

## ICE Clear Europe Limited

### Default Porting Notice

#### Terms applicable to the Porting Notice

Capitalised terms used but not defined in this Porting Notice shall take their meanings from those ascribed to them in the ICE Clear Europe Limited Clearing Rules (the “**Rules**”), available at: [https://www.theice.com/publicdocs/clear\\_europe/rulebooks/rules/Clearing\\_Rules.pdf](https://www.theice.com/publicdocs/clear_europe/rulebooks/rules/Clearing_Rules.pdf).

Each of the Customer and Transferee Clearing Member must ensure that it has completed this Porting Notice as fully and accurately as possible. This Porting Notice, when completed, signed and delivered by the Customer and Transferee Clearing Member, comprises a contract as well as a formal notice and request to the Clearing House pursuant to Part 9 of the Rules and the Standard Terms<sup>1</sup> to Transfer all Contracts (and to the extent possible any Customer-CM Transactions and any available Original Margin, Initial Margin or FX Original Margin held by the Clearing House) relating to the classes of products specified in the Porting Notice relating to the Customer from a Customer Account of the Defaulter to a Customer Account of the Transferee Clearing Member.

Completed Porting Notices should be returned to: [ICEClearEuropeDefaultNotices@theice.com](mailto:ICEClearEuropeDefaultNotices@theice.com)

Following receipt of this Porting Notice, the Clearing House will provide the Customer with a Position Transfer Template in draft form. The Position Transfer Template will contain fields and information regarding the Customer’s Open Contract Positions, which may be based on information supplied to the Clearing House by the Defaulter or its Insolvency Practitioner. If the Customer agrees with the details in the draft Position Transfer Template, it should indicate that agreement by completing the Position Transfer Template and returning it to the Clearing House. If the Customer disagrees with the details in the draft Position Transfer Template, it should indicate that promptly and provide such details as it believes are correct to the Clearing House. In any instances where the Customer disagrees with a draft Position Transfer Template and the alternative information provided by the Customer cannot be reconciled against the information submitted by the Defaulter or its Insolvency Practitioner to the Clearing House (or otherwise is not accepted by the Clearing House), the Clearing House shall be entitled not to give effect to any Transfer until such time as details of the Open Contract Positions and the Position Transfer Template are settled as between the Customer and the Clearing House. Once the Customer has completed and returned a Position Transfer Template or otherwise settled its contents with the Clearing House, the Customer will be deemed to represent, warrant and agree that the Position Transfer Template has correctly and accurately stated the entirety of the Open Contract Positions relating to it in respect of each Account in which it is interested that the Customer has requested be the subject of a Transfer. If the Customer does not return the Position Transfer Template or the Clearing House and the Customer are unable to mutually settle its contents within the time frame specified by the Clearing House for the acceptance of Porting Notices, the relevant Porting Notice will be treated as not having been validly served within the required timeframe.

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<sup>1</sup> The Standard Terms are contained within the Rules as an Exhibit.

Once the Position Transfer Template has been confirmed by the Customer or its contents have been settled, i.e. the Open Contract Positions to be Transferred have been confirmed by the Customer and the Clearing House, the Transferee Clearing Member must complete the final column thereof by specifying which of its Customer Position Accounts at the Clearing House, the Open Contract Positions should be transferred into.

By signing and submitting this Porting Notice, the Customer further represents and warrants to the Clearing House both as at the time of the Porting Notice and as at the time of each Transfer that:

- a. the relevant Standard Terms have been duly cross-referenced as being applicable to all Customer-CM Transactions between the Customer and the Defaulter in an agreement between the Customer and the Defaulter that has been duly executed and duly authorised by both parties;
- b. subject to Rule 202(c), the obligations of the Customer to the Defaulter and the Clearing House under the Standard Terms constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application and to other matters which are standardly excluded, restricted or qualified in legal opinions (regardless of whether enforcement is sought in a proceeding in equity or at law));
- c. any amendments, modifications, restatements or supplements in respect of the Standard Terms made by the Clearing House in accordance with the procedures set out in the Standard Terms were, are and shall hereby be deemed and agreed to be effective, such that the most current published version of the Standard Terms (and not any previous version thereof) is legally binding on the Customer, including in respect of its Customer-CM Transactions with the Defaulter and its obligations to the Defaulter and the Clearing House;
- d. any attempted or purported amendment to or disapplication of any provision of the Standard Terms as between the Customer and the Defaulter is void and of no effect;
- e. any other agreement between the Customer and the Defaulter that any provision of any other document shall prevail over the Standard Terms (or any amendment made thereto by the Clearing House) is void and of no effect, with the result that the Standard Terms prevail over any contrary provision to which the Customer and the Defaulter or any other Person are bound in any other agreement or document;
- f. the Clearing House is a third party beneficiary of the Standard Terms and may enforce the Standard Terms;
- g. at the request of the Transferee Clearing Member or the Clearing House, the Customer will enter into a further written confirmation of or agreement to any of the above or to any provision of the Standard Terms as applicable between the Customer and the Defaulter;
- h. it has not given any notice and neither the Clearing House nor the Transferee Clearing Member has any notice (in either case, whether actual, constructive, of a kind referred to in sections 177(2) or 190(5) of the Companies Act 1989 or otherwise arising) of any prior equitable interest or right, any right or remedy arising from a breach of statutory duty or any pledge, trust, lien, security interest or other Encumbrance in favour of any person over any Margin received by the Clearing House or to be Transferred to the Transferee Clearing Member in respect of the Customer (except (I) such interest that the Customer may have by virtue of a Customer-Clearing Member Agreement that is permitted under the Rules and Standard Terms, or (II) as arising under Applicable Laws in respect of any contractual receivable of a Clearing Member with respect to a Customer Account);
- i. the Customer-CM Transactions to which the Open Contract Positions on the settled Position

Transfer Template relate remain open and have not been terminated as a result of the Event of Default (or any connected or contemporary circumstances, actions or notices) and no notice has been served on the Defaulter or received by the Customer which has resulted in or will result in or relates to the termination of any Customer-CM Transaction (except pursuant to any automatic early termination provision which is not restricted or disapplied by the Standard Terms); and

- j. the Clearing House has no duty of care to the Customer.

By signing and submitting this Porting Notice, each of the Customer and the Transferee Clearing Member represents and warrants to the Clearing House that:

- a. the relevant Standard Terms have been duly cross-referenced as being applicable to all Customer-CM Transactions between the Customer and the Transferee Clearing Member in an agreement between the Customer and the Transferee Clearing Member that has been duly executed and duly authorised by both parties;
- b. subject to Rule 202(c), its obligations under the Standard Terms constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application and to other matters which are standardly excluded, restricted or qualified in legal opinions (regardless of whether enforcement is sought in a proceeding in equity or at law));
- c. any amendments, modifications, restatements or supplements in respect of the Standard Terms made by the Clearing House in accordance with the procedures set out in the Standard Terms were, are and shall hereby be deemed and agreed to be effective, such that the most current published version of the Standard Terms (and not any previous version thereof) is legally binding on it;
- d. any attempted amendment to or disapplication of any provision of the Standard Terms as between the Customer and the Transferee Clearing Member is void and of no effect;
- e. any other agreement between the Customer and the Transferee Clearing Member that any provision of any other document shall prevail over the Standard Terms (or any amendment made thereto by the Clearing House) is void and of no effect, with the result that the Standard Terms prevail over any contrary provision to which the Customer and the Transferee Clearing Member are bound in any other agreement or document;
- f. the Clearing House is a third party beneficiary of the Standard Terms and may enforce the Standard Terms;
- g. at the request of the Clearing House, it will enter into a further written confirmation of or agreement to any of the above or to any provision of the Standard Terms as applicable between the Customer and the Transferee Clearing Member.

In order for it to have effect, the Customer and the Transferee Clearing Member must send a fully completed and executed Porting Notice to the Clearing House at the email address specified above. Each Customer and Transferee Clearing Member represents and warrants that: (i) its signatory is duly authorised to make the agreements, confirmations, representations and warranties herein and to execute this Porting Notice; and (ii) the information provided is accurate in all respects. Further, by executing the Porting Notice, the Transferee Clearing Member represents and warrants to the Clearing House that: (i) it is in compliance with all Applicable Laws, including any requirements regarding customer due diligence, pursuant to Rule 202(a)(ii); and (ii) it is satisfied that the Customer's request as contained in this Porting Notice is given by a person (or persons) with

appropriate authority. The Clearing House shall be entitled to rely on such representations and warranties given by the Transferee Clearing Member and the Customer when acting upon the finalised Porting Notice. Notwithstanding, the Clearing House may ask for further evidence in support of the Customer's and / or Transferee Clearing Member's authority to execute this Porting Notice. The Clearing House shall be entitled not to give effect to any requested Position Transfer and to treat the relevant Porting Notice as not having been validly served within the required timeframe unless the Transferee Clearing Member has confirmed the destination Position Account(s)<sup>2</sup> for all Open Contract Positions by validly completing the Position Transfer Template within that timeframe.

In submitting this Porting Notice, each of the Customer and the Transferee Clearing Member agrees and acknowledges that neither the Clearing House nor any of its Affiliates will be liable to the Customer, the Transferee Clearing Member or any third party for: (i) acting upon any error of the Customer or Transferee Clearing Member in the information contained in this Porting Notice; or (ii) any difference between the value at which a Contract is terminated (or a replacement Contract re-established) on the one hand and any claim that the Customer or Transferee Clearing Member may have or realise in respect of any Customer Account, client money or customer asset pool or otherwise as against the Defaulter under insolvency laws or otherwise, on the other hand, including without limitation as a result of any Margin not being capable of being the subject of a Transfer to the Transferee Clearing Member or subsequently being alleged or held not to have been validly so transferred.

All Transfers of Contracts based upon a Porting Notice will take place pursuant to a termination and replacement in accordance with Rule 904, unless specified otherwise in a Circular or unless this mechanism of Transfer is unlawful in a relevant jurisdiction, in which case whichever of the other mechanisms in Rule 904 that is specified in the Circular or lawful, respectively, shall instead apply. This Porting Notice does not restrict in any way the application of those provisions of the Rules and Standard Terms which provide for consent by the Customer to be Transferred to any non-defaulting Clearing Member.

After any Transfer pursuant to the Porting Notice, all Transferor/Transferee forms and other forms and all valid notices served in respect of or relating to such Contracts prior to the Transfer shall consequentially be treated so as to take effect or remain valid as between the Transferee Clearing Member and the Clearing House after the point of Transfer (and as between the Transferee Clearing Member and the Customer in respect of the corresponding Customer-CM Transactions between them).

The Transferee Clearing Member and Customer will be responsible for managing all Open Contract Positions resulting from any Transfer as from the time of Transfer. Both the Customer and Transferee Clearing Member will check all the Open Contract Positions and Margin, where applicable, that have been subject to any Transfer as soon as practicable after receipt. Any errors shall be notified to the Clearing House by the Transferee Clearing Member or Customer in writing within one hour of the Transfer. Any errors that either (i) are not so notified; or (ii) have been so notified but are not corrected by the Clearing House within the same Business Day of the Transfer (or such later time as may be agreed with the Clearing House in writing prior to the expiry of such period), shall in either case be the responsibility and cost of the Transferee Clearing Member and

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<sup>2</sup> At the Clearing House

Customer to manage or deal with, whether through close-out, establishment of new Contracts or exchange of Permitted Cover, as necessary.

This Porting Notice is intended to be contractually binding on the Customer and the Transferee Clearing Member, and is governed by and shall be construed in accordance with English law. This Porting Notice shall be subject to the same jurisdiction and dispute resolution provisions and processes as those which are established under the Rules.

Please note that this Porting Notice is not intended for usage by FCM/BD Clearing Members or their Customers.

**Part One - to be completed by Customer**

**Customer Details**

Full name of the legal entity

Registered address  
*(if the principal place of business is different from the registered address please also specify)*

Legal Entity Identifier (LEI)  
*(where applicable)*

Contact person and position held at Customer

Telephone Number

**Direct:**

**Mobile:**

Email address

If Customer is a Sponsored Principal only: APS bank account details for Sponsored Principal (only needed if the APS bank account of the new Sponsor that is the Transferee Clearing Member is not to be used).

**Defaulting Clearing Member Information**

Defaulting Clearing Member Name

Defaulting Clearing Member Mnemonic

Customer Account Details at the Defaulting Clearing Member

Transferee Clearing Member Name

*(A list of Clearing Members can be found at:  
<https://www.theice.com/clear-europe/membership>)*

Transferee Clearing Member Mnemonic

Signed for and on behalf of the Customer

Name of Authorised Signatory	
Position	
Signature	
Date	

By executing this Porting Notice, the signatory confirms and represents that it is duly authorised and has full authority to bind the Customer as stated in this Porting Notice.

**Part Two - to be completed by the Transferee Clearing Member**

Transferee Clearing Member Details

Full name of the legal entity

Contact Name and position held at Clearing Member

Telephone Number

**Direct:**

**Mobile:**

Email address

Clearing Member Mnemonic

Signed for and on behalf of the Transferee Clearing Member

Name of Authorised Signatory

Position

Signature

Date

By executing this Porting Notice, the signatory confirms and represents that it is duly authorised and has full authority to bind the Transferee Clearing Member as stated in this Porting Notice.