitive record of the Permitted Cover transferred by the Clearing Member that is the transferor is updated in the ICE Systems to reflect the successful transfer of Non-Cash Collateral to or to the order of the Clearing House pursuant to the Collateral Transfer Order.

Under Rule 1205(d), the procedures for satisfaction of CDS Clearing Orders or Energy Block Clearing Orders are set forth. Rule 1205(d) is new. Under this Rule, CDS Clearing Orders or Energy Block Clearing Orders are satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 401(a).

The satisfaction of CDS Physical Settlement Orders is described in new Rule 1205(e). Under that Rule, a CDS Physical Settlement Order is satisfied immediately and automatically at the time when ICE Clear Europe updates its records of the relevant CDS Contracts in the ICE Systems to reflect that either physical delivery of the security in question has been completed or the delivery obligations of the parties under the relevant CDS Contracts have otherwise been discharged or settled.

Rule 1205(f) amends and replaces prior Rule 1207(c). Under Rule 1207(c), if a Credit/Debit Payment Transfer Order or Insufficient Funds Payment Transfer Order becomes irrevocable in respect of the same obligation to which an Open Offer Payment Transfer Order relates, the Open Offer Payment Transfer Order shall automatically be terminated and shall not become irrevocable. Under Rule 1205(f) as it is amended, the reference to Insufficient Funds Payment Transfer Order is deleted, the term Open Offer Payment Transfer Order is renamed New Contract Payment Transfer Order, and the term

“terminated” is replaced with “satisfied”. Further, the amendment acknowledges that New Contract Payment Transfer Orders will generally terminate in accordance with Rule 1205(f) when standard clearing and payment processes apply.

Under Rule 1205(g), a New Contract Payment Transfer Order relating to an Energy Contract shall be satisfied immediately and automatically if and at the point that the relevant Energy Transaction or Contract is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii). This replaces former Rule 1207(d), under which an Open Offer Payment Transfer Order is terminated immediately and automatically if and at the point that the relevant Transaction is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii).

ICE Clear Europe has engaged in a public consultation process in relation to all the changes, pursuant to the Circulars referred to above, and as required under U.K. legislation. ICE Clear Europe has received no opposing views or comments in relation to the proposed rule amendments.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

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

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

Written comments relating to the proposed rule change have been solicited by ICE Clear Europe pursuant to public consultation processes in the circulars referred to above. No comments have been received. The time period for the public consultation has closed so ICE Clear Europe does not expect to receive any further written comments as a result of this process.

**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-ICEEU-2012-03 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-ICEEU-2012-03. 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 Europe.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2012-03 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>4</sup>

Elizabeth M. Murphy  
Secretary

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<sup>4</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Underlined text indicates additions.

[~~Strikethrough~~ text] indicates deletions



**ICE Clear Europe<sup>sm</sup>**

**Clearing Rules**

**[~~PUBLISHED VERSION~~2011 SFD CHANGES]**

## Part 12 Settlement Finality Regulations and Companies Act 1989

### Rule 1201 Introduction and Interpretation

- (a) The Clearing House is the system operator of a Designated System for the purposes of the Settlement Finality Regulations in respect of Transfer Orders. In addition, Part VII of the Companies Act 1989 applies in respect of Contracts, the 'default rules' and 'default proceedings' of the Clearing House and certain other matters related to the Clearing House.
- (b) Clearing Members are subject to various obligations and requirements as a result of the Settlement Finality Regulations and Companies Act 1989. Clearing Members must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Regulations or the Companies Act 1989. Furthermore, various modifications to Applicable Laws relating to Insolvency affecting Clearing Members apply pursuant to the Settlement Finality Regulations and Companies Act 1989.
- (c) The term "Custodian" means any custodian, sub-custodian, nominee, agent, depository or settlement system used by a Clearing Member or the Clearing House for the holding or transfer of Non-Cash Collateral that is subject of a Collateral Transfer Order provided that such person is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).
- (d) ~~[(e)]~~ The term "**Default Arrangements**" means the Rules and Procedures relating to, or that can be exercised upon, an Event of Default including, without limitation, all of Part 9 and Part 11 and this Part 12 of the Rules and Procedures relating thereto and any and all actions, omissions, powers and arrangements of the Clearing House pursuant to such Rules or Procedures.
- (e) ~~[(d)]~~ The term "**Designated System**" means the standardised formal arrangements, common rules and procedures, as set out in the Rules and the Procedures, and related functionality which, *inter alia*:
- (i) enable the Clearing House to give instructions and to place at the disposal of Clearing Members amounts of money on the account of Approved Financial Institutions;
  - (ii) enable Clearing Members to give instructions and to place at the disposal of the Clearing House amounts of money on the accounts of Approved Financial Institutions;
  - (iii) enable the Clearing House and Clearing Members to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
  - (iv) enable transfers, assignments and novations of Contracts between Clearing Members or following a Default;
  - (v) enable transfers of Non-Cash Collateral to or to the order of the Clearing House and Clearing Members;

- (vi) enable Bilateral CDS Transactions to give rise to CDS Contracts;
  - (vii) enable ICE OTC Block Transactions and ICE Futures Europe Block Transactions to give rise to Energy Contracts;
  - (viii) facilitate physical settlement obligations under CDS Contracts; and
  - (ix) ~~{(v)}~~ facilitate supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in respect of Contracts or Permitted Cover.
- (f) ~~{(e)}~~ The term "**Indirect Participant**" means any Disclosed Principal Member or Customer, provided that: (i) it is an 'indirect participant', within the meaning of the Settlement Finality Regulations, in the Designated System; (ii) the identity of that Disclosed Principal Member or Customer has been notified to the Clearing House in writing by the Clearing Member; (iii) the Clearing House has accepted such notification and treatment as an indirect participant in writing (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, an Indirect Participant); and (iv) such Disclosed Principal Member or Customer has executed such agreement as is prescribed by the Clearing House from time to time in order for it to become contractually bound by these Rules and this Part 12 in particular.
- (g) The term "**Intermediary Financial Institution**" means any bank or branch used by an Approved Financial Institution, whether as banker, corresponding banker, intermediary or agent, for the fulfilment of a Payment Transfer Order, that it is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).
- (h) The term "**Non-Cash Collateral**" means any Permitted Cover that is in the form of an SFD Security.
- (i) ~~{(f)}~~ The term "**Participant**" means the Clearing House, each Clearing Member and each Approved Financial Institution, in the case of a Clearing Member or Approved Financial Institution to the extent that it is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, a Participant).
- (j) ~~{(g)}~~ The term "**Payment Transfer Order**" means a payment transfer order (as defined in the Settlement Finality Regulations) that is [~~an Open Offer~~] a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order[,] or CB-AFI Payment Transfer Order [~~or Insufficient Funds Payment Transfer Order~~] subject to this Part 12.
- (k) ~~{(h)}~~ The term "**Securities Transfer Order**" means a securities transfer order (as defined in the Settlement Finality Regulations) that is a Position Transfer Order, Collateral Transfer Order, Energy Block Clearing Order, CDS Clearing Order or CDS Physical Settlement Order subject to this Part 12.
- (l) The term "**SFD Security**" means a 'security', as defined in the Settlement Finality Regulations.

- (m) ~~(i)~~ The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (n) ~~(j)~~ The term "**ICE Post Trade and Clearing Systems**" or the "**ICE Systems**" means the trade registration~~[-and]~~, clearing processing and finance hardware and software used by the Clearing House and Clearing Members from time to time, as further described in the Procedures.
- (o) ~~(k)~~ No transfer orders (as defined in the Settlement Finality Regulations) shall arise, enter the Designated System or become irrevocable under these Rules except as set out in this Part 12.
- (p) ~~(l)~~ The Clearing House and each Clearing Member with a Pledged Collateral Account that is a Participant in the Designated System acknowledge and agree that: (i) all forms of Permitted Cover provided as Pledged Collateral constitute "realisable assets"; and (ii) Pledged Collateral is provided under a charge, repurchase or similar agreement for the purpose of securing rights and obligations potentially arising in connection with a designated system. Accordingly, the Clearing House and each such Clearing Member that is a Participant in the Designated System intend and agree that: (a) Pledged Collateral constitutes both "collateral security" and "collateral security in connection with participation in a designated system" for purposes of the Settlement Finality Regulations; and (b) the Clearing Membership Agreement, Pledged Collateral Addendum, Rules and Contracts insofar applicable to Pledged Collateral constitute a "collateral security charge" in respect of the Pledged Collateral, for purposes of the Settlement Finality Regulations.

**Rule 1202      *Transfer Orders Arising***

- (a) Subject to regulation 20 of the Settlement Finality Regulations, a Payment Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) in relation to a Contract that forms in accordance with Rule ~~401, at the point~~ 401(a) (excluding any Energy Contract arising under Rule 401(a)(vii) and further excluding any CDS Contract arising under Rule 401(a)(x) pursuant to a Bilateral CDS Transaction submitted for Weekly Clearing), at the time that a Contract arises under Rule 401 (~~["Open Offer"]~~ such Payment Transfer Order, a "New Contract Payment Transfer Order");
  - (ii) the Clearing House sending an instruction pursuant to Rule 302 (such Payment Transfer Order, a "Credit/~~Debt~~Debit Payment Transfer Order");
  - (iii) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank (such Payment Transfer Order, a "AFI-CB Payment Transfer Order"); or
  - (iv) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the

Concentration Bank to a Clearing House Account (such Payment Transfer Order, a "CB-AFI[~~Payment Transfer Order~~]; or Payment Transfer Order");

~~[(v) the Clearing House receiving a notification pursuant to Rule 1205(b) ("~~Insufficient Funds Payment Transfer Order~~");]~~

(b) Subject to regulation 20 of the Settlement Finality Regulations [~~and only if both of the Clearing Members affected are Participants~~], a Securities Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:

(i) if either:

(A) the Clearing House, the relevant Market and the two Clearing Members involved (both being Participants) have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another Clearing Member pursuant to Rule 408(a)(i); or

(B) the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member (being a Participant) pursuant to the Clearing House's powers under Rule 902(a)~~(i)~~, Rule 903 or otherwise,

in either case, instructions for settlement of the transfer, assignment or novation in question being effected through the ICE Systems at the relevant settlement transfer deadline for the relevant Contract (such Securities Transfer Order, a "Position Transfer Order")~~];~~

(ii) the Clearing House accepts, through the ICE Systems, that a Clearing Member has validly requested either:

(A) the transfer of Non-Cash Collateral to or to the order of the Clearing House; or

(B) a transfer to that Clearing Member or to its order of Non-Cash Collateral

(such Securities Transfer Order, in either case, a "Collateral Transfer Order");

(iii) the Clearing House receiving full, complete and correct information in relation to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction from the relevant Market (such Securities Transfer Order, a "Energy Block Clearing Order");

(iv) in respect of a Bilateral CDS Transaction submitted for Weekly Clearing, the Clearing House providing a report to a Clearing Member after it has checked whether a Bilateral CDS Transaction submitted for Clearing is consistent with the records submitted by another Clearing Member and with the records in Deriv/SERV (such Securities Transfer Order, a "Weekly CDS Clearing Order");

- (v) in respect of a Bilateral CDS Transaction submitted for Trade Date Clearing, the Clearing House issuing an acceptance notice in accordance with Rule 401(a)(ix) to a Clearing Member through the ICE System (such Securities Transfer Order, a "Trade Date CDS Clearing Order" and, together with a Weekly CDS Clearing Order, "CDS Clearing Order"); or
- (vi) (A) the Clearing House being provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a Notice of Physical Settlement in respect of Matched CDS Contracts, where the Notice of Physical Settlement specifies an instrument to be delivered that is an SFD Security; or (B) the Clearing House being provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a NOPS Amendment Notice in respect of Matched CDS Contracts, where the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security but where the Notice of Physical Settlement (including, as amended by any previous NOPS Amendment Notice) had specified an instrument that is not an SFD Security as the instrument that was to be delivered (either such Securities Transfer Order, a "CDS Physical Settlement Order").
- (c) If two or more Transfer Orders exist in respect of the same obligation prior to becoming irrevocable, all such Transfer Orders shall be valid. No duplication of an obligation to pay shall arise as a result of two or more Transfer Orders existing in respect of the same obligation.
- (d) The status of a Transfer Order shall not be affected by any calculation of Open Contract Position, netting, set off or closing out of a Contract to which it relates.
- (e) Each Payment Transfer Order shall apply and have effect in respect of the following amounts:
  - (i) in the case of ~~[an Open Offer]~~a New Contract Payment Transfer Order, the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the Contract to which the confirmation referred to in Rule 1202(a)(i) relates arising; (which, for any CDS Contract arising as a result of Trade Date Clearing, is the Initial Payment); or
  - (ii) in the case of a Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order, the amount specified in the relevant instruction referred to in Rule 1202(a);
  - ~~{(iii) in the case of an Insufficient Funds Payment Transfer Order, the amount determined pursuant to Rule 1205(b)}.~~
- (f) Each Position Transfer Order shall apply and have effect in respect of the Contracts to be transferred, assigned or novated.
- (g) Each Collateral Transfer Order shall apply and have effect in respect of the Non-Cash Collateral to be transferred to or to the order of the Clearing House or Clearing Member.

- (h) Each Energy Block Clearing Order shall apply and have effect in respect of the ICE OTC Transaction or ICE Futures Europe Transaction in question and any resulting Energy Contract.
- (i) Each CDS Clearing Order shall apply and have effect in respect of the Bilateral CDS Transaction in question and any resulting CDS Contract.
- (j) Two separate CDS Physical Settlement Orders shall apply and shall have effect separately in respect of each of the CDS Contracts in the Matched Pair that are subject to a physical settlement obligation, and the instrument to be delivered pursuant thereto.
- (k) ~~[(g)]~~ Transfer Orders shall apply to, and have effect as against and between, each of the following Persons, in respect of any particular Person only to the extent that such Person is a Participant or an Indirect Participant:
  - (i) in the case of [~~an Open Offer~~] a New Contract Payment Transfer Order, the affected Clearing Member (if it is a Participant) and the Clearing House and, as from and after the time of irrevocability only, the affected Approved Financial Institution;
  - (ii) in the case of a Credit/Debit Payment Transfer Order [~~or Insufficient Funds Payment Transfer Order~~], the affected Clearing Member (if it is a Participant), the affected Approved Financial Institutions and the Clearing House;
  - (iii) in the case of an AFI-CB Payment Transfer Order, CB-AFI Payment Transfer Order, the affected Approved Financial Institution, the Concentration Bank and the Clearing House;
  - (iv) in the case of a Position Transfer Order:
    - (A) the Clearing Members (that are the transferor, assignor or person whose rights, liabilities and obligations are novated and the transferee, assignee or person that assumes rights, liabilities and obligations pursuant to a novation);
    - (B) each Customer and Disclosed Principal Member affected by the Position Transfer Order which is an Indirect Participant (if any); and
    - (C) the Clearing House;
  - (v) in the case of a Collateral Transfer Order:
    - (A) the Clearing Member that is the transferor of the Non-Cash Collateral in question;
    - (B) any Custodian of the Clearing Member or the Clearing House; and
    - (C) the Clearing House;
  - (vi) in the case of an Energy Block Clearing Order:

- (A) each Clearing Member that has submitted or confirmed details of the ICE OTC Block Transaction or ICE Futures Europe Block Transaction;
  - (B) any Affiliate of the Clearing Member that was party to an ICE OTC Block Transaction or ICE Futures Europe Block Transaction and which is an Indirect Participant (if any); and
  - (C) the Clearing House;
- (vii) in the case of a CDS Clearing Order:
  - (A) each Clearing Member that has submitted or confirmed details of the Bilateral CDS Transaction;
  - (B) any Affiliate of a Clearing Member that is or was party to a Bilateral CDS Transaction and which is an Indirect Participant (if any); and
  - (C) the Clearing House; and
- (viii) in the case of a CDS Physical Settlement Order:
  - (A) each Clearing Member in the Matched Pair; and
  - (B) the Clearing House.
- (l) Where a Transfer Order applies to an Approved Financial Institution, it shall also apply to and be effective against any Intermediary Financial Institution used by that Approved Financial Institution.
- (m) ~~{(h)}~~ Where a Transfer Order applies additionally to an Indirect Participant, the liability of any Participant pursuant to the same Transfer Order shall not be affected.

**Rule 1203      *Transfer Orders Becoming Irrevocable***

- (a) A Credit/Debit~~[Payment Transfer Order or Insufficient Funds]~~ Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made.
- (b) An AFI-CB Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made.
- (c) A CB-AFI Payment Transfer Order shall become irrevocable at the time when the Concentration Bank sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made.
- (d) Subject to Rule~~[ 1207]~~1205(~~e~~f) and Rule ~~[1207(d), an Open Offer]~~1205(g), a New Contract Payment Transfer Order shall become irrevocable upon an Approved Financial Institution sending a SWIFT confirmation message, other electronic message,

fax, telephone or other message confirming that ~~[the relevant payment will be]~~amount to which the New Contract Payment Transfer Order relates (as specified in Rule 1202(e)(i)) will be or has been made.

- (e) A Position Transfer Order shall become irrevocable at the time when the definitive record of the ~~[long or short position]~~Open Contract Position of the Clearing Member (that is the assignee, transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the ICE Systems to reflect the transfer, assignment or novation of Contracts which are given effect ~~[to]~~ pursuant to the Position Transfer Order.
- (f) A Collateral Transfer Order shall become irrevocable at the earlier of the time when: (i) the Clearing House receives the Non-Cash Collateral; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.
- (g) An Energy Block Clearing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).
- (h) A CDS Clearing Order shall become irrevocable when the time specified pursuant to the Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a)(x).
- (i) A CDS Physical Settlement Order shall become irrevocable at the earliest of: (i) the time when the Matched CDS Buyer in the Matched Pair has submitted irrevocable instructions to a securities system, depository, nominee or custodian for the transfer of securities to or to the account of the Matched CDS Seller; (ii) the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or (iii) if the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.
- (j) ~~[(f)]~~ As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.

**Rule 1204** *Variations to ~~[Payment]~~or Cancellation of Transfer Orders*

- (a) This Rule 1204 applies only to a Transfer Order that is not irrevocable and:
  - (i) in the case of any Transfer Order, it is affected by manifest or proven error;
  - (ii) ~~[(a) This Rule 1204 applies if an Open Offer]~~in the case of a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order~~[r, Insufficient Funds Payment Transfer Order]~~ or Position Transfer Order~~[- that is not irrevocable]~~, it relates to a Contract or Transaction which is:

- (A) ~~{(i)}~~ void *ab initio* pursuant to Rule 403;
- (B) ~~{(ii)}~~ avoided pursuant to Rule 404; or
- (C) ~~{(iii)}~~ amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules~~;~~ or
- (iii) without prejudice to the generality of Rule 1204(a)(i), in the case of a Weekly CDS Clearing Order, if an error or omission is noted by or notified to the Clearing House prior to the Acceptance Time or the data relating to any Bilateral CDS Transaction to which the Weekly CDS Clearing Order relates is otherwise capable of being amended in accordance with the Procedures;
- (iv) in the case of a CDS Physical Settlement Order, if a NOPS Amendment Notice is validly delivered by the Matched CDS Buyer in accordance with Rule 1505 and Rule 1509; or
- (v) without prejudice to the generality of Rule 1204(a)(i), (ii) or (iii), in the case of an Energy Block Clearing Order or CDS Clearing Order, it relates to a Transaction which is not eligible for Clearing or which is not accepted for Clearing by the Clearing House.
- (b) ~~{Neither}~~ Subject to Rules 1205(d), (f) and (g), neither the validity nor the irrevocability of any Transfer Order shall of itself be affected by any event described in Rule 1204(a) occurring.
- (c) The terms of all Transfer Orders that have not become irrevocable shall each be subject to a condition (which, if not satisfied, shall enable the Clearing House to exercise its rights under this Rule 1204) that that the circumstances described in Rule 1204(a) have not occurred.
- (d) ~~{(e) The terms of all Open Offer Payment Transfer Orders, Credit/Debit Payment Transfer Orders, Insufficient Funds Payment Transfer Orders and Position Transfer Orders that have not become irrevocable shall each include the condition that the relevant Transfer Order does not relate to a Contract described in Rule 1204(a)(i) to (iii). The amount payable or}~~ If any of the circumstances described in Rule 1204(a) has occurred, the amount payable, Contracts to be transferred or to arise or SFD Securities or Non-Cash Collateral to be delivered pursuant to [any such]the affected Transfer Order ~~relating to such a Contract and that has not become irrevocable~~ may at the discretion of the Clearing House be ~~reduced or~~ increased, decreased or otherwise varied, as necessary, to reflect the payments ~~or~~, transfers, Contracts, assignments ~~or~~, novations ~~of Contracts~~, SFD Securities, Non-Cash Collateral or deliveries that would have been required:
- (i) in the case of Rule 1204(a)(i) applying, had there been no error;
- (ii) ~~{(i) in the case of Rule 1204(a)(i) }~~ in the case of Rule 1204(a)(ii)(A), Rule 1204(a)(ii)(B) or Rule 1204(a)(~~{ii}~~iv) applying, had no Contract or Transaction ever arisen or occurred; ~~or~~

- (iii) in the case of Rule 1204(a)(ii)(C) applying, had the Contract always been subject to such amended terms as are agreed or determined;
- (iv) ~~{(ii)}~~ in the case of Rule 1204(a)(iii) applying, had the [Contract always been subject to such amended terms as are agreed or determined,] details of the Bilateral CDS Transaction always been corrected or amended as permitted in accordance with the Procedures; or
- (v) in the case of Rule 1204(a)(iv) applying and the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security, had the Notice of Physical Settlement been originally issued as amended pursuant to the NOPS Amendment Notice

~~{each}~~ any such variation, a "Transfer Order Variation").

- (e) ~~{(d)}~~ A Transfer Order Variation may be effected only by the Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants. Valid delivery of a NOPS Amendment Notice in accordance with Rules 1505 and 1509 by a Matched CDS Buyer in a Matched Pair shall be deemed to constitute notice by the Clearing House for purposes of this Rule 1204(e) in respect of a Transfer Order Variation to a CDS Physical Settlement Order, if the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security.

~~{(e)}—This Rule 1204 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof in the event of any of the events described in Rule 1204(a) occurring.~~

#### ***Rule 1205 — Insufficient Funds***

- ~~(a) — If an Approved Financial Institution notifies the Clearing House prior to a Credit/Debit Payment Transfer Order becoming irrevocable otherwise than pursuant to this Rule 1205 that there are insufficient funds in the relevant Nominated Account, the Credit/Debit Payment Transfer Order shall nonetheless become irrevocable and shall bind all relevant Participants but only in respect of such amount as that Approved Financial Institution notifies to the Clearing House is available in the relevant Nominated Account (or such other amount, if greater, as is notified by the Approved Financial Institution).~~
- ~~(b) — If a Credit/Debit Payment Transfer Order becomes irrevocable pursuant to this Rule 1205, the affected Clearing Member shall notify (or shall cause the relevant Approved Financial Institution to notify) the Clearing House immediately if any other amount is deposited in the Nominated Account. Upon the Clearing House receiving any such notification, an Insufficient Funds Payment Transfer Order shall arise in respect of such amount or the amount outstanding in respect of the original Credit/Debit Payment Transfer Order, whichever is the smaller amount. Insufficient Funds Payment Transfer Orders shall arise upon any further amounts being received in the Nominated Account and notification being made from time to time until the amount due pursuant to the original Credit/Debit Payment Transfer Order has been paid to the Clearing House in full.~~

- ~~(c) This Rule 1205 shall not affect the obligation of the Clearing Member to make payment to the Clearing House in respect of the full amount to which the original Credit/Debit Payment Transfer Order related or the validity of any Open Offer Payment Transfer Order or Contract.~~

~~**Rule 1206**~~ ***Cancellation of Transfer Orders***

- ~~(f) (a) All Transfer Orders that have not become irrevocable shall be subject to the condition that they are not affected by manifest or proven error. A Transfer Order that is affected by manifest or proven error and that has not become irrevocable may be cancelled by~~ If any of the circumstances described in Rule 1204(a) has occurred, the Transfer Order in question may at the discretion of the Clearing House alternatively be cancelled. Any such cancellation may be effected ~~[only]~~ by the Clearing House serving a notice of cancellation on all affected Participants. In respect of an Energy Block Clearing Order or CDS Clearing Order, such notice shall be deemed to have been given if the Clearing House (or, in the case of an Energy Block Clearing Order, any Market) rejects a Transaction for Clearing.
- ~~(g)~~ A CDS Physical Settlement Order shall be cancelled immediately and automatically if and when a copy is provided to the Clearing House of a validly delivered NOPS Amendment Notice specifying an instrument for delivery which is not an SFD Security.
- ~~(h) (b)~~ This Rule [1206]1204 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof [in cases of manifest error]if any of the events described in Rule 1204(a) occur. No Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by the Clearing House. The ability of the Clearing House to cancel a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

**Rule 1205** ~~**Rule 1207**~~ ***Termination of Transfer Orders***

- (a) Each Payment Transfer Order shall ~~[terminate]~~be satisfied immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in cleared funds or full satisfaction of the relevant underlying obligations is otherwise made, in either case not subject to any Encumbrances.
- (b) Each Position Transfer Order shall ~~[terminate]~~be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1203~~(e)~~ (whereupon~~[-without prejudice to the foregoing,]~~ all Contracts ~~[arising in connection with]~~to which the ~~[Position]-~~Transfer Order in question relates will have ~~[arisen]~~been transferred, assigned or novated pursuant to the Rules).
- ~~(c)~~ Each Collateral Transfer Order shall be satisfied immediately and automatically at the later of the time when: (i) the Clearing House receives the Non-Cash Collateral in its account; or (ii) the definitive record of the Permitted Cover transferred by the Clearing Member that is the transferor is updated in the ICE Systems to reflect the successful transfer of Non-Cash Collateral to or to the order of the Clearing House pursuant to the Collateral Transfer Order.

- (d) A CDS Clearing Order or Energy Block Clearing Order shall be satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 401(a).
- (e) A CDS Physical Settlement Order shall be satisfied immediately and automatically at the time when the Clearing House updates its records of the relevant CDS Contracts in the ICE Systems to reflect that either physical delivery of the security in question has been completed or the delivery obligations of the parties under the relevant CDS Contracts have otherwise been discharged or settled.
- (f) ~~[(e)]~~ If a Credit/Debit Payment Transfer Order [~~or Insufficient Funds Payment Transfer Order~~] becomes irrevocable in respect of the same obligation to which [~~an Open Offer~~] a New Contract Payment Transfer Order relates, the [~~Open Offer~~] New Contract Payment Transfer Order shall automatically be [~~terminated~~] satisfied and shall not become irrevocable. It is acknowledged that New Contract Payment Transfer Orders will generally terminate in accordance with this Rule 1205(f) when standard Clearing and payment processes apply.
- (g) ~~[(d) An Open Offer]~~ A New Contract Payment Transfer Order relating to an Energy Contract shall [~~terminate~~] be satisfied immediately and automatically if and at the point that the relevant Energy Transaction or Contract is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii).

**Rule 1206** ~~*[Rule 1208] Provision of Information by the Clearing House and [Clearing Members] Participants*~~

- (a) The Clearing House and any Participant must provide, upon payment of a reasonable charge, the following information to any person who requests it, save where the request is frivolous or vexatious, within 14 days of a request being made:
  - (i) details of the Designated System; and
  - (ii) information about the Rules relevant to the functioning of the Designated System.
- (b) The Clearing House will provide a copy of information referred to in Rule [~~1208~~] 1206 (a) to any Clearing Member upon request.

**Rule 1207** ~~*[Rule 1209] Notice to the FSA and Bank of England*~~

- (a) Any notice which under Rule 204(a)(viii) must be copied to the FSA and Bank of England, shall be sent to the following addresses:
- (b) FSA:
  - Manager, Clearing/Settlement
  - Markets and Exchanges Division
  - Financial Services Authority
  - 25 The North Collonade
  - London E14 5HS
  - Fax: 020 7676 9735

- (c) Bank of England:
- The Senior Manager, Payment Systems Oversight  
Financial Resilience Division, HO-3  
Bank of England  
Threadneedle Street  
London EC2R 8AH  
Fax: 020 7601 3217
- (d) Any such notice will only be effectively served, filed, made or provided and delivered to the FSA and Bank of England:
- (i) if sent by post, on the fifth Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope;
  - (ii) if delivered in person to the officer or department specified, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day.
- (e) Any notice by fax shall not be effective until hard copy confirmation is served pursuant to Rule [~~1209~~1207](d).