

ICE Clear Europesm Clearing Rules

~~13 December 2019~~

[•] 2020

Rule 101

settlement price establishment and other functions of the Clearing House pursuant to these Rules.

The term "**Clearing House**" means ICE Clear Europe Limited, a company registered in England & Wales with registered number 06219884.

The term "**Clearing House Account**" means an account of the Clearing House at an Approved Financial Institution.

The term "**Clearing House CDS Contributions**" means the Clearing House CDS GF Contribution and the Clearing House CDS Initial Contribution.

The term "**Clearing House CDS GF Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(c)(~~iii~~iv)(B) or Rule 908(g)(~~iii~~iv)(C) and as maintained pursuant to Rule 1103(f) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House CDS Initial Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(c)(ii) or Rule 908(g)(ii)(B) and as maintained pursuant to Rule 1103(f) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Contributions**" means the Clearing House F&O Contributions, the Clearing House CDS Contributions and the Clearing House FX Contributions.

The term "**Clearing House F&O Contributions**" means the Clearing House F&O GF Contribution and the Clearing House F&O Initial Contribution.

The term "**Clearing House F&O GF Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(b)(~~iii~~iv)(B) or Rule 908(g)(~~iii~~iv)(B) and as maintained pursuant to Rule 1103(f) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House F&O GF (Energy) Contribution**" means that portion of the Clearing House F&O GF Contribution as is allocated by the Clearing House as applying primarily to Energy Contracts and residually to Financials & Softs Contracts.

The term "**Clearing House F&O GF (Financials & Softs) Contribution**" means that portion of the Clearing House F&O GF Contribution as is allocated by the Clearing House as applying primarily to Financials & Softs Contracts and residually to Energy Contracts.

The term "**Clearing House F&O Initial Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(b)(ii) or Rule 908(g)(ii)(A) and as maintained pursuant to Rule 1103(f) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House F&O Initial (Energy) Contribution**" means that portion of the Clearing House F&O Initial Contribution as is allocated by the Clearing House as applying primarily to Energy Contracts and residually to Financials & Softs Contracts.

The term "**Clearing House F&O Initial (Financials & Softs) Contribution**" means that portion of the Clearing House F&O Initial Contribution as is allocated by the Clearing House as applying primarily to Financials & Softs Contracts and residually to Energy Contracts.

The term "**Clearing House FX Contributions**" means the Clearing House FX GF Contribution and the Clearing House FX Initial Contribution.

The term "**Clearing House FX GF Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(d)(~~iii~~iv)(B) or Rule 908(g)(~~iii~~iv)(D) and as maintained pursuant to Rule 1103(f) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House FX Initial Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(d)(ii) or Rule 908(g)(ii)(C) and as maintained pursuant to Rule 1103(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing Member**" means a Person which has entered into a Clearing Membership Agreement with the Clearing House and which has been admitted as a clearing member pursuant to Part 2 of these Rules.

The term "**Clearing Member-Required Additional Margin**" has the meaning set out in the relevant Standard Terms.

The term "**Clearing Membership Agreement**" means an agreement between the Clearing House and a Clearing Member under which, *inter alia*, the Clearing House agrees to provide Clearing in respect of Contracts to that Clearing Member and that Clearing Member agrees to be bound by and subject to these Rules. Without prejudice to the generality of Rule 102(b) or to the effectiveness of any other agreement between a Clearing House and a Clearing Member, for the avoidance of doubt, for Clearing Members that have executed a Pledged Collateral Addendum, the relevant Clearing Membership Agreement will be interpreted as amended by that Pledged Collateral Addendum.

The term "**Clearing Organisation**" means any clearing house duly authorised, regulated, recognised or licensed under Applicable Laws in any jurisdiction, including any recognised clearing house, recognised overseas clearing house, derivatives clearing organisation or similar entity.

The term "**Clearing Processing System**" means the clearing processing system for Energy Contracts, the universal clearing platform for Financials & Softs Contracts and other clearing processing systems and platforms used by the Clearing House for F&O Contracts.

The term "**CLS Bank**" means CLS Bank International.

Rule 908(b)

- (i) first, any amounts falling under *N* in Rule 906(a) in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(b)(ii) to (v) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
- (ii) second, the Clearing House F&O Initial Contribution;
- (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by the Clearing House in cleared funds as a result of the Event of Default (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(b), subject to Rule 1102(k));
- (iv) ~~(iii) third~~ fourth (subject to Rule 908(i)):
- (A) F&O Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus F&O Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
- (B) the Clearing House F&O GF Contribution,
- on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all F&O Guaranty Fund Contributions (excluding F&O Guaranty Fund Contributions of the Defaulter and F&O Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House F&O GF Contribution at the time of the Event of Default; and
- ~~(iv) fourth, subject to Rule 908(d), any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Event of Default; and~~
- (v) fifth (subject to Rule 908(i)), F&O Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (c) In the case of a Defaulter that was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS (but neither an F&O Clearing Member nor an FX Clearing Member nor authorised to clear F&O or FX), the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that

Defaulter (including in connection with any net sum calculated under Rule 906), by applying the following assets in the order of recourse set out below:

- (i) first, any amounts falling under *N* in Rule 906(a) in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(c)(ii) to ~~(iv)~~) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
 - (ii) second, the Clearing House CDS Initial Contribution;
 - (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by the Clearing House in cleared funds as a result of the Event of Default (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(c), subject to Rule 1102(k));
 - (iv) ~~(iii) third~~ fourth (subject to Rule 908(i)):
 - (A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
 - (B) the Clearing House CDS GF Contribution,

on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and
 - (v) ~~(iv) fourth~~ fifth (subject to Rule 908(i)), CDS Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (d) In the case of a Defaulter that was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX (but neither an F&O Clearing Member nor a CDS Clearing Member nor authorised to clear F&O or CDS), the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that Defaulter (including in connection with any net sum calculated under Rule 906), by applying the following assets in the order of recourse set out below:

- (i) first, any amounts falling under *N* in Rule 906(a), in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs Rule 908(d)(ii) to ~~(iv)~~ below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
 - (ii) second, the Clearing House FX Initial Contribution;
 - (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by the Clearing House in cleared funds as a result of the Event of Default (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(d), subject to Rule 1102(k));
 - (iv) ~~(iii) third~~fourth (subject to Rule 908(i)):
 - (A) FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus FX Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
 - (B) the Clearing House FX GF Contribution,
 - on a basis *pro rata* (subject to Rule 908(i)), to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default; and
 - (v) ~~(iv) fourth~~fifth, (subject to Rule 908(i)), FX Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (e) In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rule 906(a) to (c) as if they were "net sums", *mutatis mutandis* in respect of assets and liabilities relating to the Clearing of F&O Contracts ("**F&O Default Amount**"), the Clearing of CDS Contracts ("**CDS Default Amount**") and the Clearing of FX Contracts ("**FX Default Amount**"), as follows:
- (i) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of F&O Contracts, then the net sum declared in respect of such account shall be the sole element of the F&O Default Amount in respect of such Account;

Rule 908(g)(ii)

- (A) if a Defaulter was an F&O Clearing Member or a Sponsored Principal that was authorised to clear F&O, the Clearing House F&O Initial Contribution, provided that it shall only be applied up to the extent of any F&O Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the F&O Default Amount represents a shortfall, loss or liability;
- (B) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS Initial Contribution, provided that it shall only be applied up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount represents a shortfall, loss or liability; and
- (C) if a Defaulter was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX, the Clearing House FX Initial Contribution, provided that it shall only be applied up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the FX Default Amount represents a shortfall, loss or liability;

(iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Event of Default (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(g), subject to Rule 1102(k)), provided that any proceeds of any such claim shall be applied to each Default Amount on a basis pro rata to the shortfall, loss or liability of each Default Amount (less any amounts applied to such Default Amounts pursuant to 908(g)(ii));

(iv) ~~(iii) third~~ fourth (subject to Rule 908(i)):

- (A) Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters and proceeds of the realisation thereof, if two or more Default proceedings take place concurrently and any such surplus is available);
- (B) if a Defaulter was an F&O Clearing Member or a Sponsored Principal that was authorised to clear F&O, the Clearing House F&O GFContribution;
- (C) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS GF Contribution in the order of priority set forth in the CDS Default Auction Procedures;and

Rule 908(g)(iv)

- (Y) in the case of a Defaulter who was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, CDS Guaranty Fund Contributions and the Clearing House CDS GF Contribution are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter in question or its Sponsor and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and
- (Z) in the case of a Defaulter who was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX, FX Guaranty Fund Contributions and the Clearing House FX GF Contribution are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter in question or its Sponsor and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default; and

~~(iv) fourth, if a Defaulter was an F&O Clearing Member or a Sponsored Principal that was authorised to clear F&O, subject to Rule 1103(e), any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Event of Default, provided that the Clearing House, acting reasonably, must specify in a Circular the extent to which any such claims are applied in respect of any shortfall, loss or liability relating to the F&O Default Amount and any shortfall, loss or liability relating to any other Default Amount(s); and~~

- (v) fifth (subject to Rule 908(i)), Assessment Contributions received by the Clearing House pursuant to Rule 909, provided that:
- (1) if a Defaulter was an F&O Clearing Member or a Sponsored Principal that was authorised to clear F&O, F&O Assessment Contributions of Clearing Members other than the Defaulter shall only be applied towards and up to the extent of any F&O Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the F&O Default Amount less any Clearing House F&O Initial Contribution applied in accordance with Rule 908(g)(ii)(A), F&O Guaranty Fund Contributions applied in accordance with Rule 908(g)(iii)(A) and Clearing House F&O GF Contribution applied in accordance with Rule 908(g)(iii)(B) represents a shortfall, loss or liability;
 - (2) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, CDS Assessment Contributions of Clearing Members other than the Defaulter in question shall only be applied

towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount less any Clearing House CDS Initial Contribution applied in accordance with Rule 908(g)(ii)(B), CDS Guaranty Fund Contributions applied in accordance with Rule 908(g)(~~iii~~iv)(A) and Clearing House CDS GF Contribution applied in accordance with Rule 908(g)(~~iii~~iv)(C) represents a shortfall, loss or liability; and

- (3) if a Defaulter was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX, FX Assessment Contributions of Clearing Members other than the Defaulter in question shall only be applied towards and up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the FX Default Amount less any Clearing House FX Initial Contribution applied in accordance with Rule 908(g)(ii)(C), FX Guaranty Fund Contributions applied in accordance with Rule 908(g)(~~iii~~iv)(A) and Clearing House FX GF Contribution applied in accordance with Rule 908(g)(~~iii~~iv)(D) represents a shortfall, loss or liability;

and provided further that:

- (X) in the case of a Defaulter who was an F&O Clearing Member or a Sponsored Principal that was authorised to clear F&O, F&O Assessment Contributions are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all F&O Assessment Contributions received by the Clearing House;
- (Y) in the case of a Defaulter who was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, CDS Assessment Contributions are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all CDS Assessment Contributions received by the Clearing House; and
- (Z) in the case of a Defaulter who was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX, FX Assessment Contributions are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all FX Assessment Contributions received by the Clearing House.
- (h) The requirements of this Rule 908 shall apply and be binding upon the Clearing House and all Clearing Members and Sponsored Principals including upon the event of any Insolvency affecting the Clearing House or any Clearing Member or Sponsored Principal. The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members and Sponsored Principals (including any Insolvency Practitioner with powers over any Clearing Member or

Sponsored Principal or their Representatives) shall, to the extent permitted by Applicable Laws:

- (i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Part 9; and
 - (ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Clearing House are applied only pursuant to this Part 9.
- (i) Notwithstanding Rule 908(b)(~~iii~~iv), (~~b~~)(v), (c)(~~iii~~iv)-(~~iv~~v), (d)(~~iii~~)-(iv)-(v) (g)(~~iii~~iv) and Rules (g)(v) and Rule 909, if a Default Auction is held, the Guaranty Fund Contributions of particular non-defaulting Clearing Members (or other funds transferred to the Clearing House by other Default Auction participants) may be applied in different orders or sequences, and Assessment Contributions may be called in different orders or sequences, rather than being applied or called *pro rata* for all Clearing Members, with reference to the bids made or other behaviours in the Default Auction, in accordance with the applicable provisions of the Default Auction Procedures. Any capitalised terms used in this Rule 908(i) but not defined in Rule 101 shall have the meaning set out in the CDS Default Auction Procedures.

(i) Where a CDS Default Auction is held the following modifications shall be made:

(A) Rule 908(c)(~~iii~~iv)-(~~iv~~v) shall be modified to read as follows in relation to all Lots comprising an Initial CDS Auction:

(vii) ~~third~~fourth:

*(A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available), **Direct Auction Participant Contributions and any Replenishment Amounts shall be applied based on the CDS Auction Priority GF Sequence**;*

(B) the Clearing House CDS GF Contribution,

~~on a basis pro rata (subject to Rule 908(i)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the~~

~~**Clearing House CDS GF Contribution at the time of the Event of Default; and**~~

~~(iv)~~ ~~fourth~~fifth. CDS Assessment Contributions received by the Clearing House pursuant to Rule 909 **shall be applied based on the CDS Auction Priority AC Sequence.**

- (B) Rule 908(g) shall be modified to read as follows in relation to all Lots comprising an Initial CDS Auction:

~~(iiiiv)~~ ~~third~~fourth:

[...]

~~(C) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS GF Contribution **in the order of priority set forth in the CDS Default Auction Terms and any Replenishment Amounts;** and~~

[...]

provided that:

[...]

~~(2) if a Defaulter was a CDS Clearing Member or a Sponsored Principal authorised to clear CDS, CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor, the Clearing House CDS GF Contribution **and any Replenishment Amounts shall be applied in accordance with the CDS Auction Priority GF Sequence and** shall only be applied towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount less any Clearing House CDS Initial Contribution applied in accordance with Rule 908(g)(ii)(B) represents a shortfall, loss or liability; and~~

[...]

and provided further that:

[...]

- ~~(Y) **in the case of a Defaulter who was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, CDS Guaranty Fund Contributions and the**~~

~~Clearing House CDS GF Contribution are applied on a basis pro rata (subject to Rule 908(i)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter in question or its Sponsor and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default[Intentionally omitted]; and~~

[...]

(v) fifth, Assessment Contributions received by the Clearing House pursuant to Rule 909, provided that:

[...]

- (2) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, CDS Assessment Contributions of Clearing Members other than the Defaulter in question **and any Replenishment Amounts shall be applied in accordance with the CDS Auction Priority AC Sequence and shall** only be applied towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount less any Clearing House CDS Initial Contribution applied in accordance with Rule 908(g)(ii)(B), CDS Guaranty Fund Contributions applied in accordance with Rule 908(g)(~~iii~~iv)(A) and Clearing House CDS GF Contribution applied in accordance with Rule 908(g)(~~iii~~iv)(C) represents a shortfall, loss or liability; and

[...]

and provided further that:

[...]

- (Y) ~~in the case of a Defaulter who was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, CDS Assessment Contributions are applied on a basis pro rata (subject to Rule 908(i)) to the sum of the total of all CDS Assessment Contributions received by the Clearing House[Intentionally omitted]; and~~

- (C) Rule 908(c)(~~iii~~iv)-(~~iv~~v) shall be modified as follows in relation to all Lots comprising a Secondary CDS Auction (other than Failed Lots):

(vii) ~~third~~fourth:

(A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available)and the Clearing House Contributions Tranche shall be applied based on the Secondary CDS Auction Priority GF Sequence; and

(B) the Clearing House CDS GF Contribution,

~~on a basis pro rata (subject to Rule 908(i)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and~~

(~~iv~~) ~~fourth~~fifth, CDS Assessment Contributions received by the Clearing House pursuant to Rule 909 and any Replenishment Amounts shall be applied based on the Secondary CDS Auction Priority AC Sequence.”

(D) Rule 908(g) shall be modified as follows in relation to all Lots comprising a Secondary CDS Auction (other than Failed Lots):

"(~~iii~~) ~~third~~fourth:

[...]

(C) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS GF Contribution and the Clearing House CDS Contributions Tranche~~in the order of priority set forth in the CDS Default Auction Terms~~; and

[...]

provided that:

[...]

Rule 908(i)(i)

extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount less any Clearing House CDS Initial Contribution applied in accordance with Rule 908(g)(ii)(B), CDS Guaranty Fund Contributions applied in accordance with Rule 908(g)(~~iii~~iv)(A) and Clearing House CDS GF Contribution applied in accordance with Rule 908(g)(~~iii~~iv)(C) represents a shortfall, loss or liability; and

[...]

and provided further that:

[...]

~~(Y) in the case of a Defaulter who was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, CDS Assessment Contributions are applied on a basis pro rata (subject to Rule 908(i)) to the sum of the total of all CDS Assessment Contributions received by the Clearing House[Intentionally omitted]; and~~

[...]"

- (ii) Where a Default Auction is held in respect of the F&O or FX Contract Categories, the applicable modifications to Rule 908 shall be as set out by the Clearing House by Circular.

Rule 909 Powers of Assessment

- (a) Powers of assessment under this Rule 909 may be exercised by the Clearing House following an Event of Default occurring in respect of a Clearing Member if a shortfall, loss or liability to the Clearing House has arisen, or is considered by the Clearing House to be likely to arise, as a result of a shortfall, loss or liability relating to any Proprietary Account or Customer Account of a Defaulter authorised to clear Contracts of the Relevant Contract Category where such shortfall, loss or liability is not met pursuant to the application of the following rules as applicable to the Relevant ContractCategory:

- (i) Rule 908(b)(i) to (iv) (for the F&O Contract Category);
- (ii) Rule 908(c)(i) to (~~iii~~iv) (for the CDS Contract Category);
- (iii) Rule 908(d)(i) to (~~iii~~iv) (for the FX Contract Category); or
- (iv) Rule 908(g)(i) to (iv), only to the extent that:

- (A) For the F&O Contract Category, the F&O Default Amount, less any assets applied in accordance with Rules 908(g)(ii)(A), 908(g)(~~iii~~iv)(B) and

908(g)(iv) represents, or is considered by the Clearing House at its discretion likely to represent, a shortfall, loss or a liability;

- (B) For the CDS Contract Category, the CDS Default Amount, less any assets applied in accordance with Rules 908(g)(ii)(B) and 908(g)(~~iv~~iv)(C), represents, or is considered by the Clearing House at its discretion likely to represent, a shortfall, loss or a liability; or
- (C) For the FX Contract Category, the FX Default Amount, less any assets applied in accordance with Rules 908(g)(ii)(C) and 908(g)(~~iv~~iv)(D) represents, or is considered by the Clearing House at its discretion likely to represent, a shortfall, loss or a liability.

Immediately upon the Clearing House certifying the Assessment Amount in respect of a Relevant Contract Category in a Circular, all Clearing Members (other than Defaulters) that are Clearing Members in that Relevant Contract Category shall indemnify the Clearing House and become liable to pay Assessment Contributions for the Relevant Contract Category to the Clearing House in accordance with Rule 909(b), 909(c) or 909(e), as applicable. The exercise of any right to call Assessment Contributions under this Rule 909 is subject to any contrary requirement arising pursuant to Rule 917 or Rule 918(a)(ii).

- (b) The F&O Assessment Contribution payable by each F&O Clearing Member shall be the amount:

$$FOAA \times \frac{FOGF(CM)}{FOGF(all)}$$

where:

FOAA is the F&O Assessment Amount certified by the Clearing House in a Circular, provided that the total F&O Assessment Amount shall be no greater than the amount equal to twice the total required F&O Guaranty Fund Contributions of all F&O Clearing Members immediately prior to the relevant Event of Default (less F&O Guaranty Fund Contributions of Defaulters);

FOGF(CM) is the required F&O Guaranty Fund Contribution of the relevant F&O Clearing Member immediately preceding the relevant Event of Default; and

FOGF(all) is the total required F&O Guaranty Fund Contributions of all F&O Clearing Members immediately preceding the relevant Event of Default (less F&O Guaranty Fund Contributions of Defaulters and excluding the Clearing House F&O Contributions).

F&O Assessment Contributions will be designated as relating primarily to Energy Contracts or Financials & Softs Contracts based on the designation of Guaranty Fund Contributions to Energy Contracts or Financials & Softs Contracts under Rule 1101(a).

Rule 909(h)

for an amount greater than twice its FX Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 909(c), (d), (f) and (g), as applicable, further Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire Assessment Amount has been met in full by Assessment Contributions.

- (i) All Assessment Contributions shall become due and payable at such time as the Clearing House notifies to Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (j) If, after any Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation, loss, shortfall or unpaid Assessment Contribution relating to the Relevant Contract Category in whole or in part from the Defaulter in question, an insurer or a Person liable to pay an unpaid Assessment Contribution for the Relevant Contract Category, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other Clearing Members in the Relevant Contract Category (excluding any Defaulter) ~~pro-rata~~ pro-rata (subject to Rule 908(i)) in respect of paid Assessment Contributions relating to the Relevant Contract Category and the Event of Default in question, subject to the Clearing House: (i) first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any shortfall, loss or liability following exhaustion of the assets specified in Rule 908 or in substitution of any such assets; and (ii) if applicable, meeting any repayment obligations arising pursuant to 909(j), 914(j) or 916(n).
- (k) Amounts transferred to the Clearing House by Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). Assessment Contributions do not constitute Guaranty Fund Contributions.
- (l) Where the Clearing House calls Assessment Contributions in excess of that required or actually applied against a loss, shortfall or liability, it shall treat any such excess provided by a particular Clearing Member as special Surplus Collateral on the relevant Proprietary Account of such Clearing Member. Such special Surplus Collateral shall be available to be applied at any time as an Assessment Contribution for the Relevant Contract Category, but unavailable for withdrawal under Part 3 or the Finance Procedures, until such time as any such amount of Assessment Contributions are determined by the Clearing House not to be required, at which point the Surplus Collateral shall become available for withdrawal in the same way as other Surplus Collateral.

Rule 913(a)

Defaulter or other amounts, credits or assets that would otherwise be due to the Defaulter in the calculation of a net sum under Rule 906 and which have been evaluated as cash obligations (as calculated by the Clearing House). Available Defaulter Resources exclude for the avoidance of doubt all Available Non-Defaulter Resources, the Clearing House's own assets and capital, Clearing House Contributions and any assets or rights representing the proceeds of Permitted Cover, Margin, cover for Margin or Guaranty Fund Contributions provided by Clearing Members, Sponsors or Sponsored Principals that are not Defaulters. The principles in Rule 908 used for the calculation of relevant Default Amounts shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Defaulter Resources.

- (iv) The term "**Available Non-Defaulter Resources**" means, following a particular Event of Default, the cash proceeds or equivalent cash value (as calculated by the Clearing House) of those Guaranty Fund Contributions, Clearing House Contributions ~~and~~, Assessment Contributions and any claims under any default insurance policies which are available to be applied pursuant to Rule 908, provided that Assessment Contributions and any claims under any default insurance policies shall only count as Available Non-Defaulter Resources if they have been received by the Clearing House in cleared funds at the time the Clearing House performs a calculation of Available Non-Defaulter Resources. The principles in Rule 908 shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Non-Defaulter Resources.
- (v) The term "**Available Product Funds**" means the amount of resources available to the Clearing House in respect of a Relevant Contract Category, as calculated in accordance with Rule 916(f).
- (vi) The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vii) The term "**Cash Gain**" means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.
- (viii) The term "**Cash Gainer**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is greater than zero.
- (ix) The term "**Cash Gainer Adjustment**" has the meaning set out in Rule 914(c).
- (x) The term "**Cash Loser**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative

Rule 914(g)

- (ii) the Clearing House will remain liable to pay or release Margin and Permitted Cover to Clearing Members and Sponsored Principals in the usual way, subject to netting to take account of any Cash Loser /Gainer Adjustment; and
- (iii) the Clearing House's obligation to pay or release Original/Initial Margin shall not be subject to reduction under this Rule 914 as a result of any Distribution Haircut;

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

- (h) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Clearing House (whether for itself or on behalf of any Market) in respect of Contracts affected by the arrangements during the Loss Distribution Period shall not be applicable during any Loss Distribution Period. Action by the Clearing House under this Rule 914 shall not constitute any kind of Clearing House Event.
- (i) Where the Clearing House determines that none of the situations under which an RGD Determination could be made persists or is likely to persist that Business Day shall not be a Loss Distribution Day and the Loss Distribution Period shall have terminated as of the last Loss Distribution Day. In this circumstance or where the Clearing House otherwise wishes to end any Loss Distribution Period, it shall issue a Circular specifying the final date of the Loss Distribution Period. After the end of the Loss Distribution Period, the adjustments, modifications and limited recourse provisions specified in this Rule 914 shall no longer apply and the Clearing House shall resume calculating, collecting and paying MTM/VM payments in the ordinary course, without adjustment to take into account any Cash Gainer/Loser adjustments during the Loss Distribution Period except as provided in Rule 914(j). The end of the Loss Distribution Period shall not preclude the Clearing House from making a further RGD Determination in respect of the same Event of Default to the extent that any open Contracts of the Defaulter have not been closed out, sold or liquidated and the other conditions of the RGD Determination are satisfied.
- (j) Notwithstanding Rule 1102(k), this Rule 914(j) shall apply where the Clearing House (1) receives amounts from a Defaulter (as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise) or another Clearing Member or Sponsored Principal or any insurer that would, had it been paid on time, have increased the Clearing House's Available Resources or Received MTM/VM on a Business Day on which any Margin Account Adjustment was made pursuant to this Rule 914 during a Loss Distribution Period; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher; or (3) declares an actual net sum under Rule 906 in circumstances in which an Estimated Payable Net Sum had previously been used as a basis for invoking its rights under this Rule 914 where the actual net sum is greater than the last Estimated Payable Net Sum. Where this Rule 914(j) applies, the Clearing House shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other

Rule 916(i)

Guaranty Fund; and (D) Assessment Contributions subject always to the relevant caps set out in Rule 909.

- (j) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Clearing House (whether for itself or on behalf of any Market) in respect of Contracts to be terminated under this Rule 916 shall not be applicable in respect of such Contracts.
- (k) No action or omission by the Clearing House pursuant to this Rule 916 shall constitute any kind of Clearing House Event.
- (l) If the Clearing House terminates Contracts of a particular Set, this shall not preclude it from terminating Contracts of a different Set of the same Relevant Contract Category in respect of the same Event of Default.
- (m) In carrying out any calculations or making any determinations pursuant to this Rule 916, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (n) Notwithstanding Rule 1102(k) and Rule 914(j), this Rule 916(n) shall apply where the Clearing House (1) receives amounts from a Defaulter or another Clearing Member or Sponsored Principal or any insurer that would, had it been paid on time, have meant that a Negative Product Termination Amount being lower or eliminated or a Positive Product Termination Amount being higher; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher in circumstances in which any resulting Negative Product Termination Amount would have been lower or eliminated or a Positive Product Termination Amount would have been higher based on the later Estimated Payable Net Sum; or (3) an actual net sum is declared by the Clearing House under Rule 906 in circumstances in which any resulting Negative Product Termination Amount would have been lower or eliminated or a Positive Product Termination Amount would have been higher based on the actual net sum. Where this Rule 916(n) applies, the Clearing House shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Clearing House, including, without limitation, the costs of recovering or recalculating any such amounts):
 - (i) first to Clearing Members and Sponsored Principals that are not Defaulters who would, but for this Rule 916, have received a Termination Price in full, with the payments determined on a *pro rata* basis based on the difference between the Discounted Product Repayment Amount and the Product Repayment Amount in respect of each Clearing Member or Sponsored Principal;
 - (ii) secondly, in accordance with Rule 914(j); and

Rule 1102(i)

are so due. Any obligation on a Clearing Member to make payments pursuant to this Rule 1102(i) is separate from, and shall apply in addition to, any obligation to make payment in respect of Assessment Contributions pursuant to Rule 909.

(j) If:

- (i) an Event of Default is declared in relation to more than one Defaulter contemporaneously (excluding an Event of Default declared in respect of a Disclosed Principal Member or Sponsored Principal when an Event of Default is declared contemporaneously in respect of its Clearing Member or Sponsor, respectively) (the defaulter in respect of whom default proceedings are first completed being the "**First Defaulter**" and any other defaulter being an "**Additional Defaulter**" or, if default proceedings are completed at the same time, the Defaulter whose name would appear first alphabetically being the "**First Defaulter**" and any other Defaulter or Defaulters being an "**Additional Defaulter**"); or
- (ii) a separate Event of Default is declared in relation to a Defaulter or Defaulters that has or have made a Guaranty Fund Contribution or Guaranty Fund Contributions to the same Guaranty Fund (any, an "**Additional Defaulter**") prior to the termination of default proceedings in relation to an existing Defaulter ("**First Defaulter**"),

and recourse is made to Guaranty Fund Contributions in respect of the First Defaulter (or any Additional Defaulter), then (subject to Rule 917 and Rule 918(a)(ii)) Clearing Members shall be required to replenish the relevant Guaranty Fund pursuant to Rule 1102(i) separately in respect of each Defaulter causing a reduction in the Guaranty Fund. The Clearing House may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to the First Defaulter to meet the liabilities of an Additional Defaulter and may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to an Additional Defaulter to meet the liabilities of another Additional Defaulter. Other than as set out in this Rule 1102(j), amounts transferred by Clearing Members or former Clearing Members in order to replenish Guaranty Fund Contributions under Rule 1102(i) or amounts designated as Clearing House Contributions may not be applied to meet liabilities arising in connection with any Event of Default occurring prior to the time at which the relevant replenishment or designation is required under these Rules.

- (k) In the event of the Clearing House applying any Guaranty Fund Contributions of non-defaulting Clearing Members, ~~the Clearing House will make payment to the Persons whose Guaranty Fund Contributions have been applied (and retain assets in respect of Clearing House F&O GF Contributions, Clearing House CDS GF Contributions and Clearing House FX GF Contributions) pro rata (subject to Rule 908(i)) in respect of~~ Contributions or insurance proceeds and then receiving any amounts ~~received~~ from the Defaulter as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise (net of the Clearing House's costs of recovery), the Clearing House will

make payment to relevant Persons whose Guaranty Fund Contributions have been applied, retain assets in respect of Clearing House Contributions or repay the relevant insurer, as applicable, in the reverse order to that specified in Rule 908 (subject to Rule 1103(e)) and in the case of payments to Clearing Members (and Clearing House Contributions that are not Clearing House Initial Contributions) on a pro rata basis (subject to Rule 908(i)), up to the amount by which the relevant Guaranty Fund was reduced (excluding the Guaranty Fund Contribution of the Defaulter) but without counting for interest, the amount of Clearing House Contributions that were applied or the amount of insurance proceeds were applied, subject in either case to the Clearing House first: (i) retaining or repaying amounts up to the amount of any other assets of the Clearing House ~~(including following claims under insurance policies)~~ or other third parties applied to meet any shortfall or loss following exhaustion of the assets specified in Rule 908 or in substitution of any such assets; ~~and~~ (ii) if applicable, making reimbursement payments to Persons that have made Assessment Contributions (in ~~that order of priority~~ the reverse order to that specified in Rule 908), in accordance with Rule 909(j); and (iii) if applicable, meeting any repayment obligations arising pursuant to 909(j), 914(j) or 916(n).

- (l) If an Event of Default occurs prior to the end of a Guaranty Fund Period where the total amount of Guaranty Fund Contributions or the Guaranty Fund Contribution of any particular Clearing Member would otherwise subsequently be reduced in the next Guaranty Fund Period, the Clearing House shall at its discretion be entitled to defer the end of the current Guaranty Fund Period and start of the next Guaranty Fund Period until the completion of default proceedings or retain all then held Guaranty Fund Contributions made to any potentially affected Guaranty Fund. In either such circumstance, the Clearing House shall not be obliged to make any repayment to Clearing Members in respect of Guaranty Fund Contributions to any such Guaranty Fund until and subject to completion of the relevant Default proceedings pursuant to Part 9 and this Part 11. For the avoidance of doubt: in such circumstances, the Clearing House shall nonetheless be entitled to make periodic adjustments to Guaranty Fund Contributions as otherwise set out in these Rules at its discretion; and this Rule 1102(l) is without prejudice to Rule 1102(m) and Rule 1102(n).
- (m) If a Clearing Member's business changes in a material way, a Clearing Member's anticipated clearing volume of Contracts indicates a potential increase in risk to the Clearing House at any time during a Guaranty Fund Period or as otherwise required by the Finance Procedures, which determinations shall be made and conducted at the Clearing House's discretion, then the Clearing House may require the Clearing Member to increase the amount of its Guaranty Fund Contribution at the time specified by the Clearing House. Any such Guaranty Fund Contributions shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the relevant Guaranty Funds shall be increased accordingly until the end of the relevant Guaranty Fund Period.

Rule 1103(a)

- be used or applied under this Rule 1103(a) after available resources of the Defaulter have been exhausted.
- (b) The Clearing House may at any time and from time to time sell, substitute, set off, transfer, assign, mortgage, pledge, repledge or otherwise create or grant a lien, interest, charge or other security interest on or use as collateral by way of title transfer arrangement, any proceeds of Guaranty Fund Contributions for any of the purposes set out in Rule 1103(a). Any borrowings using proceeds of Guaranty Fund Contributions as collateral shall be on terms and conditions deemed necessary or advisable by the Clearing House in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Clearing Member to the Clearing House for which such cash, securities or other property was pledged to or deposited with the Clearing House. Any amounts so borrowed shall be used and applied by the Clearing House solely for the purposes set out in Rule 1103(a); provided that the failure of the Clearing House to comply with Rule 1103(a) in respect of any borrowings, facility or agreement shall not impair any of the rights or remedies of any transferee, assignee, mortgagee, pledgee, collateral taker or holder of any lien or security interest.
- (c) Any expense (including, without limitation, legal fees and expenses) incurred by the Clearing House in connection with the use, application or transfer of Guaranty Fund Contributions, or the return of equivalent assets to a Clearing Member, may, at the option and discretion of the Clearing House, be charged to the account of such Clearing Member.
- (d) A Clearing Member's entitlement to repayment of any Guaranty Fund Contribution or any part of it or interest thereon shall not be capable of assignment or transfer by the Clearing Member or being made subject to any Encumbrance whatsoever purporting to rank in priority over, *pari passu* with, or subsequent to, the rights of the Clearing House or in conflict with Rule 908. Any purported Encumbrance of a Clearing Member in respect of any Guaranty Fund Contribution shall be null and void.
- (e) ~~Default~~ It being understood that the Clearing House shall not be obliged to obtain or keep in place or make any claim under any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in Rule 908, subject to the payment order specified in Rule 1102(k), any claims under default insurance policies of which the Clearing House is the beneficiary ~~(if any)~~ may be subject to limits on claims applicable in respect of particular time periods (each such period, a "**Relevant Period**"). Furthermore, pursuant to the terms of any such insurance obtained by the Clearing House, it is possible that (i) insurance claims may be payable in excess of losses resulting from a Default or Defaults above a certain amount ("**Loss Threshold**") occurring within a Relevant Period as opposed to following the application of particular assets in respect of particular Defaults in the order set out in Rule 908; or (ii) default insurance policies may apply only in relation to losses occurring in relation to certain Sets of Contracts cleared by the Clearing House or particular Guaranty Funds. Moreover, the Clearing House shall not be obliged to obtain or keep in place or make any claim under any default insurance policy or make, or receive the proceeds under, any

claim prior to processing to the next levels of assets specified in Rule 908, subject to the payment order specified in Rule 1102(k). As a result, it is possible that: ~~(A)~~

- (A) there may be a delay in any insurance proceeds being received, meaning that in practice other assets applicable under Rule 908 may be called prior to insurance proceeds being received, subject to Rule 1102(k);
- (B) insurance receipts may be available to (and applied by) the Clearing House at an earlier order to that specified in Rule 908 if the total available Guaranty Fund Contributions exceed the Loss Threshold or in respect of a second or subsequent Default where the limit on claims for the Relevant Period has not been exhausted;
- (C) ~~(B)~~ no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period; ~~(C)~~
- (D) proceeds of any claim under default insurance may need to be applied to meet losses across more than one Event of Default, if there is a First Defaulter and one or more Additional Defaulters in a Relevant Period;
- (E) the insurance policies (if any) may not provide cover in respect of certain Events of Default; or
- (F) ~~(D)~~ there may be no default insurance either generally or in respect of any particular products cleared by the Clearing House.

If there is a First Defaulter and there are one or more Additional Defaulters during a Relevant Period, the proceeds of any claim under default insurance shall be applied as between the losses, shortfalls or liabilities relating to each Defaulter at the relevant point in the waterfall in Rule 908 on the following basis: (i) first, a Defaulter shall be excluded from any application of such assets if, prior to or after application of Clearing House Contributions, there is no further loss, liability or shortfall; (ii) secondly, such assets shall be applied to reduce the losses, shortfalls or liabilities relating to a Defaulter whose Event of Default was first in time to be declared by the Clearing House, provided that any Events of Default occurring on the same day shall be treated as occurring simultaneously for purposes of this Rules 1103(e); and (iii) where there are simultaneous Events of Default, such assets shall be applied so as to reduce the losses, shortfalls or liabilities relating to each Defaulter on a *pro-rata* basis, based on the total of all unsatisfied Default Amounts relating to each such Defaulter (after applying Clearing House Contributions).

The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contract or Guaranty Fund applicable to any default insurance obtained by the Clearing House. Neither this Rule 1103(e) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.