



NATIONAL
SECURITIES
CLEARING
CORPORATION

RULES & PROCEDURES

TEXT OF PROPOSED RULE CHANGE

Bold and underlined text indicates proposed added language

~~Bold and strikethrough text~~ indicates proposed deleted language

RULE 40. (~~RULE NUMBER RESERVED FOR FUTURE USE~~ WIND-DOWN OF A MEMBER, FUND MEMBER OR INSURANCE CARRIER/RETIREMENT SERVICES MEMBER)

When a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member notifies the Corporation that it intends to wind down its activities, the Corporation may, in its sole discretion, in order to protect itself and its participants, determine that such Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a “Wind-Down Member”. In that event and, without limiting any other rights of the Corporation under these Rules and Procedures, the Corporation may impose conditions on, or take actions with respect to, the Wind-Down Member as provided below.

As soon as practicable after the Corporation determines that a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a Wind-Down Member, the Corporation shall notify the Wind-Down Member, all other participants and the SEC of such determination.

The Corporation may, in its discretion, impose conditions on, or take actions with respect to, the Wind-Down Member as appropriate to mitigate risk the Corporation perceives may be presented by the Wind-Down Member, including but not limited to, the following:

- (i) Permitting the Wind-Down Member to submit to the Corporation only transactions that serve to support the wind-down;**
- (ii) Permitting the Wind-Down Member to continue use of one or more of the Corporation’s services, notwithstanding that it may not meet some or all of the financial or operational requirements for continuance as a Member or Limited Member, as applicable;**
- (iii) Restricting or modifying the Wind-Down Member’s use of any or all of the Corporation’s services (whether generally, or with respect to certain transactions);**
- (iv) Requiring additional assurances of the financial responsibility or operational capability of the Wind-Down Member through, for example, submission of a guaranty of the Wind-Down Member’s obligations to the Corporation by an entity acceptable to the Corporation and/or additional reporting by the Wind-Down Member;**

- (v) Agreeing to complete one or more trades to which the Wind-Down Member is a party prior to the time the Corporation's guaranty otherwise would become effective pursuant to these Rules and Procedures;**
- (vi) Requiring the Wind-Down Member to post increased Clearing Fund deposits and/or to post its Required Deposit all in cash or in proportions of cash, qualifying bonds and eligible Letters of Credit different from those permitted under Rule 4;**
- (vii) Prohibiting the Wind-Down Member from withdrawing Clearing Fund on deposit in excess of its Required Deposit;**
- (viii) Calculating the Required Deposit of the Wind-Down Member in a manner different from the applicable formulae provided in the Procedures, in order to more appropriately reflect the risk presented by the Wind-Down Member to the Corporation, such as for example, not applying certain components of such calculation; or**
- (ix) Liquidating by buying-in or selling-out, as applicable, any open positions of the Wind-Down Member, for the benefit of such Wind-Down Member with any profit or loss resulting therefrom being debited or credited, as applicable, to the settlement account of the Wind-Down Member.**

If the Corporation takes, or mandates, any action pursuant to this Rule, the Corporation shall, as soon as practicable thereafter, notify the SEC and such other participants as it deems proper due to the nature of such action.

Notwithstanding the foregoing, the Corporation shall not be restricted from exercising any of its rights in these Rules or in any agreements between itself and the Wind-Down Member at any time, including the Corporation's right at any time to cease to act for the Wind-Down Member pursuant to Rule 46.

**RULE 41. (~~RULE NUMBER RESERVED FOR FUTURE USE~~CORPORATION
DEFAULT)**

SEC. 1. If a “Corporation Default” occurs pursuant to Section 2 below, all CNS Transactions which have been guaranteed but have not yet settled, and all obligations and related rights arising thereunder which have been assigned to and assumed by the Corporation pursuant to these Rules, shall be immediately terminated, and the Board shall determine a single net amount owed by or to each Member with respect to such CNS Transactions by applying the valuation and netting procedures set forth in Section 3 of this Rule 41 below. Notwithstanding the foregoing, (a) the occurrence of a Corporation Default shall not affect the rights and obligations of Members party to Balance Orders that they would otherwise have on account of such transactions under these Rules and applicable law; and (b) the treatment of any pending non-guaranteed transactions shall be determined in accordance with the provisions of Rule 42 (Wind-down of the Corporation).

SEC. 2. Certain Definitions. For purposes of this Rule 41:

- (a) Notwithstanding anything to the contrary in the Rules, the following events shall constitute a “Corporation Default”:**
- (i) Failure by the Corporation to make, when due, any undisputed payment or delivery to a Member required to be made by it under and in accordance with these Rules and such failure is not remedied within 7 days after notice of such failure is given to the Corporation by the affected Member; provided that this clause (i) shall not apply to (A) obligations of the Corporation to Wind-Down Members, or Members for whom the Corporation has otherwise ceased to act pursuant to Rule 46 (including an insolvent Member), (B) any payment or delivery which the Corporation satisfies by alternate means as provided in these Rules, or (C) any obligation of the Corporation that is not a payment or delivery obligation of the Corporation to a Member under these Rules; or**
 - (ii) The Corporation (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) institutes a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or presents a petition for its winding-up or liquidation or makes a general assignment for the benefit of creditors; (C) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is**

presented for its winding-up or liquidation and, in each case, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or (D) seeks or becomes subject to the appointment of a receiver, trustee, or other similar official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act for it or for all or substantially all its assets.

- (b) the “CNS Position” of a Member in any CNS Security shall be equal to the net of the Member’s unsettled Long Positions and Short Positions in such security as of the close of Business on the Default Date (and, for the avoidance of doubt, this shall include both CNS positions that have not yet passed Settlement Date and fail positions);
- (c) “Default Date” means the date on which the event that constitutes the Corporation Default occurs; and
- (d) “Net Contract Value” means, for each Member’s CNS Position in a given CNS Security, the net of the Member’s (x) contract price for such net position that, as of the Default Date, has not yet passed Settlement Date, and (y) the Current Market Price in the CNS System on the Default Date for its fail positions, in each case as shown on the applicable reports issued by the Corporation to the Member in accordance with the Procedures applicable to the CNS System.

SEC. 3 Valuation and Calculation of Claims.

- (a) As promptly as practicable, but in any event within 45 days after the Default Date, the Corporation shall fix a dollar amount to be paid or received by each Member to or from the Corporation in connection with the termination of a CNS Transaction, after taking into account all of the applicable following netting and offsetting:
 - (i) The Corporation shall value all CNS Positions by using the Current Market Price, as determined for the CNS System, as of the close of business on the next Business Day immediately following the Default Date, so that each Member shall have the same per share price for a given security in which it had an open CNS Position (the resulting value referred to as the “CNS Market Value”);
 - (ii) For each Member, the Net Contract Value of its terminated CNS Positions shall be determined as provided in

subsection 2(d) above; which amount shall be positive or negative, as applicable;

- (iii) To determine each Member's CNS Close-out Value, (x) the Net Contract Value for each CUSIP shall be subtracted from the CNS Market Value for such CUSIP, and (y) the resulting difference for all CUSIPS in which the Member had a CNS Position shall be summed, and the resulting amount shall be positive or negative, as applicable.
- (iv) The CNS Close-out Value shall be further netted and offset against any other amounts, or the value of any property, as valued by the Corporation, that may be due to, or owing from, the Member under these Rules, taking into account the application of any provisions of Rule 4 relating to loss allocation, including in the event that the Member is in default of its obligations to deliver funds to the Corporation, or the Corporation has prior to the Default Date Ceased to Act for the Member.

(b) The Board shall notify each Member of the CNS Close-out Value, taking into account the netting and offsetting provided for in subsections 3(a)(i) to (iv) above. Members who have been notified that they owe an amount to the Corporation shall pay that amount on or prior to the date specified by the Board, subject to any applicable setoff rights. Members who have a net claim against the Corporation shall be entitled to payment thereof along with other Members' and any other creditors' claims pursuant to the underlying contracts with respect thereto, these Rules and applicable law. For the avoidance of doubt, nothing herein shall limit the rights of the Corporation upon a Member default (including following a Corporation Default), including any rights under any Clearing Agency Cross-Guaranty Agreement or otherwise.

SEC. 4. Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991:

The Corporation and the Members intend that these Rules be interpreted in relation to certain terms (identified below) that are defined in the Federal Deposit Insurance Corporation Act of 1991 ("FDICIA"), as amended, as follows:

The Corporation is a "clearing organization";

Any obligation of a Member or the Corporation to make any payments to the other is a "covered clearing obligation" and a "covered contractual payment obligation";

An entitlement of a Member or the Corporation to receive a payment from the other is a “covered contractual payment entitlement”;

The Corporation and each Member is a “member” of the “clearing organization”;

The amount by which the covered contractual payment entitlements of a Member or the Corporation exceed the covered contractual payment obligations of such Member or the Corporation after netting pursuant to Rule 18 or this Rule 41 is its “net entitlement”;

The amount by which the covered contractual payment obligations of a Member or the Corporation exceed the covered contractual payment entitlements of such Member or the Corporation after netting under a netting pursuant to Rule 18 or this Rule 41 is its “net obligation”; and

These Rules, together with all other agreements between the Corporation and a Clearing Member, are a “netting contract”, the margin, Clearing Fund and other provisions of these Rules granting an interest in any funds or property of a member to the Corporation constitute a “security agreement or arrangement or other credit enhancement” relating to such netting contract and the close-out process in Rule 18 or this Rule 41 constitutes the “terminat[ion], liquidat[ion], accelerat[ion], and nett[ing]” of obligations.

RULE 42. (~~WIND-DOWN OF A MEMBER, FUND MEMBER OR INSURANCE CARRIER/RETIREMENT SERVICES MEMBER~~WIND-DOWN OF THE CORPORATION)

Section 1. Defined Terms

(a) For purposes of this Rule 42:

“Bridge Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Business” means the Critical Services and any Non-Critical Services of the Corporation included in a Transfer.

“Comparability Period” means a period of time following the Transfer, to be agreed between the Corporation and a Transferee, during which the Business transferred from the Corporation to the Transferee shall be operated by the Transferee in a manner comparable to the manner in which the Business was previously operated by the Corporation, as more specifically set forth in Section 9 of this Rule 42.

“Corporation Default Rule” means Rule 41 of the Corporation.

“Critical Services” means the services of the Corporation described in the Rules and Procedures of the Corporation that have been identified as critical services in the Recovery and Wind-down Plan.

“Delinquent Limited Member” means a Limited Member of the Corporation that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).

“Delinquent Member” means a Member of the Corporation that is delinquent in the performance of any of its obligations to the Corporation (as determined by the Corporation).

“DTCC” means The Depository Trust & Clearing Corporation.

“Eligible Limited Member” means a Limited Member of the Corporation other than a Non-Eligible Limited Member.

“Eligible Member” means a Member of the Corporation other than a Non-Eligible Member.

“Failover Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Guaranteed Transaction” means a transaction in CNS Securities or Balance Order Securities that is processed through the facilities of the Corporation and guaranteed by the Corporation.

“Last Settlement Date” has the meaning given to such term in Section 2(c)(3) of this Rule 42.

“Last Transaction Acceptance Date” has the meaning given to such term in Section 2(c)(2) of this Rule 42.

“Limited Member” means a Limited Member of the Corporation (other than a Settling Bank Only Member or an AIP Settling Bank Only Member) or a Limited Member of the Transferee (other than a Settling Bank Only Member or an AIP Settling Bank Only Member), as the context requires.

“Limited Member Agreement” means the form of agreement between a Limited Member and the Corporation or between a Limited Member and the Transferee, as the context requires, providing, *inter alia*, for the Limited Member to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Limited Member.

“Member” means a Member of the Corporation (other than a Settling Bank or AIP Settling Bank) or a Member of the Transferee (other than a Settling Bank or AIP Settling Bank), as the context requires.

“Member Agreement” means the form of agreement between a Member and the Corporation or between a Member and the Transferee, as the context requires, providing, *inter alia*, for the Member to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Member.

“Non-Critical Services” means the services of the Corporation described in the Rules and Procedures of the Corporation other than the Critical Services.

“Non-Eligible Limited Member” means a Limited Member of the Corporation that is a Delinquent Limited Member or Withdrawing Limited Member.

“Non-Eligible Member” means a Member of the Corporation that is a Delinquent Member or Withdrawing Member.

“Non-Guaranteed Transaction” means any transaction that is processed through the facilities of the Corporation other than a Guaranteed Transaction.

“Recovery and Wind-down Plan” means the plan for the recovery and orderly wind-down of the Corporation necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses, adopted by the Corporation pursuant to Rule 17Ad-22(e)(3)(ii) under the Securities Exchange Act of 1934, as amended.

“Recovery Plan” means the portion of the Recovery and Wind-down Plan addressing recovery.

“Risk Reducing Transaction” means a Guaranteed Transaction that offsets one or more other Guaranteed Transactions, and thereby reduces the potential exposure of the Corporation with respect to such Guaranteed Transactions.

“Rules and Procedures” means the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as the context requires.

“Settling Bank” means a Settling Bank, Settling Bank Only Member, AIP Settling Bank or AIP Settling Bank Only Member for Members and Limited Members of the Corporation or a Settling Bank, Settling Bank Only Member, AIP Settling Bank or AIP Settling Bank Only Member for Members and Limited Members of the Transferee, as the context requires.

“Settling Bank Agreement” means the form of agreement between a Settling Bank and the Corporation or between a Settling Bank and the Transferee, as the context requires, providing, *inter alia*, for the Settling Bank to be bound by the Rules and Procedures of the Corporation or the Rules and Procedures of the Transferee, as applicable to such Settling Bank.

“Third Party Entity” has the meaning given to such term in the definition of “Transferee” in this Section 1(a).

“Transfer” means a transfer of the Business of the Corporation pursuant to the Wind-down Plan.

“Transferee” means an entity to which the Business of the Corporation is transferred pursuant to the Wind-down Plan, and may include (i) a failover entity established by DTCC (a “Failover Entity”), (ii) a then-existing or newly-established third party entity (a “Third Party Entity”) or (iii) a bridge entity formed to operate the Business on an interim basis (a “Bridge Entity”). The Transferee shall be an entity that is legally, financially and operationally qualified to continue to operate the Business that is to be transferred from the Corporation to the Transferee.

“Transferee Documents” means the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Transferee.

“Transfer Notice” has the meaning given to such term in Section 3 of this Rule 42.

“Transfer Time” has the meaning given to such term in Section 2(c)(1) of this Rule 42.

“Wind-down Plan” means the portion of the Recovery and Wind-down Plan addressing wind-down.

“Withdrawing Limited Member” means a Limited Member of the Corporation that has given notice to the Corporation of its election to withdraw as a Limited Member but that, at the Transfer Time, has not yet ceased to be a Limited Member (as determined by the Corporation).

“Withdrawing Member” means a Member of the Corporation that has given notice to the Corporation of its election to withdraw as a Member but that, at the Transfer Time, has not yet ceased to be a Member (as determined by the Corporation).

- (b) **Capitalized terms that are used in this Rule 42 but not defined in Section 1(a) above shall have the meanings given to such terms in other Rules and Procedures of the Corporation.**

Section 2. Initiation of Wind-down Plan

- (a) **The Board of Directors may authorize the initiation of the Wind-down Plan and a transfer of the Business from the Corporation to a Transferee if the Board of Directors determines, in the exercise of its business judgment and subject to its fiduciary duties:**
- (1) **that the application of some or all of the recovery tools set forth in the Recovery Plan, necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses:**
- A. **has not restored the Corporation to viability as a going concern, able to continue to provide its Critical Services to Members and Limited Members of the Corporation in a safe and efficient manner; or**
- B. **will not likely restore the Corporation to viability as a going concern, able to continue to provide its Critical**

Services to Members and Limited Members of the Corporation in a safe and efficient manner; and

- (2) **that the implementation of the Wind-down Plan and a Transfer of the Business from the Corporation to a Transferee is in the best interests of the Corporation, its shareholders and creditors, Members and Limited Members and the US financial markets.**

(b) **The Board of Directors shall identify:**

- (1) **the Critical Services and any Non-Critical Services that shall be transferred from the Corporation to the Transferee at the Transfer Time; and**
- (2) **any Non-Critical Services that shall not be transferred from the Corporation to the Transferee.**

The Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee at the Transfer Time shall be provided by the Transferee following the Transfer Time. Any Non-Critical Services that are not transferred from the Corporation to the Transferee shall be terminated at the Transfer Time.

(c) **The Board of Directors shall establish:**

- (1) **the date and time (the “Transfer Time”) of the Transfer;**
- (2) **the last day that transactions may be submitted to the Corporation for processing (the “Last Transaction Acceptance Date”); and**
- (3) **the last day that transactions submitted to the Corporation for processing will be settled (the “Last Settlement Date”).**

The Corporation shall not accept any transactions (i) for processing after the Last Transaction Acceptance Date or (ii) which have a designated Settlement Date that occurs after the Last Settlement Date. All transactions to be processed and/or settled after the Transfer Time shall be submitted to the Transferee in accordance with the Rules and Procedures of the Transferee, and the Corporation shall have no responsibility for such transactions.

- (d) **To the extent that the Board of Directors deems it to be practicable based on the available resources of the Corporation, the Board of Directors may provide for pending transactions to be run off and settled prior to the Transfer Time, with the objective of facilitating the**

settlement of transactions in the ordinary course. In furtherance of this objective, so long as a Corporation Default has not occurred, the Board of Directors may provide for how such transactions accepted by the Corporation on or prior to the Last Transaction Acceptance Date shall be processed and settled, including:

- (1) whether such transactions must be Risk Reducing Transactions; and
- (2) whether such transactions will be processed (i) in the ordinary course or (ii) in accordance with any special or exception processing procedures that will apply through the close of business on the Last Settlement Date.

Section 3. Notice of Transfer of the Business

If the Board of Directors determines to implement a Transfer of the Business from the Corporation to a Transferee in accordance with this Rule 42 and the terms and conditions of the Wind-down Plan, the Corporation shall, in such manner as may be provided by the Rules and Procedures of the Corporation and subject to any required regulatory or judicial approval or consent:

- (a) provide Members, Limited Members and Settling Banks with a notice (a "Transfer Notice") setting forth:
 - (1) the decision taken by the Board of Directors to Transfer the Business from the Corporation to the Transferee and a brief statement of the reasons therefor;
 - (2) the name of the Transferee and basic information about the Transferee;
 - (3) a description of the material financial and operational terms of the Transfer;
 - (4) the (i) Transfer Time, (ii) Last Transaction Acceptance Date and (iii) Last Settlement Date;
 - (5) a summary of the matters described in Sections 4 through 8 of this Rule 42;
 - (6) a list setting forth (i) which Members and Limited Members of the Corporation are Eligible Members and Limited Members and (ii) which Members and Limited Members of the Corporation are Non-Eligible Members and Limited Members; and

- (7) a list setting forth (i) the Critical Services and any Non-Critical Services that will be transferred from the Corporation to the Transferee at the Transfer Time and (ii) any Non-Critical Services that will not be transferred from the Corporation to the Transferee; and
- (b) make available to Members, Limited Members and Settling Banks a copy of the Transferee Documents.

No delay or failure on the part of the Corporation to provide a Transfer Notice or make available a copy of the Transferee Documents to any Member, Limited Member or Settling Bank shall alter the timing or effectiveness of the Transfer. The Corporation shall also furnish the Transfer Notice and a copy of the Transferee Documents to its regulators.

Section 4. Transfer of Members, Limited Members and Settling Banks

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, at the Transfer Time, by operation of this Rule 42 and with no further action required by any party:

- (a) each Eligible Member of the Corporation shall become (i) a Member of the Transferee and (ii) a party to a Member Agreement with the Transferee;
- (b) each Eligible Limited Member of the Corporation shall become (i) a Limited Member of the Transferee and (ii) a party to a Limited Member Agreement with the Transferee; and
- (c) each Settling Bank for Members and Limited Members of the Corporation shall become (i) a Settling Bank for Members and Limited Members of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.

Section 5. Status of Members, Limited Members and Settling Banks

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, from and after the Transfer Time:

- (a) An Eligible Member of the Corporation that has become a Member of the Transferee shall have all of the rights and be subject to all of the obligations of a Member set forth in the Rules and Procedures of the Transferee, including the legal, financial, operational and collateral requirements of the Transferee applicable to such Member.

- (b) An Eligible Limited Member of the Corporation that has become a Limited Member of the Transferee shall have all of the rights and be subject to all of the obligations of a Limited Member set forth in the Rules and Procedures of the Transferee, including the legal, financial and operational requirements of the Transferee applicable to such Limited Member.
- (c) A Settling Bank for Members and Limited Members of the Corporation that has become a Settling Bank for Members and Limited Members of the Transferee shall have all of the rights and be subject to all of the obligations of a Settling Bank set forth in the Rules and Procedures of the Transferee, including the operational requirements of the Transferee applicable to such Settling Bank.

Section 6. Right of Non-Eligible Members and Limited Members to Apply to the Transferee

Nothing contained in this Rule 42 shall:

- (a) preclude a Non-Eligible Member of the Corporation from applying after the Transfer Time to become a Member of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Member shall not have the benefit of the automatic admission arrangements provided in Section 4(a) of this Rule 42; or
- (b) preclude a Non-Eligible Limited Member of the Corporation from applying after the Transfer Time to become a Limited Member of the Transferee in accordance with such eligibility requirements and procedures as may be prescribed by the Transferee, but such Non-Eligible Limited Member shall not have the benefit of the automatic admission arrangements set forth in Section 4(b) of this Rule 42.

Section 7. Right to Withdraw from the Transferee

Nothing contained in this Rule 42 shall:

- (a) preclude an Eligible Member of the Corporation that has become a Member of the Transferee pursuant to Section 4(a) of this Rule 42 from electing to withdraw as a Member from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee;
- (b) preclude an Eligible Limited Member of the Corporation that has become a Limited Member of the Transferee pursuant to Section 4(b) of this Rule 42 from electing to withdraw as a Limited Member from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee; or

- (c) preclude a Settling Bank for Members and Limited Members of the Corporation that has become a Settling Bank for Members and Limited Members of the Transferee pursuant to Section 4(c) of this Rule 42 from electing to withdraw as a Settling Bank from the Transferee at any time after the Transfer Time, subject to the Rules and Procedures of the Transferee.

Section 8. Disposition of Pending Transactions

At the Transfer Time:

- (a) any pending transactions that are Guaranteed Transactions shall be treated as provided in the Corporation Default Rule; and
- (b) any pending transactions that are Non-Guaranteed Transactions shall be settled by the parties outside the facilities of the Corporation, including, if agreed by the Transferee, through the facilities of the Transferee.

Section 9. Certain Ex Ante Matters

Prior to the Transfer Time, the Corporation shall enter into arrangements with a Transferee that is a Failover Entity, or shall use commercially reasonable efforts to enter into arrangements with a Transferee that is a Third Party Entity or Bridge Entity, providing in either case that, with respect to the Critical Services and any Non-Critical Services that are transferred from the Corporation to the Transferee, for at least the duration of the Comparability Period, in order to facilitate a smooth Transfer of the Business from the Corporation to the Transferee:

- (a) the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Transferee shall be comparable in substance and effect to the Rules and Procedures, Member Agreement, Limited Member Agreement and Settling Bank Agreement of the Corporation;
- (b) the rights and obligations of Members, Limited Members and Settling Banks of the Transferee under the Rules and Procedures of the Transferee shall be comparable in substance and effect to the rights and obligations of Members, Limited Members and Settling Banks of the Corporation under the Rules and Procedures of the Corporation; and
- (c) the Critical Services and any Non-Critical Services provided by the Transferee shall be provided in a manner that is comparable in substance and effect to the manner in which such Critical Services and Non-Critical Services were provided by the Corporation.

Section 10. Subordination of Claims

In the event of any insolvency of the Corporation following the commencement of any Event Period (as defined in Rule 4), the unsecured claims (if any) of Members and Limited Members of the Corporation that failed to pay or perform any obligation to the Corporation or elected to withdraw as Members or Limited Members from and after such time shall (i) rank *pari passu* with each other and (ii) be subordinate to the claims of other unsecured creditors of the Corporation.

Section 11. Further Assurances; Additional Powers; Miscellaneous Matters

- (a) Members, Limited Members and Settling Banks of the Corporation shall assist and cooperate with the Corporation to effectuate any Transfer of the Business from the Corporation to a Transferee, including without limitation (i) by complying with the terms and conditions of this Rule 42 and their obligations hereunder and (ii) by providing the Corporation and the Transferee with such financial and operational information as they may request. The Corporation may provide to a Transferee any financial and operational information it has with respect to Members, Limited Members and Settling Banks of the Corporation as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to the Transferee.**
- (b) The Corporation may take such other actions and enter into such other arrangements (on behalf of itself and its Members, Limited Members and Settling Banks) as may be necessary and appropriate to effectuate an orderly Transfer of the Business from the Corporation to a Transferee, and otherwise accomplish the purposes of the Wind-down Plan.**
- (c) As a condition to receiving, and by virtue of accepting, the continuing benefits of being Members, Limited Members and Settling Banks of the Corporation, such Members, Limited Members and Settling Banks (i) hereby expressly agree to the arrangements set forth in this Rule 42 relating to their becoming Members, Limited Members and Settling Banks, as the case may be, of the Transferee in the circumstances described herein and (ii) hereby expressly grant to the Corporation an irrevocable power of attorney to execute and deliver on their behalf such documents and instruments as the Transferee may request for this purpose. As Members, Limited Members and Settling Banks of the Corporation, such Members, Limited Members and Settling Banks are subject to the Rules and Procedures of the Corporation.**
- (d) No actions taken or omitted to be taken by the Corporation pursuant to this Rule 42 shall be deemed to constitute a default by the**

Corporation in the performance of any of its other obligations to Members, Limited Members and Settling Banks of the Corporation pursuant to any other Rules and Procedures of the Corporation.

- (e) The Corporation shall have no liability to any Members, Limited Members, or Settling Banks of the Corporation for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 42.
- (f) The Corporation shall have no liability to any third parties, including any customers or clients of any Members, Limited Members or Settling Banks of the Corporation, for any actions taken or omitted to be taken by the Corporation pursuant to this Rule 42.
- (g) In connection with the Transfer of the Business from the Corporation to the Transferee, (i) the Corporation shall assign all of its Member Agreements, Limited Member Agreements and Settling Bank Agreements to the Transferee and (ii) the Transferee shall assume such Member Agreements, Limited Member Agreements and Settling Bank Agreements.
- (h) All rights of the Corporation that are not assigned to the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee, including any claims of the Corporation against Members, Limited Members and Settling Banks arising at any time prior to the Transfer Time, shall remain rights of the Corporation, enforceable by the Corporation in accordance with their terms and subject to applicable law (including insolvency law).
- (i) All obligations and liabilities of the Corporation that are not assigned to and assumed by the Transferee in connection with the Transfer of the Business from the Corporation to the Transferee shall remain obligations and liabilities of the Corporation, enforceable against the Corporation in accordance with their terms and subject to applicable law (including insolvency law).
- (j) In the event of any conflict between the provisions of this Rule 42 and any other Rules and Procedures of the Corporation, the provisions of this Rule 42 shall prevail.

~~When a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member notifies the Corporation that it intends to wind down its activities, the Corporation may, in its sole discretion, in order to protect itself and its participants, determine that such Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a "Wind-Down Member". In that event and, without limiting any other rights of the Corporation under these~~

~~Rules and Procedures, the Corporation may impose conditions on, or take actions with respect to, the Wind-Down Member as provided below.~~

~~As soon as practicable after the Corporation determines that a Member, Mutual Fund/Insurance Services Member, Fund Member, Insurance Carrier/Retirement Services Member or AIP Member is a Wind-Down Member, the Corporation shall notify the Wind-Down Member, all other participants and the SEC of such determination.~~

~~The Corporation may, in its discretion, impose conditions on, or take actions with respect to, the Wind-Down Member as appropriate to mitigate risk the Corporation perceives may be presented by the Wind-Down Member, including but not limited to, the following:~~

- ~~(i) Permitting the Wind-Down Member to submit to the Corporation only transactions that serve to support the wind-down;~~
- ~~(ii) Permitting the Wind-Down Member to continue use of one or more of the Corporation's services, notwithstanding that it may not meet some or all of the financial or operational requirements for continuance as a Member or Limited Member, as applicable;~~
- ~~(iii) Restricting or modifying the Wind-Down Member's use of any or all of the Corporation's services (whether generally, or with respect to certain transactions);~~
- ~~(iv) Requiring additional assurances of the financial responsibility or operational capability of the Wind-Down Member through, for example, submission of a guaranty of the Wind-Down Member's obligations to the Corporation by an entity acceptable to the Corporation and/or additional reporting by the Wind-Down Member;~~
- ~~(v) Agreeing to complete one or more trades to which the Wind-Down Member is a party prior to the time the Corporation's guaranty otherwise would become effective pursuant to these Rules and Procedures;~~
- ~~(vi) Requiring the Wind-Down Member to post increased Clearing Fund deposits and/or to post its Required Deposit all in cash or in proportions of cash, qualifying bonds and eligible Letters of Credit different from those permitted under Rule 4;~~
- ~~(vii) Prohibiting the Wind-Down Member from withdrawing Clearing Fund on deposit in excess of its Required Deposit;~~
- ~~(viii) Calculating the Required Deposit of the Wind-Down Member in a manner different from the applicable formulae provided in the~~

~~Procedures, in order to more appropriately reflect the risk presented by the Wind-Down Member to the Corporation, such as for example, not applying certain components of such calculation; or~~

- ~~(ix) Liquidating by buying-in or selling-out, as applicable, any open positions of the Wind-Down Member, for the benefit of such Wind-Down Member with any profit or loss resulting therefrom being debited or credited, as applicable, to the settlement account of the Wind-Down Member.~~

~~If the Corporation takes, or mandates, any action pursuant to this Rule, the Corporation shall, as soon as practicable thereafter, notify the SEC and such other participants as it deems proper due to the nature of such action.~~

~~Notwithstanding the foregoing, the Corporation shall not be restricted from exercising any of its rights in these Rules or in any agreements between itself and the Wind-Down Member at any time, including the Corporation's right at any time to cease to act for the Wind-Down Member pursuant to Rule 46.~~

**RULE 60. (RULE NUMBER RESERVED FOR FUTURE USE) MARKET DISRUPTION
AND FORCE MAJEURE**

Section 1. Market Disruption Events

On the happening of any one or more of the events or circumstances set out below (each a “Market Disruption Event”) which, in any case, is likely to materially affect or has materially affected the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, including performance by the Corporation of any obligations under these Rules & Procedures, the Corporation shall be entitled to take such action as is set out in this Rule 60:

- (a) a general suspension or limitation of trading on the New York Stock Exchange, NASDAQ, or any other exchange or market relevant to the pricing or trading of securities cleared and settled through the Corporation;**
- (b) the declaration of a trading or banking moratorium in the United States or New York State;**
- (c) any international organization, the government of any nation, state, or territory, or any institution or agency thereof, or any self-regulatory organization taking action of a nature likely to affect the normal course of business, including performance by the Corporation of obligations under these Rules & Procedures;**
- (d) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any payment, bank transfer or wire, or securities settlement system;**
- (e) the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of any cash or securities depository, custodian or clearing bank, or any material variation of such depository’s, custodian’s or clearing bank’s processing or turnaround times, whether or not occasioned by action of such depository, custodian or clearing bank; or**
- (f) any Force Majeure, which shall include (without limitation) any terrorist or other criminal action, war or hostilities between any nations, national emergency, riot, civil unrest, acts of God or the public enemy, fire or other casualty, flood, accident, disaster (including any nuclear, atomic, environmental, or natural disaster), sabotage, bomb threat, labor dispute, embargo, the unavailability, failure, malfunction, or restriction of communication, computer, or data processing systems or facilities, or of software or technology, cyber attack, lack of transportation facilities, interruption (whether partial or total) of power supplies or other utility or**

service, or any event, situation, or circumstance beyond the reasonable control of the parties (whether or not similar to any of the foregoing), including those imminent or threatened.

Section 2. Powers of the Corporation

If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 60. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, or the General Counsel, or by any management committee on which all of the foregoing officers serves (an "Officer Market Disruption Event Action"), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event within 5 business days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action.

Section 3. Authority to take Actions

Upon the determination that there is a Market Disruption Event, the Corporation shall be entitled, during the pendency of such Market Disruption Event, to:

- (a) suspend the provision of any or all services of the Corporation; and
- (b) take, or refrain from taking, or require Members and/or Limited Members (whether or not they are affected by the Market Disruption Event) to take or refrain from taking, any and all action which the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to Members and/or Limited Members.

Section 4. Notifications

4.1 Each Member and Limited Member shall notify the Corporation immediately upon becoming aware of any Market Disruption Event.

4.2 The Corporation shall promptly notify Members and Limited Members of any action the Corporation takes or intends to take pursuant to Section 3 of this Rule 60.

4.3 The Corporation shall attempt to consult with officials of the Securities and Exchange Commission prior to the Corporation taking any action pursuant to Section 3 of this Rule 60; provided, however, that the authority contained herein shall not be conditioned by such consultation.

The Corporation shall advise the Securities and Exchange Commission as soon as practicable by telephone, and confirmed in writing, of any action taken by the Corporation pursuant to Section 3 of this Rule 60, and a record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member or Limited Member during regular business hours on business days.

The Corporation shall also advise the Securities and Exchange Commission as soon as practicable by telephone, and confirmed in writing, at such time it determines that there is no longer a Market Disruption Event and the Corporation terminates the actions taken by the Corporation pursuant to Section 3 of this Rule 60. A record of such writing shall be promptly made and filed with the Corporation's records and shall be available for inspection by any Member or Limited Member during regular business hours on business days.

Section 5. Certain Miscellaneous Matters

(a) Without limiting any other provisions in these Rules & Procedures concerning limitations on liability, none of the Corporation, its directors, officers, employees, agents, or contractors shall be liable to a Member, Limited Member or any other person (including any customer or client thereof) for:

(i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Market Disruption Event; or

(ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 60.

(b) The power of the Corporation to take any action pursuant to this Rule 60 also includes the power to repeal, rescind, revoke, amend, or vary any such action.

- (c) The powers of the Corporation pursuant to this Rule 60 shall be in addition to, and not in derogation of, authority granted elsewhere in these Rules & Procedures to take action as specified therein.**
- (d) In the event of any conflict between the provisions of this Rule 60 and any other Rules or Procedures, the provisions of this Rule 60 shall prevail.**