



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

## **Clearing Rules**

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**Part 1** General Provisions

**Rule 101** *Definitions*

The term "**Account**" means a Customer Account or Proprietary Account, as the case may be, of a Clearing Member.

The term "**Accounting Standards**" means applicable accounting standards and principles.

The term "**Affected FM Party**" means a Person prevented, hindered or delayed by a Force Majeure Event.

The term "**Affiliated Person**" or "**Affiliate**" means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person.

The term "**Appeals Panel**" means the panel at which an appeal of a decision of a Disciplinary Panel is heard pursuant to Rule 1005.

The term "**Applicable Law**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession, judgment or decision of a Governmental Authority and, for the avoidance of doubt, includes all the provisions of the FSA Rules and any rules or regulations of any other Regulatory Authority.

The term "**Approved Financial Institution**" means a credit institution, bank, trust company or other institution which is an "institution" as defined in the Settlement Finality Regulations and which has been designated as an approved financial institution by the Clearing House for purposes of making and receiving cash transfers to and from the Clearing House and Payment Transfer Orders.

The term "**Approved CDS Trade Processing Platform**" has the meaning given to that term in the definition of Trade Processing Platform below.

The term "**Assessment Contribution**" means an F&O Assessment Contribution, a CDS Assessment Contribution or an FX Assessment Contribution.

The term "**Banking Consolidation Directive**" means Directive 2006/48/EC.

The term "**Bankruptcy**" means, in relation to a Person, where that Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it, by a Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, 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 by it or such Governmental Authority; (v) 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 such proceeding or petition is instituted or presented by a person or entity not described in (iv) above and either (1) 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 (2) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (viii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (ix) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in (i) to (viii) above; or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts. For the purposes of this definition and for the avoidance of doubt, "Person", in the case of a CDS Clearing Member, includes any Office (as defined in the CDS Procedures) which the Clearing House and the CDS Clearing Member have agreed pursuant to paragraph 9.2(h)(ii) of the CDS Procedures that the CDS Clearing Member may enter into a CDS Contract through or have an open CDS Contract recorded in the name of, or any Office of such CDS Clearing Member through which it is acting.

The term "**BClear**" means a service operated by LIFFE which enables LIFFE Clearing Members to report certain trades that have been made bilaterally in the over-the-counter market, to LIFFE for the purposes of the LIFFE Rules.

The term "**Bilateral CDS Transaction**" means: (i) a CDS transaction between two CDS Clearing Members (or, to the extent permitted in the CDS Procedures, involving the same CDS Clearing Member acting in two different capacities) or (ii) a CDS transaction between a CDS Clearing Member and an Affiliate of the same or a different CDS Clearing Member or (iii) a CDS transaction between an Affiliate of a CDS Clearing Member and an Affiliate of the same or a different CDS Clearing Member (to which in either case (i), (ii) or (iii), for the avoidance of doubt, the Clearing House is not a party).

The term "**Board**" means the board of Directors or any other body established thereunder (whether called a board, a committee or otherwise) of the Clearing House.

The term "**Business Day**" means a day on which the Clearing House is open for business or, in relation to deliveries in respect of a particular F&O Contract, has the meaning given in the Delivery Procedures or, in relation to certain Contract Terms, has the meaning given in or pursuant to the Contract Terms Procedures, ICE Endex Rules, ICE Futures Europe Rules, ICE Futures US Rules or LIFFE Rules.

The term "**Buyer**" means, in relation to deliveries under Part 7 or a Contract of Sale, the Clearing Member or the Clearing House, whichever is obliged to receive delivery of a Deliverable (whether itself or through another Person).

The term "**Buying Clearing Member**" means, in respect of a Contract: (a) except in circumstances in which sub-paragraph (c) below applies, the Clearing Member that was, before formation of a Contract, party to the corresponding Transaction (or specified in the CDS Trade Particulars) as buyer (or, in relation to CDS Contracts, as protection buyer or, in relation to a Financially-Settled FX Contract, Reference Currency Buyer); (b) except in circumstances in which sub-paragraph (c) below applies, where a Non-FCM/BD Clearing Member's Customer is a party to the corresponding Transaction (or specified in the CDS Trade Particulars) as buyer, protection buyer or Reference Currency Buyer (as applicable), the Clearing Member that provides clearing services to that Customer in relation to the Transaction (or CDS Trade Particulars) in question (or, for F&O Contracts, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); (c) where an FCM/BD Customer is a party to the corresponding Transaction (or specified in the CDS Trade Particulars) as buyer or protection buyer (as applicable), the FCM/BD Clearing Member clearing on behalf of such FCM/BD Customer; or (d) in relation to F&O Contracts only and overriding any designation that would occur pursuant to (a), (b) or (c) above, where one Clearing Member that would be the Buying Clearing Member in accordance with (a), (b) or (c) above has allocated an F&O Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such F&O Transaction is allocated.

The term "**CAD**" means Canadian dollars, or any other lawful currency that is a successor to it.

The term "**Call**", in respect of an F&O Contract, means an Option pursuant to which a Person with a Long position has the actual or notional right to buy a Deliverable from a Person with a Short position at the Strike Price and at a specified time.

The term "**Capital**":

- (a) with respect to a Non-FCM/BD Clearing Member, has the same meaning as the term "own funds", as such term is defined in the Banking Consolidation Directive and determined on a stand-alone (non-consolidated) basis and subject to the limits and deductions set out therein and, in relation to matters reserved for member states, as implemented in the United Kingdom, whether or not the relevant Clearing Member is subject to the Banking Consolidation Directive or the supervision of the FSA; or
- (b) with respect to an FCM/BD Clearing Member, means its "adjusted net capital" as defined in CFTC Rule 1.17,

and, in either case, such other classes of capital as are permitted at the Clearing House's discretion pursuant to the Finance Procedures.

The term "**CDS**" means credit default swap.

The term "**CDS Assessment Amount**" means the total amount of all CDS Assessment Contributions payable by CDS Clearing Members pursuant to Rule ~~106~~[910\(a\)](#) in respect of an Event of Default.

The term "**CDS Assessment Contribution**" has the meaning set out in Rule ~~106~~[910\(b\)](#).

The term "**CDS Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to CDS Contracts.

The term "**CDS Contract**" means a Contract that is a CDS to which the Clearing House is party in accordance with these Rules and the CDS Procedures, which may be in the form of a CDS relating to an index or a single reference entity or in the form of a Component Transaction (as defined in Part 15).

The term "**CDS Customer Account**" means, in relation to a Non-FCM/BD Clearing Member, a kind of Customer Account with the Clearing House used for the recording of CDS Contracts entered into by that CDS Clearing Member on a back-to-back basis with one or more Customer-CM CDS Transactions, and related Margin.

The term "**CDS Default Amount**" has the meaning set out in Rule ~~403~~908(e).

The term "**CDS Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating to the Clearing of CDS Contracts.

The term "**CDS Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the CDS Guaranty Fund.

The term "**CDS Sub-Account**" means, in relation to a CDS Clearing Member, each account at the Clearing House with a unique identification number used by that CDS Clearing Member in accordance with an election under Rule 406(d) for the recording of details of CDS Contracts with the Clearing House, which account is linked to an identification code at Deriv/SERV for the recording of details of trades relating to such CDS Contracts and which account is further linked to the CDS Clearing Member's Proprietary Account or its Designated CDS Customer Account, as a sub-account of the relevant Proprietary Position Account or the Customer Position Account (as applicable).

The term "**CDS Trade Particulars**" means trade particulars submitted to the Clearing House by a Clearing Member or Clearing Members (including by any Representative, including via a Trade Processing Platform), which particulars, if accepted by the Clearing House, will give rise to a CDS Contract or CDS Contracts (and, in the case of particulars submitted by a Non-FCM/BD Clearing Member for its Designated CDS Customer Account, a Customer-CM CDS Transaction). For the avoidance of doubt, CDS Trade Particulars may or may not reflect a binding Bilateral CDS Transaction between two CDS Clearing Members or any binding transaction between a CDS Clearing Member and its Customer.

The term "**CEA**" means the U.S. Commodity Exchange Act.

The term "**CFTC**" means the Commodity Futures Trading Commission of the United States of America, or any successor thereto.

The term "**Chairman**" means the chairman of the Board from time to time.

The term "**CHF**" means the Swiss frank, or any other lawful currency that is a successor to it.

The term "**Circular**" means a publication issued by the Clearing House for the attention of all Clearing Members and posted on the Clearing House's website in accordance with Rule 109(g).

The term "**Clearing**" means the central counterparty and, where relevant, related risk, Open Contract Position, Margin, settlement, delivery, administrative, acceptance, transaction data, 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 1103~~ [Rules 908\(c\)\(v\)\(B\)](#) or ~~1103~~ [908\(g\)\(v\)\(C\)](#) and as maintained pursuant to Rule ~~1104~~ [1103\(e\)](#) 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 1103~~ [Rules 908\(c\)\(iv\)](#) or ~~Rule 1103~~ [908\(g\)\(iv\)\(B\)](#) and as maintained pursuant to Rule ~~1104~~ [1103\(e\)](#) 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 1103~~ [Rules 908\(b\)\(v\)\(B\)](#) or ~~1103~~ [908\(g\)\(v\)\(B\)](#) and as maintained pursuant to Rule ~~1104~~ [1103\(e\)](#) 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 LIFFE Contracts.

The term "**Clearing House F&O GF (LIFFE) Contribution**" means that portion of the Clearing House F&O GF Contribution as is allocated by the Clearing House as applying primarily to LIFFE 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~~



~~1103~~Rules 908(b)(iv) or ~~1103~~908(g)(iv)(A) and as maintained pursuant to Rule ~~1104~~1103(e) 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 LIFFE Contracts.

The term "**Clearing House F&O Initial (LIFFE) Contribution**" means that portion of the Clearing House F&O Initial Contribution as is allocated by the Clearing House as applying primarily to LIFFE 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 1103~~Rules 908(d)(v)(B) or ~~Rule 1103~~908(g)(v)(D) and as maintained pursuant to Rule ~~1104~~1103(e) 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 1103~~Rules 908(d)(iv) or ~~Rule 1103~~908(g)(iv)(C) and as maintained pursuant to Rule ~~1104~~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 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 LIFFE 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.

The term "**Concentration Bank**" means an Approved Financial Institution at which the Clearing House has an account or accounts for the purpose of making transfers between Clearing House Accounts.

The term "**Continuing CDS Rule Provisions**" means the Rules as in effect prior to the effectiveness of Circular C14/XXX as of February 1, 2014, which Continuing CDS Rule Provisions will continue to be in effect with respect to the CDS Contract Category as set forth herein. The Continuing CDS Rule Provisions will be available on the Clearing House website at <http://www.theice.com>[ ] or a successor website identified by the Clearing House.

The term "**Contract**" means a contract between the Clearing House and a Clearing Member arising in accordance with these Rules, and as amended, subject to netting or aggregation in accordance with these Rules, the terms and conditions of which are the relevant Contract Terms.

The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House which are linked to a specific Guaranty Fund, i.e. F&O Contracts, CDS Contracts and FX Contracts.

For the definition of the term "**Contract Position**", see 'Open Contract Position' below.

The term "**Contract Terms**" means all the terms and conditions of a Contract, as applicable, in: (i) (in relation to F&O Contracts only) the general conditions set out in the Contract Terms Procedures; (ii) (in relation to ICE Endex Contracts only) the ICE Endex Rules; (iii) (in relation to ICE Futures Europe Contracts only) the ICE Futures Europe Rules; (iv) (in relation to ICE Futures US Contracts only) the ICE Futures US Rules; (v) (in relation to LIFFE Contracts only) the LIFFE Rules; (vi) (in relation to ICE OTC Contracts only) the specific standard terms and eligibility criteria set out in the Contract Terms Procedures and Clearing Procedures for the class of Contract involved, the ICE OTC Participant Agreement between the Clearing Member and the ICE OTC Operator and any relevant ICE OTC Broker Agreement; (vii) (except in relation to F&O Contracts which are settled only in cash) if such F&O Contract becomes deliverable or is a Contract of Sale, the relevant Delivery Procedures for the class of F&O Contract, the specified standard terms set out in the Contract Terms Procedures and ICE Endex Rules, ICE Futures Europe Rules, ICE Futures US Rules or LIFFE Rules, as applicable; (viii) for CDS Contracts, the terms specified pursuant to Rule 1502; and (ix) for FX Contracts, the general conditions set out in the Rules and Procedures.

The term "**Control**" means the rights and powers exercised over a Person by a Controller and its cognate terms shall be construed accordingly.

The term "**Controller**" has the meaning given to that term in section 422 of the FSMA.

The term "**Controller Guarantee**" means a guarantee given by a Controller of a Clearing Member under Rule 201(a)(ix).

The term "**Corresponding Contract**", means an transaction arising or as referred to in Rule 401(m) between a Non-FCM/BD Clearing Member and a Segregated Customer on economic

terms similar to a corresponding Non-CDS Contract recorded in the Clearing Member's Non-CDS Customer Account (except, where applicable, the position of the Clearing Member as buyer or seller).

The term "**Credit Derivatives Definitions**" means the document of that name dated 2003 published by ISDA as supplemented by the 2009 ISDA Credit Derivatives Determination Committees, Auction Settlement and Restructuring Supplement to the Credit Derivatives Definitions (published by ISDA on 14 July 2009) and the Credit Derivatives Determinations Committees Rules (published by ISDA and as amended from time to time) including as supplemented or modified by incorporation of any additional provisions thereto (howsoever described) under, and as amended by, the Contract Terms for any relevant CDS Contract from time to time.

The term "**Credit Support Document**" means any guarantee or letter of credit or other security interest issued or granted to or for the benefit of the Clearing House that guarantees, covers or secures the Clearing Member's obligations under any Contract, but excluding any Pledged Collateral Addendum.

The term "**Credit Support Provider**" means, in respect of a Clearing Member each provider of a Credit Support Document in relation to that Clearing Member.

The term "**Customer**" means a Person who is a client or customer of a Clearing Member (which Customer may, subject to Applicable Law, be acting for one or more other clients or customers for purposes of the clearing of Contracts).

The term "**Customer Account**" means, in respect of a Clearing Member, any one customer account of the various different Customer Account Categories and comprises in the case of each Customer Account the related Customer Position Account and Customer Margin Account.

The term "**Customer Account Category**" means: (i) in relation to an FCM/BD Clearing Member, any of the following categories of Customer Account: DCM Customer Account, Non-DCM/Swap Customer Account, Swap Customer Account, Non-CDS Customer Account and SBS Customer Account; and (ii) in relation to a Non-FCM/BD Clearing Member, any of the following categories of Customer Account: Non-CDS Customer Account and CDS Customer Account.

The term "**Customer Account Contract**" means a Contract recorded in a Customer Position Account of a Clearing Member.

The term "**Customer Account Gross-Net Amount**" in respect of a Designated CDS Customer Account, means all Margin recorded in that Designated CDS Customer Account, excluding the Customer Account Net Margin Amount, any Surplus Collateral and, for the avoidance of doubt, excluding any Clearing Member-Required Additional Margin.

The term "**Customer Account Net Margin Amount**" in respect of a Designated CDS Customer Account, means, for the relevant CDS Clearing Member, the part of the aggregate amount of Initial Margin (other than Physical Settlement Margin) recorded in the Customer Margin Account of that CDS Clearing Member which would have been required if the Initial Margin recorded in that Designated CDS Customer Account were required to be provided based on the contract

positions that would be recorded in the related Customer Position Account were the gross protection buyer Open Contract Position to be netted against the gross protection seller Open Contract Position for each Set of Contracts.

The term "**Customer Account Position**" means an Open Contract Position as recorded in the Customer Position Account of a Clearing Member, or any sub-account thereof.

The term "**Customer Clearing Member Agreement**" has the meaning set out in the Standard Terms.

The term "**Customer-CM CDS Transaction**" means a CDS transaction between a Non-FCM/BD CDS Clearing Member and a Segregated CDS Customer on economic terms similar to those of a corresponding CDS Contract recorded in the Clearing Member's CDS Customer Account (except, where applicable, the position of the CDS Clearing Member as protection buyer or protection seller and otherwise due to being governed by the Standard Terms).

The term "**Customer-CM Collateral**" means collateral provided by a Segregated CDS Customer to a CDS Clearing Member as collateral for the Segregated CDS Customer's obligations (or, where applicable, other obligations) to the CDS Clearing Member under Customer-CM CDS Transactions.

The "**Customer Margin Account**" forms part of a Customer Account and the term means an account with the Clearing House opened in the name of a Clearing Member for the recording of debits and credits of Margin in respect of Customer Account Contracts recorded in the related Customer Position Account, which may be divided for administrative convenience only into sub-accounts relating to different Segregated Customers or groups of Segregated Customers.

The "**Customer Position Account**" forms part of a Customer Account and the term means an account (if any) with the Clearing House opened in the name of a Clearing Member relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Segregated Customers and in which the Clearing House records such Contracts, which may be divided for administrative convenience only into sub-accounts (including, for the avoidance of doubt, CDS Sub-Accounts) relating to different Segregated Customers or groups of Segregated Customers.

The term "**DCM Customer**" means any FCM/BD Customer with respect to any Contract arising as a result of a Transaction in U.S. Futures. A Person may be a DCM Customer in relation to certain Contracts and another category of FCM/BD Customer in relation to other Contracts.

The term "**DCM Customer Account**", in respect of an FCM/BD Clearing Member, means a kind of Customer Account with the Clearing House (in its capacity as a registered U.S. derivatives clearing organization clearing Contracts that are U.S. Futures), the books and records of which are located in the United States of America, opened in the name of the FCM/BD Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to DCM Customers where segregation of related collateral is required in accordance with Section 4d(a) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and entering into market contracts in the capacity of a clearing member in relation to transactions connected with the provision of services to DCM Customers) relating to

Contracts to which the FCM/BD Clearing Member is a party as a result of it acting for one or more DCM Customers (whose transactions the FCM/BD Clearing Member requests be recorded in the DCM Customer Account where the same is required in accordance with the segregation provisions of Section 4d(a) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder) and in which the Clearing House records such Contracts and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different DCM Customers or groups of DCM Customers.

The term "**Default Amount**" means any of the F&O Default Amount, the CDS Default Amount or the FX Default Amount, as the context requires, and "**Default Amounts**" means any two of the foregoing or all of them, as the context requires.

The term "**Default Notice**" means a notice issued by the Clearing House under Rule 902(b).

The term "**Default Portability Preference**", in respect of a particular Segregated CDS Customer of a Non-FCM/BD CDS Clearing Member, has the meaning set out in the Standard Terms.

The term "**Default Portability Rules**" means Rule 904 and any terms setting out the meaning of the defined terms used therein.

The term "**Defaulter**" means a Clearing Member or former Clearing Member in respect of whom a Default Notice has been issued.

The term "**Deliverable**" means any property, right, interest, register or book entry, commodity, certificate, property entitlement or Investment, which is capable of being delivered pursuant to an F&O Contract.

The term "**Delivery Default**" means a Clearing Member failing to deliver or transfer to the Clearing House in full any Deliverable required to be delivered or transferred by that Clearing Member under or in connection with any Contract, including a failure to deliver or transfer a Deliverable in accordance with the applicable Delivery Procedures, unless such failure constitutes a Force Majeure Event affecting the relevant Clearing Member.

The term "**Delivery Facility**" means any Person or facility used for the delivery of Deliverables (excluding Transferors and Transferees).

The term "**Deriv/SERV**" means The Depository Trust & Clearing Corporation's system for storage and processing of trade information in relation to CDS, currently known as Deriv/SERV, or any successor thereto.

The term "**Designated CDS Customer Account**" refers to one or more of various different kinds of Customer Account of a Clearing Member (but is not itself a kind of Customer Account) and means: (i) in respect of a Non-FCM/BD CDS Clearing Member, its CDS Customer Account; or (ii) in respect of an FCM/BD Clearing Member, either or both the Swap Customer Account or the SBS Customer Account as is used by it for the recording of CDS Contracts on behalf of the Customer in question. If an FCM/BD Clearing Member uses more than one Customer Account for the recording of CDS Contracts, each such Customer Account shall be a separate Designated CDS

Customer Account and references herein to the Designated CDS Customer Account shall be either to such Designated CDS Customer Account as is relevant or to both of their Designated CDS Customer Accounts, as the context requires.

The term "**Designated Controller**" means a Controller that has: (i) been notified to the Clearing House by the Clearing Member as a controller which should be taken into account by the Clearing House for purposes of calculating the Capital or Margin requirements of the Clearing Member; and (ii) executed in favour of, and delivered to, the Clearing House an acceptable Controller Guarantee, which Controller Guarantee remains valid and in effect.

The term "**Director**" means a director of the Clearing House.

The term "**Disciplinary Panel**" means a disciplinary panel established pursuant to Rule 1003.

The term "**Disclosed Principal Member**" means, where a Clearing Member acts as agent for a disclosed principal in respect of its Energy Contract clearing business and such principal has been admitted by the Clearing House as a Disclosed Principal Member, that principal.

The term "**Dispute**" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with these Rules or any Contract, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of these Rules or any Contract.

The term "**EFPs**" means 'exchange for physicals' under the ICE Futures Europe Rules or ICE Futures US Rules, as applicable or any similar transaction under LIFFE Rules or ICE Endex Rules.

The term "**EFs**" means 'exchange for swaps' under the ICE Futures Europe Rules or 'exchange for related position' under ICE Futures US Rules, as applicable or any similar transaction under LIFFE Rules or ICE Endex Rules.

The term "**Eligible Complaint**" means a complaint which is eligible pursuant to the Complaints Procedures.

The term "**Eligible Currencies**" means USD, EUR, GBP, CAD, CHF, SEK and such other currencies as are specified as such by the Clearing House from time to time.

The term "**Encumbrance**" means any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing.

The term "**Energy Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to Energy Contracts.

The term "**Energy Contracts**" means Contracts resulting from the clearing of Energy Transactions.

The term "**Energy Transaction**" means an ICE Endex Transaction, ICE Futures Europe Transaction, ICE Futures US Transaction or an ICE OTC Transaction.

The term "**EUR**" means the euro, or any other lawful currency that is a successor to it.

The term "**Event of Default**" has the meaning set out in Rule 901 and the term "**Default**" shall be construed accordingly.

The term "**Exchange**" means any exchange or similar body duly authorised, regulated, recognised or licensed (to the extent necessary) under Applicable Laws in any jurisdiction, including, but not limited to, any recognised investment exchange, recognised overseas investment exchange, designated investment exchange, designated contract market, exempt commercial market, regulated market, alternative trading system, multilateral trading facility or similar entity.

The term "**Exchange Act**" means the U.S. Securities Exchange Act of 1934.

The term "**F&O Assessment Amount**" means the total amount of all F&O Assessment Contributions payable by F&O Clearing Members pursuant to Rule ~~1105~~909(a) in respect of an Event of Default.

The term "**F&O Assessment Contribution**" has the meaning set out in Rule ~~1105~~909(b).

The term "**F&O Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to Energy Contracts or LIFFE Contracts or both.

The term "**F&O Contract**" means an Energy Contract and/or a LIFFE Contract.

The term "**F&O Default Amount**" has the meaning set out in Rule ~~1103~~908(e).

The term "**F&O Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part ~~119~~9 relating only to F&O Contracts.

The term "**F&O Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the F&O Guaranty Fund.

The term "**F&O Transaction**" means an Energy Transaction and/or LIFFE Transaction.

The term "**Failure To Pay**" means, in respect of a particular Contract Category, the failure of the Clearing House to make any payment when due (including the return of assets equivalent to any Pledged Collateral) pursuant to Part 3 of the Rules ~~in relation to CDS Contracts~~ if such failure is not remedied on or before:

- (i) if no extension has been granted to the Clearing House pursuant to Rule 110(b) or Rule 110(c) prior to this date: the date falling 3 Business Days after notice of such failure is given to it by the ~~CDS~~ Clearing Member to which such payment or return is due; or



- (ii) if an extension has been granted to the Clearing House as referred to in paragraph (i) of this definition, 10 a.m. on the next Business Day after service of a notice of that failure to the Clearing House by the ~~CDS~~ Clearing Member to which such payment or return is due, provided that such notice is given no earlier than the final day of a period for which an extension has been granted to the Clearing House pursuant to Rule 110(b) or Rule 110(c),

save to the extent that any such failure to pay or return constitutes a Force Majeure Event affecting the Clearing House.

The term "**FCM/BD**" means a Person registered as a futures commission merchant with the CFTC and/or as a broker-dealer with the SEC, as applicable.

The term "**FCM/BD Clearing Member**" means a Clearing Member that is an FCM/BD.

The term "**FCM/BD Customer**" means any Customer that is (i) a customer (as defined in CFTC Rule 39.2) of an FCM/BD Clearing Member with respect to any Contract in one or more account classes (as defined in CFTC Rule 190.01) (other than a non-public customer as defined in CFTC Rule 190.01) or that is (ii) a customer (as defined in SEC Rule 15c3-3) of an FCM/BD Clearing Member with respect to any Contract recorded in the SBS Customer Account; provided that for the avoidance of doubt the term "FCM/BD Customer" will include a Customer of an FCM/BD Clearing Member (which Customer may, but need not, be an Affiliate of that FCM/BD Clearing Member or another Clearing Member) that is itself acting on behalf of one or more customers (other than non-public customers, as so defined) with respect to a Contract.

The term "**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements).

The term "**Financial Emergency**" means, with respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member or any of its Designated Controllers is not or is likely not to be, in either case determined at the discretion of the Clearing House, adequate for such Clearing Member to meet its obligations (including, without limitation, its obligations to comply with these Rules) or to engage in business, or is such that it would not be in the best interests of the Clearing House or the marketplace for such Clearing Member to continue to be a Clearing Member.

The term "**Financial Indebtedness**" means any indebtedness for or in respect of: (a) monies borrowed; (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with applicable accounting standards, be treated as a finance or capital lease; (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis); (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank



or financial institution; and (h) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in (a) to (g) above.

The term "**Financially-Settled FX Contract**" means an FX Contract which provides for cash settlement in a single predetermined currency on the relevant FX Settlement Date based on the difference between the values on the FX Settlement Date of: (i) the purchase of an agreed amount in one currency by the Reference Currency Buyer from the Reference Currency Seller; and (ii) the purchase by the Reference Currency Seller of an agreed amount in a different currency from the Reference Currency Buyer. Each leg of an FX Swap may be an FX Transaction which, if eligible for Clearing and Cleared, would give rise to two Financially-Settled FX Contracts.

The term "**Force Majeure Event**" means any occurrence outside the control of the Clearing House or the relevant Clearing Member, as applicable, which hinders or prevents the performance in whole or in part of any of its obligations hereunder (other than, for an F&O Contract or Financially-Settled FX Contract or any obligation relating to an F&O Contract or Financially-Settled FX Contract, an obligation to make payments in an Eligible Currency) (and, in relation only to any obligation of the Clearing House or a CDS Clearing Member under a CDS Contract, which obligation has not yet fallen due, such an occurrence which would hinder or prevent performance in whole or in part of any of its obligations thereunder were the occurrence or effects of the occurrence to continue until the date of performance of the relevant obligation), including, but not limited to, fire, flood, storm, earthquake, explosion, war, hostilities, accidents howsoever caused, strike, labour dispute, lockout, work to rule or other industrial dispute, lack of energy supply, criminal action, terrorist action, civil unrest, embargoes, acts of God, acts of a public enemy, unavailability or impairment of computer or data processing facilities, the actions or omissions of third Persons (including, without limitation, Deriv/SERV, CLS Bank, any Trade Processing Platform, Delivery Facilities, Approved Financial Institutions, bank or electronic transfer systems, Exchanges, Clearing Organisations, Governmental Authorities and Regulatory Authorities, but excluding the Clearing House in the case of a Force Majeure Event affecting the Clearing House and further excluding a Clearing Member, its Customers, Transferors and Transferees in the case of a Force Majeure Event affecting a Clearing Member); and, for CDS Clearing Members and the Clearing House in relation to CDS Clearing Members only, Illegality; or, in relation to delivery of a Deliverable pursuant to any F&O Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that F&O Contract under the Contract Terms or Market Rules.

The term "**FSA**" means the UK's Financial Services Authority or any successor entity.

The term "**FSA Rules**" means all rules, requirements, directions, guidance, examples, waivers and other similar materials published or otherwise made by the FSA from time to time.

The term "**FSMA**" means the UK's Financial Services and Markets Act 2000.

The term "**Future**" means an F&O Contract or FX Contract subject to Clearing by the Clearing House that is a 'future' or 'contract for differences etc.' under articles 84 or 85 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**FX**" means foreign exchange.

The term "**FX Assessment Amount**" means the total amount of all FX Assessment Contributions payable by FX Clearing Members pursuant to Rule ~~407~~[911\(a\)](#) in respect of an Event of Default.

The term "**FX Assessment Contribution**" has the meaning set out in Rule ~~407~~[911\(b\)](#).

The term "**FX Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to FX Contracts.

The term "**FX Contract**" means a Contract that is a foreign exchange contract that is subject to Clearing pursuant to these Rules and of a nature as specified in Circulars issued by the Clearing House from time to time.

The term "**FX Default Amount**" has the meaning set out in Rule ~~403~~[908\(e\)\(iii\)](#). ~~The term "**FX Failure To Pay**" means the failure of the Clearing House to make, when due, any payment (including the transfer of Pledged Collateral) pursuant to Part 3 of the Rules in relation to FX Contracts required to be made by it if such failure is not remedied on or before the third Business Day after notice of such failure is given to it by the FX Clearing Member to which such payment is due, unless such failure to pay constitutes a Force Majeure Event affecting the Clearing House.~~

The term "**FX Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating to the Clearing of FX Contracts.

The term "**FX Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the FX Guaranty Fund.

The term "**FX Mark-to-Market Interest**" means interest calculated by reference to the FX Mark-to-Market Margin Balance, determined and payable as set out in the Procedures.

The term "**FX Mark-to-Market Margin**" means the Permitted Cover required to be provided to the Clearing House by a Clearing Member or by the Clearing House to a Clearing Member in respect of FX Contracts pursuant to Rule 503(i) and the Procedures.

The term "**FX Mark-to-Market Margin Balance**", in respect of an FX Contract on any day, means the sum of all FX Mark-to-Market Margin delivered by the relevant FX Clearing Member in respect of such FX Contract to the Clearing House less all FX Mark-to-Market Margin delivered by the Clearing House in respect of such FX Contract to such FX Clearing Member, as determined at the close of business on such day.

The term "**FX Original Margin**" means the Permitted Cover required to be provided to the Clearing House as security for the obligations of a Clearing Member in respect of FX Contracts pursuant to Part 5 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**FX Settlement Date**" means (a) in relation to a Financially-Settled FX Contract, means the date on which the Reference Currency Buyer or Reference Currency Seller is obliged to make payment to the other party in order to discharge its obligations under the contract, which date may be expressed as a settlement, termination or payout date and (b) in relation to an FX Transaction submitted for Clearing, the date set out in the relevant FX Confirmation.

The term "**FX Swap**" means an FX transaction that is a 'contract for differences' under article 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (or any economically similar transaction that is not an investment). An FX Swap may be submitted for Clearing as two separate FX Transactions or part of an FX Swap may be submitted for Clearing as a single FX Transaction.

The term "**FX Transaction**" means a foreign exchange transaction in the form of a non-deliverable forward of a nature which, pursuant to the Procedures and Circulars issued by the Clearing House from time to time, is eligible for Clearing pursuant to these Rules and the Procedures.

The term "**GBP**" means the lawful currency from time to time of the United Kingdom.

The term "**General Customer**" means either: (i) a Customer of a Non-FCM/BD Clearing Member; or (ii) for an FCM/BD Clearing Member, a Customer that is not a DCM Customer, Swap Customer, Non-DCM/Swap Customer, or SBS Customer. A Person may be a General Customer of an FCM/BD Clearing Member in relation to certain Transactions or Contracts and another category of FCM/BD Customer of an FCM/BD Clearing Member in relation to other Transactions or Contracts.

The term "**General Customer Account**" means either a CDS Customer Account or a Non-CDS Customer Account (but is not itself a kind of Customer Account).

The term "**Governmental Authority**" means any Regulatory Authority and any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction.

The term "**Gross Margin Shortfall**" in respect of a CDS Customer Account of a Non-FCM/BD CDS Clearing Member that has been declared a Defaulter, means the amount by which the value of  $-N$  (i.e.  $N$  subject to a change sign function) for that CDS Customer Account (were it not for the inclusion of the proceeds of any Proprietary Account assets, CDS Guaranty Fund Contributions of non-Defaulters, Clearing House CDS Contributions or CDS Assessment Contributions in amount  $OA$ ) would fall below the value of  $A-B$  where:

$A$  = total of Surplus Collateral and Customer Account Gross-Net Amount for that CDS Customer Account, including where applicable any such amounts received by the Clearing House pursuant to a letter of credit in favour of the Clearing House falling under amount  $SC$  and provided in respect of that CDS Customer Account; and

$B$  = such amounts that would fall under  $A$  but are attributable to a particular CDS Sub-Account and are applied to meet a loss on that CDS Sub-Account.

provided that the Gross Margin Shortfall shall in no circumstances be less than zero (and, in this definition, the terms  $N$ ,  $SC$  and  $OA$  have the meanings given in Rule 906).

The term "**Group Company**" means, with respect to any entity, an undertaking which is a parent undertaking or subsidiary undertaking of that entity or a subsidiary undertaking of any parent undertaking of that entity. For the purposes of this definition, the expressions "parent undertaking" and "subsidiary undertaking" shall have the meanings given to them in section 1162 of the Companies Act 2006, the expression "undertaking" shall have the meaning given to it in section 1161 of the Companies Act 2006 and the expression "entity" shall have the same meaning as the expression "undertaking".

The term "**Guaranty Funds**" means the F&O Guaranty Fund, the CDS Guaranty Fund and the FX Guaranty Fund.

The term "**Guaranty Fund Contribution**" means Permitted Cover transferred by a Clearing Member to the Clearing House as a contribution to the Guaranty Fund pursuant to Part 11 that has not been applied pursuant to Part ~~11~~9 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Guaranty Fund Period**" (i) for the F&O Guaranty Fund, means a three-month period for which the total amount of F&O Guaranty Fund Contributions for the F&O Guaranty Fund is fixed (subject to any termination or suspension of any F&O Clearing Member's membership or status as an F&O Clearing Member, new F&O Clearing Members making F&O Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11); (ii) for the CDS Guaranty Fund, means a period for which the total amount of CDS Guaranty Fund Contributions for the CDS Guaranty Fund is fixed pursuant to the Finance Procedures (subject to any termination or suspension of any CDS Clearing Member's membership or status as a CDS Clearing Member, new CDS Clearing Members making CDS Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11; or (iii) for the FX Guaranty Fund, means a period for which the total amount of FX Guaranty Fund Contributions for the FX Guaranty Fund is fixed pursuant to the Procedures (subject to any termination or suspension of any FX Clearing Member's membership or status as an FX Clearing Member, new FX Clearing Members making FX Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part ~~11~~9).

The term "**Guidance**" means guidance issued by the Clearing House pursuant to Rule 109(f).

The term "**HM Treasury**" means Her Majesty's Treasury in the UK and any successor thereto.

The term "**ICE Commodity Markets**" means ICE U.S. OTC Commodity Markets, LLC, a company incorporated in Delaware.

The term "**ICE Endex**" means ICE Endex Derivatives B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under Dutch law, registered with the trade register of the chamber of commerce in Amsterdam, the Netherlands, under number 09100980, and the regulated market it operates pursuant to a licence under section 5:26(1) of the Dutch Act on the Financial Supervision (*Wet op het financieel toezicht*).

The term "**ICE Endex Block Contract**" means a Contract resulting from an ICE Endex Block Transaction.

The term "**ICE Endex Block Trade Facility**" means the over-the-counter clearing service operated by ICE Endex in accordance with the ICE Endex Rules.

The term "**ICE Endex Block Transaction**" means an EFS, EFP or ICE Endex Block Trade Facility transaction reported through ICE Endex in accordance with the ICE Endex Rules.

The term "**ICE Endex Contract**" means an ICE Futures Endex Block Contract or an ICE Endex Matched Contract.

The term "**ICE Endex Matched Contract**" means a Contract resulting from an ICE Endex Matched Transaction.

The term "**ICE Endex Matched Transaction**" means a transaction that occurs or occurred on the ICE Endex regulated market in accordance with the ICE Endex Rules.

The term "**ICE Endex Rules**" means the rules of ICE Endex, and, except when a particular rule is cross-referenced herein, has the same meaning as that given to the term "*Rules*" in the rules of ICE Endex, as amended from time to time.

The term "**ICE Endex Transaction**" means an ICE Endex Matched Transaction or an ICE Endex Block Transaction where the related trade particulars or data submitted or provided to the Clearing House or ICE Endex by or on behalf of a Clearing Member (including by any Representative) will give rise to a Contract or Contracts if the relevant circumstances specified in Rule 401(a) occur.

The term "**ICE Futures Europe**" means ICE Futures Europe (a company registered in England and Wales with registration number 01528617) and the recognised investment exchange (as defined in the FSMA) known as and operated by ICE Futures Europe.

The term "**ICE Futures Europe Block Contract**" means a Contract resulting from an ICE Futures Europe Block Transaction.

The term "**ICE Futures Europe Block Trade Facility**" means the block trade facility operated by ICE Futures Europe in accordance with the ICE Futures Europe Rules.

The term "**ICE Futures Europe Block Transaction**" means an EFS, EFP or ICE Futures Europe Block Trade Facility Transaction reported through ICE Futures Europe in accordance with the ICE Futures Europe Rules.

The term "**ICE Futures Europe Contract**" means an ICE Futures Europe Block Contract or an ICE Futures Europe Matched Contract.

The term "**ICE Futures Europe Matched Contract**" means a Contract resulting from an ICE Futures Europe Matched Transaction.

The term "**ICE Futures Europe Matched Transaction**" means a Transaction that occurs or occurred on the ICE Futures Europe exchange in accordance with the ICE Futures Europe Rules.

The term "**ICE Futures Europe Rules**" means the rules of ICE Futures Europe and, except when a particular rule is cross-referenced herein, has the same meaning as that given to the term "*Regulations*" in the regulations of ICE Futures Europe.

The term "**ICE Futures Europe Transaction**" means an ICE Futures Europe Matched Transaction or an ICE Futures Europe Block Transaction.

The term "**ICE Futures US**" means ICE Futures U.S. Inc. and the designated contract market operated thereby.

The term "**ICE Futures US Block Contract**" means a Contract resulting from an ICE Futures US Block Transaction.

The term "**ICE Futures US Block Trade Facility**" means the block trade facility operated by ICE Futures US in accordance with the ICE Futures US Rules.

The term "**ICE Futures US Block Transaction**" means an EFS, EFP or ICE Futures US Block Trade Facility transaction reported through ICE Futures US in accordance with the ICE Futures US Rules.

The term "**ICE Futures US Contract**" means an ICE Futures US Block Contract or an ICE Futures US Matched Contract.

The term "**ICE Futures US Matched Contract**" means a Contract resulting from an ICE Futures US Matched Transaction.

The term "**ICE Futures US Matched Transaction**" means a transaction that occurs or occurred on the ICE Futures US exchange in accordance with the ICE Futures US Rules.

The term "**ICE Futures US Rules**" means the bylaws and rules of ICE Futures US.

The term "**ICE Futures US Transaction**" means an ICE Futures US Matched Transaction or an ICE Futures US Block Transaction.

The term "**ICE Group**" means the Clearing House and all its Group Companies.

The term "**ICE Inc.**" means IntercontinentalExchange, Inc., a company incorporated in Delaware with registered file number of 2497808.

The term "**ICE OTC**" means the market operated by the ICE OTC Operator.

The term "**ICE OTC Block Contract**" means a Contract resulting from an ICE OTC Block Transaction.

The term "**ICE OTC Block Transaction**" means a Transaction reported through ICE OTC without a trade having been matched by ICE OTC.



The term "**ICE OTC Broker Agreement**" means an agreement between the ICE OTC Operator and an ICE OTC broker in the form approved by the ICE OTC Operator from time to time, relating to that broker's access to ICE OTC.

The term "**ICE OTC Contract**" means an ICE OTC Matched Contract or an ICE OTC Block Contract.

The term "**ICE OTC Matched Contract**" means a Contract resulting from an ICE OTC Matched Transaction.

The term "**ICE OTC Matched Transaction**" means a Transaction that occurs or occurred on ICE OTC in accordance with applicable ICE OTC Participant Agreements and, where applicable, any ICE OTC Broker Agreement.

The term "**ICE OTC Operator**" means either: (i) ICE Commodity Markets, in connection with any Contract entered into, transaction submitted or other circumstance relating to ICE OTC occurring on or after the ICE OTC Changeover Time; or (ii) ICE Inc., in connection with any Contract entered into, transaction submitted or other circumstance relating to ICE OTC occurring prior to the ICE OTC Changeover Time. For the purposes of this definition, the term "ICE OTC Changeover Time" means the time notified as such by the Clearing House in a Circular, at which ICE Inc. will cease to be the ICE OTC Operator and ICE Commodity Markets will become the new ICE OTC Operator.

The term "**ICE OTC Participant**" means a Clearing Member or Customer that has entered into an ICE OTC Participant Agreement.

The term "**ICE OTC Participant Agreement**" means an agreement between the ICE OTC Operator and an ICE OTC Participant, in the form approved by the ICE OTC Operator from time to time, relating to the ICE OTC Participant's access to ICE OTC.

The term "**ICE OTC Transaction**" means an ICE OTC Matched Transaction or an ICE OTC Block Transaction.

The term "**ISDA**" means the International Swaps and Derivatives Association, Inc. and any successor thereto.

The term "**Illegality**" means where, after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, these Rules, the Procedures and the applicable Contract Terms, due to an event or circumstance (other than any action taken by a Clearing Member) occurring after a CDS Contract arises, it becomes unlawful under any Applicable Law on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the Clearing Member of Rules 202 and 203), to perform any absolute or contingent obligation to make a payment or delivery in respect of such CDS Contract, to receive a payment or delivery in respect of such CDS Contract or to comply with any other material provision of the Rules and Procedures relating to such CDS Contract.



The term "**Initial Margin**" means the Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or pledge pursuant to a Pledged Collateral Addendum) to the Clearing House as collateral for the obligations of a Clearing Member in respect of CDS Contracts, including Portfolio Risk Margin, Physical Settlement Margin and other margin transferred in relation to CDS Contracts pursuant to Part 5 including any margin provided in relation to CDS Contracts pursuant to Rule 502(g), in each case as calculated or permitted to be called in accordance with the risk policies of the Clearing House, but excluding in any case Mark-to-Market Margin and any Customer-CM Collateral that is not transferred to the Clearing House and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Initial Payment**" means, in relation to a CDS Contract, the payment, if any, specified as the "Initial Payment Amount" under the Contract Terms for such CDS Contract and, in relation to a Bilateral CDS Transaction or CDS Trade Particulars, the payment, usually described therein as the "Initial Payment Amount" or "Additional Amount", payable by one party thereto to the other usually not later than the third business day after the trade date of such Bilateral CDS Transaction or CDS Trade Particulars.

The term "**Insolvency**" means, in relation to any Person: a bankruptcy or winding-up petition being presented; a bankruptcy order being made; a voluntary arrangement being approved; an Insolvency Practitioner being appointed or petition or order being made for such an appointment; a composition or scheme of arrangement being approved by a court or other Governmental Authority; an assignment, compromise or composition being made or approved for the benefit of any creditors or significant creditor; an order being made or resolution being passed for winding up; dissolution; the striking off of that Person's name from a register of companies or other corporate bodies; a distress process being levied or enforced or served upon or against property of that Person; a Governmental Authority making an order pursuant to which any of that Person's securities, property, rights or liabilities are transferred; a Governmental Authority exercising one or more of its stabilisation powers under the Banking Act 2009 in respect of that Person; a trust deed granted by it becoming a protected trust deed (where the terms 'trust deed' and 'protected trust deed' are construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985) and, for CDS Clearing Members only, also any event not otherwise falling within this definition but which constitutes a Bankruptcy in respect of such CDS Clearing Member; or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, change of Control or merger notified to the Clearing House in accordance with Rule 204(a)(i)).

The term "**Insolvency Practitioner**" means a receiver, administrator, bank administrator, manager or administrative receiver, liquidator, conservator, examiner, trustee in bankruptcy, relevant office-holder (under the Companies Act 1989) or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

The term "**Intellectual Property**" means copyright, trade marks, design rights, patents, domain names, database rights and know-how, in each case whether registered or unregistered and including applications to register and rights to apply for registration, and all similar or equivalent rights which may subsist anywhere in the world.

The term "**Investment**" means any 'specified investment' as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or any loan, bond, obligation or debenture referenced in a CDS Contract.

The term "**Invoice Back**" means the process by which a Contract of the same Set as an existing Contract is created by the Clearing House pursuant to Rule 104 and Rule 401(a)(vi), with the role of Buying Clearing Member or Selling Clearing Member reversed and, at the Clearing House's discretion, a different price or premium and other terms as are determined by the Clearing House pursuant to Rule 104; and the terms "**Invoiced Back**", "**Invoicing Back**" and other similar expressions shall be construed accordingly.

The term "**LCIA**" means the London Court of International Arbitration or any successor thereto.

The term "**LCIA Rules**" means the arbitration rules of the LCIA.

The term "**LIFFE**" means LIFFE Administration and Management (a company registered in England and Wales with registration number 01591809) and the recognised investment exchange (as defined in the FSMA) known as and operated by LIFFE Administration and Management.

The term "**LIFFE Block Contract**" means a Contract resulting from a LIFFE Block Transaction.

The term "**LIFFE Block Trade Facility**" means the block trade facility operated by LIFFE in accordance with the LIFFE Rules.

The term "**LIFFE Block Transaction**" means an EFS, EFP, LIFFE Block Trade Facility Transaction or BClear transaction reported through LIFFE in accordance with the LIFFE Rules.

The term "**LIFFE Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to LIFFE Contracts and that is a clearing member of LIFFE.

The term "**LIFFE Contract**" means a LIFFE Block Contract or a LIFFE Matched Contract.

The term "**LIFFE Matched Contract**" means a Contract resulting from a LIFFE Matched Transaction.

The term "**LIFFE Matched Transaction**" means a Transaction that occurs or occurred on the LIFFE exchange in accordance with the LIFFE Rules.

The term "**LIFFE Rules**" means the rules of LIFFE, together with any procedures, as interpreted in accordance with guidance, notices and circulars, of LIFFE and, except when a particular rule is cross-referenced herein, has the same meaning as that given to the term "*Rules*" in the rules of LIFFE, as amended from time to time.

The term "**LIFFE Transaction**" means a LIFFE Matched Transaction or a LIFFE Block Transaction.

The term "**Long**", in respect of an Option, refers to the positions of Persons entitled to exercise Options.

The term "**Margin**" means Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or pledge pursuant to a Pledged Collateral Addendum) to the Clearing House (or, in the case of Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin, provided to or by the Clearing House, as the context may require or, in the case of Variation Margin provided pursuant to a transfer of cash) pursuant to a requirement for Original Margin, Variation Margin, FX Original Margin, Initial Margin, Mark-to-Market Margin, FX Mark-to-Market Margin or any other requirement under the Rules or the Finance Procedures and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Mark-to-Market Margin**" means cash required to be provided or actually provided by a Clearing Member (by way of title transfer pursuant to a Clearing Membership Agreement or, or for FCM/BD Clearing Members only, by way of pledge pursuant to a Pledged Collateral Addendum) to the Clearing House or by the Clearing House to a Clearing Member related to the market value of a Clearing Member's Open Contract Positions relating to CDS Contracts, as determined pursuant to Rule 503(f)(ii) and the Finance Procedures and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Mark-to-Market Price**" has the meaning given in Rule 503(g).

The term "**Market**" means ICE Endex, ICE Futures Europe, ICE Futures US, ICE OTC, LIFFE and any other market for which the Clearing House provides or may provide Clearing services (and for the purposes of Clearing Membership Agreements for CDS Clearing Members only, also includes the over-the-counter market for CDS).

The term "**Market Delivery Settlement Price**" in respect of a Set of F&O Contracts or an F&O Contract, means the delivery or cash settlement price determined pursuant to Rule 701.

The term "**Market Rules**" means the rules, regulations, procedures of, and agreements governing, a Market, including the ICE Endex Rules, ICE Futures Europe Rules, ICE Futures US Rules, ICE OTC Participant Agreements, ICE OTC Broker Agreements, LIFFE Rules and the procedures of each of ICE Endex, ICE Futures Europe, ICE Futures US, the ICE OTC Operator and LIFFE.

The term "**Membership Category**" means any of the three membership categories that are linked to a specific Guaranty Fund, i.e. that of F&O Clearing Member, CDS Clearing Member and FX Clearing Member.

The term "**Monetary Default**" means a Clearing Member failing to transfer to, deposit with, or pay to, the Clearing House in full any Margin, Guaranty Fund Contribution, amount due under or in connection with any Contract or other amount due to the Clearing House or required by or pursuant to Market Rules, unless such failure constitutes a Force Majeure Event affecting the relevant Clearing Member.

The term "**Money Laundering Directive**" means Directive 2005/60/EC and relevant implementing measures in each member state of the European Economic Area which has implemented Directive 2005/60/EC, including the Money Laundering Regulations 2007.

The term "**Nominated Bank Account**" means a Nominated Customer Bank Account or a Nominated Proprietary Bank Account.

The term "**Nominated Customer Bank Account**" means an account (if any) of a Clearing Member at an Approved Financial Institution, nominated by the Clearing Member in accordance with the Finance Procedures, used by the Clearing Member for transfers to or from the Clearing House of amounts due in respect of a Customer Account which, for Non-FCM/BD Clearing Members, may be designated by the Clearing Member for payments in respect of a Non-CDS Customer Account or CDS Customer Account or both and, for FCM/BD Clearing Members must be designated by the Clearing Member for use in connection with only one (but not two or more) of the following: Non-DCM/Swap Customer Account, DCM Customer Account, Swap Customer Account, Non-CDS Customer Account or SBS Customer Account. For the avoidance of doubt, a Nominated Customer Bank Account is not and does not form part of a Customer Account.

The term "**Nominated Proprietary Bank Account**" means an account of a Clearing Member at an Approved Financial Institution, nominated by the Clearing Member in accordance with the Finance Procedures, used by the Clearing Member for transfers to or from the Clearing House of amounts due in respect of a Proprietary Account, which may be designated for payments in respect of F&O Contracts, Non-CDS Contracts, CDS Contracts or any or all of them. For the avoidance of doubt, a Nominated Proprietary Bank Account is not and does not form part of a Proprietary Account.

The term "**Non-CDS Contracts**" means Contracts that are not CDS Contracts.

The term "**Non-CDS Customer Account**" means a kind of Customer Account with the Clearing House: (i) in relation to a Non-FCM/BD Clearing Member, opened in the name of that Non-FCM/BD Clearing Member for the recording of Non-CDS Contracts to which that FCM/BD Clearing Member is a party as a result of it acting for one or more Segregated Customers, and related Margin; and (ii) in relation to an FCM/BD Clearing Member, opened in the name of that FCM/BD Clearing Member for the recording of Non-CDS Contracts to which that FCM/BD Clearing Member is a party as a result of it acting for one or more General Customers, and related Margin.

The term "**Non-DCM/Swap**" means, in relation to an FCM/BD Clearing Member, a transaction or Contract that is not a U.S. Future, SBS or a Swap (as described in paragraphs (i) or (ii) of the definition thereof), which will include without limitation an ICE Endex Transaction, ICE Endex Contract, ICE Futures Europe Transaction, an ICE Futures Europe Contract, LIFFE Transaction, LIFFE Contract and any other transaction or Contract made on or subject to the rules of any other "foreign board of trade" as defined in the CEA.

The term "**Non-DCM/Swap Customer**", in respect of an FCM/BD Clearing Member, means a Customer that is not a DCM Customer, a Swap Customer or an SBS Customer with respect to a transaction or Contract and which is required by Applicable Laws to be treated or is otherwise treated by the FCM/BD Clearing Member as a Non-DCM/Swap Customer. A Person may be a Non-DCM/Swap Customer in relation to certain transactions or Contracts and another category of FCM/BD Customer in relation to other transactions or Contracts.

The term "**Non-DCM/Swap Customer Account**", in respect of an FCM/BD Clearing Member, means a kind of Customer Account with the Clearing House that is not a DCM Customer Account, Swap Customer Account or SBS Customer Account in relation to which the FCM/BD Clearing Member: (i) acts in its capacity as a clearing member in relation to Non-DCM/Swaps (other than Permitted Co-mingled Contracts) connected with the provision of services to Non-DCM/Swap Customers; and (ii) enters into market contracts in the capacity of a clearing member in relation only to transactions connected with the provision of services to Non-DCM/Swap Customers.

The term "**Non-FCM/BD CDS Clearing Member**" means any CDS Clearing Member that is not an FCM/BD Clearing Member.

The term "**Non-FCM/BD Clearing Member**" means any Clearing Member that is not an FCM/BD Clearing Member.

The term "**Non-FCM/BD Customer**" means any Customer that is not an FCM/BD Customer.

The term "**Non-Transfer Positions**" in respect of a Designated CDS Customer Account of a CDS Clearing Member, means the Customer Account Positions in respect of which either: (i) the relevant Segregated Customer has not made a Default Portability Preference; or (ii) a Default Portability Preference has been made by the relevant Segregated Customer but has not been communicated to the Clearing House by such CDS Clearing Member or, where permitted, by such Segregated Customer, in each case in accordance with the Rules and the Procedures.

The term "**OFT**" means the UK's Office of Fair Trading and any successor thereto.

The term "**Open Contract Position**", in respect of each Set of Contracts for a Clearing Member from time to time, comprises the Contract Position and, for F&O Contracts only, the Net Amount Position, where:

(a) *Contract Position* means:

- (i) in relation to a Proprietary Position Account for F&O Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the number that equals the netted sum of buy and sell obligations pursuant to those Contracts recorded in that account;
- (ii) in relation to a Proprietary Position Account for F&O Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the number that equals the netted sum of Long and Short obligations pursuant to those Contracts recorded in that account;
- (iii) in relation to a Customer Position Account for F&O Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the gross number of buy positions and the gross number of sell positions pursuant to those Contracts recorded in that account (subject to any netting pursuant to Rule 406);

- (iv) in relation to a Customer Position Account for F&O Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the gross number of Long positions and the gross number of Short positions pursuant to those Contracts recorded in that account (subject to any netting pursuant to Rule 406);
- (v) in relation to a Proprietary Position Account for CDS Contracts: where a Clearing Member is party to one or more CDS Contracts of a particular Set, the number that equals the aggregate of all Floating Rate Payer Calculation Amounts for (and as defined pursuant to) each CDS Contract of that Set recorded in that account where it acts as Selling Clearing Member minus the aggregate of all Floating Rate Payer Calculation Amounts for each CDS Contract of that Set recorded in that account where it acts as Buying Clearing Member, provided that Matched CDS Contracts will be held and calculated on a gross basis;
- (vi) in relation to a Customer Position Account for CDS Contracts: where a Clearing Member is party to one or more CDS Contracts of a particular Set, the gross number of all Floating Rate Payer Calculation Amounts for (and as defined pursuant to) each CDS Contract of that Set recorded in that account where it acts as Selling Clearing Member; and the gross number of all Floating Rate Payer Calculation Amounts for each CDS Contract of that Set recorded in that account where it acts as Buying Clearing Member, subject in either case to any netting pursuant to Rule 406, provided that Matched CDS Contracts will be held and calculated on a gross basis;
- (vii) in relation to a Proprietary Account for FX Contracts: where a Clearing Member is party to one or more FX Contracts of a particular Set, both the gross Financially-Settled FX Contracts to which the Clearing Member is party as Reference Currency Buyer and the gross Financially-Settled FX Contracts to which the Clearing Member is party as Reference Currency Seller for a particular Set, without prejudice to any requirement for Margin to be called based on the position derived from the Financially-Settled FX Contracts to which the Clearing Member is party as Reference Currency Buyer being netted against the Financially-Settled FX Contracts to which the Clearing Member is party as Reference Currency Seller (or *vice versa*) for a particular Set; and
- (viii) in relation to a Customer Account for FX Contracts: where a Clearing Member is party to one or more FX Contracts of a particular Set, both the gross Financially-Settled FX Contracts where the Clearing Member is identified as Reference Currency Buyer and the gross Financially-Settled FX Contracts where the Clearing Member is identified as Reference Currency Seller for a particular Set, without prejudice to any requirement for Margin to be called based on the position derived from the Financially-Settled FX Contracts where the Clearing Member is identified as Reference Currency Buyer being netted against the Financially-Settled FX Contracts where the Clearing Member is identified as Reference Currency Seller (or *vice versa*) for a particular Set to the extent permitted under these Rules and the Procedures for the Customer Account in question,



in any case as calculated by the Clearing House from time to time based on data received by the Clearing House in respect of Contracts entered into by the Clearing Member up to the close of business on the immediately preceding Business Day (or such other period determined by the Clearing House at its discretion); and

- (b) *Net Amount Position* for F&O Contracts, means the price at which the Contract Position for any Set is recorded on the Clearing House's books based on Settlement Prices for each Contract.

The term "**Opening Days**" means the days upon which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Opening Hours**" means the hours during which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Option**" means an F&O Contract subject to Clearing by the Clearing House that is an 'option' under article 83 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**Original Margin**" means the Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or pledge pursuant to a Pledged Collateral Addendum) to the Clearing House as collateral for the obligations of a Clearing Member in respect of F&O Contracts pursuant to Part 5 including any margin provided in relation to F&O Contracts pursuant to Rule 502(g), in each case as calculated or permitted to be called in accordance with the risk policies of the Clearing House, but excluding in any case Variation Margin, and including where the context so requires, any proceeds of realisation of the same.

The term "**Permitted Co-mingled Contract**" means, with respect to an FCM/BD Clearing Member, a Contract that is a Non-DCM/Swap which has been designated by the Clearing House by Circular and approved by the appropriate Regulatory Authority or Regulatory Authorities to be recorded in the Swap Customer Account or the DCM Customer Account, as applicable, rather than the Non-DCM/Swap Customer Account.

The term "**Permitted Cover**" means cash in Eligible Currencies and other assets determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions and includes, where the context so requires, any such cash or assets transferred to the Clearing House and any proceeds of realisation of the same. A particular kind of currency or asset may be determined by the Clearing House to be Permitted Cover only in respect of Proprietary Accounts, particular kinds of Customer Accounts, Energy Contracts, LIFFE Contracts, F&O Contracts, FX Contracts, Non-CDS Contracts, CDS Contracts or certain Sets of Contracts.

The term "**Person**" means any individual, partnership, firm, body corporate, association, trust, unincorporated organisation or other entity.



The term "**Physical Settlement Margin**" means the Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or pledge pursuant to a Pledged Collateral Addendum) to the Clearing House as collateral for the obligations of a Clearing Member related to the risk and size of such Clearing Member's obligations relating to physical settlement of a CDS Contract, as determined pursuant to Rule 503(f)(i) and the Finance Procedures and as calculated or permitted to be called in accordance with the risk policies of the Clearing House from time to time, including the proceeds of realisation of the same.

The term "**Pledged Collateral**" means Margin (or Permitted Cover in respect thereof) provided by a Clearing Member in respect of a Pledged Collateral Account by way of pledge pursuant to a Pledged Collateral Addendum and any proceeds of realisation of the same.

The term "**Pledged Collateral Account**" means a Proprietary Account or Customer Account (or any sub-account of such an account) in respect of which the Clearing House has designated (including by way of Rule 1603(c) or Circular) that some or all Margin (or Permitted Cover in respect thereof) is to be provided by a Clearing Member by way of security interest in accordance with a Pledged Collateral Addendum rather than by way of title transfer pursuant to the Clearing Membership Agreement.

The term "**Pledged Collateral Addendum**" means a pledged collateral addendum to the Clearing Membership Agreement entered into between a Clearing Member and the Clearing House and shall, for an FCM/BD Clearing Member, Non FCM/BD Clearing Member and/or particular Account, refer to the relevant form of pledged collateral addendum for such Clearing Member or Account as specified by the Clearing House from time to time.

The term "**Portfolio Risk Margin**" means the Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or pledge pursuant to a Pledged Collateral Addendum) to the Clearing House as collateral for the obligations of a Clearing Member related to the size and risk of a Clearing Member's Open Contract Positions in relation to CDS Contracts, as determined pursuant to Rule 503(f)(i) and as calculated or permitted to be called in accordance with the risk policies of the Clearing House from time to time, including the proceeds of realisation of the same.

The term "**Position Holder**" has the meaning set out in Rule 407.

The term "**Position Limit**" of any Clearing Member means the limit(s) on Open Contract Positions established by the Clearing House pursuant to Rule 601.

The term "**Potential Event of Default**" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

The term "**President**" means the president of the Clearing House from time to time.

The term "**Procedures**" means the procedures of the Clearing House from time to time, as amended pursuant to Rule 109(e) and any reference to the Finance Procedures, Delivery Procedures, Clearing Procedures, Complaints Procedures, CDS Procedures, Contract Terms Procedures or any other section of the Procedures shall be interpreted accordingly.

The term "**Proprietary Account**", in respect of a Clearing Member, refers to a single proprietary account (in respect of both CDS Contracts and Non-CDS Contracts recorded in a Proprietary Position Account and all related Margin) and comprises the Proprietary Position Account and Proprietary Margin Account of that Clearing Member.

The term "**Proprietary Account Contract**" means a Contract recorded in the Proprietary Position Account of a Clearing Member (or any sub-account thereof).

The term "**Proprietary Account Position**" means an Open Contract Position as recorded in the Proprietary Position Account of a Clearing Member (or any sub-account thereof).

The "**Proprietary Margin Account**" forms part of a Proprietary Account and the term means an account with the Clearing House which is not a Customer Margin Account, opened in the name of a Clearing Member for the recording of debits and credits of Margin in respect of Proprietary Account Contracts recorded in the related Proprietary Position Account, which may be divided for administrative convenience only into sub-accounts including for F&O Contracts only, for CDS Contracts only or for FX Contracts only.

The "**Proprietary Position Account**" forms part of a Proprietary Account and the term means an account with the Clearing House which is not a Customer Position Account, opened in the name of a Clearing Member in which Proprietary Account Contracts entered into by the Clearing Member (whether directly or indirectly) and/or related Open Contract Positions are recorded, which may be divided for administrative convenience only into sub-accounts including for F&O Contracts only, for CDS Contracts only, for FX Contracts only or for Customer-related Contracts where the Customer is a non-Segregated Customer.

The term "**Put**", in respect of an F&O Contract, means an Option pursuant to which the Person with a Long position has the right to sell a Future or Futures to the Person with a Short position at the Strike Price and at a specified time.

The term "**Reference Currency Buyer**" means, (i) in respect of an FX Transaction the person identified as the Reference Currency Buyer in the Clearing House's records in relation to that Transaction; and (ii) in respect of an FX Contract, the Clearing House if the Clearing Member who is party to that FX Contract (or its Customer) was the Reference Currency Seller under the corresponding FX Transaction, or the Clearing Member who (or whose Customer) was party to the corresponding FX Transaction as Reference Currency Buyer.

The term "**Reference Currency Seller**" means, (i) in respect of an FX Transaction the person identified as the Reference Currency Seller in the Clearing House's records in relation to that Transaction; and (ii) in respect of an FX Contract, the Clearing House if the Clearing Member who is party to that FX Contract (or its Customer) was the Reference Currency Buyer under the corresponding FX Transaction, or the Clearing Member who (or whose Customer) was party to the corresponding FX Transaction as Reference Currency Seller.

The term "**Reference Price**" in respect of F&O Contracts and a Set of Options or an Option, means the reference price determined by the Clearing House on the basis of data provided by the relevant Market or otherwise pursuant to Rule 802.

The term "**Regulatory Authority**" means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, Exchanges or Clearing Organisations (including, without limitation, the FSA, any Person given powers under the FSMA, the Bank of England, HM Treasury, the OFT, the CFTC and the SEC).

The term "**Representative**" means any Person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person, including without limitation any director, partner, officer, executive, employee, Affiliate, Customer, contractor or agent of that other Person (provided, in the case of a Clearing Member, that a Customer will only be treated as a Representative of a Clearing Member in respect of any act, omission, conduct or behaviour in its capacity as a Customer to the extent that the Clearing Member is bound by the conduct of such Customer pursuant to Rule 102(j) or Rule 1516(d)).

The term "**Rule Change**" means any amendment, alteration, restatement, addition, deletion or other change to the Rules (excluding, for purposes of this definition, the Procedures, any Guidance or any Circular) made in accordance with Rule 109.

The term "**Rules**" means these rules, together with the Procedures, as interpreted in accordance with Guidance and Circulars.

The term "**SBS**" means a security-based swap (as defined in the Exchange Act), but does not include U.S. Futures, Non-DCM/Swaps and Swaps.

The term "**SBS Customer**", in respect of an FCM/BD Clearing Member, means any FCM/BD Customer with respect to any Contract arising as a result of CDS Trade Particulars relating to an SBS and registered in the SBS Customer Account of that FCM/BD Clearing Member. A Person may be a SBS Customer in relation to certain Contracts and another category of FCM/BD Customer in relation to other Contracts.

The term "**SBS Customer Account**", in respect of an FCM/BD Clearing Member, means a kind of Customer Account with the Clearing House (in its capacity as a registered clearing agency registered with the SEC under the Exchange Act), opened in the name of the FCM/BD Clearing Member relating to Contracts to which the FCM/BD Clearing Member is a party as a result of it acting for one or more SBS Customers (whose transactions the Clearing Member requests be recorded in the SBS Customer Account where that is required in accordance with Section 3E(b) of the Exchange Act and SEC Rule 15c3-3, insofar as applicable and any other applicable rules of the SEC) and in which the Clearing House records such Contracts and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different SBS Customers or groups of SBS Customers.

The term "**SEC**" means the Securities and Exchange Commission of the United States of America, or any successor thereto.

The term "**Segregated CDS Customer**" means a Customer of a Non-FCM/BD CDS Clearing Member, which Customer is party to one or more Customer-CM CDS Transactions, where related cleared Contracts are requested by the CDS Clearing Member to be recorded in a Customer Position Account relating to CDS Contracts.

The term "**Segregated CDS FCM/BD Customer**" means an FCM/BD Customer of an FCM/BD CDS Clearing Member in respect of CDS Contracts recorded in a Customer Position Account.

The term "**Segregated Customer**" means a Segregated CDS Customer, Segregated CDS FCM/BD Customer or a Segregated Non-CDS Customer.

The term "**Segregated Non-CDS Customer**" means a Customer of a Clearing Member, which Customer is party to one or more Corresponding Contracts, where related cleared Non-CDS Contracts are requested by the Clearing Member to be recorded in a Customer Position Account relating to Non-CDS Contracts.

The term "**SEK**" means Swedish krona, or any other lawful currency that is a successor to it.

The term "**Seller**" means, in relation to deliveries under Part 7 or a Contract of Sale, the Clearing Member or the Clearing House, whichever is obliged to make delivery of a Deliverable (whether itself or through another Person).

The term "**Selling Clearing Member**" means, in respect of a Contract: (a) except in circumstances in which sub-paragraph (c) below applies, the Clearing Member that was, before formation of a Contract for Clearing, party to the corresponding Transaction (or specified in the CDS Trade Particulars) as seller (or, in relation to CDS Contracts, as protection seller or, in relation to Financially-Settled FX Contracts, Reference Currency Seller); or (b) except in circumstances in which sub-paragraph (c) below applies, where a Non-FCM/BD Clearing Member's Customer is party to the corresponding Transaction (or specified in the CDS Trade Particulars) as seller, protection seller or Reference Currency Seller (as applicable), the Clearing Member that provides clearing services to that Customer in relation to the Transaction (or CDS Trade Particulars) in question (or, for F&O Contracts, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); (c) where an FCM/BD Customer is a party to the corresponding Transaction (or specified in the CDS Trade Particulars) as seller or protection seller (as applicable), the FCM/BD Clearing Member clearing on behalf of such FCM/BD Customer; or (d) in relation to F&O Contracts only and overriding any designation that would occur pursuant to (a), (b) or (c) above, where one Clearing Member that would be a Selling Clearing Member in accordance with (a), (b) or (c) above has allocated an F&O Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such F&O Transaction is allocated.

The term "**Sequential FX Guaranty Fund Depletion**" in respect of a particular FX Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different FX Clearing Members within a period of 20 or fewer Business Days; (ii) FX Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the FX Clearing Member has paid the Clearing House to replenish its FX Guaranty Fund Contributions exceeds the total amount of FX Guaranty Fund Contributions standing to the credit of that FX Clearing Member in the Clearing House's accounts prior to the first Event of Default.

The term "**Set**" means:

- (a) for Futures Contracts: a set or class of Contracts that are identical as to their terms (including the Deliverable to which such Contract relates and contract date; but excluding any amount paid or to be paid for entry into the Contract and any amount paid or to be paid in respect of settlement or delivery of a Contract);
- (b) for Options Contracts: a set of Contracts that are identical as to their terms (including the Deliverable to which such Contracts relate, contract date and strike price; but excluding any amount paid or to be paid for entry into or writing of a Contract and any amount paid or to be paid in respect of settlement);
- (c) for CDS Contracts that are based on an index (including Triggered Restructuring CDS Contract Portions and Component Transactions forming part thereof or, pursuant to the Rules, resulting therefrom), a set of Contracts that are similar as to their terms (including, without limitation, identical as to their terms concerning the reference entities and obligations to which any payment or delivery obligation is linked, series number, fixed rate and scheduled termination date; but which may differ, without limitation, as to any Initial Payment, the 'Trade Date' and any provisions relating to tax or the provision of forms relating to tax);
- (d) for CDS Contracts that are based on a single reference entity, a set of Contracts that are similar as to their terms (including, without limitation, identical as to their terms concerning the reference entity and obligations to which any payment or delivery obligation is linked, fixed rate, scheduled termination date and, where terms are determined by reference to a "Physical Settlement Matrix", referring to the same version of such "Physical Settlement Matrix"; but which may differ, without limitation, as to any Initial Payment, the 'Trade Date' and any provisions relating to tax or the provision of forms relating to tax); and
- (e) for Financially-Settled FX Contracts: a set of Contracts that are identical as to their terms and economic characteristics (including the currency pair to which such Financially-Settled FX Contracts relate and their FX Settlement Date; but excluding any amount paid or to be paid for entry into or writing of the Financially-Settled FX Contract, any amount paid or to be paid in respect of settlement under the Financially-Settled FX Contract and the position of the FX Clearing Member or Clearing House as Reference Currency Buyer or Reference Currency Seller).

The term "**Settlement and Notices Terms**" means the Settlement and Notices Terms as published by the Clearing House from time to time as an Exhibit to these Rules, but which do not form part of these Rules, which are applicable in respect of CDS Contracts, Customer-CM CDS Transactions and clearing agreements or arrangements between FCM/BD CDS Clearing Members and their Customers, as amended from time to time in accordance with the terms thereof.

The term "**Settlement Finality Regulations**" means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

The term "**Settlement Price**" means the settlement price for any F&O Contract as determined in accordance with the ICE Futures Europe Rules (for Contracts traded on ICE Futures Europe) or



the ICE Futures US Rules (for Contracts traded on ICE Futures US) or the LIFFE Rules (for Contracts traded on LIFFE) or by the Clearing House in coordination with the ICE OTC Operator (for Contracts traded on ICE OTC); except that if on any day an F&O Contract ceases to be traded, then the Clearing House may treat as the Settlement Price for such F&O Contract on such day a price determined by the Clearing House at its discretion (or by the relevant Market and accepted by the Clearing House at its discretion), as reflecting the fair market value of such F&O Contract as of the close of trading in such F&O Contract on such day.

The term "**Short**", in respect of an Option, refers to the positions of Persons against whom Put Options and Call Options may be exercised.

The term "**Standard Terms**" means the form of Customer-CM CDS Transactions Standard Terms as published by the Clearing House from time to time as an Exhibit to these Rules, but which do not form part of these Rules, which are applicable as between each Non-FCM/BD CDS Clearing Member and each of its Segregated CDS Customers, as amended from time to time in accordance with the Standard Terms.

The term "**Strike Price**" in respect of an Option, means the price of the relevant Deliverable at which the Option may be or is exercised.

The term "**Summary Disciplinary Committee**" means a summary disciplinary committee established pursuant to Rule 1004(c).

The term "**Surplus Collateral**" in respect of a Clearing Member or a particular Customer Account, Proprietary Account or account for Guaranty Fund Contributions at any time, means any Permitted Cover transferred to the Clearing House by a Clearing Member that is not required to satisfy the Clearing Member's current or most recently calculated requirements in respect of Margin or Guaranty Fund Contributions at such time.

The term "**Swap**" means (i) a "swap" as defined in the CEA and the Exchange Act, (ii) to the extent permitted to be held in an account with swaps (as defined in (i) above) under Applicable Law, a "security-based swap" as defined in the CEA and the Exchange Act, and (iii) Permitted Co-mingled Contracts recorded in the Swap Customer Account.

The term "**Swap Customer**", in respect of an FCM/BD Clearing Member, means any FCM/BD Customer with respect to any Contract arising as a result of CDS Trade Particulars or a Transaction that relates to a Swap. A Person may be a Swap Customer in relation to certain Contracts and another category of FCM/BD Customer in relation to other Contracts.

The term "**Swap Customer Account**", in respect of an FCM/BD Clearing Member, means a kind of Customer Account with the Clearing House (in its capacity as a registered U.S. derivatives clearing organisation clearing Swaps), the books and records of which are located in the United States of America, opened in the name of the FCM/BD Clearing Member (acting in its capacity as a clearing member in relation to transactions connected with the provision of services to Swap Customers where segregation of related collateral is required in accordance with Section 4d(f) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and any interpretations thereof by the CFTC, and entering into market contracts in the capacity of a clearing member in relation to transactions connected with the provision of services to Swap

Customers) relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Swap Customers (whose transactions the FCM/BD Clearing Member requests be recorded in the Swap Customer Account where the same is required in accordance with the segregation provisions of Section 4d(f) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and any interpretations thereof by the CFTC) and in which the Clearing House records such Contracts and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Swap Customers or groups of Swap Customers.

The term "**Termination Close-Out Deadline Date**" means: (i) in respect of ~~a~~ termination of ~~FX~~ clearing membership either generally or in respect of a particular Membership Category under Rule 209(a)(ii)-(v) or Rule 209(c)(i)(A) or Rule 209(f)(i)(A), the date falling 30 Business Days after the Termination Notice Time; (ii) ~~in respect of termination of clearing membership in respect of a particular Membership Category under Rule 917(c) and 918, the date falling 20+x Business Days after the Termination Notice Time;~~ ~~(ii) in respect of a termination of FX clearing membership under Rule 209(c)(i)(E) or Rule 209(f)(i)(E), in respect of FX Contracts only, the day falling 10 Business Days after~~ where x= the total number of unexpired Business Days in the relevant Cooling-Off Termination Notice Time; or Period; (iii) notwithstanding (i) and (ii), in any case, such later ~~day~~ date as the Clearing House may at its discretion permit and notify in writing to the affected ~~FX~~ Clearing Member; or (iv) in respect of termination of clearing membership following an Event of Default under Rule 209(a)(i), is inapplicable.

The term "**Termination Close-Out Time**" means: (i) in respect of termination of clearing membership generally (other than following an Event of Default under Rule 209(a)(i)), the time at which an ~~FX~~ Clearing Member that is terminating its ~~FX~~ clearing membership ceases to be party to any open ~~FX~~ Contracts with the Clearing House; (ii) in respect of termination of clearing membership in respect of a particular Membership Category, the time at which a Clearing Member ceases to be party to any open Contracts of the relevant Membership Category with the Clearing House; or (iii) in respect of termination of clearing membership generally following an Event of Default under Rule 209(a)(i), is inapplicable.

The term "**Termination Date**" means: (A) ~~(x) in respect of an FX Clearing Member that is not a CDS Clearing Member or an F&O Clearing Member and (y) for any other Clearing Member, in respect of its FX clearing membership only~~ in respect of termination of clearing membership either generally or in respect of a particular Membership Category (other than following an Event of Default under Rule 209(a)(i)), the later of: (i) where applicable, the Termination Close-Out Deadline Date; and (ii) the date of the Termination Close-Out Time; or (iii) the time of expiry of the termination notice period; ~~or (B) in respect of the membership of a CDS Clearing Member or F&O Clearing Member except as set out in (A), the date on which a Clearing Member's membership of~~ termination of clearing membership generally following an Event of Default under Rule 209(a)(i), the date on which default proceedings are completed or such other date as is specified by the Clearing House terminates in writing.

The term "**Termination Notice**" means a notice served by a Clearing Member of termination of its membership or of its membership of a particular Membership Category under Rule 209(c)(i)(A) or Rule 917(c).



The term "**Termination Notice Time**", ~~in respect of FX clearing membership,~~ means the time of service by ~~an FX~~ a Clearing Member of a ~~notice of termination under Rule 209(c)(i)(A) or (E) or Rule 209(f)(i)(A) or (E).~~ The term "**Termination Date**" ~~means the date on which a Clearing Member's membership of the Clearing House terminates.~~ Notice.

The term "**Trade Processing Platform**" means a person that has satisfied the Clearing House's requirements to act as an agent of one or more CDS Clearing Members in the submission of CDS Trade Particulars for Clearing, including having entered into an agreement with the Clearing House to act as an "**Approved CDS Trade Processing Platform**" in relation to such submissions and, in relation to any CDS Clearing Member for which (and, as the case may be, for whose Affiliate) it acts as agent, has obtained that CDS Clearing Member's authorisation in writing to submit CDS Trade Particulars for Clearing as agent for that CDS Clearing Member and accordingly, such a Trade Processing Platform will be a Representative of such CDS Clearing Member for that purpose until the expiry of not less than one Business Day's written notice to the Clearing House given by such CDS Clearing Member that such Trade Processing Platform is no longer, or is not, authorised to act as its agent and/or Representative.

The term "**Transaction**" means: (i) in respect of the Clearing of CDS Contracts, CDS Trade Particulars; (ii) in respect of the Clearing of F&O Contracts: any transaction where the related trade particulars or data submitted or provided to the Clearing House or a Market by or on behalf of a Clearing Member or Clearing Members (including by any Representative) will give rise to a Contract or Contracts if the relevant circumstances specified in Rule 401(a) occur; or (iii) an FX Transaction. For the avoidance of doubt: (A) a Transaction may or may not reflect a binding contract or transaction between two Clearing Members or between a Clearing Member and its Customer and includes any trade particulars or any data resulting from the matching of any trade or block orders; and (B) in the case of an F&O Transaction made on or reported to a Market, the Transaction need not yet have been reported to the Clearing House.

The term "**Transaction Rights or Obligations**" means the rights, liabilities or obligations (if any) of a Clearing Member relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than a Customer of the Clearing Member in relation to the Transaction in question.

The term "**Transfer**" has the meaning given to that term in Rule 904(a).

The term "**Transferee**" means a Person nominated by a Buyer to whom a transfer or delivery is to be made under an F&O Contract and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

The term "**Transferee Clearing Member**" means a Clearing Member which becomes party to a Contract as a result of a transfer, novation, sale or termination and replacement pursuant to Part 9 of the Rules.

The term "**Transferor**" means a Person nominated by a Seller by whom a transfer or delivery is to be made under an F&O Contract and includes reference to the Seller where transfer or delivery is to be made by the Seller.

The term "**Tribunal**" means an arbitral tribunal established under Rule 117.

The term "**USD**" means the lawful currency from time to time of the United States of America.

The term "**U.S. Future**" means (i) a Future or an Option that is an option on a Future, in either case that is traded on or subject to the rules of a designated contract market under Section 5 of the CEA and (ii) Permitted Co-mingled Contracts recorded in the DCM Customer Account. For the avoidance of doubt, U.S. Futures will not include Swaps or SBS.

The term "**Variation Margin**" means the cash required to be provided or actually provided by a Clearing Member to the Clearing House or by the Clearing House to a Clearing Member related to the market value of a Clearing Member's Open Contract Positions relating to F&O Contracts, as determined pursuant to Rule 503(e) and the Finance Procedures and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Withdrawal Date**" means, if at any time the Clearing House decides to terminate its services, either generally or in relation to a significant part of its business or certain categories of Contract, the date on which that termination will take effect.

## **Rule 102**     *Interpretation*

- (a) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time amended, modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.
- (b) References to any rules or any agreement are references to such rules or agreement as amended or restated from time to time, provided that such amendments or restatements are made in accordance with these Rules.
- (c) The Interpretation Act 1978 shall apply to these Rules in the same way as it applies to an enactment.
- (d) When a reference is made in these Rules to a rule, part, paragraph or procedure, such reference is to a Rule, Part, paragraph, Procedure of, or made under these Rules, unless otherwise indicated.
- (e) The headings in these Rules are for reference purposes only and do not affect in any way the meaning or interpretation of these Rules.
- (f) To the extent there is any conflict between any of the provisions of these Rules, a Clearing Membership Agreement, the Procedures (including all exhibits, attachments and appendices thereto), any Guidance or Circular or Market Rules or between any of the

foregoing, the provision of the first document specified in the paragraphs below shall prevail, control, govern and be binding upon the parties:

- (i) these Rules (excluding the Procedures, Contract Terms (save to the extent that the Contract Terms include the Rules) and any other document incorporated by reference) (except Rules 301(h), (i), (j) or (k) only in the event of any conflict between any such provision on the one hand and any provision of the Contract Terms of a CDS Contract relating to tax on the other hand, in which case the relevant provision of the Contract Terms of the CDS Contract shall prevail; and except as provided in Rule 1518);
- (ii) the Clearing Membership Agreement;
- (iii) in the case of CDS Contracts only, the CDS Procedures;
- (iv) in the case of Energy Contracts traded on ICE Endex only, in relation to those aspects of the ICE Endex Rules that include Contract Terms only, the ICE Endex Rules;
- (v) in the case of Energy Contracts traded on ICE Futures Europe only, in relation to those aspects of the ICE Futures Europe Rules that include Contract Terms only, the ICE Futures Europe Rules;
- (vi) in the case of Energy Contracts traded on ICE Futures US only, in relation to those aspects of the ICE Futures US Rules that include Contract Terms only, the ICE Futures US Rules;
- (vii) in the case of LIFFE Contracts, in relation to those aspects of the LIFFE Rules that include Contract Terms only, the LIFFE Rules;
- (viii) in the case of F&O Contracts only, the Contract Terms other than those set out in these Rules or Market Rules (except as set out in Rule 102(f)(i)) (excluding the Rules and any other document incorporated by reference);
- (ix) the Procedures (excluding any Contract Terms set out in the Procedures) save to the extent included in (iii);
- (x) Market Rules other than those referred to in (iv) to (vii) above (excluding any document described in Rule 102(f)(i) to (ix) incorporated by reference);
- (xi) any Guidance;
- (xii) any Circular (except for a Circular communicating an amendment to any of the above documents in accordance with these Rules, in which case the amendments communicated in such Circular shall be binding on the effective date specified in the Circular as if such amendments were one of those documents);

- (xiii) in the case of CDS Contracts recorded in a Designated CDS Customer Account, the Standard Terms (solely to the extent that the Standard Terms may be of interpretative relevance to the Rules or a CDS Contract); and
  - (xiv) the Settlement and Notices Terms.
- (g) [Not used].
- (h) All references to timings or times of day are to London (UK) times, unless indicated otherwise. Business hours shall occur only on Business Days and shall be construed accordingly.
- (i) All references to "**tax**" shall include, without limitation, any tax, levy, impost, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying the same).
- (j) Each Clearing Member shall be bound by any act, omission, conduct or behaviour ("**conduct**") of its Customers and clients of such Customers but only in any instance in which any such Customer or client of such Customer:
- (i) is permitted by the Clearing Member to have access to any system or interface of any Market, Trade Processing Platform or the Clearing House which access enables or results in the entry into of Contracts and relates to Clearing by that Clearing Member for such Customer or client (which access, without limitation shall be deemed to have been granted by the Clearing Member if the Customer or client in question has been nominated to the Clearing House as an Eligible Person pursuant to the Clearing Membership Agreement to which such Clearing Member is a party);
  - (ii) is permitted by the Clearing Member to have access to any system or interface of any Market, Trade Processing Platform or the Clearing House which relates to Clearing by that Clearing Member for such Customer or client and which is used for the enriching of data held by the Clearing House relating to Contracts, the post-trade management of Contracts, allocations from one Clearing Member to another Clearing Member under Rule 401(a)(viii) or Rule 401(e) or to or from a Participating Exchange under Rule 401(a)(xiv) and Rule 410, the transfer of Contracts between any Proprietary Account or Customer Account (or sub-account thereof) of a Clearing Member, position transfers, novations or assignments under Rule 408(a), the service of any notice, the exercise or abandonment of any Option, the closing-out, expiry or termination of any Future or the netting, combining or offsetting of any Contract recorded in a particular account;
  - (iii) is nominated by the Clearing Member (being an F&O Clearing Member) as a Transferee or Transferor for purposes of delivery under an F&O Contract; or
  - (iv) is otherwise duly appointed as an agent of the Clearing Member.

If a Customer or client of a Customer or any of their Representatives would have breached the Rules in respect of any instance listed in (i), (ii), (iii) or (iv) above if it were a Clearing Member, then such Customer, client or Representative or their Clearing Member may be subject to disciplinary proceedings, in which Rule 1003(u) applies. The application of this Rule 102(j) to Customers of CDS Clearing Members (acting in such capacity) is excluded in Rule 1516(d). This Rule 102(j), in as much as it is relevant to conduct relating to FX Data, is subject to the provisions of Rule 1708(a).

In addition, a Clearing Member shall be bound by and responsible for any conduct of or by any of the following Persons (including for purposes of disciplinary proceedings under Part 10; but not for the avoidance of doubt for the purposes of determining any liability of a Clearing Member or Defaulter for losses of the Clearing House or any of its Affiliates or Markets or any of their officers or employees, which liabilities are governed solely by Rule 111 and Rule 905(f)):

- (A) the Clearing Member; and
  - (B) the Clearing Member's Representatives (excluding Customers and their Customers' clients), as if such conduct were the conduct of the Clearing Member itself.
- (k) Pursuant to Rule 102(f), a Clearing Member's liability under clause 3.5 of the Clearing Membership Agreement shall be limited by Rules 102(j) and 1516(d), as applicable.
  - (l) Any capitalised term used in these Rules that is not defined in Rule 101 or elsewhere herein shall have the meaning given to it (in order of priority) in the Procedures, the Clearing House's standard form Clearing Membership Agreement and any relevant Market Rules.
  - (m) Each of the Rules shall, unless the context otherwise requires, be construed as an independent provision and shall be in addition and without prejudice to any other provision of the Rules.
  - (n) If any provision of these Rules (or part of any provision) is found by any court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Rules, and the validity, legality or enforceability of the other provisions of these Rules shall not be affected.
  - (o) The Rules, together with the applicable Clearing Membership Agreement and other documents given contractual force pursuant to these Rules, form a contract between the Clearing House and each Clearing Member. All obligations of the Clearing House hereunder are solely to Clearing Members. No Person other than the Clearing House has any obligation to Clearing Members pursuant to these Rules except as expressly provided in any provisions of these Rules or the Procedures purporting to create or define rights and obligations as between Clearing Members, between Clearing Members and their Customers or between Customers (each a "**Bilateral Obligation**"). Subject to any Bilateral Obligation in respect of which the relevant Clearing Members or Customers (as applicable) shall have the right to enforce the provisions of these Rules or Procedures against each

other, no Person shall have any right pursuant to the Contract (Rights of Third Parties) Act 1999 to enforce any provision of these Rules or the Procedures.

- (p) Any matter or right stated to be in, of or at the Clearing House's discretion shall be subject to the Clearing House's sole, unfettered and absolute discretion and such discretion may be exercised at any time. Where there is a provision that the Clearing House (or its Directors, officers or committees) may make further directions upon or in relation to the operation of a Rule or may make or authorise any arrangement, direction or procedure thereunder, the Clearing House may make such direction or make or authorise such arrangement or procedure in relation to or under the whole or any part of the Rule and may make or authorise different directions, arrangements or procedures in relation to different Clearing Members and may make or authorise such directions, arrangements or procedures generally or in relation to a particular Clearing Member or particular occasion and in all cases subject to such conditions as it may think fit. Any action taken at the discretion of the Clearing House may not be challenged by a Clearing Member (subject to the requirements of Rule 111(c) and the right of the Clearing Member to make a complaint pursuant to the Complaints Procedures or Part 10).
- (q) Without prejudice to the requirements of any Applicable Laws including, but not limited to, those relating to clients' money made by the FSA under sections 138 and 139 of the FSMA and notwithstanding any other provision of these Rules, nothing in these Rules shall have the effect of enabling, requiring or implying that any Margin or other amounts deposited in relation to a Clearing Member's or Defaulter's:
- (i) Customer Account of any class be used to meet a loss or shortfall on that Clearing Member's or Defaulter's Proprietary Account;
  - (ii) Customer Account of one Customer Account Category be used to meet a loss or shortfall on that Clearing Member's or Defaulter's Customer Account of any other Customer Account Category,

(which restrictions, for the avoidance of doubt, shall not apply to any Guaranty Fund Contribution or Assessment Contribution).

Without prejudice to the requirements of any Applicable Laws including, but not limited to, those relating to clients' money made by the FSA under sections 138 and 139 of the FSMA, nothing in these Rules shall have the effect of enabling, requiring or implying that any Contracts recorded in a Clearing Member's or Defaulter's:

- (iii) Customer Account of any class be netted, combined or offset with any Contract recorded in that Clearing Member's or Defaulter's Proprietary Account; or
- (iv) Customer Account of one Customer Account Category be netted, combined or offset with any Contract recorded in that Clearing Member's or Defaulter's Customer Account of any other Customer Account Category

(except as expressly provided under the Rules and to the extent permissible under Applicable Laws).



- (r) The Rules shall at all times be observed, interpreted and given effect to in the manner most conducive to the promotion and maintenance of recognition of:
- (i) the Clearing House as a recognised clearing house under the FSMA and any other legal or regulatory status it has from time to time under any other Applicable Law;
  - (ii) the good reputation of the Clearing House (and Clearing Members);
  - (iii) high standards of integrity and fair dealing in accordance with FSA Rules; and
  - (iv) proper protection for all Persons interested in the performance of Contracts.

To the extent that the Clearing House or any Clearing Member has any right under these Rules which may on its face be performed in a manner that goes beyond that which is permitted by Applicable Law, that right may only be exercised to the extent permitted under Applicable Law.

- (s) Subject to Rule 1608, these Rules and each Contract shall be governed by and construed in accordance with the laws of England and Wales.
- (t) These Rules may be supplemented by processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (u) References in these Rules to UK or English legislation or European Directives shall be interpreted as references to such legislation as implemented in England and Wales, including by the relevant Governmental Authorities. References in these Rules to U.S. federal or state legislation or regulation shall be interpreted as references to such legislation or regulation as implemented in the U.S. including by the relevant U.S. Governmental Authorities.
- (v) Notwithstanding Rule 102(o), nothing in these Rules shall preclude a Customer or any other Person from agreeing to the application of these Rules or any provision of these Rules in their agreements with any Clearing Member or third party, in which case the Clearing House shall be entitled to enforce any provision of these Rules (including, without limitation, Rule 111) as a third party with rights pursuant to the Contract (Rights of Third Parties) Act 1999.

**Rule 103      *Delay in performance by the Clearing House***

Subject to the provisions of the Contract Terms and further subject as set out in the Procedures, where an obligation of the Clearing House must be performed immediately, promptly or by or prior to a specified time or date but is not so performed, the Clearing House shall not be in breach of these Rules if, having used all reasonable endeavours to perform such obligation by such specified time or date, it performs the relevant obligation promptly after such specified time or date.

**Rule 104      *Invoicing Back and Specification of Terms***

- (a) The Clearing House shall have the right in consultation with the relevant Market (if any), to Invoice Back a Contract with a Clearing Member, including a Contract that is subject to delivery or tender, upon the occurrence of a Force Majeure Event or a Financial Emergency, provided that the Invoicing Back is, subject to Rule 109(c), approved in advance by an affirmative vote of the Board at a quorate meeting, at which meeting the facts giving rise to the Force Majeure Event or the Financial Emergency, as the case may be, will be considered and the meeting shall decide whether it would be appropriate to use this Invoicing Back power, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (b) The Clearing House shall have the right in consultation with the relevant Market, to specify or over-ride the price or other terms of any F&O Contract or F&O Transaction, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees. Other than in circumstances in which Rule ~~209(e)(iii)~~ [912](#) applies, the Clearing House shall have the right to specify or over-ride the price or other terms of any FX Contract, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees and provided that the Clearing House's rights under this Rule 104(b) may not be applied for the purpose of changing the amount of any liability of the Clearing House to a Defaulter (or deemed defaulter) or to an FX Clearing Member which would be a Defaulter on the making of the relevant declaration by the Clearing House under Rule 901(a) or of any liability of any Defaulter (or deemed defaulter) or any such FX Clearing Member to the Clearing House.
- (c) Provided that any power exercised under this Rule 104 is exercised in accordance with its terms, any Invoicing Back, specification or over-riding by the Clearing House shall be final and binding for the purposes of these Rules and not be subject to challenge by any Person under these Rules or otherwise, except in the case of manifest error, negligence or fraud.
- (d) Where the Clearing House deems it necessary to exercise its powers under paragraph (a) or (b) above, it will do so in good faith and in accordance with Rule 102(r).
- (e) The Clearing House will not exercise its powers under paragraph (a) or (b) to avoid or amend the terms of any Contract to which a Clearing Member is party unless there is an objective justification for it doing so and such an approach is applied objectively. The price at which any Invoicing Back is executed shall be determined in a commercially reasonable manner.

**Rule 105      *Termination***

- (a) If at any time the Clearing House decides to cease acting as a clearing house, either generally, in relation to a particular Exchange or in relation to a class of Contracts, it shall give all Clearing Members advance notice of the proposed Withdrawal Date by Circular. In the event of a complete cessation of services or of services in relation to a particular

Exchange or any class of Contracts, at least four months' notice shall be necessary. In any other event for which there is a Withdrawal Date, at least one month's notice shall be necessary. The Clearing House shall be entitled to postpone any such Withdrawal Date, generally or in respect of any individual Clearing Member, Exchange or class of Contract.

- (b) If, at any Withdrawal Date, any affected Contracts have not been finally settled, the Clearing House shall be entitled to terminate any or all such Contracts and require any such Contracts to be cash settled on terms specified by the Clearing House in accordance with Rule 104.
- (c) Rule ~~209(d) and Rule 209(e)~~[918\(a\)\(i\), \(ii\), \(iii\), \(v\), \(vi\) and \(vii\) and 918\(b\)](#) shall apply, ~~either~~[mutatis mutandis](#), in relation to [a termination of](#) the Clearing House's services, [whether](#) generally or ~~the Contracts in question~~[in respect of a particular Contract Category](#), as applicable, in the event of any termination under this Rule 105. [For such purposes, the term Termination Notice Time as used in Rule 918 shall be read as referring to the time at which the Clearing House issues a notice relating to the withdrawal, the terms Termination Close-out Deadline Date and Termination Date as used in Rule 918 shall be read as referring to the Withdrawal Date, the term Relevant Contract Category as used in Rule 918 refers to the Sets of Contracts being withdrawn and the terms Relevant Membership Category, Relevant Guaranty Fund Contributions and Relevant Assessment Contributions as used in Rule 918 shall be interpreted accordingly.](#)<sup>1</sup>

## **Rule 106      *Confidentiality and Information***

- (a) All information received or held by the Clearing House concerning past or current positions carried by the Clearing House or any other Clearing Organisation for a Clearing Member, or concerning Margin payments between the Clearing House or any other Clearing Organisation and a Clearing Member or concerning deliveries made by or to a Clearing Member and any financial statements filed with the Clearing House by any Clearing Member shall be held in confidence by the Clearing House and shall not be made known to any other Person except where disclosed, subject to such terms and conditions as the Clearing House may from time to time deem appropriate:
- (i) with the written consent of the Clearing Member involved;
  - (ii) to a Regulatory Authority or Governmental Authority where a request is formally made to the Clearing House by or on behalf of the same or pursuant to Applicable Laws;
  - (iii) pursuant to an order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Law;

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<sup>1</sup> [Rule 105\(c\) applies only to the F&O and FX Contract Categories. Rule 105\(c\) under the Continuing CDS Rule Provisions applies to the CDS Contract Category.](#)

- (iv) to any member of the ICE Group, any Exchange or Clearing Organisation and any of their or the Clearing House's Representatives, committees, experts, Delivery Facilities, auditors, advisers or lawyers including (without limitation) for audit, compliance, making or taking delivery, market surveillance or disciplinary purposes, for the purposes of an arbitration pursuant to Rule 117 or any proceedings in support of such an arbitration, or in relation to any possible or actual Event of Default or the termination or suspension of any clearing membership;
  - (v) to any Person in the business of providing data processing or similar services for the purposes of performing computations or analysis, or of preparing reports or records, for the Clearing House;
  - (vi) to any Person who has provided or is considering entering into a loan, insurance policy, guarantee or other financial arrangement with the Clearing House or any of its Affiliates, provided that information identifying the positions or name of a Clearing Member or any of its accounts or the name of any of a Clearing Member's Customers will not be so disclosed, except, in the case of a Clearing Member and its accounts only, as is necessary to respond to any enquiries of such a Person concerning the Clearing House's or any of its Affiliates' potential losses or exposures relating to an Event of Default (whether or not declared);
  - (vii) to the Secretary of State, any Insolvency Practitioner and any other authority or body having responsibility for any matter arising out of or connected with an Event of Default;
  - (viii) to any Person or to the public as a result of its complaints procedure or disciplinary proceedings; or
  - (ix) to any Person if the information comes into the public domain, other than as a result of a breach of this Rule by the Clearing House or its Representatives.
- (b) Clearing Members are given notice that the Clearing House is subject to section 348 (Restrictions on disclosure of confidential information by the FSA etc.) and regulations made under section 349 (Exemptions from section 348) of the FSMA. Clearing Members shall be deemed to consent to any use, disclosure or non-disclosure of information by the Clearing House that is required or permitted pursuant to such provisions.
- (c) The Clearing House is a Data Controller in relation to Personal Data provided to it by Clearing Members and their Representatives. Each Clearing Member shall ensure that:
- (i) any and all of its Representatives in relation to whom Personal Data are provided to the Clearing House ("**Data Subjects**") have consented in advance to such data being Controlled and Processed by the Clearing House or, if not a natural person, have agreed to procure such consent to the extent necessary;
  - (ii) the disclosure of Personal Data by the Clearing Member or its Representatives is in all respects and in each case lawful; and

- (iii) the information set out in Rule 106(d) has been provided to each Data Subject prior to disclosure of Personal Data relating to such Data Subject to the Clearing House.
- (d) The Clearing House shall have the right to disclose Personal Data to such Persons and for such purposes as are set out in Rule 106(a). The Clearing House and other Persons referred to in Rule 106(a) may transfer Personal Data outside the European Economic Area and Process Personal Data outside the European Economic Area.
- (e) Data Subjects have the right, on payment of a small fee to the Clearing House, to receive a copy of Personal Data held by the Clearing House and to have any errors or inaccuracies in such Personal Data rectified. Any request should be addressed to the Clearing House's registered office.
- (f) In this Rule 106 only, the terms "**Control**" (and derivations thereof), "**Process**" (and derivations thereof), "**Personal Data**" and "**Data Controller**" each have the meaning given to such terms in the Data Protection Act 1998.
- (g) Each Clearing Member and the Clearing House:
  - (i) consents to the recording of telephone conversations between the trading, clearing and other relevant personnel of the Clearing Member and the Clearing House or their Group Companies in connection with the Rules and any Contract, potential Contract or Transaction;
  - (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its and its Group Companies' relevant personnel;
  - (iii) agrees, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any Dispute; and
  - (iv) agrees that the remainder of this Rule 106 [Rule 106](#) shall apply to any such recordings made by the Clearing House.

**Rule 107      *Conversion to other Eligible Currency***

The Clearing House shall be entitled to direct Approved Financial Institutions to convert any cash standing to the debit or credit of any Clearing Member into such other Eligible Currency as the Clearing House, in its discretion, determines is appropriate or expedient. Any such conversion shall be effected at a reasonable exchange rate determined by the Clearing House at its discretion or such Approved Financial Institution.

**Rule 108      *Maintenance of Records; Return of Documents and other Materials***

- (a) Clearing Members that provide or present any documentation or other materials to the Clearing House are required to make a copy (whether electronic or physical) prior to doing so and must maintain each such copy for at least five years. Clearing Members that are authorised and regulated by the FSA will be deemed to satisfy this requirement if they

comply with all applicable FSA Rules relating to record-keeping in relation to their activities connected with the Clearing House.

- (b) The Clearing House shall not be obliged to return or provide a copy of any document or other materials presented or provided by any Clearing Member or other Person to the Clearing House, except where an express right to such copy or return is set out in these Rules.

**Rule 109**     *Alteration of Rules, Procedures, Guidance and Circulars*

- (a) The Clearing House shall provide details (which, where appropriate, will include a reasoned account) of any Rule Change in a Circular. A Rule Change shall take effect and be binding on the Clearing House and Clearing Members on the relevant date specified by the Clearing House in a Circular. Where the reason for any Rule Change is not manifest in the amended text of the Rules, the Clearing House will seek to provide an appropriate reasoned account of the Rule Change.
- (b) The Clearing House shall be entitled, at its discretion, to make any Rule Change at any time and without consulting Clearing Members where such Rule Change:
  - (i) is of a minor nature and relates to Rules of an administrative or commercial nature;
  - (ii) is of a limited, technical nature, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (iii) relates to the Clearing House's fees, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (iv) is considered by the Clearing House to be necessary as a result of an Event of Default, Force Majeure Event or Financial Emergency which has been recognised by an affirmative vote of the Board at a quorate meeting (subject always to Rule 109(c)) and subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees;
  - (v) is required to ensure compliance by the Clearing House or any Clearing Member or Members with Applicable Laws, Accounting Standards or the requirements of any Governmental Authority or Regulatory Authority or is necessary or desirable to maintain the Clearing House's status as a recognised clearing house under the FSMA or any other legal or regulatory status it has under any other Applicable Law;
  - (vi) concerns the parameters for Margin or the Guaranty Fund or classes of or haircuts for Permitted Cover, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (vii) results from, and is or can be implemented solely by, a change in:
    - (A) Market Rules made by the relevant Market;



- (B) the Credit Derivatives Determinations Committee's Rules made by the Persons lawfully entitled to amend that document; or
- (C) any other document (excluding, for the avoidance of doubt, the Credit Derivatives Definitions) that is not published by the Clearing House but which is incorporated into or forms part of the Contract Terms of any Contract in circumstances in which, pursuant to the Rules, upon such document being amended there results in a change to the Contract Terms without the need for any further step by the Clearing House,

which changes, for the avoidance of doubt shall take effect upon the relevant Market Rules, Credit Derivatives Determinations Committee's Rules or other document itself being amended without the need for any Circular or notice on the part of the Clearing House;

- (viii) involves a technical or operational specification of any Contract Term previously published in a Circular or found in a Clearing House policy or procedure or part II or III of the Contract Terms Procedures but which is not set out in the Rules or otherwise in the Procedures;
- (ix) involves the removal of an existing Contract Set or the addition of a new Contract Set; or
- (x) is considered by the Clearing House to be of an urgent nature (provided that the Clearing House may consult Clearing Members in relation to the continued applicability of the Rule Change after the urgent event or circumstance has concluded or ended), of a nature that would not affect significantly the rights of Clearing Members or of a nature where a consultation would otherwise not be appropriate or necessary;

provided that, in any such case, the requirements of sections 300A to 300E of the FSMA or article 10(4) of the Settlement Finality Regulations would not prevent such Rule Change from being made.

- (c) In relation to the determination of an Event of Default, a Force Majeure Event or a Financial Emergency pursuant to Rule 109(b)(iv) or, in relation to a Force Majeure Event only, Rule 112(b), or in relation to an approval of Invoicing Back under Rule 104(a), in the event that the Clearing House is unable to convene a meeting of the Board sufficiently promptly in the circumstances, any officer of the Clearing House designated by the Board from time to time for purposes of the applicable determination or approval may make such determination or approval, as the case may be, provided that the Clearing House shall convene a meeting of the Board as soon as practicable thereafter to ratify such determination or approval, rescind such determination or approval (only where, if rescission is desired, this is possible and practicable) or, where rescission is desired but not possible and practicable, to amend such determination or approval as appropriate.
- (d) In cases other than those described in Rule 109(b), prior to any proposed Rule Change taking effect, the Clearing House will either: (i) issue a consultation paper by Circular or

- (ii) consult with a smaller number of Clearing Members selected by the Clearing House at its discretion. In cases where this Rule 109(d) applies, the Clearing House will seek to provide at least 14 days for Clearing Members and any other Persons to respond to the consultation. The contents of responses and the names of Persons who respond to any consultation may be made publicly available by the Clearing House, unless the Clearing House receives a request to the contrary by a Person making a response. If the Clearing House receives any such requests for confidentiality or anonymity, the Clearing House may state that an anonymous response was made and may make public a summary of the contents of any response but the response will otherwise be subject to Rule ~~106~~.106. Clearing Members are encouraged, where appropriate, to inform Customers of proposed Rule Changes.
- (e) The Clearing House may at any time amend the Procedures, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees. Any such amendment shall have immediate effect or shall take effect at such time as is specified by the Clearing House. The Clearing House will issue a Circular in respect of any amendment to the Procedures.
- (f) The Clearing House may issue, amend or revoke interpretative Guidance in relation to any aspect of the management of the Clearing House, its action under these Rules or the conduct of business of the Clearing House or Clearing Members at any time at its discretion and without prior consultation.
- (g) The Clearing House may issue Circulars or amend or revoke the contents of Circulars in connection with Clearing, the Rules or any action taken by it under the Rules at any time at its discretion and without prior consultation.
- (h) None of the following (whether proven, evidenced or alleged) shall invalidate any Rule Change, Procedures amendment or the contents of any Circular or Guidance in respect of any individual Clearing Member:
- (i) omission by the Clearing House to give any notice or publish any Circular which may be required under these Rules;
  - (ii) non-receipt of any Circular by the Clearing Member or any of its Representatives;
  - (iii) lack of awareness on the part of the Clearing Member or any of its Representatives;
  - (iv) lack or inadequacy of any reasoned account; or
  - (v) failure by the Clearing House to comply with its obligations under Rule 109(d).
- (i) Without prejudice to the generality of Rule 109(h), in the event of any of the circumstances in Rule 109(h)(i), (iv) or (v) occurring, the Clearing House will consider what action should appropriately be taken in relation to the Rule Change which may (or may not) include the Clearing House:

- (i) opening a second or subsequent consultation on the past Rule Change, subject to the procedures required by this Rule 109 *mutatis mutandis*; or
  - (ii) allowing a particular Clearing Member or Clearing Members to make representations or submissions in relation to a past Rule Change and considering whether to propose a new Rule Change in accordance with this Rule 109.
- (j) In accordance with paragraph 2 of the Standard Terms, a change may be made to the Standard Terms in the same way as a Rule Change is made pursuant to this Rule 109.
- (k) The Clearing House may specify a one-off irreversible payment under CDS Contracts of a particular relevant Set by protection buyers or protection sellers (which in any case shall include the Clearing House), if it has made or proposes to make any Rule Change or other change to Contract Terms which the Clearing House determines, pursuant to documents governing the internal governance of the Clearing House and its committees, materially affects Mark-to-Market Prices of such Set. In such circumstances, the amount payable, the party that is obliged to make such payments, and the date of payments (which may be by reference to the date of introduction of a particular future Rule Change or change to Contract Terms) shall be specified by the Clearing House in a Circular. In making such determinations, the Clearing House may have reference to a poll of, or to price submissions by, CDS Clearing Members, the need and process for which is to be determined in any case pursuant to documents governing the internal governance of the Clearing House and its committees.

**Rule 110**      *Extension or Waiver of Rules*

- (a) The performance by any Clearing Member of any of its obligations under the Rules or any Contract may be waived by the Clearing House whenever in its discretion it considers that such waiver is necessary or in the best interests of the Clearing House.
- (b) Subject to Rule 110(c), the time fixed by the Rules for filing any report or other document, for submitting any information or for making transfers, deposits or payments may be extended by the Clearing House whenever in its discretion it considers that such extension is necessary or in the best interests of the Clearing House. Any such extension may continue in effect after the event or events giving rise thereto.
- (c) Any extension of the time for making transfers, deposits, payments or performance for any length of time longer than 3 Business Days after such transfer, deposit, payment or performance is due must be approved by the Clearing House in advance by an affirmative vote of the Board at a quorate meeting, at which meeting the facts giving rise to the proposed use of this provision will be considered and the meeting shall decide whether it would be appropriate to use this power, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (d) Any waiver of any right or consent given by the Clearing House under these Rules is only effective if it is in writing, applies only in the circumstances for which it is given and shall not prevent the Clearing House from subsequently relying on the relevant provision. No

delay or failure to exercise by the Clearing House of any of its rights or pursuing any of its remedies hereunder shall constitute a waiver. No single or partial exercise of any right or remedy by the Clearing House shall prevent any further exercise of the same or any other right or remedy.

- (e) If any extension of any length of time is approved in respect of any payment, deposit, transfer or performance under this Rule 110, any notice given to the Clearing House prior to the end of such extension period shall be deemed not to have been given.
- (f) The Clearing House shall be entitled without breach of these Rules to delay the making of a payment to any Clearing Member in respect of a Variation Margin or Mark-to-Market Margin call in respect of all or any of a Clearing Member's accounts on an intra-day basis without following the procedure set out in Rule 110(a) to (e) in circumstances in which:
  - (i) another Clearing Member or Clearing Members has or have been or will be asked to make payment in respect of a Variation Margin or Mark-to-Market Margin call occurring at or around the same time;
  - (ii) that other Clearing Member has, or those other Clearing Members have failed to pay the Clearing House (which term for purposes of this Rule 503(k) and Rule 503(l) includes a request for payment or planned request for payment not yet being made, confirmed or due including for technical or operational reasons); and
  - (iii) the total amount of such failure or failures to pay exceeds the Original Margin, Initial Margin or FX Original Margin for each Proprietary Account or Customer Account to which the unpaid call relates provided by the Clearing Member or Clearing Members that has or have failed to pay the Clearing House.<sup>2</sup>

## **Rule 111      *Liability***

- (a) Each Clearing Member shall indemnify and hold harmless the Clearing House against any and all losses, liabilities, damages, injuries, costs and expenses (excluding any consequential losses, liabilities, damages, injuries, costs or expenses) incurred or suffered by the Clearing House or any of its officers or employees arising out of or in connection with any of the following:
  - (i) a breach (or an allegation made by the Clearing House or any Governmental Authority of a breach) by such Clearing Member of any of its obligations under these Rules, the Procedures, its Clearing Membership Agreement or any Contract;
  - (ii) such Clearing Member's conduct (excluding conduct attributed to a Clearing Member solely as a result of the conduct of a Customer under Rule 102(j)), excluding conduct which the Clearing Member is obliged to perform and has

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<sup>2</sup> Rule 110(f) does not apply to the CDS Contract Category.

performed in accordance with the Rules or Procedures or its Clearing Membership Agreement;

- (iii) a breach by such Clearing Member of any Customer-CM CDS Transaction, Corresponding Contract, agency relationship or other contract with its Customer or a failure to perform by such Clearing Member in breach of any other obligation to such Customer (including, without limitation, any failure by such Clearing Member in whole or in part to pass on or credit to any Customer equivalent performance under a Customer-CM CDS Transaction, Corresponding Contract or other contract with its Customer to that which such Clearing Member has received under a Customer Account Contract from the Clearing House where such failure constitutes a breach or failure to perform as aforementioned);
- (iv) if it is a CDS Clearing Member, a Customer-CM Relationship Claim (as defined at Rule 111(i) below) in respect of a breach or failure to perform alleged by a Customer of the CDS Clearing Member acting in such capacity but only to the extent that (A) the Indemnifying CM (as defined at Rule 111(i) below) has elected to defend against, negotiate or settle the Customer-CM Relationship Claim in accordance with Rule 111(i)(ii) below; (B) the Customer-CM Relationship Claim has been resolved; and (C) the Clearing House has been unable to recover from the Customer any or a portion of any losses, liabilities, damages, injuries, costs and expenses (excluding any consequential losses, liabilities, damages, injuries, costs or expenses) it has incurred or suffered in respect of that Customer-CM Relationship Claim; in which case the Indemnifying CM shall indemnify the Clearing House only for the portion of the indemnifiable amounts not recovered from the Customer;
- (v) except in respect of a CDS Clearing Member acting in that capacity: (A) any claim made or alleged against the Clearing House by, or any liability of the Clearing House to, an Eligible Person (as defined in the relevant Clearing Membership Agreement), Transferor, Transferee or Customer of that Clearing Member; or (B) such Clearing Member's conduct to the extent that the same is not covered by Rule 111(a)(ii); or
- (vi) a breach (or an allegation made by the Clearing House or any Governmental Authority of a breach) by the Clearing Member of any Applicable Law,

provided that a Clearing Member shall not indemnify or hold harmless the Clearing House or any of its officers or employees to the extent that any such loss, liability, damage, injury, cost or expense arises out of or in connection with:

- (A) a breach by the Clearing House of any of its obligations under these Rules, the Procedures or any Contract;
- (B) fraud, bad faith, or wilful misconduct by the Clearing House or any of its officers or employees; or

- (C) personal injury or death resulting from negligence, recklessness or an intentional act or omission of the Clearing House or any of its officers or employees.
- (b) The provisions of this Rule 111 shall apply:
- (i) without prejudice to the liability of any other Person subject to the Rules or the rules of any Exchange for the same conduct;
  - (ii) in the case of inconsistency with any other provision of the Rules, in priority to that other provision;
  - (iii) whether or not the Clearing Member's Representative(s) are subject to the Rules; and
  - (iv) whether or not the Clearing Member's Representative(s) can be conclusively identified (provided that it is established that the relevant conduct was in fact carried out by a Clearing Member's Representative, albeit an unidentified Clearing Member's Representative).
- (c) Neither the Clearing House nor any of its Representatives, its Affiliates or its Affiliates' Representatives shall be liable to any Clearing Member or any other Person in respect of any loss, liability, damage, injury, cost or expense incurred or suffered by such Clearing Member or Person, whether in contract, tort or restitution, as a fiduciary or under any other cause of action, arising out of or in connection with any of the following:
- (i) any suspension, restriction or closure of the Clearing House or its services;
  - (ii) any failure or malfunction of or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by the Clearing House or any Exchange or the suspension, restriction or closure of any Market or Exchange;
  - (iii) any act or omission of any Exchange, any Clearing Member or any other third party including any error in relation to price data;
  - (iv) any Force Majeure Event affecting the Clearing House (including, in relation to a delivery, a Force Majeure Event affecting a Person making or taking delivery on behalf of the Clearing House);
  - (v) any dispute relating to the validity, existence or terms of any Contract;
  - (vi) the exercise (or failure to exercise) by the Clearing House of any discretion or right conferred upon it pursuant to these Rules;
  - (vii) the exercise (or failure to exercise) by any Exchange of any discretion or right conferred upon it pursuant to its rules (including, without limitation, in relation to error trades);



- (viii) any indirect or consequential loss, liability, damage, injury, cost or expense, any loss of profit (whether direct or indirect) or any loss of bargain;
- (ix) any action in libel, defamation or slander in connection with the issue of any Default Notice, conduct of any proceedings relating to an Event of Default, the timing of termination of any Contracts or the manner in which or the price at which any Contracts are terminated following an Event of Default;
- (x) rejection of any application to become a Clearing Member;
- (xi) any Contract being void pursuant to Rule 403 or avoided pursuant to Rule 404, including (without limitation) the causes and consequences of such Contract being void or voidable;
- (xii) any action or inaction on the part of a Transferor or Transferee;
- (xiii) in respect of a Contract subject to tender, delivery or physical settlement:
  - (A) a tender given by the Clearing House;
  - (B) any documents accompanying a tender as required by Market Rules or the Procedures;
  - (C) the performance by the Clearing House of its obligations to make delivery of a Deliverable or Investment under a Contract or to pay the price or settlement price; or
  - (D) any other loss, liability, damage, injury, cost or expense arising under the terms of a Contract in relation to tender, delivery or physical settlement,

unless, the relevant Clearing Member gives notice of its loss, liability, damage, injury, cost or expense within seven Business Days of either the day on which relevant documents must be taken up and paid for by the Clearing Member (whether or not the Clearing Member fulfils that obligation) or the Clearing Member must take delivery of the Deliverable or Investment, whichever is the earlier;
- (xiv) as a result of any action taken by it pursuant to Market Rules on the basis that Market Rules are to any extent invalid or *ultra vires* or that a determination or request made by the Market or any agreement made by the Market, is *ultra vires* or incompatible with Market Rules;
- (xv) any express or implied representations or warranties in relation to the Clearing House's systems, including, but not limited to, representations or warranties of good title, merchantability and fitness for purpose or for a particular use;

- (xvi) any statement, representation, assurance or warranty of the Clearing House or any other Person other than as expressly set out in the Rules, Contract Terms or Clearing Membership Agreement; or
- (xvii) any action, suit or proceeding brought against the Clearing House over one year after the time that a cause of action, suit or proceeding has accrued,

provided that neither this Rule 111(c) nor any other provision of these Rules shall affect the application of section 291 of the FSMA nor shall exclude or restrict the liability of the Clearing House or any other Person for:

- (xviii) fraud, bad faith or wilful misconduct;
  - (xix) personal injury or death resulting from negligence, recklessness, or an intentional act or omission;
  - (xx) obligations under Contracts (except that, other than as provided in Part 7, the terms of CDS Contracts, Part 15, the terms of FX Contracts, Part 17, and the Procedures, the Clearing House shall have no obligation physically to make or accept delivery of any Deliverable or Investment and shall have no liability arising out of the failure or lateness of another Clearing Member (or its Transferor or Transferee) physically to make or accept any such delivery or make any such payment); or
  - (xxi) any liability which in accordance with Applicable Laws cannot be excluded, to the extent such liability cannot lawfully be excluded.
- (d) Any possible action, suit or proceeding against the Clearing House must be notified to the Clearing House as soon as reasonably practicable, including all relevant details then known and supporting documentation.
  - (e) Due to ICE OTC not being a 'designated contract market' regulated under Applicable Laws in the United States of America, there may be result in additional risks, losses or liabilities for Clearing Members that are authorised to clear ICE OTC Contracts. Save as described in Rule 111(c)(xviii)-(xxi), the Clearing House shall not be liable to any Person as a result of any losses, damages, injuries, costs or expenses arising out of or in connection with the lack of regulatory oversight or regulatory status of ICE OTC.
  - (f) Save for any liability which it cannot exclude pursuant to Applicable Laws, the Clearing House shall not be liable pursuant to these Rules or any Membership Agreement to any Person who is not a Clearing Member. Without prejudice to the generality of the foregoing, the Clearing House shall not be liable (save for any liability which it cannot by law exclude) to any Transferor or Transferee (that is not the Seller or Buyer under a Contract, respectively) or to any Customer of a Clearing Member.
  - (g) If the Clearing House is found liable to a Clearing Member in respect of a Contract and another Clearing Member is also found liable to the Clearing House in respect of a Contract which arose pursuant to the same Transaction or CDS Trade Particulars as the first Contract, then the liability of the Clearing House under the first Contract shall be deemed

to be a foreseeable consequence of the breach by the Clearing Member of the second Contract and the Clearing House shall be entitled to be indemnified by such Clearing Member in accordance with this Rule 111.

- (h) Damage or loss to the property of the Clearing House or any other property on the Clearing House's premises will be paid for by the Clearing Member causing such damage or loss.
- (i) If the Clearing House is subject to any claim by a third party which would, if the claim were successful, be likely to give rise to a right on the part of the Clearing House to make a claim under Rule 111(a)(iii) (such claim, a "**Customer-CM Relationship Claim**") or Rule 111(a)(iv), in each case, against a CDS Clearing Member acting in that capacity that is not a Defaulter ("**Indemnifying CM**"):
  - (i) the Clearing House will:
    - (A) promptly provide the Indemnifying CM with notice of the Customer-CM Relationship Claim and all documentation and correspondence in its possession that is materially relevant to the Customer-CM Relationship Claim (save to the extent that the provision of such documentation or correspondence to the Indemnifying CM is restricted by a duty of confidentiality or by any Applicable Law); and
    - (B) provide the Indemnifying CM with a reasonable opportunity to comment on correspondence and documents proposed to be sent by the Clearing House to the claimant that is material to the Customer-CM Relationship Claim (save to the extent that the provision of any draft correspondence is restricted by a duty of confidentiality or by any Applicable Law);
  - (ii) the Indemnifying CM shall have the right to defend against, negotiate, settle, or otherwise deal with a Customer-CM Relationship Claim, provided that:
    - (A) if the Indemnifying CM elects to defend against, negotiate, settle, or otherwise deal with a Customer-CM Relationship Claim, it shall, within thirty (30) calendar days (or sooner if the nature of the Customer-CM Relationship Claim so requires) from the date of receipt of notice from the Clearing House of the Customer-CM Relationship Claim, notify the Clearing House, the relevant officer, or the relevant employee, as applicable, of its intent to do so;
    - (B) the Indemnifying CM will at all times conduct itself with reference to the requirements of Rule 102(r); and
    - (C) the Indemnifying CM will consult with the Clearing House in connection with any document or proposed document concerning the Customer-CM Relationship Claim that relates to the Clearing House or makes statements about the Clearing House's conduct, and will take into account any reasonable suggestions or comments received by it from the Clearing House in relation to any such document or proposed document (and the

reasonableness of any comments of the Clearing House shall be interpreted, without limitation, with reference to the principles set out in Rule 102(r); and

- (iii) if the Indemnifying CM does not elect to itself defend against, negotiate, settle, or otherwise deal with a Customer-CM Relationship Claim within the period specified in Rule 111(i)(ii)(A),
  - (A) the Indemnifying CM will promptly provide the Clearing House with all documentation and correspondence in its possession that is materially relevant to the Customer-CM Relationship Claim (save to the extent that the provision of such documentation or correspondence to the Clearing House is restricted by a duty of confidentiality or by any Applicable Law); and
  - (B) the Clearing House will, in addition to its obligations in Rule 111(i)(i):
    - (1) take into account any reasonable suggestions or comments received by it from the Indemnifying CM in relation to proposed correspondence or documents referred to in Rule 111(i)(i)(B) (and the reasonableness of any comments shall be interpreted, without limitation, with reference to the principles set out in Rule 102(r)); and
    - (2) consult with the Indemnifying CM in respect of the resolution of the Customer-CM Relationship Claim, including, prior to any settlement, in respect of the terms of settlement.

**Rule 112**     *Force Majeure and similar events*

- (a) Neither the Clearing House nor a Clearing Member shall be liable for any failure, hindrance or delay in performance in whole or in part of its obligations under these Rules or of any Contract if and to the extent that such failure, hindrance or delay arises as a result of a Force Majeure Event.
- (b) On the occurrence of any Force Majeure Event (and, where the Force Majeure Event affects the Clearing House, an affirmative vote of the Board at a quorate meeting recognising such Force Majeure Event (subject always to Rule 109(c)):
  - (i) the Affected FM Party shall immediately notify the Clearing House of the same (or, if the Affected FM Party is the Clearing House, the Clearing House shall issue a Circular in relation to the Force Majeure Event);
  - (ii) the Clearing House shall be entitled to require any Contracts affected by the event or circumstance to be performed in accordance with directions issued by the Clearing House or to be Invoiced Back;

- (iii) the Clearing House shall be entitled to require any Clearing Member to take such action as the Clearing House may direct in respect of Contracts affected by the event or circumstance;
  - (iv) the Clearing House shall be entitled to require Clearing Members to comply with any directions issued by the Clearing House regarding the performance of, or otherwise in respect of, such affected Contracts as are specified by the Clearing House; and, upon receipt of such an invoice, settlement of all affected accounts shall be due immediately and shall be made forthwith in discharge of such Contracts;
  - (v) a Clearing Member affected by a Force Majeure Event shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform its obligations to the Clearing House and if the Clearing House is affected by a Force Majeure Event, it shall use all reasonable endeavours to mitigate the effects of same upon its ability to perform such obligations to Clearing Members; and
  - (vi) the Affected FM Party shall notify the Clearing House immediately as soon as its ability to perform is no longer affected by the Force Majeure Event (or, if Affected FM Party is the Clearing House, the Clearing House shall issue a Circular in relation to the cessation of the Force Majeure Event).
- (c) If a Market determines in accordance with Market Rules that an excessive position or unwarranted speculation or any other undesirable situation or practice is developing or has developed which is affecting or capable of affecting the Market, the Clearing House may take such action as is requested of it by that Market in respect of one or more Contracts.

**Rule 113**     *Notices*

- (a) The delivery by hand, electronic transmission, facsimile or telephone of any notice, order or other communication to a Clearing Member at the address, facsimile number or telephone number last designated by it shall be good and sufficient delivery thereof to such Clearing Member (unless another method of delivery is specified in the Rules or in relation to any Contract). The publication of a Circular shall amount to good and sufficient delivery of the contents of the Circular to all Clearing Members.
- (b) Any notice, document, communication, filing or form to be served on, filed with, made to or provided to the Clearing House pursuant to these Rules or in relation to any Contract shall be served, filed, made or provided at the address, fax number or e-mail address (or through such other communication system) as is specified by the Clearing House from time to time in accordance with the Procedures and shall be marked for the attention of such person or department as is specified by the Clearing House from time to time in accordance with the Procedures. Unless another form or method is specified in the Rules or the Procedures for the notice, document, communication, filing or form in question, a notice, document, communication, filing or form must be served, filed, made or provided in writing.

- (c) Any notice, document, communication, filing or form, unless otherwise specified in the Rules or the Procedures, will only be effectively served, filed, made or provided and delivered to the Clearing House for the purposes of these Rules:
- (i) if sent by post, on the third Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope; or
  - (ii) if delivered in person or by courier, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day.
- (d) Unless otherwise specified in the Rules or Procedures, any notice by fax or electronic communication shall not be effective until hard copy confirmation is served pursuant to Rule 113(c).
- (e) Each CDS Clearing Member or FX Clearing Member that is not incorporated or registered in England and Wales shall appoint and maintain an agent in England and Wales to act as its agent to accept service of process issued out of the courts of England and Wales in relation to any arbitration commenced pursuant to Rule 117 or the Clearing Membership Agreement and shall deliver to the Clearing House an agreement substantially in the form specified by the Clearing House relating to such appointment countersigned by such agent. No CDS Clearing Member or FX Clearing Member shall give any notice of revocation to, or otherwise terminate the appointment of, any such agent unless prior to such termination it has validly appointed a replacement agent in England and Wales reasonably acceptable to the Clearing House to accept service of process issued out of the courts of England and Wales in relation to any arbitration commenced pursuant to Rule 117 or the Clearing Membership Agreement and has delivered to the Clearing House a copy of that agent's acceptance of that appointment substantially in the form specified by the Clearing House countersigned by such agent. If for any reason any agent appointed under this Rule 113(e) ceases to be such an agent, the CDS Clearing Member or FX Clearing Member shall forthwith appoint a replacement agent in England and Wales and deliver to the Clearing House a copy of the new agent's acceptance of that appointment substantially in the form specified by the Clearing House countersigned by such agent within 10 Business Days of such appointment. Nothing in these Rules, the Procedures, the Clearing Membership Agreement or any Contract shall affect the right of the Clearing House to serve process in any other manner permitted by law.

**Rule 114      *Action by the Clearing House***

- (a) Except as otherwise specifically set out herein, any action permitted or required to be taken by the Clearing House may be taken by the Board, the Chairman, the President, any other Board member or any other officer or committee to whom or which authority has been delegated by the Clearing House, the Board, the Chairman, the President or any committee.
- (b) Where there is a provision to the effect that an action may be taken or power exercised by the Clearing House, any action taken or power exercised by the Clearing House shall be



without prejudice to the right of the Clearing House to exercise such powers and take such other steps (or not as the case may be) as it may think fit upon that or any other occasion.

**Rule 115**      *Relations with Governmental Authorities and other Persons*

- (a) With a view to maintaining recognition as a clearing house under the FSMA, the Clearing House may:
  - (i) make arrangements with any Person for monitoring compliance with and investigating alleged breaches of the Rules (and arrangements, Procedures and directions made, authorised or given thereunder); and
  - (ii) co-operate generally with any Governmental Authority.
- (b) Without prejudice to the generality of Rule 115(a):
  - (i) this may include making arrangements for the sharing of information with Governmental Authorities; and
  - (ii) the Clearing House may, where appropriate, at any time refer a complaint or any other matter coming to its attention to one or more Exchanges, Clearing Organisations or Regulatory Authorities for its or their comment or investigation and may, pending the result of such reference, either suspend or continue with (in whole or in part) its own investigation, proceedings or other actions.

**Rule 116**      *Opening Hours*

The Clearing House will notify Clearing Members of any changes to its Opening Days and Opening Hours from time to time by Circular.

**Rule 117**      *Dispute Resolution*

- (a) Subject to Rule 1518, any Dispute between the Clearing House and the Clearing Member(s) shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated into this Rule 117. In the event of a conflict between any provision of the LCIA Rules and this Rule 117, this Rule 117 shall prevail.
- (b) The seat of arbitration will be London and the language of the arbitration proceedings shall be English.
- (c) The Tribunal will comprise three arbitrators appointed by the LCIA Court. The LCIA Court shall nominate one of the arbitrators to act as the chairman of the Tribunal. The members of the Tribunal will be persons considered by the LCIA Court in its discretion to have experience with respect to the subject matter of the Dispute. Tribunal members shall not be current or former employees or directors of any Clearing Member that is a party to the arbitration, current or former employees of the Clearing House or any person or persons with a material interest or conflict of interest in the outcome of the Dispute.

- (d) The Tribunal shall have the power on the application of any party to an existing arbitration, to require one or more Clearing Members to be joined to an existing arbitration. Each Clearing Member agrees that it may be joined as an additional party to an arbitration involving the Clearing House and another Clearing Member.
- (e) If more than one arbitration is begun under these Rules and the Clearing House or a Clearing Member that is a party to an arbitration so concerned serves notice upon the Tribunals concerned that it believes two or more arbitrations are substantially related and that the issues should be heard in one set of proceedings, the Tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the proceedings should be consolidated and heard together before that Tribunal.
- (f) In the case of such joinder or consolidation, the Tribunal shall make a single, final award determining all Disputes between the relevant parties in those proceedings. Each Clearing Member and the Clearing House irrevocably waives any right to challenge any award or order of any Tribunal by reason of the fact that it arises from a joined or consolidated arbitration. In addition to the waiver of challenge on the basis of joinder set out in clause 8.5 of the Clearing Membership Agreement, each Clearing Member and the Clearing House hereby irrevocably waives any right to challenge any award or order of any tribunal appointed under the Clearing Membership Agreement by reason of the fact that it arises from a consolidated arbitration.
- (g) The award of the arbitral Tribunal will be final and binding on the Clearing House and any Clearing Member from the day it is made. Judgment upon the award may be entered or the award enforced through any other procedure in any court of competent jurisdiction.
- (h) No arbitral proceedings under this Rule 117 may be instigated where arbitral proceedings could have been instigated in respect of the same Dispute under Market Rules.
- (i) The provisions of this Rule 117 may not be varied by any Clearing Member or Clearing Members save where each Clearing Member that is a party to the Dispute or arbitration proceedings and the Clearing House agree in express written terms.
- (j) The commencement of any arbitral proceedings shall be without prejudice to and shall not limit in any way the right of the Clearing House to instigate any procedure under Part 9 or Part 10 of these Rules, including without limitation in relation to any Event of Default, any investigation, disciplinary proceedings or the imposition of a sanction.
- (k) Each Clearing Member that now or hereafter has a right to claim sovereign immunity from suit or sovereign immunity from enforcement for itself or any of its assets shall be deemed to have waived any such immunity to the fullest extent permitted by Applicable Laws. Such waiver shall apply in respect of any immunity from:
  - (i) any proceedings commenced pursuant to this Rule 117;
  - (ii) any judicial, administrative or other proceedings to aid an arbitration commenced pursuant to this Rule 117; and

- (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from any judicial or administrative proceedings commenced pursuant to this Rule 117.
- (l) The rights and obligations of a Clearing Member under the Rules and in relation to any Contract are of a commercial and not a governmental nature.
- (m) No Clearing Member shall raise or in any way whatsoever assert a defence of sovereign immunity in relation to any claim or enforcement proceedings arising from a Dispute under this Agreement.
- (n) All Permitted Cover standing to the credit of a Clearing Member who is party to one or more Contracts subject to a Dispute or difference to which this Rule 117 or Market Rules applies, whether or not such Permitted Cover is held with respect to a disputed Contract, may be retained by the Clearing House until the Dispute in question is finally disposed of.
- (o) This Rule 117 is subject to Rule 1608.

**Part 2 Clearing Membership****Rule 201 *Clearing Membership Criteria***

- (a) In order to attain and maintain membership as a Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Clearing Member:
- (i) have paid the Clearing House's (non-refundable) application fee (if applicable) and provided completed membership application forms;
  - (ii) (if proposing to become a Clearing Member in relation to ICE Endex Transactions) be a member of ICE Endex;
  - (iii) (if proposing to become a Clearing Member in relation to ICE Futures Europe Transactions) be a member of ICE Futures Europe;
  - (iv) (if proposing to become a Clearing Member in relation to ICE Futures US Transactions) be a member of ICE Futures US;
  - (v) (if proposing to become a Clearing Member in relation to ICE OTC Transactions) be an ICE OTC Participant or an Affiliate of an ICE OTC Participant;
  - (vi) (if proposing to become a Clearing Member in relation to LIFFE Transactions) be a member of LIFFE;
  - (vii) have nominated a Person, satisfactory to the Clearing House, who is (A) a director, general partner, trustee or officer of the applicant (or Person occupying a similar status or performing similar functions), (B) responsible for the clearing operations of the applicant and (C) authorised to act on behalf of the applicant in all transactions with or involving the Clearing House, and have nominated a second Person who meets the requirements of (A) above and is authorised to act on behalf of the applicant in the event of the death, incapacity or other inability of the first Person to so act;
  - (viii) maintain and, where applicable, procure that all of its Designated Controllers maintain, sufficient Capital in accordance with Rule 206;
  - (ix) where a Controller Guarantee is or is to be provided by a Designated Controller, procure that the Controller Guarantee is executed in such form and delivered in such manner as the Clearing House may prescribe from time to time;
  - (x) be party to a Clearing Membership Agreement with the Clearing House;
  - (xi) have in place all necessary regulatory authorisations, licences, permissions and approvals in its country of origin, the UK and any other jurisdiction in which it conducts business;

- (xii) be fit and proper, have sufficient qualities of financial responsibility, operational capacity, business integrity, reputation and competence as the Clearing House, in its discretion, considers necessary or appropriate and satisfy the Clearing House that its directors, officers and Controllers also satisfy such tests;
- (xiii) have such facilities, equipment, operational capability, personnel, hardware and software systems as are capable of supporting the proper performance of its business as a Clearing Member, including such IT links to the Clearing House and software as in the judgment of the Clearing House are necessary or desirable;
- (xiv) have in place business continuity procedures that satisfy the Clearing House's minimum requirements;
- (xv) have a sufficient level of knowledge about the types of Contracts that it intends to clear and any risks involved in relation to the same;
- (xvi) have demonstrated its ability to make available to the Clearing House sufficient Margin and make Margin payments as required pursuant to these Rules;
- (xvii) have made the required Guaranty Fund Contributions;
- (xviii) not be subject to an Insolvency;
- (xix) be either a Person that is not a natural person or a Person that is subject to business taxation for the purposes of Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments;
- (xx) if it is a Clearing Member in respect of ICE OTC Transactions, be an 'eligible commercial entity' (as defined in Section 1a(11) of the U.S. Commodity Exchange Act) or an 'eligible contract participant' (as defined in Section 1a(12) of the U.S. Commodity Exchange Act);
- (xxi) not be subject to any circumstances pursuant to which an Event of Default could be declared were the applicant to be a Clearing Member;
- (xxii) have provided details of an office which is staffed during normal business hours and sufficient for its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive officer of the Clearing Member (who need not be physically located at such office) to which all notices, orders and other communications from the Clearing House may be transmitted or delivered;
- (xxiii) satisfy the Clearing House that it, its officers, directors and Controllers would each meet the requirements for an 'approved person' (for individuals) or 'controller' (for partnerships, companies and other bodies corporate) under the FSA Rules;
- (xxiv) hold a Nominated Bank Account or Accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House;

- (xxv) if non-cash assets are to be used as Permitted Cover, have executed all necessary documentation relating to the transfer of such assets and not be in dispute with the Clearing House in relation to the ownership over or rights relating to such non-cash assets;
  - (xxvi) either (A) be a Person in respect of whom 'simplified due diligence' may be applied pursuant to the Money Laundering Regulations 2007; or (B) have been subject to customer due diligence measures under the Money Laundering Regulations 2007 to the Clearing House's satisfaction;
  - (xxvii) be organised (and any relevant branch or establishment outside its home jurisdiction must be organised) in a jurisdiction whose insolvency laws are acceptable to the Clearing House, and comply with any additional restrictions or requirements imposed by the Clearing House as a result of activities in any such jurisdictions; and
  - (xxviii) not be subject to statutory disqualification under Applicable Law.
- (b) The Clearing House may at its discretion attach further objective conditions to any application for Clearing Member status prior to such status being granted. The Clearing House may grant approval to an applicant conditional upon satisfying certain requirements, provided that the applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.
  - (c) Applicants for membership must provide information or documentation to the Clearing House evidencing compliance (or lack thereof) with each of the criteria set out in or required pursuant to Rule 201(a), and for CDS Clearing Member applicants only, Rule 201(i), and, in addition, for FX Clearing Member applicants only, Rule 201(j). Failure by an applicant to supply such information or documentation may result in an application being rejected.
  - (d) All information supplied to the Clearing House in respect of an application for membership shall be deemed to have been provided by the Clearing Member to the Clearing House on the day on which that Clearing Member becomes a Clearing Member, save to the extent that such information has been amended or revoked at least two Business Days prior to membership being granted.
  - (e) If the Clearing House determines that an application for membership should be denied, the applicant will be given notice of such denial. In such an event, the applicant may request an opportunity to be heard by the Clearing House's Board (or an appropriately constituted sub-committee of the Board) in relation to the matter and to present evidence as to why its application should not be denied or may raise a complaint which the Clearing House will deal with in the same way as if Part 10 applied to such complaint (notwithstanding that the Rules do not apply to the complaint).
  - (f) Membership of the Clearing House does not entitle any Clearing Member to any shareholding or other similar interest in the Clearing House or any of the Clearing House's Affiliates. Nothing in these Rules is intended to, or shall be deemed to, establish any



partnership or joint venture between any Clearing Members or between the Clearing House and any other person. Except for any provision relating to Disclosed Principal Members or Representatives that are agents, nothing in these Rules constitutes any Clearing Member or the Clearing House as the agent or principal of any other Person. Nothing in these Rules authorises any Person to make or enter into any commitments for or on behalf of any other Person (save in the case of a Clearing Member acting on behalf, or for the account, of and being liable for a Customer or as otherwise expressly provided herein).

- (g) Clearing Members shall be deemed to represent and warrant, upon their first date of membership and on each subsequent date that they are a Clearing Member, that they meet all of the membership criteria in Rule 201(a) (and, if they are a CDS Clearing Member, Rule 201(i) and, in addition, if they are an FX Clearing Member, Rule 201(j)) and are in compliance with all of their obligations under these Rules.
- (h) In order to attain and maintain membership as a Disclosed Principal Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Disclosed Principal Member, meet all the requirements for membership as a Clearing Member. A Disclosed Principal Member shall be subject to and bound by all these Rules in every way as if it were a Clearing Member, subject to such modifications as are set out herein and acting at all times as disclosed principal for the Clearing Member that has appointed it.
- (i) In order to attain and maintain membership as a CDS Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a CDS Clearing Member, meet such additional requirements applicable to CDS Clearing Members as are specified in the CDS Procedures.
- (j) In order to attain and maintain membership as an FX Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes an FX Clearing Member, meet such additional requirements applicable to FX Clearing Members as are specified in the Procedures.

**Rule 202**      *Obligations of Clearing Members*

- (a) In connection with these Rules, all and any Contracts, its membership of the Clearing House and its business and activities as a Clearing Member, each Clearing Member shall at all times:
  - (i) comply with these Rules and any agreement with the Clearing House;
  - (ii) comply with all Applicable Laws relating to its status and performance as a Clearing Member;
  - (iii) act in good faith in its dealings with the Clearing House;
  - (iv) continually satisfy the criteria for membership set out in or required pursuant to Rule 201(a) and, in addition, if it is a CDS Clearing Member, Rule 201(i), and, in addition, if it is an FX Clearing Member, Rule 201(j);

- (v) respond promptly to any direction by the Clearing House to provide information or documentation;
- (vi) maintain at least the amount of Capital required pursuant to Rule 206 (and, where the Capital requirements would not be met without a Controller Guarantee being provided, procure that each of its Designated Controllers is party to a Controller Guarantee that remains in force and maintains such amount of Capital as is required pursuant to Rule 206);
- (vii) pay all fees and other charges when due in accordance with Part 3;
- (viii) provide Margin and make Margin payments to the Clearing House in accordance with Part 3 and Part 5;
- (ix) make all such payments to such Guaranty Funds as are required pursuant to Part 11;
- (x) respond promptly to all enquiries or requests for information made by the Clearing House;
- (xi) maintain accounts at an Approved Financial Institution for the deposit of funds in Eligible Currencies and the deposit of securities required to be transferred to and from the Clearing Member pursuant to these Rules (whether by way of Margin, Guaranty Fund Contributions, fees, amounts due under Contracts or otherwise) and have arrangements with such Approved Financial Institutions satisfactory to the Clearing House for electronic transfer of funds and securities into and out of such accounts (separately for Proprietary Account and each different Customer Account) (as applicable) on the order of the Clearing House and without the need to seek the consent of such Clearing Member or any of its Customers;
- (xii) if it:
  - (A) has a place of business or establishment in any member state of the European Economic Area;
  - (B) is to have a Customer Account; and
  - (C) is a credit institution or financial institution (as defined in the Money Laundering Directive) or otherwise is a person falling under article 17(2) of the Money Laundering Regulations 2007 (or the equivalent provision implementing the Money Laundering Directive in a member state other than the UK):

consent to any Transferee Clearing Member and the Clearing House relying upon its customer due diligence in relation to all of its Customers and all other "beneficial owners" (within the meaning of article 3(6) of the Money Laundering Directive) in respect of any Contracts entered into in respect of Customer business, Margin recorded in its Customer Margin Account or any other collateral subject to the Default Portability Rules, such consent only to be relied upon in the event of the

Clearing Member becoming a Defaulter and the Default Portability Rules being applied;

- (xiii) if the Clearing House at its discretion so directs, allow formal audits or system tests of its operations related to its business with the Clearing House during reasonable business hours and on reasonable notice no more than twice annually, at the expense of the Clearing Member;
- (xiv) have adequate systems and controls in place in order to ensure that:
  - (A) its internal affairs are organised and controlled in a responsible and effective manner;
  - (B) it has adequate risk management systems that are applied appropriately;
  - (C) its internal record-keeping is adequate;
  - (D) all of its Representatives are fit and proper, suitable, adequately trained and properly supervised;
  - (E) all clearing business conducted by it, including in relation to individual Contracts, complies with the Clearing Member's obligations under the Rules and Applicable Laws;
  - (F) it only enters into Contracts or accesses the Clearing House (through actions of its Representatives or otherwise) in or from jurisdictions on a list of acceptable jurisdictions published by the Clearing House from time to time and in accordance with all conditions and requirements as are specified by the Clearing House from time to time for entry into Contracts or access in or from that jurisdiction;
  - (G) it is able continuously to monitor communication facilities for receipt of communications from the Clearing House; and
  - (H) it is able promptly to review Circulars and other communications delivered or made available to the Clearing Member or its Representatives by the Clearing House;
- (xv) ensure that any power of attorney, appointment of any agent or Representative or other authorisation to transact business with the Clearing House given by a Clearing Member to any Person remains in effect on its original terms until not less than five Business Days after a written notice of change has been received by the Clearing House; and
- (xvi) keep accurate records showing the details of each Transaction or CDS Trade Particulars submitted for Clearing by or on behalf of such Clearing Member and such other information, in such form, as shall be required by the Clearing House

from time to time and in accordance with Applicable Laws and Accounting Standards.

**Rule 203**     ***Prohibitions on Clearing Members***

- (a) In connection with these Rules, any Contracts, its membership of the Clearing House or its business and activities as a Clearing Member, no Clearing Member shall at any time:
- (i) provide any information to the Clearing House (including information for the purpose of obtaining or reinstating membership) which is false, misleading or inaccurate in any material respect;
  - (ii) breach any Applicable Law relating to its status and performance as a Clearing Member;
  - (iii) commit any act of fraud;
  - (iv) engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering or which is in breach of any similar Applicable Laws;
  - (v) except with the prior written consent of the Clearing House and otherwise than to terminate existing positions, continue to trade, enter into Contracts or provide or accept payments or transfers in respect of Margin when not in compliance with the Capital requirement then applicable;
  - (vi) knowingly disseminate false, misleading or inaccurate reports concerning any Contract, product or market information or conditions that affect or tend to affect prices of Contracts;
  - (vii) make or report a false or fictitious Transaction or Contract or false or factitious CDS Trade Particulars;
  - (viii) knowingly, fraudulently, recklessly or negligently furnish any false, inaccurate or misleading information to the Clearing House;
  - (ix) enter into any Contract or fail to close out the same either intending to default in performance of the same or having no reasonable grounds for believing that it would be able to avoid such default (provided that it shall not be sufficient to have intended to comply with any contractual or other provision governing the consequences of default);
  - (x) use or reveal any information confidential to the Clearing House or any of its Representatives when under a legal or contractual obligation to the Clearing House or any Applicable Law not to do so;
  - (xi) (A) use any information technology or any online services provided to it or made available to it pursuant to its membership of the Clearing House other than for the

purposes of conducting its business and activities as a Clearing Member in accordance with these Rules; or (B) use any FX Data except for (1) internal purposes related directly to such Clearing Member's, its Affiliates' and Customers' and their clients' trading and clearing activity relating to FX Clearing at the Clearing House; or (2) licensing, sublicensing, transferring, transmitting, reproducing and/or distributing copies of FX Data to third parties in accordance with Rule 1708;

- (xii) engage in any other event or practice which has developed or is developing on the Clearing House and is reasonably considered by the Clearing House to be capable of impairing the orderly conduct of business of the Clearing House or affecting the timely delivery or settlement of Contracts;
- (xiii) represent or hold out to any Person that membership of the Clearing House brings with it any stamp of approval, special status, hallmark, regulatory supervision or approval or confers any rights or protections to Customers or any other Person in relation to the Clearing Member's business, policies, financial standing or otherwise (although Clearing Members may inform their Customers, potential Customers and other Persons that they are a member of the Clearing House and details of their privileges);
- (xiv) participate in, facilitate, procure, counsel, incite, encourage, aid or abet any conduct by a third party which would be a violation or attempted violation of these Rules regardless of whether that third party is subject to these Rules;
- (xv) take any action or make any omission or knowingly or recklessly permit the use of its services, facilities or membership or clearing privileges by any Person in a manner which in the reasonable opinion of the Clearing House is liable to:
  - (A) bring the Clearing House or any of its Clearing Members into disrepute;
  - (B) impair the dignity or degrade the good name of the Clearing House;
  - (C) create or maintain or exacerbate actual or attempted breaches, infringements, manipulations or violations of the Rules (or arrangements, provisions or directions made or given thereunder) or market practice; or
  - (D) otherwise be substantially detrimental to the interests or welfare of the Clearing House;
- (xvi) engage in conduct that would render it unable to satisfy the membership criteria in Rule 201(a), Rule 201(i) or Rule 201(j) (in the case of Rule 201(i), only if it is a CDS Clearing Member, and in the case of Rule 201(j), only if it is an FX Clearing Member);
- (xvii) knowingly, negligently, recklessly or carelessly allow any Representative to engage in any conduct that might itself breach these Rules or render it unable to satisfy the membership criteria in Rule 201(a), Rule 201(i) or Rule 201(j) (in the

case of Rule 201(i), only if it is a CDS Clearing Member and in the case of Rule 201(j), only if it is an FX Clearing Member);

- (xviii) assign any of its rights or transfer by novation any of its rights and obligations under these Rules to a third party (or purport to do so) unless the Clearing House provides its prior written consent (which consent shall not unreasonably be withheld or delayed); or
- (xix) breach any Contract Terms.

**Rule 204     *Notifications by Clearing Members***

- (a) Each Clearing Member shall notify the Clearing House in writing without delay providing full particulars known to it:
  - (i) in relation to any change of Control, as soon as it becomes aware of that change or proposed change of Control and it is not prevented from disclosing the change of Control by Applicable Laws;
  - (ii) if it breaches any applicable Position Limit that has been notified to it;
  - (iii) if it ceases to have sufficient Capital, as determined pursuant to Rule 206;
  - (iv) if its Capital for any reason is reduced by more than 10% from that shown on the latest financial statement filed by it with the Clearing House;
  - (v) prior to any payment, loan, distribution or redemption causing a reduction in Capital of the nature described in Rule 204(a)(iv), detailing the payment, loan, distribution or redemption involved and a description of the effect that the same will have on the Capital of the Clearing Member;
  - (vi) in the event that it fails to meet any obligation to transfer, deposit or pay any Margin when and as required by any Clearing Organisation of which it is a member (other than the Clearing House), excluding any matter subject to a dispute (where the Clearing Member is not in default) or resulting from manifest error;
  - (vii) in the event that it fails to comply with any applicable financial requirements of any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility;
  - (viii) of an Insolvency affecting it or any of its Group Companies (and must provide a copy of such notice to the FSA and the Bank of England pursuant to Part 12);
  - (ix) of any Event of Default affecting it;
  - (x) of any financial or commercial difficulty such as would give rise to a risk of an Event of Default occurring;



- (xi) of any "early warning" or similar matter required to be notified to the CFTC or SEC under Applicable Law, within the time and in the manner specified in Applicable Law for such notification to such Regulatory Authority;
  - (xii) of any breach by it of any Applicable Law relating to its status and performance as a Clearing Member or of the Rules, including full particulars of the breach; or
  - (xiii) of anything relating to the Clearing Member of which the Clearing House would reasonably expect notice (including of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded).
- (b) Where a Clearing Member is regulated by the FSA:
- (i) Notifications under Rule 204(a)(i) shall only be required where a change of Control is notifiable to the FSA; and in such cases the Clearing Member should provide the Clearing House contemporaneously with a copy of all submissions sent to the FSA relating to the change of Control; and
  - (ii) Notifications under Rule 204(a)(xiii) (other than notifications of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded) shall only be required if a notification is also required to the FSA under the Principles for Business in the FSA Rules.

## **Rule 205      *Financial Reporting***

- (a) Each Clearing Member must file with the Clearing House in relation to the Clearing Member and, if so notified by the Clearing House at its discretion, any Controller:
- (i) an audited financial statement including profit and loss accounts and balance sheet, with the auditor's report, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House within 90 days of the end of the Clearing Member's or relevant Controller's fiscal year;
  - (ii) a quarterly financial statement including management profit and loss accounts and balance sheet, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House, within 30 days of the end of each quarter; and
  - (iii) in the case of Clearing Members or their Controllers that are licensed, authorised or regulated by a Regulatory Authority, a copy of all financial returns, reports, statements and notices provided to the relevant Regulatory Authority as soon as so provided and, if any such material is other than a routine periodic financial return,

statement or report required under Applicable Laws, a written statement setting out (to the extent known) the reasons why such Clearing Member or relevant Controller is filing it.

- (b) In the case of Clearing Members authorised and regulated by the FSA, the Clearing House shall be authorised, at its discretion, to obtain copies of financial filings, returns and reports directly from the FSA rather than from the Clearing Member. The Clearing Member will not be relieved of any of its obligations to the extent that the Clearing House does not obtain, or is unable to verify the accuracy of, any financial return or report obtained by it from the FSA.
- (c) Each Clearing Member shall file with the Clearing House such financial or other relevant information, in addition to what is explicitly required by this Rule 205, as may be requested by the Clearing House at its discretion from time to time.
- (d) All qualifications and reports of Clearing Members' auditors in any financial report must be satisfactory to the Clearing House.

**Rule 206**     *Minimum Capital*

- (a) Each Clearing Member shall maintain at all times the requisite types and amounts of Capital as required pursuant to the CDS Procedures and Finance Procedures, or otherwise as specified in writing by the Clearing House from time to time. Eligible Capital of each Designated Controller, if any, of a Clearing Member will be taken into account by the Clearing House in determining whether the Clearing Member satisfies applicable Capital requirements.
- (b) A Clearing Member must, upon request of the Clearing House, provide financial statements and other documentation supporting calculations of Capital and details of the terms and conditions of any documentation relating to any Capital (including, without limitation, subordinated loan agreements, legal opinions, information provided to Governmental Authorities and accounts and including in relation to any Controller) to the Clearing House.

**Rule 207**     *Clearing Member Status*

- (a) Each Clearing Member shall be authorised to enter into Contracts and hold an Open Contract Position with the Clearing House. Clearing Members may, at the Clearing House's discretion, be subject to restrictions in their business with the Clearing House, for example by reference to certain Contracts, Markets or the clearing of Contracts for Customers or using a Non-DCM/Swap Customer Account, Swap Customer Account, DCM Customer Account, SBS Customer Account, Non-CDS Customer Account or CDS Customer Account. The Clearing House shall be entitled to publish lists of Clearing Members including details of their privileges and restrictions from time to time.
- (b) Each Clearing Member shall have the privileges, rights and obligations provided for in these Rules. Such privileges, rights and obligations may be terminated or altered in any respect at any time as provided in these Rules.

- (c) A Clearing Member may apply to clear additional categories of Contract by furnishing such information as is relevant to such request in accordance with Rule 201.
- (d) Each Clearing Member shall be liable to the Clearing House and responsible for all its obligations in respect of its Proprietary Account. Each Clearing Member shall be liable to the Clearing House and responsible for all its obligations in respect of each of its Customer Accounts as principal, except that an FCM/BD Clearing Member shall be liable to the Clearing House in respect of each of its Customer Accounts as set forth in Part 16. Any sub-accounts of a Customer Account are reported on by the Clearing House for administrative convenience of the Clearing Member only. Recognition by the Clearing House, and transfers between, to and from, a Clearing Member's Nominated Customer Bank Accounts and Nominated Proprietary Bank Accounts are for administrative convenience of the Clearing Member only. Subject only to the provisions of Part 16 and any Pledged Collateral Addendum in the case of FCM/BD Clearing Members, neither any separate Customer Account or sub-accounts of a Customer Account recognised in the Clearing House's or any Clearing Member's books and records or those of any Approved Financial Institution nor any other Procedures or Rules of the Clearing House shall result in any obligation of the Clearing House towards any Customer of the Clearing Member, any other Person that is not a Clearing Member, whether under FSA Rules relating to client money, any other Applicable Laws or otherwise. It is the responsibility of the Clearing Member (and not the Clearing House) to ensure that its Nominated Proprietary Bank Accounts and Nominated Customer Bank Accounts are linked appropriately to its Proprietary Account and Customer Accounts and to ensure its own compliance with Applicable Laws relating to conduct of business, client money, segregation of client assets and segregation of Customer Transactions. Accordingly: (i) each Clearing Member with a Customer Account intends that it will be acting in a separate capacity for purposes of section 187 of the Companies Act 1989 in relation to its Customer Account to that in which it acts in relation to its Proprietary Account; (ii) each Clearing Member with more than one Customer Account intends that it will be acting in a separate and different capacity for purposes of section 187 of the Companies Act 1989 in relation to each of its different Customer Accounts, which capacity in each case is a separate and different capacity from that which it acts in relation to its Proprietary Account; and (iii) the Clearing House agrees with the Clearing Members acting in such different capacities. An FCM/BD Clearing Member shall only be eligible to have a Proprietary Account, DCM Customer Account, Swap Customer Account, Non-DCM/Swap Customer Account, SBS Customer Account and/or a General Customer Account. A Non-FCM/BD Clearing Member shall only be eligible to have a Proprietary Account, Non-CDS Customer Account and/or a CDS Customer Account. A Disclosed Principal Member shall be liable as principal to the Clearing House and responsible for all obligations arising in respect of the Proprietary Account referable to the Clearing Member that has appointed it as a Disclosed Principal Member, instead of the Clearing Member. Where the Clearing Member appoints a Disclosed Principal Member, there shall be no Customer Account for either the Clearing Member or the Disclosed Principal Member and the only Proprietary Account shall be that of the Disclosed Principal Member.
- (e) Subject to Market requirements (if any), a Clearing Member may appoint another Clearing Member to perform specific functions, including deliveries, on the first Clearing Member's

behalf. In order to do so, the relevant Clearing Members, the Market (if any) and the Clearing House must be party to an agreement pursuant to which the second Clearing Member agrees to perform specific functions detailed in the agreement on behalf of the first Clearing Member. A Clearing Member intending to perform functions for another Clearing Member will represent and warrant to the Clearing House that it has sufficient authorisation under the FSMA and other Applicable Laws to carry on such function.

- (f) The following categories of Clearing Members will not be permitted to clear LIFFE Contracts that are futures or options on underlying U.S. securities (other than futures contracts on broad-based security indices): (i) FCM/BD Clearing Members; (ii) other Clearing Members that are organised in the United States of America; and (iii) other Clearing Members having a U.S. residence, based upon the location of their executive office or principal place of business, including, without limitation, (a) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), and (b) a foreign branch of a U.S. bank or U.S. registered broker-dealer.

**Rule 208**     *Suspension of Clearing Member*

- (a) A Clearing Member may be suspended:
- (i) if one or more of the conditions set out in Rule 209(a) is satisfied;
  - (ii) upon any breach by the Clearing Member of these Rules;
  - (iii) if a Market suspends the Clearing Member or any of its trading privileges;
  - (iv) if the Clearing House at its discretion considers that suspension is necessary to protect the interests of the Clearing House or its Clearing Members (excluding the Clearing Member concerned); or
  - (v) in the event of any Financial Emergency or Force Majeure Event affecting the Clearing Member.
- (b) Any suspension may occur in relation to the Clearing Member's status as a Clearing Member or in respect of certain classes of Contracts or rights of a Clearing Member only. A Clearing Member that has been suspended shall, during the term of such suspension and thereafter, remain and continue to be:
- (i) subject to and bound by these Rules and any agreements between it and the Clearing House;
  - (ii) obliged to pay all fees, fines, assessments or other charges imposed by the Clearing House;
  - (iii) liable pursuant to these Rules for all other obligations arising under Contracts and all obligations incurred before, during or after such suspension including, but not limited to, obligations to transfer, deposit, maintain and pay Margin and make Guaranty Fund Contributions; and

- (iv) able to undertake such activities of a Clearing Member as are expressly permitted by the Clearing House and required to undertake such activities of a Clearing Member as are required by the Clearing House, in each case subject to compliance with all reasonable instructions of the Clearing House in relation to those activities.
- (c) The Clearing House shall be entitled at its discretion to revoke the suspension of any suspended Clearing Member.
- (d) The Clearing House may publish details of any suspension or a copy of any suspension notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 208(e).
- (e) The Clearing House will issue a Circular promptly following any suspension of a Clearing Member or the suspension of any Clearing Member's ability to clear Energy Contracts, LIFFE Contracts, F&O Contracts, CDS Contracts or FX Contracts specifying the name of the Clearing Member affected.

**Rule 209**      *Termination of Clearing Membership*<sup>3</sup>

- (a) The Clearing House shall be entitled to terminate the membership of any Clearing Member ~~immediately upon~~, either generally or in respect of any Relevant Contract Category, upon written notice to the Clearing Member:
  - (i) following the occurrence of any Event of Default affecting that Clearing Member;
  - (ii) as a result of disciplinary proceedings brought against that Clearing Member pursuant to Part 10;
  - ~~(iii) upon receipt of notice of termination of the Clearing Member's Clearing Membership Agreement from that Clearing Member;~~
  - (iii) ~~(iv)~~ following any material and unremedied breach by the Clearing Member of these Rules;
  - (iv) ~~(v)~~ upon such Clearing Member ceasing to meet, or being unable to satisfy the Clearing House that it is able to meet, any of the membership criteria set out in or required pursuant to Rule 201(a) or, if it is a CDS Clearing Member, Rule 201(i), or, if it is an FX Clearing Member, Rule 201(j); or
  - ~~(vi) upon an Insolvency in relation to that Clearing Member or any of its Group Companies.~~
- ~~(b) The Clearing House shall be entitled to terminate the membership of any Clearing Member upon no less than three months' prior written notice.~~

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<sup>3</sup> Rule 209 as set forth herein does not apply to CDS Clearing Members. The provisions of Rule 209 under the Continuing CDS Rule Provisions remain in effect for CDS Clearing Members (regardless of whether they are also F&O Clearing Members or FX Clearing Members).

~~(e)~~

- ~~(i) The Clearing Member shall be entitled to terminate its membership of the Clearing House:~~
- ~~(A) upon no less than three months' prior written notice to the Clearing House;~~
  - ~~(B) upon the Insolvency of the Clearing House;~~
  - ~~(C) pursuant to Rule 1105(h);~~
  - ~~(D) pursuant to Rule 1106(h); or~~
  - ~~(E) pursuant to Rule 1107(h).~~
- ~~(ii) The membership of a Clearing Member which is a CDS Clearing Member but neither an F&O Clearing Member nor an FX Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House or Failure To Pay in respect of the Clearing House. The membership of a Clearing Member which is an FX Clearing Member but neither an F&O Clearing Member nor a CDS Clearing Member shall terminate automatically upon the occurrence of an FX Failure To Pay in respect of the Clearing House.~~
- ~~(iii) In the event of an Insolvency in respect of the Clearing House (in the case of any Clearing Member) or (in the case of a CDS Clearing Member that is neither an F&O Clearing Member nor an FX Clearing Member) a Failure To Pay (in the case of a CDS Clearing Member that is neither an F&O Clearing Member nor an FX Clearing Member) a Failure To Pay in respect of the Clearing House or (in the case of an FX Clearing Member that is neither an F&O Clearing Member nor a CDS Clearing Member) an FX Failure To Pay in respect of the Clearing House or (in the case of a Clearing Member that is an FX Clearing Member and a CDS Clearing Member but not an F&O Clearing Member) circumstances which constitute both a Failure To Pay and an FX Failure To Pay in respect of the Clearing House, Rule 912 applies and the rights and liabilities of each Clearing Member under all Contracts will be deemed to be terminated without need for any further step on the part of any party and discharged for the purposes of Rule 906 and a net sum or net sums payable by or to the Clearing Member to or from the Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member. In circumstances in which this Rule 209(e)(iii) applies:~~
- ~~(A) Rules 1105, 1106 and 1107 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901(a) (rather than any Event of Default effectively deemed to occur pursuant to this provision or Rule 912);~~



- ~~(B) — Rules 901, 902, 903, 904 and 905 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this provision or Rule 912);~~
- ~~(C) — without prejudice to the generality of paragraph (B), Rule 905(e) shall apply only in relation to Contracts the counterparties to which are Clearing Members that are actually declared subject to an Event of Default (and not in relation to Contracts the counterparties to which are Clearing Members that are effectively deemed to be subject to an Event of Default pursuant to this provision);~~
- ~~(D) — the net sum or net sums required to be determined in these circumstances pursuant to Rule 906 in respect of a Clearing Member that has multiple Membership Categories will be made separately in relation to the rights and liabilities of that Clearing Member for each applicable Membership Category and Rule 906 shall be interpreted accordingly;~~
- ~~(E) — neither Rule 101(a)(ii)-(iii) nor Rule 301(k) shall apply to payments made or received after the Insolvency or an Event of Default as aforementioned in respect of the Clearing House; and~~
- ~~(F) — otherwise, Part 9 shall apply *mutatis mutandis* in relation to terminated CDS Contracts and rights, obligations and liabilities relating thereto.~~
- ~~(iv) — If the Clearing House becomes aware of there being or occurring an Insolvency in respect of the Clearing House, the Clearing House will promptly notify the FX Clearing Members that the same has occurred.~~
- ~~(v) — Any Clearing Member terminating its membership of the Clearing House under this Rule 209(e) shall provide notice of termination to the Clearing House. taking effect no less than 30 Business Days after the date of service of the notice.~~
- ~~(d) — This Rule 209(d) applies to a Person that has served a notice of termination, except:~~
- ~~(A) — if the Person is or was an FX Clearing Member but neither a CDS Clearing Member nor an F&O Clearing Member, in which case Rule 209(g) and Rule 209(h) shall apply and this Rule 209(d) shall not apply; or~~
- ~~(B) — if the Person is or was an FX Clearing Member and is or was also either an F&O Clearing Member or a CDS Clearing Member (or both), in which case Rule 209(g) and Rule 209(h) shall apply but only in respect of those of the rights, obligations or liabilities of the Person relating to FX Contracts, FX Guaranty Fund, FX Assessment Contributions, FX Mark to Market Margin, FX Original Margin and otherwise in respect of the Person's status (or former status) as an FX Clearing Member, and this Rule 209(d) shall apply otherwise in relation to the termination of membership of that Person.~~

~~In circumstances in which this Rule 209(d) applies, upon any termination of a Clearing Member's membership, the relevant Clearing Member shall remain liable to transfer, deposit, maintain and pay all Margin, make Guaranty Fund Contributions when due and make all other payments due pursuant to Contracts from time to time and shall be obliged to:~~

- ~~(i) transfer, terminate, make settlement in respect of and/or make delivery (as applicable) pursuant to all Contracts to which it is party in accordance with applicable Contract Terms; and~~
- ~~(ii) take such other actions as the Clearing House at its discretion deems appropriate or necessary.~~

~~(e) This Rule 209(e) applies to a Person that has served a notice of termination, except:~~

- ~~(A) if the Person is or was an FX Clearing Member but neither a CDS Clearing Member nor an F&O Clearing Member, in which case Rule 209(g) and Rule 209(h) shall apply and this Rule 209(e) shall not apply; or~~
- ~~(B) if the Person is or was an FX Clearing Member and is or was also either an F&O Clearing Member or a CDS Clearing Member (or both), in which case Rule 209(g) and Rule 209(h) shall apply but only in respect of those of the rights, obligations or liabilities of the Person relating to FX Contracts, FX Guaranty Fund, FX Assessment Contributions, FX Mark to Market Margin, FX Original Margin and otherwise in respect of the Person's status (or former status) as an FX Clearing Member, and this Rule 209(e) shall apply otherwise in relation to the termination of membership of that Person.~~

~~In circumstances in which this Rule 209(e) applies, any Person who for any reason ceases to be a Clearing Member shall remain and continue to be:~~

- ~~(i) subject to any arbitration, investigations, panels or proceedings, and provisions of these Rules relating thereto, which relate in whole or in part to any acts or omissions of that Person while it was a Clearing Member;~~
- ~~(ii) obliged in respect of all fees, fines, charges, payments pursuant to Contract Terms, Margin payments and other amounts due to the Clearing House as a result of Contracts and other obligations entered into or incurred prior to the termination of its status as Clearing Member;~~
- ~~(iii) subject to claims against its Guaranty Fund Contributions until the Clearing House returns such Guaranty Fund Contributions in accordance with Part 11; and~~
- ~~(iv) obliged to pay any Assessment Contribution for which it is liable pursuant to Part 11.~~

(b) Rule 918(a)(i), (ii), (iii), (v), (vi), (vii), (viii) and (b) shall apply, *mutatis mutandis*, following service of a notice of termination by the Clearing House, whether generally or in

respect of a particular Contract Category, under Rule 209(a)(ii)-(v). For such purposes, the terms Relevant Contract Category and Relevant Membership Category as used in Rule 918 refer to the Contract Category and Membership Category respectively to which the notice of termination relates and the terms Relevant Guaranty Fund Contributions and Relevant Assessment Contributions as used in Rule 918 shall be interpreted accordingly.

(c)

~~(f)~~

~~(i) — A Clearing Member which has multiple Membership Categories (or which clears both Energy Contracts and LIFFE Contracts) shall be entitled to terminate its status as an Energy Clearing Member, LIFFE Clearing Member, F&O Clearing Member, CDS Clearing Member and/or an FX Clearing Member:~~

~~(A) — upon no less than three months' prior written notice to the Clearing House;~~

~~(B) — upon the Insolvency of the Clearing House;~~

~~(C) — in the case of F&O Clearing membership, pursuant to Rule 1105(i);~~

~~(D) — in the case of CDS Clearing membership, pursuant to Rule 1106(i); or~~

~~(E) — in the case of FX Clearing membership, pursuant to Rule 1107(i).~~

~~(ii) — If a CDS Clearing Member has multiple Membership Categories, its status as a CDS Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House or Failure To Pay in respect of the Clearing House.~~

~~(iii) — If an FX Clearing Member has multiple Membership Categories, its status as an FX Clearing Member shall terminate automatically upon the occurrence and continuance of an FX Failure To Pay in respect of the Clearing House.~~

~~(iv) — Rule 209(c)(iii), Rule 209(c)(iii)(D), Rule 209(d), Rule 209(e), Rule 209(g) and Rule 209(h) shall apply *mutatis mutandis* in relation to any termination described in this Rule 209(f), as regards F&O Contracts, CDS Contracts or FX Contracts (whichever the Clearing Member proposes to cease to clear or ceases to clear, as applicable) and Clearing related thereto only.~~

~~(g) — If an FX Clearing Member serves notice of termination of its membership under Rule 209(e)(i)(A) or termination of FX Clearing membership under Rule 209(f)(i)(A) (other than if there is a termination pursuant to Rule 209(e)(i)(B) or the second sentence of Rule 209(e)(ii), Rule 209(f)(i)(B) or Rule 209(f)(iii)) it must use all reasonable endeavours, until such time as there is a subsequent Insolvency or FX Failure To Pay in respect of the Clearing House, to close out all of its open FX Contracts prior to the Termination Close Out Deadline Date. Such an FX Clearing Member, after the Termination Notice Time, shall only be entitled to submit FX Transactions for clearing or become party to FX Contracts which it can demonstrate have the overall effect of reducing risks to the Clearing House associated with the FX Contracts to which that FX Clearing Member is party,~~

~~whether by hedging, novating, transferring, terminating, liquidating or otherwise closing out such FX Contracts. If any such FX Clearing Member has any open FX Contracts with the Clearing House after the Termination Close Out Deadline Date (and notwithstanding any provision of Rule 1107 or Rule 1710 to the contrary) the FX Clearing Member shall as from the Termination Close Out Deadline Date: (x) become liable to replenish any FX Guaranty Fund Contribution that would have fallen due for replenishment but has not been paid, to have applied any FX Guaranty Fund Contribution that would have been applied but was not so applied and to pay any FX Assessment Contribution that would have fallen due but has not been paid, in each case to the extent that the same would have been payable or applied but for its service of a notice of termination and in each case in respect of any Event of Default affecting an FX Clearing Member and relating to FX Clearing that has occurred subsequent to the Termination Notice Time; (y) become liable for further obligations to replenish any FX Guaranty Fund Contribution, have any FX Guaranty Fund Contribution applied or pay FX Assessment Contributions in the same way as any other FX Clearing Member in respect of any Event of Default affecting an FX Clearing Member and relating to FX Clearing occurring prior to the Termination Date; and (z) (unless the termination was under Rule 209(c)(i)(A) or Rule 209(f)(i)(A)) be reinstated as an FX Clearing Member without any need to follow the membership application process described in Part 2. For the avoidance of doubt, the Clearing House may call for additional FX Original Margin from an FX Clearing Member subject to this Rule 209(g), until such time as all of its open FX Contracts have been terminated, and such FX Clearing Member shall pay such additional FX Original Margin to the Clearing House. Following termination of all open FX Contracts to which a terminating FX Clearing Member (the "**Terminated Clearing Member**") was party in relation to a particular Customer Account or Proprietary Account, the Clearing House shall then declare a net sum (which may be declared in parts, as envisaged below) as due to or from the Terminated Clearing Member in accordance with Rule 905(f) and Rule 906, in the same way as if the Terminated Clearing Member were a Defaulter but with the following modifications:~~

- ~~(i)~~ references in Part 9 to "Default", an "Event of Default" shall be read as references to a Terminated Clearing Member terminating its FX clearing membership and, in the case of a failure to close out relevant Contracts only in respect of a particular Customer Account or Proprietary Account, shall be construed as applying only in respect of such account; A Clearing Member shall be entitled to terminate its membership of the Clearing House, either generally or in respect of any Relevant Contract Category, upon service of a Termination Notice to the Clearing House;
- ~~(ii)~~ any net sum calculated in relation to the Terminated Clearing Member under Rule 906 will be calculated only with regard to rights, obligations and liabilities relating to FX and any such net sum which is payable to the Terminated Clearing Member shall not be paid by the Clearing House to such Terminated Clearing Member until the later of:
  - ~~(A)~~ ten Business Days after the date on which the termination of the Terminated Clearing Member's open FX Contracts and the realisation or return of any Margin provided in respect of FX Contracts, FX Guaranty Fund Contributions or other assets remaining credited to the Terminated Clearing

~~Member's relevant Proprietary Account or Customer Account in respect of FX clearing or otherwise in the Clearing House's possession in respect of FX clearing is completed (subject always to Rule 102(q)); or~~ taking effect no less than 30 Business Days after the date of the Termination Notice Time;

~~(B) — if the Terminated Clearing Member has any unapplied FX Guaranty Fund Contributions, the expiry of the Guaranty Fund Period for the FX Guaranty Fund immediately following the Guaranty Fund Period current on the Termination Date;~~

~~(iii) — notwithstanding anything in Part 9 or elsewhere in these Rules:~~

~~(A) — the Clearing House may at its discretion return amounts due to the Terminated Clearing Member in different currencies or by way of transfer or return of non-cash Permitted Cover to the Terminated Clearing Member;~~

~~(B) the Clearing House may further pay any net sum calculated under Rule 906 and payable to the Terminated Clearing Member in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and~~ pursuant to Rule 917(c).

~~(C) — the Clearing House may make part payment of any amounts due excluding the FX Guaranty Fund Contribution prior to the time specified in Rule 209(g)(ii)(B);~~

~~(iv) — it is acknowledged that any 'net sum' declared in accordance with this provision is not formally a 'net sum' for purposes of the Companies Act 1989;~~

~~(v) — an FX Clearing Member subject to these provisions is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such FX Clearing Member in order for the Clearing House to exercise its rights under this provision or for the FX Clearing Member in question to receive any payment or return of assets; and~~

~~(vi) — references to Part 9 in any other Rules or in the Procedures, Circulars and Guidance shall be construed in accordance with this Rule 209(g) when they fall to be applied in relation to the termination of a Clearing Member's membership under Rule 209 and any action taken by the Clearing House following such termination taking effect.~~

~~(h) — Notwithstanding Rule 209(e), after the Termination Date, a Person that was an FX Clearing Member shall remain and continue, in respect of all obligations, rights and liabilities relating to the Clearing Member's status as an FX Clearing Member:~~

~~(i) — subject to any arbitration, investigations, panels or proceedings, and provisions of these Rules relating thereto, which relate in whole or in part to any acts or omissions of that Person while it was a Clearing Member;~~

- (ii) ~~bound to the Clearing House to perform all and any obligations and liabilities (which either have not been performed or have fallen due but are unpaid) resulting from its status as an FX Clearing Member, including obligations and liabilities relating to: fees, fines, charges, payments pursuant to Contract Terms for FX Contracts, obligations to pay FX Guaranty Fund Contributions (subject always to Rule 209(g), Rule 1107(h) and Rule 1107(i)), obligations to pay FX Assessment Contributions (subject always to Rule 209(g), Rule 1107(h) and Rule 1107(i)), FX Original Margin payments and FX Mark to Market Margin payments; and~~The membership of a Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House. In any such circumstances, Rule 912 applies.
- (iii) ~~subject always to Rule 1107(h) and Rule 1107(i), in a position such that its FX Guaranty Fund Contributions may be applied in accordance with Part 11, until such time as the Clearing House returns such FX Guaranty Fund Contributions in accordance with Part 11 and Rule 209(g)(ii)(B).~~The membership of a Clearing Member in respect of a particular Membership Category shall terminate automatically upon the occurrence of a Failure to Pay in respect of the Clearing House relating to such Membership Category. In any such circumstances, Rule 912 applies.
- ~~(i) The Clearing House may publish details of any termination or a copy of any termination notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 209(j).~~
- (d) Rules 918(a)(ii), (iv), (v), (vi), (vii), (viii) and (b) shall apply, *mutatis mutandis*, following service of a Termination Notice, whether generally or in respect of a particular Contract Category, under Rule 209(c)(i)(A). For such purposes, the terms Relevant Contract Category and Relevant Membership Category as used in Rule 918 refer to the Contract Category and Membership Category respectively to which the Termination Notice relates and the terms Relevant Guaranty Fund Contributions and Relevant Assessment Contributions as used in Rule 918 shall be interpreted accordingly. Unless it served such notice during a Cooling-off Termination Period, a Clearing Member that serves a Termination Notice shall be liable immediately upon service of the Termination Notice to pay the Clearing House Assessment Contributions of an amount equal to three times its required Relevant Guaranty Fund Contribution (as calculated prior to the time of the Cooling-off Trigger Event) in respect of each Relevant Contract Category, such amounts to be held as permitted Cover until the Termination Date and applied only as permitted in accordance with Part 9 of the Rules. A Clearing Member that has served a Termination Notice and made such payments shall not be liable for any further replenishments of its Guaranty Fund Contribution or Assessment Contribution, regardless of how many Events of Default take place. Any reference in these Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, in respect of a Clearing Member which has provided such Permitted Cover to the Clearing House under this Rule 209(d), shall be interpreted as a reference to the Permitted Cover in question being similarly applied.



- (e) ~~(f)~~ The Clearing House will issue a Circular promptly following any termination of membership of a Clearing Member or the termination of any Clearing Member's ability to clear ~~Energy Contracts, LIFFE Contracts, F&O Contracts, CDS Contracts or FX Contracts~~ a specified Contract Category, specifying the name of the Clearing Member affected. The Clearing House may at its discretion (but shall not be required to) publish a copy of any Termination Notice or other termination notice.

### **Part 3 Financial Requirements and Payments**

#### **Rule 301 *Fees, Margin, Contract and other payment obligations***

- (a) Clearing Members shall be liable to pay such fees and charges as are levied by the Clearing House in accordance with published rates from time to time. Unless otherwise provided and without limitation, fees shall be payable on each Contract cleared by the Clearing House and the Clearing House shall be entitled to levy fees in respect of Permitted Cover. The Clearing House may amend its fees and charges and the bases for its fees at any time and will notify Clearing Members of any such amendments by means of a Circular prior to the same taking effect.
- (b) Fees charged to Clearing Members by the Clearing House may include the fees of any one or more Markets. The Clearing House shall be entitled to collect fees due from Clearing Members on behalf of all Markets of which a Clearing Member is a member or participant.
- (c) Clearing Members shall be liable to make any payment to the Clearing House that is required pursuant to these Rules at the time and in the amount specified by the Rules or required in accordance with the Rules. In particular, Clearing Members shall be liable to make payment in respect of Margin and Guaranty Fund Contributions from time to time in accordance with Part 5, Part 6 and Part 11 of the Rules at the times and in the amounts that are required pursuant to the instructions of the Clearing House made pursuant to Rule 302.
- (d) Clearing Members shall be liable to pay all amounts due under the Contract Terms, upon entering into a Contract, as Margin and upon delivery or settlement, as further described in these Rules and the Contract Terms at the time and in such amounts as are required pursuant to the Contract Terms. Without prejudice to the generality of the foregoing:
  - (i) in relation to each F&O Contract that is a Future, the parties to such Contract shall be liable to make such payments upon settlement and delivery as are required pursuant to Part 7, the Contract Terms, the Delivery Procedures and the Finance Procedures;
  - (ii) in relation to each F&O Contract that is an Option, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 8, the Contract Terms, the Delivery Procedures and the Finance Procedures;
  - (iii) in relation to each CDS Contract, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 15 and the Procedures; and
  - (iv) in relation to each FX Contract, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 17 and the Procedures.
- (e) Each Clearing Member will procure that the Clearing House has at all times the right to instruct that Clearing Member's Approved Financial Institution to debit its Nominated Proprietary Bank Accounts and Nominated Customer Bank Accounts (if any) and any other account designated by that Clearing Member for the purposes of this Rule 301, for payment in respect of fees, charges, fines, penalties, Margin, Guaranty Fund Contributions,

amounts due pursuant to Contracts (whether upon their formation, settlement or delivery) and any other amounts due to the Clearing House or due to any Market.

- (f) All amounts payable to the Clearing House (except, with the prior written consent of the Clearing House, application fees) shall be payable by electronic transfer from an account at an Approved Financial Institution only. The Clearing Member shall continue to be liable for any amount due under these Rules and no payment obligation of a Clearing Member shall be treated as having been satisfied or discharged unless and until all of the following steps have taken place in respect of any payment of such amount:
- (i) the relevant electronic transfer of funds is actually received by the Clearing House in unencumbered, fully cleared and fully available funds in a Clearing House Account, being an account at an Approved Financial Institution which is not subject to an Insolvency;
  - (ii) if the Approved Financial Institution used by the Clearing Member is not a Concentration Bank, such Approved Financial Institution has fully performed its concentration function in respect of the payment in question, by completing the transfer of funds from the Clearing House's account at such Approved Financial Institution to the Clearing House's concentration account at a Concentration Bank (which Concentration Bank is not subject to an Insolvency), in which account the Clearing House has received unencumbered, fully cleared and fully available funds, in respect of:
    - (A) in the case of a payment under Rule 302(a), a net amount reflecting all payments processed through that Approved Financial Institution in respect of all calls on or payments to all Clearing Members using that Approved Financial Institution under Rule 302(a) in respect of the Business Day in question; or
    - (B) in the case of a payment other than a payment under Rule 302(a) (such as a payment following an intra-day call for Margin or an *ad hoc* transfer of additional cash Permitted Cover to the Clearing House), the amount received from the Clearing Member that is seeking to make the payment in question; and
  - (iii) in the case of a payment under Rule 302(a) only, that Approved Financial Institution (including if it is a Concentration Bank) has made all relevant payments under Rule 302(a) due to the Clearing Member and other Clearing Members (in its capacity as an Approved Financial Institution or Concentration Bank) in respect of the Business Day in question.

Nothing in this Rule 301(f) shall restrict or prevent the Clearing House or any Clearing Member from making any claim against an Approved Financial Institution which has failed to make a payment referred to under this Rule 301(f). In particular: (I) the Clearing House shall not be deemed to have had any loss, liability or shortfall made good or whole vis-à-vis an Approved Financial Institution by virtue of any further payment by a Clearing

Member in addition to an attempted payment not credited to its account as a result of this Rule 301(f); and (II) an Approved Financial Institution which has failed to make any payment referred to in this Rule 301(f) shall remain fully liable to the Clearing House or relevant Clearing Member for any such failed payment or account balance notwithstanding a reimbursement or additional payment as between a Clearing Member and the Clearing House. In the event that:

- (x) a payment is received into a Clearing House Account at an Approved Financial Institution but the requirements of Rule ~~101301~~301(af)(ii) or Rule ~~101301~~301(af)(iii) are not satisfied;
- (y) an affected Clearing Member has satisfied its payment obligations through an additional payment which complies with the requirements of this Rule 301(f); and
- (z) the Clearing House makes a recovery or irrevocably receives any part or full payment from the Approved Financial Institution into one of its accounts at a Concentration Bank (which Concentration Bank is not subject to an Insolvency),

then the Clearing House will make payment to affected Clearing Members in respect of the recovery or receipt actually made by the Clearing House, net of the Clearing House's costs and expenses, *pro rata* in proportion to the amounts of the original missed payments of each affected Clearing Member.

No Clearing Member shall be declared subject to an Event of Default as a result of failing to make any payment due to the operation of either Rule ~~101301~~301(af)(ii) or Rule ~~101301~~301(af)(iii), unless and until the Clearing House has notified the Clearing Member of the failed payment in question and requested that the payment be made using alternative means and the Clearing Member has defaulted in making the latter payment (other than solely due to the operation of either Rule ~~101301~~301(af)(ii) or Rule ~~101301~~301(af)(iii)).

- (g) Interest shall be paid by the Clearing Member to the Clearing House on any unpaid but due amount from the date on which the amount becomes due and payable until the date of payment at 1% above the rate per annum which is the cost (without proof or evidence of any actual cost) to the Clearing House if it were to fund the relevant amount, compounded daily.
- (h) In the event that the Clearing House determines that it will suffer or has suffered (directly or indirectly) any loss, liability or cost for or on account of any tax in connection with any Contract, any amount payable to the Clearing House or in respect of any future obligation, or these Rules, the Clearing Member counterparty to such Contract or the Clearing Member by which such amount is payable shall be liable to pay to the Clearing House, pursuant to Rule 302, an amount equal to such loss, liability, or cost.
- (i) All amounts set out in or expressed to be payable to the Clearing House in connection with any Contract or these Rules or otherwise and which constitute the consideration for a supply made by the Clearing House for the purposes of value added tax, and the value of any supply made by the Clearing House for value added tax purposes, shall be deemed to be exclusive of any value added tax which is chargeable on that supply and accordingly if

value added tax is chargeable on any supply made by the Clearing House the relevant Clearing Member shall pay to the Clearing House (in addition to and at the same time as the consideration is paid or provided, or if no consideration is due, at the time the supply is made or an appropriate value added tax invoice is issued, whichever is earlier) an amount equal to the amount of the value added tax and the Clearing House shall issue an appropriate value added tax invoice.

- (j) All amounts payable to the Clearing House or by the Clearing House in connection with any Contract or these Rules or otherwise shall be paid without any deduction or withholding for or on account of tax unless such deduction or withholding is required by Applicable Law. If a deduction or withholding for or on account of tax is required to be made in relation to an amount payable to the Clearing House, the amount of the payment due shall be increased to an amount which (after making the deduction or withholding) leaves an amount equal to the payment which would have been due if no such deduction or withholding had been required.
- (k) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation of the Clearing Member to make payment to the Clearing House shall be construed as an obligation of the Disclosed Principal Member, any right to receive payment of the Clearing Member shall be construed as a right of the Disclosed Principal Member and all other provisions of these Rules relating to payment shall be construed accordingly.
- (l) Any payment due to a Clearing Member from the Clearing House will be recognised as having been duly made, and the Clearing House's obligations in respect thereof shall be treated as having been satisfied and discharged, at the time that the relevant Credit/Debit Payment Transfer Order arises relating to such payment (or, if the Clearing Member or Approved Financial Institution is not a Participant, would have arisen were the Clearing Member or Approved Financial Institution to have been a Participant), provided that the Clearing House has reason to believe that the Clearing House Account from which payment is to be made has sufficient funds or credit on account.

### **Rule 302      *Mechanics for Payments***

- (a) Amounts payable to or by the Clearing House in a particular currency (as determined in accordance with the Finance Procedures) will be settled on a net basis, as set out below and in accordance with the Finance Procedures. The Clearing House shall advise each Clearing Member of amounts due to or from the Clearing Member in respect of its Proprietary Account and each of its Customer Accounts (if any) on each Business Day (or more frequently if the Clearing House determines to make an intra-day call in accordance with the Finance Procedures) and:
  - (i) if the net amount for a Proprietary Account is due to the Clearing House, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Proprietary Bank Account of the Clearing Member with the Approved Financial Institution to a Clearing House Account in an amount equal to the amount so due;

- (ii) if the net amount for a Proprietary Account is due to the Clearing Member, the Clearing House shall instruct an Approved Financial Institution to transfer funds from a Clearing House Account to the relevant Nominated Proprietary Bank Account of the Clearing Member with the Approved Financial Institution in an amount equal to the amount so due;
  - (iii) if the net amount for a Customer Account is due to the Clearing House, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Customer Bank Account of the Clearing Member with the Approved Financial Institution to a Clearing House Account in an amount equal to the amount so due;
  - (iv) if the net amount for a Customer Account is due to the Clearing Member, the Clearing House shall instruct an Approved Financial Institution to transfer funds from a Clearing House Account to the relevant Nominated Customer Bank Account of the Clearing Member with the Approved Financial Institution in an amount equal to the amount so due.
- (b) Instructions made pursuant to this Rule 302 may be made by means of a SWIFT message (or, in the case of a contingency, such other electronic message, fax, telephone or other means as are allowed pursuant to the Finance Procedures) to the relevant Approved Financial Institution. Payments pursuant to this Part 3 shall be made immediately at the time and on the date that the obligation to pay arises or at such other time as is specified by the Clearing House in writing.
  - (c) Upon notice from the Clearing House that a transfer of funds from a Clearing Member's Nominated Bank Account was not effected as instructed by the Clearing House for any reason, the Clearing Member shall deliver to the Clearing House the amount required at such time and in such form as the Clearing House may prescribe.
  - (d) Various authorities and powers are granted to the Clearing House pursuant to clause 5.2 of the Clearing Membership Agreement for purposes of supporting the payment arrangements set out in this Part 3. For the avoidance of doubt, the reference in the fourth sentence of clause 5.2 of the Clearing Membership Agreement that the "Approved Financial Institutions will act upon any instructions received from the Clearing House" shall be understood to mean that the "Approved Financial Institutions shall be authorised and directed to act upon any instructions received from the Clearing House".
  - (e) Each Customer Account of a Clearing Member shall be treated separately for purposes of any payments under Rule 302(a). Where a Clearing Member has more than one Customer Account, there shall be separate payments in respect of each such Customer Account.

### **Rule 303**     *Set Off*

- (a) Subject to Rule 102(q), the Clearing House may set off any obligation due to it from a Clearing Member against any obligation owed by the Clearing House to, or for the account of, the Clearing Member, regardless of the place of payment, account, branch or currency of either obligation. If the obligations referred to in this Rule 303(a) are in different



currencies, the Clearing House may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set off.

- (b) Subject to Rule 102(q), the Clearing House shall be entitled to make any necessary adjustments to the Clearing Member's Proprietary Account and Customer Accounts resulting from exercise of its rights of set off.
- (c) The rights of the Clearing House in this Rule 303 are without prejudice to any rights of lien, set-off, netting, liquidation, combination of accounts or appropriation, or to instruct the same or any other rights or remedies of the Clearing House or any Approved Financial Institution, whether under these Rules or otherwise.
- (d) Without prejudice to Applicable Laws of mandatory application following an Insolvency, notwithstanding any existing or future agreement and except as expressly provided in these Rules, the Clearing Membership Agreement, the Procedures or a Contract, each Clearing Member irrevocably waives any and all rights it may have to set off, net, recoup, combine accounts or otherwise withhold or suspend or condition payment or performance of any obligation between the Clearing House and such Clearing Member under these Rules or any Contract against any obligations between the Clearing House and such Clearing Member or any branch or Affiliate of the Clearing House or of such Clearing Member, under any other agreements.

## Part 4 Clearing Mechanism

### Rule 401 *Formation of Contracts*

- (a) Subject to Rule 403 and Rule 404, two Contracts shall arise automatically, one between the Selling Clearing Member and the Clearing House and the other between the Clearing House and the Buying Clearing Member (or a single Contract shall arise between the Clearing House and a Clearing Member where applicable in the case of Rule 401(a)(vi) or (x)), at the moment that:
- (i) in the case of any ICE Endex Matched Transaction, ICE Futures Europe Matched Transaction, ICE Futures US Matched Transaction or LIFFE Matched Transaction, the relevant orders are matched on ICE Endex, ICE Futures Europe, ICE Futures US or LIFFE, respectively;
  - (ii) in the case of any ICE OTC Matched Transaction, the relevant orders are matched on ICE OTC in an instance in which, in accordance with relevant ICE OTC Participant Agreements, any relevant ICE OTC Broker Agreement and the Clearing Procedures, the Transaction is to proceed to clearing;
  - (iii) in the case of any ICE Endex Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Block Transaction: ICE Endex, ICE Futures Europe, ICE Futures US or LIFFE, respectively, receives and has recorded on its system complete data in respect of the Transaction;
  - (iv) in the case of any ICE OTC Block Transaction, the ICE OTC Operator receives complete data in respect of the Transaction in an instance in which, in accordance with relevant ICE OTC Participant Agreements, any relevant ICE OTC Broker Agreement and the Clearing Procedures, the Transaction is to proceed to clearing;
  - (v) in the case of Transactions generated by ICE Endex, ICE Futures Europe, ICE Futures US, the ICE OTC Operator or LIFFE as a result of the operation of their contra trade, error trade, invalid trade, cancelled trade, trade correction, error correction or similar policies and rules or procedures relating thereto or otherwise, upon notice of the final terms of the Transaction being received by the Clearing House;
  - (vi) in the case of a Contract that is formed as a result of another Contract being Invoiced Back by the Clearing House, immediately upon notice of the existence and final terms of the new Contract being given by the Clearing House to the Clearing Member affected;
  - (vii) in the case of a Contract (including a Contract of Sale) that forms as a result of an Option being exercised in accordance with Part 8, immediately upon such exercise taking effect pursuant to Part 8;
  - (viii) in the case of an F&O Contract that is allocated by one Clearing Member to another Clearing Member by agreement of both Clearing Members subsequent to that F&O

Contract arising but on the same day as that on which such Contract arose, upon both such Clearing Members having recorded their agreement to such allocation on the Clearing House's systems;

- (ix) in the case of a CDS Contract (other than a CDS Contract arising pursuant to Rule 401(a)(x)), the time specified pursuant to the CDS Procedures occurs for the acceptance of CDS Contracts on any day, provided that no such CDS Contract shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the Procedures in relation to the CDS Contract;
- (x) in the case of a CDS Contract arising under Rule 905(c), the time specified by the Clearing House for the entry into of the relevant CDS Contract occurs, provided that the Clearing House has given notice to the relevant CDS Clearing Member of the particulars of the CDS Contract involved and the price or Initial Payment at which such CDS Contract will be recorded on the Clearing House's books and records;
- (xi) in the case of a CDS Contract arising following the submission of end-of-day prices by a Clearing Member pursuant to Rule 503(g), at the time specified by the Clearing House for the entry into of the relevant CDS Contract, provided that (A) the Clearing House has given notice to the relevant CDS Clearing Member of the particulars of the CDS Contract involved and the price or Initial Payment at which such CDS Contract will be recorded on the Clearing House's books and records in accordance with the CDS Procedures; and (B) no such CDS Contract shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the CDS Procedures in relation to the CDS Contract;
- (xii) in the case of an FX Contract (other than an FX Contract arising pursuant to Rule 401(a)(vi)), the time specified pursuant to the Procedures occurs for the acceptance of the FX Contract, provided that no such FX Contract shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the Procedures in relation to the FX Contract;
- (xiii) in the case of a Contract arising under Rule 404(c)(i), at the time of execution of relevant documentation or otherwise when a replacement Contract arises in accordance with that provision; and
- (xiv) in the case of a Contract opposite to a Linked Outgoing Contract arising under Rule 410(d) on confirmed receipt by the relevant Participating Exchange, or in the case of a Linked Incoming Contract arising under Rule 410(e), on confirmed receipt by the Clearing House, in either case of the relevant transfer, as detailed further in Rule 410(d) or (e) as applicable.

- (b) For F&O Contracts only, a contract or contracts shall arise between the Clearing House and the Buyer and/or the Clearing House and the Seller at the moment that an alternative delivery is agreed in respect of a Contract where, pursuant to the Clearing Procedures and Market Rules, a new collateral contract arises as a result of the alternative delivery being agreed, at the time and subject to the conditions and effects on existing Contracts specified in the Clearing Procedures.
- (c) Other than as specifically set out in the CDS Procedures, the Clearing House shall be entitled to rely conclusively on the accuracy and authenticity of any and all information and data regarding any Transaction or CDS Trade Particulars submitted to the Clearing House by or on behalf of a Market, Exchange, Deriv/SERV, Trade Processing Platform, data entry facility for FX Transactions, Clearing Member or Representative of a Clearing Member, whether or not a Clearing Member or Representative in fact authorised the submission of such information or the details so submitted.
- (d) In the case of a new Contract that forms as a result of another Contract being Invoiced Back pursuant to Rule 401(a)(vi), the new Contract shall be on the same terms as the original Contract, except that the roles of Buying Clearing Member and the Clearing House or, as the case may be, the Selling Clearing Member and the Clearing House shall be reversed and the Clearing House shall be entitled, at its discretion, to determine the price or Initial Payment at which the Contract was bought or sold and any delivery or settlement price.
- (e) In the case of a Contract that forms as a result of another Contract being subject to allocation pursuant to Rule 401(a)(viii), the new Contract shall be on the same terms as the original Contract, except that the identity of the Clearing Member shall be different, in accordance with the allocation instructions received by the Clearing House. The Clearing Member that was party to the original Contract and the Clearing House shall each automatically and immediately be released and discharged from all their rights, liabilities and obligations in respect of the original Contract upon formation of the new Contract.
- (f) Upon request by the Clearing House, a Clearing Member shall promptly confirm or otherwise notify the details of any Contract, Transaction or CDS Trade Particulars to the Clearing House in such form and manner as the Clearing House requests. Any such confirmation or notification shall not of itself affect the status or terms of any Contract.
- (g) Each Clearing Member shall promptly and accurately designate each new Contract (in the case of CDS Contracts through the submission of CDS Trade Particulars and in the case of F&O Contracts through the ICE Systems) in accordance with Applicable Laws as: (i) related either to its Proprietary Position Account or one of its Customer Position Accounts (if any); and (ii) in the case of CDS Contracts as related to a particular CDS Sub-Account or in the case of Non-CDS Contracts to any relevant sub-account in the ICE Systems. If a Clearing Member becomes aware of any event or circumstance which results in any designation previously made by it under this Rule 401(g) having been incorrect or requiring amendment, it shall provide a further designation to the Clearing House, specifying any required transfers between accounts or sub-accounts which, if acted upon by the Clearing House, would result in any Contract affected by such event or circumstance being correctly designated as for the appropriate Proprietary Position Account or Customer

Position Account, CDS Sub-Account (if applicable) and sub-account in the ICE Systems (if applicable). The Clearing House shall be entitled to act and shall (subject, in the case of any transfers, to the requirements of Rule 408(a)) act upon such designations by Clearing Members in recording Contracts in the Proprietary Position Account, Customer Position Account, CDS Sub-Account or other sub-account designated by the Clearing Member from time to time, without the need for any further enquiry on the part of the Clearing House.

(h) Where a Clearing Member has appointed a Disclosed Principal Member, the Disclosed Principal Member shall be the Buying Clearing Member or the Selling Clearing Member (as applicable) instead of the relevant Clearing Member in respect of all Contracts arising under this Rule 401 to which that Clearing Member would, but for the requirements of this Rule 401(h), otherwise be party. All provisions of these Rules relating to Contracts shall be construed accordingly.

(i) In order for a Contract to arise pursuant to:

(i) Rule 401(a)(i), (ii), (iii), (iv), (v), (vii) or (viii); or

(ii) Rule 401(a)(vi) in relation to an Energy Contract,

the Clearing Member in question must be an Energy Clearing Member and an F&O Clearing Member.

In order for a Contract to arise pursuant to:

(iii) Rule 401(a)(i), (ii), (iii), (iv), (v), (vii), (viii) or (xiv); or

(iv) Rule 401(a)(vi) in relation to a LIFFE Contract,

the Clearing Member in question must be a LIFFE Clearing Member and an F&O Clearing Member.

(j) In order for a Contract to arise pursuant to:

(i) Rule 401(a)(ix), (x) or (xi); or

(ii) Rule 401(a)(vi) or 401(a)(xiii) in relation to a CDS Contract,

the Clearing Member in question must be a CDS Clearing Member.

(k) In order for a Contract to arise pursuant to:

(i) Rule 401(a)(xii); or

(ii) Rule 401(a)(vi) or Rule 401(a)(xiii) in relation to an FX Contract,

the Clearing Member in question must be an FX Clearing Member.

- (l) On each occasion that the Clearing House gives notice in relation to a CDS Contract pursuant to Rule 401(a)(ix), (x) or (xi), each affected Clearing Member, Customer and the Clearing House, as applicable, must submit (and the Clearing House shall be authorised to submit), in accordance with the CDS Procedures, the terms of the CDS Trade Particulars or CDS Contract (and Customer-CM CDS Transaction, where applicable) to Deriv/SERV or another service specified by the Clearing House. Such submissions shall include identical terms as the original submission for clearing of the CDS Trade Particulars or the CDS Contract arising under Rule 401(a)(x) or (xi), as applicable, adjusted to take into account netting and aggregation of CDS Contracts pursuant to Rule 406.
- (m) Where an F&O Contract arises pursuant to Rule 401 as a result of trading, submission of trade data or other action by or relating to a Customer of a Non-FCM/BD Clearing Member, an opposite corresponding contract shall arise between the Customer and that Clearing Member (and may be void or voided) and further corresponding contracts may arise between Customers in the manner specified by and in accordance with:
- (i) in the case of Energy Contracts arising as a result of ICE Endex Transactions, the ICE Endex Rules;
  - (ii) in the case of Energy Contracts arising as a result of ICE Futures Europe Transactions, the ICE Futures Europe Rules;
  - (iii) in the case of Energy Contracts arising as a result of ICE OTC Transactions, the Clearing Procedures; or
  - (iv) in the case of LIFFE Contracts arising as a result of LIFFE Transactions, the LIFFE Rules.
- (n) Where a CDS Contract arises pursuant to Rule 401 as a result of submission of CDS Trade Particulars referencing the Customer Account of a Clearing Member, a Customer-CM CDS Transaction shall arise (or, any previously existing transaction shall be amended and restated in the form of a Customer-CM CDS Transaction) between the Customer and that Clearing Member.
- (o) When a Clearing Member enters into any Contract, it may do so in only one of the following capacities:
- (i) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Non-DCM/Swap Customers, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for the Non-DCM/Swap Customer Account and recorded by the Clearing House in accordance with such designation;
  - (ii) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more DCM Customers, in which case the Contract shall be designated by the Clearing



- Member in accordance with Rule 401(g) as for the DCM Customer Account and recorded by the Clearing House in accordance with such designation;
- (iii) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Swap Customers, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for the Swap Customer Account and recorded by the Clearing House in accordance with such designation;
  - (iv) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more SBS Customers, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for the SBS Customer Account and recorded by the Clearing House in accordance with such designation;
  - (v) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more General Customers in respect of Non-CDS Contracts in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for the Non-CDS Customer Account and recorded by the Clearing House in accordance with such designation;
  - (vi) if it is not an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Customers in respect of Non-CDS Contracts where segregation of related collateral is required or agreed, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for the Non-CDS Customer Account and recorded by the Clearing House in accordance with such designation; if it is not an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Customer in respect of CDS Contracts where segregation of related collateral is required or agreed, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for the CDS Customer Account and recorded by the Clearing House in accordance with such designation; or
  - (vii) as a clearing member in any other capacity (including where the Clearing Member does not provide any services to any Customer or where the Clearing Member provides services in relation to a transaction or transactions where there is no requirement or agreement for segregation of related collateral) in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for the Proprietary Account and recorded by the Clearing House in accordance with such designation.
- (p) For the avoidance of doubt, for the purposes of section 187 of the Companies Act 1989, a Clearing Member with one or more of a Proprietary Account, Non-DCM/Swap Customer Account, Swap Customer Account, DCM Customer Account, SBS Customer Account, CDS Customer Account or Non-CDS Customer Account enters into Contracts recorded in

its each such account in a different capacity to that in which it enters into Contracts recorded in any other account and each of the Customer Accounts mentioned in this provision constitute a different Customer Account for the purposes of Rule 906.

**Rule 402      *Relationship between Clearing Members and Clearing House***

- (a) Each Clearing Member that is party to a Contract shall act as principal and not as agent. In performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).
- (b) Upon the formation of a Contract in accordance with Rule 401, any Clearing Member that has any Transaction Rights or Obligations in relation to the original Transaction shall be automatically and immediately released and discharged from all and any such Transaction Rights or Obligations other than (i) any Transaction Rights or Obligations falling due for performance before the formation of such Contract and (ii) any Transaction Rights or Obligations relating to any Initial Payment under any Bilateral CDS Transaction recorded in Deriv/SERV before submission for Clearing.
- (c) The liabilities and obligations of the Clearing House pursuant to Contracts extend only to, and are enforceable only by, Clearing Members. Without limiting the generality of the foregoing, the Clearing House shall have no liability or obligation whatsoever to any Customer of a Clearing Member or any client of such a Customer.
- (d) The Clearing House shall have no liability or obligation in relation to any Transaction or CDS Trade Particulars whatsoever, unless and until a Contract arises in accordance with Rule 401 and is not void; in which case its liabilities shall be pursuant to the Contract only. The Clearing House's obligations and liabilities under any Contract shall be limited to those pursuant to the Contract Terms and these Rules, and are subject to the Contract not being void pursuant to Rule 403 and to the Clearing House's rights in relation to voidable Contracts pursuant to Rule 404.
- (e) As between the Clearing House and each Clearing Member, all Contracts, these Rules and the relevant Clearing Membership Agreement are entered into in reliance on the fact that all such documents constitute a single agreement between the Clearing House and such Clearing Member. Were it not for these Rules, the Clearing Membership Agreement and other Contracts, neither the Clearing House nor such Clearing Member would enter into any Contracts with the other.
- (f) In the case of a Contract between the Clearing House and an FCM/BD Clearing Member that is recorded in a Customer Account, the Contract will remain valid and binding on the FCM/BD Clearing Member, and the FCM/BD Clearing Member will be liable to perform under the Contract as set forth in Part 16, regardless of the validity of any obligations in respect of the Contract to which the Customer is or was intended to be bound.

**Rule 403**      ***F&O Contracts that are Void from Inception***

- (a) No F&O Contract will arise (it being void *ab initio*) and the Clearing House shall have no obligation or liability to any Person in respect of a Transaction for which incomplete, erroneous or conflicting details are received by the relevant Market.
- (b) In the event of an F&O Contract being void:
  - (i) the Clearing House shall immediately notify the affected Clearing Members and any relevant Market;
  - (ii) all amounts paid pursuant to the purported F&O Contract shall be returned by the affected Clearing Member and the Clearing House to their respective contractual counterparties, in each case without interest;
  - (iii) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b).
- (c) Nothing in this Rule 403 of itself is intended to result in any Transaction or Transaction Rights or Obligations being void or voided as between the original parties thereto.

**Rule 404**      ***Contracts that are Voidable***

- (a) In relation only to F&O Contracts, the Clearing House shall have the discretion to avoid any Contract (which is not void *ab initio* pursuant to Rule 403) if the relevant Contract or Transaction (or related information or data received by the Clearing House, as applicable) whether in whole or in part:
  - (i) conflicts or appears to conflict with information received by the Clearing House in relation to such Contract or Transaction from another source, including (without limitation) information received from a Market, Exchange, any other Clearing Member or any Governmental Authority;
  - (ii) results or appears to result from a communications or information technology error or problem;
  - (iii) is or appears to be connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws;
  - (iv) is or appears to be a result of a Force Majeure Event;
  - (v) is one which any Governmental Authority or any Market requires or requests in writing that the Clearing House treat as void or voided;
  - (vi) is one which any Applicable Law provides is void or voided or which any Applicable Law requires the Clearing House to treat as void or voided;

- (vii) is one in respect of which the Clearing House has requested additional Margin or Permitted Cover from the Clearing Member and no Margin or Permitted Cover is provided by the time required;
  - (viii) was entered into in breach of a representation by a Clearing Member arising under the Rules or the Procedures;
  - (ix) is otherwise made or received in such circumstances or in such a manner that acceptance of the Contract or Transaction would be inadvisable, in the opinion of the Clearing House, for the Clearing House's own protection, the protection of Clearing Members generally, Energy Clearing Members generally, LIFFE Clearing Members generally, F&O Clearing Members generally or the protection of a Market or marketplace in any class of Contracts.
- (b) If any CDS Contract or FX Contract:
- (i) is one which any Governmental Authority requires or requests in writing that the Clearing House treat as void or voided;
  - (ii) is one which any Applicable Law provides is void or voided, or requires the Clearing House to treat as void or voided;
  - (iii) is one which, whether in whole or in part, pursuant to any Applicable Law is voidable; or
  - (iv) is unenforceable by the Clearing House,
- then the Clearing House shall act in accordance with Rule 404(c). A Contract shall not be subject to Rule 404(b)(iii) or (iv) if a Clearing Member is subject to fraud, illegality, insider dealing, market abuse, money laundering, breach of Applicable Laws or other grounds for the Contract being void, voidable or unenforceable solely as a result of it having submitted CDS Trade Particulars together with another CDS Clearing Member or having been party to an FX Transaction (as applicable) in circumstances in which the Contract to which another Clearing Member is party is subject to Rule 404(b)(iii) or (iv).
- (c) If any of the circumstances set out in Rule 404(b)(i) and (ii) arises, the Clearing House shall comply with any relevant request, requirement or provision, and, if Rule 404(b)(iii) or (iv) applies, it may at its discretion avoid the relevant Contract. If the Clearing House exercises its discretion to avoid a Contract or any Contract is otherwise void or voided, the Clearing House may, at its discretion, take action in accordance with this Rule 404(c). Where it does take action under this Rule 404(c), it may take the steps set out in paragraph (i) below or, if that is not reasonably practicable, it may take the steps set out in paragraph (ii) below, in relation to the affected Contract(s):
- (i) direct the Clearing Member who was counterparty to the void or voided Contract to enter into a replacement Contract of equal economic terms to the void or voided Contract or sign documentation confirming the validity of an existing Contract, in which case the Clearing Member shall forthwith execute or sign such

documentation as is directed by the Clearing House, which documentation may contain any terms specified by the Clearing House, in order to establish a replacement Contract as near as possible of equal terms to the Contract that is void or voided or confirm the validity of an existing Contract (and in the case of a CDS Contract recorded in a Customer Account, the CDS Contract will then stand regardless of whether or not the Customer is bound by any related Customer-CM Transaction or, in the case of an FCM/BD Clearing Member of the existence of any agency or other relationship between the Customer and the Clearing Member in respect of the CDS Contract); or

- (ii) enter into such contracts for its own account as it considers necessary for the Clearing House to achieve a balanced book of Contracts, in which case:
  - (A) the Clearing Member who was counterparty to the void or voided Contract shall be liable to pay the Clearing House for all of the Clearing House's costs, expenses and losses incurred in establishing such contracts;
  - (B) the Clearing House shall be entitled to retain all Margin and Guaranty Fund Contributions of the Clearing Member that would otherwise be returned or returnable to the Clearing Member as a result of the Contract being voided and apply the same as against any amount due to the Clearing House under Rule 404(c)(ii)(A); and
  - (C) the Clearing House shall be entitled to call additional Margin from the Clearing Member from the time at which the Contract is void until the time that the Clearing House has achieved a balanced book and has been reimbursed in respect of all its costs, expenses and losses incurred in establishing such contracts,

provided that, for the avoidance of doubt, any amounts received by the Clearing House in the process of achieving a balanced book which are in excess of its costs, expenses and losses incurred in establishing such contracts will be repayable to the affected Clearing Member.

- (d) If the Clearing House directs a Clearing Member to enter into a replacement Contract or sign documentation confirming the validity of an existing Contract under Rule 404(c)(i), any failure by the Clearing Member to do so or to take the steps set out in Rule 404(e) at or before the time reasonably specified by the Clearing House shall constitute grounds for the Clearing House declaring an Event of Default in respect of the Clearing Member, regardless of any event or circumstance which might (but for this provision) constitute a Force Majeure Event. If a Clearing Member is restricted or prevented by Applicable Law from entering into or signing a valid replacement Contract or signing documentation confirming the validity of an existing Contract, such restriction or prevention (in conjunction with the failure of the Clearing Member to enter into a replacement Contract or sign effective documentation confirming the validity of an existing Contract where directed to do so by the Clearing House pursuant to Rule 404(c)(i) or to take the steps set out in Rule 404(e)) shall of itself constitute grounds for the Clearing House declaring an

Event of Default in respect of the Clearing Member, regardless of any event or circumstance which might (but for this provision) constitute a Force Majeure Event.

- (e) If, in relation to an F&O Contract, any of the circumstances in Rule 404(a) arises or if, in the case of a CDS Contract or FX Contract only, any of the circumstances set out in Rule 404(b) arises and no replacement Contract is established and the position is not otherwise dealt with pursuant to Rule 404(c), the Clearing House shall immediately notify the affected Clearing Members and any relevant Market. Upon such notification:
- (i) the Clearing House and the Clearing Member shall immediately be released from all rights, liabilities and obligations under any affected Contract;
  - (ii) the affected Contract shall become null and void;
  - (iii) all amounts paid pursuant to the Contract shall immediately be returned by the Clearing Member and the Clearing House to their respective contractual counterparties, in each case without interest;
  - (iv) in the case of an F&O Contract, any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b);
  - (v) in the case of two CDS Contracts (resulting from the same CDS Trade Particulars) being voided in circumstances in which the CDS Trade Particulars reflect a transaction (including any Bilateral CDS Transaction) that is not void or would itself not have been void:
    - (A) if the CDS Trade Particulars represent a Bilateral CDS Transaction or other transaction that was contractually binding prior to being submitted for Clearing:
      - (1) the Bilateral CDS Transaction shall be deemed never to have been terminated; and
      - (2) each affected Clearing Member shall submit, or, as the case may be, resubmit the terms of the Bilateral CDS Transaction or other transaction to Deriv/SERV or another service specified by the Clearing House;
    - (B) each affected Clearing Member or the Clearing House, as the case may be, shall cancel any submission relating to the voided CDS Contracts made pursuant to Rule 401(l); and
    - (C) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b), except to the extent that any equivalent obligation under a CDS Contract corresponding to a Transaction Right or Obligation has been performed or part-performed; and



- (vi) in the case of two FX Contracts resulting from the same FX Transaction being voided in circumstances in which the FX Transaction itself is not void:
  - (A) the relevant FX Transaction shall be deemed never to have been terminated; and
  - (B) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b).
- (f) Nothing in this Rule 404 of itself is intended to result in any Transaction or Transaction Rights or Obligations being void or voided as between the original parties thereto, except to the extent that any equivalent obligation under a Contract corresponding to a Transaction Right or Obligation has been performed or part-performed.
- (g) For the avoidance of doubt, Rules 404(b), (c) and (d) shall only apply to CDS Contracts and FX Contracts and shall not apply to F&O Contracts.
- (h) The Clearing House will notify any relevant Market when it avoids a Contract under this Rule 404.

**Rule 405**     *Representations and Warranties on Contract Formation*

- (a) In relation to each Contract, the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
  - (i) the Clearing Member is in full compliance with the Rules;
  - (ii) the Clearing Member's obligations under the Clearing Membership Agreement, any Contract and Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));
  - (iii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Clearing Membership Agreement, any Contract or any Credit Support Document to which it is a party;
  - (iv) there is not pending or, to its knowledge, threatened against it or any of its Credit Support Providers any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of the Clearing Membership Agreement, any Contract or any Credit Support Document to which it is a party or its ability to perform its obligations under the Clearing Membership Agreement, any Contract or such Credit Support Document;

- (v) except as expressly provided in Part 16 of the Rules in respect of FCM/BD Clearing Members, it is acting for its own account and as principal and not as agent;
  - (vi) it has made its own independent decisions to enter cleared Contracts and as to whether the entry into of cleared Contracts is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary;
  - (vii) it is not relying on any communication (written or oral) of the Clearing House as investment advice or as a recommendation to enter into the Contract, it being understood that information and explanations related to the terms and conditions of a Contract will not be considered investment advice or a recommendation to enter into a Contract;
  - (viii) no communication (written or oral) received from the Clearing House will be deemed to be an assurance or guarantee as to the expected results of that Contract;
  - (ix) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Contract and it is also capable of assuming, and assumes, the risks of the Contract;
  - (x) the Clearing House is not acting as a fiduciary for or an adviser to it in respect of the Contract; [and](#)
  - (xi) where the Contract is to be recorded in its Customer Account or is otherwise related to a Customer-CM CDS Transaction or Corresponding Contract, the Clearing Member acknowledges its obligation in Rule 202(a)(ii) and that compliance with Applicable Laws in the context of entering into Customer transactions includes compliance with Applicable Laws relating to customer due diligence in respect of its Customer and Applicable Laws relating to sanctions administered or imposed by the European Union, H.M. Treasury, the Office of Foreign Assets Control of the U.S. Department of the Treasury, the United Nations Security Council or any other relevant Governmental Authority affecting the Customer or any of its Customer's assets.
- (b) In relation to each Contract (other than a Contract arising pursuant to Rule 401(a)(v), Rule 401(a)(vi), Rule 401(a)(x), Rule 401(a)(xi), Rule 401(a)(xiii) or Rule 401(a)(xiv)), the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
- (i) the data submitted by the Clearing Member or its Customer to the Exchange (if applicable) or the Clearing House (or submitted by the Participating Exchange, if applicable):
    - (A) is complete and correct in all respects; and

- (B) has been authorised by the Clearing Member (including that any Trade Processing Platform used by the Clearing Member for the submission of CDS Trade Particulars has been duly authorised by the Clearing Member for the submission of data relating to CDS Trade Particulars in accordance with the CDS Procedures); and
- (ii) Market Rules (if applicable), the Trade Processing Platform's procedures (if applicable), the rules of the Participating Exchange (if applicable) and all Applicable Laws have been complied with by the Clearing Member and any relevant Customer in respect of the Transaction, Participating Exchange Transaction or CDS Trade Particulars.
- (c) In relation to each Contract that arises pursuant to Rule 401(a)(iii), Rule 401(a)(iv), Rule 401(a)(viii), Rule 401(a)(ix), Rule 401(a)(xii) and Rule 401(a)(xiv), the Clearing House will, and will be entitled to, rely on representations and warranties deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
- (i) all and any previously subsisting contracts, rights, obligations or liabilities in connection with the subject matter of the Transaction or proposed Contract are on equal terms to that of the relevant Contract Terms (save as to the parties) and, in the case of rights, are free from all Encumbrances (excluding liabilities and obligations arising pursuant to the Contract Terms); and
- (ii) any Person other than the Clearing Member to whom any contracts, rights, obligations or liabilities referred to in Rule 405(c)(i) pertain has agreed with the Clearing Member, or such other Person as is relevant, to be released from all of its rights, obligations and liabilities as a result of Contracts arising pursuant to Rule 401(a) (save for any contracts, rights, obligations or liabilities as between the Clearing Member and its Customer (under a Customer-CM CDS Transaction, Corresponding Contract or otherwise) or between any Customer and its customers and so on, in relation to the subject matter of the Contract on a back-to-back basis with a Contract, and further except as provided in Part 16).
- (d) Clearing Members will become party to, and liable under, Contracts each and every time a Contract arises from a Transaction or CDS Trade Particulars as a result of the action or omission of its Representatives, regardless of any circumstance in relation to such Transaction or CDS Trade Particulars, including without limitation whether the person submitting the Transaction or CDS Trade Particulars was authorised to do so by the Clearing Member or its Representative or whether the Transaction or CDS Trade Particulars caused a Representative to exceed the Clearing House's credit or other parameters set for such Representative or the Clearing House's Position Limits or otherwise was in breach of the Rules or any of the Clearing Member's or Clearing House's policies, procedures or controls.

- (e) When a CDS Contract arises, the Clearing House shall make the warranties and the Clearing Member shall make the additional representations and warranties as in each case are set out in the CDS Procedures.
- (f) The Clearing House shall be entitled to assume, without enquiry, that at each time at which a Customer-CM CDS Transaction or Corresponding Contract arises, the respective obligations of the Clearing Member and Customer under such Customer-CM CDS Transaction or Corresponding Contract constitute its legal, valid and binding obligations enforceable in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles in general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

**Rule 406      *Open Contract Positions***

- (a) At the end of each day or at such other frequency as the Clearing House determines at its discretion either generally or in respect of any Clearing Member, the Clearing House will calculate Open Contract Positions in its books and records. Settlement or revaluation of Open Contract Positions and Contracts will take place pursuant to the applicable Contract Terms and, for F&O Contracts, through the Clearing Processing System. The Clearing House shall have no obligation to notify any Clearing Member of Open Contract Positions or Contracts other than through the Clearing Processing System or otherwise than in accordance with the Rules and the Clearing Procedures.
- (b) If a Clearing Member so instructs the Clearing House in accordance with the Clearing Procedures, the Clearing House will net particular buy and sell positions (for a Set of Futures that are F&O Contracts), or Long and Short positions (for a Set of Options that are F&O Contracts) within the Clearing Member's Open Contract Position in respect of one of a Clearing Member's Customer Position Accounts.
- (c) Subject to its obligations under Rule 406(b), the Clearing House may at its discretion treat any F&O Contract pursuant to which a Clearing Member is the Buying Clearing Member and another F&O Contract of the same Set pursuant to which the same Clearing Member is the Selling Clearing Member simultaneously as being netted, set off and mutually closed out and terminated upon calculation of the Open Contract Position in respect of such F&O Contracts, subject to the Clearing Member having made all then due payments pursuant to the Contract Terms in respect of such F&O Contracts and to separate treatment of Open Contract Positions in the Clearing Member's Proprietary Account and each of its Customer Accounts of a different Customer Account Category. Where the position as Buying Clearing Member is not of the same size as a position a Selling Clearing Member, the Contracts in question shall be closed out and terminated in part. For the avoidance of doubt, any contractual netting of F&O Contracts is subject to Rule 102(q) and there shall be separate treatment (and no offsetting and close-out or resulting termination nor any aggregation or consolidation) as between any of: (A) any F&O Contract recorded in the Clearing Member's Proprietary Account; (B) any F&O Contract recorded in particular Customer Account of a Clearing Member; or (C) any F&O Contract recorded in a different Customer Account of a Clearing Member.

- (d) CDS Clearing Members shall elect in accordance with the CDS Procedures between one of three different methods for the aggregation and netting of CDS Contracts (listed in paragraphs (i) to (iii) below), separately in respect of each of its CDS Sub-Accounts. If a CDS Clearing Member has only one CDS Sub-Account, then only one election under this Rule 406(d) is required. Any aggregation and netting of CDS Contracts pursuant to this Rule 406(d) shall take place pursuant to a novation, through termination of the relevant existing CDS Contract of the same Set or some or all of the relevant existing CDS Contracts of the same Set in the same CDS Sub-Account in consideration for the entry into of a new replacement single CDS Contract replacing those CDS Contracts so being aggregated and/or netted. Such aggregation and netting will take place at the times, and will affect those CDS Contracts, set out in or determined in accordance with the CDS Procedures, which will provide for aggregation and netting in relation to each CDS Sub-Account at least weekly. The Clearing House and relevant CDS Clearing Member will reflect each aggregation and netting under this Rule 406(d) in the records of Deriv/SERV in accordance with CDS Procedures. Subject to Rule 406(e):
- (i) where a CDS Clearing Member elects to manage a CDS Sub-Account on a 'trade by trade' basis, there will be no netting, offsetting, consolidation, aggregation, novation, termination or replacement of CDS Contracts recorded in that CDS Sub-Account;
  - (ii) where a CDS Clearing Member elects to manage a CDS Sub-Account on a 'gross' basis:
    - (A) there shall be no regular netting or offsetting of CDS Contracts recorded in that CDS Sub-Account;
    - (B) CDS Contracts recorded in that CDS Sub-Account, to the extent they are in the same Set and where the CDS Clearing Member acts as Buying Clearing Member, will, by operation of this provision, be aggregated, terminated and replaced by a single CDS Contract at the relevant times specified in this Rule 406(d), with a Floating Rate Payer Calculation Amount equal to the total of the Floating Rate Payer Calculation Amounts of those CDS Contracts; and
    - (C) CDS Contracts recorded in that CDS Sub-Account, to the extent they are in the same Set and where the CDS Clearing Member acts as Selling Clearing Member, will, by operation of this provision, be aggregated, terminated and replaced by a single CDS Contract, being a different CDS Contract to the CDS Contract referred to in Rule 406(d)(ii)(B), at the relevant times specified in this Rule 406(d), with a Floating Rate Payer Calculation Amount equal to the total of the Floating Rate Payer Calculation Amounts of those CDS Contracts;
  - (iii) where a CDS Clearing Member elects to manage a CDS Sub-Account on a 'net' basis, CDS Contracts recorded in that CDS Sub-Account, to the extent they are in the same Set, will, by operation of this provision, be terminated and replaced by a

single CDS Contract, at the relevant times specified in this Rule 406(d), with a Floating Rate Payer Calculation Amount equal to the net of the Floating Rate Payer Calculation Amounts of those CDS Contracts;

- (iv) where a CDS Clearing Member makes no election in respect of a CDS Sub-Account linked to its Proprietary Account, it shall be deemed to have elected to manage that CDS Sub-Account on a 'net' basis and Rule 406(d)(iii) shall apply; and
  - (v) where a CDS Clearing Member makes no election in respect of a CDS Sub-Account linked to one of its Customer Accounts, it shall be deemed to have elected to manage that CDS Sub-Account on a 'trade by trade' basis and Rule 406(d)(i) shall apply.
- (e) Notwithstanding Rule 406(d), but without prejudice to Rule 102(q):
- (i) following an Applicable Credit Event, the Clearing House shall be entitled to aggregate, consolidate, set off, close out and terminate CDS Contracts (as applicable) to result in one or more CDS Contracts per Set regardless of the election in Rule 406(d), to the extent permitted under these Rules and the CDS Procedures;
  - (ii) if a CDS Contract becomes a self-referencing CDS Contract (in the circumstances further detailed in the Procedures), the Clearing House shall be entitled to set off, close out and terminate CDS Contracts (as applicable) to result in one or more CDS Contracts per Set regardless of the election in Rule 406(d), to the extent permitted under the Rules and CDS Procedures;
  - (iii) following an Event of Default, Part 9 of the Rules shall prevail and apply in relation to all matters concerning aggregation, consolidation, set off, closing out and termination of Contracts;
  - (iv) for the avoidance of doubt, Rule 406(d) is subject to Rule 102(q) and there shall be separate treatment (and no offsetting and close-out or resulting termination nor any aggregation or consolidation) as between any of: (A) any CDS Contract recorded in the Clearing Member's Proprietary Account; (B) any CDS Contract recorded in a particular Customer Account of a Clearing Member; or (C) any CDS Contract recorded in a different Customer Account of a Clearing Member;
  - (v) an election under Rule 406(d)(i) or Rule 406(d)(ii) shall not prevent a CDS Clearing Member from requesting on an *ad hoc* basis that the Clearing House net, set off, consolidate or aggregate any particular CDS Contracts (or parts of any CDS Contracts) in a manner that would be permitted under Rule 406(d)(iii) (if that Rule were applicable to the relevant CDS Sub-Account) nor shall it prevent the Clearing House from accepting any such request (and the Clearing House shall not unreasonably withhold or delay its consent to any such *ad hoc* netting, set off, consolidation or aggregation);



- (vi) Rule 406(d) does not affect the definition or calculation of the Open Contract Position of a CDS Clearing Member, nor does it affect any Margin or Guaranty Fund Contribution requirements applicable to a CDS Clearing Member which shall at all times be based upon the Open Contract Position in each Set, notwithstanding the CDS Contracts to which a CDS Clearing Member is party or elections in relation to CDS Sub-Accounts;
  - (vii) if the records of trades in Deriv/SERV do not reflect the CDS Contracts to which a CDS Clearing Member and the Clearing House are party, then the CDS Clearing Member and the Clearing House will together correct the records of Deriv/SERV accordingly; and
  - (viii) where Rule 406(d)(ii) or Rule 406(d)(iii) applies to a CDS Sub-Account, Fixed Amounts for the CDS Contracts recorded in that CDS Sub-Account shall be calculated on the basis of the average Floating Rate Payer Calculation Amounts for the affected period.
- (f) There shall be no regular contractual netting or aggregation of FX Contracts. FX Contracts will be recorded separately and on a gross basis in both the Clearing Member's Proprietary Account and Customer Account. Notwithstanding this Rule 406(f):
- (i) following an Event of Default, Part 9 of the Rules shall prevail and apply in relation to all matters concerning aggregation, consolidation, set off, closing out and termination of Contracts;
  - (ii) Rule 406(f) does not affect the definition or calculation of any Margin or Guaranty Fund Contribution requirements applicable to an FX Clearing Member;
  - (iii) Rule 406(f) does not prevent the netting and offset of an FX Contract against another FX Contract, if the second FX Contract arose as a result of the Invoicing Back of the first FX Contract by the Clearing House under Rule 104;
  - (iv) for the avoidance of doubt, any contractual netting of FX Contracts is subject to Rule 102(q) and there shall be separate treatment (and no offsetting and close-out or resulting termination nor any aggregation or consolidation) as between any of:  
(A) any FX Contract recorded in the Clearing Member's Proprietary Account; (B) any FX Contract recorded in a particular Customer Account of a Clearing Member; or (C) any FX Contract recorded in a different Customer Account of a Clearing Member; and
  - (v) if the Clearing House nets and offsets or combines and replaces any opposite FX Contracts (or any part of an FX Contract) of a Defaulter pursuant to Rule 902 to Rule 907, then the Clearing House shall be entitled to net and offset or combine and replace up to an equal amount of FX Contracts (or any part of an FX Contract) of other Clearing Members (which are not Defaulters) of the same Set as those FX Contracts of the Defaulter that were netted and offset or combined and replaced, and upon any such netting and offsetting or combination and replacement being notified by the Clearing House to a Clearing Member, the FX Contracts to which



the netting and offsetting or combination and replacement applies shall automatically be terminated (and, in the case of a combination or partial offset, replaced with a new FX Contract) without need for any further action on the part of any Person, provided that:

- (A) the Clearing House shall only net or offset two or more Financially-Settled FX Contracts of a Clearing Member that is not a Defaulter, in whole or in part, where such Financially-Settled FX Contracts are in the same Set and the Clearing Member in question is Reference Currency Buyer under one of the Financially-Settled FX Contracts and Reference Currency Seller under the other Financially-Settled FX Contract;
  - (B) the Clearing House shall only combine and replace two or more Financially-Settled FX Contracts (or parts thereof) of a Clearing Member that is not a Defaulter:
    - (1) if the Clearing Member is Reference Currency Buyer under one of the Financially-Settled FX Contracts in respect of a particular currency and Reference Currency Seller under the other Financially-Settled FX Contract in respect of the same currency, and those two Financially-Settled FX Contracts have the same FX Settlement Date; and
    - (2) if the replacement FX Contract is also a Financially-Settled FX Contract, with the obligations and rights of the Clearing Member referring to the two currencies of the original FX Contracts (which were not the same), but with the same FX Settlement Date as the original FX Contracts and based on obligations with reference to the two remaining currencies as stood under the original FX Contracts; and
  - (C) the Clearing Members to which any netting, offsetting, combination or replacement applies shall be selected by the Clearing House based on an objective, automated selection process.
- (g) All Intellectual Property in data relating to CDS Trade Particulars, Transactions, Contracts and Open Contract Positions provided to the Clearing House under these Rules or generated by the Clearing House shall be the property of the Clearing House (except as otherwise agreed with a Market and that, in relation to CDS Contracts or FX Contracts, this shall be subject to any provision to the contrary in any agreement in writing between the Clearing House and a CDS Clearing Member or FX Clearing Member, respectively). Such data may be provided by the Clearing House to any Market, Exchange, Trade Processing Platform, Deriv/SERV or any other data entry facility for CDS Contracts or any repository or data entry facility for FX Contracts and any member of the ICE Group and used by the Clearing House or such other Persons for any commercial or other purpose, subject in each case to the restrictions in Rule 106(a). Each Clearing Member's rights in such Intellectual Property shall be automatically assigned to the Clearing House by virtue of this provision

as such rights arise. This Rule 406(g) is subject, in relation to CDS Clearing and FX Clearing, to any further restrictions in any agreement in writing between the Clearing House and a CDS Clearing Member or FX Clearing Member, as the case may be.

**Rule 407**      *Reporting of Open Contract Positions Carried by Other Clearing Members*

If an F&O Clearing Member (for the purposes of this Rule 407 only, the "**Relevant Clearing Member**") has Customer or proprietary positions in respect of any Contract carried for it by another F&O Clearing Member (for the purposes of this Rule 407 only, the "**Position Holder**"), the Relevant Clearing Member shall give written notice to the Clearing House of the name of the Position Holder and the extent of its position on the Business Day following the Business Day on which a position was carried by the Position Holder.

**Rule 408**      *Transfer of Contracts*

- (a) A Clearing Member shall not assign, allocate or transfer, or create any Encumbrance whatsoever in relation to, any of its rights, liabilities or obligations under a Contract except:
- (i) that all rights and obligations of a Clearing Member pursuant to a Contract may be transferred, novated or terminated and replaced from one Clearing Member to another Clearing Member with the agreement of each of the two Clearing Members involved (and, if required under Applicable Law for Open Contract Positions in a Customer Account, the consent of the relevant Customers), and the consent of the Clearing House and relevant Market (if any), subject to such conditions as the Clearing House at its discretion stipulates and, in relation to CDS Contracts, subject to the requirements set out in the CDS Procedures;
  - (ii) as a result of an allocation resulting in a Clearing Member being the 'Buying Clearing Member' or 'Selling Clearing Member' as such terms are defined in Rule 101;
  - (iii) as a result of an allocation pursuant to Rule 401(a)(viii);
  - (iv) as a result of a CDS Contract arising pursuant to Rule 905(c) and Rule 401(a)(x);
  - (v) as a result of a Transfer of Contracts pursuant to Rule 904; or
  - (vi) as a result of a transfer of a Linked Outgoing Contract under Rule 401(a)(xiv) and Rule 410.
- (b) Any purported transfer of any rights, liabilities or obligations under a Contract other than in accordance with Rule 408(a) shall be null and void.

**Rule 409**      *Amendment of Contract Terms*

- (a) The terms of any Contract may only be amended, waived or varied with the prior written consent of the Clearing House.

**Rule 410**     *Link Agreements*

- (a) In this Rule 410, the following terms shall have the meanings set out below:

The term "**Cleared Exchange**" means an Exchange to which the Clearing House provides clearing services.

The term "**Clearing Member Link Agreement**" means a written agreement in one or more forms amongst a Cleared Exchange, the Clearing House and a Participating Exchange to which, amongst others, a Clearing Member is party. A Clearing Member Link Agreement has the function, amongst other things, of facilitating the transfer of Contracts and transactions in accordance with this Rule 410.

The term "**Link Agreement**" means an agreement entered into between the Clearing House and a Participating Exchange and, if applicable, a Cleared Exchange for the purposes of facilitating the transfer of Contracts from the Clearing House to the Participating Exchange or vice-versa.

The term "**Linked Outgoing Contract**" means a Contract or notional Contract which is subject to a transfer to a Participating Exchange from the Clearing House pursuant to a Link Agreement, giving rise to an offsetting Contract under Rule 410(d).

The term "**Linked Incoming Contract**" means a Contract which arises under Rule 410(g) following the transfer from a Participating Exchange to the Clearing House of a Participating Exchange Transaction pursuant to a Link Agreement.

The term "**Participating Exchange**" means an organisation (whether an Exchange, association or otherwise) which operates a derivatives market and which has concluded a Link Agreement with the Clearing House. For the purposes of this Rule 410, a Participating Exchange shall not include a Cleared Exchange but shall, where the context requires, be read as referring alternatively to the Clearing Organisation which provides clearing services to the relevant Participating Exchange.

The term "**Participating Exchange Transaction**" means a transaction arising under the rules of a Participating Exchange which, pursuant to a Link Agreement, may be transferred to the Clearing House and, if accepted by the Clearing House in accordance with a Link Agreement, give rise to a Linked Incoming Contract.

- (b) Linked Outgoing Contracts are transferred from the Clearing House to a Participating Exchange in accordance with the provisions of this Rule 410. Any such transfer shall include all affected Linked Outgoing Contracts nominated by a Clearing Member for transfer to a Participating Exchange, regardless of whether they have been contractually netted under Rule 406.
- (c) In accordance with the Procedures and subject to other provisions in this Rule 410, the Clearing House shall:

- (i) calculate each Clearing Member's Open Contract Position with respect to Linked Outgoing Contracts; and
  - (ii) transmit details of each Clearing Member's Linked Outgoing Contracts arising on such Business Day, to the relevant Participating Exchange in accordance with procedures and timings agreed from time to time with the relevant Participating Exchange.
- (d) On confirmed receipt by the relevant Participating Exchange, in accordance with such procedures as may be agreed from time to time between the Clearing House and the Participating Exchange pursuant to a Link Agreement, when each relevant Linked Outgoing Contract referred to in Rule 410(c) is transferred, an offsetting or opposite Contract shall arise in accordance with Rule 401(a)(xiv) between the Clearing House and the Clearing Member which is identical in terms to and for the same number of lots as the Linked Outgoing Contract save as to the position of the parties as Buying Clearing Member or Selling Clearing Member which shall be reversed. The offsetting or opposite Contract and Linked Outgoing Contract may be subject to contractual netting under Rule 406(c).
- (e) A Participating Exchange may transmit details of Participating Exchange Transactions to be Cleared by the Clearing House in accordance with procedures and timings agreed from time to time with the Clearing House. On confirmed receipt by the Clearing House of full details of a Participating Exchange Transaction, in accordance with a Link Agreement and such procedures as may be agreed from time to time with a Participating Exchange, a Linked Incoming Contract shall arise in accordance with Rule 401(a)(xiv) between the Clearing House and each of the relevant Clearing Members identical to and for the same number of lots as the relevant Participating Exchange Transactions (save as to the identity of the Clearing Organisation, if any, which shall be the Clearing House).
- (f) This Rule 410(f) is applicable in situations of impossibility or difficulty of transfer of an Outgoing Linked Contract or Participating Exchange Transaction.
- (i) The provisions of this Rule 410(f) shall apply if it is not possible to effect a transfer of Linked Outgoing Contracts or Participating Exchange Transactions on the relevant Business Day for any reason (other than default as referred to in Part 9) including, without limitation, as a result of:
    - (A) any action taken by a Cleared Exchange, regulatory body or governmental authority;
    - (B) any change in Applicable Law;
    - (C) failure of any systems, communication facilities or other technology affecting the Clearing House, the relevant Participating Exchange or the Cleared Exchange; and/or
    - (D) a Force Majeure Event.

- (ii) If details of Linked Outgoing Contracts cannot be transmitted on the relevant Business Day or the relevant Participating Exchange cannot receive such details or despatch a confirmation, so that such Contracts cannot be transferred on the Business Day on which they arose, such Contracts shall not be subject to transfer on that Business Day and shall remain open Contracts with the Clearing House subject to the Rules. Details of such Contracts which remain open may be transmitted to the relevant Participating Exchange on the next day on which such Contracts are permitted to be transferred under the relevant Link Agreement and on which it is possible for details of such Contracts to be transmitted.
- (iii) If details of Participating Exchange Transactions cannot be transferred on the day on which such transactions were entered into on the Participating Exchange, such transactions shall not be subject to any transfer, and may remain subject to the rules of the Participating Exchange and shall not give rise to any Contract until such time as they are transferred to the Clearing House. Such transactions may be transferred to the Clearing House on the next day on which such transactions are permitted to be so transferred under the relevant Link Agreement and on which it is possible to do so.
- (iv) Nothing in this Rule 410(f) shall restrict or qualify the applicability of Rule 112 in a situation in which this Rule 410(f) applies.
- (v) On the termination of an applicable Link Agreement, Linked Outgoing Contracts and Participating Exchange Transactions subject to such agreement that arise after such termination taking effect shall cease to be subject to any transfer under this Rule 410. Termination of any Link Agreement shall not affect the validity of any existing Contract.
- (vi) In the event of a default by a member of a Participating Exchange (where such member is not also a Clearing Member), where such default is defined or declared under the rules of the Participating Exchange, any Participating Exchange Transaction registered in the name of such affected Participating Exchange member shall not be transferred under the applicable Link Agreement pursuant to this Rule 410, provided that the Clearing House may elect to enter into one or more Contracts with F&O Clearing Members or with the relevant Cleared Exchange or Participating Exchange for the purpose of facilitating the replacement of the Participating Exchange Transactions of the defaulting member of such Cleared Exchange or Participating Exchange with a new contract with a non-defaulting Clearing Member.

## **Part 5     Margin**

### **Rule 501     *Approved Financial Institutions***

- (a) The Clearing House will maintain a list of Approved Financial Institutions. Only Approved Financial Institutions shall be permitted by the Clearing House:

- (i) to open and operate, on behalf of Clearing Members, accounts from which the Clearing House can draw amounts pursuant to a direct debit mandate, for the collection of amounts due to the Clearing House from time to time; and
  - (ii) to issue and confirm letters of credit for Clearing Members. Approved Financial Institutions may also act in such other capacity as the Clearing House may approve from time to time.
- (b) All cash transfers made by Clearing Members to or to the order of the Clearing House must be made from an account at an Approved Financial Institution, unless the Clearing House gives its prior written consent to another method being used.
  - (c) Clearing Members are given notice that the Clearing House may suspend or terminate the status of an Approved Financial Institution or attach, amend or revoke conditions to the continued status of an Approved Financial Institution. The Clearing House may take such steps if an institution no longer meets all of the requirements of the Clearing House or if the Clearing House determines that it would be advisable for the Clearing House's own protection, the protection of Clearing Members or the protection of a Market to do so.

**Rule 502**     *Margin*

- (a) Each Clearing Member shall transfer Permitted Cover to the Clearing House in respect of Margin in such amounts, in such forms and at such times as are required pursuant to this Part 5 and otherwise as may be prescribed by the Clearing House and notified to Clearing Members, in each case in accordance with these Rules and the Finance Procedures, from time to time.
- (b) At any time on which a requirement for Original Margin, FX Original Margin, Initial Margin or Margin under Rule 502(g) falls due and insufficient Permitted Cover is held, the Clearing Member must initially transfer cash in an Eligible Currency. Thereafter a Clearing Member may substitute such cash Margin with other Permitted Cover by delivery of the replacement Permitted Cover to the Clearing House. The amount of Original Margin or Margin under Rule 502(g) for any Business Day shall be calculated (and, if necessary, called) separately in respect of the relevant Proprietary Account and each Customer Account of a different Customer Account Category for each Clearing Member in accordance with the Finance Procedures.
- (c) Variation Margin, FX Mark-to-Market Margin and Mark-to-Market Margin payments may be made by the Clearing House or a Clearing Member only in cash in the Eligible Currency in which the Contract in question is to be or can be settled (for F&O Contracts), which is the settlement currency (for CDS Contracts) pursuant to the Contract Terms or which is specified as the FX Mark-to-Market Margin currency for the relevant Set (for FX Contracts) (save where the Procedures require otherwise).
- (d) Details of Eligible Currencies and other Permitted Cover that may be used to satisfy Margin obligations will be notified to Clearing Members from time to time by a Circular. The Clearing House may, at its discretion, vary or alter the standard Margin requirements, nature or types of acceptable Eligible Currencies and Permitted Cover, specify proportions



or maximum proportions of asset classes or modify any valuation procedures or haircuts set out in or established pursuant to the Finance Procedures or any risk policies. Any general changes to requirements for Margin or Permitted Cover will be notified to Clearing Members by a Circular.

- (e) Certain classes of Permitted Cover may be subject to haircuts in accordance with the Finance Procedures (as specified from time to time by Circular) pursuant to which certain classes of Permitted Cover do not count for their full face or market value in the determination of Margin for the account of a Clearing Member. For the avoidance of doubt, this subparagraph (e) shall apply to any haircuts imposed pursuant to clause 2.9 of the Pledged Collateral Addendum.
- (f) The Clearing House may require a Clearing Member or Clearing Members to transfer cash in other Eligible Currencies or Permitted Cover with the Clearing House in substitution for any Permitted Cover already transferred to the Clearing House.
- (g) The Clearing House may impose, amend or withdraw additional Margin requirements in respect of any Clearing Member at any time and at its discretion.
- (h) The Clearing House may designate by Circular or Rule that a Proprietary Account or Customer Account or any sub-account of such an account of a Clearing Member shall be a Pledged Collateral Account and consequently that all or any part of the Margin (or Permitted Cover in respect thereof) to be provided by such Clearing Member with respect to such account shall be provided by way of Pledged Collateral. In the absence of such express designation, a Proprietary Account or Customer Account will not be a Pledged Collateral Account. The Clearing House undertakes in favour of each Clearing Member that has executed a Pledged Collateral Addendum (which remains valid and effective and which has not been terminated or rescinded) that in exercising its rights under the Pledged Collateral Addendum to modify the terms thereof, the Clearing House will not redesignate any of such Clearing Member's Proprietary Accounts or Customer Accounts or any sub-account thereof which is a Pledged Collateral Account as not being a Pledged Collateral Account (without the consent of the Clearing Member) or otherwise in such a way as would cause the Clearing Member to breach any Applicable Law.
- (i) Any Pledged Collateral recorded in a Pledged Collateral Account is transferred to the Clearing House as contingent cover for Margin on the basis that it may only be applied by the Clearing House in accordance with the terms of the Pledged Collateral Addendum: (i)(A) following an Event of Default pursuant to Rule 905 and Rule 906 as cover for Margin against a liability of the Clearing Member relating to the relevant Customer Account or Proprietary Account of the Pledged Collateral Account (provided that the value of any Pledged Collateral returned directly to a Clearing Member or any Person on such Clearing Member's behalf will be excluded from the calculation of any relevant net sum); and (B) only to the extent that such applied amount is required to be included in the net sum calculation to ensure that the net sum for the Customer Account or Proprietary Account of the Pledged Collateral Account would not represent an amount payable by the Clearing Member to the Clearing House; or (ii) pursuant to the Default Portability Rules. Any Pledged Collateral not applied in accordance with this provision and which is not



transferred to a Transferee Clearing Member in accordance with Part 9 of the Rules shall be returned to the relevant Clearing Member for its applicable proprietary or customer account, as the case may be, subject to Applicable Law as a result of such Clearing Member's or its customers' entitlements to such Pledged Collateral and not as part of the net sum process arising pursuant to Part 9 of the Rules. Any such return by the Clearing House of Pledged Collateral outside of the net sum calculation shall discharge and satisfy in full the Clearing House's obligations to return such Pledged Collateral to the Clearing Member or any of its Customers and no Customer or Clearing Member shall have any further claim in respect of such Pledged Collateral. To the extent any Pledged Collateral is, or is required under Applicable Law to be, returned to a Defaulter, it shall be returned separately from any net sum certified by the Clearing House pursuant to Rule 905.

- (j) Without limiting Rule 111, but subject to any contrary requirements of law: The Clearing House shall not be liable to any Clearing Member, Customer or other Person for any losses, claims, liabilities, damages or expenses arising out of or relating to the holding of any Pledged Collateral or the assets in any Pledged Collateral Account ("**Custodial Losses**"), except to the extent such Custodial Losses result from the gross negligence or wilful misconduct of the Clearing House. The Clearing House shall have no responsibility for any investment decisions made or directed by a Clearing Member (or any Representative thereof) with respect to assets representing Pledged Collateral or for the results of any such investments. The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any requests, instructions or directions with respect to Pledged Collateral or the assets in any Pledged Collateral Account under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate Clearing Member.
- (k) With respect to F&O Contracts, changes to the matters described in Rules 502(d) and (e) above, including assets eligible as Margin or Permitted Cover and the haircuts established with respect thereto, will be based on an analysis of appropriate factors as determined by the Clearing House, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spreads and correlations between relevant assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information.

**Rule 503**      *Margin Calls and Return of Surplus Collateral*

- (a) Margin shall be and become due and payable at the times specified by the Clearing House pursuant to Rule 302.
- (b) Regular Margin calculations will be made by the Clearing House on each Business Day. Any such calculation may result in a call for additional Permitted Cover pursuant to Part 3.
- (c) The Clearing House shall be entitled, at its discretion, to make an intra-day call for Margin or any other amount payable to it. In the event of such a call being made, the Clearing House will:

- (i) give notice to each Clearing Member which is required to make payment to the Clearing House of the amount payable by such Clearing Member and time by which payment must be made; and
  - (ii) immediately after giving or making reasonable efforts to give the notice described in Rule 503(c)(i), instruct the relevant Approved Financial Institution to transfer funds equal to the amount due to the Clearing House from the account of such Clearing Member to an account of the Clearing House.
- (d) For regular calls relating to F&O Contracts, Margin shall be calculated with reference to a Clearing Member's Open Contract Position in accordance with the Finance Procedures. For any intra-day Margin call relating to F&O Contracts, Margin shall be calculated with reference to a Clearing Member's Open Contract Position and gross number of Contracts in relation to any Contracts not included in Open Contract Positions in accordance with the Finance Procedures.
- (e) The amount of Variation Margin for any Business Day shall be calculated (and, if necessary, called) separately in respect of the relevant Proprietary Account and each Customer Account of a different Customer Account Category for each Clearing Member in accordance with the Finance Procedures. Each such Variation Margin call shall be:
  - (i) in the case of an Open Contract Position, based on the prices at which Open Contract Positions in F&O Contracts are recorded on the Clearing House's books; and
  - (ii) in the case of F&O Contracts not reflected in a Clearing Member's Open Contract Position, represented by the difference between the Settlement Price and the price at which each such F&O Contract was bought or sold; provided, however, that in the case of any F&O Contract based on an index, the amount of the final Variation Margin payment shall be determined as specified in the rules of the Exchange on which the index is based.
- (f) Regular calls for Margin in respect of CDS Contracts will be made following the close of business on each Business Day as follows and in accordance with the Finance Procedures:
  - (i) For Portfolio Risk Margin and Physical Settlement Margin calls, the Clearing House shall calculate net amounts as due to or from the Clearing House from or to each CDS Clearing Member separately in respect of its Proprietary Margin Account and relevant Customer Margin Account (if any). Such amounts shall in each case be calculated in accordance with the risk policies of the Clearing House based on the difference between the CDS Clearing Member's requirement for Portfolio Risk Margin and Physical Settlement Margin and the value attributed by the Clearing House to assets accounted for by the Clearing House as Margin of that category, in accordance with the Finance Procedures. Additional amounts in respect of Physical Settlement Margin may also be required pursuant to the CDS Procedures or Rule 502(g). For Designated CDS Customer Accounts, the net amount due or payable at any time shall be based on the Customer Account Net

Margin Amount plus the Customer Gross-Net Amount in respect of CDS Contracts recorded in the corresponding Customer Position Account.

- (ii) For Mark-to-Market Margin calls, each currency in which a CDS Contract is denominated is treated as a separate category (each, a "**Mark-to-Market Margin Category**"). For each Mark-to-Market Margin Category of a CDS Clearing Member, the Clearing House shall calculate net amounts as due to or from the Clearing House from or to each CDS Clearing Member separately in respect of its Proprietary Margin Account and Customer Margin Account (if any) based on the change in Mark-to-Market Price from the last time at which a Mark-to-Market Margin call was made, in accordance with the Finance Procedures.
- (g) The "**Mark-to-Market Price**", for CDS Contracts of a Set at any time is the price, determined by the Clearing House in accordance with the Finance Procedures and calculated in accordance with its risk policies. To aid in the establishment of Mark-to-Market Prices, Clearing Members are required to submit end-of-day prices relating to Sets of CDS Contracts. In connection with the Clearing services provided by the Clearing House and as detailed in the CDS Procedures, the submission of end-of-day prices relating to CDS Contracts may, on the day of price submission only, result in a CDS Contract arising pursuant to Rule 401(a)(xi).
- (h) For regular and intra-day Margin calls relating to FX Contracts, Margin shall be calculated with reference to the FX Contracts to which the Clearing Member is party, in accordance with the Procedures.
- (i) The amount of FX Mark-to-Market Margin for any Business Day shall be calculated (and, if necessary, called) separately in respect of the relevant Proprietary Account and Customer Account of a Clearing Member in accordance with the Procedures. Each such FX Mark-to-Market Margin call shall be based on changes to the mark-to-market values for FX Contracts and exchange rates from the last time at which a call for FX Mark-to-Market Margin was made in accordance with Part 17 of the Rules and the Procedures.
- (j) The Clearing House shall return to a Clearing Member the amount of any Surplus Collateral, provided that the Clearing House receives a request for such a release from such Clearing Member prior to such time as may be specified by the Clearing House for the day on which such release is to be made or pursuant to standing instructions for the return of Surplus Collateral, as the same may be established or amended in accordance with the Finance Procedures, such returns to be made in accordance with Rule 302 and the Finance Procedures.

**Rule 504**      *Rights relating to Margin and Representations of Clearing Members*

- (a) The rights and liabilities of the Clearing House and each Clearing Member in relation to Margin are set out in the Clearing Membership Agreement and these Rules.
- (b) Each Clearing Member will act as principal and not as agent in providing Margin to the Clearing House. The Clearing House will take no account of any right or interest which

any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House.

- (c) Each Clearing Member will be deemed to represent and warrant to the Clearing House on each date on which such Clearing Member transfers Permitted Cover to the Clearing House that:
- (i) immediately prior to any such Permitted Cover being transferred to the Clearing House, the Clearing Member is or was the sole legal and beneficial owner of all such assets (or such assets are provided with all legal and beneficial owners' unconditional consent for their use and application pursuant to these Rules);
  - (ii) the Clearing House is not subject to any obligation to perform directly to any of a Clearing Member's Customers, Affiliates or Representatives or any third party as a result of the Clearing Member granting any interest in any receivable from the Clearing House resulting from the Clearing House's receipt or use of such Permitted Cover, except as expressly provided pursuant to these Rules or any Pledged Collateral Addendum or as mandated pursuant to Applicable Law;
  - (iii) such Permitted Cover is provided on the basis that it may be used by the Clearing House and applied in accordance with these Rules;
  - (iv) the Clearing Member will not claim that any use of Permitted Cover by the Clearing House in accordance with the Rules or the relevant Clearing Membership Agreement is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation (provided that the Clearing House does not cause such breach by amending these Rules); and
  - (v) the Clearing Member is not in breach of any of its contractual obligations towards any third party as a result of the transfer of Permitted Cover to the Clearing House (provided that the Clearing House does not cause such breach by amending these Rules).
- (d) The Clearing Member shall be liable to the Clearing House for any cost or liability incurred by the Clearing House as a result of the Clearing House possessing, holding, perfecting the title (or, in the case of Pledged Collateral, perfecting its security interest) to or otherwise being associated with, any asset provided to it by that Clearing Member by way of Margin.
- (e) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation to transfer Margin of the Clearing Member shall be construed as an obligation of the Disclosed Principal Member and all other provisions of these Rules relating to Margin shall be construed accordingly.
- (f) Each Non-FCM/BD CDS Clearing Member shall require and receive Customer-CM Collateral from its Segregated CDS Customers only in such a manner as is consistent with these Rules and the Standard Terms and in a manner which allows the Clearing Member to transfer Margin and any Surplus Collateral to the Clearing House in accordance with its obligations under the Clearing Membership Agreement and Part 5 of the Rules.

- (g) Any amount or asset recorded in a Customer Margin Account may be applied by the Clearing House to the extent permitted under Part 9 of the Rules as against the net sum for the Clearing Member's relevant Customer Account or transferred to the extent permitted under Rule 906 regardless of the origin or status of such amount or assets at the time of transfer or prior to the time of transfer as Customer-CM Collateral, title transfer, Pledged Collateral or otherwise.
- (h) The Clearing House has acknowledged in Rule 102(q), Rule 906(b), Circulars and Clearing Membership Agreements that:
  - (i) no Customer Account of a Clearing Member (or any money, asset or contract recorded in such a Customer Account) is to be combined or co-mingled with the Proprietary Account of the same Clearing Member (or any money, asset or contract recorded in such a Proprietary Account);
  - (ii) no Customer Account of a Clearing Member (or any money, asset or contract recorded in such a Customer Account) is to be combined or co-mingled with a different Customer Account of the same Clearing Member (or any money, asset or contract recorded in such a Customer Account); and
  - (iii) no right of set-off shall be exercised by the Clearing House against money, asset or contract credited to a Customer Account in respect of any sum or obligation owed to the Clearing House on any other account.
- (i) A Clearing Member shall take any action reasonably requested by the Clearing House that may be necessary or desirable to create, preserve, perfect or validate the right, title or interests of the Clearing House in Margin or Guaranty Fund Contributions intended to be created under these Rules, the relevant Clearing Membership Agreement or any Pledged Collateral Addendum or to enable the Clearing House to exercise or enforce any of its rights with respect thereto.

#### **Rule 505      *Financial Collateral Regulations***

Clearing Members and the Clearing House acknowledge that the Financial Collateral Regulations apply in relation to all Permitted Cover, Margin and Guaranty Fund Contributions transferred to the Clearing House in the form of "cash" or "financial instruments" (in either case, as defined in the Financial Collateral Regulations). Each Clearing Member agrees that it will not dispute the construction of the arrangements regarding the provision of collateral under these Rules as "financial collateral arrangements" within the meaning of the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on Financial Collateral Arrangements.

## Part 6 Position Limits

### Rule 601 *Establishment of Position Limits*

- (a) The Clearing House will be entitled at its discretion to establish, amend or revoke Position Limits for Clearing Members. The Clearing House may or may not inform Clearing Members of their Position Limits.
- (b) The Position Limit for each Clearing Member will be determined at the Clearing House's discretion and may take into account the Clearing House's evaluation of the financial and operational capacity of the Clearing Member and such other factors as the Clearing House at its discretion deems appropriate.
- (c) If a Clearing Member is not notified of a Position Limit for a particular Set of Contracts or broader group of Contracts, it may assume that there is no such Position Limit in place (and shall not be treated as having breached any Position Limit) until such time as the Clearing House notifies it of the Position Limit. Any finding of breach of a Position Limit by the Clearing House may only be prospective and not retrospective with respect to the time of notification to the Clearing Member of the Position Limit.

### Rule 602 *Breach of Position Limit*

- (a) If a Clearing Member exceeds its Position Limit, the Clearing House may, at its discretion:
  - (i) require a Clearing Member to provide information to the Clearing House in respect of any of its positions;
  - (ii) require a Clearing Member to allocate, transfer or terminate such Contracts or close out its Open Contract Position to the extent necessary to reduce its Open Contract Position so as to meet its Position Limit within such time as the Clearing House may prescribe;
  - (iii) make an additional call for such Margin as the Clearing House in its discretion determines; and/or
  - (iv) impose such additional Capital requirements on the Clearing Member as the Clearing House in its discretion determines.
- (b) If the Clearing Member fails to comply with any requirement imposed on it pursuant to Rule 602(a), the Clearing Member shall be in breach of these Rules and, without limitation, the Clearing House may, at its discretion, in respect of the Clearing Member concerned:
  - (i) declare an Event of Default;
  - (ii) terminate or suspend membership of the Clearing Member;
  - (iii) terminate such Contracts as the Clearing House at its discretion selects on behalf of the Clearing Member;



- (iv) instigate an investigation or disciplinary proceedings under Part 10 of the Rules; and/or
  - (v) impose such other requirements on the Clearing Member as it sees fit.
- (c)
- (i) A Clearing Member shall be deemed not to have exceeded a Position Limit (for purposes of Rules 602(a)(ii) and (iv) and Rule 204(a)(ii) only) to the extent that such Position Limit is exceeded as a result of it being party to any Contract arising pursuant to any of Rule 401(a)(v), (vi), (x), (xi) or (xiii) which was entered into: (A) 5 or fewer Business Days prior to the date of determination by the Clearing House that a Position Limit has been exceeded; or (B) 5 or fewer Business Days prior to the relevant Set becoming ineligible for Clearing (provided that if the relevant Set later becomes eligible for Clearing again, this paragraph (B) shall cease to apply 5 Business Days after the Set has so become eligible for Clearing) (or, in either case (A) or (B), as a result of any Open Contract Position or Contract reflecting any such Contract). Consequently, where a Clearing Member is party to any such Contract, the existence of the Contract will be disregarded in calculating the position of the Clearing Member that is used for purposes of determining the availability of the Clearing House's powers under Rule 602(a)(ii) or (iv) or the applicability of a notification requirement under Rule 204(a)(ii) and instead the position of the Clearing Member excluding each disregarded Contract will be used for the purposes of such determinations.
  - (ii) A Clearing Member shall be deemed not to have breached a requirement imposed on it pursuant to Rule 602(a)(ii) to the extent that such a requirement is breached as a result of it being party to any Contract arising pursuant to any of Rule 401(a)(v), (vi), (x), (xi) or (xiii) which was entered into: (A) at any time after the requirement was imposed; (B) 5 or fewer Business Days prior to the requirement being imposed; or (C) 5 or fewer Business Days prior to the Set becoming ineligible for Clearing (provided that if the relevant Set later becomes eligible for Clearing again, this paragraph (C) shall cease to apply 5 Business Days after the Set has so become eligible for Clearing) (or, in any such case (A), (B), or (C), as a result of any Open Contract Position or Contract reflecting any such Contract). Consequently, where a Clearing Member is party to any such Contract, the existence of the Contract will be disregarded for purposes of determining any breach of a requirement under Rule 602(a)(ii) and instead the position of the Clearing Member excluding each disregarded Contract will be used for the purposes of any such determination.
  - (iii) Nothing in Rule 602(c) shall restrict the taking by the Clearing House of any action under Rule 602(a)(i) or (iii), which it may do without regard to the nature of Contracts making up any Open Contract Position.

## **Part 7 Settlement and Delivery of Futures**

Part 7 of the Rules does not apply to CDS Contracts or FX Contracts. References to Contracts in this section are to F&O Contracts. References to any Customer Account in this section are references only to any Non-CDS Customer Account and the terms 'Customer Margin Account' and 'Customer Position Account' shall be construed accordingly. References to Customers in this section are solely to Customers of F&O Clearing Members in relation to F&O Contracts.

### **Rule 701 *Determination of Market Delivery Settlement Price***

- (a) The Clearing House will specify the Market Delivery Settlement Price for any Future Set.
- (b) The Market Delivery Settlement Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Market Delivery Settlement Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine a Market Delivery Settlement Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Market Delivery Settlement Price;
  - (iii) there is an error in data provided by a Market; or
  - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

### **Rule 702 *Cash Settlement***

- (a) A Futures Contract shall be settled in cash if:
  - (i) pursuant to the applicable Contract Terms it can be settled only in cash; or
  - (ii) pursuant to the applicable Contract Terms it may be settled in cash and the Clearing Member opts to settle the Contract(s) in cash.
- (b) Cash settlement for a Set of Futures Contracts shall occur separately, and separate payment obligations shall accrue, in respect of a Clearing Member's:
  - (i) Proprietary Account;
  - (ii) gross buy positions under its Non-DCM/Swap Customer Account (if applicable);
  - (iii) gross sell positions under its Non-DCM/Swap Customer Account (if applicable);
  - (iv) gross buy positions under its Swap Customer Account (if applicable);
  - (v) gross sell positions under its Swap Customer Account (if applicable);

- (vi) gross buy positions under its DCM Customer Account (if applicable);
  - (vii) gross sell positions under its DCM Customer Account (if applicable);
  - (viii) gross buy positions under its Non-CDS Customer Account (if applicable); and
  - (ix) gross sell positions under its Non-CDS Customer Account (if applicable).
- (c) Provided that all Margin payments in respect of the Set have been paid by the Clearing Member to the Clearing House or repaid by the Clearing House, the amount payable for cash settlement of any Future shall be the net gain or loss, as the case may be, based on the price at which Open Contract Positions are recorded on the Clearing House's books and the Market Delivery Settlement Price and, for Contracts not reflected in a Clearing Member's Open Contract Position, the difference between the Market Delivery Settlement Price and the price at which each new relevant Contract not in the Clearing Member's Open Contract Position was bought or sold. Each cash settlement shall occur in accordance with the Contract Terms.
- (d) Neither the Delivery Procedures nor the requirements of Rule 703 shall apply to any Contract which is settled in cash in accordance with this Rule 702.

**Rule 703      *Delivery***

- (a) In relation only to Futures which are not settled in cash pursuant to Rule 702, the Delivery Procedures and the requirements of this Rule 703 shall apply.
- (b) The Buyer and Seller shall each make such payments and deliveries and deliver such tenders, notices and invoices as are required pursuant to the Delivery Procedures and Market Rules.
- (c) The passing on by the Clearing House of such tenders or such other documents shall not constitute acceptance by the Clearing House of such tenders or such documents if the Clearing Member to which the Clearing House passed on such tender or documents rejects the same where permitted to do so. In the event of such rejection, the Clearing House shall also be entitled to reject the tenders or other documents. Similarly, where a Clearing Member who is a Buyer under a Contract rejects a Deliverable delivered to it, the Clearing House as Buyer under the corresponding back to back Contract shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under that Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.
- (d) Subject to Rule 703(c), no tender received by the Buyer may be withdrawn or substituted by the Seller except with the consent of the Buyer or otherwise in accordance with the Contract Terms and Procedures.
- (e) Full compliance with the Delivery Procedures applicable to the Contract in question and, where applicable, Market Rules shall amount to a good discharge of the rights, liabilities

and obligations of the parties under such Contract (but shall be without prejudice to any rights, liabilities or obligations of any party to a Contract in relation to breach of warranty, representation, damaged goods, under-delivery, over-delivery or otherwise).

- (f) The Clearing House may, at its discretion, direct a Clearing Member who is a Seller under a Contract subject to delivery to deliver the Deliverable that is the subject matter of such Contract to another Clearing Member that is a Buyer. The Seller and Buyer shall each be bound by any such direction. Delivery in accordance with any such direction shall be deemed to constitute delivery by the Seller to the Clearing House and from the Clearing House to the Buyer for the purposes of the Contract or Contracts in question (but title shall not pass unless and until the time specified in the Delivery Procedures). All payments in relation to such Contracts shall nonetheless be made only to and from the Clearing House by the Clearing Members concerned.
- (g) If an invoice has not been prepared or delivered when payment becomes due pursuant to a Contract, payment shall be made and received on account, pending the issue of that invoice.
- (h) Where a Clearing Member that is a Buyer or Seller under a Contract subject to delivery is subject to an Event of Default or Force Majeure Event, the rights, liabilities and obligations of any Clearing Member that is not a Defaulter in respect of such performance shall be discharged and there shall arise in place of the same an obligation to account as between the Clearing Member and the Clearing House for a settlement amount. The Clearing House shall be entitled to substitute an obligation to account for such settlement amount, or a proportion thereof, for the Clearing House's rights, liabilities and obligations in respect of performance of delivery obligations under other Contracts subject to tender with other Clearing Members (such Contracts and Clearing Members selected by the Clearing House at its discretion) of the same Set.
- (i) Where a Clearing Member has appointed a Disclosed Principal Member, any delivery or related obligation of the Clearing Member shall be construed as an obligation of the Disclosed Principal Member and terms 'Buyer,' 'Seller' and all other provisions of these Rules relating to deliveries shall be construed accordingly.

**Rule 704**      *Credit and Debit of Accounts*

- (a) The Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Margin Account and Customer Margin Accounts, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3.
- (b) Subject to the Contract Terms and Procedures, any compensation, adjusting payment or other allowance payable by or to either the Buyer or the Seller under the terms of the Contract shall be paid by or to the Clearing House for onward payment to the Buyer or the Seller as the case may be.

**Rule 705**      *Settlement and Delivery Obligations only in respect of Open Contract Position and Termination of other Contracts*

- (a) The Clearing House and each Clearing Member shall make cash settlement or delivery only for such number of Contracts as are reflected in the Clearing Member's Open Contract Position plus any Contracts not included in the Open Contract Position, separately for each of the positions on the Clearing Member's:
- (i) Proprietary Account;
  - (ii) gross buy positions under its Non-DCM/Swap Customer Account (if applicable);
  - (iii) gross sell positions under its Non-DCM/Swap Customer Account (if applicable);
  - (iv) gross buy positions under its Swap Customer Account (if applicable);
  - (v) gross sell positions under its Swap Customer Account (if applicable);
  - (vi) gross buy positions under its DCM Customer Account (if applicable);
  - (vii) gross sell positions under its DCM Customer Account (if applicable);
  - (viii) gross buy positions under its Non-CDS Customer Account (if applicable); and
  - (ix) gross sell positions under its Non-CDS Customer Account (if applicable).

No such Open Contract Position (or additional Contracts) may be netted against another Open Contract Position on cash settlement or delivery without the prior written consent of the Clearing House, and subject always to Rule 102(q).

- (b) Upon each of the parties to a Contract having made all necessary payments and deliveries in accordance with these Rules in respect of all Futures Contracts in a Set in relation to which a cash settlement or delivery obligation exists for any account or positions specified in Rule 705(a), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Futures Contracts belonging to such Set in respect of such account or position.

## **Part 8 Options**

Part 8 of the Rules does not apply to CDS Contracts or FX Contracts. References to Contracts in this section are to F&O Contracts. References to any Customer Account in this section are references only to any Non-CDS Customer Account and the terms 'Customer Margin Account' and 'Customer Position Account' shall be construed accordingly. References to Customers in this section are solely to Customers of F&O Clearing Members in relation to F&O Contracts.

### **Rule 801 *Payment of Premium***

- (a) A Buying Clearing Member that becomes party to an Option shall be obliged to pay to the Clearing House the premium for the Option at the time specified in the Contract Terms.
- (b) A Selling Clearing Member that becomes party to an Option will be credited by the Clearing House with an amount equal to the premium for the Option at the time specified in the Contract Terms.

### **Rule 802 *Reference Prices***

- (a) The Clearing House will specify the Reference Price for any Option Set.
- (b) The Reference Price will generally be determined on the basis of data provided by the Market on which the Contract in question is traded.
- (c) The Clearing House shall be entitled to determine the Reference Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine a Reference Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of a Reference Price;
  - (iii) there is an error in data provided by a Market; or
  - (iv) the Clearing House at its discretion otherwise considers it appropriate to do so.

### **Rule 803 *Exercise of Options***

- (a) An Option Contract may be exercised only if permitted by the applicable Contract Terms. An Option Contract may be exercised only by a Clearing Member with a Long Open Contract Position or by the Clearing House in respect of a Contract in which it is Long. Option Contracts may only be exercised by a Clearing Member for any Option Set for such number of Contracts as are reflected in the Clearing Member's Open Contract Position (plus any Contracts not included in the Open Contract Position), separately for each of the positions on the Clearing Member's:
  - (i) Proprietary Account;
  - (ii) gross Long positions under its Non-DCM/Swap Customer Account (if applicable);



- (iii) gross Short positions under its Non-DCM/Swap Customer Account (if applicable);
  - (iv) gross Long positions under its Swap Customer Account (if applicable);
  - (v) gross Short positions under its Swap Customer Account (if applicable);
  - (vi) gross Long positions under its DCM Customer Account (if applicable);
  - (vii) gross Short positions under its DCM Customer Account (if applicable);
  - (viii) gross Long positions under its Non-CDS Customer Account (if applicable); and
  - (ix) gross Short positions under its Non-CDS Customer Account (if applicable).
- (b) Any exercise of an Option Contract shall be in accordance with the applicable Contract Terms. In particular, an Option Contract shall only be exercised:
- (i) if it is an Option Contract which in accordance with the applicable Contract Terms is automatically exercised, in which case it will be automatically exercised at the time and in the manner specified in the Contract Terms; or
  - (ii) if it is an Option Contract not falling in Rule 803(b)(i), at such time as is permitted pursuant to the applicable Contract Terms (whether on the day and by the time prescribed by the applicable Contract Terms or in such period as is prescribed by the applicable Contract Terms) and in such form and manner as is permitted pursuant to the Contract Terms and the Clearing Procedures (including, where permitted, by manual exercise or the establishment of settings in the Clearing House's systems for the exercise of Options).
- (c) An Option Contract may be abandoned by notice to the Clearing House in writing or such other form as is permitted pursuant to the Clearing Procedures or Contract Terms.
- (d) The Clearing House shall be entitled to rely upon any form or electronic communication purporting to give notice of exercise or abandonment of an Option made in accordance with these Rules without any enquiry as to:
- (i) whether such form or electronic communication complies with the Contract Terms or the requirements of the Clearing Procedures; or
  - (ii) as to the authority of any Representative purporting to exercise an Option on behalf of a Clearing Member or due execution of the relevant form.
- (e) The Clearing House may reject any notice of exercise or abandonment of an Option if such notice does not, or appears not to, comply with the Contract Terms or the Clearing Procedures, notwithstanding any equivalent notice or other prescribed form of exercise that has been provided by the Clearing House to any Clearing Member in respect of the exercise of an Option Contract.

- (f) No notice or other form of exercise or abandonment of an Option received by the Clearing House may be cancelled or withdrawn once the deadline for exercise has passed.
- (g) Part 7 of these Rules shall not apply in relation to Options.

**Rule 804**     *Exercise Notices*

The Clearing House will assign exercise notices to Clearing Members which have or carry Short Open Contract Positions (and Short Contracts not in their Open Contract Position) in the Option Set being exercised, in accordance with the Clearing Procedures.

**Rule 805**     *Options with Deliverables which are Futures*

- (a) Upon exercise of any Option with a Future as the Deliverable under the Option, one or more Futures Contracts at the Strike Price (or such other price as is required pursuant to the Contract Terms) shall arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules.
- (b) Upon such Futures Contract or Contracts having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Clearing Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

**Rule 806**     *Options with Deliverables other than Futures*

- (a) Upon exercise of any Option with a Deliverable which is not a Future, a Contract for the sale and purchase of the relevant Deliverable (a "**Contract of Sale**") at the Strike Price (or such other price as is required pursuant to the Contract Terms) shall arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules.
- (b) Upon such Contract of Sale or Contracts of Sale having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Clearing Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

**Rule 807**     *Termination of other Contracts*

Upon each of the parties to a Contract having made all necessary payments and becoming party to all resulting Futures Contracts and Contracts of Sale in accordance with these Rules in respect of all Option Contracts in a Set in relation to an account or position specified in Rule 803(a), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Option Contracts belonging to such Set in respect of such account or position.

**Rule 808**     *Expiry and Abandonment*

- (a) If an Option Contract is not automatically exercised in accordance with Rule 803(b)(i) or exercised by the Clearing Member by the day and time referred to in Rule 803(b)(ii), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of any the Option shall lapse and the Option shall be terminated and be deemed to be abandoned.
- (b) If notice of abandonment of an Option Contract is given pursuant to Rule 803(c), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of any the Option shall lapse and the Option shall be terminated and be deemed to be abandoned upon the Clearing House updating its books and records in respect of such abandonment.

**Rule 809**     *Deliveries under Contracts of Sale*

- (a) The Delivery Procedures and the requirements of this Rule 809 shall apply to Contracts of Sale.
- (b) The Buyer and Seller under each Contract of Sale shall each make such payments and deliveries and deliver such tenders, notices and invoices as are required pursuant to the Delivery Procedures and Market Rules.
- (c) Full compliance with the Delivery Procedures applicable to the Contract of Sale in question and, where applicable, Market Rules shall amount to a good discharge of the rights, liabilities and obligations of the parties under such Contract (but shall be without prejudice to any rights, liabilities or obligations of any party to a Contract in relation to breach of warranty, representation, damaged goods, under-delivery, over-delivery or otherwise).
- (d) The Clearing House may, at its discretion, direct a Clearing Member who is a Seller under a Contract of Sale subject to delivery to deliver the Deliverable that is the subject matter of such Contract to another Clearing Member that is a Buyer. The Seller and Buyer shall each be bound by any such direction. Delivery in accordance with any such direction shall be deemed to constitute delivery by the Seller to the Clearing House and from the Clearing House to the Buyer for the purposes of the Contract of Sale or Contracts of Sale in question (but title shall not pass unless and until the time specified in the Delivery Procedures). All payments in relation to such Contracts shall nonetheless be made only to and from the Clearing House by the Clearing Members concerned.
- (e) If a Buyer under a Contract of Sale rejects a Deliverable delivered to it, the Clearing House as Buyer under the similar (effectively, back to back) Contract shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under the equivalent Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.

- (f) Where payment is subject to an invoice under the Contract Terms, if an invoice has not been prepared or delivered when payment becomes due pursuant to a Contract, payment shall be made and received on account, pending the issue of that invoice.
- (g) Where a Clearing Member that is a Buyer or Seller under a Contract of Sale is subject to an Event of Default or Force Majeure Event, the rights, liabilities and obligations of any Clearing Member that is not a Defaulter in respect of such performance shall be discharged and there shall arise in place of the same an obligation to account as between the Clearing Member and the Clearing House for a settlement amount. The Clearing House shall be entitled to substitute an obligation to account for such settlement amount, or a proportion thereof, for the Clearing House's rights, liabilities and obligations in respect of performance of delivery obligations under other Contracts subject to tender with other Clearing Members (such Contracts and Clearing Members selected by the Clearing House at its discretion) of the same Set.
- (h) Upon each of the parties to a Contract having made all necessary payments and deliveries in accordance with these Rules in respect of all Contracts of Sale relating to Options in a Set in relation to which a delivery obligation exists for any account or positions specified in Rule 803(a), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to such Contracts of Sale in respect of such account or position.

**Rule 810**      *Cash Settlement*

- (a) Neither the Delivery Procedures nor Rules 803 to 809 apply to Option Contracts which are, according to their applicable Contract Terms, capable of cash-settlement only or which, being Contracts that may be cash-settled at the option of either party, have been designated for cash-settlement by either party.
- (b) An Option Contract shall be settled in cash if:
  - (i) pursuant to the applicable Contract Terms it can be settled only in cash; or
  - (ii) pursuant to the applicable Contract Terms it may be settled in cash and the Clearing Member opts to settle the Contract(s) in cash.
- (c) Cash settlement for a Set of Option Contracts shall occur separately, and separate payment obligations shall accrue, in respect of a Clearing Member's:
  - (i) Proprietary Account;
  - (ii) gross buy positions under its Non-DCM/Swap Customer Account (if applicable);
  - (iii) gross sell positions under its Non-DCM/Swap Customer Account (if applicable);
  - (iv) gross buy positions under its Swap Customer Account (if applicable);
  - (v) gross sell positions under its Swap Customer Account (if applicable);

- (vi) gross buy positions under its DCM Customer Account (if applicable);
  - (vii) gross sell positions under its DCM Customer Account (if applicable);
  - (viii) gross buy positions under its Non-CDS Customer Account (if applicable); and
  - (ix) gross sell positions under its Non-CDS Customer Account (if applicable).
- (d) Provided that all Margin payments in respect of the Set have been paid by the Clearing Member to the Clearing House or repaid by the Clearing House, the amount payable for cash settlement of any Option shall be the net gain or loss, as the case may be, based on the price at which Open Contract Positions are recorded on the Clearing House's books and the Reference Price and, for Contracts not reflected in a Clearing Member's Open Contract Position, the difference between the Reference Price and the price at which each new relevant Contract not in the Clearing Member's Open Contract Position was bought or sold. Each cash settlement shall occur in accordance with the Contract Terms.
- (e) Upon each of the parties to a Contract having made all necessary payments in accordance with these Rules in respect of all Option Contracts in a Set in relation to which a cash settlement obligation exists for any account or positions specified in Rule 810(c), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Option Contracts belonging to such Set in respect of such account or position.

**Rule 811**      *Credit and Debit of Accounts*

The Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Margin Account and Customer Margin Accounts, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3.

## Part 9 Default Rules

*Without prejudice to the status of any other provision of these Rules, all the provisions of this Part 9 are intended to constitute 'default rules' for purposes of the Companies Act 1989.*

### Rule 901 *Events of Default affecting Clearing Members*

- (a) If any of the following events should occur with respect to any Clearing Member (regardless of whether it is cured by the Clearing Member, a guarantor or other third party on behalf of the Clearing Member or otherwise), such event shall, if so declared by the Clearing House, constitute an "**Event of Default**":
- (i) any breach by that Clearing Member of these Rules, the Procedures, the Clearing Membership Agreement, any other agreement with the Clearing House or Market Rules;
  - (ii) that Clearing Member being unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract;
  - (iii) a Monetary Default or Delivery Default occurring with respect to that Clearing Member;
  - (iv) any Financial Indebtedness of that Clearing Member or any of its Group Companies: (A) not being paid when due or within any originally applicable grace period; or (B) being declared to be or otherwise becoming due and payable prior to its specified maturity as a result of an event of default (however described);
  - (v) any commitment for any Financial Indebtedness of that Clearing Member or any of its Group Companies being cancelled or suspended by a creditor as a result of an event of default (however described);
  - (vi) any creditor of that Clearing Member or any of its Group Companies becoming entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described);
  - (vii) an Insolvency in relation to that Clearing Member or any of its Group Companies;
  - (viii) any material action being taken against that Clearing Member (including, without limitation, any declaration of default, material adverse notice or finding, material fine, suspension or expulsion or withdrawal of, revocation of or failure to renew any permission, licence or authorisation) by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility;
  - (ix) breach by that Clearing Member of any Applicable Law relevant to its business as a Clearing Member;
  - (x) (A) failure by the Clearing Member or its Credit Support Provider to comply with or perform any agreement or obligation to be complied with or performed by it in



accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed; (B) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such Clearing Member or its Credit Support Provider to the Clearing House pursuant to any such Credit Support Document, to be in full force and effect for the purpose of any Contract (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Contract to which such Credit Support Document relates in each case without the written consent of the Clearing House; or (C) such Clearing Member or its Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf); or

- (xi) the Clearing Member or its Credit Support Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution: (A) the resulting, surviving or transferee entity fails to assume all the obligations of such Clearing Member or its Credit Support Provider under any Contract or any Credit Support Document to which it or its predecessor was a party; or (B) the benefits of any Credit Support Document fail to extend (without the consent of the Clearing House) to the performance by such resulting, surviving or transferee entity of its obligations under any Contract.
- (b) The Clearing House may assume that the occurrence of any Event of Default means that a Clearing Member is unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract.
- (c) The Clearing House may exercise rights under the power of attorney granted under clause 5.1 and 5.2 of the Clearing Membership Agreement (including with respect to the Pledged Collateral Addendum) if there has been an Event of Default. If, following an Event of Default, the Clearing House exercises rights under the power of attorney in clause 5.1 and 5.2 of the Clearing Membership Agreement for purposes of enforcement to exercise any of its rights under this Part 9 or under the Pledged Collateral Addendum and a Circular has not been issued in respect of the Event of Default, the Clearing House will notify the Clearing Member concerned as soon as is reasonably practicable of such exercise.

**Rule 902**      *Actions to be taken following declaration of a Clearing Member Event of Default*

- (a) If an Event of Default has been declared, the Clearing House may immediately suspend or terminate the Defaulter's membership as a Clearing Member and take any action to close out the Defaulter's positions under this Part 9. Any such suspension or termination may be temporarily postponed or may not be enforced if the Clearing House in its discretion determines that any such suspension or termination would either (i) not be in the best interests of the Clearing House; or (ii) be likely adversely to affect the operation of any market.

- (b) As soon as practicable after the Clearing House has declared that a Clearing Member is subject to an Event of Default, the Clearing House shall issue a Default Notice to the Defaulter and shall provide a copy of such Default Notice to any other party to an affected Contract (if any). The Clearing House will issue a Circular in respect of any Default Notice specifying the name of the Defaulter. The Clearing House may at its discretion publish a copy of the relevant Default Notice in or together with a Circular. The Clearing House shall, as soon as reasonably practicable after issuing a Default Notice, appoint a day on which any net sums certified under Rule 906 are to be paid.
- (c) The Clearing House may take such steps pursuant to this Part 9 as appear in the circumstances to be necessary or expedient to discharge all the Defaulter's rights and liabilities under or in respect of Contracts to which it is party, to protect the Clearing House, its non-defaulting Clearing Members or Markets or to complete the process described in this Part 9.

**Rule 903**      *Treatment of Contracts following a Clearing Member Event of Default and Hedging*

- (a) The Clearing House shall be entitled to take any of the following steps at its discretion following the occurrence of an Event of Default with respect to a Clearing Member:
  - (i) to arrange for Contracts to be subject to a Transfer to a Transferee Clearing Member in accordance with Rule 904 and effect the same;
  - (ii) if it determines at its discretion that the protection of the financial integrity of the Clearing House so requires, or because of the cessation or curtailment of trading on a Market where contracts may be traded, to delay a close out or termination of some or all Contracts of the Defaulter;
  - (iii) subject always to Rule 102(q), if the Defaulter acts as Buying Clearing Member and Selling Clearing Member in respect of Contracts of the same Set, to net, offset, mutually close out or terminate such Contracts (or any part thereof) provided that, following such netting, offsetting, closing out or termination, Contracts representing in aggregate the Open Contract Position of the Defaulter in the relevant Set are recognised; and, in the case of CDS Contracts, the Clearing House shall amend the records of trades recorded in Deriv/SERV accordingly, provided that the Clearing House shall not be obliged to amend such records if it no longer has the necessary authority or access to do so or is otherwise prevented or restricted from doing so by an Insolvency Practitioner; and
  - (iv) to combine and replace two or more FX Contracts of a Defaulter (or any part of an FX Contract) with a single FX Contract, which may occur where the Defaulter is Reference Currency Seller under one of the FX Contracts in respect of a particular currency and Reference Currency Buyer under the other FX Contract in respect of the same currency, and those two FX Contracts have the same FX Settlement Date.

- (b) All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be closed out in the manner set out in Rule 905 except to the extent that Rule 903(a) applies to such Contracts.
- (c) To the extent that any Contracts to which a Defaulter is party remain open from time to time (whether pursuant to Rule 903(a)(ii), pending Transfers, terminations or otherwise) or if the Clearing House is otherwise unable for any reason to liquidate Contracts in a prompt and orderly fashion, the Clearing House may authorise the execution from time to time for the account of the Clearing House, for the purpose of an orderly unwind of any Contracts to which a Defaulter is party or reducing the risk to the Clearing House and the risk to Clearing Members (in the case of Clearing Members, except to the extent that reducing any risk to Clearing Members creates or increases any risk for the Clearing House) resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts. Any such hedging transactions that are executed shall be submitted by Clearing Members with whom they are executed to the Clearing House for Clearing on a daily basis. Any costs, expenses or losses sustained by the Clearing House in connection with transactions effected pursuant to this Rule 903(b) shall be charged to the Defaulter and any gains shall be credited to the Defaulter in the relevant net sum calculation under Rule 906 for the Account in respect of which exposures were hedged.
- (d)
- (i) If a CDS Contract or F&O Contract is automatically terminated pursuant to an automatic early termination provision or under Applicable Law as a result of an Event of Default, Insolvency or related event affecting the Defaulter, this Part 9 shall apply *mutatis mutandis* in relation to such terminated Contract to which such Defaulter was party and the rights, obligations and liabilities relating thereto.
- (ii) If an FX Contract is terminated pursuant to an automatic early termination provision or under Applicable Law as a result of any Event of Default or related event, or if Rule ~~209(e)(iii)~~912 applies, this Part 9 shall apply *mutatis mutandis* in relation to such terminated FX Contract and rights, obligations and liabilities relating thereto. For the avoidance of doubt, in any case where this Rule 903(d)(ii) applies as a result of Rule ~~209(e)(iii)~~912 applying, Rule 905(f) shall not apply to the extent that the same is disappplied by Rule ~~209(e)~~912.
- (e) Upon an Event of Default being declared with respect to a Clearing Member, any accrued or invoiced amounts shall be immediately due and payable by the Defaulter to the Clearing House.

#### **Rule 904      *Transfer of Contracts and Margin on a Clearing Member Event of Default***

##### ***Provisions applicable to all Defaulters and all Contracts***

- (a) The Clearing House may arrange for any of the following steps (any such step, a "Transfer" and the term "Transferred" shall be interpreted accordingly) to take place in

respect of the Contracts of a Defaulter, at the discretion of the Clearing House as part of its default proceedings:

- (i) a transfer, sale, assignment or novation of Contracts (and related Customer-CM CDS Transactions, Corresponding Contracts or other affected transactions between a Customer and the Defaulter, where applicable) of a Defaulter to a Transferee Clearing Member; or
- (ii) the termination of Contracts between the Clearing House and a Defaulter (and related Customer-CM CDS Transactions, Corresponding Contracts or other affected transactions between a Customer and the Defaulter, where applicable) and the entry into of new replacement Contracts (and related Customer-CM CDS Transactions, Corresponding Contracts or other transactions, where applicable) between the Clearing House and the Transferee Clearing Member or between such Customer and such Transferee Clearing Member, as applicable (by way of novation and amendment or otherwise).

Unless the Clearing House specifies otherwise in writing, all Transfers shall occur pursuant to the process described in Rule 904(a)(ii).

- (b) All Contracts subject to a Transfer shall be Transferred on the basis of the applicable Market Delivery Settlement Price, Reference Price, Market-to-Market Value, Settlement Price or other price specified by the Clearing House. Transferee Clearing Members will be notified of applicable prices determined pursuant to this provision prior to the Transfer.
- (c) For the avoidance of doubt, the Clearing House shall have no obligation to enter into or effect any Transfer if to do so would result in the Clearing House being under-collateralised with respect to any remaining Contracts or would raise other risk management concerns, in each case as determined by the Clearing House at its discretion.
- (d) If any Contracts recorded in a Defaulter's Customer Account are subject to any Transfer pursuant to Rule 904(a)(i):
  - (i) any related Margin recorded in the relevant Customer Account may, at the discretion of the Clearing House also be transferred from that Customer Account to the Transferee Clearing Member's Customer Account (in the case of CDS Contracts, provided that such transfer occurs in accordance with the remainder of this Rule 904);
  - (ii) to the extent that any transfer of Margin takes place in accordance with Rule 904(d)(i), the Defaulter shall have no claim against the Clearing House or any Transferee Clearing Member for return of such Margin and the Clearing House shall be released from any liability or obligation to return such Margin (or any property in substitution thereof) to the Defaulter;
  - (iii) as between the Transferee Clearing Member and the Clearing House, the Clearing House shall have all rights in relation to any Margin transferred pursuant to Rule

904(d)(i) as if the same were Margin transferred to the Clearing House directly from the Transferee Clearing Member; and

- (iv) where a Clearing Member that is a Defaulter has a Pledged Collateral Account, the Clearing House shall be entitled, in addition to the rights and remedies referred to in Rule 902, to exercise the rights of a secured party, collateral taker, market chargee and collateral security chargee under Applicable Law with respect to any Pledged Collateral and the rights set forth in the Pledged Collateral Addendum in order to facilitate any such transfer of Margin.
- (e) The Clearing House may rely upon any information relating to the positions, assets or identities of individual Customers provided to it by an Exchange, Approved CDS Trade Processing Platform or Clearing Member, without need for further enquiry by the Clearing House with respect thereto. The books and records of the Clearing House may be treated as definitive evidence of the positions and Customers which correspond to Contracts recorded in a Defaulter's Customer Account.
- (f) The Clearing House is not obliged to effect any transfer of Margin. The Clearing House shall be entitled to make partial or full transfers of available Margin at any time from the relevant account of a Defaulting Clearing Member in respect of Contracts subject to a Transfer, provided that in any case the total amount of Margin transferred in respect of any Contracts relating to a particular Customer remains commensurate to the Margin that was provided in respect of such transferred Contracts and held by the Clearing House immediately prior to the Event of Default.
- (g) Nothing in these Rules shall require a Clearing Member to accept any Transfer of Contracts as a Transferee Clearing Member, without the prior consent of that Clearing Member (and for these purposes no such consent shall have been provided as a result of a Clearing Member being named as a potential Transferee Clearing Member in accordance with the Standard Terms). The Clearing House shall be entitled (but not required) to Transfer any Contract regardless of whether the relevant Customer has designated the Transferee Clearing Member as a permitted transferee or has consented to such Transfer.
- (h) If the Clearing House determines that any Contracts of the Defaulter are to be Transferred pursuant to this Rule 904, the Clearing House may estimate the loss or gain that it would incur in respect of the relevant Customer Account Positions (i.e. the amount *L-A* in Rule 906 as calculated in respect of those Customer Account Positions) and the extent, if any, to which any Margin would be applied to any such loss and may (but shall not be required) to prioritise and give effect first to any Transfers on the basis of the extent of any potential resulting loss or gain to a Customer Account notwithstanding the time at which any Transfer instructions are submitted or confirmed.
- (i) The Clearing House may take into consideration such factors as the Clearing House determines to be relevant in accepting or effecting any Transfer. Without limiting the foregoing, any Transfer or transfer of Margin shall be subject to any requirements or limitations under Applicable Law, and any approvals or consents that the Clearing House may determine to be required or desirable under the circumstances.

***Provisions applicable only to Contracts recorded in a Designated CDS Customer Account of a Defaulter***

- (j) For the avoidance of doubt, the Clearing House may recalculate the Customer Account Net Margin Amount for the relevant Designated CDS Customer Account of a Defaulter to reflect any increase in the Initial Margin requirement for such Customer Account as a result of the Transfer of fewer than all of the relevant Customer Account Contracts and related Customer Account Positions.
- (k) Following any Transfer of CDS Contracts pursuant to this Rule 904, the Clearing House may submit appropriate data, in accordance with the CDS Procedures, to Deriv/SERV or another service specified by the Clearing House to reflect such Transfer. The Clearing House shall be authorised and entitled to take similar action on the Defaulter's and any of its Customers' behalves, including in respect of records in the Tripartite Representation referring to any Customer and any Customer-CM CDS Transactions to which the Defaulter and Customer were party which have been Transferred in accordance with this Rule 904.

***Provisions applicable only to Contracts recorded in a Designated CDS Customer Account of a Defaulter that is or was a Non-FCM/BD Clearing Member***

- (l) The Clearing House will have regard to any Default Portability Preference in determining whether or not to give effect to any Transfer. Nonetheless, and without prejudice to the generality of Rule 904(g) the Clearing House shall be entitled (but not required) to Transfer any CDS Contract recorded in a Designated CDS Customer Account of a Non-FCM/BD Clearing Member regardless of whether the relevant Customer has designated the Transferee Clearing Member as a permitted transferee pursuant to a Default Portability Preference or has made any Default Portability Preference. If, pursuant to a Transfer, the Clearing House becomes party to a CDS Contract with a Transferee Clearing Member (that is a Non-FCM/BD Clearing Member) as replacement for any CDS Contract of a Defaulter (that is or was a Non-FCM/BD Clearing Member) in circumstances in which the Customer was a Segregated CDS Customer, the Clearing House and (to the extent necessary) the Defaulter shall contemporaneously cause the Transfer of the related Customer-CM CDS Transactions between each affected Segregated CDS Customer and the Defaulter, such that Customer-CM CDS Transactions are established between each relevant Segregated CDS Customer and the Transferee Clearing Member and such Transferred Customer-CM CDS Transactions between the Defaulter and each relevant Segregated CDS Customer are terminated (or otherwise subject to a Transfer) as follows:
  - (i) If a CDS Contract recorded in the Defaulter's Customer Account is Transferred, the Transferee Clearing Member shall enter into a Customer-CM CDS Transaction(s) with each affected Segregated CDS Customer (to replace the terminated Customer-CM CDS Transaction with the Defaulter), in the case of the Customer-CM CDS Transaction(s) on such terms as are specified in Rule 904(l)(ii). Upon such Transfer, the Transferee Clearing Member shall assume and undertake in favour of the Customer the obligations of (or obligations similar to those of) the Defaulter under the Transferred CDS Contract(s) and the Transferred Customer-CM CDS Transaction(s). Any termination payments due or payable in



respect of the termination of the CDS Contracts and related Customer-CM CDS Transactions to which the Defaulter was party and any amounts due or payable in respect of the establishment of the replacement CDS Contracts or Customer-CM CDS Transactions to which the Transferee Clearing Member is party shall be equal (in each case based on the amount determined by the Clearing House for purposes of close out of the CDS Contract in accordance with these Rules, and not taking into account any clearing fees or similar amounts agreed to by the relevant parties or affecting any other amount mentioned in Rule 906) and all obligations to make such termination payments shall be deemed to have been paid, netted and satisfied among the relevant parties beneficially entitled to such payments.

- (ii) If the Transferee Clearing Member and a relevant Segregated CDS Customer have previously entered into a Customer-Clearing Member Agreement, any Customer-CM CDS Transactions between the Transferee Clearing Member and Segregated CDS Customer Transferred to the Transferee Clearing Member in accordance with this Rule 904 shall be subject to such Customer-Clearing Member Agreement. If the Transferee Clearing Member and Segregated CDS Customer have not entered into a Customer-Clearing Member Agreement, the Transferred Customer-CM CDS Transactions shall be deemed subject to an agreement in such form as is specified by the Transferee Clearing Member.
- (iii) Following any Transfer of CDS Contracts and, where applicable, Customer-CM CDS Transactions, pursuant to this Rule 904, the Clearing House may transfer, and if such transfer occurs, will record the transfer, of any available Margin recorded in the corresponding Customer Margin Account of the Defaulter for each affected Customer the Customer-CM CDS Transactions of which are to be Transferred (to the extent that the same has not been subject to netting under Rule 904(l)(i)) to the applicable Customer Margin Account of the Transferee Clearing Member, to be treated in the same way as if such assets had been transferred by the Transferee Clearing Member direct to the Clearing House pursuant to the Clearing Membership Agreement and these Rules. In relation to any such transfer, the Defaulter shall be deemed to agree and consent to any such transfer and shall take any necessary action to facilitate such transfer (and the Clearing House may take any action on the Defaulter's behalf in connection therewith). Notwithstanding the foregoing, the Transferee Clearing Member shall remain obliged to satisfy any Margin requirements resulting from its entry into of, or becoming party to, CDS Contracts for each of its CDS Customer Accounts pursuant to this Rule 904 which may be calculated without taking into account any amount that may be transferred by or due from the Defaulter to the Clearing House pursuant to the foregoing requirement but which has not been transferred.

**Rule 905**      *Termination and close out of Contracts on a Clearing Member Event of Default*

- (a) The following contracts shall be terminated or closed out in such manner as the Clearing House in its discretion may direct for the purposes of discharging all the rights, obligations and liabilities of the Defaulter:



- (i) Contracts to which a Defaulter is party, which are not voidable and voided by the Clearing House pursuant to Part 4, and which are required to be terminated or closed out pursuant to Rule 903(b);
- (ii) contracts arising from hedging transactions made pursuant to Rule 903(b), which shall be treated as if they were "Contracts" for purposes of this Rule 905 and Rule 906;
- (iii) Linked Incoming Contracts, Linked Outgoing Contracts and Contracts arising as a result of Linked Outgoing Contracts.

The Clearing House shall not be entitled to terminate or close out any rights or liabilities attributable to the Defaulter arising out of the relationship of principal and agent, where a Defaulter has entered into a contract as agent, but for the avoidance of doubt this requirement shall not restrict the Clearing House from closing out any Contract recorded in such a Customer Account of an FCM/BD Clearing Member. To the extent necessary, the Clearing House may take such steps pursuant to such powers as are granted pursuant to the Clearing Membership Agreement or Pledged Collateral Addendum.

- (b) Without prejudice to the generality of Rule 905(a), at the Clearing House's discretion, any of the following steps may be taken in respect of contracts to which Rule 905(a) applies:
  - (i) The Clearing House may place, with one or more members of an Exchange, Clearing Organisation or over-the-counter marketplace upon which the relevant category of Contract is traded, orders for the purchase, grant, exercise or sale of Contracts. The Clearing House may designate and authorise an individual to be responsible for the placement of such orders or may enter into Contracts with non-defaulting Clearing Members by way of auction.
  - (ii) Contracts (or any part thereof) to which the Defaulter is party on opposite sides of the market of the same Set, or for F&O Contracts having different expiration dates or exercise dates or for CDS Contracts having different series or version numbers or scheduled termination dates, may be terminated or closed out by the Clearing House pursuant to the submission of CDS Trade Particulars, any transactions, Invoicing Back or the creation of new Contracts to which the Defaulter is party at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), but subject always to, and accounting for the close-out amounts under, Rule 906. FX Contracts (or any part thereof) on opposite sides of the market of the same Set or having different FX Settlement Dates may be terminated or closed out by the Clearing House pursuant to any transactions, Invoicing Back or the creation of new Contracts at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), but subject always to, and accounting for the close-out amounts under, Rule 906, for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise. For the avoidance of doubt but without prejudice to Rule 905(c), this Rule 905(b)(ii) does not empower the Clearing House to oblige non-defaulting Clearing Members to become party to any Contracts.

- (iii) FX Contracts of a Defaulter having different FX Settlement Dates may be combined, terminated and replaced by any transactions, Invoicing Back or the creation of new FX Contracts at the Clearing House's discretion, for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise, if the Defaulter is Reference Currency Buyer under one of the FX Contracts in respect of a particular currency and Reference Currency Seller under the other FX Contract in respect of the same currency.
- (iv) Any Contracts (including those recorded in one of the Defaulter's Customer Position Accounts) which are sale and purchase Contracts in the same Set may be closed out and terminated (in whole or in part), together with any termination payments settled by way of off-set.
- (v) An Option may be terminated, exercised or abandoned, at the discretion of the Clearing House, and in any case where an Option is exercised, the Clearing House may terminate or close out the Future or Contract of Sale, if any, arising as a result of such exercise in accordance with the provisions of this Rule 905.
- (vi) Notwithstanding any other provision of this Rule 905, the Clearing House may pair and cancel offsetting Long and Short positions in the same Future or Option Set or 'Selling Clearing Member' and 'Buying Clearing Member' positions in any Set of CDS Contracts or FX Contracts; and where it is necessary or desirable for there to be a price (for example, in the case of a liquidation of offsetting Customer Account and Proprietary Account Contracts or the liquidation of offsetting Contracts recorded in different Customer Accounts, where in each case, the close-out values of the offsetting Contracts are required be taken into account for the calculation of different net sums pursuant to Rule 102(q) and Rule 906), the price for a Future or Option Contract will be equal to the Settlement Price, the price for a CDS Contract will be the Mark-to-Market Price or for FX Contracts at the FX Market Price, in either case on the day such cancellation is ordered (or alternatively, such other price shall apply as the Clearing House may establish in accordance with the Procedures and its risk policies).
- (vii) The Clearing House shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any court order) to sell, transfer, value or create any interest in any Permitted Cover, Margin, Guaranty Fund Contributions or other assets that are credited to the Defaulter's Proprietary Margin Account, any of its Customer Margin Accounts (subject to Rule 502(i)) or any of its accounts used for Guaranty Fund Contributions or any other asset of the Defaulter that is otherwise in the Clearing House's possession (subject always to Rule 102(q)), subject to an obligation to account for the net proceeds of such actions after having deducted the Clearing House's reasonable and properly incurred expenses and costs in doing so in accordance with Part 1.
- (viii) Without prejudice to Rule 905(b)(xvii), where a Clearing Member that is a Defaulter has a Pledged Collateral Account, the Clearing House shall be entitled, in addition to its other rights and remedies under Part 9 but subject to Rule 502(i), to

exercise the rights of a secured party, collateral taker, market chargee and collateral security chargee under Applicable Law with respect to any Pledged Collateral and pursuant to the Pledged Collateral Addendum to appropriate, exercise rights of use over and liquidate such Pledged Collateral, and shall thereupon apply the proceeds thereof to the applicable obligations of the Defaulter in respect of the relevant Customer Account or Proprietary Account in determining the net sum under Rule 906. For the avoidance of doubt, rights of use or appropriation shall not be exercised in respect of a Pledged Collateral Account of a Clearing Member that is not a Defaulter.

- (ix) The Clearing House shall be entitled to settle any Contract in respect of which settlement may have been, or were it not for an Event of Default could have been, requested by the Defaulter.
- (x) The Clearing House shall be entitled to take such actions, take or make delivery and give such notices on behalf of the Defaulter in respect of a Contract under delivery as it determines; or to make or receive a tender in the Defaulter's name.
- (xi) The Clearing House shall be entitled to determine an amount due from the Defaulter in substitution for delivery obligations.
- (xii) The Clearing House shall be entitled to take any other action with respect to the Event of Default or the Defaulter as it deems to be necessary or prudent.
- (xiii) The Clearing House's powers to convert currency under Rule 107 may be applied.
- (xiv) The Clearing House shall be entitled to Transfer Contracts to which a Defaulter is party to one or more other Transferee Clearing Members at a price agreed between the Clearing House and the Transferee Clearing Member pursuant to this Part 9.
- (xv) Subject to Rule 904(g), the Clearing House shall be entitled to effect the Transfer of the Defaulter's rights, title and interest to Contracts, any related Margin or other assets of the Defaulter and any related Customer-CM CDS Transaction(s), Corresponding Contract(s) or other transactions between a Customer and a Defaulter to a Transferee Clearing Member, without any further action being required on the part of any Person. This may be done through the Clearing House's exercise of rights pursuant to its power of attorney in the relevant Clearing Membership Agreement with the Defaulter or on the basis of this default rule, as opposed to pursuant to the process and legal entitlements described further in Rule 904.
- (xvi) The Clearing House may take action so as to terminate or replace Customer-CM CDS Transactions, Corresponding Contracts or other transactions between a Customer and a Defaulter which are consequential on it taking actions in relation to Contracts in accordance with Rule 904.
- (xvii) The Clearing House shall be entitled to take any other action with respect to the Defaulter, the Contracts to which the Defaulter is party or any Margin, Guaranty

Fund Contribution or Surplus Collateral provided by the Defaulter as the Clearing House at its discretion considers to be necessary or prudent in the circumstances.

- (xviii) The Clearing House may make appropriate entries on the records of the Clearing House and submit appropriate data to Deriv/SERV, Delivery Facilities and other applicable repositories or registers to give effect to any action taken in accordance with this Part 9.
- (xix) Without prejudice to the generality of the foregoing, the Clearing House may, at the expense of a Defaulter, enter into replacement or offsetting Contracts with non-defaulting Clearing Members in respect of Participating Exchange Transactions or Linked Outgoing Contracts of a Defaulter to facilitate the transfer under Rule 410 of Participating Exchange Transactions or Linked Outgoing Contracts to which a non-defaulting Clearing Member is or was a party. The Clearing House may take such other actions and steps as are necessary in order to facilitate transfers of Participating Exchange Transactions or Linked Outgoing Contracts to which non-defaulting Clearing Members are party, including with Participating Exchanges and Cleared Exchanges.
- (c) To the extent that the Clearing House does not terminate, transfer or close out all of the CDS Contracts of a Defaulter, the Clearing House may at its discretion require the entry into of new CDS Contracts between the Clearing House and CDS Clearing Members that are not Defaulters (which CDS Contracts replace any remaining CDS Contracts of the Defaulter) at a price determined by the Clearing House, taking into account the minimum target price determined in accordance with the CDS Procedures, on a *pro rata* basis (or as near as practicable, with odd lots determined by the Clearing House and assigned randomly) in proportion to the size of each CDS Clearing Member's required CDS Guaranty Fund Contribution relative to the aggregate of all required CDS Guaranty Fund Contributions. In any such circumstances, the provisions of Part 4 of the Rules (including without limitation Rule 401(a)(x)) shall apply to the formation of any new CDS Contracts resulting from such action, as part of the Clearing House's default rules. To the extent that any new CDS Contracts arise pursuant to the procedure set out in this Rule 905(c), an equal notional amount of CDS Contracts of each relevant Set to which the Defaulter was party shall be treated as having been closed out and terminated at the same price.
- (d) If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to close out or terminate all Contracts to which the Defaulter is party pursuant to Rule 905(b) or Rule 905(c), the Clearing House may close out or terminate such Contracts by taking opposite positions for F&O Contracts in Contracts in the current expiration period, for CDS Contracts in Contracts of a different series or version number or scheduled termination date or, for FX Contracts in Contracts of a different FX Settlement Date, and terminating the resultant terminated positions.
- (e) All terminations and closing out of Contracts pursuant to this Rule 905 shall be for the account and cost of the Defaulter.

- (f) Without prejudice to the generality of the indemnities in Rules 111 and 301, but without duplication of any other obligation under these Rules, the Defaulter, acting for its own account as principal, shall indemnify, hold harmless and be liable to the Clearing House in respect of all the losses, unpaid fees, liabilities, damages, injuries, taxes, costs and expenses (including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts or Margin and any amount payable by the Clearing House to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default), in the case of any such item whether relating to a Proprietary Account or Customer Account of the Defaulter, incurred or suffered by any of the Clearing House, any Market or any of their officers or employees or those of their Affiliates arising out of the Defaulter's conduct (whether such conduct took place prior to or after declaration of the Event of Default) or in connection with the Event of Default. Rule 111(b) shall apply in respect of this Rule 905(f) in the same way as it applies to Rule 111(a).

**Rule 906**      *Net Sums Payable*

- (a) Following discharge of a Defaulter's rights, obligations and liabilities under Contracts pursuant to this Part 9, the Clearing House shall carry out the following calculation separately in respect of the Proprietary Account and each different Customer Account of the Defaulter. The calculation set out below follows the requirements relating to default rules of recognised clearing houses set out in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995). The methodology involves aggregating or setting off various amounts (as applicable) so as to produce separate net sums for the Proprietary Account and each different Customer Account of the Defaulter (each such net sum, *N*) in each case defined by the formula:

$$N = L - A - D - C - M - GFC - SC - OA + OL$$

where such letters have the meanings set out below in this Rule 906(a):

*L* = the aggregate amount of all sums payable by the Defaulter in respect of Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) taking into account any of the following actions under Rule 903, 904 or 905:

- (i) the effecting by the Clearing House of corresponding contracts (as defined in section 25(3) of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, SI 2001/995) in relation to Contracts to which the Defaulter is party;
- (ii) the Transfer of any of the Defaulter's Contracts to a Transferee Clearing Member (not being the Defaulter) or acceptance or entry into by a Clearing Member of any of the Defaulter's Contracts or contracts similar to any of the Defaulter's Contracts; and
- (iii) the exercise by the Clearing House of any Option,

plus all amounts that were payable but remain unpaid by the Defaulter under the terms of Contracts, plus any costs and expenses of the Clearing House in any way relating to any Contract to which the Defaulter was party, including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts and any amount payable by the Clearing House to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default; but excluding, in respect of a Contract where the Defaulter acts as agent (if any), any liabilities attributable to the Defaulter arising out of the relationship of principal and agent; and the Clearing House may assess any one or more elements of such amount  $L$  in its discretion, provided that any costs, expenses, taxes or other amounts falling within the scope of the indemnity in Rule 905(f) (not being amounts payable in respect of Contracts falling under  $L(i)$  to (iii) above) shall be allocated to the Proprietary Account regardless of the Contracts or Account to which they relate.

$A$  = the aggregate amount of all sums payable to the Defaulter in respect of Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4), taking into account any of the actions referred to under  $L$  (i), (ii) or (iii) above, plus all amounts that were payable but remain unpaid by the Clearing House under the terms of Contracts, excluding, in respect of a Contract where the Defaulter acts as agent (if any), any rights attributable to the Defaulter arising out of the relationship of principal and agent and further excluding any amount included under  $D$ ,  $C$ ,  $M$ ,  $GFC$  or  $SC$ ; and the Clearing House may assess any one or more elements of such amount  $A$  in its discretion.

*Note on calculation of the amounts  $L$  and  $A$ :* For the purposes of calculating amounts  $L$  and  $A$ , the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:

(x) the price of the Contract or Open Contract Position recorded in the Clearing House's books for the later of: (A) the last date on which a payment in respect of Variation Margin, FX Mark-to-Market Margin or Mark-to-Market Margin was successfully and fully made by the Clearing Member to or to the account of the Clearing House; or (B) the last date on which a return of amounts following a Variation Margin, FX Mark-to-Market Margin or Mark-to-Market Margin call was successfully and fully made by the Clearing House to the Clearing Member or to the account of the Clearing Member; and

(y) the price at which the Contract or Open Contract Position was Transferred, terminated or closed out pursuant to Rules 903 to 905.

$D$  = if the Clearing House so determines at its discretion, the aggregate amount of any sums in respect of a Deliverable delivered, physically settled, to be delivered or to be physically settled under a Contract with the Defaulter or in respect of which cash settlement is to be made as calculated by the Clearing House at its discretion (if payable to the Clearing Member being a positive number and hence set off in the calculation under this Rule 906(a) against any amount  $L-A$  if that amount is also a positive number or if payable to the Clearing House being a negative number and aggregated in the calculation under this Rule



906(a) with any amount  $L-A$  if that amount is a positive number), in any case excluding any amount included under  $C$ ,  $M$ ,  $GFC$  or  $SC$ .

$C$  = if relevant, any sum owed by or to the Clearing House to or from a recognised investment exchange or another recognised clearing house of which the Defaulter is or was a member, under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the Defaulter chose to participate (if payable to the Clearing Member being a positive number and set off in the calculation under this Rule 906(a) against any amount  $L-A-D$  if that amount is also a positive number or if payable to the Clearing House being a negative number and aggregated in the calculation under this Rule 906(a) with any amount  $L-A-D$  if that amount is a positive number).

$M$  = means

- (i) in relation to a net sum calculation for the Proprietary Account of the Defaulter, any property provided by or on behalf of the Defaulter as margin under Rule 502(g), Original Margin, FX Original Margin, Initial Margin, buyer's security or seller's security (without any double counting) or in satisfaction of such Margin requirements and recorded in the Proprietary Margin Account of the Defaulter; or
- (ii) in relation to a net sum calculation for any Customer Account of the Defaulter (other than a Swap Customer Account of an FCM/BD Clearing Member), any property provided by or on behalf of the Defaulter as margin under Rule 502(g), Original Margin, FX Original Margin, Initial Margin, buyer's security or seller's security (without any double counting) or in satisfaction of such Margin requirements that is recorded in the related Customer Margin Account of the Defaulter, excluding any Margin that would otherwise fall under amount  $M$  but that is transferred to a Transferee Clearing Member pursuant to this Part 9, and further excluding, for the avoidance of doubt, in relation to a Designated CDS Customer Account, the Customer Account Gross-Net Amount and any Surplus Collateral,
- (iii) in relation to a net sum calculation for a Swap Customer Account of an FCM/BD Clearing Member, any property provided by or on behalf of the Defaulter as margin under Rule 502(g), Original Margin, Initial Margin, buyer's security or seller's security (without any double counting) (collectively, "**FCM Swap Customer IM**") or in satisfaction of such Margin requirements that is recorded in the related Customer Margin Account of the Defaulter, excluding any Margin that would otherwise fall under amount  $M$  but that is transferred to a Transferee Clearing Member pursuant to this Part 9 and further excluding, for the avoidance of doubt, any Surplus Collateral, provided that such assets allocated to a particular Customer Swap Portfolio and proceeds thereof shall only be included in  $M$  to the extent of obligations to the Clearing House in respect of Open Contract Positions in such Customer Swap Portfolio in accordance with CFTC Rule 22.15, and provided, further, that where an amount payable by the Defaulter as determined in  $L(i)$ -(iii) includes a net obligation (after taking into account Variation Margin or Mark-to-Market Margin in accordance with the 'Note on Calculation of the Amounts in  $L$  and  $A$ ') in respect of Open Contract Positions of the Defaulter in



relation to multiple Customer Swap Portfolios, *M* shall include the FCM Swap Customer IM allocated to each Customer Swap Portfolio to which a corresponding payment or margin obligation to the Clearing House is referable up to the amount of such payment or obligation;

including in any such case under *M*(i), (ii) or (iii) any such Margin transferred to the Clearing House by the Defaulter and any amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee entered into in favour of the Clearing House in satisfaction of such applicable Margin requirements that would, if the Margin was funded, fall under *M*.

*GFC* = any property provided by or on behalf of the Defaulter as Guaranty Fund Contributions, which may be applied in connection with the net sum for any Customer Account or the Proprietary Account of the Defaulter at the discretion of the Clearing House regardless of the basis under which any Guaranty Fund Contribution was calculated under Rule 1101(e), provided that the total applied to the Customer Accounts and Proprietary Account of a Defaulter under *GFC* shall not exceed the total Guaranty Fund Contributions of the Defaulter.

*SC* =

- (i) in the case of a Defaulter that was a Non-FCM/BD CDS Clearing Member and a CDS Customer Account: any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral or the Customer Account Gross-Net Amount;
- (ii) otherwise, any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral,

including, in each of cases (i) and (ii), where applicable any such amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee in favour of the Clearing House not falling under *M*, but excluding any Pledged Collateral returned to a Clearing Member or any of its Customers pursuant to Rule 502(i) or amounts not needed that are returned to the letter of credit issuer; or

*OA* = the aggregate of any amounts not falling under *A*, *D*, *C*, *M*, *GFC* or *SC* standing to the credit of the Defaulter or payable to the Defaulter or any right or claim of the Defaulter against the Clearing House, in any case whether pursuant to these Rules, any Contract or otherwise, including without limitation:

- (i) any available assets that would be recorded in the Proprietary Account but for Rule 906(c); and
- (ii) in the case of a Designated CDS Customer Account for a Non-FCM/BD Clearing Member only: such Guaranty Fund Contributions of non-Defaulters, Clearing House CDS Contributions and CDS Assessment Contributions as may be required to be applied pursuant to Rule ~~1103~~908 to meet a Gross Margin Shortfall,

but excluding in any case: (A) any Pledged Collateral returned to a Clearing Member or any of its Customers pursuant to Rule 502(i) (B) any Customer Account Gross-Net Amount; (C) any Surplus Collateral; and (D) separate amounts payable pursuant to the final sentence of Rule 906(i).

and

*OL* = the aggregate of any other amounts not falling under *L* payable by the Defaulter to the Clearing House or any right or claim of the Clearing House against the Defaulter, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any fines payable pursuant to Part 10 and any other amounts payable in respect of any breach by the Defaulter of these Rules in either case not falling under *L*), in any case at the discretion of the Clearing House, provided that any amounts falling within the scope of the indemnity in Rule 905(f) but not falling under *L* shall be allocated to the Proprietary Account regardless of the Contracts or Account to which they relate.

All such amounts specified above must be aggregated, set off and applied in the order set out in the calculation above and in such order as is further required, restricted or limited by Rules 102(q), 906(b) and ~~1103~~908 and provided further that any amount is only included in respect of the relevant net sum to the extent allowed pursuant to Rule 906(b).

- (b) Where the Defaulter has one or more Customer Accounts, the process set out in Rule 906(a) shall be completed separately, and separate net sums shall be determined, in respect of:
- (i) the Defaulter's Non-DCM/Swap Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's Non-DCM/Swap Customers;
  - (ii) the Defaulter's Swap Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's Swap Customers;
  - (iii) the Defaulter's DCM Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's DCM Customers;
  - (iv) the Defaulter's SBS Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's SBS Customers;
  - (v) the Defaulter's Non-CDS Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's General Customers in respect of Non-CDS Contracts;
  - (vi) the Defaulter's CDS Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's General Customers in respect of CDS Contracts; and
  - (vii) the Defaulter's Proprietary Account and other Contracts, rights, obligations and liabilities not falling under Rule 906(b)(i) to (vi).

The Defaulter's Guaranty Fund Contributions and amounts received by the Clearing House under a Controller Guarantee or letter of credit may be used for the purpose of calculating any net sum relating to that Defaulter (provided that any such amounts are not double counted), in accordance with Rule 906(a) and subject to the restrictions in Rule ~~1103~~,908, Rule 102(q) and this Rule 906(b) as determined by the Clearing House. The aggregate sums finally payable shall be separately certified under Rule 906(e).

- (c) The Clearing House may aggregate, set off or apply any Margin, Surplus Collateral or other surplus assets available to it in relation to a Defaulter's Proprietary Account to meet a shortfall on any one or more of that Defaulter's Customer Accounts (and, if it does so, shall include any such amounts within the net sum to be calculated in relation to such Customer Account), provided that if any amounts are so aggregated, set off or applied, the amount *A*, *D*, *C*, *M*, *SC* or *OA* (as applicable) and consequently the net sum payable by the Clearing House in relation to the Defaulter's Proprietary Account shall be reduced by the same amount as is so included within the net sum for the relevant Customer Account. A 'shortfall' for such purposes shall include, in respect of a Designated CDS Customer Account, any Gross Margin Shortfall. The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on another of that Defaulter's Customer Accounts. The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on the Defaulter's Proprietary Account.
- (d) Where *N* is a positive number, the net sum equal to *N* shall be payable by the Defaulter to the Clearing House. Where *N* is a negative number, the net sum equal to the absolute value of *N* shall be payable by the Clearing House to the Defaulter, provided that if the Clearing House is required under any Applicable Law or pursuant to the order of any Governmental Authority to make payment in respect of any net sum to or to the account of a Person other than the Defaulter, the Defaulter's claim against the Clearing House shall be reduced by the amount paid to such Person and the amount payable by the Clearing House to the Defaulter shall be reduced accordingly. Where *N* is equal to zero, no amount shall be payable as between the Clearing House and the Defaulter pursuant to this Rule 906. Where there is more than one separately certified amount *N* certified under Rule 906(e) as a result of Rule 906(b), each amount so certified shall be treated as a separate obligation which cannot be netted off against another certified amount *N* in respect of a different account of the Defaulter.
- (e) Each amount *N* shall be certified by the Clearing House promptly upon its determination. Such determination may be delayed or withheld until such time as all relevant sums and components have been evaluated, all Transfers have been completed and the value or sale proceeds of any non-cash Margin, Surplus Collateral, Guaranty Fund Contributions or other assets are determined, received or available. A certificate of the Clearing House made pursuant to this Rule 906(e) shall be conclusive as to the amount required to be paid by any Defaulter in discharge of its rights and liabilities in respect of the Contracts to which such certificate relates or by any other Person in relation to such Event of Default.

- (f) If a Disclosed Principal Member and the Clearing Member that appointed the Disclosed Principal Member are both Defaulters, the Clearing House shall be entitled to set-off any amount or asset to the credit of either Defaulter against any liability or obligation of the other Defaulter for the purposes of calculating any net sum under this Rule 906 and may exercise any of its powers under this Part 9 accordingly.
- (g) The Clearing House and each Clearing Member with a Pledged Collateral Account acknowledge and agree that Pledged Collateral: (i) is provided pursuant to a charge over property provided as margin in respect of market contracts entered into by the Clearing House; and (ii) is provided to secure the obligation to pay the Clearing House any sum due to the Clearing House in respect of unsettled market contracts to which the Clearing Member is party as set forth in these Rules, in respect of the Customer Account or Proprietary Account of the Pledged Collateral Account. Accordingly, the Clearing House and each such Clearing Member intend and agree that all Pledged Collateral provided to the Clearing House is provided pursuant to a "market charge" for purposes of the Companies Act 1989.
- (h) Any amounts received from a letter of credit issuer in respect of Margin, Surplus Cover or Guaranty Fund Contributions may at the discretion of the Clearing House be returned to the letter of credit issuer and not included in any net sum calculation relating to an Account of a Defaulter, to the extent that such amounts are not needed to cover a loss or shortfall (including any Gross Margin Shortfall), to the extent that the same is permitted pursuant to the terms of the letter of credit in question.
- (i) Without duplication of any other obligation under these Rules, the Clearing House shall be obliged to pay a Defaulter that was a Non-FCM/BD Clearing Member in respect of its Designated CDS Customer Account (such Defaulter acting in respect of such obligation solely in the capacity in which it was acting in respect of such account and not for its own account) an amount equal to the Gross Margin Shortfall (if any) in respect of such Designated CDS Customer Account. Such obligation may be satisfied in whole or in part through payment of a net sum in respect of the relevant Designated CDS Customer Account, and to the extent not so satisfied shall remain payable as a separate amount.

**Rule 907**      *Administrative matters concerning an Event of Default*

- (a) The Clearing House may co-operate, by the sharing of information and otherwise, with any Governmental Authority, Clearing Organisation, Exchange or Insolvency Practitioner having responsibility for any matter arising out of, or connected with, an Event of Default or the default of a recognised investment exchange or another recognised clearing house.
- (b) The Clearing House will report to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part 9.
- (c) For the avoidance doubt, nothing in these Rules shall oblige the Clearing House to take any step to recover any asset or amount in the possession of a Defaulter or one of its Customers in connection with an Event of Default.

- (d) Without prejudice to the Clearing House relying on any other information provided to it by a Clearing Member, the Clearing House shall be entitled to rely on the most recent information provided to it in relation to Default Portability Preferences and Non-Transfer Positions (for Non-FCM/BD CDS Clearing Members) and Margin provided to the Clearing House by a Defaulter prior to declaration of an Event of Default, notwithstanding any notice or purported notice to the contrary from a Defaulter, its Insolvency Practitioner or any other Person received by the Clearing House after declaration of an Event of Default. The Clearing House shall have no obligation to enquire of any Customer or other Person as to any Default Portability Preference or Non-Transfer Positions. The rights of the Clearing House to deal with Margin and other Permitted Cover under the default rules shall not be restricted as a consequence of a Defaulter having either entered into any indebtedness with a Customer or having provided different forms of collateral to the Clearing House from that which it had received from its Customer, in either case in order to facilitate the provision of Permitted Cover to the Clearing House.
- (e) A Defaulter shall immediately disclose the names, addresses and contact details of each of its Customers or any Customer upon receiving notice to do so from the Clearing House.
- (f) Rule 202(a)(xii) shall apply in respect of the Defaulter for the benefit of the Clearing House and any Transferee Clearing Member in respect of each Transfer of Contracts (and any related Customer-CM CDS Transactions, Corresponding Contracts or other transactions between the Defaulter and its Customers) and any related transfer of Margin or other assets taking place pursuant to this Part 9.
- (g) The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members (including any Insolvency Practitioner with powers over any Clearing Member or other Representative) 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.
- (h) Notwithstanding any other provision of these Rules or the Finance Procedures concerning the use of Nominated Bank Accounts or Approved Financial Institutions, any amount payable to or from the Clearing House following the declaration of a net sum in accordance with this Part 9 may be paid to or from an account other than a Nominated Bank Account and/or to or from an account other than with an Approved Financial Institution that has previously been designated as such by the Clearing House, provided that:
  - (i) the account is an account of the Defaulter or an account operated by an Insolvency Practitioner on behalf of the Defaulter;

- (ii) in the case of payments to the Defaulter, details of the account to be used and such other information relating to the account as is reasonably requested by the Clearing House are provided in writing to the Clearing House by the Defaulter or its Insolvency Practitioner; and
  - (iii) the bank of the account to which such payment is made shall be treated as if it were an Approved Financial Institution for purposes of any payments referred to in this Rule 907(h) and Part 12 without the need for any further action on the part of the Clearing House.
- (i) If an Event of Default occurs affecting a CDS Clearing Member, the Clearing House shall convene the CDS Default Committee. The CDS Default Committee shall have the competences specified in the CDS Procedures.
  - (j) Without prejudice to the status of any other provision of the Rules that is potentially applicable following an Event of Default as a default rule for purposes of the Companies Act 1989:
    - (i) the provisions of the CDS Procedures relevant to a default shall apply if the Defaulter is or was a CDS Clearing Member and shall amount to default rules for the purposes of these Rules and Applicable Laws;
    - (ii) Part 12 and Rule 1604 contain additional default rules; and
    - (iii) where any defined term is used in a default rule or any general interpretative provision of these Rules is relevant to the interpretation of a default rule, the definition of that term or that interpretative provision is itself also a default rule.

**Rule 908** ~~Not used~~ *Application of Assets upon an Event of Default*

(a) Notwithstanding any other provision of these Rules:

- (i) if a Defaulter was only liable to make a Guaranty Fund Contribution relating to a single Membership Category, no Guaranty Fund Contributions, Assessment Contributions, or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising from the Event of Default;
- (ii) if a Defaulter was only liable to make Guaranty Fund Contributions relating to two Membership Categories, no Guaranty Fund Contributions, Assessment Contributions or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising from the Event of Default;
- (iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Members that are not



Defaulters or accrued in each case after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default shall not be applied to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising in connection with that prior Event of Default;

- (iv) if a Defaulter was a CDS Clearing Member and had one or more other Membership Categories and any CDS Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 908(g)(ii)(B), no non-defaulting CDS Clearing Member shall be required to make any payment to replenish the CDS Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the CDS Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the CDS Guaranty Fund (other than pursuant to Rule 903(e), if the non-defaulting CDS Clearing Member becomes a Defaulter;
- (v) without limitation to the generality of Rule 102(q), this Rule 908 is subject to Rule 102(q);
- (vi) where the loss or shortfall relates to Energy Contracts: (A) the Clearing House F&O Initial (Energy) Contribution shall be applied and exhausted prior to applying the Clearing House F&O Initial (LIFFE) Contribution; (B) the F&O Guaranty Fund Contributions relating to Energy Contracts shall be applied and exhausted prior to applying the F&O Guaranty Fund Contributions relating to LIFFE Contracts; (C) the Clearing House F&O GF (Energy) Contribution shall be applied and exhausted prior to applying the Clearing House F&O GF (LIFFE) Contribution; and (D) F&O Assessment Contributions relating to Energy Contracts shall be applied and exhausted prior to applying F&O Assessment Contributions relating to LIFFE Contracts;
- (vii) where the loss or shortfall relates to LIFFE Contracts: (A) the Clearing House F&O Initial (LIFFE) Contribution shall be applied and exhausted prior to applying the Clearing House F&O Initial (Energy) Contribution; (B) the F&O Guaranty Fund Contributions relating to LIFFE Contracts shall be applied and exhausted prior to applying the F&O Guaranty Fund Contributions relating to Energy Contracts; (C) the Clearing House F&O GF (LIFFE) Contribution shall be applied and exhausted prior to applying the Clearing House F&O GF (Energy) Contribution; and (D) F&O Assessment Contributions relating to LIFFE Contracts shall be applied and exhausted prior to applying F&O Assessment Contributions relating to Energy Contracts; and
- (viii) in determining whether a loss or shortfall relates to Energy Contracts or to LIFFE Contracts for the purposes of Rule 908(a)(v) or (vi), the principles set out in Rule 908(e) for the attribution of liabilities to particular Contract Categories shall be applied as if Energy Contracts and LIFFE Contracts were two separate Contract Categories, *mutatis mutandis*; and

- (ix) for the avoidance of doubt, in connection with an Event of Default of a Non-FCM/BD CDS Clearing Member which has a Designated CDS Customer Account, references to the application of Guaranty Fund Contributions, Assessment Contributions and Clearing House Contributions in these Rules include the use by the Clearing House of amounts representing the proceeds of such contributions for payment of amounts it is obliged to pay the Defaulter under Rule 906(i) (and included in item SC of the net sum calculation in Rule 906(a)).
- (b) In the case of a Defaulter that was an F&O Clearing Member 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), in the following order of recourse:
- (i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);
- (ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a);
- (iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (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)(iv) to (vii) 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);
- (iv) fourth, the Clearing House F&O Initial Contribution;
- (v) fifth:
- (A) F&O Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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;
- (vi) sixth, subject to Rule 1103(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

(vii) seventh, 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 but neither an F&O Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability (including, in respect of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:

(i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);

(ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a);

(iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (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)(iv) to (vi) 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) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);

(iv) fourth, the Clearing House CDS Initial Contribution;

(v) fifth:

(A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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* 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

- (vi) sixth, CDS Assessment Contributions received by the Clearing House pursuant to Rule 910.
- (d) In the case of a Defaulter that was an FX Clearing Member but neither an F&O Clearing Member nor a CDS Clearing Member, 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 Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:
- (i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);
- (ii) second, FX Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such FX Guaranty Fund Contributions falling under amount GFC in Rule 906(a);
- (iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (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)(iv) to (vi) 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);
- (iv) fourth, the Clearing House FX Initial Contribution;
- (v) fifth:
- (A) FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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* 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
- (vi) sixth, FX Assessment Contributions received by the Clearing House pursuant to Rule 911.
- (e) In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rules 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;
- (ii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of CDS Contracts, then the net sum declared in respect of such account (or, for a Designated CDS Customer Account of a Non-FCM/BC CDS Clearing Member, the Gross Margin Shortfall where such Gross Margin Shortfall is not zero) shall be the sole element of the CDS Default Amount in respect of such Account;
- (iii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of FX Contracts, then the net sum declared in respect of such account shall be the sole element of the FX Default Amount in respect of such Account;
- (iv) if an Account in respect of which a positive net sum was produced was used for the Clearing of Contracts consisting of more than one Contract Category then:
  - (A) if the Defaulter was a CDS Clearing Member, the CDS Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of CDS Contracts, Margin or Surplus Collateral in respect of positions in CDS Contracts and any other amounts, assets or liabilities relating in any case exclusively to CDS Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below (including, in the case of a Designated CDS Customer Account and a Non-FCM/BD CDS Clearing Member, any obligation of the Clearing House to the Defaulter pursuant to Rule 906(i));
  - (B) if the Defaulter was an F&O Clearing Member, the F&O Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of F&O Contracts, Margin or Surplus Collateral in respect of F&O Contracts and any other amounts, assets or liabilities relating in any case exclusively to F&O Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below;
  - (C) if the Defaulter was an FX Clearing Member, the FX Default Amount shall include an amount in respect of such Account calculated by taking into

account: any amounts, assets or liabilities included or to be included within the calculation of the amount  $N$  in Rule 906(a) in respect of FX Contracts, Margin or Surplus Collateral in respect of positions in FX Contracts and any other amounts, assets or liabilities relating in any case exclusively to FX Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below; and

(v) notwithstanding Rule 908(e)(i), (ii), (iii) or (iv), Guaranty Fund Contributions of any kind shall be applied as follows as between Default Amounts:

(A) in the case of F&O Guaranty Fund Contributions, first to meeting any loss, shortfall or liability that would otherwise be represented in the F&O Default Amount;

(B) in the case of CDS Guaranty Fund Contributions, first to meeting any loss, shortfall or liability that would otherwise be represented in the CDS Default Amount;

(C) in the case of FX Guaranty Fund Contributions, first to meeting any loss, shortfall or liability that would otherwise be represented in the FX Default Amount;

(D) in the case of any remaining Guaranty Fund Contributions, next towards eliminating any loss, shortfall or liability that would otherwise be represented in any Default Amount;

(E) to the extent that there is no further loss, shortfall or liability reflected in any Default Amount following application of Guaranty Fund Contributions under (A) to (D), F&O Guaranty Fund Contributions shall be included in the F&O Default Amount, CDS Guaranty Fund Contributions shall be included in the CDS Default Amount and FX Guaranty Fund Contributions shall be included in the FX Default Amount.

(vi) "Non-Exclusive Assets" constitute any amounts or assets included or to be included within the calculation of the amount  $N$  in Rule 906(a) not relating exclusively to any one Contract Category, but excluding Guaranty Fund Contributions. Non-Exclusive Assets may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:

(A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a shortfall, loss or liability ("**Shortfall Default Amounts**"), the Non-Exclusive Assets must be included in the calculation of the Shortfall Default Amounts in proportion to the Margin requirements of the Defaulter for each Contract Category corresponding to each Shortfall Default Amount immediately prior to the Event of Default until one of the Shortfall Default Amounts would represent zero; and



- (B) subject to the process in Rule 908(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a shortfall, loss or liability to the Clearing House, the Non-Exclusive Assets must be included in the relevant calculation so as to eliminate or reduce the shortfall, loss or liability *pro rata* as to the losses.
- (vii) "Non-Exclusive Liabilities" constitute any liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one Contract Category. Non-Exclusive Liabilities may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:
- (A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a surplus ("Surplus Default Amounts"), the Non-Exclusive Liabilities must be included in the calculation of the Surplus Default Amounts in proportion to the Margin requirements of the Defaulter for each Contract Category corresponding to each Surplus Default Amount immediately prior to the Event of Default until one of the Surplus Default Amounts would represent zero; and
- (B) subject to the process in Rule 908(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a shortfall, loss or liability to the Clearing House, Non-Exclusive Liabilities must first be included in the relevant calculation against the surplus *pro rata* as to the surpluses.
- (f) In any instance in which assets are to be applied pursuant to Rule 908(g)(ii), (iii), (iv) or (v), the Clearing House shall publish the amount of any F&O Default Amount, CDS Default Amount and/or FX Default Amount that is required to be calculated under Rule 908(e) in a Circular. For the avoidance of doubt, any F&O Default Amount, CDS Default Amount and/or FX Default Amount so published shall not constitute a "net sum" for purposes of Rule 906, the Companies Act 1989 or the Settlement Finality Regulations.
- (g) In the case of a Defaulter which held multiple Membership Categories, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability (including, in the case of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:
- (i) first, any amounts falling under *A*, *D*, *C* or *M* in Rule 906(a), in the order specified in Rule 906(a);

- (ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a), provided that:
- (A) if a Defaulter was an F&O Clearing Member, F&O Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall, loss or liability relevant to the F&O Default Amount;
  - (B) if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall, loss or liability relevant to the CDS Default Amount;
  - (C) if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any liabilities relevant to the FX Default Amount;
  - (D) if a Defaulter was an F&O Clearing Member, subject to paragraphs (A), (B) and (C), any F&O Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall, loss or liability but only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an F&O Clearing Member;
  - (E) if a Defaulter was a CDS Clearing Member, subject to paragraphs (A), (B) and (C), any CDS Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall, loss or liability but only after the earliest date on which non-defaulting CDS Clearing Members are required to replenish the CDS Guaranty Fund pursuant to Rule 908(a)(iv) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting a CDS Clearing Member; and
  - (F) if a Defaulter was an FX Clearing Member, subject to paragraphs (A), (B) and (C), any FX Guaranty Fund Contributions of the Defaulter may be applied against any other liabilities of the Defaulter but only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an FX Clearing Member;
- (iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (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(g)(iv) to (vii) 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) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);
- (iv) fourth:

- (A) if a Defaulter was an F&O Clearing Member, 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, 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, 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;

(v) fifth:

- (A) Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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, the Clearing House F&O GF Contribution;
- (C) if a Defaulter was a CDS Clearing Member, the Clearing House CDS GF Contribution; and
- (D) if a Defaulter was an FX Clearing Member, the Clearing House FX GF Contribution;

provided that:

- (1) if a Defaulter was an F&O Clearing Member, F&O Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House F&O GF Contribution 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)(iv)(A) represents a shortfall, loss or liability;
- (2) if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and

the Clearing House CDS GF Contribution 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)(iv)(B) represents a shortfall, loss or liability; and

(3) if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House FX GF Contribution 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)(iv)(C) represents a shortfall, loss or liability;

and provided further that:

(X) in the case of a Defaulter who was an F&O Clearing Member, F&O Guaranty Fund Contributions and the Clearing House F&O GF Contribution are applied 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 in question 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;

(Y) in the case of a Defaulter who was a CDS Clearing Member, CDS Guaranty Fund Contributions and the Clearing House CDS GF Contribution are applied on a basis *pro rata* to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter in question 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, 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 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;

(vi) sixth, if a Defaulter was an F&O Clearing Member, subject to Rule 1103(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, 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

(vii) seventh, if a Defaulter was an F&O Clearing Member, F&O Assessment Contributions received by the Clearing House pursuant to Rule 909, if a Defaulter was a CDS Clearing Member, CDS Assessment Contributions received by the Clearing Member pursuant to Rule 910, and, if a Defaulter was an FX Clearing Member, FX Assessment Contributions received by the Clearing House pursuant to Rule 911, provided that:

(1) if a Defaulter was an F&O Clearing Member, 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)(iv)(A), F&O Guaranty Fund Contributions applied in accordance with Rule 908(g)(v)(A) and Clearing House F&O GF Contribution applied in accordance with Rule 908(g)(v)(B) represents a shortfall, loss or liability;

(2) if a Defaulter was a CDS Clearing Member, 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)(iv)(B), CDS Guaranty Fund Contributions applied in accordance with Rule 908(g)(v)(A) and Clearing House CDS GF Contribution applied in accordance with Rule 908(g)(v)(C) represents a shortfall, loss or liability; and

(3) if a Defaulter was an FX Clearing Member, 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)(iv)(C), FX Guaranty Fund Contributions applied in accordance with Rule 908(g)(v)(A) and Clearing House FX GF Contribution applied in accordance with Rule 908(g)(v)(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, 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, CDS Assessment Contributions are applied on a basis *pro rata* 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, 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 including upon the event of any Insolvency affecting the Clearing House or any Clearing Member. The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members (including any Insolvency Practitioner with powers over any Clearing Member or other Representative) 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), (c)(iii), (d)(iii) and (g)(iii) and Rules 909-911, if any Clearing Member that is not a Defaulter does not comply with any of its obligations in the Default Auction Procedures as applicable to a Default Auction in respect of Contracts equivalent to those to which a Defaulter was party of a particular Contract Category or chooses not to participate in any such Default Auction, then the Guaranty Fund Contributions and Assessment Contributions of that Clearing Member relating to such Contract Category shall be applied to meet any shortfall, loss or liability in full, prior to the *pro rata* Guaranty Fund Contributions or Assessment Contributions (as applicable) of any other Clearing Member or Clearing House Contributions ranking equally with such Guaranty Fund Contributions being so applied. Notwithstanding Rule 908(b)(iii), (c)(iii), (d)(iii) and (g)(iii) and Rules 909-911, if an auction is held pursuant to the Default Auction Procedures, the Guaranty Fund Contributions (and, Clearing House F&O GF Contributions or Clearing House FX GF Contributions) and Assessment Contributions of Clearing Members may further be applied in sequence instead of *pro rata*, with the Clearing Members with less competitive bids in a default auction having their Guaranty



Fund Contributions and Assessment Contributions applied prior to Clearing Members with more competitive bids, in the manner set out in the Default Auction Procedures.<sup>4</sup>

**Rule 909** ~~*[Not used]*~~ *Powers of Assessment: F&O*

(a) Powers of assessment under this Rule 909 may be exercised by the Clearing House following an Event of Default occurring in respect of an F&O 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 that is or was an F&O Clearing Member where such shortfall, loss or liability is not met pursuant to:

(i) Rule 908(b)(i) to (vi); or

(ii) Rule 908(g)(i) to (vii), only to the extent that the F&O Default Amount, less any assets applied in accordance with Rules 908(g)(iv)(A), 908(g)(v)(B) and 908(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the F&O Default Amount), 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 F&O Assessment Amount in a Circular, all F&O Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay F&O Assessment Contributions to the Clearing House in accordance with Rule 909(b). 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:

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

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

<sup>4</sup> Rule 908(i) does not apply to the CDS Contract Category.

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 LIFFE Contracts based on the designation of Guaranty Fund Contributions to Energy Contracts or LIFFE Contracts under Rule 1101(a).

- (c) No F&O Clearing Member shall be liable for more than an amount equal to twice their required Guaranty Fund Contributions immediately preceding the relevant Event of Default in total F&O Assessment Contributions in respect of a single Event of Default. A Person that is or was an F&O Clearing Member and that has served a Termination Notice shall be subject to obligations to pay F&O Assessment Contributions only in respect of Events of Default declared in relation to Clearing Members that are F&O Clearing Members occurring prior to the Termination Date.
- (d) If the F&O Assessment Amount is not met by F&O Assessment Contribution receipts from F&O Clearing Members due to non-payment by an F&O Clearing Member or F&O Clearing Members, Default of an F&O Clearing Member or F&O Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in F&O Assessment Contribution receipts shall be re-assessed against all F&O Clearing Members (other than Defaulters and Persons that have defaulted in making an F&O Assessment Contribution) in accordance with Rule 909(a), as if such shortfall were the F&O Assessment Amount, provided that no F&O Clearing Member shall be liable to pay F&O Assessment Contributions in respect of a single Default for an amount greater than twice its F&O Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 909(c), further F&O Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire F&O Assessment Amount has been met in full by F&O Assessment Contributions.
- (e) All F&O Assessment Contributions shall become due and payable at such time as the Clearing House notifies to F&O Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any F&O Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid F&O Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid F&O Assessment Contribution, 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 F&O Clearing Members (excluding any Defaulter) *pro rata* in respect of paid F&O Assessment Contributions relating to the Event of Default in question, subject to the Clearing House 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.

- (g) Amounts transferred to the Clearing House by F&O 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 F&O Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of F&O 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). F&O Assessment Contributions do not constitute Guaranty Fund Contributions.
- (h) Where the Clearing House calls F&O 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 such Clearing Member's Proprietary Account. Such special Surplus Collateral shall be available to be applied at any time as an F&O Assessment Contribution but unavailable for withdrawal under Part 3 or the Finance Procedures, until such time as any such amount of F&O 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 910**     ~~*Powers of Assessment: CDS*~~

- (a) Powers of assessment under this Rule 910 may be exercised by the Clearing House following an Event of Default occurring in respect of a CDS Clearing Member if a shortfall, loss or liability to the Clearing House arising as a result of the liabilities of a Defaulter that is or was a CDS Clearing Member where such shortfall, loss or liability is not met pursuant to:
- (i) Rule 908(c)(i) to (v); or
- (ii) Rule 908(g)(i) to (v), only to the extent that the CDS Default Amount, less any assets applied in accordance with Rules 908(g)(iv)(B) and 908(g)(v)(C) represents a shortfall, loss or a liability.

Immediately upon the Clearing House certifying the CDS Assessment Amount in a Circular, all CDS Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay CDS Assessment Contributions to the Clearing House in accordance with Rule 910(b).

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

$$\frac{CAA \times CGF(CM)}{CGF(all)}$$

where:

CAA is the CDS Assessment Amount certified by the Clearing House in a Circular, provided that the total CDS Assessment Amount shall be no greater than the amount equal

to the total required CDS Guaranty Fund Contributions of all CDS Clearing Members immediately prior to the relevant Event of Default (less CDS Guaranty Fund Contributions of Defaulters);

CGF(CM) is the required CDS Guaranty Fund Contribution of the relevant CDS Clearing Member immediately preceding the relevant Event of Default; and

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

(c) A Person that ceases to be a CDS Clearing Member shall be subject to obligations to pay CDS Assessment Contributions only in respect of:

(i) Events of Default declared in relation to Clearing Members that are CDS Clearing Members occurring prior to the Termination Date (whether or not declared prior to the Termination Date); and

(ii) any Events of Default declared in relation to Clearing Members that are CDS Clearing Members occurring after the Termination Date but whilst it still has a CDS Guaranty Fund Contribution with the Clearing House,

provided that:

(A) the aggregate amount of all CDS Assessment Contributions in respect of all Events of Default for any such Person shall be capped at: (I) in the case of a Person terminating its membership of the Clearing House following an Event of Default or Events of Default where CDS Guaranty Fund Contributions have been applied, an amount equal to that Person's CDS Guaranty Fund Contribution immediately prior to the first Event of Default being declared which led to the relevant application of CDS Guaranty Fund Contributions; or (II) in the case of a Person otherwise terminating its membership of the Clearing House, an amount equal to that Person's CDS Guaranty Fund Contribution on the date of service of the relevant notice of termination; and

(B) CDS Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 910(h) shall be included for the purpose of calculating such a cap.

(d) If the CDS Assessment Amount is not met by CDS Assessment Contribution receipts from CDS Clearing Members due to non-payment by a CDS Clearing Member or CDS Clearing Members, Default of a CDS Clearing Member or CDS Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in CDS Assessment Contribution receipts shall be re-assessed against all CDS Clearing Members (other than Defaulters and Persons that have defaulted in making a CDS Assessment Contribution) in accordance with Rule 910(a), as if such shortfall were the

CDS Assessment Amount, provided that no CDS Clearing Member shall be liable to pay CDS Assessment Contributions in respect of a single Default for an amount greater than its CDS Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 910(c), further CDS Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire CDS Assessment Amount has been met in full by CDS Assessment Contributions.

- (e) All CDS Assessment Contributions shall become due and payable at such time as the Clearing House notifies to CDS Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any CDS Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid CDS Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid CDS Assessment Contribution, 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 CDS Clearing Members (excluding any Defaulter) *pro rata* in respect of paid CDS Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 908 or in substitution of any such assets.
- (g) Amounts transferred to the Clearing House by CDS 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 CDS Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of CDS 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). CDS Assessment Contributions do not constitute Guaranty Fund Contributions.
- (h) Upon an Event of Default or Events of Default occurring and CDS Assessment Contributions becoming due, a Clearing Member liable to pay a CDS Assessment Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which CDS Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), a CDS Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to 910(c) and 910(d). Rule 209(c)(iii), Rule 209(c)(iii)(D), Rule 209(d) (subject as aforesaid), Rule 209(e)(i) and Rule 209(e)(ii) shall apply in relation to any such termination.<sup>5</sup> Any Clearing Member terminating its membership pursuant to this Rule 910(h) shall give notice of the same to the Clearing

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<sup>5</sup> References in this Rule 910(h) to Rule 209 shall be to the Continuing CDS Rule Provisions.

House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.

- (i) Upon an Event of Default or Events of Default occurring and CDS Assessment Contributions becoming due, a Clearing Member that is both an F&O Clearing Member and a CDS Clearing Member and which is liable to pay a CDS Assessment Contribution shall be entitled to terminate its status with the Clearing House as a CDS Clearing Member (maintaining its status as an F&O Clearing Member) with effect from the moment immediately prior to the time at which CDS Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f),<sup>6</sup> a Clearing Member that terminates its status as a CDS Clearing Member in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to Rules 910(c) and 910(d). Rule 209(f) shall apply in relation to any such termination. Any Clearing Member terminating its status as a CDS Clearing Member pursuant to this Rule 910(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.

**Rule 911**     ~~*Powers of Assessment: FX*~~

- (a) Powers of assessment under this Rule 911 may be exercised by the Clearing House following an Event of Default occurring in respect of an FX 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 that is or was an FX Clearing Member where such shortfall, loss or liability is not met pursuant to:

(i) Rule 908(d)(i) to (v); or

(ii) Rule 908(g)(i) to (v), only to the extent that the FX Default Amount, less any assets applied in accordance with Rules 908(g)(iv)(C) and 908(g)(v)(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 FX Assessment Amount in a Circular, all FX Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay FX Assessment Contributions to the Clearing House in accordance with Rule 911(b). The exercise of any right to call Assessment Contributions under this Rule 911 is subject to any contrary requirement arising pursuant to Rule 917 or Rule 918(a)(ii).

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

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<sup>6</sup> References in this Rule 910(i) to Rule 209 shall be to the Continuing CDS Rule Provisions.



$$\frac{FAA \times FGF(CM)}{FGF(all)}$$

where:

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

FGF(CM) is the required FX Guaranty Fund Contribution of the relevant FX Clearing Member immediately preceding the relevant Event of Default; and

FGF(all) is the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately preceding the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters).

- (c) No FX Clearing Member shall be liable for more than an amount equal to twice their required Guaranty Fund Contributions immediately preceding the relevant Event of Default in total FX Assessment Contributions in respect of a single Event of Default. A Person that is or was an FX Clearing Member and that has served a Termination Notice shall be subject to obligations to pay FX Assessment Contributions only in respect of Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring prior to the Termination Date.
- (d) If the FX Assessment Amount is not met by FX Assessment Contribution receipts from FX Clearing Members due to non-payment by an FX Clearing Member or FX Clearing Members, Default of an FX Clearing Member or FX Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in FX Assessment Contribution receipts shall be re-assessed against all FX Clearing Members (other than Defaulters and Persons that have defaulted in making an FX Assessment Contribution) in accordance with Rule 911(a), as if the shortfall were the FX Assessment Amount, provided that no FX Clearing Member shall be liable to pay FX Assessment Contributions in respect of a single Default for an amount greater than twice its FX Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 911(c), further FX Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire FX Assessment Amount has been met in full by FX Assessment Contributions.
- (e) All FX Assessment Contributions shall become due and payable at such time as the Clearing House notifies to FX Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any FX Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid FX Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid FX Assessment Contribution, 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 FX Clearing Members (excluding any Defaulter) *pro rata* in respect of paid FX Assessment Contributions relating to the Event of Default in question, subject to the Clearing House 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.

- (g) Amounts transferred to the Clearing House by FX 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 FX Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of FX 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). FX Assessment Contributions do not constitute Guaranty Fund Contributions.
- (h) Where the Clearing House calls FX Assessment Contributions in excess of that required or actually applied against a shortfall, loss or liability, it shall treat any such excess provided by a particular Clearing Member as special Surplus Collateral on such Clearing Member's Proprietary Account. Such special Surplus Collateral shall be available to be applied at any time as an FX Assessment Contribution but unavailable for withdrawal under Part 3 or the Finance Procedures, until such time as any such amount of FX 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 912**      *Default procedure for certain termination events*<sup>7</sup>

- (a) In the event of any termination pursuant to Rule 209(c)(ii)-(iii), the rights and liabilities of each Clearing Member under all Contracts will be deemed to be terminated without need for any further step on the part of any party and discharged for the purposes of Rule 906 and a net sum or net sums payable by or to the Clearing Member to or from the Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member.
- (b) In circumstances in which this Rule 912 applies:
- (i) Rules 909, 910 and 911 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901 (rather than any Event of Default effectively deemed to occur pursuant to this Rule 912);

<sup>7</sup> Rule 912 does not apply to the CDS Contract Category. Rule 912 under the Continuing CDS Rule Provisions remains in effect with respect to CDS Clearing Members.

- (ii) Rules 901, 902, 903, 904 and 905 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this Rule 912);
  - (iii) in the case of this Rule 912 applying solely due to a Failure to Pay which does not affect all Contract Categories, the net sum or net sums required to be determined in these circumstances pursuant to Rule 906 in respect of a Clearing Member that has multiple Membership Categories will be made separately in relation to the rights and liabilities of that Clearing Member for each applicable Membership Category to which the Failure to Pay relates, and Rule 906 shall be interpreted accordingly; and
  - (iv) otherwise, this Part 9 shall apply *mutatis mutandis* in relation to terminated CDS Contracts and rights, obligations and liabilities relating thereto.
- (c) ~~(a)~~ If the Clearing House becomes aware of there being or occurring an Insolvency, ~~Failure To Pay~~ or ~~FX~~ Failure To Pay in respect of the Clearing House, the Clearing House will promptly issue a Circular specifying that the same has occurred.

**Rule 913 Definitions used in the remainder of this Part 9<sup>8</sup>**

- (a) The following additional definitions apply to the following sections of this Part 9:
- (i) The term "**Aggregate Cash Gains**" or "**ACG**" means, in respect of any Business Day, the sum of the Cash Gain in respect of all Cash Gainers on such Business Day.
  - (ii) The term "**Available Defaulter Resources**" means, following a particular Event of Default, all the quantifiable and certain resources on any particular date to the extent that the same: (A) are available to the Clearing House to meet losses and liabilities resulting from the Event of Default; (B) were posted as collateral in respect of an Account referred to in Rule 914(a)(ii)(B) or are otherwise available to be applied by the Clearing House in accordance with the Rules against losses or liabilities resulting from the Event of Default on such an Account; and (C) represent the cash proceeds or equivalent cash value (as calculated by the Clearing House) of Permitted Cover provided to the Clearing House by the 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 that are not Defaulters. The principles in Rule 908 used for the calculation of relevant

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<sup>8</sup> Rule 913 does not apply to the CDS Contract Category.

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.

- (iii) 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 which are available to be applied pursuant to Rule 908, provided that Assessment Contributions 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.
- (iv) 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).
- (v) The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vi) 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.
- (vii) The term "**Cash Gainer**" means, in respect of each Contributing Clearing Member 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.
- (viii) The term "**Cash Gainer Adjustment**" has the meaning set out in Rule 914(c).
- (ix) The term "**Cash Loser**" means, in respect of each Contributing Clearing Member 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 equal to or less than zero.
- (x) The term "**Cash Loser Adjustment**" has the meaning set out in Rule 914(d).
- (xi) The term "**Clearing House Event**" means a Failure To Pay or Insolvency occurring in respect of the Clearing House.
- (xii) The term "**Clearing Member Adjustment Amount**" means, in respect of all the Margin Account(s) of any Contributing Clearing Member and any Loss Distribution Day, an amount equal to the sum of the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such

Clearing Member less the sum of the Cumulative Actual Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Clearing Member, in each case in respect of the Loss Distribution Period in which such Loss Distribution Day falls.

- (xiii) The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House, namely F&O Contracts, CDS Contracts and FX Contracts.
- (xiv) The term "**Contractual Payments**" means, in respect of each Margin Account and any Business Day, any of the following connected to such Margin Account on such Business Day: for CDS Contracts: any Fixed Amounts, Initial Payment, Physical Settlement Amount, Auction Settlement Amount or any Cash Settlement Amount; and for F&O Contracts any Market Delivery Settlement Price, Option premium or other settlement amount, strike price, exercise price, settlement price or delivery price, exercise price or any other payment pursuant to the terms of a Contract. Where physical delivery or physical settlement of any Investment or Commodity is due to be made by way of final settlement under a Contract of a Relevant Contract Category from the Clearing House to any Clearing Member, and the Clearing House (including any non-defaulting Clearing Member or its Transferee acting as agent for the Clearing House) has not received delivery of an equivalent Investment or Commodity from the Defaulter, the Clearing House may attribute a reasonable value to its delivery obligations and treat such amount as a Contractual Payment for purposes of this definition.
- (xv) The term "**Contributing Clearing Member**" means a Clearing Member that is not a Defaulter in respect of whom the Estimated Payable Net Sum or total net sum would or does exceed the Available Defaulter Resources.
- (xvi) The term "**Cooling-off Period**" means the period commencing on the date of the Cooling-off Period Trigger Event and terminating 30 Business Days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 30 or fewer Business Days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling 30 Business Days after the second such Cooling-off Period Trigger Event.
- (xvii) The term "**Cooling-off Period Trigger Event**" in respect of a particular Contract Category, means: (i) any call for Assessment Contributions being made; (ii) the occurrence of a Sequential Guaranty Fund Depletion.
- (xviii) The term "**Cooling-off Termination Period**" means the period commencing on the date of each Cooling-off Period Trigger Event and terminating 10 Business Days thereafter. A Cooling-off Termination Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 10 or fewer Business Days since the previous Cooling-off Period Trigger Event, until the date falling 10 Business Days after the second such Cooling-off Period Trigger Event.

- (xix) The term "**Cumulative Actual Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the aggregate amount, if any, actually paid by the Clearing House to such Clearing Member (expressed as a positive number) or by such Clearing Member to the Clearing House (expressed as a negative number) in respect of such Margin Account by way of Contractual Payments and MTM/VM, taking into account each Margin Account Adjustment from but excluding the relevant Last Call Prior To Default to and including such Business Day such that, to the extent that any payment of MTM/VM or Contractual Payment is netted or offset against any Margin Account Adjustment on any Loss Distribution Day, the amount actually paid for the purposes of this definition shall be used in calculating such aggregated amount.
- (xx) The term "**Cumulative Transfer Cost**" means, on any Business Day during any Loss Distribution Period, the sum of any Transfer Cost for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (xxi) The term "**Cumulative Unadjusted Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the sum of the Pre-Haircut Gains, Losses and Realised Cash Flows for such Margin Account for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (xxii) The term "**Default Auction**" means an auction which takes place in accordance with the Default Auction Procedures.
- (xxiii) The term "**Default Auction Procedures**" means the F&O Default Auction Procedures, CDS Default Auction Procedures or FX Default Auction Procedures, as applicable to the Relevant Contract Category in question.
- (xxiv) The term "**Distribution Haircut**" or "**DH**" means, on each Loss Distribution Day, the fraction determined by the Clearing House in accordance with the following formula:
- $$DH_{(t)} = UL_{(t)} / ACG_{(t)}$$
- where:
- UL means the Uncovered Loss; and
- ACG means the Aggregate Cash Gains.
- (xxv) The term "**Estimated Payable Net Sum**" means, following a particular Event of Default, an estimate by the Clearing House of the total of those net sums calculated using the methodology set out in Rule 906 which represent an amount payable by a Defaulter in respect of a particular Account, based on the cash or estimated value of items considered by the Clearing House to be sufficiently certain to be estimated as



at the date of the estimation (including, in respect of Contracts, latest available MTM/VM Prices), without any netting or offsetting in respect of any other Estimated Payable Net Sum or actual net sum payable to a Defaulter in respect of a different Account of a Defaulter.

(xxvi) The term "**Haircutting Determination**" has the meaning set out in Rule 914(a).

(xxvii) The term "**Last Call Prior To Default**" means the most recent Business Day on which payments of MTM/VM required to be made by Clearing Members were paid in full.

(xxviii) The term "**Loss Distribution Day**" means a Business Day in the Loss Distribution Period.

(xxix) The term "**Loss Distribution Period**" means, in relation to a Relevant Contract Category, the period commencing from and including the date specified by the Clearing House in a Circular following a Haircutting Determination and ending on a date specified by the Clearing House in the same or any subsequent Circular, as the same may be extended under Rule 914. A Loss Distribution Period shall end with immediate effect and without the need for any action on the part of any Clearing Member or the Clearing House upon any Clearing House Event.

(xxx) The term "**Margin Account**" means each Proprietary Margin Account and Customer Margin Account of a Contributing Clearing Member, related to the Proprietary Position Account or Customer Position Account in which Contracts of a Relevant Contract Category are recorded.

(xxxi) The term "**Margin Account Adjustment**" means, in respect of each Margin Account and any Business Day, any Cash Gainer Adjustment or Cash Loser Adjustment as the case may be payable in connection with such Margin Account on such Business Day.

(xxxii) The term "**MTM/VM**" stands for mark-to-market/variation margin and means: (i) in relation to F&O Contracts, Variation Margin; (ii) in relation to CDS Contracts, Mark-to-Market Margin; and (iii) in relation to FX Contracts, FX Mark-to-Market Margin. References to the payment of MTM/VM shall be construed as including obligations to transfer cash or other Permitted Cover as a result of changes to MTM/VM Prices (as the difference between MTM/VM Prices on different Business Days) following a recalculation of MTM/VM Price and not to the total amount of MTM/VM held by any Clearing Member or the Clearing House at any time.

(xxxiii) The term "**MTM/VM Price**" means: (i) in relation to F&O Contracts, Market Delivery Settlement Price; (ii) in relation to CDS Contracts, Mark-to-Market Price; and (iii) in relation to FX Contracts, FX Mark-to-Market Price.

(xxxiv) The term "**Negative Product Repayment Amounts**" means the negative single net sum determined in respect of a Clearing Member's Margin Account in respect of a

Relevant Contract Category that is subject to a termination in accordance with Rule 916(e).

(xxxv) The term "**Original/Initial Margin**" means: (i) in relation to F&O Contracts, Original Margin (including buyer's security and seller's security); (ii) in relation to CDS Contracts, Initial Margin; and (iii) in relation to FX Contracts, FX Original Margin and, in any case (i), (ii) or (iii) includes Margin under Rule 502(g).

(xxxvi) The term "**Outward MTM/VM Payments**", on any Business Day, means amounts in respect of MTM/VM that the Clearing House has calculated which would, but for Rule 914, be paid in full by the Clearing House to Contributing Clearing Members (whether relating to their Proprietary Account or any Customer Account) in respect of a particular Relevant Contract Category following the determination of MTM/VM Prices for Contracts of that Contract Category.

(xxxvii) The term "**Positive Product Repayment Amounts**" means the positive single net sum determined in respect of a Clearing Member's Margin Account in respect of a Relevant Contract Category that is subject to a termination accordance with Rule 916(e).

(xxxviii) The term "**Pre-Haircut Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the amount which would be paid by the Clearing House to such Clearing Member (expressed as a positive number) or by such Clearing Member to the Clearing House (expressed as a negative number) by way of Contractual Payments or MTM/VM in respect of such Margin Account on such Business Day in the absence of the application of the Distribution Haircut. In connection with CDS Contracts and any other Contract which is not re-priced daily in connection with the establishment of a Mark-to-Market Price (or any other similar price, however described or defined), for the avoidance of doubt, the Pre-Haircut Gains, Losses and Realised Cash Flows are calculated taking into account MTM/VM that is paid by the Clearing House to the Clearing Member (or would have been payable to the Clearing Member but for Rule 914) and Mark-to-Market Margin payable and paid by the Clearing Member to the Clearing House (without taking into account any reductions to such payments made pursuant to this Rule 914).

(xxxix) The term "**Product Termination Amount**" means the Negative CDS Repayment Amounts and the Positive CDS Repayment Amounts in respect of Contracts of a Set subject to termination under Rule 916.

(xl) The term "**Received MTM/VM**", on a particular Business Day following an Event of Default, means the amount that the Clearing House has actually received in cleared funds from Clearing Members (other than Defaulters) who were party to Contracts in a Relevant Contract Category in respect of MTM/VM.

(xli) The term "**Relevant Assessment Contributions**" means those Assessment Contributions (being F&O Assessment Contributions, CDS Assessment

Contributions or FX Assessment Contributions) which may be applied to losses relating to a Relevant Contract Category.

(xlii) The term "**Relevant Contract Category**" subject to Rule 914(h), means one of the three categories of Contract (F&O, CDS or FX) to which a Haircutting Determination or Termination Circular relates (as applicable in Rules 914 or 916 respectively), as designated by the Clearing House in the relevant Circular.

(xliii) The term "**Relevant Guaranty Fund**" means a Guaranty Fund (being the F&O Guaranty Fund, the CDS Guaranty Fund or the FX Guaranty Fund) in respect of which Guaranty Fund Contributions may be applied to losses relating to a Relevant Contract Category.

(xliv) The term "**Relevant Guaranty Fund Contributions**" means those Guaranty Fund Contributions (being F&O Guaranty Fund Contributions, CDS Guaranty Fund Contributions or FX Guaranty Fund Contributions) which may be applied to losses relating to a Relevant Contract Category.

(xlv) The term "**Relevant Membership Category**" means one of the three categories of membership (F&O, CDS or FX) to which a Haircutting Determination or Termination Circular relates (as applicable in Rules 914 or 916 respectively), as designated by the Clearing House in the relevant Circular.

(xlvi) The term "**Relevant Post Default Period**" means the period starting at the time of declaration of an Event of Default of a Clearing Member which clears a particular Contract Category and ending at the time of declaration of net sums in respect of any Proprietary Account and each Certain Account of the Defaulter.

(xlvii) The term "**Sequential CDS Guaranty Fund Depletion**" in respect of a particular CDS Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different CDS Clearing Members within a period of 30 or fewer Business Days; (ii) CDS Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the CDS Clearing Member has as a result paid to the Clearing House to replenish its CDS Guaranty Fund Contributions exceeds the total amount of CDS Guaranty Fund Contributions standing to the credit of that CDS Clearing Member in the Clearing House's accounts prior to the first Event of Default.

(xlviii) The term "**Sequential F&O Guaranty Fund Depletion**" in respect of a particular F&O Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different F&O Clearing Members within a period of 30 or fewer Business Days; (ii) F&O Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the F&O Clearing Member has as a result paid to the Clearing House to replenish its F&O Guaranty Fund Contributions exceeds the total amount of F&O Guaranty Fund Contributions standing to the credit of that

F&O Clearing Member in the Clearing House's accounts prior to the first Event of Default.

- (xlix) The term "**Sequential FX Guaranty Fund Depletion**" in respect of a particular FX Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different FX Clearing Members within a period of 30 or fewer Business Days; (ii) FX Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the FX Clearing Member has as a result paid to the Clearing House to replenish its FX Guaranty Fund Contributions exceeds the total amount of FX Guaranty Fund Contributions standing to the credit of that FX Clearing Member in the Clearing House's accounts prior to the first Event of Default.
- (l) The term "**Sequential Guaranty Fund Depletion**" means a Sequential CDS Guaranty Fund Depletion, a Sequential F&O Guaranty Fund Depletion, or a Sequential FX Guaranty Fund Depletion.
- (li) Intentionally omitted.
- (lii) Intentionally omitted.
- (liii) Intentionally omitted.
- (liv) Intentionally omitted.
- (lv) The term "**t**" means, in respect of any determination made in relation to a Business Day, such Business Day.
- (lvi) The term "**t-1**" means, in respect of any determination made in relation to a Business Day, the Business Day immediately prior to such Business Day.
- (lvii) The term "**Termination**" in respect of a Contract means termination, close-out, exercise, abandonment, or expiry pursuant to its terms and under the Rules.
- (lviii) The term "**Termination Circular**" has the meaning set out in Rule 916(a).
- (lix) The term "**Termination Price**" in respect of a Contract means the price determined by the Clearing House, which shall be applicable upon the termination, close-out, exercise, abandonment, or expiry of the Contract upon any termination pursuant to Rule 916.
- (lx) The term "**Total Cumulative Pre-Haircut Amount**" means, in respect of any Business Day, the sum of the Total Pre-Haircut Amount for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.

(lxi) The term "Total Pre-Haircut Amount" or "TPHA" means, in respect of any Business Day, the sum of the Pre-Haircut Gains, Losses and Realised Cash Flows in respect of all Margin Accounts of all Contributing Clearing Members on such Business Day.

(lxii) The term "Transfer Cost", on any Business Day, means the total amount payable by the Clearing House to Clearing Members that are not Defaulters as consideration for the entry into of replacement Contracts in a Relevant Contract Category to those to which a Defaulter was party (or otherwise Transferred Contracts), whether as a result of an auction, sale or otherwise pursuant to Part 9 plus any associated costs or expenses of the Clearing House.

(lxiii) The term "Uncovered Loss" or "UL" means in respect of the Clearing House on any Loss Distribution Day:

(A) where Rule 914(a)(ii)(A) applies, an amount calculated in accordance with the following formula:

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

where:

TPHA means the Total Pre-Haircut Amount;

CTC means the Cumulative Transfer Cost;

AR means the Available Resources; and

the Uncovered Loss as at the Last Call prior to Default shall be zero,

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

(B) where Rule 914(a)(ii)(B)(1) applies, the Estimated Payable Net Sum minus Available Non-Defaulter Resources; or

(C) where Rule 914(a)(ii)(B)(2) applies, the total of relevant net sums payable by but not received from the Defaulter minus Available Non-Defaulter Resources;

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

(lxiv) The term "Under-priced Auction" means a situation in which such number of Default Auctions as are provided for in the Default Auction Procedures have taken place but a full allocation of the auctioned Contracts has not occurred or the auction

price determined in such Default Auctions falls below any minimum or reserve price or above any maximum or reserve price set by the Clearing House.

**Rule 914** *Margin haircutting*<sup>9</sup>

(a) This Rule 914 shall only apply if the Clearing House has published its determination (any such determination, a "Haircutting Determination") that the following five conditions are all satisfied:

(i) an Event of Default has been declared but the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of its Proprietary Account and all of its different Customer Accounts;

(ii) the Clearing House determines that one or more of the following circumstances has arisen:

(A) the sum of Outward MTM/VM Payments and Transfer Cost (if any) in respect of a particular Contract Category would, in its view, exceed Available Resources plus Received MTM/VM for the same Contract Category;

(B) Available Resources are insufficient to meet the shortfalls, losses or liabilities of the Clearing House on relevant Accounts of the Defaulter, which may be determined if, in its view:

(1) any Estimated Payable Net Sum would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, would be available to meet the losses of the Clearing House represented by any net sum payable by the Defaulter were such net sum to be of an amount equal to the Estimated Payable Net Sum; or

(2) any net sums payable by the Defaulter that are calculated and declared by the Clearing House under Rule 906 (to the extent that the same have not been received by the Clearing House in cleared funds from the Defaulter) in total would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, are to be applied to meet the losses of the Clearing House represented by such net sums;

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

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<sup>9</sup> Rule 914 does not apply to the CDS Contract Category.



(iii) intentionally omitted;

(iv) no Termination Circular has been issued in respect of the Relevant Contract Category; and

(v) there has been no Clearing House Event.

The Clearing House may make such currency conversions at its discretion and as it seems fit for purposes of making any of such determinations listed in paragraphs (A) or (B), based on the rates of exchange that would be applicable in respect of amounts due to or from a Defaulter.

(b) If there is a Haircutting Determination, the Clearing House shall issue a Circular to that effect specifying:

(i) the Relevant Contract Category or Relevant Contract Categories that is or are affected (or, if Rule 914(h) applies, the affected Contract Set or Sets);

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

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

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

(c) Adjustment of MTM/VM payments for Cash Gainers. On each Loss Distribution Day for each Margin Account of each Contributing Clearing Member that is deemed to be a Cash Gainer, the relevant Contributing Clearing Member shall be required to pay the Clearing House an amount equal to any positive amount determined in accordance with the following formula separately for each of its Accounts or, as applicable, the Clearing House shall be required to pay the relevant Contributing Clearing Member the absolute value of any negative amount determined in accordance with the following formula (in each case, such amount the "**Cash Gainer Adjustment**"):

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

where:

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

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

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

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

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

- (d) Adjustment of MTM/VM Payments for Cash Losers. On each Loss Distribution Day for each Margin Account of each Contributing Clearing Member that is deemed to be a Cash Loser, the Clearing House shall be required to pay the absolute value of an amount (the "Cash Loser Adjustment") determined in accordance with the following formula separately for each of its Accounts:

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

where:

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

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

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

- (e) On each Loss Distribution Day, the Clearing House shall apply the payment or receipt of any Margin Account Adjustment as an offset against any payments from or receivable by the relevant Clearing Member or aggregate it with any required payment to the Clearing House, in accordance with Rule 302 or the Finance Procedures. MTM/VM obligations and related adjustments pursuant to this Rule 914 of Contributing Clearing Members that are not Defaulters shall then be paid and collected following such netting with other payment obligations as are provided for in Part 3 and the Finance Procedures.
- (f) Where Physical Settlement is applicable to any CDS Contract or obligations relating to physical delivery in respect of any F&O Contract are to be performed following expiry or the end of trading in the relevant Set, on any Business Day during a Loss Distribution Period, the Clearing House may make such adjustments as are necessary to the calculation of Cash Gainer Adjustment or Cash Loser Adjustment to reflect the payment flows arising from such Physical Settlement or delivery, based on the principle that the calculation of Cash Gainer Adjustment and Cash Loser Adjustment is designed to capture all profits and/or losses on Open Contract Positions during the relevant Loss Distribution Period.
- (g) Notwithstanding the effects of this Rule 914 during a Loss Distribution Period:
- (i) Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall

- continue to make timely delivery of, all property falling due for delivery to, the Clearing House in accordance with the Rules and Procedures, including obligations to pay Original/Initial Margin, Guaranty Fund Contributions and Assessment Contributions (in the latter case, subject always to the relevant caps set out in Rules 909, 910 and 911); and
- (ii) the Clearing House will remain liable to pay or release Margin and Permitted Cover to Clearing Members in the usual way, subject to netting to take account of any Cash Loser Adjustment.
- (h) All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the Haircutting Determination) has been made and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.
- (i) 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.
- (j) Where the Clearing House determines that none of the situations under which a Haircutting Determination could be made persists or is likely to persist or otherwise wishes to end any Loss Distribution Period, it shall issue a 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. The end of the Loss Distribution Period shall not preclude the Clearing House from making a further Haircutting 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 Haircutting Determination are satisfied.
- (k) Notwithstanding Rule 1102(k), this Rule 914(k) shall apply where the Clearing House (1) receives amounts from a Defaulter or another Clearing Member 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(k) 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 Contributing Clearing Members who are not then Defaulters (irrespective of whether they remain Clearing Members at the time of the recovery) who became liable to pay Cash Gainer Adjustments during the Loss Distribution Period for the Contract Category to which the receipts relate, with the payments determined on a pro rata basis based on each Clearing Member's Clearing Member Adjustment Amount in respect of the relevant Contract Category;
  - (ii) secondly, in accordance with Rule 1102(k).
- (l) Payments of Cash Gainer Adjustments and Cash Loser Adjustments may be made pursuant to Part 3 of the Rules and the Finance Procedures. This Rule 914 is without prejudice to the Clearing House's rights to set off or net any sum owed by a Clearing Member to the Clearing House against any sum payable by the Clearing House to a Clearing Member or to any other powers of the Clearing House under Parts 3, 9 or 11 or the Procedures, but the Clearing House may not take any action under those provisions to the extent inconsistent with the provisions of this Rule 914.
- (m) Nothing in this Rule 914 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member or Defaulter in respect of any amount, obligation or asset (not being Available Resources or Available Defaulter Resources) which is owed or due but unpaid or unsatisfied by such Clearing Member or Defaulter.
- (n) In carrying out any calculations or making any determinations pursuant to this Rule 914, 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.
- (o) The Clearing House shall apply all Received MTM/VM and Available Resources solely to meet Outward MTM/VM Payments and Transfer Costs, as envisaged under Parts 9 and 11 of the Rules and the Default Auction Procedures, to make reimbursement to Clearing Members under Rule 914(k) and to fund its obligations to meet any shortfall, loss or liability incurred by it under Contracts or these Rules as permitted under the Rules.

**Rule 915** *Intentionally omitted.*

**Rule 916** *Contract Termination following Certain Conditions or Under-priced Auction*<sup>10</sup>

- (a) If:
  - (i) Intentionally omitted.
  - (ii) the following conditions are satisfied:

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<sup>10</sup> Rule 916 does not apply to the CDS Contract Category.

(A) an Event of Default has been declared but the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of its Proprietary Account and all of its different Customer Accounts;

(B) the Clearing House determines that one or more of the following circumstances has arisen:

(1) its obligations to meet Outward MTM/VM Payments or the Transfer Cost, in its view, may not to be satisfied by applying Available Resources and the provisions set out in Rule 914;

(2) following either the declaration of all net sums in respect of a particular Event of Default or, where any net sum has not been declared, based on the calculation of an Estimated Payable Net Sum, the Clearing House, in its view, may either:

(a) become unable to pay its debts as they fall due; or

(b) have total liabilities which exceed its total assets,

in either case if it does not invoke the provisions set out in this Rule 916; or

(3) there has been a Under-priced Auction in respect of the Relevant Contract Category;

The Clearing House may make such currency conversions at its discretion and as it seems fit for purposes of making any of such determinations listed in paragraphs (1) or (2), based on the rates of exchange that would be applicable in respect of amounts due to or from a Defaulter;

(C) either (x) all of the Contracts of the Defaulter have been terminated, or (y) there has been a Default Auction or attempted Default Auction; and

(D) there has been no Clearing House Event; or

(iii) following the service of notices by Clearing Members under Rule 917, the Clearing House determines that there are insufficient Clearing Members interested in continuing to clear Contracts of a Relevant Contract Category for clearing of such Relevant Contract Category to remain viable,

and there has been no Clearing House Event, then the Clearing House may issue a Termination Circular.

(b) If the Clearing House is to terminate Contracts under this Rule 916, it must issue a Circular (a "Termination Circular") stating:

- (i) the Relevant Contract Category or Relevant Contract Categories in respect of which Contracts are to be terminated;
  - (ii) the Clearing House's intention to rely upon and apply Rule 916;
  - (iii) the applicable Termination Price for each Contract Set of the Relevant Contract Category or Relevant Contract Categories that are to be terminated;
  - (iv) the date and time on which termination will take place "**Termination Time**"; and
  - (v) such other matters as the Clearing House considers are relevant.
- (c) Upon and with effect immediately as from the Termination Time, every open Contract in the Relevant Contract Category shall be automatically terminated at the Termination Price, without the need for any further step by any party to such Contract. Neither the Clearing House nor any Clearing Member that is not a Defaulter shall be obliged to make any further payments, physical settlement or deliveries under any Contract which would, but for this Rule 916(c), have fallen due for performance on or after the Termination Time, and any obligations to make further payments or deliveries which would otherwise have fallen due shall be satisfied by settlement (whether by payment, set off or otherwise) of the Termination Amount and other payment and delivery obligations in relation to any Contracts and any other obligations pursuant to the Rules (including the repayment or redelivery of any Original/Initial Margin or Guaranty Fund Contribution) that is relevant solely to the Relevant Contract Category that is subject to a termination shall be payable or deliverable on the Business Day after the Termination Time and in accordance with the provisions of this Rule 916 in full discharge of the Clearing House's obligations in respect of Contracts of the Relevant Contract Category.
- (d) The Termination Price for Contracts in the same Set shall be the equal for all such Contracts and shall be the same for all Clearing Members that are party to Contracts of the same Set. Termination Prices shall be based upon the value of Contracts as at the Termination Time in accordance with the principles set out in this Rule 916(d) but without reference to the Loss Distribution Process in Rule 914. Such Termination Prices shall be calculated as the relevant loss or gain that would be calculated for purposes of items *L* and *A* in Rule 905(a) were a net sum to be required to be calculated, but based on:
- (i) for a Set:
    - (A) of F&O Contracts, the Market Delivery Settlement Price (excluding any such price determined or over-ridden by the Clearing House) or any other exchange delivery settlement price or other settlement price or market quotation established or published by a Market for which the Clearing House provided Clearing services for the relevant Contract Set prior to the Termination Date (or, if the Termination Date is not a business day for the relevant Market, the business day for the relevant Market immediately preceding the Termination Date);

(B) of CDS Contracts, the latest established Mark-to-Market Price for each relevant Set as at the Termination Time, determined using the methodology standardly applicable for determining Mark-to-Market Prices; or

(C) of FX Contracts, the latest established FX Market Price for each relevant Set as at the Termination Time, determined using the methodology standardly applicable for determining FX Market Prices;

provided that, prior to or around the time of giving effect to the termination, the Clearing House may, following consultation with the Risk Committee, determine that it should conduct a final price submission and price determination process to determine a Mark-to-Market Price or FX Market Price for purposes of termination in which it shall use its standard processes and procedures to determine the price and which Clearing Members shall participate in fully, in good faith, using their standard processes and procedures and in accordance with Applicable Laws.

(ii) if no price described in Rule 916(d)(i) exists or is determined, the last market quotation or settlement price established or published by another Exchange or Clearing Organisation (that is not subject to an Insolvency) selected by the Clearing House for an economically similar contract to the Set immediately prior to the Termination Time; or

(iii) if no price described in Rule 916(d) (i) or (ii) exists or is determined, at a commercially reasonable price as reasonably determined by the Clearing House by reference to objective and observable market prices at the relevant Termination Time, the mean settlement price for the Termination Time based on a survey of market participants active in Contracts similar to the Set or otherwise on such basis as the Clearing House determines with a view to obtaining a fair valuation.

(e) The maximum amount that may be paid or repaid in respect of the Relevant Contract Category and related liabilities and rights shall be calculated separately in respect of each Margin Account for each Clearing Member with a Relevant Membership Category that is not a Defaulter, by way of a net sum calculation using the calculation under Rule 906 *mutatis mutandis*, as if the Clearing Member were a Defaulter, bringing into account the Termination Price for purposes of calculating amounts *L* and *A* and all net Cash Gainer Adjustments relating to the Relevant Contract Category but otherwise solely bringing into account any amount for purposes of such calculation inasmuch as it relates to the Relevant Contract Category ("**Product Termination Amount**"). To the extent that any Original/Initial Margin, Surplus Collateral or other assets are held by the Clearing House for the account of a Clearing Member in respect of any Contract of a Relevant Contract Category (or any such asset becomes Surplus Collateral as a result of Termination), the amount of such Original/Initial Margin, assets or Surplus Collateral shall be included in the Product Termination Amount.

(f) Following its determination of the Product Termination Amount in relation to each Margin Account for each Clearing Member that is not a Defaulter, the Clearing House shall calculate the Available Product Funds as the sum equal to the aggregate of the Negative



Product Repayment Amounts in respect of each affected Clearing Member. Where the Available Product Funds are less than the aggregate amount of Positive Product Repayment Amounts, the Clearing House shall calculate the Discounted Product Repayment Amount for each Positive Product Repayment Amount payable to the Clearing Member by multiplying each such Positive Product Repayment Amount by the fraction determined by dividing  $A$  by  $B$ , where  $A$  is the Available Product Funds and  $B$  is the aggregate amount of Positive Product Repayment Amounts.

- (g) Prior to any amount being paid or collected pursuant to Rule 916(h), the Clearing House shall notify each Clearing Member that is due to receive a Positive Product Repayment Amount of such amount and any Discounted Product Repayment Amount and the extent to which this differs from the Product Termination Amount. This notification shall show in reasonable detail how any Discounted Product Repayment Amount has been calculated by the Clearing House. Where a Discounted Product Repayment Amount is notified to a Clearing Member, such amount shall be payable by the Clearing House and the Clearing House shall have no obligation (other than pursuant to Rule 916(i)) to pay either the Product Termination Amount or the Termination Price or any difference between any such amount or price and the Discounted Product Repayment Amount.
- (h) The Clearing House will issue payment instructions to collect (and each Clearing Member shall, immediately upon receipt of any such instructions, pay) each Negative Product Repayment Amount in respect of the Relevant Contract Category, prior to the Clearing House making payment to Clearing Members of Positive Product Repayment Amounts or Discounted Product Repayment Amount. All payments in respect of Negative Product Repayment Amounts shall be made by Clearing Members 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. If any Clearing Member fails to pay any Negative Product Repayment Amount due to the Clearing House, the Discounted Product Repayment Amount may be recalculated for each Margin Account and Contributing Clearing Member and, if so recalculated, will be notified to affected Contributing Clearing Members. Payment of any Discounted Product Repayment Amount shall constitute full satisfaction of the Clearing House's obligations and liabilities relating to the Relevant Contract Category.
- (i) Notwithstanding the termination process under this Rule 916, Clearing Members, including each Defaulter and the Clearing House, shall each remain liable to pay, and shall continue to make timely payment of, all amounts falling due, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery, in accordance with the Rules and Procedures, including: (A) pursuant to Contracts which are not terminated; (B) Original/Initial Margin in relation to Contracts that are not terminated; (C) replenishments of and returns in respect of Guaranty Fund Contributions in respect of any Guaranty Fund that is not a Relevant Guaranty Fund; and (D) Assessment Contributions subject always to the relevant caps set out in Rules 909, 910 and 911.
- (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(k), this Rule 916(n) shall apply where the Clearing House (1) receives amounts from a Defaulter or another Clearing Member 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 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;
- (ii) secondly, in accordance with Rule 914(k); and
- (iii) for the avoidance of doubt, thirdly, under Rule 1102(k) (as modified by Rule 914(k)).
- (o) Nothing in this Rule 916 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member or Defaulter in respect of any amount, obligation or asset (not being Available Resources or Available Defaulter Resources) which is owed or due but unpaid or unsatisfied by such Clearing Member or Defaulter.

(p) Payments of Negative Product Repayment Amounts, Positive Product Repayment Amounts and Discounted Product Repayment Amounts may be made following such netting with other payment obligations as are provided for in Part 3 and the Finance Procedures.

**Rule 917 Cooling-off period and Clearing Member termination rights<sup>11</sup>**

- (a) Upon the occurrence of any Cooling-off Period Trigger Event, the Clearing House shall issue a Circular notifying Clearing Members of the commencement of the Cooling-off Period, setting out the date on which such period is scheduled to end (and on the date on which the Cooling-off Termination Period is scheduled to end), and specifying the Relevant Contract Category.
- (b) ~~In the event of any termination pursuant to:~~ From the commencement of, and solely for the duration of, the Cooling-off Period:
- (i) None of the second sentences of any of Rule 909(c), Rule 910(c) or Rule 911(c) shall apply to a Clearing Member with the Membership Category of the Relevant Contract Category, until the end of the Cooling-off Period;
- (ii) Relevant Assessment Contributions under Rules 909, 910 and 911 for all Events of Default occurring or declared during the Cooling-off Period in relation to the Relevant Contract Category shall not exceed three times the amount of the Clearing Member's required Relevant Guaranty Fund Contribution immediately prior to the commencement of the Cooling-off Period (with any Assessment Contributions payable in respect of the Event of Default which occurred prior to the start of the Cooling-Off Period being counted towards reducing such maximum amount); and a Clearing Member in a Cooling-off Period that has made a total of three Relevant Assessment Contributions shall not be liable for any further replenishments of its Relevant Guaranty Fund Contribution or Relevant Assessment Contributions, regardless of how many additional Events of Default take place;
- (iii) for the avoidance of doubt, the required Guaranty Fund Contribution-based caps on the amount of Assessment Contributions for a Clearing Member in respect of each particular Relevant Contract Category shall apply on a per Event of Default basis, in the same way as set out in the first sentences of each of Rule 909(c), Rule 910(c) and Rule 911(c), in respect of each Event of Default occurring or declared during the Cooling-off Period;
- (iv) no replenishment of Relevant Guaranty Fund Contributions under Rule 1102(i) or Rule 1102(j) shall take place; and
- (v) there shall be no rebalancing, re-setting or recalculation of Relevant Guaranty Fund Contribution requirements or the total required amount in any Relevant Guaranty

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<sup>11</sup> Rule 917 does not apply to the CDS Contract Category.

Fund for purposes of determining liability for replenishment of Relevant Guaranty Fund Contributions or Relevant Assessment Contributions;

provided that the limits set out in this Rule 917(b) shall only apply if the Clearing Member continues during the Cooling-off Period to pay the Clearing House all amounts when due (subject to the caps and limits set out in this Rule 917(b)).

- (c) At any time during the Cooling-off Termination Period, a Clearing Member with the Relevant Membership Category may give written notice of termination of that Membership Category or of its membership of the Clearing House to the Clearing House.
- (d) At the end of the Cooling-off Period, the restrictions and requirements of Rule 917(b) shall cease to apply, subject to Rule 918(a)(ii), going forwards, to each Clearing Member that has not served a Termination Notice during the Cooling-off Termination Period.

**Rule 918** *Termination of membership*<sup>12</sup>

- (a) A Clearing Member that has served a Termination Notice, under Rule 917(c) is subject to the following requirements, obligations and provisions (and certain of these provisions are also applicable pursuant to other sorts of termination or withdrawal, pursuant to Rule 105(c), Rule 209(b) and Rule 209(d)):
- (i) ~~Rule 209(e)(i)(B);~~ it must use all reasonable endeavours, until such time (if any) as there is a subsequent Clearing House Event, to close out all of its open Contracts of the Relevant Contract Category prior to the Termination Close-Out Deadline Date;
  - (ii) ~~Rule 209(e)(ii)-(iii);~~ if it closes out all of its open Contracts in respect of the Relevant Contract Category prior to the Termination Close-Out Deadline Date and complies with the other requirements of this Rule 918, it shall maintain the benefit of the protections set out in Rule 917(b) and such provision shall not apply solely during the Cooling-off Period;
  - (iii) ~~Rule 209(f)(i)(B); or~~ after the Termination Notice Time, it shall only be entitled to submit Transactions relating to the Relevant Contract Category for clearing or become party to Contracts of the Relevant Contract Category which it can demonstrate have the overall effect of reducing Open Contract Positions in any Set of Contracts of a Relevant Contract Category or risks to the Clearing House associated with Contracts of a Relevant Contract Category, whether by hedging, novating, Transferring, terminating, liquidating or otherwise closing out such Contracts;
  - (iv) ~~Rule 209(f)(ii)-(iii);~~ if it has any open Contracts of the Relevant Contract Category with the Clearing House (whether recorded in a Proprietary Account or Customer Account) after the Termination Close-Out Deadline Date (and notwithstanding any

<sup>12</sup> Rule 918 does not apply to the CDS Contract Category. Rule 918 further does not apply to CDS Clearing Members (regardless of whether they are also F&O Clearing Members or FX Clearing Members).

provision of Rules 909 to 911 to the contrary) the Clearing Member shall as from the Termination Close-Out Deadline Date:

~~the provisions of Rule 209(e)(iii) shall apply. Rule 209(e) and Rule 209(f) are default rules for such purposes and Rule 907(g) applies equally to such provisions.~~

- (A) become liable to replenish any Relevant Guaranty Fund Contribution that would have fallen due for replenishment but has not been paid, become liable to have applied any Relevant Guaranty Fund Contribution that would have been applied but was not so applied and become liable to pay any Relevant Assessment Contribution that would have fallen due but has not been paid, in each case to the extent that the same would have been payable or applied but for its service of a Termination Notice and in each case in respect of any Event of Default affecting a Clearing Member with a Relevant Membership Category that has occurred subsequent to the Termination Notice Time;
- (B) become liable for further obligations to replenish any Relevant Guaranty Fund Contribution, have any Relevant Guaranty Fund Contribution applied or pay Relevant Assessment Contributions in the same way as any other Clearing Member with its Membership Categories in respect of any Event of Default occurring prior to the Termination Date; and
- (C) be subject to the Clearing House exercising rights in Part 9 to liquidate or Transfer the Open Contract Positions of the Clearing Member of the Relevant Contract Category (insofar as they relate to clearing of Contracts relating to a Relevant Contract Category) and otherwise deal with the Clearing Member's Contracts and property in the same way as if the Clearing Member were a Defaulter.
- (v) the Clearing House may call for additional Original/Initial Margin until such time as all of its open Contracts of the Relevant Contract Category have been terminated, and such Clearing Member shall pay such additional Original/Initial Margin to the Clearing House as is requested on time;
- (vi) it shall be obliged to participate in Default Auctions pursuant to the Default Auction Procedures in the same way as any other non-defaulting Clearing Member and subject to the provisions of Rule 908(h) in respect of all Events of Default occurring prior to the Cooling-off Period Trigger Event which gave rise to or extended the Cooling-off Termination Period during which the Clearing Member served its Termination Notice (or, if Rule 917(c) does not apply, the Termination Notice Time);
- (vii) there shall be no rebalancing, re-setting or recalculation of Relevant Guaranty Fund Contribution requirements or the total required amount in any Relevant Guaranty Fund for purposes of determining liability for replenishment of Relevant Guaranty

Fund Contributions or Relevant Assessment Contributions of the Clearing Member that has served a Termination Notice;

(viii) following termination of all open Contracts of the Relevant Contract Category to which a terminating Clearing Member (the "**Terminated Clearing Member**") was party in relation to a particular Customer Account or Proprietary Account, the Clearing House shall then declare a net sum (which may be declared in parts, as envisaged below) as due to or from the Terminated Clearing Member in accordance with Rules 904 and 906, in the same way as if the Terminated Clearing Member were a Defaulter but with the following modifications:

(A) references in Part 9 to "Default" or an "Event of Default" shall be read as references to a Terminated Clearing Member terminating its membership of the Relevant Membership Category and, in the case of a failure to close out Contracts of the Relevant Contract Category only in respect of a particular Customer Account or Proprietary Account, shall be construed as applying only in respect of such account;

(B) any net sum calculated in relation to the Terminated Clearing Member under Rule 906 will be calculated only with regard to rights, obligations and liabilities relating to the Relevant Contract Category and any such net sum which is payable to the Terminated Clearing Member shall not be paid by the Clearing House to such Terminated Clearing Member until the later of:

(1) ten Business Days after the date on which the termination of the Terminated Clearing Member's open Contracts of the Relevant Contract Category and the realisation or return of any Original/Initial Margin provided in respect of such Contracts, Relevant Guaranty Fund Contributions or other assets remaining credited to the Terminated Clearing Member's relevant Proprietary Account or Customer Account in respect of clearing of the Relevant Contract Category or otherwise in the Clearing House's possession in respect of clearing of the Relevant Contract Category is completed (subject always to Rule 102(q)); or

(2) if the Terminated Clearing Member has any unapplied Relevant Guaranty Fund Contributions, the date of expiry of the Guaranty Fund Period for the Relevant Guaranty Fund immediately following the Guaranty Fund Period current on the Termination Date;

(C) notwithstanding anything in Part 9 or elsewhere in these Rules:

(1) the Clearing House may at its discretion return amounts due to the Terminated Clearing Member in different currencies

or by way of transfer or return of non-cash Permitted Cover to the Terminated Clearing Member;

(2) the Clearing House may further pay any net sum calculated under Rule 906 and payable to the Terminated Clearing Member in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and

(3) the Clearing House may make part payment of any amounts due excluding the Relevant Guaranty Fund Contribution prior to the time specified in Rule 918(a)(viii)(B).

(D) it is acknowledged that any 'net sum' declared in accordance with this Rule 918(a)(viii) is not formally a 'net sum' for purposes of the Companies Act 1989;

(E) a Clearing Member subject to these provisions is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such Clearing Member in order for the Clearing House to exercise its rights under this provision or for the Clearing Member in question to receive any payment or return of assets; and

(F) references to Part 9 in any other Rules or in the Procedures, Circulars or Guidance shall be construed in accordance with this Rule 918 when they fall to be applied in relation to the termination of a Clearing Member's membership under this Rule 918 and any action taken by the Clearing House following such termination taking effect.

(b) If:

(i) a Clearing Member has served a Termination Notice under Rule 917(c);

(ii) there is an Event of Default or are Events of Default before the relevant Termination Date,

then the Clearing Member in question shall remain liable for the application of any then unapplied Relevant Guaranty Fund Contributions and unapplied Relevant Assessment Contributions (including those paid or which the Clearing Member is liable to pay under Rule 209(d)) for all such Events of Default (as if all such Events of Default had been declared by the Clearing House prior to the Termination Notice Time), subject to the general limits relating to particular Events of Default and all Events of Default referred to in this Rule 918.

(c) Any Termination Notice issued by a Clearing Member shall be irrevocable by the Clearing Member and membership may only be reinstated pursuant to a new application for membership following the close-out of all its open Contracts of the Relevant Contract Category.



(d) A Clearing Member whose membership in respect of the Relevant Membership Category has terminated shall, following the Termination Date, cease to be liable for Guaranty Fund Contribution replenishments under Rule 1102 in respect of Events of Default relating to the Relevant Contract Category or affected Membership Category has that occur after the Termination Date.

## **Part 10    Disciplinary Proceedings**

### **Rule 1001    *Complaints***

- (a) The Clearing House shall consider all complaints made to it in writing by a Clearing Member and may consider any complaints made to it by any other person. If the Clearing House, in its discretion, considers it appropriate or if it is otherwise compelled to do so under any Applicable Law, the Clearing House may refer the matter or make a report on the matter to a Market, Regulatory Authority or Governmental Authority.
- (b) In the case of a complaint which alleges a breach of these Rules, the Clearing House may authorise an investigation or commence disciplinary proceedings under this Part 10 or take no further action if it considers it disproportionate or otherwise, in its discretion.
- (c) The Clearing House shall inform the complainant in writing of any steps taken as a result of the complaint and of the result thereof.
- (d) In the event of a complaint against the Clearing House or any of its officers or employees (or agents in their capacity as such), such complaint shall be investigated in accordance with the Complaints Procedures and shall not otherwise be subject to this Part 10.

### **Rule 1002    *Investigations***

- (a) Investigations into breaches or alleged breaches of the Rules may be authorised and conducted by the Clearing House.
- (b) Upon determining that a complaint, matter or concern requires investigation, the Clearing House shall issue a Notice of Investigation ("**NoI**") notifying the Clearing Member concerned that an investigation has been commenced. The NoI shall be sent to the Clearing Member or the person concerned and shall contain a brief description of the matter under investigation.
- (c) In the course of conducting an investigation, the Clearing House may call for the assistance of such professional, legal or accounting advisers, Clearing Organisations, Exchanges, Regulatory Authorities and advisers or other Persons as it thinks fit. Any external adviser appointed by the Clearing House shall be required to treat all information obtained in the course of the investigation as confidential and to disclose it only to the Clearing House, save where compelled to disclose such documents to a third party under any Applicable Law.
- (d) Clearing Members shall co-operate fully with all investigations (whether or not such Clearing Member or person is the direct subject of such investigation). Without limitation, each Clearing Member shall:
  - (i) promptly furnish to the Clearing House such information and documentary and other material (including any information in electronic form) as may reasonably be requested (including without limitation in the case of Clearing Members, details of the Clearing Member's Customers' accounts);

- (ii) permit those persons appointed to carry out or assist in carrying out the investigation on reasonable notice, such notice being commensurate with the seriousness of the potential or alleged breach of the Rules and to enter any premises in any part of the world where the Clearing Member carries on its business or maintains its records during normal business hours for the purpose of carrying out such investigation. Each Clearing Member hereby irrevocably grants the Clearing House a licence for this purpose and shall procure a licence to the Clearing House from any Affiliated Person, agent or third party under its control that is necessary for this purpose;
  - (iii) exercise best endeavours to make available for interview such of the Clearing Member's Representatives as may reasonably be requested and use its best endeavours to ensure that such persons answer truthfully and fully any question put to him or them by or on behalf of the Clearing House. A Clearing Member who fails to procure any of its Representatives to attend an interview or hearing with the Clearing House and who fails in the reasonable opinion of the Clearing House to demonstrate good cause for such failure may be fined £1000 per day of non-attendance, such fine representing a genuine pre-estimate of the likely cost to the Clearing Houses attributable to such non-attendance, and the Clearing Member may be suspended until the Clearing Member takes reasonable steps to make its Representatives available on an alternative date;
  - (iv) make available for inspection such documents, records or other material in its possession, power or control as may reasonably be required and, upon request, provide copies of the same; and
  - (v) use its best endeavours to ensure that so far as possible its Representatives give similar co-operation.
- (e) Failure to co-operate with an investigation by the Clearing House, failure to provide information requested on a timely basis and concealment or destruction of evidence are each, for the avoidance of doubt, a breach of these Rules.
- (f) The Clearing House, having conducted an investigation into an alleged breach of the Rules, shall send to the relevant Clearing Member a letter of mindedness ("**Letter of Mindedness**") setting out its preliminary factual conclusions and its intended course of action in relation to the alleged breach.
- (g) Following its issuing of the Letter of Mindedness, the Clearing House shall invite the Clearing Member to either attend an initial meeting ("**IM**") or alternatively send the Clearing House written comments. The purpose of the IM or the written comments shall be to afford the Clearing Member an opportunity to correct any factual error it considers to be contained in the Letter of Mindedness. The IM is not intended to be a hearing. The proceedings of the IM will take place on a confidential basis, subject, in the case of the Clearing House, to Rule 106. The Clearing House and Clearing Member shall each be entitled to nominate up to four attendees, who may include lawyers or legal advisers.

- (h) Following the IM or the receipt of written comments from the Clearing Member (if received within a reasonable time) the Clearing House shall finalise its initial findings and communicate these in writing to the Clearing Member.
- (i) Without prejudice to any other powers, the possible powers of the Clearing House following the completion of its investigation and the communication of its initial findings to the Clearing Member include:
  - (i) to decide that no further action should be taken and notify any Clearing Member or other Person concerned in writing accordingly;
  - (ii) in the event of a minor breach, to issue a written warning (which shall be private save as provided for in Rule 1002(i)(vii) below) to the Clearing Member concerned (or, in the case of such a breach by some other Person, that Person with a copy to any Clearing Member with whom he was associated at the time of such breach);
  - (iii) to order that the Clearing Member concerned pay a fine which the Clearing House in its discretion regards as commensurate with a breach of the Rules, the amount of such fine to be appellable to the Appeals Panel directly without reference first to a Disciplinary Panel;
  - (iv) to commence disciplinary proceedings;
  - (v) to refer the matter for further enquiry where the Clearing House considers it necessary to investigate further;
  - (vi) to report the findings of the investigation and hand over any documents or communicate any information it has acquired whether during the course of its investigation or otherwise, to other Clearing Organisations, Exchanges, Regulatory Authorities or Governmental Authorities; or
  - (vii) to publish such findings as it has made following the IM and in such detail as the Clearing House deems appropriate where the matter under investigation is considered of relevance to the market in general or in the public interest, save that the Clearing Member shall be afforded an opportunity to comment on the text of such an announcement during a period of no less than 48 hours prior to publication, such period commencing on a Business Day;

provided that the Clearing House may, in an appropriate case, take more than one of the above actions in relation to any one Clearing Member and/or different actions in relation to different Clearing Members concerned in the same investigation or on similar facts.

### **Rule 1003     *Disciplinary Proceedings***

- (a) Disciplinary proceedings may be commenced by the Clearing House only when the Clearing House is satisfied (whether or not a formal investigation has taken place under this Part 10) that there is *prima facie* evidence of a breach of the Rules by a Clearing Member.

- (b) Upon determining that disciplinary proceedings should be commenced, the Clearing House must establish a Disciplinary Panel. Each Disciplinary Panel shall consist of a chairman sitting with two other persons. Such persons, including the Chairman, that are appointed to the Disciplinary Panel may be drawn from market practitioners, experts, lawyers or other suitable persons at the discretion of the Clearing House. Neither employees nor directors of the Clearing House or Clearing Member subject to disciplinary proceedings nor any of their Affiliated Persons, Representatives or Customers shall be appointed to a Disciplinary Panel. Expert assessors may be appointed, at the discretion of the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but not to vote. No person shall serve on or sit with a Disciplinary Panel if he has a personal or financial interest in or has been involved in any investigation into or previous disciplinary panel hearing on the matter under consideration.
- (c) The Clearing Member alleged to have committed the breach may object to any particular appointment to the Disciplinary Panel, which objection will be determined in the first instance by the chairman of the Disciplinary Panel and, in the event that the objection is in relation to the chairman of the Disciplinary Panel, the Chairman of the Clearing House.
- (d) In the event of any member of the Disciplinary Panel having or acquiring a personal or financial interest in the outcome or in any other way being or becoming incapacitated or permanently unavailable, the chairman of the Disciplinary Panel (or in the case of the chairman of the Disciplinary Panel, the Chairman of the Clearing House) may direct that the Disciplinary Panel shall continue to act with a reduced number or appoint another person to take the place of the retiring member of the Disciplinary Panel (and the disciplinary proceedings shall then proceed as if such person had been originally appointed in lieu of the first person) or may direct that a new Disciplinary Panel should be appointed to rehear the matter.
- (e) In the event of equality of votes, the chairman shall have a second or casting vote in reaching any determination.
- (f) The Clearing House may discontinue disciplinary proceedings or reach a settlement with the Clearing Member on such terms as it sees fit at any stage during the course of the disciplinary proceedings (including any Summary Procedure pursuant to Rule 1004 or any appeal).
- (g) When the Clearing House commences disciplinary proceedings, it shall send a written notice ("**Notice**") to the Clearing Member, setting out the alleged breach of the Rules, including a summary of facts relied upon in sufficient detail for a party in the Clearing Member's position properly to understand and respond to the allegations made against it.
- (h) The Clearing Member or other person the subject of a Notice shall have 20 days (or such further time as either the Clearing House or Disciplinary Panel may in their discretion allow) from the service of the Notice in which to provide a statement of defence (the "**Defence**") responding to all or any of the allegations, stating its intended pleas and what admissions of fact, if any, it makes. If no Defence has been served within 20 days of service of the Notice or such extended period as has been agreed, the Disciplinary Panel

- may in its discretion deem the Clearing Member to have accepted the facts and matters alleged in the Notice.
- (i) Having seen and considered the Defence, the Clearing House may proceed with the disciplinary proceedings, discontinue the disciplinary proceedings or deal with the matter as set out in Rule 1003(j).
  - (j) The Clearing House may at any time amend a Notice by deletion, alteration or addition, change to the Rule breach alleged in the Notice or addition of another Rule breach in the Notice provided that:
    - (i) the deletion, alteration, addition, change, amendment or variation is relevant to the course of conduct under investigation;
    - (ii) the essential character of the allegation or Rule breach has not been changed;
    - (iii) the Clearing Member or other respondent would not be substantially prejudiced in any defence he might wish to put before the Disciplinary Panel; and
    - (iv) the Disciplinary Panel has not previously and does not subsequently make a procedural ruling adverse to the Clearing House in connection with such deletion, alteration, addition, change, amendment or variation.
  - (k) For the avoidance of doubt, the power of the Clearing House to amend a Notice will exist where the Clearing House has in its discretion determined that a separate or unrelated *prima facie* breach of the Rules has been revealed during the course of the disciplinary proceedings. The Disciplinary Panel may order an adjournment at any stage upon an application by the Clearing House to enable such an alleged separate or unrelated *prima facie* breach to be investigated further. The Clearing House shall not be obliged to hold a further IM or otherwise consult with the Clearing Member in respect of additional or new alleged breaches.
  - (l) Upon amendment of a Notice, the Clearing Member shall have 14 days or such extended period as may be agreed with the Clearing House or as directed by the Disciplinary Panel to make any consequential amendment of its Defence. If no amended Defence has been served within 14 days of service of the amended Notice on the Clearing Member, the Disciplinary Panel may in its discretion deem the Clearing Member to have accepted the facts and matters alleged in the Notice.
  - (m) The Disciplinary Panel shall hear submissions on the matter of the alleged breach of the Rules and shall determine whether there has been a violation of the Rules and, if so, the appropriate sanction (if any) to be imposed. In carrying out this function, the Disciplinary Panel acting as a whole or through the Chairman may adopt such procedure as it thinks fit, including the holding of a pre-hearing review to hear procedural applications by the Clearing House or Clearing Member at any stage following its composition or in order to set a procedural timetable. Without limitation, the Disciplinary Panel may:

- (i) order the disclosure by the Clearing House or Clearing Member of such further statements, information, documents or other evidence as may be necessary;
  - (ii) allow either party to the proceedings to present to it further evidence within time limits ordered by the Disciplinary Panel;
  - (iii) issue directions and take such other steps as it considers appropriate for the clarification of the facts and issues and for the just and expeditious determination of the case;
  - (iv) balancing the need for cases to be dealt with expeditiously and the need for affected Persons to have sufficient opportunity to prepare and present their case: specify deadlines for the production of documents or hearings, which shall be binding on the parties;
  - (v) if it considers appropriate, but only with the express agreement of the Clearing House and the Clearing Member concerned (or the Person concerned and any associated Clearing Member), decide to determine the case upon written submissions and evidence placed before it;
  - (vi) in all other cases, give the opportunity to, or require, the Clearing House and the Clearing Member to attend hearings before the Disciplinary Panel and the Clearing House and the Clearing Member may call witnesses to give evidence and be questioned;
  - (vii) allow the Clearing Member and the Clearing House to be assisted or represented by any person, who may or may not be legally qualified;
  - (viii) call for any person to attend its hearings;
  - (ix) require hearings to be held in private unless the Clearing Member or Clearing House requests otherwise and the other consents; and
  - (x) appoint its own legal advisers.
- (n) The Disciplinary Panel shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach.
  - (o) The Disciplinary Panel shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact made by a court or any other Governmental Authority.
  - (p) If the Clearing House or Clearing Member should fail to meet a time limit imposed by the Disciplinary Panel or fail to attend a hearing, the Disciplinary Panel may in its discretion allow an extension of time, adjourn its proceedings or proceed, if necessary in the absence of the Clearing Member.



- (q) Upon having determined whether a breach of the Rules has been proven in accordance with the standard of proof set out in Rule 1003(n), the Disciplinary Panel shall communicate in writing its findings and particulars of any sanction determined to the Clearing House and to the Clearing Member concerned. Such findings and sanction shall be deemed conclusive and binding upon expiry of the time permitted for appeal or receipt by the Clearing House of any earlier written notice from the Clearing Member that such right of appeal will not be exercised. The Disciplinary Panel may in its absolute discretion communicate its findings to the parties and give them, where there is a finding that there has been a disciplinary breach, the opportunity to make representations as to the appropriate sanction(s) before deciding on the sanction(s).
- (r) Subject to Rule 1003(u), the sanctions which may be imposed on a person subject to the Rules by a Disciplinary Panel shall be communicated to the Clearing Member and shall not exceed the following:
- (i) the issue of a private warning or reprimand;
  - (ii) the issue of a public notice of censure;
  - (iii) in the case of a Representative, a finding that any Clearing Member for which such Representative is a director, controller or officer would not meet the Clearing House's membership criteria for any period or indefinitely;
  - (iv) in the case of a Clearing Member, disqualification (either indefinitely or for a fixed term) of any of its Representatives from being a Director or member of a committee or any panel of the Clearing House;
  - (v) a fine of any amount, to be paid on such terms as may be prescribed;
  - (vi) the disgorgement of any gain made by the Clearing Member or its Representatives in connection with the breach of the Rules;
  - (vii) a recommendation to the Clearing House to suspend membership for a period of time or terminate the membership of the Clearing Member;
  - (viii) the issue of an order requiring the Clearing Member or Representative found to have committed the breach to take such steps including making an order for compensation, as the Disciplinary Panel may direct, to remedy the situation including, without limitation, making an order for restitution to any affected person when the Clearing Member (or person concerned) has profited (or avoided a loss) from a breach at that person's expense;
  - (ix) in an appropriate case, more than one of the above actions in relation to any one Clearing Member and/or different actions in relation to different Clearing Members concerned in the same investigation or on similar facts; and
  - (x) any combination of the foregoing.

- (s) Following the suspension or expulsion of a Clearing Member, the Clearing House may make such directions as it thinks fit in respect of Contracts to which that Clearing Member is a party (including, without limitation, directions for the reduction, transfer or elimination of any of them).
- (t)
  - (i) The contravention of any sanction imposed or direction made under or pursuant to Rule 1003(q) may be treated for all purposes as a breach of the Rules.
  - (ii) A Disciplinary Panel may order any party to the proceedings to pay costs as it thinks appropriate, including, but not limited to the costs of running the Disciplinary Panel, further administration costs directly attributable to the disciplinary proceedings, costs incurred in the investigation, preparation and presentation of the case, including the costs of the Clearing House's and Disciplinary Panel's external advisers.
- (u) The following sanctions may be imposed by a Disciplinary Panel where the conduct in question is found by the Disciplinary Panel to result in whole or in part from the conduct of a Customer or client of a Customer of a Clearing Member:
  - (i) the issue of a private warning or reprimand naming the Customer or client of a Customer or any of their Representatives;
  - (ii) the issue of a public notice of censure naming the Customer or client of a Customer or any of their Representatives;
  - (iii) a recommendation to the Clearing House to suspend the Customer or client of a Customer (either indefinitely or for a fixed term) or any of their Representatives from being a Director or member of a committee or any panel or from being a Customer or client of a Customer of any Clearing Member of the Clearing House for purposes of Clearing or the Clearing of any particular product at the Clearing House;
  - (iv) a fine of any amount, to be paid by such Person as is specified by the Disciplinary Panel to the Clearing House (which shall be binding on the Customer or client of a Customer or any of their Representatives if so specified by the Disciplinary Panel), on such terms as may be prescribed;
  - (v) the disgorgement of any gain made by the Customer or client of a Customer or any of their Representatives in connection with the breach of the Rules payable by such Person as is specified by the Disciplinary Panel to the Clearing House (which shall be binding on the Customer or client of a Customer or any of their Representatives if so specified by the Disciplinary Panel), on such terms as may be prescribed;
  - (vi) in an appropriate case, more than one of the above actions in relation to any one Customer or client of a Customer or any of their Representatives and/or different

actions in relation to different Customers or clients of Customers or any of their Representatives concerned in the same investigation or on similar facts; and

- (vii) any combination of the foregoing.

The Disciplinary Panel shall only impose any sanction on a Person that it determines is or was or should be held responsible (whether solely, jointly or by way of contribution) for the relevant conduct. If sanctions are to be imposed as a result of any conduct of a Customer or client of a Customer, the relevant Clearing Member may present information or evidence to the relevant Disciplinary Panel as to whether any sanctions should be limited to those set out in this Rule 1003(u). If any pecuniary sanction imposed by a Disciplinary Panel is expressed to payable by a Customer or any of its clients or their Representatives but not to be payable by the Clearing Member, the Clearing Member shall not be liable for payment of, or to collect, any such amount.

**Rule 1004**     *Summary Procedure*

- (a) A Clearing Member may submit in writing a request that the Clearing House adopt a summary procedure under this Rule 1004 ("**Summary Procedure**") for disposing of the matter. Such notice may be served by the Clearing Member at any time prior to the formation of the Disciplinary Panel.
- (b) The Clearing House may in its discretion agree to refer the matter to the Summary Procedure and shall notify the Clearing Member of any such determination.
- (c) Upon reference of the matter to the Summary Procedure the Clearing House in its absolute discretion shall nominate three Directors or employees of the Clearing House or of any Clearing Member other than the Clearing Member subject to the Summary Procedure to hear the submissions of the Clearing Member into the alleged breach, who shall form a Summary Disciplinary Committee. The Clearing House shall nominate one such member of the Summary Disciplinary Committee to act as Chairman.
- (d) The Summary Disciplinary Committee shall make such directions as to the procedural conduct of the case before it as it sees fit.
- (e) The Summary Disciplinary Committee shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach. The Summary Disciplinary Committee shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact by a court or Governmental Authority.
- (f) The Summary Disciplinary Committee shall hold a private hearing at which the Clearing Member shall be present in order to put to the Clearing Member the alleged breach of the Rules and hear any submissions the Clearing Member or its Representatives make in relation to the alleged breach or the mitigation.

- (g) None of the Clearing House, the Clearing Member or the Summary Disciplinary Committee shall be represented by legal advisors at a hearing except with the prior express agreement of the Summary Disciplinary Committee.
- (h) Save as provided in Rule 1005, a Clearing Member that chooses to submit itself to the Summary Procedure expressly waives any right of appeal or review by any body including any court of law against any determination or ruling of the Summary Disciplinary Committee.
- (i) The Summary Disciplinary Committee shall, following the hearing, determine whether a Clearing Member has breached the Rules and shall determine what sanction or sanctions are to be imposed on the Clearing Member or Representative. Upon having determined in its absolute discretion whether a breach of the Rules has occurred, the Summary Disciplinary Committee shall communicate its findings and particulars of any sanction to the Clearing Member. The Summary Disciplinary Committee shall enjoy the full range of powers of sanction open to a Disciplinary Panel and may impose a combination of any such sanctions as it sees fit.
- (j) A determination or sanction imposed by the Summary Disciplinary Committee may be appealed under Rule 1005 to an Appeals Panel and shall not be referred to a Disciplinary Panel.

**Rule 1005**    *Appeals*

- (a)
  - (i) Within 14 days of receiving notice in writing of a decision of a Disciplinary Panel, a determination in writing of a Summary Disciplinary Committee or a notice of sanction (whichever is the later), or such longer period as the chairman of the Disciplinary Panel or the Summary Disciplinary Committee may in his discretion direct, a Clearing Member (whether current or former in the case of expulsion) or the Clearing House, or both, may appeal to an Appeals Panel by lodging with the Clearing House a notice of appeal in writing and by delivering a copy thereof to any other party to the disciplinary proceedings.
  - (ii) A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The grounds of the appeal may be any one or more of the following:
    - (A) the Disciplinary Panel or Summary Disciplinary Committee misdirected itself; or
    - (B) the Disciplinary Panel's or Summary Disciplinary Committee's decision was:
      - (1) one which no reasonable tribunal could have reached; or

- (2) unsupported by the evidence or was against the weight of the evidence; or
- (3) in the case of the Disciplinary Panel only, based on an error of law, or a misinterpretation of the Rules; or
- (C) the sanction imposed by the Disciplinary Panel, Clearing House or Summary Disciplinary Committee was excessive or, in the case of an appeal by the Clearing House, was insufficient or inappropriate; or
- (D) new evidence is available and that, had it been made available, the Disciplinary Panel, Clearing House or Summary Disciplinary Committee could reasonably have come to a different decision. This will not apply, in the case of the Disciplinary Panel only, if the evidence could have been adduced before the Disciplinary Panel by the exercise of reasonable diligence;

but no party may otherwise appeal.

- (iii) In the case of appeal against a sanction, the Appeals Panel may affirm, vary or revoke the sanction. The Appeals Panel may make such order or give such direction as it considers fit, including, in the case of an appeal from the Disciplinary Panel, a direction for a rehearing of the case by another newly constituted Disciplinary Panel.
- (b) Upon receipt of such a notice of appeal, the Clearing House shall appoint an Appeals Panel.
- (c) The Clearing House shall have 14 working days or such other period as the Chairman of the Disciplinary Panel or the Summary Disciplinary Committee, as the case may be (or the Appeals Panel in its exclusive discretion should it be constituted at such time), may allow from the service of the notice of appeal to serve notice of any grounds on which it objects to such appeal.
- (d) An Appeals Panel shall consist of a chairman sitting alone who shall be a solicitor admitted in England and Wales or a member of the Bar of England and Wales and who shall be appointed at the discretion of the Clearing House. No Members of any disciplinary panel, serving members of the Clearing House's committees dealing with any disciplinary or summary disciplinary proceedings, employees of the Clearing House or Clearing Member subject to disciplinary proceedings or any of their Affiliated Persons, Representatives or Customers shall be appointed to an Appeals Panel. Expert assessors may be appointed, at the discretion of the Chairman of the Appeals Panel, to sit with and advise the Appeals Panel but not to vote. No Person shall serve on or sit with an Appeals Panel if he has a personal or financial interest in or has been involved in any investigation into or previous disciplinary panel or Summary Disciplinary Committee hearing (including that which is the subject of the appeal itself) on the matter under consideration.
- (e) An Appeals Panel may adopt such procedure as it thinks fit and just, including, without limitation, the procedures described in Rule 1003(m) and shall be bound by Rule 1003(n)

- and (o). An Appeals Panel shall further enjoy all powers vested in disciplinary panels, procedural or otherwise. The appellant and the respondent may appear, make representations and (subject to any restriction on adducing new evidence), call witnesses, who may be examined and cross-examined.
- (f) The decision of an Appeals Panel shall be final and binding and there shall be no further appeal. The decision with reasons shall be notified to the appellant and respondent in writing without undue delay.

## Part 11 Guaranty Funds

### Rule 1101 *Establishment and parameters of the Guaranty Funds*

- (a) There shall be three separate Guaranty Funds operated by the Clearing House: the F&O Guaranty Fund, the CDS Guaranty Fund and the FX Guaranty Fund. F&O Clearing Members shall be liable to make and maintain F&O Guaranty Fund Contributions. CDS Clearing Members shall be liable to make and maintain CDS Guaranty Fund Contributions. FX Clearing Members shall be liable to make and maintain FX Guaranty Fund Contributions. The total amount required in each Guaranty Fund will be established by the Clearing House in accordance with the Finance Procedures. The total amount of the F&O Guaranty Fund will be expressed in USD and will be reviewed quarterly by the Clearing House. F&O Guaranty Fund Contributions will be designated for each Guaranty Fund Period and F&O Clearing Member as relating primarily to either Energy or LIFFE Clearing, based on the Margin requirements for such Contracts for the purposes of Rule ~~1103908~~(a)(~~ix~~vi) to (~~x~~vii). The total amounts of the CDS Guaranty Fund and the FX Guaranty Fund will be expressed in the currencies set out in the Finance Procedures and will be reviewed periodically by the Clearing House in advance of the end of each Guaranty Fund Period for each of those Guaranty Funds. If the Clearing House determines that the total amount in any Guaranty Fund is to change, Clearing Members will be given notice by Circular and will be informed of their new Guaranty Fund Contribution requirements prior to the start of the Guaranty Fund Period when the change becomes effective.
- (b) The Clearing House will communicate to Clearing Members by Circular the basis on which their Guaranty Fund Contributions are calculated.
- (c) The Clearing House may vary the parameters by reference to which Guaranty Fund Contributions are calculated from time to time and at any time upon issuing a Circular to Clearing Members. Any new parameters will come into effect on the date of the next applicable re-calculation of Guaranty Fund Contributions, unless Clearing Members are otherwise notified of a different effective date.
- (d) Clearing Members shall be required and liable to make Guaranty Fund Contributions in the amounts and at the times specified in accordance with Rule 1102 and Part 3, such that the Guaranty Funds are always at least of the size required pursuant to this Rule 1101, except in circumstances in which amounts are drawn down from any Guaranty Fund in order to meet liabilities resulting from an Event of Default and such amounts have not been replenished in accordance with this Part 11.
- (e) Separate amounts of CDS Guaranty Fund Contribution will be calculated based on the Proprietary Account Positions and Customer Account Positions (if any) relating to CDS Contracts of a CDS Clearing Member but this shall not result in any restriction on the use of any CDS Guaranty Fund Contribution following an Event of Default.



**Rule 1102**    *Clearing Members' Contributions*

- (a) Clearing Members' required Guaranty Fund Contributions at the start of each Guaranty Fund Period (or otherwise when a payment to a Guaranty Fund is due) will be calculated with reference to the total amount of the relevant Guaranty Fund established pursuant to Rule 1101.
- (b) CDS Guaranty Fund Contributions for each CDS Clearing Member will be calculated each Guaranty Fund Period based on criteria set out in the Finance Procedures and Circulars. F&O Guaranty Fund Contributions for each F&O Clearing Member will be proportional to its relative share of the total of the average of the highest valid daily intra-day calculations of each Clearing Member as calculated by the Clearing House, in accordance with Rule 503(b), over the preceding Guaranty Fund Period, subject to the minimum contribution of any one Clearing Member being USD 1 million. FX Guaranty Fund Contributions for each FX Clearing Member will be calculated each Guaranty Fund Period based on criteria set out in the Procedures and Circulars.
- (c) Required Guaranty Fund Contributions will be calculated or re-calculated, as the case may be, by the Clearing House for each Clearing Member and notified in advance of each Guaranty Fund Period.
- (d) Guaranty Fund Contributions must be in the form of cash or other Permitted Cover, subject to such limits as are specified in the Finance Procedures and Circulars.
- (e) In the event of any change in the value of non-cash Guaranty Fund Contributions, the Clearing Member may be required by the Clearing House to make an additional Guaranty Fund Contribution. Clearing Members will be permitted (and may be required) at any time to make additional Guaranty Fund Contributions (beyond the required Guaranty Fund Contributions) in order to reduce the risk that revaluations of non-cash Permitted Cover result in such additional Guaranty Fund Contributions falling due.
- (f) New Clearing Members admitted to membership of the Clearing House shall make the required minimum Guaranty Fund Contributions plus such other amount as the Clearing House at its discretion determines is necessary based on projected clearing activity. Any such Guaranty Fund Contributions by a new Clearing Member or Clearing Members 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.
- (g) F&O Guaranty Fund Contributions and CDS Guaranty Fund Contributions of a Clearing Member following termination of its membership of the Clearing House will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period beginning after the Transfer, close out or termination of all of its positions at the Clearing House and the payment of all other amounts due to the Clearing House (subject to F&O Guaranty Fund Contributions and CDS Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the F&O Guaranty Fund Period or CDS Guaranty Fund Period pursuant to Rule 1102(l)). ~~F&O~~CDS Guaranty Fund Contributions

of a Clearing Member that is both an F&O Clearing Member and a CDS Clearing Member ~~or FX Clearing Member~~ following termination of its membership of the Clearing House in relation to ~~F&O Contracts under Rule 209(f) will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period for the F&O Guaranty Fund beginning after the Transfer, close out or termination of all of its F&O Contract positions at the Clearing House and the payment of all other amounts due to the Clearing House in respect of F&O Contracts (subject to F&O Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period for the F&O Guaranty Fund pursuant to Rule 1102(l)).~~ CDS Guaranty Fund Contributions of a Clearing Member that is both an F&O Clearing Member and a CDS Clearing Member following termination of its membership of the Clearing House in relation to CDS under ~~Rule 209(f)~~ CDS under Rule 209(f)<sup>13</sup> under the Continuing CDS Rule Provisions will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period for the CDS Guaranty Fund beginning after the Transfer, close out or termination of all of its CDS Contract positions at the Clearing House and the payment of all other amounts due to the Clearing House in respect of CDS Contracts (subject to CDS Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period for the CDS Guaranty Fund pursuant to Rule 1102(l)). The obligation of the Clearing House to return to an ~~FXF&O~~ FXF&O Clearing Member any remaining portion of its ~~FXF&O~~ FXF&O Guaranty Fund Contributions in the event of termination of its ~~FXF&O~~ FXF&O clearing membership of the Clearing House will be satisfied by accounting for the amount of that obligation in the determination of a net sum under Rule ~~906,906 or~~ 906, a net sum as referred to in Rule ~~209(e) or a net sum in respect of FX under Rule 209(g)918(a)(viii)~~ 209(e) or a net sum in respect of FX under Rule 918(a)(viii) (whichever is applicable or the earlier), in either case payable by the Clearing House or the Clearing Member to the other, provided that in the case of a termination under Rule 209(c)(i)(A), the determination of the portion of such F&O Guaranty Fund Contributions to be so taken into account may be made up to and including the first date of the first new F&O Guaranty Fund Period beginning after the transfer or liquidation of all of the relevant F&O Clearing Member's F&O Contracts at the Clearing House. The obligation of the Clearing House to return to an FX Clearing Member any remaining portion of its FX Guaranty Fund Contributions in the event of termination of its FX clearing membership of the Clearing House will be satisfied by accounting for the amount of that obligation in the determination of a net sum under Rule 906 or a net sum as referred to in Rule 918(a)(viii) (whichever is applicable or the earlier), in either case payable by the Clearing House or the Clearing Member to the other, provided that in the case of a termination under Rule 209(c)(i)(A), the determination of the portion of such FX Guaranty Fund Contributions to be so taken into account may be made up to and including the first date of the first new FX Guaranty Fund Period beginning after the transfer or liquidation of all of the relevant FX Clearing Member's FX Contracts at the Clearing House.

- (h) Each Clearing Member will be entitled to receive interest payments on its cash Guaranty Fund Contributions each quarter through the banking arrangements detailed in Part 3 and no accommodation charges will apply to any non-cash Guaranty Fund Contributions.

<sup>13</sup> This reference is to Rule 209(f) under the Continuing CDS Rule Provisions.

- (i) In the event of application of any Guaranty Fund Contributions taking place pursuant to Rule ~~1103~~908 or Rule ~~1104~~1103, the Clearing House shall:
- (i) give notice by Circular of the amount by which each relevant Guaranty Fund has been reduced;
  - (ii) notify each Clearing Member and any relevant former Clearing Member of the amount for which it is liable to make additional Guaranty Fund Contributions in order to replenish the relevant Guaranty Funds;
  - (iii) in the case of any F&O Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House F&O Contributions by Circular;
  - (iv) in the case of any CDS Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House CDS Contributions by Circular; and
  - (v) in the case of any FX Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House FX Contributions by Circular.

~~F&O—Clearing Members must make required F&O~~replenishment Guaranty Fund Contributions ~~within ten Business Days of the notice under Rule 1102(i)(ii), or on or before such other later date as is specified by the Clearing House at its discretion. CDS Clearing Members must make required CDS Guaranty Fund Contributions and FX Clearing Members must make required FX Guaranty Fund Contributions prior to the opening of business on the first Business Day following the notice under Rule 1102(i)(ii) or such other later date as is specified by the Clearing House at its discretion.~~ upon demand (subject to Rule 917 and Rule 918(a)(ii)).<sup>14</sup> The Clearing House shall ensure that any specified new Clearing House Contributions are held by it in accordance with Rule ~~1104~~1103(e) at the same date as Guaranty Fund Contributions for the relevant Guaranty Fund 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 F&O Assessment Contributions pursuant to Rule ~~1105 (subject only to the provisions of Rules 1105(h) and 1105(i))~~ or 909, CDS Assessment Contributions pursuant to Rule ~~1106~~910 (subject only to the provisions of Rules ~~1106~~910(h) and ~~1106~~910(i)), or FX Assessment Contributions pursuant to Rule ~~1107 (subject only to the provisions of Rules 1107(h) and 1107(i))~~ 911.

- (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, only when an Event of Default is declared

<sup>14</sup> This sentence shall not apply to CDS Clearing Members. In accordance with the Continuing CDS Rule Provisions, CDS Clearing Members must make required CDS Guaranty Fund Contributions prior to the opening of business on the first Business Day following the notice under Rule 1102(i)(ii) or such other later date as is specified by the Clearing House at its discretion.

contemporaneously in respect of the Clearing Member that identified that Disclosed Principal Member in accordance with Rule 201(h)) (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 \(a\)\(ii\)](#) in the case of ~~FX Guaranty Fund Contributions only to Rule 1107(h) and Rule 1107(i)~~[the F&O and FX Contract Categories](#)) 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* in respect of 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), 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, subject 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 ~~1104~~[908](#) or in substitution of any such assets; and (ii) making reimbursement payments to Persons that have made Assessment Contributions (in that order of priority).
- (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 CDS Clearing Member's business changes in a material way, a CDS 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 CDS 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.
- (n) If an FX Clearing Member's business changes in a material way, an FX 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 Procedures, which determinations shall be made and conducted at the Clearing House's discretion, then the Clearing House may require the FX 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 — Application of Assets upon an Event of Default~~**

~~(a) — Notwithstanding any other provision of these Rules:~~

- ~~(i) — if a Defaulter was only liable to make a Guaranty Fund Contribution relating to a single Membership Category, no Guaranty Fund Contributions, Assessment Contributions, or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising from the Event of Default;~~
- ~~(ii) — if a Defaulter was only liable to make Guaranty Fund Contributions relating to two Membership Categories, no Guaranty Fund Contributions, Assessment~~

~~Contributions or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising from the Event of Default;~~

- ~~(iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Members that are not Defaulters or accrued in each case after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default shall not be applied to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising in connection with that prior Event of Default;~~
- ~~(iv) if a Defaulter was an F&O Clearing Member and had one or more other Membership Categories, and any F&O Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(g)(ii)(A), no non-defaulting F&O Clearing Member shall be required to make any payment to replenish the F&O Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the F&O Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the F&O Guaranty Fund (other than pursuant to Rule 903(e), if the non-defaulting F&O Clearing Member becomes a Defaulter);~~
- ~~(v) if a Defaulter was a CDS Clearing Member and had one or more other Membership Categories and any CDS Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(g)(ii)(B), no non-defaulting CDS Clearing Member shall be required to make any payment to replenish the CDS Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the CDS Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the CDS Guaranty Fund (other than pursuant to Rule 903(e), if the non-defaulting CDS Clearing Member becomes a Defaulter);~~
- ~~(vi) if a Defaulter was an FX Clearing Member and had one or more other Membership Categories, and any FX Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(g)(ii)(C), no non-defaulting FX Clearing Member shall be required to make any payment to replenish the FX Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the FX Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the FX Guaranty Fund (other than pursuant to Rule 903(e), if the non-defaulting FX Clearing Member becomes a Defaulter);~~
- ~~(vii) without limitation to the generality of Rule 102(q), this Rule 1103 is subject to Rule 102(q);~~



- ~~(viii) for the avoidance of doubt, in connection with an Event of Default of a Non-FCM/BD-CDS Clearing Member which has a Designated CDS Customer Account, references to the application of Guaranty Fund Contributions, Assessment Contributions and Clearing House Contributions in these Rules include the use by the Clearing House of amounts representing the proceeds of such contributions for payment of amounts it is obliged to pay the Defaulter under Rule 906(i) (and included in item SC of the net sum calculation in Rule 906(a));~~
- ~~(ix) where the loss or shortfall relates to Energy Contracts: (A) the Clearing House F&O Initial (Energy) Contribution shall be applied and exhausted prior to applying the Clearing House F&O Initial (LIFFE) Contribution; (B) the F&O Guaranty Fund Contributions relating to Energy Contracts shall be applied and exhausted prior to applying the F&O Guaranty Fund Contributions relating to LIFFE Contracts; (C) the Clearing House F&O GF (Energy) Contribution shall be applied and exhausted prior to applying the Clearing House F&O GF (LIFFE) Contribution; and (D) F&O Assessment Contributions relating to Energy Contracts shall be applied and exhausted prior to applying F&O Assessment Contributions relating to LIFFE Contracts;~~
- ~~(x) where the loss or shortfall relates to LIFFE Contracts: (A) the Clearing House F&O Initial (LIFFE) Contribution shall be applied and exhausted prior to applying the Clearing House F&O Initial (Energy) Contribution; (B) the F&O Guaranty Fund Contributions relating to LIFFE Contracts shall be applied and exhausted prior to applying the F&O Guaranty Fund Contributions relating to Energy Contracts; (C) the Clearing House F&O GF (LIFFE) Contribution shall be applied and exhausted prior to applying the Clearing House F&O GF (Energy) Contribution; and (D) F&O Assessment Contributions relating to LIFFE Contracts shall be applied and exhausted prior to applying F&O Assessment Contributions relating to Energy Contracts; and~~
- ~~(xi) in determining whether a loss or shortfall relates to Energy Contracts or to LIFFE Contracts for the purposes of Rule 1103(a)(ix) and (x), the principles set out in Rule 1103(e) for the attribution of liabilities to particular Contract Categories shall be applied as if Energy Contracts and LIFFE Contracts were two separate Contract Categories, *mutatis mutandis*.~~
- ~~(b) In the case of a Defaulter that was an F&O Clearing Member but neither a CDS Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:~~
- ~~(i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);~~



- ~~(ii) — second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount *GFC* in Rule 906(a);~~
- ~~(iii) — third, any amounts falling under *SC* or *OA* in Rule 906(a) in the order specified in Rule 906(a) (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 1103(b)(iv) to (vii) 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);~~
- ~~(iv) — fourth, the Clearing House F&O Initial Contribution;~~
- ~~(v) — fifth:
 
  - ~~(A) — F&O Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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* 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;~~~~
- ~~(vi) — sixth, subject to Rule 1104(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~~
- ~~(vii) — seventh, F&O Assessment Contributions received by the Clearing House pursuant to Rule 1105.~~
- ~~(c) — In the case of a Defaulter which was a CDS Clearing Member but neither an F&O Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall (including, in respect of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:
 
  - ~~(i) — first, any amounts falling under *A*, *D*, *C* or *M* in Rule 906(a), in the order specified in Rule 906(a);~~~~

- ~~(ii) — second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a);~~
- ~~(iii) — third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (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 1103(c)(iv) to (vi) 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) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);~~
- ~~(iv) — fourth, the Clearing House CDS Initial Contribution;~~
- ~~(v) — fifth:
 
  - ~~(A) — CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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 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~~~~
- ~~(vi) — sixth, CDS Assessment Contributions received by the Clearing House pursuant to Rule 1106.~~
- ~~(d) — In the case of a Defaulter which was an FX Clearing Member but neither an F&O Clearing Member nor a CDS Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall to the Clearing House upon or following any Event of Default (including in connection with any net sum calculated under Rule 906), in the following order of recourse:
 
  - ~~(i) — first, any amounts payable to the Defaulter in respect of Contracts, any Margin and any other amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);~~
  - ~~(ii) — second, FX Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such FX Guaranty Fund Contributions falling under amount GFC in Rule 906(a);~~~~

- ~~(iii) — third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (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 (iv) to (vi) 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);~~
- ~~(iv) — fourth, the Clearing House FX Initial Contribution;~~
- ~~(v) — fifth:~~
- ~~(A) — FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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* 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~~
- ~~(vi) — sixth, FX Assessment Contributions received by the Clearing House pursuant to Rule 1107.~~
- ~~(e) — In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rules 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;~~
- ~~(ii) — if an Account in respect of which a positive net sum was produced was used solely for the Clearing of CDS Contracts, then the net sum declared in respect of such account (or, for a Designated CDS Customer Account of a Non-FCM/BC CDS Clearing Member, the Gross Margin Shortfall where such Gross Margin Shortfall is not zero) shall be the sole element of the CDS Default Amount in respect of such Account;~~
- ~~(iii) — if an Account in respect of which a positive net sum was produced was used solely for the Clearing of FX Contracts, then the net sum declared in respect of such~~

~~account shall be the sole element of the FX Default Amount in respect of such Account;~~

~~(iv) if an Account in respect of which a positive net sum was produced was used for the Clearing of Contracts consisting of more than one Contract Category then:~~

~~(A) the CDS Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of CDS Contracts, Margin or Surplus Collateral in respect of positions in CDS Contracts, Guaranty Fund Contributions to the CDS Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to CDS Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below (including, in the case of a Designated CDS Customer Account and a Non-FCM/BD CDS Clearing Member, any obligation of the Clearing House to the Defaulter pursuant to Rule 906(i));~~

~~(B) the F&O Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of F&O Contracts, Margin or Surplus Collateral in respect of F&O Contracts, Guaranty Fund Contributions to the F&O Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to F&O Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below; and~~

~~(C) if the Defaulter was an FX Clearing Member, the FX Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of FX Contracts, Margin or Surplus Collateral in respect of positions in FX Contracts, Guaranty Fund Contributions to the FX Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to FX Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below.~~

~~"Non-Exclusive Assets" constitute any amounts or assets included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one Contract Category. Non-Exclusive Assets may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:~~

~~(A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a loss or shortfall ("**Shortfall Default Amounts**"), the Non-Exclusive Assets must be included in the calculation~~

~~of the Shortfall Default Amounts in proportion to the Margin requirements of the Defaulter for each Contract Category corresponding to each Shortfall Default Amount immediately prior to the Event of Default until one of the Shortfall Default Amounts would represent zero; and~~

~~(B) subject to the process in Rule 1103(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a loss or shortfall to the Clearing House, the Non-Exclusive Assets must be included in the relevant calculation so as to eliminate or reduce the loss or shortfall *pro rata* as to the losses.~~

~~"Non-Exclusive Liabilities" constitute any liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one Contract Category. Non-Exclusive Liabilities may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:~~

~~(A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a surplus ("Surplus Default Amounts"), the Non-Exclusive Liabilities must be included in the calculation of the Surplus Default Amounts in proportion to the Margin requirements of the Defaulter for each Contract Category corresponding to each Surplus Default Amount immediately prior to the Event of Default until one of the Surplus Default Amounts would represent zero; and~~

~~(B) subject to the process in Rule 1103(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a loss or shortfall to the Clearing House, Non-Exclusive Liabilities must first be included in the relevant calculation against the surplus *pro rata* as to the surpluses.~~

~~(f) In any instance in which assets are to be applied pursuant to Rule 1103(g)(ii), (iii) (iv) or (v), the Clearing House shall publish the amount of any F&O Default Amount, CDS Default Amount and/or FX Default Amount that is required to be calculated under Rule 1103(e) in a Circular. For the avoidance of doubt, any F&O Default Amount, CDS Default Amount and/or FX Default Amount so published shall not constitute a "net sum" for purposes of Rule 906, the Companies Act 1989 or the Settlement Finality Regulations.~~

~~(g) In the case of a Defaulter which held multiple Membership Categories, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall (including, in the case of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member~~

~~(including in connection with any net sum calculated under Rule 906), in the following order of recourse:~~

- ~~(i) — first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);~~
- ~~(ii) — second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a), provided that:~~
  - ~~(A) — if a Defaulter was an F&O Clearing Member, F&O Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall or loss relevant to the F&O Default Amount;~~
  - ~~(B) — if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall or loss relevant to the CDS Default Amount;~~
  - ~~(C) — if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any liabilities relevant to the FX Default Amount;~~
  - ~~(D) — if a Defaulter was an F&O Clearing Member, subject to Rule 1103(g)(ii)(A), (B) and (C), any F&O Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall or loss but only after the earliest date on which non-defaulting F&O Clearing Members are required to replenish the F&O Guaranty Fund pursuant to Rule 1103(a)(iv) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an F&O Clearing Member;~~
  - ~~(E) — if a Defaulter was a CDS Clearing Member, subject to Rule 1103(g)(ii)(A), (B) and (C), any CDS Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall or loss but only after the earliest date on which non-defaulting CDS Clearing Members are required to replenish the CDS Guaranty Fund pursuant to Rule 1103(g)(v) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting a CDS Clearing Member; and~~
  - ~~(F) — if a Defaulter was an FX Clearing Member, subject to paragraphs (A), (B) and (C), any FX Guaranty Fund Contributions of the Defaulter may be applied against any other liabilities of the Defaulter but only after the earliest date on which non-defaulting FX Clearing Members are required to replenish the FX Guaranty Fund pursuant to Rule 1103(a)(vi) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an FX Clearing Member;~~

~~(iii) — third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (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 1103(g)(iv) to (vii) 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) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);~~

~~(iv) — fourth:~~

~~(A) — if a Defaulter was an F&O Clearing Member, 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 1103(f) and in circumstances in which the F&O Default Amount represents a shortfall or loss;~~

~~(B) — if a Defaulter was a CDS Clearing Member, 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 1103(f) and in circumstances in which the CDS Default Amount represents a shortfall or loss; and~~

~~(C) — if a Defaulter was an FX Clearing Member, 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 1103(f) and in circumstances in which the FX Default Amount represents a shortfall or loss;~~

~~(v) — fifth:~~

~~(A) — Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (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, the Clearing House F&O GF Contribution;~~

~~(C) — if a Defaulter was a CDS Clearing Member, the Clearing House CDS GF Contribution; and~~

~~(D) — if a Defaulter was an FX Clearing Member, the Clearing House FX GF Contribution;~~

~~provided that:~~



- ~~(1) — if a Defaulter was an F&O Clearing Member, F&O Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House F&O GF Contribution shall only be applied towards and up to the extent of any F&O Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the F&O Default Amount less any assets applied in accordance with Rule 1103(g)(iv)(A) represents a shortfall or loss;~~
- ~~(2) — if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House CDS GF Contribution shall only be applied towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the CDS Default Amount less any assets applied in accordance with Rule 1103(g)(iv)(C) represents a shortfall or loss;~~
- ~~(3) — if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House FX GF Contribution shall only be applied towards and up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the FX Default Amount less any assets applied in accordance with Rule 1103(g)(iv)(C) represents a shortfall or liability;~~

and provided further that:

- ~~(X) — in the case of a Defaulter who was an F&O Clearing Member, F&O Guaranty Fund Contributions and the Clearing House F&O GF Contribution are applied on a basis *pro rata* to the sum of the total of all F&O Guaranty Fund Contributions (excluding F&O Guaranty Fund Contributions of the Defaulter in question 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;~~
- ~~(Y) — in the case of a Defaulter who was a CDS Clearing Member, CDS Guaranty Fund Contributions and the Clearing House CDS GF Contribution are applied on a basis *pro rata* to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter in question 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, FX Guaranty Fund Contributions and the Clearing House FX GF Contribution are applied on a basis *pro rata* to the sum of the total of all FX Guaranty Fund~~

~~Contributions (excluding FX Guaranty Fund Contributions of the Defaulter in question 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;~~

- ~~(vi) — sixth, if a Defaulter was an F&O Clearing Member, subject to Rule 1104(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, 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 relating to the F&O Default Amount and any shortfall relating to any other Default Amount(s); and~~
- ~~(vii) — seventh, if a Defaulter was an F&O Clearing Member, F&O Assessment Contributions received by the Clearing House pursuant to Rule 1105, if a Defaulter was a CDS Clearing Member, CDS Assessment Contributions received by the Clearing Member pursuant to Rule 1106, and, if a Defaulter was an FX Clearing Member, FX Assessment Contributions received by the Clearing House pursuant to Rule 1107.~~
- ~~(h) — For the avoidance of doubt, this Part 11, including this Rule 1103, is part of the Clearing House's "default rules" for the purposes of the Companies Act 1989. The requirements of this Rule 1103 shall apply and be binding upon the Clearing House and all Clearing Members including upon the event of any Insolvency affecting the Clearing House or any Clearing Member. The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members (including any Insolvency Practitioner with powers over any Clearing Member or other Representative) 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 11; 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 11.~~~~

**Rule 1103**     ~~**Rule 1104**~~ *Use of Guaranty Fund Contributions*

- (a) Following an Event of Default, the Clearing House shall apply the Guaranty Fund Contribution of a Defaulter only pursuant to Rules 906 and ~~1103~~908. Otherwise, Guaranty Fund Contributions of a Clearing Member may be applied or used by the Clearing House at its discretion in any of the following manners to the extent of the relevant Clearing Member's Guaranty Fund Contribution:

- (i) against any amount that becomes due to the Clearing House by that Clearing Member for any reason (including but not limited to Margin, amounts due pursuant to Contract Terms, fees, dues, assessments and fines);
- (ii) where applicable, to meet the Clearing House's costs involved in facilitating the transfer of Contracts recorded in a Clearing Member's Customer Position Account, if that Clearing Member is experiencing financial difficulty or during a termination of membership to another Clearing Member; or
- (iii) provisionally, in respect of any actual or potential shortfall, loss, obligation or liability if the Clearing House at its discretion determines that Guaranty Fund Contributions are likely to be applied pursuant to [Rules 908](#), [Rule 1103](#) ~~or [Rule 1104\(a\)\(i\)](#)~~, or (ii), provided that to the extent that any Guaranty Fund Contributions are not applied pursuant to ~~[Rule 1103](#)~~ [Rules 908](#), [1103](#) ~~or [Rule 1104\(a\)\(i\)](#)~~ or (ii) within a reasonable period of time, the Clearing House shall account to the relevant Clearing Member for the difference between the amount by which any Guaranty Fund Contributions were actually applied and the amount by which the same were provisionally applied under this ~~[Rule 1104](#)~~ [1103](#)(a)(iii).

In any such case, to the extent that Guaranty Fund Contributions are called upon, Guaranty Fund Contributions may be sold, substituted, set off, transferred, assigned, pledged, repledged or have any lien, interest or charge created over them at the Clearing House's discretion, in order to realise proceeds therefrom.

- (b) 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.
- (c) 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 1103](#)~~ [908](#). Any purported Encumbrance of a Clearing Member in respect of any Guaranty Fund Contribution shall be null and void.
- (d) 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 1103](#)~~ [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. As a result, it is possible that: (A) insurance receipts may be available to (and applied by) the Clearing House at an earlier order to that specified in ~~[Rule 1103](#)~~ [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; (B) no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period; (C) the insurance policies (if any) may not provide cover in respect of certain Events of Default; or (D) there may be no default insurance either generally or in respect of any particular products cleared by the Clearing House. 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 ~~1104~~1103(d) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.

- (e) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Finance Procedures, of each of the Clearing House Contributions. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain amounts equal to the total of the Clearing House Contributions in a separate account from its other assets and to use such amounts only for the purposes of meeting shortfalls arising directly or indirectly from Defaults in accordance with this Part 11. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain Clearing House F&O Contributions, Clearing House CDS Contributions and Clearing House FX Contributions in a separate account or accounts for each such contribution. This Rule ~~1104~~1103(e) shall not restrict the Clearing House from investing such amounts in any way that it is able to invest Guaranty Fund Contributions made by Clearing Members.
- (f) The total amount of Guaranty Fund Contributions for each Guaranty Fund and any Clearing House Contributions applied in connection with any Event of Default shall be notified to Clearing Members in a Circular prior to the same being applied.

**~~Rule 1105 — Powers of Assessment: F&O~~**

~~(a) — Powers of assessment under this Rule 1105 may be exercised by the Clearing House following an Event of Default occurring in respect of an F&O Clearing Member and a loss or shortfall to the Clearing House arising as a result of the liabilities of a Defaulter that is or was an F&O Clearing Member not having been met pursuant to:~~

~~(i) — Rule 1103(b)(i) to (vi); or~~

~~(ii) — Rule 1103(g)(i) to (vi), only to the extent that the F&O Default Amount, less any assets applied in accordance with Rule 1103(g)(iv)(A), Rule 1103(g)(v)(B) and Rule 1103(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the F&O Default Amount), represents a shortfall or loss.~~

~~Immediately upon the Clearing House certifying the F&O Assessment Amount in a Circular, all F&O Clearing Members (other than Defaulters) shall indemnify the Clearing~~

~~House and become liable to pay F&O Assessment Contributions to the Clearing House in accordance with Rule 1105(b).~~

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

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

~~where:~~

~~FOAA is the F&O Assessment Amount certified by the Clearing House in a Circular as the total shortfall or loss following an Event of Default occurring after funds referred to in Rule 1105(a) have been applied, 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 and excluding the Clearing House F&O Contributions);~~

~~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 LIFFE Contracts based on the designation of Guaranty Fund Contributions to Energy Contracts or LIFFE Contracts under Rule 1101(a).~~

- ~~(c) — A Person that ceases to be an F&O Clearing Member shall be subject to obligations to pay F&O Assessment Contributions only in respect of:~~

~~(i) — Events of Default declared in relation to Clearing Members that are F&O Clearing Members occurring prior to the Termination Date (whether or not declared prior to the Termination Date); and~~

~~(ii) — any Events of Default declared in relation to Clearing Members that are F&O Clearing Members occurring after the Termination Date but whilst it still has an F&O Guaranty Fund Contribution with the Clearing House;~~

~~provided that:~~

- ~~(A) — the aggregate amount of all F&O Assessment Contributions in respect of all Events of Default for any such Person shall be capped at: (I) in the case of a Person terminating its membership of the Clearing House following an Event of Default or Events of Default where F&O Guaranty Fund Contributions have been applied, an amount equal to twice that Person's~~

~~F&O Guaranty Fund Contribution immediately prior to the first Event of Default being declared which led to the relevant application of F&O Guaranty Fund Contributions; or (II) in the case of a Person otherwise terminating its membership of the Clearing House, an amount equal to twice that Person's F&O Guaranty Fund Contribution on the date of service of the relevant notice of termination; and~~

~~(B) F&O Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1105(h) shall be included for the purpose of calculating such a cap.~~

- ~~(d) If the F&O Assessment Amount is not met by F&O Assessment Contribution receipts from F&O Clearing Members due to non-payment by an F&O Clearing Member or F&O Clearing Members, Default of an F&O Clearing Member or F&O Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in F&O Assessment Contribution receipts shall be re-assessed against all F&O Clearing Members (other than Defaulters and Persons that have defaulted in making an F&O Assessment Contribution) in accordance with Rule 1105(a), as if such shortfall were the F&O Assessment Amount, provided that no F&O Clearing Member shall be liable to pay F&O Assessment Contributions in respect of a single Default for an amount greater than twice its F&O Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1105(e), further F&O Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire F&O Assessment Amount has been met in full by F&O Assessment Contributions.~~
- ~~(e) All F&O Assessment Contributions shall become due and payable at such time as the Clearing House notifies to F&O Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.~~
- ~~(f) If, after any F&O Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid F&O Assessment Contribution in whole or in part from the Defaulter or a Person liable to pay an unpaid F&O Assessment Contribution, 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 F&O Clearing Members (excluding any Defaulter) *pro rata* in respect of paid F&O Assessment Contributions relating to the Event of Default in question, subject to the Clearing House 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 or loss following exhaustion of the assets specified in Rule 1103 or in substitution of any such assets.~~
- ~~(g) Amounts transferred to the Clearing House by F&O 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 F&O Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of F&O 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). F&O Assessment Contributions do not constitute Guaranty Fund Contributions.~~

- ~~(h) Upon an Event of Default or Events of Default occurring and F&O Assessment Contributions becoming due, a Clearing Member liable to pay an F&O Assessment Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which F&O Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), an F&O Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the F&O Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further F&O Assessment Contribution payments pursuant to Rules 1105(c) and 1105(d). Rule 209(e)(iii), Rule 209(c)(iii)(D), Rule 209(d) (subject as aforesaid), Rule 209(e)(i) and Rule 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1105(h) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for F&O Assessment Contributions was made.~~
- ~~(i) Upon an Event of Default or Events of Default occurring and F&O Assessment Contributions becoming due, a Clearing Member that is both an F&O Clearing Member and a CDS Clearing Member and which is liable to pay an F&O Assessment Contribution shall be entitled to terminate its status with the Clearing House as an F&O Clearing Member (maintaining its status as a CDS Clearing Member) with effect from the moment immediately prior to the time at which F&O Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f), a Clearing Member that terminates its status as an F&O Clearing Member in such circumstances shall have no further obligation to replenish the F&O Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further F&O Assessment Contribution payments pursuant to Rules 1105(c) and 1105(d). Any Clearing Member terminating its status as an F&O Clearing Member pursuant to this Rule 1105(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for F&O Assessment Contributions was made.~~

**~~Rule 1106 — Powers of Assessment: CDS~~**

- ~~(a) Powers of assessment under this Rule 1106 may be exercised by the Clearing House following an Event of Default occurring in respect of a CDS Clearing Member and a shortfall or loss to the Clearing House arising as a result of the liabilities of a Defaulter that is or was a CDS Clearing Member not having been met pursuant to:~~
- ~~(i) Rule 1103(c)(i) to (v); or~~
- ~~(ii) Rule 1103(g)(i) to (vi), only to the extent that the CDS Default Amount, less any assets applied in accordance with Rule 1103(g)(iv)(B) or Rule 1103(g)(v)(C) and Rule 1103(g)(vi) (in the latter case, only to the extent certified by the Clearing~~



~~House as applying in relation to the CDS Default Amount), represents a shortfall or loss:~~

~~Immediately upon the Clearing House certifying the CDS Assessment Amount in a Circular, all CDS Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay CDS Assessment Contributions to the Clearing House in accordance with Rule 1106(b):~~

~~(b) The CDS Assessment Contribution payable by each CDS Clearing Member shall be the amount:~~

$$\frac{CAA \times CGF(CM)}{CGF(all)}$$

~~where:~~

~~CAA is the CDS Assessment Amount certified by the Clearing House in a Circular as the total shortfall or loss following an Event of Default occurring after funds referred to in Rule 1106(a) have been applied, provided that the total CDS Assessment Amount shall be no greater than the amount equal to the total required CDS Guaranty Fund Contributions of all CDS Clearing Members immediately prior to the relevant Event of Default (less CDS Guaranty Fund Contributions of Defaulters and excluding the Clearing House CDS Contributions);~~

~~CGF(CM) is the required CDS Guaranty Fund Contribution of the relevant CDS Clearing Member immediately preceding the relevant Event of Default; and~~

~~CGF(all) is the total required CDS Guaranty Fund Contributions of all CDS Clearing Members immediately preceding the relevant Event of Default (less CDS Guaranty Fund Contributions of Defaulters and excluding the Clearing House CDS Contributions).~~

~~(c) A Person that ceases to be a CDS Clearing Member shall be subject to obligations to pay CDS Assessment Contributions only in respect of:~~

~~(i) Events of Default declared in relation to Clearing Members that are CDS Clearing Members occurring prior to the Termination Date (whether or not declared prior to the Termination Date); and~~

~~(ii) any Events of Default declared in relation to Clearing Members that are CDS Clearing Members occurring after the Termination Date but whilst it still has a CDS Guaranty Fund Contribution with the Clearing House;~~

~~provided that:~~

~~(A) the aggregate amount of all CDS Assessment Contributions in respect of all Events of Default for any such Person shall be capped at: (I) in the case of a Person terminating its membership of the Clearing House following an Event of Default or Events of Default where CDS Guaranty Fund~~

~~Contributions have been applied, an amount equal to that Person's CDS Guaranty Fund Contribution immediately prior to the first Event of Default being declared which led to the relevant application of CDS Guaranty Fund Contributions; or (II) in the case of a Person otherwise terminating its membership of the Clearing House, an amount equal to that Person's CDS Guaranty Fund Contribution on the date of service of the relevant notice of termination; and~~

- ~~(B) CDS Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1106(h) shall be included for the purpose of calculating such a cap.~~
- ~~(d) If the CDS Assessment Amount is not met by CDS Assessment Contribution receipts from CDS Clearing Members due to non-payment by a CDS Clearing Member or CDS Clearing Members, Default of a CDS Clearing Member or CDS Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in CDS Assessment Contribution receipts shall be re-assessed against all CDS Clearing Members (other than Defaulters and Persons that have defaulted in making a CDS Assessment Contribution) in accordance with Rule 1106(a), as if such shortfall were the CDS Assessment Amount, provided that no CDS Clearing Member shall be liable to pay CDS Assessment Contributions in respect of a single Default for an amount greater than its CDS Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1106(c), further CDS Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire CDS Assessment Amount has been met in full by CDS Assessment Contributions.~~
- ~~(e) All CDS Assessment Contributions shall become due and payable at such time as the Clearing House notifies to CDS Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.~~
- ~~(f) If, after any CDS Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid CDS Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid CDS Assessment Contribution, 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 CDS Clearing Members (excluding any Defaulter) *pro rata* in respect of paid CDS Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 1103 or in substitution of any such assets.~~
- ~~(g) Amounts transferred to the Clearing House by CDS 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 CDS Assessment Contributions. Neither the exercise of powers of assessment by the Clearing~~

~~House nor the payment of CDS 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). CDS Assessment Contributions do not constitute Guaranty Fund Contributions.~~

- ~~(h) Upon an Event of Default or Events of Default occurring and CDS Assessment Contributions becoming due, a Clearing Member liable to pay a CDS Assessment Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which CDS Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), a CDS Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to Rules 1106(c) and 1106(d). Rule 209(e)(iii), Rule 209(c)(iii)(D), Rule 209(d) (subject as aforesaid), Rule 209(e)(i) and Rule 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1106(h) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.~~
- ~~(i) Upon an Event of Default or Events of Default occurring and CDS Assessment Contributions becoming due, a Clearing Member that is both an F&O Clearing Member and a CDS Clearing Member and which is liable to pay a CDS Assessment Contribution shall be entitled to terminate its status with the Clearing House as a CDS Clearing Member (maintaining its status as an F&O Clearing Member) with effect from the moment immediately prior to the time at which CDS Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f), a Clearing Member that terminates its status as a CDS Clearing Member in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to Rules 1106(c) and 1106(d). Rule 209(f) shall apply in relation to any such termination. Any Clearing Member terminating its status as a CDS Clearing Member pursuant to this Rule 1106(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.~~

**~~Rule 1107 — Powers of Assessment: FX~~**

- ~~(a) Powers of assessment under this Rule 1107 may be exercised by the Clearing House following an Event of Default occurring in respect of an FX Clearing Member and the liabilities of a Defaulter that is or was an FX Clearing Member not having been met pursuant to:~~
- ~~(i) Rule 1103(d)(i) to Rule 1103(d)(v); or~~
- ~~(ii) Rule 1103(g)(i) to Rule 1103(g)(vi), only to the extent that the FX Default Amount, less any assets applied in accordance with Rule 1103(g)(iv)(C) or Rule~~

~~1103(g)(v)(D) and Rule 1103(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the FX Default Amount) represents a shortfall or a liability.~~

~~Immediately upon the Clearing House certifying the FX Assessment Amount in a Circular, all FX Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay FX Assessment Contributions to the Clearing House in accordance with Rule 1107(b).~~

- ~~(b) The FX Assessment Contribution payable by each FX Clearing Member shall be the amount:~~

$$\frac{FAA \times FGF(CM)}{FGF(all)}$$

~~where:~~

~~FAA is the FX Assessment Amount certified by the Clearing House in a Circular as the total shortfall following an Event of Default occurring after funds referred to in Rule 1107(a) have been applied, provided that the total FX Assessment Amount shall be no greater than the amount equal to twice the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately prior to the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters);~~

~~FGF(CM) is the required FX Guaranty Fund Contribution of the relevant FX Clearing Member immediately preceding the relevant Event of Default; and~~

~~FGF(all) is the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately preceding the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters).~~

- ~~(c) A Person that is or was an FX Clearing Member and that has served a termination notice shall be subject to obligations to pay FX Assessment Contributions only in respect of:~~

~~(i) Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring prior to the Termination Notice Time; and~~

~~(ii) any Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring after the Termination Notice Time but prior to the Termination Close-Out Time;~~

~~provided that FX Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1107(h) or Rule 1107(i) shall be included for the purpose of calculating such a cap.~~

- ~~(d) If the FX Assessment Amount is not met by FX Assessment Contribution receipts from FX Clearing Members due to non-payment by an FX Clearing Member or FX Clearing Members, Default of an FX Clearing Member or FX Clearing Members or otherwise, the~~

~~Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall shall be re-assessed against all FX Clearing Members (other than Defaulters and Persons that have defaulted in making an FX Assessment Contribution) in accordance with Rule 1107(a), as if the shortfall were the FX Assessment Amount, provided that no FX Clearing Member shall be liable to pay FX Assessment Contributions in respect of a single Default for an amount greater than twice its FX Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1107(c), further FX Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire FX Assessment Amount has been met in full by FX Assessment Contributions.~~

- ~~(e) All FX Assessment Contributions shall become due and payable at such time as the Clearing House notifies to FX Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.~~
- ~~(f) If, after any FX Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid FX Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid FX Assessment Contribution, 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 FX Clearing Members (excluding any Defaulter) *pro rata* in respect of paid FX Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 1103 or in substitution of any such assets.~~
- ~~(g) Amounts transferred to the Clearing House by FX 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 FX Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of FX 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). FX Assessment Contributions do not constitute Guaranty Fund Contributions.~~
- ~~(h) Upon an Event of Default or Events of Default being declared and either FX Assessment Contributions becoming due or there being a Sequential FX Guaranty Fund Depletion, a Clearing Member liable either to pay an FX Assessment Contribution or to have its FX Guaranty Fund Contribution applied (as applicable) shall be entitled to terminate its membership of the Clearing House in accordance with and subject to the provisions of this Rule 1107(h). Subject as set out in Rule 209(g), an FX Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the FX Guaranty Fund pursuant to Rule 1102(i) as from the Termination Notice Time. Such a Clearing Member shall nonetheless remain liable for further application of its FX Guaranty Fund and further FX Assessment Contribution payments pursuant to Rule 1107(c)(i) and (d), in either case in connection with any Event of Default declared by the Clearing House~~

~~prior to the Termination Notice Time. For the avoidance of doubt, Rule 209(c)(iii), Rule 209(d), Rule 209(e)(i) (ii), Rule 209(g) and Rule 209(h) shall apply in relation to any such termination. To be valid, a termination notice under this Rule 1107(h) must be delivered to the Clearing House: (i) between the first date on which a call for FX Assessment Contributions was made in respect of the relevant Event of Default and the date falling 10 days after such date; or, as applicable (ii) between the first date on which the Clearing House gave notice that FX Guaranty Fund Contributions have been applied in circumstances which constitute a Sequential FX Guaranty Fund Depletion and the date falling 10 days after such date.~~

- ~~(i) Upon an Event of Default or Events of Default being declared and either FX Assessment Contributions becoming due or there being a Sequential FX Guaranty Fund Depletion, an FX Clearing Member with multiple Membership Categories which is liable either to pay an FX Assessment Contribution or to have its FX Guaranty Fund Contribution applied (as applicable) shall be entitled to terminate its status with the Clearing House as an FX Clearing Member (maintaining any other Membership Category or Categories) in accordance with and subject to the provisions of this Rule 1107(i). Subject as set out in Rule 209(g), a Clearing Member that has duly served notice of termination of its status as an FX Clearing Member in such circumstances shall have no further obligation to replenish the FX Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member, after the Termination Notice Time, shall nonetheless remain liable for further application of its FX Guaranty Fund and further FX Assessment Contribution payments pursuant to Rule 1107(e)(i) and (d), in either case in connection with any Event of Default declared by the Clearing House prior to the Termination Notice Time. For the avoidance of doubt, Rule 209(g) and Rule 209(h) shall apply in relation to any such termination. To be valid, a termination notice under this Rule 1107(i) must be delivered to the Clearing House: (i) between the first date on which a call for FX Assessment Contributions was made in respect of the relevant Event of Default and the date falling 10 days after such date; or, as applicable (ii) between the first date on which the Clearing House gave notice that FX Guaranty Fund Contributions have been applied in circumstances which constitute a Sequential FX Guaranty Fund Depletion and the date falling 10 days after such date.~~

## Part 12 Settlement Finality Regulations and Companies Act 1989

### Rule 1201 *Introduction and Interpretation*

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



- (iii) enable the Clearing House and Clearing Members to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
  - (iv) enable transfers, assignments and novations of Contracts between Clearing Members or following a Default;
  - (v) enable transfers of Non-Cash Collateral to or to the order of the Clearing House and Clearing Members;
  - (vi) enable Bilateral CDS Transactions and CDS Trade Particulars to give rise to CDS Contracts;
  - (vii) enable ICE Endex Block Transactions, ICE OTC Block Transactions, ICE Futures Europe Block Transactions, ICE Futures US Block Transactions and LIFFE Block Transactions to give rise to F&O Contracts;
  - (viii) facilitate physical settlement obligations under CDS Contracts and obligations for the delivery of Deliverables that are SFD Securities under LIFFE Contracts;
  - (ix) facilitate the transfer between the Clearing House and Participating Exchanges of Linked Incoming Contracts, Linked Outgoing Contracts and Participating Exchange Transactions pursuant to Rule 410; and
  - (x) facilitate supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in respect of Contracts or Permitted Cover.
- (g) The term "**Indirect Participant**" means any Disclosed Principal Member or Customer, provided that: (i) it is an 'indirect participant', within the meaning of the Settlement Finality Regulations, in the Designated System; (ii) the identity of that Disclosed Principal Member or Customer has been notified to the Clearing House in writing by the Clearing Member; (iii) the Clearing House has accepted such notification and treatment as an indirect participant in writing (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, an Indirect Participant); and (iv) such Disclosed Principal Member or Customer has executed such agreement as is prescribed by the Clearing House from time to time in order for it to become contractually bound by these Rules and this Part 12 in particular.
- (h) The term "**Intermediary Financial Institution**" means any bank or branch used by an Approved Financial Institution, whether as banker, corresponding banker, intermediary or agent, for the fulfilment of a Payment Transfer Order, that is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).
- (i) The term "**Non-Cash Collateral**" means any Permitted Cover that is in the form of an SFD Security.

- (j) The term "**Participant**" means the Clearing House, each Clearing Member, each Participating Exchange and each Approved Financial Institution, in the case of a Clearing Member or Approved Financial Institution to the extent that it is a 'participant' (as defined in the Settlement Finality Regulations) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, a Participant).
- (k) The term "**Payment Transfer Order**" means a payment transfer order (as defined in the Settlement Finality Regulations) that is a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order subject to this Part 12.
- (l) The term "**Securities Transfer Order**" means a securities transfer order (as defined in the Settlement Finality Regulations) that is a Position Transfer Order, Collateral Transfer Order, F&O Block Clearing Order, CDS Clearing Order, CDS Physical Settlement Order, LIFFE Delivery Order, Linked Exchange Incoming Order or Linked Exchange Outgoing Order subject to this Part 12.
- (m) The term "**SFD Security**" means a 'security', as defined in the Settlement Finality Regulations.
- (n) The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (o) The term "**ICE Post Trade and Clearing Systems**" or the "**ICE Systems**" means the trade registration, clearing processing and finance hardware and software used by the Clearing House and Clearing Members from time to time, as further described in the Procedures.
- (p) No transfer orders (as defined in the Settlement Finality Regulations) shall arise, enter the Designated System or become irrevocable under these Rules except as set out in this Part 12.
- (q) The Clearing House and each Clearing Member with a Pledged Collateral Account that is a Participant in the Designated System acknowledge and agree that: (i) all forms of Permitted Cover provided as Pledged Collateral constitute 'realisable assets'; and (ii) Pledged Collateral is provided under a 'charge or a repurchase or similar agreement' which has been entered into 'for the purpose of securing rights and obligations potentially arising in connection with a designated system', for purposes of the Settlement Finality Regulations. Accordingly, the Clearing House and each such Clearing Member that is a Participant in the Designated System intend and agree that: (a) Pledged Collateral constitutes both 'collateral security' and 'collateral security in connection with participation in a designated system' for purposes of the Settlement Finality Regulations; and (b) the Clearing Membership Agreement, Pledged Collateral Addendum, Rules and Contracts insofar applicable to Pledged Collateral constitute a 'collateral security charge' in respect of the Pledged Collateral, for purposes of the Settlement Finality Regulations.

**Rule 1202     *Transfer Orders Arising***

- (a) Subject to regulation 20 of the Settlement Finality Regulations, a Payment Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) in relation to a Contract that forms in accordance with Rule 401(a) (excluding any F&O Contract arising under Rule 401(a)(vii) and further excluding any CDS Contract arising under Rule 401(a)(x) pursuant to the Clearing of CDS Trade Particulars relating to a Bilateral CDS Transaction already recorded in Deriv/SERV); at the time that a Contract arises under Rule 401 (such Payment Transfer Order, a "**New Contract Payment Transfer Order**");
  - (ii) the Clearing House sending an instruction pursuant to Rule 302 (such Payment Transfer Order, a "**Credit/Debit Payment Transfer Order**");
  - (iii) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank (such Payment Transfer Order, a "**AFI-CB Payment Transfer Order**"); or
  - (iv) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the Concentration Bank to a Clearing House Account (such Payment Transfer Order, a "**CB-AFI Payment Transfer Order**").
- (b) Subject to regulation 20 of the Settlement Finality Regulations, a Securities Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) if either:
    - (A) the Clearing House, the relevant Market (if any) and the two Clearing Members involved (both being Participants) have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another Clearing Member pursuant to Rule 408(a)(i); or
    - (B) the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member (being a Participant) pursuant to the Clearing House's powers under Rule 903, Rule 904, Rule 905 or otherwise,

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

- (ii) the Clearing House accepts, through the ICE Systems, that a Clearing Member has validly requested either:
  - (A) the transfer of Non-Cash Collateral to or to the order of the Clearing House; or
  - (B) a transfer to that Clearing Member or to its order of Non-Cash Collateral (such Securities Transfer Order, in either case, a "**Collateral Transfer Order**");
- (iii) the Clearing House receiving full, complete and correct information in relation to an ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Block Transaction from the relevant Market (such Securities Transfer Order, a "**F&O Block Clearing Order**");
- (iv) in respect of CDS Trade Particulars submitted for Clearing in relation to a Bilateral CDS Transaction already recorded in Deriv/SERV, the Clearing House providing a report to a Clearing Member after it has checked whether a CDS Trade Particulars submitted for Clearing are consistent with the records submitted by another Clearing Member and, where applicable, with the records in Deriv/SERV (such Securities Transfer Order, a "**Subsisting CDS Clearing Order**");
- (v) in respect of CDS Trade Particulars other than as referred to in (iv) above submitted for Clearing, the Clearing House issuing an acceptance notice in accordance with Rule 401(a)(ix) to a Clearing Member through the ICE System (such Securities Transfer Order, a "**New CDS Clearing Order**" and, together with a Subsisting CDS Clearing Order, "**CDS Clearing Order**");
- (vi) (A) the Clearing House being provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a Notice of Physical Settlement in respect of Matched CDS Contracts, where the Notice of Physical Settlement specifies an instrument to be delivered that is an SFD Security; or (B) the Clearing House being provided with a copy of a notice delivered by a Matched CDS Buyer to a Matched CDS Seller in a Matched Pair of a NOPS Amendment Notice in respect of Matched CDS Contracts, where the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security but where the Notice of Physical Settlement (including, as amended by any previous NOPS Amendment Notice) had specified an instrument that is not an SFD Security as the instrument that was to be delivered (either such Securities Transfer Order, a "**CDS Physical Settlement Order**"); or
- (vii) delivery of an SFD Security as a Deliverable is required following expiry of a LIFFE Contract that is a Future or following exercise of a LIFFE Contract that is an Option (such Securities Transfer Order, a "**LIFFE Delivery Order**");
- (viii) the Clearing House receiving instructions from a Clearing Member or Participating Exchange for the transfer of a Participating Exchange Contract to the Clearing

House (such Securities Transfer Order, a "**Linked Exchange Incoming Order**");  
or

- (ix) the Clearing House receiving instructions from a Clearing Member or Participating Exchange for the transfer of a Linked Outgoing Contract to a Participating Exchange (such Securities Transfer Order, a "**Linked Exchange Outgoing Order**").
- (c) If two or more Transfer Orders exist in respect of the same obligation prior to becoming irrevocable, all such Transfer Orders shall be valid. No duplication of an obligation to pay shall arise as a result of two or more Transfer Orders existing in respect of the same obligation.
- (d) The status of a Transfer Order shall not be affected by any calculation of Open Contract Position, netting, set off or closing out of a Contract to which it relates.
- (e) Each Payment Transfer Order shall apply and have effect in respect of the following amounts:
  - (i) in the case of a New Contract Payment Transfer Order, the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the Contract to which the confirmation referred to in Rule 1202(a)(i) relates arising; or
  - (ii) in the case of a Credit/Debit Payment Transfer Order, AFI-CB Payment Transfer Order or CB-AFI Payment Transfer Order, the amount specified in the relevant instruction referred to in Rule 1202(a);
- (f) Each Position Transfer Order shall apply and have effect in respect of the Contracts to be transferred, assigned or novated.
- (g) Each Collateral Transfer Order shall apply and have effect in respect of the Non-Cash Collateral to be transferred to or to the order of the Clearing House or Clearing Member.
- (h) Each F&O Block Clearing Order shall apply and have effect in respect of the ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Block Transaction in question and any resulting F&O Contract.
- (i) Each CDS Clearing Order shall apply and have effect in respect of the CDS Trade Particulars and any Bilateral CDS Transaction in question and any resulting CDS Contract.
- (j) Two separate CDS Physical Settlement Orders shall apply and shall have effect separately in respect of each of the CDS Contracts in the Matched Pair that are subject to a physical settlement obligation, and the instrument to be delivered pursuant thereto.
- (k) Two separate LIFFE Delivery Orders shall apply and shall have effect separately in respect of each of the LIFFE Contracts that are subject to an obligation to make delivery of an SFD Security, and the SFD Security to be delivered pursuant thereto.

- (l) Each Linked Exchange Incoming Order shall apply and have effect in respect of the Participating Exchange Transaction in question and any resulting Linked Incoming Contract.
- (m) Each Linked Exchange Outgoing Order shall apply and have effect in respect of the Linked Outgoing Contract in question and any resulting transaction between a Clearing Member and a Participating Exchange.
- (n) Transfer Orders shall apply to, and have effect as against and between each of the following Persons, in respect of any particular Person only to the extent that such Person is a Participant or an Indirect Participant:
  - (i) in the case of a New Contract Payment Transfer Order, the affected Clearing Member (if it is a Participant) and the Clearing House and, as from and after the time of irrevocability only, the affected Approved Financial Institution;
  - (ii) in the case of a Credit/Debit Payment Transfer Order, the affected Clearing Member (if it is a Participant), the affected Approved Financial Institutions and the Clearing House;
  - (iii) in the case of an AFI-CB Payment Transfer Order, CB-AFI Payment Transfer Order, the affected Approved Financial Institution, the Concentration Bank and the Clearing House;
  - (iv) in the case of a Position Transfer Order:
    - (A) the Clearing Members (that are the transferor, assignor or person whose rights, liabilities and obligations are novated and the transferee, assignee or person that assumes rights, liabilities and obligations pursuant to a novation);
    - (B) each Customer and Disclosed Principal Member affected by the Position Transfer Order which is an Indirect Participant (if any); and
    - (C) the Clearing House.
  - (v) in the case of a Collateral Transfer Order:
    - (A) the Clearing Member that is the transferor of the Non-Cash Collateral in question;
    - (B) any Custodian of the Clearing Member or the Clearing House; and
    - (C) the Clearing House;
  - (vi) in the case of an F&O Block Clearing Order:

- (A) each Clearing Member that has submitted or confirmed details of the ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Transaction;
  - (B) any Affiliate of the Clearing Member that was party to an ICE Endex Block Transaction, ICE OTC Block Transaction, ICE Futures Europe Block Transaction, ICE Futures US Block Transaction or LIFFE Block Transaction and which is an Indirect Participant (if any); and
  - (C) the Clearing House;
- (vii) in the case of a CDS Clearing Order:
- (A) each Clearing Member that has submitted or confirmed details of the CDS Trade Particulars;
  - (B) any Affiliate of a Clearing Member that is or was party to a Bilateral CDS Transaction and which is an Indirect Participant (if any); and
  - (C) the Clearing House;
- (viii) in the case of a CDS Physical Settlement Order:
- (A) each Clearing Member in the Matched Pair; and
  - (B) the Clearing House;
- (ix) in the case of a LIFFE Delivery Order:
- (A) each Clearing Member that is party to a LIFFE Contract under delivery;
  - (B) any Custodian of the Clearing Member or the Clearing House; and
  - (C) the Clearing House;
- (x) in the case of a Linked Exchange Incoming Order or Linked Exchange Outgoing Order:
- (A) each Clearing Member that is party to a Linked Incoming Contract, Linked Outgoing Contract or Participating Exchange Transaction, as applicable;
  - (B) the relevant Participating Exchange; and
  - (C) the Clearing House.
- (o) Where a Transfer Order applies to an Approved Financial Institution, it shall also apply to and be effective against any Intermediary Financial Institution used by that Approved Financial Institution.



- (p) Where a Transfer Order applies additionally to an Indirect Participant, the liability of any Participant pursuant to the same Transfer Order shall not be affected.

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

- (a) A Credit/Debit Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made.
- (b) An AFI-CB Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made.
- (c) A CB-AFI Payment Transfer Order shall become irrevocable at the time when the Concentration Bank sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made.
- (d) Subject to Rule 1205(g) and Rule 1205(h), a New Contract Payment Transfer Order shall become irrevocable upon an Approved Financial Institution sending a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that amount to which the New Contract Payment Transfer Order relates (as specified in Rule 1202(e)(i)) will be or has been made.
- (e) A Position Transfer Order shall become irrevocable at the time when the definitive record of the Open Contract Position of the Clearing Member (that is the assignee, transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the ICE Systems to reflect the transfer, assignment or novation of Contracts which are given effect pursuant to the Position Transfer Order.
- (f) A Collateral Transfer Order shall become irrevocable at the earlier of the time when: (i) the Clearing House receives the Non-Cash Collateral; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.
- (g) An F&O Block Clearing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).
- (h) A CDS Clearing Order shall become irrevocable when the time specified pursuant to the CDS Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a)(~~x~~).
- (i) A CDS Physical Settlement Order shall become irrevocable at the earliest of: (i) the time when the Matched CDS Buyer in the Matched Pair has submitted irrevocable instructions

to a securities system, depository, nominee or custodian for the transfer of securities to or to the account of the Matched CDS Seller; (ii) the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or (iii) if the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the CDS Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.

- (j) A LIFFE Delivery Order shall become irrevocable at the earlier of the time when: (i) the Clearing House (or a Clearing Member that is due to receive delivery directly from another Clearing Member under Part 7) receives the SFD Security into its account; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which is a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.
- (k) A Linked Exchange Incoming Order or Linked Exchange Outgoing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(xiv).
- (l) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.

**Rule 1204**     *Variations to or Cancellation of Transfer Orders*

- (a) This Rule 1204 applies only to a Transfer Order that is not irrevocable and:
  - (i) in the case of any Transfer Order, it is affected by manifest or proven error or an error that is agreed so to be by all affected Participants;
  - (ii) in the case of a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order or Position Transfer Order, it relates to a Contract which is (or a Transaction or CDS Trade Particulars which, if accepted, would be):
    - (A) void *ab initio* pursuant to Rule 403;
    - (B) avoided pursuant to Rule 404; or
    - (C) amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules; or
  - (iii) without prejudice to the generality of Rule 1204(a)(i), in the case of a Subsisting CDS Clearing Order, if an error or omission is noted by or notified to the Clearing House prior to the Acceptance Time or the data in the CDS Trade Particulars to which the Subsisting CDS Clearing Order relates is otherwise capable of being amended in accordance with the CDS Procedures;

- (iv) in the case of a CDS Physical Settlement Order, if a NOPS Amendment Notice is validly delivered by the Matched CDS Buyer in accordance with Rule 1505 and Rule 1509; or
  - (v) without prejudice to the generality of Rule 1204(a)(i), (ii) or (iii), in the case of an F&O Block Clearing Order, CDS Clearing Order, Linked Exchange Incoming Order or Linked Exchange Outgoing Order, it relates to a Transaction which is, or CDS Trade Particulars which are, not eligible for Clearing or which is or are not accepted for Clearing by the Clearing House.
- (b) Subject to Rule 1204(d), (e), (f) and (g), neither the validity nor the irrevocability of any Transfer Order shall of itself be affected by any event described in Rule 1204(a) occurring.
  - (c) The terms of all Transfer Orders that have not become irrevocable shall each be subject to a condition (which, if not satisfied, shall enable the Clearing House to exercise its rights under this Rule 1204) that that the circumstances described in Rule 1204(a) have not occurred.
  - (d) If any of the circumstances described in Rule 1204(a) has occurred, the amount payable, Contracts to be transferred or to arise or SFD Securities or Non-Cash Collateral to be delivered pursuant to the affected Transfer Order may at the discretion of the Clearing House be increased, decreased or otherwise varied, as necessary, to reflect the payments, transfers, Contracts, assignments, novations, SFD Securities, Non-Cash Collateral or deliveries that would have been required:
    - (i) in the case of Rule 1204(a)(i) applying, had there been no error;
    - (ii) in the case of Rule 1204(a)(ii)(A), Rule 1204(a)(ii)(B) or Rule 1204(a)(v) applying, had no Contract, Transaction or CDS Trade Particulars ever arisen, occurred or been submitted;
    - (iii) in the case of Rule 1204(a)(ii)(C) applying, had the Contract always been subject to such amended terms as are agreed or determined;
    - (iv) in the case of Rule 1204(a)(iii) applying, had the details of the CDS Trade Particulars always been corrected or amended as permitted in accordance with the CDS Procedures; or
    - (v) in the case of Rule 1204(a)(iv) applying and the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security, had the Notice of Physical Settlement been originally issued as amended pursuant to the NOPS Amendment Notice

(any such variation, a "Transfer Order Variation").
  - (e) A Transfer Order Variation may be effected only by the Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants. Valid delivery of a NOPS Amendment Notice in accordance with Rules 1505 and 1509 by a Matched CDS

Buyer in a Matched Pair shall be deemed to constitute notice by the Clearing House for purposes of this Rule 1204(e) in respect of a Transfer Order Variation to a CDS Physical Settlement Order, if the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security.

- (f) If any of the circumstances described in Rule 1204(a) has occurred, the Transfer Order in question may at the discretion of the Clearing House alternatively be cancelled. Any such cancellation may be effected by the Clearing House serving a notice of cancellation on all affected Participants. In respect of an F&O Block Clearing Order or CDS Clearing Order, such notice shall be deemed to have been given if the Clearing House (or, in the case of an F&O Block Clearing Order, any Market) rejects a Transaction or CDS Trade Particulars for Clearing.
- (g) A CDS Physical Settlement Order shall be cancelled immediately and automatically if and when a copy is provided to the Clearing House of a validly delivered NOPS Amendment Notice specifying an instrument for delivery which is not an SFD Security.
- (h) A LIFFE Delivery Order shall be cancelled immediately and automatically if, prior to it becoming irrevocable, the issuer of the SFD Security that is the Deliverable becomes subject to an Insolvency, redeems all its SFD Securities of a kind which would have been the Deliverables for the delivery or another event occurs under which delivery obligations are substituted for cash settlement obligations under the Contract Terms.
- (i) A Linked Exchange Incoming Order or Linked Exchange Outgoing Order shall be cancelled immediately and automatically if, prior to it becoming irrevocable, the Participating Exchange or Clearing House rejects or cancels the transfer.
- (j) This Rule 1204 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof if any of the events described in Rule ~~401~~1204(a) occur. No Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by the Clearing House. The ability of the Clearing House to cancel or vary a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

#### **Rule 1205     *Termination of Transfer Orders***

- (a) Each Payment Transfer Order shall be satisfied immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in cleared funds or full satisfaction of the relevant underlying obligations is otherwise made, in either case not subject to any Encumbrances (except as envisaged under a Pledged Collateral Addendum).
- (b) Each Position Transfer Order shall be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1203(e) (whereupon all Contracts to which the Transfer Order in question relates will have been transferred, assigned or novated pursuant to the Rules).

- (c) Each Collateral Transfer Order shall be satisfied immediately and automatically at the later of the time when: (i) the Clearing House receives the Non-Cash Collateral in its account; or (ii) the definitive record of the Permitted Cover transferred by the Clearing Member that is the transferor is updated in the ICE Systems to reflect the successful transfer of Non-Cash Collateral to or to the order of the Clearing House pursuant to the Collateral Transfer Order.
- (d) A CDS Clearing Order, F&O Block Clearing Order, Linked Exchange Incoming Order or Linked Exchange Outgoing Order shall be satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 401(a).
- (e) A CDS Physical Settlement Order shall be satisfied immediately and automatically at the time when the Clearing House updates its records of the relevant CDS Contracts in the ICE Systems to reflect that either physical delivery of the security in question has been completed or the delivery obligations of the parties under the relevant CDS Contracts have otherwise been discharged or settled.
- (f) A LIFFE Delivery Order shall be satisfied immediately and automatically at the time when the Clearing House (or a Clearing Member to whom delivery is to be made directly from another Clearing Member under Part 7) receives the SFD Security that is the Deliverable, unencumbered in its account.
- (g) If a Credit/Debit Payment Transfer Order becomes irrevocable in respect of the same obligation to which a New Contract Payment Transfer Order relates, the New Contract Payment Transfer Order shall automatically be satisfied and shall not become irrevocable. It is acknowledged that New Contract Payment Transfer Orders will generally terminate in accordance with this Rule 1205(g) when standard Clearing and payment processes apply.
- (h) A New Contract Payment Transfer Order relating to an F&O Contract shall be satisfied immediately and automatically if and at the point that the relevant F&O Transaction or Contract is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii).

**Rule 1206**     *Provision of Information by the Clearing House and Participants*

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

**Rule 1207**    *Notice to the FSA and Bank of England*

- (a) Any notice which under Rule 204(a)(viii) must be copied to the FSA and Bank of England, shall be sent to the following addresses:
- (b) FSA:  
  
Manager, Clearing/Settlement  
Markets and Exchanges Division  
Financial Services Authority  
25 The North Collonade  
London E14 5HS  
Fax: 020 7676 9735
- (c) Bank of England:  
  
The Senior Manager, Payment Systems Oversight  
Financial Resilience Division, HO-3  
Bank of England  
Threadneedle Street  
London EC2R 8AH  
Fax: 020 7601 3217
- (d) Any such notice will only be effectively served, filed, made or provided and delivered to the FSA and Bank of England:
  - (i) if sent by post, on the fifth Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope;
  - (ii) if delivered in person to the officer or department specified, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day.
- (e) Any notice by fax shall not be effective until hard copy confirmation is served pursuant to Rule 1207(d).

**Part 13** [Not used]

**Part 14** Transition Rules for ICE Energy Markets in 2008 [No longer applicable:  
available on request.]



## Part 15 Credit Default Swaps

Part 15 of the Rules does not apply to F&O Contracts or FX Contracts. References to Contracts in this section are to CDS Contracts. References to any Customer Account in this section are references only to any Designated CDS Customer Account and the terms 'Customer Account Position', 'Customer Margin Account' and 'Customer Position Account' shall be construed accordingly. References to Customers in this section are solely to Customers of CDS Clearing Members in relation to CDS Contracts.

### Rule 1501 Definitions

- (a) The term "**2010 PD Amending Directive**" means Directive 2010/73/EU.
- (b) The term "**Applicable Close-out Rate**" means:
  - (i) in respect of obligations which would have been payable but for paragraph 9.2(a)(i)(B) or paragraph 9.2(a)(i)(C) of the CDS Procedures, as the case may be, by a Defaulting Party, the Late Payment Rate; and
  - (ii) in respect of obligations which would have been payable but for paragraph 9.2(a)(i)(B) or paragraph 9.2(a)(i)(C) of the CDS Procedures, as the case may be, by a Non-defaulting Party, the Non-default Rate.
- (c) The term "**Applicable Credit Event**", in relation to a CDS Contract, means any of the Credit Events specified in that CDS Contract as being applicable.
- (d) The term "**CADP**" or "**CDS Alternative Delivery or Settlement Procedure**" has the meaning set out in Rule 1514.
- (e) The term "**CADP Notice**" means a notice delivered to the Clearing House and issued jointly by a Matched CDS Buyer and Matched CDS Seller concerning CADP in respect of a Matched Pair and related Matched CDS Contracts, in the form specified in the CDS Procedures.
- (f) The term "**CDS Buyer**" means a CDS Clearing Member (or, in the circumstances set out in the definition of "Matched Pair", the Clearing House) that is party to a CDS Contract as protection buyer.
- (g) The term "**CDS Seller**" means a CDS Clearing Member (or, in the circumstances set out in the definition of "Matched Pair", the Clearing House) that is party to a CDS Contract as protection seller.
- (h) The term "**Component Transaction**", in relation to any CDS Contract, has the meaning given to that term in the relevant Contract Terms.
- (i) The term "**Credit Event Announcement**" means a DC Credit Event Announcement.
- (j) The term "**Deemed Discharge**" has the meaning set out in Rule 1519.

- (k) The term "**Defaulter Close-Out**" has the meaning set out in Rule 1519.
- (l) The term "**Defaulting Party**" means with respect to (i) a Defaulter Close-Out, the relevant CDS Clearing Member and (ii) a Deemed Discharge, the Clearing House.
- (m) The term "**Deferral Rate**" means a rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.
- (n) The term "**Determining Body**" means the Credit Derivatives Determinations Committee or any other relevant body or person that is expressed to have jurisdiction to make the relevant determination under the Credit Derivatives Definitions or the CDS Procedures. The Credit Derivatives Determinations Committee is not a Representative or committee of the Clearing House.
- (o) The term "**Failed Amount**" has the meaning given to that term in Rule 1512.
- (p) The term "**Late Payment Rate**" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount, plus 1% per annum.
- (q) The term "**Matched CDS Buyer Contract**" means a CDS Contract (or part thereof) between a Matched CDS Buyer and the Clearing House which is the subject of a Matched Pair having a Floating Rate Payer Calculation Amount equal to the MP Amount relating to that Matched Pair.
- (r) The term "**Matched CDS Contract**" means a Matched CDS Seller Contract or a Matched CDS Buyer Contract.
- (s) The term "**Matched CDS Seller Contract**" means a CDS Contract (or part thereof) between a Matched CDS Seller and the Clearing House which is the subject of a Matched Pair having a Floating Rate Payer Calculation Amount equal to the MP Amount relating to that Matched Pair.
- (t) The term "**Matched Pair**" means a CDS Buyer and CDS Seller matched by the Clearing House pursuant to Rule 1507 or Rule 1508, as applicable, where the CDS Buyer in such Matched Pair is the "**Matched CDS Buyer**" and the CDS Seller in such Matched Pair is the "**Matched CDS Seller**", provided that the Clearing House shall take the position of CDS Buyer or CDS Seller in any Matched Pair in order to create a Matched Pair for any CDS Seller or CDS Buyer which it is unable to match to another CDS Buyer or CDS Seller (other than the Clearing House), as the case may be.
- (u) The term "**Matched Pair Notice**" has the meaning set out in Rule 1507(b) or Rule 1508(a), as the case may be.

- (v) The term "**MP Amount**" means an amount equal to the portion of a Floating Rate Payer Calculation Amount in respect of which the Clearing House matches a Matched Pair for the purposes of Rule 1507(b) or Rule 1508(a), as applicable.
- (w) The term "**MP Notice**" means a notice provided under Rule 1509(b) or Rule 1509(c) or an Electronic Notice.
- (x) The term "**Non-default Rate**" means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.
- (y) The term "**Non-defaulting Party**" means with respect to (i) a Defaulter Close-Out, the Clearing House and (ii) a Deemed Discharge, the Clearing Member.
- (z) The term "**Offer to the Public**" in relation to any Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any Securities to be offered so as to enable an investor to decide to purchase or subscribe for those Securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State.
- (aa) The term "**PD Contract**" means a CDS that is a Security (if any) and which is:
  - (i) a CDS Contract cleared or proposed to be cleared by the Clearing House;
  - (ii) a Customer-CM CDS Transaction; or
  - (iii) a CDS on terms identical or similar to a CDS Contract falling under Rule 1501(aa)(i).
- (bb) The term "**Prospectus Directive**" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State in question) and includes any European Commission regulations thereunder and relevant implementing measures in each Relevant Member State. Any reference to a particular article of the Prospectus Directive shall be deemed to also be a reference to the relevant provision of the relevant implementing measure in each Relevant Member State.
- (cc) The term "**Relevant Member State**" means any member state of the European Economic Area which has implemented the Prospectus Directive.
- (dd) The term "**Restructuring CDS Contract**" means a CDS Contract (or in respect of a CDS Contract relating to an index, a CDS Contract which is a Component Transaction) in respect of a Reference Entity in relation to which a Restructuring Credit Event Announcement has been made (and no Credit Event Announcement in respect of any other Applicable Credit Event) in relation to that Reference Entity and where relevant, the requirement for Publicly Available Information has been satisfied as determined by the

Determining Body provided that if, after such Restructuring Credit Event Announcement has been made, a further Credit Event Announcement is made of the occurrence of an Applicable Credit Event other than Restructuring in relation to that Reference Entity, such CDS Contract, to the extent that it has not become a Triggered Restructuring CDS Contract Portion, will cease to be a Restructuring CDS Contract and provided further that any Restructuring CDS Contract, to the extent that it is not a Triggered Restructuring CDS Contract Portion, in respect of which an effective Restructuring Credit Event Notice can no longer be delivered (including, at the times and in the circumstances specified in the CDS Procedures, copied to the Clearing House) will cease to be a Restructuring CDS Contract and will thereafter be a CDS Contract subject to the provisions of these Rules.

- (ee) The term "**Restructuring Credit Event Announcement**" means a Credit Event Announcement of the occurrence of a Restructuring Credit Event.
- (ff) The term "**Restructuring Credit Event Notice**" means a Credit Event Notice in respect of a Restructuring Credit Event, relating to all or, where permitted under Section 3.9 of the Credit Derivatives Definitions, part of the Floating Rate Payer Calculation Amount of a Restructuring CDS Contract to be delivered in accordance with the Contract Terms by a Matched CDS Buyer or Matched CDS Seller (as applicable) to the Matched CDS Buyer or Matched CDS Seller (as applicable) in the Matched Pair and copied to the Clearing House where required in accordance with Rule 1509(d).
- (gg) The term "**Restructuring Reference Entity**" means the Reference Entity in respect of which a Credit Event Announcement has been made in respect of a Restructuring Credit Event.
- (hh) The term "**Securities**" means 'securities' within the meaning of article 2(1)(a) of the Prospectus Directive as the same may be varied in any Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State; and the term "**Security**" shall be construed accordingly.
- (ii) The term "**Settlement Notice**" means any notice under a CDS Contract that is not an MP Notice which is delivered pursuant to the Settlement and Notices Terms
- (jj) The term "**Triggered Restructuring CDS Contract Portion**" means a Restructuring CDS Contract in respect of which a Restructuring Credit Event Notice has been delivered in accordance with the Contract Terms, these Rules and the CDS Procedures, provided that, where permitted under Section 3.9 of the Credit Derivatives Definitions, if such Restructuring Credit Event Notice specifies an Exercise Amount that is less than the Floating Rate Payer Calculation Amount of the Restructuring CDS Contract, such Restructuring CDS Contract shall be construed, pursuant to Section 3.9 of the Credit Derivatives Definitions, as if the parties had entered into two Restructuring CDS Contracts, one of which will constitute the Triggered Restructuring CDS Contract Portion and has a Floating Rate Payer Calculation Amount equal to the Exercise Amount and the other of which has a Floating Rate Payer Calculation Amount equal to the Floating Rate Payer Calculation Amount outstanding immediately prior to the delivery of the Restructuring Credit Event Notice minus the Exercise Amount.

(kk) The term "**Tripartite Representation**" means the record relating to a CDS Contract in Deriv/SERV. In relation to each CDS Contract recorded in Deriv/SERV, it is acknowledged that Deriv/SERV will create a record as follows:

- (i) Where the CDS Contract is recorded in a Customer Account of the CDS Clearing Member:
  - (A) The record will identify three entities, namely the Clearing House, the CDS Clearing Member and the relevant Customer and will identify whether the Customer is a protection buyer or a protection seller.
  - (B) Where the CDS Clearing Member is an FCM/BD Clearing Member, such record will represent a CDS Contract between the Clearing House and such FCM/BD Clearing Member acting on behalf of or for the account of such Customer and such FCM/BD Clearing Member will be a CDS Buyer if such record identifies such Customer as a protection buyer and a CDS Seller if such record identifies such Customer as a protection seller.
  - (C) Where the CDS Clearing Member is a Non-FCM/BD CDS Clearing Member, such record will represent two contracts:
    - (1) a CDS Contract between the Clearing House and such Non-FCM/BD CDS Clearing Member; and
    - (2) a Customer-CM CDS Transaction between such Non-FCM/BD CDS Clearing Member and such Customer,

and where such record identifies such Customer as a protection buyer, the Non-FCM/BD CDS Clearing Member will be a CDS Buyer in respect of the CDS Contract and a protection seller in respect of the Customer-CM CDS Transaction; and where such record identifies such Customer as a protection seller, such Non-FCM/BD CDS Clearing Member will be a CDS Seller in respect of the CDS Contract and a protection buyer in respect of the Customer-CM CDS Transaction. Where, in these Rules or the CDS Procedures, a Customer-CM CDS Transaction is described as "related" or "connected" in the context of a CDS Contract, or a CDS Contract is described as "related" or "connected" in the context of a Customer-CM CDS Transaction, that is a reference to the CDS Contract and the Customer-CM CDS Transaction which are related or connected by virtue of being recorded in a single Tripartite Representation.

- (ii) Where the CDS Contract is recorded in a Proprietary Account of the CDS Clearing Member, the record may identify two or three entities:
  - (A) where the record identifies three entities, namely the Clearing House, the CDS Clearing Member and the relevant non-Segregated Customer (which may only be an Affiliate of the CDS Clearing Member), Rule

1501(kk)(i)(B) and (C) will apply in the same way as for the Customer Account and Segregated Customers; and

- (B) where the record identifies the two entities: the record will identify the Clearing House and the CDS Clearing Member in the same manner as set under Rule 1501(kk)(i)(A) and will in addition identify the CDS Clearing Member where, under Rule 1501(kk)(i)(A), it would have identified the Customer, identifying whether the CDS Clearing Member is a protection buyer (in which case the CDS Clearing Member will be a CDS Buyer in respect of the CDS Contract) or a protection seller (in which case the CDS Clearing Member will be a CDS Seller in respect of the CDS contract).
- (ll) The term "**Unpaid Amounts**" owing to a party pursuant to a CDS Contract means:
- (i) with respect to the CDS Clearing Member, the amounts that would have become payable but for paragraph 9.2(a)(i)(B) of the CDS Procedures to the Clearing Member under paragraph 9.2(a)(i)(A) of the CDS Procedures on or prior to the date of the Defaulter Close-Out or Deemed Discharge, as the case may be, and which remain unpaid at the date of the Defaulter Close-Out or Deemed Discharge, as the case may be; and
- (ii) with respect to the Clearing House, the amounts that would have become payable but for paragraph 9.2(a)(i)(C) of the CDS Procedures to the Clearing House under paragraph 9.2(a)(i)(A) of the CDS Procedures on or prior to the date of the Defaulter Close-Out or Deemed Discharge, as the case may be, and which remain unpaid at the date of the Defaulter Close-Out or Deemed Discharge, as the case may be.
- (mm) The terms "**Auction Cancellation Date**", "**Auction Settlement**", "**Auction Settlement Amount**", "**Convened DC**", "**Credit Derivatives Determinations Committee**", "**Credit Event**", "**Credit Event Notice**", "**DC Credit Event Announcement**", "**DC Resolution**", "**DC Secretary**", "**Deliverable Obligations**", "**Deliver**", "**Delivery**", "**Effective Date**", "**Exercise Amount**", "**Fallback Settlement Method**", "**Floating Rate Payer Calculation Amount**", "**Indicative Quotation**", "**Latest Permissible Physical Settlement Date**", "**No Auction Announcement Date**", "**NOPS Amendment Notice**", "**Notice of Physical Settlement**", "**Notice to Exercise Movement Option**", "**Obligation**", "**Physical Settlement Amount**", "**Publicly Available Information**", "**Reference Entity**", "**Restructuring**", "**Settlement Method**" and "**Undeliverable Obligations**" each have the meaning given to those terms in the Credit Derivatives Definitions.
- (nn) The terms "**CDS Default Committee**", "**Electronic Notice**", "**Electronic Notice Process**", "**Manual Notice Process**", "**Manual MP Notice**", "**NEMO Triggering Period**" and "**Sovereign Contract**" each have the meaning given to those terms in the CDS Procedures.
- (oo) Any term used but not defined in this Part 15 or elsewhere in the Rules shall have the meaning given to that term in the CDS Procedures.



**Rule 1502**     *Terms of CDS Contracts and Initial Payments*

- (a) The terms of each CDS Contract shall be as follows:
- (i) such quantity, notional and other economic terms (as determined pursuant to the CDS Procedures) as were submitted to the Clearing House in respect of the CDS Trade Particulars that gave rise to the CDS Contract, subject, in the case of a Restructuring CDS Contract, to such changes to such terms as result from the operation of these Rules and the CDS Procedures, subject to the provisions of Rule 401(a)(vi), (ix), (x) or (xi), as applicable;
  - (ii) the applicable terms set out in the Rules (including, without limitation, the CDS Procedures, the Settlement and Notices Terms and those provisions of the General Contract Terms Procedures as are specified in the CDS Procedures); and
  - (iii) the Credit Derivatives Definitions, as amended pursuant to these Rules (including, without limitation, pursuant to the CDS Procedures).
- (b) No CDS Contract arising pursuant to the Clearing of CDS Trade Particulars in respect of a Bilateral CDS Transaction already recorded in Deriv/SERV shall contain any rights or obligations in respect of any Initial Payment. If any CDS Trade Particulars submitted for Clearing relate to a Bilateral CDS Transaction which includes any binding obligation for payment or performance falling due before a CDS Contract arises pursuant to Rule 401(a)(ix), the obligation for such payment or performance shall remain a direct obligation of the relevant CDS Buyer or CDS Seller (as applicable) to the other party to the relevant Bilateral CDS Transaction. The Clearing House shall have no obligation to make or guarantee any Initial Payment in respect of a Bilateral CDS Transaction or any CDS Trade Particulars (but this shall not affect the Clearing House's obligations under CDS Contracts, including any obligation to make an Initial Payment under a CDS Contract in accordance with the Contract Terms) or to make or guarantee any payment or performance reflecting any payment or performance in respect of a Bilateral CDS Transaction or any CDS Trade Particulars falling due for payment or performance before a CDS Contract arises pursuant to Rule 401(a)(ix). For the avoidance of doubt: (i) each CDS Contract arising from the submission for Clearing of CDS Trade Particulars for which no Bilateral CDS Transaction is already recorded in Deriv/SERV will include an obligation to pay an Initial Payment constituting a payment obligation of the relevant party thereto reflecting the Initial Payment, if any, reflected in the CDS Trade Particulars submitted for Clearing; and (ii) CDS Contracts arising in other circumstances (other than pursuant to Clearing of CDS Trade Particulars in respect of a Bilateral CDS Transaction already recorded in Deriv/SERV, but including, without limitation, CDS Contracts arising pursuant to Rule 401(a)(vi), (ix), (x) (x) or (xi)) may include an obligation to pay an Initial Payment constituting a payment obligation of the relevant party thereto.

**Rule 1503**     *Prospectus Directive*

- (a) The Clearing House has not authorised, nor does it authorise, the making of any Offer to the Public by any Person of any PD Contract in circumstances in which: (i) an obligation



arises for the Clearing House to publish or supplement a prospectus for any such offer; (ii) an obligation arises for the Clearing House to make any other public disclosure or filing required under the Prospectus Directive; or (iii) a "home member state" is determined in respect of the Clearing House for purposes of article 2(1)(m) of the Prospectus Directive. Accordingly, Clearing Members shall not make any such Offer to the Public in relation to PD Contracts.

(b) Without prejudice to the generality of Rule 1503(a), no Clearing Member shall enter into a PD Contract:

- (i) with the Clearing House;
- (ii) with another Clearing Member pursuant to CADP; or
- (iii) with any of its Customers on a back-to-back or agency basis with a contract falling under (i) or (ii),

unless one or more of the following conditions is satisfied:

- (A) in the case of any PD Contract to which the Clearing House is a party, the Clearing Member is a "qualified investor" (as defined in article 2(1)(e) of the Prospectus Directive);
- (B) in the case of any PD Contract relating to a Customer, the Clearing Member and its Customer are both "qualified investors" (as defined in article 2(1)(e) of the Prospectus Directive);
- (C) the minimum total consideration is at least:
  - (1) €50,000, in relation to any Offer to the Public made in a Relevant Member State that has not implemented the 2010 PD Amending Directive; or
  - (2) €100,000, in relation to any Offer to the Public made in a Relevant Member State that has implemented the 2010 PD Amending Directive; or
- (D) the requirement to publish or supplement a prospectus under the Prospectus Directive otherwise does not apply.

(c) Notwithstanding any other provision of these Rules, no Clearing Member shall be declared subject to an Event of Default or have its membership terminated or suspended under Rules 208 or 209 for breach of any provision of this Rule 1503 unless:

- (i) a Governmental Authority has determined or published a determination, rule or guidance to the effect that any CDS is or may be characterised as a Security, in which case any breach of this Rule 1503 following such determination or

publication shall be actionable as an Event of Default and constitute grounds for termination or suspension of membership under Rules 208 or 209; or

- (ii) the Clearing House has suffered a loss or is subject to any investigation or proceeding by a Governmental Authority in relation to the Prospectus Directive caused by the Clearing Member's breach of this Rule 1503.
- (d) Neither Rule 1501(aa) nor this Rule 1503 constitutes any agreement, admission or acknowledgement on the part of any Customer, Clearing Member or the Clearing House that any CDS is or could be characterised as a Security. Rule 1501(aa) and this Rule 1503 are without prejudice to any right of any Customer, Clearing Member or the Clearing House to assert, argue or provide evidence that any CDS is not a Security in any arbitration, disciplinary or other legal proceedings or to any Governmental Authority or to publish any view that the Prospectus Directive does or does not apply in relation to any such contract.

**Rule 1504**     *Separate treatment of CDS Contracts for Proprietary Account and Customer Account*

Further to Rule 102(q), CDS Contracts (and consequently Open Contract Positions including any Restructuring CDS Contracts, Matched CDS Contracts and Triggered Restructuring CDS Contract Portions) will be separately subject to the application of these Rules in respect of the following accounts of a CDS Clearing Member: its Proprietary Account and each of its Designated CDS Customer Accounts (if any).

**Rule 1505**     *Credit Event Notices, Notices of Physical Settlement, NOPS Amendment Notices and Notices to Exercise Movement Option*

- (a) None of the Clearing House, any CDS Clearing Member, any Segregated CDS Customer or any Segregated CDS FCM/BD Customer will be entitled to deliver a Credit Event Notice under a CDS Contract or any Customer-CM CDS Transaction, as the case may be, in relation to any Applicable Credit Event other than Restructuring.
- (b) None of the Clearing House, any CDS Clearing Member, any Segregated CDS Customer or any Segregated CDS FCM/BD Customer will deliver any of the following notices in respect of any CDS Contract or any Customer-CM CDS Transaction (as the case may be) unless and until the Clearing House has (or, pursuant to Rule 1507 or Rule 1508, should have) notified CDS Clearing Members which are CDS Buyers or CDS Sellers of their Matched Pairs and associated MP Amounts and any such notices delivered before that time shall be void and of no effect:
  - (i) a Notice of Physical Settlement or NOPS Amendment Notice in respect of a CDS Contract of a Set (or any related Customer-CM CDS Transaction) in respect of which an Applicable Credit Event other than Restructuring has occurred; or
  - (ii) a Credit Event Notice, Notice of Physical Settlement, NOPS Amendment Notice or, where applicable, Notice to Exercise Movement Option in respect of a CDS Contract of a Set (or any related Customer-CM CDS Transaction) in respect of which a Restructuring Credit Event has occurred

- (c) If a CDS Clearing Member delivers (or, by virtue of a Segregated CDS Customer or Segregated CDS FCM/BD Customer delivering a Credit Event Notice in respect of a CDS Contract recorded in the Tripartite Representation, is deemed to have delivered) a Credit Event Notice, Notice to Exercise Movement Option, Notice of Physical Settlement or NOPS Amendment Notice in relation to a Matched CDS Contract in respect of a Floating Rate Payer Calculation Amount exceeding the MP Amount in respect of which it is matched in the relevant Matched Pair then such notice will be effective only in respect of a Floating Rate Payer Calculation Amount equal to the relevant MP Amount. This requirement will apply separately in relation to each Matched Pair in respect of which the CDS Clearing Member is matched.
- (d) Nothing in this Rule 1505 shall restrict or prevent any deemed delivery of a Credit Event Notice pursuant to the CDS Procedures or Contract Terms.
- (e) Any purported delivery of a Notice to Exercise Movement Option outside the NEMO Triggering Period shall not amount to valid delivery of that notice and shall be disregarded by the Clearing House and Clearing Members in relation to any CDS Contracts and any related Customer CM CDS Transactions.

**Rule 1506**     *Auction Settlement and Physical Settlement*

Auction Settlement will be specified as the Settlement Method and "Physical Settlement" will be specified as the Fallback Settlement Method for all CDS Contracts.

**Rule 1507**     *Physical Settlement Allocation of Buyers and Sellers: Applicable Credit Events other than Restructuring*

- (a) Following the occurrence of a Credit Event Announcement relating to an Applicable Credit Event other than Restructuring in respect of a CDS Contract, the Clearing House will be obliged, where Fallback Settlement applies to the CDS Contract, to carry out the steps in Rule 1507(b) in accordance with the CDS Procedures.
- (b) If Rule 1507(a) applies:
  - (i) the Clearing House shall match each CDS Seller in respect of a CDS Contract of the relevant Set with one or more CDS Buyers under CDS Contract(s) of the same Set in accordance with the CDS Procedures (such CDS Contracts thereby becoming Matched CDS Contracts and each matched CDS Seller and CDS Buyer becoming a Matched Pair), such that the Floating Rate Payer Calculation Amount related to each CDS Seller under each Matched CDS Seller Contract is fully allocated to one or more CDS Buyers under Matched CDS Buyer Contracts of the same Set as such Matched CDS Seller Contract; and
  - (ii) the Clearing House will, in accordance with the CDS Procedures, notify each CDS Buyer and CDS Seller of the details of the Matched CDS Contracts, Matched CDS Buyer and Matched CDS Seller (such notice, for purposes of this Rule 1507, the "**Matched Pair Notice**") and the associated MP Amount.

- (c) If the Clearing House has delivered a Matched Pair Notice that specifies a MP Amount that is less than the outstanding Floating Rate Payer Calculation Amount applicable to a Matched CDS Contract to which such Matched Pair Notice relates, the relevant rights and obligations of the Clearing House and the relevant CDS Clearing Member pursuant to the Matched CDS Contract shall, with effect from the date such Matched Pair Notice is effective, be construed as if the Clearing House and such CDS Clearing Member had entered into two CDS Contracts, one of which has a Floating Rate Payer Calculation Amount equal to the MP Amount and the other of which has a Floating Rate Payer Calculation Amount equal to the Floating Rate Payer Calculation Amount outstanding immediately prior to delivery of such Matched Pair Notice minus the MP Amount. Where this paragraph applies to a Matched CDS Contract recorded in a Customer Account of a Non-FCM/BD CDS Clearing Member, the related Customer-CM CDS Transaction will be treated as identically separated and as two Customer-CM CDS Transactions.
- (d) The provisions of this Rule 1507 are subject to Rule 1515.

**Rule 1508**     *Settlement Allocation of Buyers and Sellers: Restructuring*

- (a) Following the occurrence of a Restructuring Credit Event Announcement, in accordance with the CDS Procedures:
- (i) the Clearing House will match each CDS Seller with one or more CDS Buyers each of which is party to a Restructuring CDS Contract of the same Set in accordance with the CDS Procedures (such Restructuring CDS Contracts thereby becoming Matched CDS Contracts and each matched CDS Seller and CDS Buyer becoming a Matched Pair), such that the Floating Rate Payer Calculation Amount related to each Matched CDS Seller under each Matched CDS Contract is fully allocated to one or more CDS Buyers under Matched CDS Contracts of the same Set as such Matched CDS Seller Contract; and
  - (ii) the Clearing House will notify each Clearing Member that is a relevant CDS Buyer and CDS Seller of the Matched CDS Contracts, Matched CDS Buyer and Matched CDS Seller (such notice, for purposes of this Rule 1508, the "**Matched Pair Notice**") and the associated MP Amount (but the Clearing House shall not be obliged to provide any Matched Pair Notice to any Customer).
- (b) If the Clearing House has delivered a Matched Pair Notice that specifies a MP Amount that is less than the outstanding Floating Rate Payer Calculation Amount applicable to a Matched CDS Contract to which such Matched Pair Notice relates, the relevant rights and obligations of the Clearing House and the relevant CDS Clearing Member pursuant to the Matched CDS Contract shall, with effect from the date such Matched Pair Notice is effective, be construed as if the Clearing House has entered into two Restructuring CDS Contracts, one of which has a Floating Rate Payer Calculation Amount equal to the MP Amount and the other of which has a Floating Rate Payer Calculation Amount equal to the Floating Rate Payer Calculation Amount outstanding immediately prior to delivery of such Matched Pair Notice minus the MP Amount. Where this paragraph applies to a Matched CDS Contract recorded in a Customer Account of a Non-FCM/BD CDS Clearing Member,

the related Customer-CM CDS Transaction will be treated as identically separated into two Customer-CM CDS Transactions.

- (c) The provisions of this Rule 1508 are subject to Rule 1515.

**Rule 1509** *Matched Pairs: Designations and Notices*

- (a) In respect of each Matched CDS Buyer Contract and each Matched CDS Seller Contract which is the subject of a Matched Pair, Restructuring Credit Event Notices and Notices to Exercise Movement Option shall, save in the limited circumstances provided for in the CDS Procedures when the Manual Notice Process applies, be given in accordance with the Electronic Notice Process and will have the effect set out in that process.
- (b) For the purposes of the Manual Notice Process, in respect of each Matched CDS Buyer Contract which is the subject of a Matched Pair, the Clearing House, pursuant to Section 9.2(c)(iv) of the Credit Derivatives Definitions (which is amended for these purposes in the CDS Procedures), as designator, shall be deemed to have designated the Matched CDS Seller in such Matched Pair as its designee:
- (i) to receive on its behalf from the Matched CDS Buyer in the Matched Pair:
- (A) Notices of Physical Settlement (and any NOPS Amendment Notices), in each case, that are Manual MP Notices in relation to any CDS Contract in respect of which a Credit Event Announcement has been made in respect of an Applicable Credit Event other than Restructuring;
- (B) Restructuring Credit Event Notices, Notices of Physical Settlement (and any NOPS Amendment Notices) and, where applicable, Notices to Exercise Movement Option, in each case, that are Manual MP Notices in relation to any Restructuring CDS Contract or Triggered Restructuring CDS Contract Portion, as the case may be; and
- (C) any Settlement Notices.
- (ii) to deliver on its behalf to the Matched CDS Buyer in the Matched Pair Restructuring Credit Event Notices and, where applicable, Notices to Exercise Movement Option, in each case, that are Manual MP Notices in relation to any Restructuring CDS Contract or Triggered Restructuring CDS Contract Portion, as the case may be, and any Settlement Notices; other than in respect of the Physical Settlement Amount relating to the settlement of Non DVP Obligations as referred to in Rule 1510, to pay, on behalf of the Clearing House, the applicable Physical Settlement Amount in respect of any Matched CDS Contract to be settled in accordance with the Fallback Settlement Method to the Matched CDS Buyer in the Matched Pair;
- (iii) to pay to the Matched CDS Buyer in the Matched Pair and receive from the Matched CDS Buyer in the Matched Pair, in either case on behalf of the Clearing

House, any amounts in respect of the costs and expenses of settlement due under the Matched CDS Buyer Contract; and

- (iv) to take Delivery, on behalf of the Clearing House, of Deliverable Obligations from the Matched CDS Buyer in the Matched Pair,

and each Matched CDS Seller is hereby notified of the same accordingly. The Matched CDS Seller shall assume such obligations as designee upon notification of any Matched Pair.

- (c) For the purposes of the Manual Notice Process, in respect of each Matched CDS Seller Contract which is the subject of a Matched Pair, the Clearing House, pursuant to Section 9.2(c)(iv) of the Credit Derivatives Definitions (which is amended for these purposes in the CDS Procedures), as designator, shall be deemed to have designated the Matched CDS Buyer in such Matched Pair as its designee:

- (i) to deliver on its behalf to the Matched CDS Seller in the Matched Pair:
  - (A) Notices of Physical Settlement (and any NOPS Amendment Notices), in each case, that are Manual MP Notices in relation to any CDS Contract in respect of which a Credit Event Announcement has been made in respect of an Applicable Credit Event other than Restructuring;
  - (B) Restructuring Credit Event Notices, Notices of Physical Settlement (and any NOPS Amendment Notices) and, where applicable, Notices to Exercise Movement Option, in each case, that are Manual MP Notices in relation to any Restructuring CDS Contract or Triggered Restructuring CDS Contract Portion, as the case may be; and
  - (C) any Settlement Notices.
- (ii) to receive on its behalf from the Matched CDS Seller in the Matched Pair Restructuring Credit Event Notices and, where applicable, Notices to Exercise Movement Option, in each case, that are Manual MP Notices in relation to any Restructuring CDS Contract or Triggered Restructuring CDS Contract Portion, as the case may be, and any Settlement Notices;
- (iii) other than in respect of the Physical Settlement Amount relating to the settlement of Non DVP Obligations as referred to in Rule 1510, to receive payment, on behalf of the Clearing House, of the applicable Physical Settlement Amount from the Matched CDS Seller in the Matched Pair;
- (iv) to pay to the Matched CDS Seller in the Matched Pair and receive from the Matched CDS Seller in the Matched Pair, in either case on behalf of the Clearing House, any amounts in respect of the costs and expenses of settlement due under the Matched CDS Seller Contract; and



- (v) to Deliver, on behalf of the Clearing House, the relevant Deliverable Obligations to the Matched CDS Seller in the Matched Pair,

and each Matched CDS Buyer is hereby notified of the same accordingly. The Matched CDS Buyer shall assume such obligations as designee upon notification of any Matched Pair.

- (d) With respect to any rights exercised as a result of or pursuant to the delivery of Manual MP Notices or Settlement Notices, in relation to each Matched Pair:
  - (i) the exercise of any rights by the Matched CDS Buyer against the Clearing House under a Matched CDS Buyer Contract shall be deemed to constitute the exercise of equal and simultaneous rights by the Clearing House against the Matched CDS Seller under the Matched CDS Seller Contract in the relevant Matched Pair;
  - (ii) the exercise of any rights of the Matched CDS Seller against the Clearing House under a Matched CDS Seller Contract shall be deemed to constitute the exercise of equal and simultaneous rights by the Clearing House against the Matched CDS Buyer under the Matched CDS Buyer Contract in the relevant Matched Pair;
  - (iii) where the Matched CDS Buyer validly delivers or serves any Manual MP Notice or Settlement Notice to or on the Matched CDS Seller in accordance with the Contract Terms and Rule 1509(c), such Manual MP Notice or Settlement Notice shall be effective with respect to both the Matched CDS Buyer Contract and the Matched CDS Seller Contract; and
  - (iv) where the Matched CDS Seller validly delivers or serves any Manual MP Notice or any Settlement Notices to or on the Matched CDS Buyer in accordance with the Contract Terms and Rule 1509(b), such Manual MP Notice or Settlement Notice shall be effective with respect to both the Matched CDS Buyer Contract and the Matched CDS Seller Contract.
- (e) Following delivery by a Matched CDS Buyer or Matched CDS Seller of any Manual MP Notice or Settlement Notice, the CDS Clearing Member that delivered such Manual MP Notice or Settlement Notice shall, at the times and in the circumstances specified in the CDS Procedures, deliver a written copy of such Manual MP Notice or Settlement Notice to the Clearing House, in the case of Manual MP Notices in accordance with the CDS Procedures. Where required by the CDS Procedures, the Clearing House will provide a copy of the copy of each Manual MP Notice so received by it to both CDS Clearing Members in each Matched Pair under which a Manual MP Notice has been served or appears to have been served, in accordance with the CDS Procedures.
- (f) Any CDS Clearing Member in a Matched Pair which disputes any MP Notice or Settlement Notice, or which considers that an MP Notice or Settlement Notice additional to those copied to it by the Clearing House has been served, must inform the Clearing House, in the case of MP Notices in accordance with the CDS Procedures. Unless the Clearing House receives any notice disputing an MP Notice, the Clearing House will update its and Deriv/SERV's records on the basis of the MP Notices (or, at the times and in the



circumstances specified in the CDS Procedures, on the basis of equivalent information) notified by the Clearing House to the Matched CDS Buyer and Matched CDS Seller in the Matched Pair. The Clearing House shall not be obliged to act upon any disputed MP Notice or Settlement Notice until the relevant dispute has been resolved.

- (g) The Matched CDS Buyer and Matched CDS Seller in each Matched Pair shall each make such payments and deliveries and deliver such tenders, notices and invoices in relation to settlement to one another and to the Clearing House as are required pursuant to a Matched CDS Contract, these Rules, the CDS Procedures or Applicable Laws.

**Rule 1510**     *Physical Settlement of Matched Pairs for Non DVP Obligations*

- (a) In respect of any Matched Pair and the associated MP Amount, if any Deliverable Obligations to be Delivered by the Matched CDS Buyer to the Matched CDS Seller are reasonably believed by the Matched CDS Buyer not to settle standardly on a delivery-versus-payment basis (such Deliverable Obligations, "**Non DVP Obligations**") (as notified by the Matched CDS Buyer to the Matched CDS Seller and to the Clearing House upon delivering any Notice of Physical Settlement or NOPS Amendment Notice), Delivery of such Non DVP Obligations and payment of the related Physical Settlement Amount, each relating to the relevant portion of the MP Amount (the "**Non DVP MP Amount**") shall take place as follows and in accordance with the CDS Procedures:
- (i) the Matched CDS Buyer shall notify the Clearing House that it is ready to Deliver to the Matched CDS Seller the Non DVP Obligations in an amount at least equal to the Non DVP MP Amount;
  - (ii) following receipt of a valid notification under Rule 1510(a)(i), the Clearing House shall request that the Matched CDS Seller pays the full Physical Settlement Amount relating to such Non DVP MP Amount to the Clearing House;
  - (iii) following receipt of a request under Rule 1510(a)(ii), the Matched CDS Seller shall transfer the full Physical Settlement Amount relating to the Non DVP MP Amount to the Clearing House;
  - (iv) following receipt of the full Physical Settlement Amount relating to the Non DVP MP Amount in accordance with Rule 301(f), the Clearing House shall notify the Matched CDS Buyer that it is holding the full Physical Settlement Amount relating to such Non DVP MP Amount from the Matched CDS Seller;
  - (v) following receipt of the notice under Rule 1510(a)(iv), the Matched CDS Buyer shall Deliver the relevant Non DVP Obligations to the Matched CDS Seller in an amount at least equal to the relevant Non DVP MP Amount;
  - (vi) following its receipt of Delivery of the relevant Deliverable Obligations, the Matched CDS Seller shall deliver a Notice to the Clearing House in the form required by the Clearing House from time to time specifying that the Delivery has occurred, in full or, if in part, the percentage of the Non DVP MP Amount (the "**Delivered Percentage**") in respect of which Delivery has occurred;

- (vii) following its receipt of a valid notice under Rule 1510(a)(vi), the Clearing House shall pay an amount equal to the Physical Settlement Amount (or, where the Matched CDS Seller notified the Clearing House of Delivery in part only, an amount equal to the Delivered Percentage of the Physical Settlement Amount) received from the Matched CDS Seller in respect of the relevant Non DVP MP Amount to the Matched CDS Buyer; and
- (viii) if the Matched CDS Buyer does not Deliver the Non DVP Obligations in an amount at least equal to the relevant Non DVP MP Amount to the Matched CDS Seller within the required period under the CDS Procedures for compliance with Rule 1510(a)(v) ("**Delivery Period**"), the Matched CDS Seller may request that the Clearing House repay to the Matched CDS Seller the Physical Settlement Amount in respect of the relevant Non DVP MP Amount, less the Delivered Percentage of the Physical Settlement Amount, if any, together with accrued interest on such amount for the period it has been held by the Clearing House calculated by reference to the Clearing House's rate for overnight deposits in the currency of the Physical Settlement Amount.

The process set out in this Rule 1510 may, subject to the relevant Contract Terms, be repeated in relation to any Non DVP Obligations not in fact delivered during a relevant Delivery Period.

**Rule 1511**     *Notice that Physical Settlement is complete*

Where, pursuant to their rights and obligations under Matched CDS Contracts, the Matched CDS Seller and Matched CDS Buyer in any Matched Pair settle any Matched CDS Contract which is to be settled in accordance with the Fallback Settlement Method, the relevant Matched CDS Seller and Matched CDS Buyer shall each deliver a notice to the Clearing House in the form required by the Clearing House from time to time specifying the payment and Delivery that have occurred in respect of such Matched CDS Contracts. Any such notice shall constitute a representation by the CDS Clearing Member delivering the notice to the Clearing House that, so far as it is aware, physical settlement has occurred successfully and that there are no outstanding claims known to the CDS Clearing Member in respect of the Matched CDS Contract (save as is disclosed in the notice) but is otherwise without prejudice to the rights of any party to a Matched CDS Contract in respect of settlement.

**Rule 1512**     *Failure to pay Physical Settlement Amount; Cash Settlement*

If, in relation to any Matched Pair, a Matched CDS Seller fails to pay all or part of the Physical Settlement Amount either to the Matched CDS Buyer or (where Rule 1510 applies) to the Clearing House when, in accordance with the Contract Terms, it was obliged to pay such amount (the amount not paid being the "**Failed Amount**"):

- (a) the Matched CDS Buyer may and the Matched CDS Seller in the Matched Pair shall, as soon as practicable, give notice in writing to the Clearing House, giving all material details of the Matched CDS Contracts involved, of the failure to pay and the Failed Amount and any material details of the amount of any Physical Settlement Amount paid in part;

- (b) such failure to pay shall not constitute or be deemed to constitute a breach of contract, Bankruptcy or Failure To Pay by the Clearing House under these Rules, the applicable Contract Terms or any Matched CDS Buyer Contract or give rise to any termination rights under Rule 209(c), Rule 209(f) or Rule ~~912~~912.<sup>15</sup>
- (c) if the Matched CDS Buyer elects to notify the Clearing House of such failure to pay in accordance with Rule 1512(a), the Matched CDS Buyer may give any such notice as soon as reasonably practicable after the occurrence of such failure to pay by the Matched CDS Seller;
- (d) the Matched CDS Seller will be deemed to have failed to pay an amount equal to the Failed Amount to the Clearing House under the relevant Matched CDS Seller Contract;
- (e) upon notice being given to the Clearing House by the Matched CDS Buyer in accordance with Rule 1512(c), "Cash Settlement" between the Matched CDS Buyer and the Clearing House pursuant to the Partial Cash Settlement Terms (set out in Section 9.8 of the Credit Derivatives Definitions, which is amended for these purposes in the CDS Procedures) shall be deemed to apply to the Matched CDS Buyer Contract with respect to the Deliverable Obligations corresponding to the Failed Amount as though:
  - (i) the Deliverable Obligations not Delivered were Undeliverable Obligations;
  - (ii) the Latest Permissible Physical Settlement Date were the date on which the Matched CDS Buyer gave the relevant notice to the Clearing House as referred to in Rule 1512(c);
  - (iii) Indicative Quotations were not applicable; and
  - (iv) the Matched CDS Buyer were the Calculation Agent,

and the Clearing House and the Matched CDS Buyer will settle the Matched Buyer CDS Contract accordingly and Rule 1509 will not apply.

**Rule 1513**     *Fallback to Cash Settlement in respect of Non-Deliverable Obligations*

- (a) If a Matched CDS Buyer is not permitted to Deliver one or more Deliverable Obligations (such Deliverable Obligations, the "**Non-Deliverable Obligations**") specified in the relevant Notice of Physical Settlement or NOPS Amendment Notice to its Matched CDS Seller in the relevant Matched Pair because:
  - (i) the amount of such Deliverable Obligation is less than the relevant minimum denomination of such Deliverable Obligation; or

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<sup>15</sup> [References to Rules 209\(c\), 209\(f\) and 912 in this Rule 1512\(b\) are to the Continuing CDS Rule Provisions.](#)

- (ii) such Matched CDS Seller is not a permitted transferee under such Deliverable Obligation or the Matched CDS Buyer does not obtain any requisite consent with respect to delivery of loans,

such occurrence shall be treated, in relation to both Matched CDS Contracts, as an illegality or impossibility outside the parties' control for the purpose of Section 9.3 of the Credit Derivatives Definitions. The Matched CDS Buyer shall deliver a notice describing in reasonable detail the facts giving rise to such deemed illegality or impossibility to its Matched CDS Seller and the Clearing House.

- (b) Upon notice being given to the Clearing House by the Matched CDS Buyer under Rule 1513(a), "Cash Settlement" pursuant to the Partial Cash Settlement Terms (set out in Section 9.8 of the Credit Derivatives Definitions, which is amended for these purposes in the CDS Procedures) shall be deemed to apply to the Matched CDS Contracts in respect of the relevant Matched Pair with respect to the Non-Deliverable Obligations as though:
  - (i) the Non-Deliverable Obligations were Undeliverable Obligations;
  - (ii) the Latest Permissible Physical Settlement Date were the date on which the Matched CDS Buyer gave the relevant notice to the Clearing House as referred to in Rule 1513(a);
  - (iii) in the case of Rule 1513(a)(ii), Indicative Quotations were not applicable; and
  - (iv) the Matched CDS Buyer were the Calculation Agent.

The Clearing House and the Matched CDS Buyer will settle the Matched Buyer CDS Contract and the Clearing House and the Matched CDS Seller will settle the Matched Seller CDS Contract accordingly as though references to the Physical Settlement Amount in Rule 1509(b) and (c) were references to the Cash Settlement Amount.

#### **Rule 1514**    *CDS Alternative Delivery or Settlement Procedure*

- (a) A Matched CDS Buyer and Matched CDS Seller in any Matched Pair for which the Settlement Method is other than Auction Settlement may, in accordance with the CDS Procedures, elect to settle their rights and obligations in relation to such Matched CDS Contracts between each other outside the Clearing House and other than pursuant to Rule 1507 to Rule 1511 ("**CDS Alternative Delivery or Settlement Procedure**" or "**CADP**"). For CADP to be effective, the Matched CDS Buyer and Matched CDS Seller must jointly provide the Clearing House with a CADP Notice specifying the Matched CDS Contracts and the quantity of the related MP Amount intended to be the subject of CADP (which quantity, if the CDS Contracts are ones to which Section 3.9 (*Credit Event Notice after Restructuring*) of the Credit Derivatives Definitions applies, shall be an amount that would be permitted as an Exercise Amount in relation to such Matched CDS Contracts under such section and, otherwise, shall be the entire MP Amount) and obtain the consent of the Clearing House to CADP, which consent will not be unreasonably withheld or delayed. The Clearing House shall respond to any CADP Notice (including its consent to CADP or otherwise) within one Business Day of receipt thereof.

- (b) With effect from the time that the Clearing House confirms its consent to CADP, the Floating Rate Payer Calculation Amount of the relevant Matched CDS Contracts will be deemed to be reduced by an amount equal to the quantity of the MP Amount specified in the CADP Notice, as referred to in (a) above. In such circumstances, Rules 1507 to 1511 (inclusive) shall not apply to such Matched CDS Buyer and Matched CDS Seller in respect of the notified reduced amount related to such Matched Pair or the relevant Matched CDS Contracts.
- (c) In such circumstances, the Matched CDS Buyer and Matched CDS Seller shall be liable to satisfy their obligations to each other in respect of such CADP bilaterally pursuant to such arrangements or agreements as they may establish or agree between them.

**Rule 1515**     *Separation of Matched Pairs*

- (a) If: -
- (i) a Credit Event Announcement has been made in respect of an Applicable Credit Event other than a Restructuring; and
  - (ii) settlement of the relevant CDS Contracts is to be made pursuant to the Fallback Settlement Method; and
  - (iii) a subsequent resolution of a Determining Body results in settlement of the relevant CDS Contracts no longer being required to be made pursuant to the Fallback Settlement Method,
- then:
- (iv) to the extent that the Clearing House has not by then matched CDS Sellers with CDS Buyers to form Matched Pairs in relation to the relevant CDS Contracts, pursuant to Rule 1507, it shall not do so; and
  - (v) to the extent that the Clearing House has by then matched CDS Sellers with CDS Buyers to form Matched Pairs in relation to the relevant CDS Contracts pursuant to Rule 1507, the Clearing House shall, as soon as reasonably practicable, give notice (the "**Matching Reversal Notice**") to the CDS Seller and CDS Buyer forming each affected Matched Pair of the proposal to reverse such matching and shall thereafter reverse such matching, provided that the Clearing House will not reverse any matching to the extent that the Matched CDS Buyer or Matched CDS Seller has, not later than one Business Day after the Matching Reversal Notice, given notice to the Clearing House in accordance with Rule 1511 or the CDS Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts (or part thereof).
- (b) If: -
- (i) a Restructuring Credit Event Announcement has been made; and

- (ii) a subsequent resolution of a Determining Body determines that the relevant Restructuring Credit Event did not in fact occur,

then:

- (iii) to the extent that the Clearing House has not by then matched CDS Sellers with CDS Buyers to form Matched Pairs in relation to the relevant CDS Contracts, pursuant to Rule 1508, it shall not do so; and
- (iv) to the extent that the Clearing House has by then matched CDS Sellers with CDS Buyers to form Matched Pairs in relation to the relevant CDS Contracts pursuant to Rule 1508, the Clearing House shall:
  - (A) with respect to relevant CDS Contracts to which Auction Settlement is applicable and where the subsequent resolution of the Determining Body in (ii) above occurs prior to the Auction Final Price Determination Date, reverse such matching; and
  - (B) with respect to relevant CDS Contracts to which the Fallback Settlement Method is applicable, to the extent that the Clearing House has by then matched CDS Sellers with CDS Buyers to form Matched Pairs in relation to the relevant CDS Contracts pursuant to Rule 1508, the Clearing House shall, as soon as reasonably practicable, give a Matching Reversal Notice to the CDS Seller and CDS Buyer forming each affected Matched Pair of the proposal to reverse such matching and shall thereafter reverse such matching, provided that the Clearing House will not reverse any matching to the extent that the Matched CDS Buyer or Matched CDS Seller has, not later than one Business Day after the Matching Reversal Notice, given notice to the Clearing House in accordance with Rule 1511 or the CDS Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts (or part thereof).
- (c) In relation to any Matched CDS Contract for which the matching of the related Matched Pair is reversed pursuant to (a) or (b) of this Rule 1514(a), the Clearing House will recalculate Margin on the basis that such CDS Contract is no longer a Matched CDS Contract and will adjust the Margin required by it accordingly.
- (d) In relation to any Matched CDS Contract for which the matching of the related Matched Pair is reversed pursuant to (a) or (b) of this Rule 1515, any notices sent by the Matched CDS Buyer or the Matched CDS Seller to the other for the purposes or in connection with the settlement of the relevant Matched CDS Contracts will be deemed not to have been delivered and will be ineffective.
- (e) For the avoidance of doubt, reversal of a Matched CDS Contract means that the Clearing House will restore the CDS Contracts (and any related Customer-CM CDS Transactions) that existed before the initial Credit Event determination occurred including by amending records in Deriv/SERV and the relevant Clearing Members, Segregated CDS Customers



and Segregated CDS FCM/BD Customers will make or confirm any required matching amendments to reflect such reversed positions.

**Rule 1516**    *Customer Accounts*

- (a) Customer Accounts are available in relation to the Clearing of CDS Contracts. Accordingly:
- (i) the third and fourth sentences of Clause 5.3 of the Clearing Membership Agreement are applicable in relation to CDS Contracts recorded in a Designated CDS Customer Account; and
  - (ii) Circular no. C08/032 applies in relation to CDS Contracts and related Margin recorded in a Designated CDS Customer Account of a Non-FCM/BD CDS Clearing Member who falls within the scope of that Circular.
- (b)
- (i) Prior to making available services relating to Clearing to any Segregated CDS Customer, a Non-FCM/BD CDS Clearing Member is obliged to procure the agreement of such Customer to the Standard Terms, in such a way that:
    - (A) the Standard Terms and/or Rules are duly cross-referenced (as being applicable to all Customer-CM CDS Transactions between such Customer and such Non-FCM/BD CDS Clearing Member) in an agreement between the Non-FCM/BD CDS Clearing Member and its Customer that has been duly executed and duly authorised by both of them; and
    - (B) the rights of the Non-FCM/BD CDS Clearing Member and Clearing House against the Segregated CDS Customer under the Standard Terms are enforceable under Applicable Laws; and
    - (C) automatic early termination does not apply under such agreement in respect of either the Non-FCM/BD CDS Clearing Member or its Customer and the relevant Customer-CM CDS Transactions (unless the party, or each of the parties, to which automatic early termination applies is incorporated in Switzerland, Germany or any other jurisdiction approved by the Clearing House for such purposes).

To the extent that it agrees to be bound by the Rules, a Customer of a Non-FCM/BD CDS Clearing Member will be deemed to be bound by the Standard Terms in such a manner.
  - (ii) If the Clearing House so requests in writing and there are reasonable grounds for it making such a request, a Non-FCM/BD Clearing Member will execute any documentation specified by the Clearing House which confirms its agreement to the Standard Terms or any amendment to the Standard Terms made in accordance



with the Standard Terms (either generally or in respect of any particular Segregated CDS Customer).

- (iii) Where a Segregated CDS Customer of a Non-FCM/BD CDS Clearing Member has agreed or is deemed to have agreed to the application of the Standard Terms as set out in this Rule 1516, the requirements of clause 3.2 of the Clearing Membership Agreement shall be deemed to have been satisfied by the Non-FCM/BD CDS Clearing Member in respect of such Segregated CDS Customer..
- (c) CDS Clearing Members must make designations to the Clearing House pursuant to Rule 401(g) and Rule 406(d) which, if acted upon by the Clearing House in accordance with such provisions, would result in:
- (i) no CDS Sub-Account being used for more than one Segregated Customer for which such CDS Clearing Member provides clearing services;
  - (ii) no CDS Sub-Account linked to a Designated CDS Customer Account including any CDS Contract entered into in respect of non-Segregated Customer business or the CDS Clearing Member's own account business;
  - (iii) no CDS Sub-Account linked to a Proprietary Account including any CDS Contracts entered into for or in connection with Segregated Customer business; and
  - (iv) the only non-Segregated Customers where related CDS Contracts are eligible for recording in a CDS Sub-Account linked to the Proprietary Account being non-Segregated Customers that are Affiliates of the CDS Clearing Member.
- (d) It is acknowledged by the Clearing House that presently, in respect of the Clearing of CDS Contracts, neither Customers nor clients of Customers are capable of being provided with any of the access referred to in Rule 102(j) and that, accordingly in such circumstances:
- (i) Rule 102(j) does not apply in respect of the Clearing of CDS Contracts unless a Customer or its client is duly appointed as a Clearing Member's agent; and
  - (ii) neither a Customer nor client of a Customer of a CDS Clearing Member acting in such capacity is a Representative of that CDS Clearing Member in respect of the Clearing of CDS Contracts solely as a result of it being a Customer or client of such a Customer.

This Rule 1516(d) does not affect the validity or effects of any notice delivered in Deriv/SERV by a Customer which results in a notice being delivered between a CDS Clearing Member and the Clearing House. If the Customer would have breached the Rules in connection with any conduct relating to any notice relating to a CDS Contract or Customer-CM CDS Transactions in Deriv/SERV if it were a Clearing Member, then its Clearing Member may be subject to disciplinary proceedings where sanctions are limited to those in Rule 1003(u) in respect of conduct relating to such notices.

- (e) The Settlement and Notices Terms published by the Clearing House will apply to all CDS Clearing Members and their Customers, save to the extent that the relevant Clearing Member and Customer agree to vary such terms.

**Rule 1517**    *[Not used]*

**Rule 1518**    *CDS Committees and Dispute Panels*

Rule 117 and Part 10 (and equivalent provisions of any Clearing Membership Agreement) are hereby disappplied only to the extent that any matter is eligible for determination by a CDS Default Committee in accordance with the CDS Procedures or the Credit Derivatives Determinations Committee in accordance with the Contract Terms. This Rule applies in respect of a Person mentioned in the foregoing sentence unless and until any such Person resolves not to determine the matter concerned.

**Rule 1519**    *Interest*

- (a) Prior to the occurrence of (A) the completion of a close out of a CDS Clearing Member's positions under Part 9 upon the declaration of an Event of Default in respect of such CDS Clearing Member (a "**Defaulter Close-Out**") or (B) a deemed discharge of the rights and liabilities of a CDS Clearing Member under CDS Contracts upon the occurrence of an Insolvency in respect of the Clearing House or a Failure To Pay in respect of the Clearing House (a "**Deemed Discharge**"):

(i)    *Interest payable by the Clearing House:*

(A)    *Interest on Late Payments.* If the Clearing House is late in the performance of any payment obligation pursuant to a CDS Contract (including but not limited to pursuant to Rule 110) that has become due and payable, it will, to the extent permitted by applicable law, pay interest (before as well as after judgment) on the overdue amount to the relevant CDS Clearing Member on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment at the Late Payment Rate.

(B)    *Interest on Deferred Payments.* If the Clearing House does not pay any amount that, but for paragraph 9.2(a)(i)(B) of the CDS Procedures, would have been payable pursuant to a CDS Contract with that CDS Clearing Member, it will, to the extent permitted by applicable law pay interest (before as well as after judgment) on that amount to the relevant CDS Clearing Member on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for paragraph 9.2(a)(i)(B) of the CDS Procedures, have been payable to (but excluding) the date the amount actually becomes payable, at the Deferral Rate.

(ii)    *Interest payable by the CDS Clearing Member:*

- (A) *Interest on Late Payments.* If the relevant CDS Clearing Member is late in the performance of any payment obligation pursuant to a CDS Contract that has become due and payable, it will pay interest to the Clearing House in accordance with Rule 301(f).
  - (B) *Interest on Deferred Payments.* If the relevant CDS Clearing Member does not pay any amount that, but for paragraph 9.2(a)(i)(C) of the CDS Procedures, would have been payable pursuant to a CDS Contract with that CDS Clearing Member, it will, to the extent permitted by Applicable Law, pay interest (before as well as after judgment) on that amount to the Clearing House on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for paragraph 9.2(a)(i)(C) of the CDS Procedures, have been payable to (but excluding) the date the amount actually becomes payable, at the Deferral Rate.
- (b) Upon the occurrence of:
- (i) a Defaulter Close-Out with respect to a CDS Clearing Member, interest will accrue and be payable on any Unpaid Amount under a CDS Contract with such CDS Clearing Member for the period from (and including) the date the relevant obligation would, but for paragraph 9.2(a)(i)(B) or paragraph 9.2(a)(i)(C) of the CDS Procedures, as the case may be, have been required to be performed to (but excluding) the date of the Defaulter Close-Out, at the Applicable Close-out Rate; and
  - (ii) a Deemed Discharge with respect to a CDS Clearing Member, interest will accrue and be payable on any Unpaid Amount under a CDS Contract with such CDS Clearing Member for the period from (and including) the date the relevant obligation would, but for paragraph 9.2(a)(i)(B) or paragraph 9.2(a)(i)(C) of the CDS Procedures, as the case may be, have been required to be performed to (but excluding) the date of the Deemed Discharge, at the Applicable Close-out Rate.
- (c) Any interest pursuant to this Rule 1519 will be calculated on the basis of daily compounding and the actual number of days elapsed.
- (d) No interest or income shall accrue for the benefit of any CDS Clearing Member:
- (i) on any Permitted Cover provided to the Clearing House; or
  - (ii) on any other obligation of the Clearing House whether pursuant to the Clearing Membership Agreement, any Pledged Collateral Addendum or any other provision of the Rules or the Procedures for such time and in respect of any such amounts on which any interest accrues pursuant to this Rule 1519.

**Rule 1520**    *Unpaid Amounts*

On the occurrence of a Defaulter Close-Out or a Deemed Discharge, Unpaid Amounts under a CDS Contract with a CDS Clearing Member subject to the Defaulter Close-Out or affected by the Deemed Discharge, as the case may be, together with any amount of interest accrued in respect of those amounts pursuant to Rule 1519(b), are deemed immediately payable, including for purposes of Rule 906.

## Part 16 FCM/BD Clearing Member Provisions

### Rule 1601 *Scope*

This Part 16 of the Rules shall apply solely to FCM/BD Clearing Members. Except as provided in this Part 16 or to the extent inconsistent with this Part 16, all other provisions of the Rules applicable to Clearing Members shall apply to FCM/BD Clearing Members, and FCM/BD Clearing Members shall constitute Clearing Members for all purposes of the Rules.

### Rule 1602 *Definitions*

- (a) The term "**Clearing House DCM Segregated Account**" means an omnibus account located in the United States maintained by the Clearing House with respect to DCM Customers of an FCM/BD Clearing Member, which is segregated in accordance with Applicable Law and contains Margin (or the Permitted Cover in respect thereof) or proceeds thereof deposited by such FCM/BD Clearing Member on behalf of its DCM Customers in connection with Contracts that are U.S. Futures. The Clearing House DCM Segregated Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (b) The term "**Clearing House Non-DCM/Swap Account**" means an omnibus account maintained by the Clearing House with respect to Non-DCM/Swap Customers of an FCM/BD Clearing Member, which is maintained in accordance with Applicable Law and contains Margin (or Permitted Cover in respect thereof) or the proceeds thereof deposited by such FCM/BD Clearing Member on behalf of its Non-DCM/Swap Customers in connection with Non-DCM/Swaps. The Clearing House Non-DCM/Swap Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (c) The term "**Clearing House Swap Segregated Account**" means an omnibus account located in the United States maintained by the Clearing House with respect to Swap Customers of an FCM/BD Clearing Member, which is segregated in accordance with Applicable Law and contains Margin (or Permitted Cover in respect thereof) or proceeds thereof deposited by such FCM/BD Clearing Member on behalf of its Swap Customers in connection with Contracts that are Swaps. The Clearing House Swap Segregated Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (d) The term "**Clearing House SBS Segregated Account**" means an omnibus account located in the United States maintained by the Clearing House with respect to SBS Customers of an FCM/BD Clearing Member, which is segregated in accordance with Applicable Law and contains Margin (or the Permitted Cover in respect thereof) or proceeds thereof deposited by such FCM/BD Clearing Member on behalf of its SBS Customers in connection with Contracts that are SBS. The Clearing House SBS Segregated Account will consist of one or more accounts at one or more depositories which may be co-mingled

to the extent permitted by the applicable provisions of the Exchange Act and SEC rules and regulations.

- (e) The term "**Clearing House FCM/BD Segregated Account**" means the Clearing House Swap Segregated Account, the Clearing House DCM Segregated Account, the Clearing House SBS Segregated Account or the Clearing House Non-DCM/Swap Account, as the case may be.
- (f) The term "**Customer Swap Portfolio**" means the portfolio of rights and obligations under Contracts that are registered in the Swap Customer Account of an FCM/BD Clearing Member and that are allocated to a particular Swap Customer in the books and records of the Clearing House in accordance with the Swap Customer Segregation Requirements. With respect to CDS Contracts, the FCM/BD Clearing Member will establish a separate CDS Sub-Account for each Customer Swap Portfolio.

### **Rule 1603**     *FCM/BD Contracts*

- (a) A Contract that arises under Rule 401 between the Clearing House and an FCM/BD Clearing Member shall be subject to this Part 16, regardless of whether any offsetting Contract between the Clearing House and another Clearing Member is subject to this Part 16. In respect of any Contract between the Clearing House and an FCM/BD Clearing Member, and in respect of other matters relating to such FCM/BD Clearing Member and/or FCM/BD Customer under the Rules, this Part 16 shall govern in the event of any conflict with any other provision of the Rules, and, for the avoidance of doubt, the Procedures, Clearing Membership Agreement or Pledged Collateral Addendum. With respect to an FCM/BD Clearing Member, references in these Rules to such Clearing Member in respect of a Contract recorded in a Customer Account shall be deemed to refer to such FCM/BD Clearing Member acting for the account of and on behalf of one or more FCM/BD Customers in respect of such Contract under the terms of these Rules as set forth in Rule 1603(d).
- (b) Each FCM/BD Clearing Member shall have a Proprietary Account and one or more Customer Accounts in which its Contracts shall be registered. Except as provided herein, references in the Rules to a Customer Account of an FCM/BD Clearing Member or to a "class" of Customer Account shall refer to one or more of the DCM Customer Account, Swap Customer Account, Non-DCM/Swap Customer Account, SBS Customer Account, General Customer Account, as applicable, each such account being of a different "class". Notwithstanding anything to the contrary herein, to the extent that pursuant to a CFTC rule, order or exemption (or a Rule of the Clearing House approved thereunder) it is permissible under Applicable Law for Contracts in U.S. Futures, Swaps and/or Non-DCM/Swaps (and related Margin or Permitted Cover) to be co-mingled in a single class of Customer Account, the Clearing House may permit such co-mingling in such class of Customer Account, and references herein to the relevant Customer Account and FCM/BD Customer shall thereupon be construed accordingly. Without limiting the foregoing, Permitted Co-mingled Contracts shall be treated as Swaps or U.S. Futures, as the case may be, and not as Non-DCM/Swaps, and the appropriate classes of Customer Account shall be construed accordingly.

- (c) Each Customer Account of an FCM/BD Clearing Member that has executed a Pledged Collateral Addendum shall be a Pledged Collateral Account. Margin (or Permitted Cover in respect thereof) to be provided by an FCM/BD Clearing Member in respect of a Customer Account shall be provided in the form of Pledged Collateral, but in all other respects shall be provided in the forms, amounts, times and manners required under Rule 502 and Rule 503.
- (d) Where an FCM/BD Clearing Member clears a Contract for FCM/BD Customers, (i) such FCM/BD Clearing Member becomes liable to the Clearing House in respect of such Contract to no less an extent than if such Contract were for the FCM/BD Clearing Member's own account (and without prejudice to the obligations of the FCM/BD Customers to the FCM/BD Clearing Member in respect of such Contract, including without limitation pursuant to any agreement between an FCM/BD Customer and the FCM/BD Clearing Member); (ii) the Clearing House becomes liable and is obligated to perform to the FCM/BD Clearing Member, which in turn it is acknowledged will be acting for the account of and on behalf of such FCM/BD Customers, in respect of such Contract; (iii) the Clearing House shall be deemed to have discharged such obligations by performing to such FCM/BD Clearing Member for credit to the relevant Customer Account in respect of all payments and other obligations owed by the Clearing House under and in respect of such Contract as otherwise set forth in and subject to these Rules, without having any obligation to perform directly to the FCM/BD Customers; and (iv) without prejudice to any agreement between an FCM/BD Customer and the FCM/BD Clearing Member, such FCM/BD Customers become liable to reimburse and indemnify such FCM/BD Clearing Member in respect of performance by the FCM/BD Clearing Member under such Contract, subject, in the case of each of clauses (i) through (iv) of this subsection, to the provisions of this Part 16. Nothing in this Rule 1603(d) (I) shall be deemed to affect the rights or obligations of an FCM/BD Customer as against such FCM/BD Clearing Member with respect to such a Contract under Applicable Law or the terms of any agreement between the FCM/BD Clearing Member and such FCM/BD Customer; (II) shall require the Clearing House to carry out any enquiry as to the identity or existence of any FCM/BD Customer or FCM/BD Customers, except as required by Applicable Law; or (III) shall be deemed to limit the right or ability of the Clearing House to net or offset Open Contract Positions or obligations within a particular class of Customer Account of an FCM/BD Clearing Member to the extent otherwise permitted by these Rules and Applicable Law.
- (e) Rule 402(a) and clause 3.2 of the Clearing Membership Agreement shall not apply to an FCM/BD Clearing Member in respect of a Contract with respect to which it is acting for an FCM/BD Customer. None of Rule 405(d), Rule 408, or clause 3.4 of a Clearing Membership Agreement shall be deemed to preclude an FCM/BD Clearing Member from acting for an FCM/BD Customer in connection with a Contract.
- (f) Where the FCM/BD Clearing Member acts for a Customer, Rule 405(c)(ii) shall not apply to any contracts, rights, obligations or liabilities as between that Customer and the FCM/BD Clearing Member.



- (g) For purposes of Rule 303 and Rule 406(c) and for the avoidance of doubt Rule 905, Contracts and other obligations in any class of Customer Account of an FCM/BD Clearing Member shall not be netted or offset against Open Contract Positions or other obligations in the Proprietary Account of that Clearing Member, and Open Contracts or other obligations in any class of Customer Account of any FCM/BD Clearing Member may not be netted or offset against Open Contract Positions or other obligations in any other class of Customer Account of that FCM/BD Clearing Member.
- (h) Notwithstanding anything to the contrary in Rule 502 and Rule 503, for each Customer Account if required by Applicable Law or otherwise if so specified in the relevant Procedures or by Circular, Margin shall be calculated and called for on a "gross" basis across all positions of the FCM/BD Customers of a particular FCM/BD Clearing Member.
- (i) The first sentence of Rule 504(b) is not applicable. The second sentence of Rule 504(b) is amended to read as follows: Except as provided by Applicable Law and Rule 1605 with respect to a Customer Account, the Clearing House will take no account of any right or interest which any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House. Nothing in the Rules nor any Pledged Collateral Addendum (including without limitation section 2.7 thereof as modified pursuant to Rule 1609) shall preclude an FCM/BD Clearing Member from providing Pledged Collateral to the Clearing House that was provided to the FCM/BD Clearing Member by an FCM/BD Customer and in which the FCM/BD Customer has granted the FCM/BD Clearing Member a security interest to secure the FCM/BD Customer's obligations; provided that FCM/BD Clearing Member hereby agrees that any such security interest in favour of FCM/BD Clearing Member is in all respects subject to the rights of the Clearing House in respect of such Pledged Collateral hereunder and under the Pledged Collateral Addendum and FCM/BD Clearing Member shall not, and shall not attempt to (i) exercise any rights or remedies or bring any proceeding or action with respect to such Pledged Collateral until such Pledged Collateral is released from the lien and security interest of the Clearing House hereunder and under the Pledged Collateral Addendum or (ii) otherwise interfere with, delay the exercise of or take any action to affect the Clearing House's rights hereunder or under the Pledged Collateral Addendum with respect to such Pledged Collateral.
- (j) Without limiting Rule 111, save for any liability which it cannot exclude pursuant to Applicable Laws, the Clearing House shall have no obligation or liability in respect of an Open Contract Position in a Customer Account of an FCM/BD Clearing Member other than to the FCM/BD Clearing Member (acting as set forth in Rule 1603(d)) and no Person (including an FCM/BD Customer) other than an FCM/BD Clearing Member shall be entitled to enforce or exercise any rights or remedies with respect to such Open Contract Position as against the Clearing House. The Clearing House shall have no obligation or liability in respect of any transaction, agreement or arrangement between an FCM/BD Clearing Member and an FCM/BD Customer. This Rule 1603(j) shall not be deemed to limit the rights, if any, of an FCM/BD Customer as against such FCM/BD Clearing Member in respect of such Open Contract Positions, and payments or other performance thereunder, under Applicable Law or the terms of any agreement between the FCM/BD Clearing Member and such FCM/BD Customer.

- (k) With respect to any Open Contract Position carried by an FCM/BD Clearing Member for a Customer Account, all terms of the position, as carried in the customer account on the books of the FCM/BD Clearing Member, must conform to the terms of the Open Contract Position under the Rules as in effect from time to time (including any changes therein or actions by the Clearing House in relation thereto).
- (l) This Rule 1603 is without prejudice to and shall not restrict or exclude any of the other obligations of Clearing Members under the Rules.
- (m) The Standard Terms shall not apply to FCM/BD Clearing Members.

**Rule 1604** *Additional default rules for FCM/BD Clearing Members*

The following provisions constitute default rules for purposes of the Companies Act 1989.

- (a) Any right of the Clearing House pursuant to Rule 902 or Rule 903 to transfer Open Contracts and related Margin (or Permitted Cover in respect thereof) of an FCM/BD Clearing Member that is a Defaulter will be subject to Applicable Law, including without limitation Part 190 of the CFTC Regulations.
- (b) Where an FCM/BD Clearing Member wishes to terminate or close out an Open Contract Position in any class of Customer Account with respect to an FCM/BD Customer because of a default or similar event with respect to that FCM/BD Customer, the relevant FCM/BD Clearing Member must, in accordance with Rule 406 and the Clearing Procedures, either:
  - (i) offset such Open Contract Position against a Contract or Contracts entered into by such FCM/BD Clearing Member for such Customer Account (which may be entered into contemporaneously with a separate Contract or Contracts entered into at the same time for its Proprietary Account) for the specific purpose of liquidating such Customer Account position; or
  - (ii) to the extent permitted by Applicable Law, transfer such Open Contract Position from such Customer Account to its Proprietary Account, whereupon it shall be treated as an Open Contract Position in the Proprietary Account for all purposes under these Rules. Nothing in this Rule 1604(b) is intended to create a condition precedent to any step being taken under any agreement between a Clearing Member and its Customer. However, a Clearing Member shall continue to be liable to the Clearing House in respect of any Contracts until such time as they are offset in accordance with this Rule 1604(b) or otherwise terminated in accordance with the Rules and the Clearing Procedures. For the avoidance of doubt, any Open Contract Position and any such offsetting Contract or Contracts entered into by an FCM/BD Clearing Member for a Customer Account for the specific purpose of liquidating such Open Contract Positions pursuant to this Rule 1604(b) may be aggregated and/or netted pursuant to Rule 406.
- (c) Each FCM/BD Customer whose transactions are cleared through an FCM/BD Clearing Member with the Clearing House will be deemed to have consented to the actions taken in accordance with the following provisions if an Event of Default has occurred with respect to its FCM/BD Clearing Member:

- (i) the FCM/BD Clearing Member (or its Insolvency Practitioner) and/or the Clearing House shall be entitled to transfer Open Contract Positions recorded in a Customer Account in accordance with Applicable Law and the Procedures;
  - (ii) such FCM/BD Customer appoints the Clearing House as its lawful agent and attorney-in-fact to take such actions on behalf of the FCM/BD Customer as the Clearing House determines necessary or appropriate in order to effectuate such transfer with respect to the Open Contract Positions carried by the FCM/BD Clearing Member for such FCM/BD Customer, including executing any document or instrument with respect to the transfer of the Open Contract Positions and/or exercising rights and remedies to transfer such positions;
  - (iii) the FCM/BD Customer shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the FCM/BD Clearing Member, any Insolvency Practitioner for such FCM/BD Clearing Member, or the Clearing House to take action contemplated by these Rules, including, without limitation, the transfer or close-out of positions and the transfer or application of related Margin or Permitted Cover in respect thereof;
  - (iv) any determination made by the Clearing House with respect to the termination value of a Contract under the Rules or the value of any other asset or liability under Rule 905 shall be conclusive and binding;
  - (v) any amount payable by such FCM/BD Customer in respect of the termination of a Contract of a Defaulter in respect of its Customer Account shall not be netted or offset against any amount owed by such FCM/BD Clearing Member to such FCM/BD Customer under any other agreement or instrument and shall be paid directly to or as directed by the Clearing House; and
  - (vi) the Clearing House applying the Default Portability Rules with respect to Open Contract Positions relating to such FCM/BD Customer, including by taking any of the following steps:
    - (A) Transferring Contract Positions to a Transferee Clearing Member;
    - (B) terminating Open Contract Positions and arranging for the entry into of new replacement Open Contract Positions with a Transferee Clearing Member (by way of novation or otherwise); and/or
    - (C) transferring Margin (in such amount as the Clearing House may determine) credited to the Customer Margin Account of its FCM/BD Clearing Member to the Customer Margin Account of the Transferee Clearing Member (and, if such a transfer occurs, the Defaulter's obligations to the FCM/BD Customer in respect of such transferred Margin shall be fully discharged).
- (d) In respect of any Contract to which a Defaulter that is or was an FCM/BD Clearing Member and the Clearing House is or was a party, any net sum certified by the Clearing House pursuant to Rule 905(b) as payable by the Clearing House to the Defaulter in respect

of any class of Customer Account of the Defaulter is intended to be treated in accordance with Applicable Laws of the United States of America, including the U.S. Bankruptcy Code and the CEA. With respect to any FCM/BD Clearing Member, the Clearing House and such FCM/BD Clearing Member intend that:

- (i) for purposes of the relevant provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991:
  - (A) the Clearing House is a 'clearing organization';
  - (B) the Clearing House and each Clearing Member is a 'member';
  - (C) the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts together constitute a 'netting contract' between those parties and include 'security agreements or arrangements or other credit enhancements related to such netting contract';
  - (D) an obligation of a Clearing Member to make a payment to the Clearing House, or of the Clearing House to make a payment to a Clearing Member, subject to a netting agreement, is a 'covered clearing obligation' and a 'covered contractual payment obligation';
  - (E) an entitlement of a Clearing Member to receive a payment from the Clearing House, or of the Clearing House to receive a payment from a Clearing Member, subject to a netting contract, is a 'covered contractual payment entitlement';
  - (F) the amount by which the covered contractual payment entitlements of a Clearing Member or the Clearing House exceed the covered contractual payment obligations of such Clearing Member or the Clearing House after netting under a netting contract is its 'net entitlement'; and
  - (G) the amount by which the covered contractual payment obligations of a Clearing Member or the Clearing House exceed the covered contractual payment entitlements of such Clearing Member or the Clearing House after netting under a netting contract is its 'net obligation';
- (ii) for purposes of the Title 11 of the United States Code (the "U.S. Bankruptcy Code"), each Contract or Open Contract Position is a 'commodity contract' or 'securities contract', as applicable and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'commodity contract' or 'securities contract', as applicable; and

- (iii) for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, each Open Contract Position is a 'swap agreement' and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'swap agreement'.
- (e) Without limiting Rule 904(e), for purposes of calculating  $M$  in Rule 906(ea) and applying assets to meet the obligations and liabilities of a Defaulter that is an FCM/BD Clearing Member in respect of a Swap Customer Account, and determining any loss or shortfall to the Clearing House upon or following any Event of Default of that Clearing Member under Rule 1103, the Clearing House shall be entitled to rely conclusively on the allocation of Open Contract Positions to Customer Swap Portfolios and the allocation of Margin to such Customer Swap Portfolios, as set forth in the books and records of the Clearing House from time to time in accordance with CFTC Rule 22.15 (absent manifest error by the Clearing House in making such allocation based on accurate information provided to the Clearing House), without need for further enquiry by the Clearing House as to the origin, source or ownership of any such Margin. Without limiting the Clearing House's rights under the preceding sentence, if the Clearing House applies FCM Swap Customer IM or Permitted Cover in respect thereof allocated to a particular Customer Swap Portfolio as permitted hereunder and subsequently determines that such asset was not the property of the relevant Swap Customer of the Defaulter (a "**Reviewed Application**"), the Clearing House shall be entitled, to the extent permitted by Applicable Law, to apply any Guaranty Fund Contribution of the Defaulter remaining after satisfaction of the obligations and liabilities of the Defaulter to reimburse the Clearing House Swap Segregated Account up to the amount of the Reviewed Application. The Clearing House shall have no obligation to rescind or otherwise refund any Reviewed Application or to apply any other assets (including, without limitation, any other assets in the Guaranty Fund, Clearing House Contributions or Assessment Contributions) to any reimbursement pursuant to the immediately preceding sentence.

#### **Rule 1605**     *Margin and Segregation Rules*

- (a) An FCM/BD Clearing Member shall require each FCM/BD Customer to provide margin (or permitted cover in respect thereof) (such assets, "**FCM/BD Customer Collateral**") in an amount at least equal to (or, if and to the extent so specified by Circular, greater than) the amount of Margin of each relevant type required on a gross basis by the Clearing House with respect to the relevant Open Contract Position(s), separately for each relevant class of Customer Account (regardless of whether the FCM/BD Clearing Member is required to provide such Margin to the Clearing House on a gross basis pursuant to Rule 503). Any additional required amount may be specified by the Clearing House in a Circular with reference to a percentage of required Customer Account Margin. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set and same FCM/BD Customer in the same class of Customer Account, but without giving effect to any offset or permitted offset of such Open



Contract Positions against Open Contract Positions relating to a different FCM/BD Customer.

- (b) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the DCM Customer Account arising from U.S. Futures (including for the avoidance of doubt Permitted Co-mingled Contracts recorded in the DCM Customer Account) ("**FCM/BD U.S. Futures Customer Collateral**"), the Clearing House shall receive and hold such collateral in the Clearing House DCM Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Section 4d(a) and (b) of the CEA and the regulations of the CFTC thereunder. By means of this Rule, the FCM/BD Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under CFTC regulations.
- (c) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the SBS Customer Account arising from SBS ("**FCM/BD SBS Customer Collateral**"), the Clearing House shall receive and hold such collateral in the Clearing House SBS Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Sections 3E(b) and/or 15(c)(3) of the Exchange Act and the applicable rules and regulations of the SEC.
- (d) With respect to FCM/BD Customer Collateral in respect of Contracts registered in the Swap Customer Account arising from Swaps (including for the avoidance of doubt Permitted Co-mingled Contracts recorded in the Swap Customer Account) ("**FCM/BD Swap Customer Collateral**")~~:-~~:
  - (i) An FCM/BD Clearing Member shall receive, hold and use all FCM/BD Swap Customer Collateral only as permitted under CEA Section 4d(f) and the regulations of the CFTC thereunder, including but not limited to Part 22 of the CFTC Regulations and any interpretations thereof by the CFTC or its staff (and, to the extent applicable, Securities Exchange Act Sections 3E(b) and/or 15(c)(3) and the regulations or any orders of the SEC thereunder) and as further set forth in these Rules and the Procedures (the "**Swap Customer Segregation Requirements**"). The Clearing House shall receive and hold such collateral transferred to the Clearing House in the Clearing House Swap Segregated Account and shall segregate, hold and use all such FCM/BD Swap Customer Collateral as cleared swaps customer property in accordance with the Swap Customer Segregation Requirements. By means of this Rule, FCM/BD Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under the Swap Customer Segregation Requirements.
  - (ii) Without prejudice to clause (i) of this subsection, Open Contract Positions in any Swap Customer Account and related FCM/BD Swap Customer Collateral (or, solely to the extent permitted by applicable rules, orders or exemptions of the CFTC and the SEC, Contracts or Open Contract Positions that are security-based swaps) shall be part of the cleared swaps account class for purposes of Part 190 of the CFTC regulations.

- (iii) Property credited to or recorded in the Clearing House Swap Segregated Account may only be applied in respect of Contracts or Open Contract Positions in the Swap Customer Account as provided in these Rules and only to the extent permitted by the Swap Customer Segregation Requirements (including CFTC Rule 22.15). For the avoidance of doubt, following an Event of Default with respect to an FCM Clearing Member, property credited to or recorded in the Clearing House Swap Segregated Account that is not eligible to be applied pursuant to the preceding sentence will be returned to the FCM Clearing Member (or its trustee or representative) pursuant to the Pledged Collateral Addendum and Rule 502(i).
- (e) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the Non-DCM/Swap Customer Account arising from Non-DCM/Swap Transactions (other than Permitted Co-mingled Contracts) ("**FCM/BD Other Transaction Collateral**"), the Clearing House shall hold such FCM/BD Customer Collateral as constituting the foreign futures or foreign options secured amount subject to the requirements of CFTC Rule 30.7. By means of this Rule, the FCM/BD Clearing Member shall have satisfied the requirement to obtain an acknowledgement letter of such status from the Clearing House under CFTC regulations.
- (f) In connection with any Open Contract Position and related FCM/BD U.S. Futures Customer Collateral, FCM/BD SBS Customer Collateral, FCM/BD Swap Customer Collateral or FCM/BD Other Transaction Collateral provided to the Clearing House, the FCM/BD Clearing Member shall keep and maintain written records with respect thereto as required under Applicable Law. Each FCM/BD Clearing Member shall provide such records to the Clearing House upon request and upon such other basis, if any, as may be provided in the Procedures.
- (g) For the avoidance of doubt, the acknowledgement in the first sentence of Rule 505 and the first sentence of clause 2.11 of a Pledged Collateral Addendum are intended to apply in relation to Pledged Collateral to the extent that the characterisation of any Pledged Collateral or the terms of a Pledged Collateral Addendum fall to be considered under the laws of any member state of the European Economic Area that has implemented Directive 2002/47/EC. For the avoidance of doubt, neither Rule 505 nor clause 2.11 of a Pledged Collateral Addendum are intended to affect any of: (i) the choice of law of the parties to any Pledged Collateral Addendum in respect of such addendum; (ii) the choice of law under Rule 1608; (iii) the location or governing law of any account in which Pledged Collateral is held by the Clearing House; (iv) the location or governing law of any account from or to which assets intended to become or which were previously Pledged Collateral are transferred to or from the Clearing House; (v) the existence or nature of any place of business, establishment or office in any jurisdiction of any Person; or (vi) the principal place of business or centre of main interests of any FCM/BD Clearing Member or any of its Customers or Affiliates.
- (h) Notwithstanding anything to the contrary in Parts 3 or 5 of these Rules, Margin shall be calculated, called and returned in respect of Contracts recorded in the Swap Customer Account of an FCM/BD Clearing Member as follows:



- (i) The Clearing House shall calculate the amount of required FCM Swap Customer IM separately for each Customer Swap Portfolio. The Clearing House shall determine an amount for each Customer Swap Portfolio at the time of each FCM Swap Customer IM calculation equal to the amount of required FCM Swap Customer IM for such Customer Swap Portfolio minus the value of the Margin (or Permitted Cover in respect thereof) then standing to the credit of the Swap Customer Account that is allocated by the Clearing House to such Customer Swap Portfolio as FCM Swap Customer IM (a "**Customer Swap Portfolio Initial Margin Call/Return Amount**"):
  - (A) with respect to each Customer Swap Portfolio Initial Margin Call/Return Amount applicable to the Clearing Member's Swap Customer Account that is a positive number, the Clearing House shall call such Clearing Member for an amount of FCM Swap Customer IM, to be transferred in accordance with Parts 3 and 5 of the Rules, equal to such Customer Swap Portfolio Initial Margin Call/Return Amount; and
  - (B) following the settlement in full of all Margin due to be transferred to the Clearing House pursuant to Rule 1605(h)(i)(A) above, the Clearing House will make available for return to the Clearing Member, in accordance with Parts 3 and 5 of the Rules, for each Customer Swap Portfolio with a Customer Swap Portfolio Initial Margin Call/Return Amount that is a negative number, Margin (or Permitted Cover in lieu thereof) in an amount as close as reasonably practicable to (but not to exceed) the absolute value of such Customer Swap Portfolio Initial Margin/Call Return Amount.
- (ii) The Clearing House shall calculate Mark-to-Market Margin requirements for the Swap Customer Account of an FCM/BD Clearing Member on a net basis across all Customer Swap Portfolios in the Swap Customer Account, in accordance with Parts 3 and 5 of the Rules.
- (iii) Notwithstanding anything to the contrary in the Rules (including Rule 302), amounts required to be transferred between an FCM/BD Clearing Member and the Clearing House in respect of Margin pursuant to any of Rules 1605(h)(i)(A)-(B) and/or (ii) above shall not be netted or offset, except to the extent such netting or offset may be permitted by Applicable Law.
- (i) The Clearing House will not accept the deposit of FCM/BD Swap Customer Collateral from an FCM/BD Clearing Member in respect of Contracts or Open Contract Positions recorded in a Swap Customer Account in excess of the amount required by the Clearing House, within the meaning of CFTC Rule 22.13(c). For the avoidance of doubt, any FCM/BD Swap Customer Collateral deposited with the Clearing House that subsequently exceeds the amount required by the Clearing House as a result of a change in the amount required or change in the market value of such FCM/BD Swap Customer Collateral will become available for withdrawal in accordance with Rules 302, 503 and 1605(h).

- (j) Notwithstanding anything to the contrary in the Rules, if the Clearing House determines to call for Margin pursuant to Rule 1605(h) in respect of one or more Customer Swap Portfolio Initial Margin Call/Return Amounts or Mark-to-Market Margin requirements for a Swap Customer Account of an FCM/BD Clearing Member on an intra-day basis, the Clearing House may in lieu thereof increase the applicable Margin requirement for the Proprietary Account of such FCM/BD Clearing Member.

**Rule 1606** *Additional FCM/BD Clearing Membership Requirements*

- (a) Each FCM/BD Clearing Member that has a Customer Account shall execute and deliver to the Clearing House a Pledged Collateral Addendum to its Clearing Membership Agreement, in the form specified by the Clearing House.

**Rule 1607** *Additional FCM/BD Requirements for Customer Transactions*

- (a) The relationship between an FCM/BD Customer and an FCM/BD Clearing Member in respect of Open Contract Positions for that FCM/BD Customer shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties, subject to the applicable provisions of these Rules and provided that no such agreement may be inconsistent with these Rules or the Clearing Membership Agreement.
- (b) The Clearing House shall have no duties or responsibilities with respect to any Clearing House FCM/BD Segregated Account except as expressly set forth in these Rules and Applicable Law. The Clearing House shall have no obligation to monitor any requirements set forth in any agreement between an FCM/BD Clearing Member and an FCM/BD Customer. The Clearing House shall have no responsibility for the compliance by any FCM/BD Clearing Member or FCM/BD Customer with its obligations under any such agreement.
- (c) Each FCM/BD Customer for which an FCM/BD Clearing Member clears a Swap must be an "eligible contract participant" as defined in the CEA.
- (d) Each FCM/BD Customer whose transactions are cleared by an FCM/BD Clearing Member with the Clearing House will be deemed to have consented to:
- (i) the Clearing House having the right to obtain information in relation to transactions from any Trade Processing Platform, Deriv/SERV or any other trade information or data depository so as to enable the Clearing House to identify which Contracts and Margin or Permitted Cover between the Clearing House and FCM/BD Clearing Member relate to such transactions;
  - (ii) the FCM/BD Clearing Member making any disclosures in connection with FCM/BD Customer and transactions as are required by the Rules or CDS Procedures or as required by Applicable Law;

- (iii) disclosures to, use by and disclosures by the Clearing House of information relating to the FCM/BD Customer (including the Personal Data of its Data Subjects) pursuant to Rule 106;
  - (iv) submissions of and other actions relating to data concerning such transactions by the Clearing House pursuant to the Rules and the Procedures; and
  - (v) the operation of Rule 1605(d)(ii).
- (e) Each FCM/BD Customer whose transactions are cleared by an FCM/BD Clearing Member with the Clearing House will be deemed to have consented to its FCM/BD Clearing Member entering into Contracts arising under Rule 404(c)(i) on its behalf.
- (f) Each FCM/BD Clearing Member shall be required to obtain the agreement of each FCM/BD Customer to the provisions of the Rules applicable to or otherwise referring to FCM/BD Customers (including Rule 111, Rule 1603(j), Rule 1604(c) and this Rule 1607) (which agreement may be obtained through a general obligation in a customer agreement to comply with applicable clearing organisation rules) and hereby represents and warrants to the Clearing House that it has obtained such agreement.

**Rule 1608**     *Governing Law and Dispute Resolution*

- (a) Solely as between an FCM/BD Clearing Member and the Clearing House, those provisions of Parts 3, 5 and 16 of the Rules inasmuch as they relate solely to an issue or matter concerning:
- (i) the pledging, transfer, holding, use and segregation of Pledged Collateral provided by an FCM/BD Clearing Member (or other property recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided by an FCM/BD Clearing Member); and/or
  - (ii) the application of any net sum owed in favour of the FCM/BD Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided and, solely to the extent relevant to interpreting the foregoing provisions in such circumstances, relevant definitions and interpretative provisions in Part 1 of the Rules (such provisions, together or separately "Pledged Collateral Matters") shall be governed by and construed in accordance with the laws of the State of New York and, as applicable, the federal law of the United States of America.
- (b) For the avoidance of doubt, Rule 1608(a) is an exception to Rule 102(s) which provides that the Rules and Contracts shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding Rule 1608(a), the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:

- (i) all of the provisions of the Rules concerning the calculation and determination of any net sum (except to the extent expressly provided in Rule 1604(d)) and the other default rules of the Clearing House, including all the provisions of Parts 9 and 11 of the Rules;
  - (ii) all of the provisions of the Rules relating to the Designated System, including all the provisions of Part 12 of the Rules;
  - (iii) any Dispute or issue arising as between a Non-FCM/BD Clearing Member on the one hand and the Clearing House on the other hand;
  - (iv) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided;
  - (v) any matter relating to Pledged Collateral of a Non-FCM/BD Clearing Member;
  - (vi) any Pledged Collateral provided by an FCM/BD Clearing Member pursuant to an English law Pledged Collateral Addendum; and
  - (vii) the Contract Terms of all Contracts.
- (c) Where a dispute between an FCM/BD Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "New York Courts"). Consistent with the preceding sentence, the Clearing House and each of the Clearing Members hereby:
- (i) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
  - (ii) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.
- (d) All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM/BD Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to Rule

1608(c), does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) heard in the New York Courts.

- (e) Nothing in this Rule 1608 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.
- (f) EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE RULES OR ANY CONTRACT OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:
  - (i) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND
  - (ii) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Rule 1608(f).

**Rule 1609**    *Modifications to Pledged Collateral Addendum*

- (a) The following provisions of each Pledged Collateral Addendum governed by New York and U.S. law have been amended pursuant to clause 4.2 thereof by virtue of the adoption of these provisions of the Rules:
  - (i) In clause 2.8, the deletion of the words: "(and to procure that any third party takes any action reasonably requested by the Clearing House)".
  - (ii) Clause 2.11, to the extent that any amendment may be regarded as necessary to give effect to Rule 1605(g).
  - (iii) In clause 3.5, the replacement of the words "the Clearing House" with the words "either party".
  - (iv) In clause 2.7, the definition of the term "Encumbrances" does not include retention of title.

- (v) Any other provision of the Pledged Collateral Addendum to the extent that any amendment may be regarded as necessary to give effect to Rule 1603(i).

## Part 17 Foreign Exchange

Part 17 of the Rules does not apply to F&O Contracts or CDS Contracts.

### Rule 1701 *Definitions*

- (a) The term "**Currency Pair**" means, in relation to an FX Contract or an FX Transaction submitted for Clearing, the Reference Currency and the Settlement Currency.
- (b) The term "**FX Default Committee**" shall have the meaning given to that term in the FX Procedures.
- (c) The term "**FX Default Management Policy**" means the FX default management policy in the form approved by the Clearing House, as amended pursuant to processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (d) The term "**FX Market Price**" means, in relation to any Financially-Settled FX Contract, on any day, the price which the Clearing House determines is to be treated, for the purposes of these Rules and the Procedures as the value of such Financially-Settled FX Contract at the closing of such day, calculated in the FX MTM Currency for that Financially-Settled FX Contract.
- (e) The term "**FX MTM Currency**" means, in relation to any FX Contract, the currency in which FX Mark-to-Market Margin will be payable in respect of that FX Contract.
- (f) The term "**FX Procedures**" means the section of the Procedures of that name, which is relevant only to the Clearing of FX Contracts.
- (g) The term "**Reference Currency**" means (a) in relation to a Financially-Settled FX Contract, the currency specified as the reference currency in the Clearing House's records, being the currency other than that in which cash settlement is to be made and (b) in relation to an FX Transaction submitted for Clearing, the currency specified as such in the relevant FX Confirmation.
- (h) The term "**Settlement Currency**" means (a) in relation to a Financially-Settled FX Contract, the currency specified as such in the Clearing House's records, being the currency in which cash settlement is to be made on the FX Settlement Date and (b) in relation to an FX Transaction submitted for Clearing, the currency specified as such in the relevant FX Confirmation.
- (i) The terms "**Settlement Rate**" means in relation to a Financially-Settled FX Contract, for the relevant FX Settlement Date, the currency exchange rate, expressed as the amount of Reference Currency per one unit of Settlement Currency, determined by the Clearing House in accordance with the Rules and the Procedures as the settlement rate for the relevant Set of Financially-Settled FX Contracts which includes that Financially-Settled FX Contract.



- (j) The term "**Spot Price**" means, for a Currency Pair, the notional foreign exchange rate between the two currencies in the Currency Pair for "spot" delivery having a cash settlement value of zero, as determined by the Clearing House by reference to the terms of the relevant Financially-Settled FX Contract.
- (k) The term "**Standard Maturities**" means the specified standard maturities for the provision of pricing data relating to FX Contracts by Clearing Members, as specified by the Clearing House in a Circular, either in respect of particular Currency Pairs or generally.
- (l) Any term used but not defined in this Part 17 or elsewhere in the Rules shall have the meaning given to that term in the FX Procedures.
- (m) For the avoidance of doubt and without prejudice to any interpretation of the following terms as defined or used elsewhere in these Rules, in the context of the Clearing of FX Contracts (including, for the avoidance of doubt, Rule 1708(c)(ii)):
  - (i) The term "**Applicable Law**" also includes a regulatory requirement.
  - (ii) The term "**Exchange**" also includes any swap execution facility, organised trading facility, systematic internaliser, trade affirmation or confirmation platform.
  - (iii) The term "**Future**" also includes any investment which may be labelled as a 'spot', 'forward' or 'swap' contract or treated as such under any Applicable Law.
  - (iv) In Rule 102(f)(i), the first reference to Contract Terms excludes any reference to the Rules or Procedures.
  - (v) The references in Rule 201(g), Rule 202(a)(iv) and Rule 209(a)(~~v~~iv) to satisfaction of the criteria for membership criteria in or set out in Rule 201(a) include those criteria for membership which are required pursuant to (but not actually set out in) Rule 201(a).

#### **Rule 1702**     *Financially-Settled FX Contracts*

- (a) Each Business Day, the Clearing House will determine or amend the FX Market Price for all Financially-Settled FX Contracts, per Currency Pair, for each maturity in respect of which it is party to one or more Financially-Settled FX Contracts in accordance with the Procedures. The Clearing House will also determine Settlement Rates for Financially-Settled FX Contracts in accordance with the Contract Terms and the Procedures.
- (b) Each FX Clearing Member shall be obliged to provide, to the Clearing House on each Business Day, for all Currency Pairs, Spot Prices and forward points for all the Standard Maturities in respect of Financially-Settled FX Contracts. The Clearing House may consolidate price data from these and other sources to determine FX Market Prices for Financially-Settled FX Contracts and will determine such prices for Financially-Settled FX Contracts that do not then match a Standard Maturity by such interpolation methodology as the Clearing House shall consider appropriate.

- (c) The Clearing House shall be entitled in certain circumstances to amend or to postpone, defer, cancel, bring forward or suspend publication of any FX Market Price or Settlement Rate as set out in the Procedures.

**Rule 1703**     ***FX Mark-to-Market Interest***

In relation to each Financially-Settled FX Contract, the FX Clearing Member party thereto will pay to the Clearing House or the Clearing House will pay to such FX Clearing Member an amount in respect of FX Mark-to-Market Interest.

**Rule 1704**     ***Separate treatment of FX Contracts for Proprietary Account and Customer Account***

FX Contracts to which a Clearing Member is party will be separately subject to the application of these Rules in relation to record-keeping and settlement for each of the following positions of the Clearing Member:

- (a) Reference Currency Buyer positions in FX Contracts allocated to the Proprietary Account;
- (b) Reference Currency Seller positions in FX Contracts allocated to the Proprietary Account;
- (c) Reference Currency Buyer positions in FX Contracts allocated to the Non-DCM/Swap Customer Account (if applicable);
- (d) Reference Currency Seller positions in FX Contracts allocated to the Non-DCM/Swap Customer Account (if applicable);
- (e) Reference Currency Buyer positions in FX Contracts allocated to the Swap Customer Account (if applicable);
- (f) Reference Currency Seller positions in FX Contracts allocated to the Swap Customer Account (if applicable);
- (g) Reference Currency Buyer positions in FX Contracts allocated to the DCM Customer Account (if applicable);
- (h) Reference Currency Seller positions in FX Contracts allocated to the DCM Customer Account (if applicable);
- (i) Reference Currency Buyer positions in FX Contracts allocated to the General Customer Account (if applicable); and
- (j) Reference Currency Seller positions in FX Contracts allocated to the General Customer Account (if applicable).

**Rule 1705**     ***Settlement of Financially-Settled FX Contracts***

- (a) Either:

- (i) the Reference Currency Buyer shall be liable to pay the amount due under any Financially-Settled FX Contract to the Reference Currency Seller; or
- (ii) the Reference Currency Seller shall be liable to pay the amount due under the Financially-Settled FX Contract to the Reference Currency Buyer,

as required under the Contract Terms, on the FX Settlement Date, in accordance with Parts 3 and 5 of the Rules and the Finance Procedures.

- (b) Upon payment by the relevant party of the amount due in respect of a Financially-Settled FX Contract on the FX Settlement Date as referred to in (a) above, neither party to such Financially-Settled FX Contract shall have any further liability or obligation to the other party under such Financially-Settled FX Contract.

**Rule 1706**     *Supplemental Default Rules*

- (a) If an FX Clearing Member is declared to be a Defaulter, the Clearing House shall convene the FX Default Committee. The FX Default Committee shall have the competences specified in the Procedures.
- (b) The provisions of the FX Procedures relevant to a default shall apply if the Defaulter is or was an FX Clearing Member and shall amount to default rules for the purposes of the Rules and Applicable Laws.

**Rule 1707**     *FX Default Committee and FX Default Management Policy*

- (a) Rule 117 and Part 10 (and equivalent provisions of any Clearing Membership Agreement) are hereby disapplied only to the extent that any matter is eligible for determination by an FX Default Committee in accordance with the FX Procedures. This Rule applies in respect of an FX Default Committee unless and until such committee resolves not to determine the matter concerned.
- (b) Notwithstanding its rights set out in Part 9, or any other analogous Rule, following an Event of Default of a Person other than the Clearing House, the Clearing House shall follow the arrangements as set out in the FX Default Management Policy and the exercise of its rights pursuant to Part 9 shall be consistent with and in support of the FX Default Management Policy, except as set out in this provision. The Clearing House's rights under Part 9 of the Rules shall not be restricted by virtue of this provision to the extent that any action other than pursuant to the FX Default Management Policy is taken in accordance with Rule 1707(c).
- (c) The Clearing House may from time to time override the implementation or application of the FX Default Management Policy to the Clearing House or as against some or all of the FX Clearing Members or in respect of one or more Defaulters, subject to prior consultation with the FX Default Committee unless Rule 109(b)(i) or (ii) would apply were the FX Default Management Policy to be Rules and were such overriding to have been effected pursuant to an amendment to the Default Management Policy. The override of the implementation or application of the FX Default Management Policy may only be brought

into effect where the Clearing House deems it necessary to manage material risks of the Clearing House or the Clearing Members or any Market (where material risks are those which could materially adversely impact the ongoing financial soundness or the proper performance of the Clearing House or the Clearing Members or the proper functioning of any Market) or is otherwise required to meet the Clearing House's continuing legal or regulatory obligations under Applicable Law. Any determination by the Clearing House to override the implementation or application of the FX Default Management Policy shall be notified to FX Clearing Members.

**Rule 1708**     *Clearing data relating to FX Contracts*

- (a) Notwithstanding Rule 102(j) or anything else to the contrary in the Rules, in no event will a Clearing Member be liable for any conduct of a Customer of such Clearing Member or such Customer's clients with respect to the use of, or other actions taken with respect to, clearing data in respect of FX Clearing at the Clearing House ("**FX Data**") by such Customer or such Customer's clients if, prior to sharing such FX Data with such Customer, the Customer has agreed that it:
- (i) may reproduce, transmit, distribute or use FX Data (to the extent generated whilst the Clearing Member which has (or whose Affiliate has) ultimately provided it with FX Data remains an FX Clearing Member) solely and exclusively for internal purposes related directly to such Customer's, its Affiliates' and their clients', trading and clearing activity relating to FX Clearing at the Clearing House;
  - (ii) may license, sublicense, transfer, transmit, reproduce and/or distribute copies of the FX Data (to the extent generated whilst the Clearing Member which has (or whose Affiliate has) ultimately provided it with FX Data remains an FX Clearing Member) to its Affiliates and clients, which may in turn license, sublicense, transfer, transmit, reproduce and/or distribute such FX Data only to their direct and indirect clients (each Affiliate, client or client's direct or indirect client that receives such FX Data, a "**Data Recipient**", each client or client's direct or indirect client that distributes such FX Data, a "**Data Distributer Client**," and each Affiliate that distributes such FX Data, a "**Data Distributer Affiliate**"), solely and exclusively to the extent such FX Data is related directly to such Data Recipient's trading and clearing activity relating to FX Clearing at the Clearing House and provided that such Data Recipient has agreed that it may:
    - (A) license, sublicense, transfer, transmit, reproduce and/or distribute such FX Data solely to (x) an Affiliate of such Data Recipient or (y) a different Data Recipient (other than an Affiliate of such Data Recipient) that in either case has agreed with such Customer to comply with restrictions on similar terms to those set out in this Rule 1708 applying to it as such restrictions would apply to the Customer (including the Data Obligations) *mutatis mutandis*; or
    - (B) reproduce, transmit, distribute or use such FX Data only for its own internal use,

in either case solely for purposes related directly to trading and clearing activity relating to FX Clearing at the Clearing House;

- (iii) shall satisfy its Data Obligations as and to the extent provided in this Rule 1708 (which shall be interpreted in the case of a licensor that is not a Customer as if such licensor were a Customer) (the "**Permitted Use Agreement**"), which Permitted Use Agreement may be in any form, including such Data Recipient's agreement to comply with these Rules, so long as such Permitted Use Agreement is legally binding; and
- (iv) in each case that it becomes aware (from the Clearing House, a Clearing Member, one of their Affiliates, a client or otherwise) that any Data Recipient to which it has directly distributed FX Data is, or is reasonably suspected (as determined in its sole discretion) of being, in violation of the Permitted Use Agreement (or would be in breach of a Permitted Use Agreement, should such agreement have been in place), shall, to the extent permitted by Applicable Law (the following obligations in (A) to (C) below being the "**Data Obligations**"):
  - (A) promptly notify the Clearing House and the Person that provided it with the FX Data (if different) in writing of the name of such Data Recipient and provide a reasonably detailed explanation of the nature of such Data Recipient's violation, or the circumstances giving rise to the suspicion of a violation or would-be violation, of the Permitted Use Agreement;
  - (B) take such actions as the Clearing House, the Person that provided it with the FX Data (if different) or any of their Affiliates may reasonably request to cause such Data Recipient to cease violating the terms of the Permitted Use Agreement (or, if no Permitted Use Agreement is in place, to cease violating the terms of a Permitted Use Agreement should such agreement have been in place) including, among other things, ceasing the provision of FX Data to any Data Recipient with which it or one of its Affiliates has a direct relationship by which it provides FX Data or suspending such Data Recipient's direct or indirect use of FX Clearing at the Clearing House through such Customer, until the time as such Data Recipient is in compliance with the Permitted Use Agreement (or, if no Permitted Use Agreement is in place, in compliance with the terms of a Permitted Use Agreement should such agreement have been in place); and
  - (C) when requested by the Clearing House, the Person that provided it with the FX Data (if different) or any of their Affiliates pursuant to its other Data Obligations, cease the provision of FX Data to a Data Recipient if and when the Clearing House, the Person that provided it with the FX Data (if different) or any of their Affiliates reasonably suspects (as determined by the Clearing House, such Person or such Affiliate, as applicable, in its sole discretion) that such Data Recipient is in violation of the Permitted Use Agreement (or would be in violation of a Permitted Use Agreement, should such agreement have been in place).

- (b) Nothing in this Rule 1708 shall impose any obligation on any Clearing Member, Customer or any of their Affiliates to monitor their Customers' or clients' use of FX Data or to independently investigate actual or suspected breaches of the Permitted Use Agreement, subject as set out in Rule 1708(a)(iv)(C).
- (c) Nothing in this Rule 1708 shall prevent or restrict any Person from:
  - (i) using its own data relating to its own trading developed by such Person independently of, and without reference to, any FX Data; or
  - (ii) providing any FX Data to any Governmental Authority as necessary to comply with any Applicable Law (including, for the avoidance of doubt, any request of a Governmental Authority).
- (d) It is intended that a Customer or any other Person may agree to the application of the restrictions and obligations set out in this Rule 1708 by agreeing with a Person that provides FX Data to such Customer or Person that the Rules are applicable to or contractually bind such Customer or Person (and, for the avoidance of doubt, it is intended that by so agreeing, the Customer or such Person thereby affirmatively agrees to comply with subsections (i) through (iv) of paragraph (a) hereof).

#### **Rule 1709     *Controllers***

- (a) If a Controller Guarantee has been provided in favour of an FX Clearing Member, the FX Clearing Member to which the Controller Guarantee relates shall procure that the Controller:
  - (i) at all times complies with the requirements of Rule 201(a)(xi), Rule 202(a)(ii), Rule 202(a)(iii), Rule 202(a)(v), Rule 202(a)(vi), Rule 202(a)(x) and Rule 202(a)(xiii) as if the Controller were a Clearing Member, *mutatis mutandis*, and such provisions applied to the Controller's business;
  - (ii) would not breach any of the requirements of Rule 203, were the Controller to be a Clearing Member subject to the requirements of Rule 203, *mutatis mutandis*, and such provisions applied to the Controller's business; and
  - (iii) makes all notifications that would be required under Rule 204 if the Controller were a Clearing Member, *mutatis mutandis*, and such provisions applied to the Controller's business.

#### **~~Rule 1710 — *Termination of FX Membership*~~**

- ~~(a) — With effect as from the Termination Notice Time in respect of a notice of termination served by an FX Clearing Member under Rule 209(c)(i)(A) the following provisions shall apply, *mutatis mutandis* and subject to Rule 1710(c):~~
  - ~~(i) — the second, third and fourth sentences of Rule 1107(h); and~~

- ~~(ii) — provisions of Rule 209 referred to therein.~~
- ~~(b) — With effect as from the Termination Notice Time in respect of a notice of termination served by an FX Clearing Member in relation to FX clearing membership under Rule 209(f)(i)(A), the following provisions shall apply, *mutatis mutandis* and subject to Rule 1710(e):~~
  - ~~(i) — the second, third and fourth sentences of Rule 1107(i); and~~
  - ~~(ii) — provisions of Rule 209 referred to therein.~~
- ~~(c) — If:~~
  - ~~(i) — an FX Clearing Member has served a notice of termination under Rule 209(e)(i)(A) or Rule 209(f)(i)(A);~~
  - ~~(ii) — either (A) the Termination Close-Out Deadline Date has not yet passed; or (B) if the Termination Close-Out Deadline Date has passed, the FX Clearing Member closed-out all of its open FX Contracts prior to the Termination Close-Out Deadline Date; and~~
  - ~~(iii) — there is an Event of Default or Events of Default after the Termination Notice Time but prior to the Termination Date,~~

~~then the FX Clearing Member in question shall remain liable for the application of any then unapplied FX Guaranty Fund Contributions and further FX Assessment Contributions for all such Events of Default as are referred to in Rule 1710(e)(iii) (as if all such Events of Default had been declared by the Clearing House prior to the Termination Notice Time), provided that:~~

  - ~~(A) — the total amounts of FX Guaranty Fund Contribution applied in respect of all Events of Default referred to in Rule 1710(e)(iii) shall not exceed the required FX Guaranty Fund Contribution as at the first day of the Guaranty Fund Period in which the Termination Notice Time fell; and~~
  - ~~(B) — the total amounts of FX Assessment Contributions for which the FX Clearing Member is liable in respect of all Events of Default referred to in Rule 1710(e)(iii) shall not exceed an amount equal to two times the amount of the required FX Guaranty Fund Contribution referred to in Rule 1710(e)(A).~~
- ~~(d) — Any termination notice issued by an FX Clearing Member under Rule 209(e)(i)(A) or Rule 209(f)(i)(A) shall be irrevocable by the FX Clearing Member and FX membership may only be reinstated pursuant to a new application for membership.~~
- ~~(e) — In addition to the remedies set out or referred to in this Rule 1710, if any FX Clearing Member has served a notice of termination under Rule 209(e)(i)(A) or Rule 209(f)(i)(A) and has any open FX Contracts with the Clearing House after the last day of the three~~



~~month notice period, the Clearing House may exercise its rights under Part 9 to liquidate the open FX Contracts of such FX Clearing Member, as if such FX Clearing Member were a Defaulter. An FX Clearing Member subject to this provision is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such FX Clearing Member in order for the Clearing House to exercise its rights under this provision.~~

## Part 18 Transition Rules for LIFFE in 2013

### Rule 1801 *Introduction*

- (a) These Transitional Rules deal with certain matters occurring at and around the Novation Time. These Transitional Rules form part of the Rules and are intended to be interpreted together with the Rules. All terms used but not defined in these Transitional Rules have the meaning given to them elsewhere in the Rules. In the event of any conflict between the Rules and these Transitional Rules in relation to any matter to which these Transitional Rules relate, these Transitional Rules shall prevail.
- (b) These Transitional Rules will cease to apply on a date notified by the Clearing House to Clearing Members in a Circular, following such consultation with LIFFE and LCH as has been agreed to take place as between the Clearing House, LIFFE and LCH.

### Rule 1802 *Additional Definitions*

- (a) The term "**Cash Collateral Transfer Form**" means a form provided by a Cash Transferring Member to the Clearing House and accepted by the Clearing House, the form of which is set out in the annex to Clearing Member Cash Instructions, including details of the amounts of Transferring Cash for that Cash Transferring Member.
- (b) The term "**Cash Transferring Member**" means a LIFFE Clearing Member that has duly executed Clearing Member Cash Instructions, has provided the Clearing House with a Cash Collateral Transfer Form and has duly executed and delivered a Deed of Novation.
- (c) The term "**Clearing Member Cash Instructions**" means an agreement duly executed by a Cash Transferring Member, LCH, LIFFE and the Clearing House relating to Transferring Cash, in the form specified by the Clearing House.
- (d) The term "**Clearing Member Instructions**" means Clearing Member Cash Instructions or Clearing Member Securities Instructions.
- (e) The term "**Clearing Member Securities Instructions**" means an agreement in the form of a deed duly executed and delivered by a Securities Transferring Member, LCH, LIFFE and the Clearing House relating to Transferring Securities, in the form specified by the Clearing House.
- (f) The term "**Collateral Transfer Form**" means a Cash Collateral Transfer Form or a Securities Collateral Transfer Form.
- (g) The term "**Deed of Novation**" means a deed duly executed and delivered by a LIFFE Clearing Member, LIFFE, LCH and the Clearing House in respect of the Novation.
- (h) The term "**Delivery Contract**" means, in respect of any 'Registered Exchange Contract' (as the same is defined in the LIFFE Clearing Membership Agreement), the set of payment and delivery rights and obligations arising as between a LIFFE Clearing Member and LCH pursuant to clause 6.7 of a LIFFE Clearing Membership Agreement which, at the Novation

Time, has not been cash settled or otherwise performed, discharged or closed out, void, voided, terminated or rescinded in full, and includes any such Delivery Contract to the extent the same has, as at the Novation Time, been novated from LCH to ICE Clear pursuant to a Deed of Novation; and for the avoidance of doubt, Delivery Contracts include such rights, liabilities and obligations as exist between a LIFFE Clearing Member and LCH in respect of the Northern Rock Contracts at the Novation Time.

- (i) The term "**LCH**" means LCH.Clearnet Limited, whose registered office is at Aldgate House, 33 Aldgate High Street, London EC3N 1EA.
- (j) ~~(j)~~ The term "**LCH Delivery Procedures**" means those published procedures governing the performance of delivery obligations, and in relation to deliveries of securities, payment obligations, in relation to Delivery Contracts, being LCH's NYSE Liffe Clearing Procedures (section 2H of the LCH procedures) as published by LCH on its website as at the Novation Time, which in turn reference LIFFE Rules.
- (k) ~~(k)~~ The term "**LCH Regulations**" means the rules, regulations, default rules and published procedures of LCH relating to the clearing of LIFFE, as amended from time to time.
- (l) ~~(l)~~ The term "**LIFFE Clearing Membership Agreement**" means a clearing membership agreement between a LIFFE Clearing Member, LCH and LIFFE (including, after the Novation Time, such agreement to the extent still applicable as between a LIFFE Clearing Member and LIFFE).
- (m) ~~(m)~~ The term "**LIFFE Rules**" means the rules, regulations, default rules and procedures for trading and related clearing on the LIFFE Markets, including, without limitation, book I (Harmonised Rules) (to the extent applicable to LIFFE) and book II (Rules Specific to LIFFE) in each case as amended or supplemented from time to time
- (n) ~~(n)~~ The term "**Lodgement Instructions**" means instructions of that name provided by a LIFFE Clearing Member to the Clearing House, the form of which is established pursuant to the Rules.
- (o) ~~(o)~~ The term "**Northern Rock Contracts**" means the rights, obligations and liabilities arising out of the LIFFE Northern Rock individual equity options contracts where LIFFE Clearing Members hold positions under such contracts as a 'Registered Exchange Contract' (as defined in the LIFFE Clearing Membership Agreement) immediately prior to the Novation Time.
- (p) ~~(p)~~ The term "**Novating Contract**" means an Open Contract or a Delivery Contract.
- (q) ~~(q)~~ The term "**Novation**" means the novation of Novating Contracts pursuant to the Deeds of Novation and these Transitional Rules and other matters that occur at the Novation Time pursuant to the Deeds of Novation, Clearing Member Instructions and Collateral Transfer Forms.

- (r) ~~(q)~~ The term "**Novation Time**" means the novation time that is determined in accordance with the Deeds of Novation, which will be communicated to LIFFE Clearing Members by the Clearing House.
- (s) ~~(r)~~ The term "**Open Contract**" means a contract between a LIFFE Clearing Member and LIFFE made in accordance with the LIFFE Rules as a result of trading or otherwise, which is open immediately prior to the Novation Time and which has not, as at the Novation Time, been cash settled or otherwise performed, discharged or closed out, void, voided, terminated or rescinded in full, and includes all obligations, rights and liabilities as between LIFFE Clearing Members and LIFFE under contracts which have given rise to settlement obligations to the extent that such obligations, rights and liabilities have not been modified and discharged pursuant to clause 6.7 of a LIFFE Clearing Membership Agreement; and for the avoidance of doubt, Open Contracts include such rights, liabilities and obligations as exist between LIFFE and a LIFFE Clearing Member in respect of the Northern Rock Contracts at the Novation Time.
- (t) ~~(s)~~ The term "**Securities Collateral Transfer Form**" means a form provided by a Securities Transferring Member to the Clearing House and accepted by the Clearing House, the form of which is set out in the annex to Clearing Member Securities Instructions, including details of the Transferring Securities for that Securities Transferring Member.
- (u) ~~(t)~~ The term "**Securities Transferring Member**" means a LIFFE Clearing Member that has duly executed and delivered Clearing Member Securities Instructions and a Deed of Novation and has provided the Clearing House with a Securities Collateral Transfer Form and Lodgement Instructions.
- (v) ~~(u)~~ The term "**Transitional Cash Collateral Deadline**" means 11:00 a.m. on the Friday immediately following the Novation Time.
- (w) ~~(v)~~ The term "**Transitional Rules**" means these transitional rules.
- (x) ~~(w)~~ The term "**Transitional Securities Collateral Deadline**" means 11:00 a.m. on the Tuesday immediately following the Novation Time.
- (y) ~~(x)~~ The term "**Transferring Cash**" means all cash in the form of Permitted Cover identified in Cash Collateral Transfer Forms in accordance with Clearing Member Cash Instructions, including all rights, interests and titles in, to, or under the same.
- (z) ~~(y)~~ The term "**Transferring Securities**" means all Permitted Cover other than cash identified in Securities Collateral Transfer Forms in accordance with Clearing Member Securities Instructions, including all rights, interests and titles in, to, or under the same.

### **Rule 1803    *Contracts***

- (a) Notwithstanding ~~Rules~~[Rule](#) 401(a) and [Rule](#) 401(b), any Contract that would otherwise arise pursuant to Rule 401(a) or Rule 401(b) prior to the Novation Time due to trading on or reporting to LIFFE prior to the Novation Time shall not arise unless it is subject to the

Novation, in which case it shall arise at the Novation Time in accordance with Rule 1803(b), subject to Rule 1806.

- (b) At the Novation Time, pursuant to and in the manner specified in the Deeds of Novation:
  - (i) the Clearing House (in place of LIFFE) and each LIFFE Clearing Member that has executed and delivered a Deed of Novation will become party to a replacement LIFFE Contract on the terms set out in these Rules in respect of each Open Contract to which that LIFFE Clearing Member is a party; and
  - (ii) the Clearing House (in place of LCH) and each LIFFE Clearing Member that has executed a Deed of Novation will become party to a replacement LIFFE Contract that is subject to delivery obligations on the terms set out in these Rules in respect of each Delivery Contract to which that LIFFE Clearing Member is a party.
- (c) The status of a Transaction or Contract as void *ab initio* under Rule 403 shall apply equally to any Novating Contract in respect of which incomplete or conflicting details are received by the Clearing House from LCH, LIFFE and/or the relevant LIFFE Clearing Member.

**Rule 1804**     *Margin*

- (a) Each LIFFE Clearing Member shall have satisfied applicable Original Margin obligations at, immediately prior to, and after the Novation Time in respect of Novating Contracts to which it is a party.
- (b) To the extent that any cash is received in cleared funds into an account at a Concentration Bank by the Clearing House from LCH in respect of a LIFFE Clearing Member (which extent, in respect of any LIFFE Clearing Member, is determined in accordance with the Cash Collateral Transfer Form), the LIFFE Clearing Member will be deemed to have deposited Permitted Cover in the form of cash with the Clearing House in accordance with the applicable Clearing Membership Agreement (regardless of the status of Transferring Cash prior to such time). To the extent that any securities equivalent to Transferring Securities are received by the Clearing House free from all Encumbrances from LCH in respect of a LIFFE Clearing Member, the LIFFE Clearing Member will be deemed to have transferred Permitted Cover in the form of securities fungible with the Transferring Securities with the Clearing House in accordance with the applicable Clearing Membership Agreement (regardless of the status of Transferring Securities prior to such time).
  - (i) Subject to Rule 1804(d), the following shall also amount to Permitted Cover:
    - (A) for Cash Transferring Members only: from the Novation Time until the Transitional Cash Collateral Deadline, the amount of Transferring Cash identified in Cash Collateral Transfer Forms to the extent that the same is not received by the Clearing House in cleared funds into its account at a Concentration Bank and LCH holds equivalent assets on trust for the benefit of the Clearing House in accordance with the Clearing Member Cash Instructions; and

- (B) for Securities Transferring Members only: from the Novation Time until the Transitional Securities Collateral Deadline, securities fungible with the Transferring Securities identified in Securities Collateral Transfer Forms to the extent that the same are held in accounts of LCH for the benefit of the Clearing House in accordance with the Clearing Member Securities Instructions.
- (c) The first sentence of Rule 502(b) shall not apply in relation to Transferring Securities described in Rule 1804(b).
- (d) If the Clearing House:
  - (i) does not receive, in cleared funds into its account at a Concentration Bank, all the Transferring Cash from LCH at or prior to the Transitional Cash Collateral Deadline;
  - (ii) does not receive Permitted Cover fungible with all the Transferring Securities in respect of any Securities Transferring Member at or prior to the Transitional Securities Collateral Deadline in its normal custody accounts as specified pursuant to the Finance Procedures; or
  - (iii) determines at its discretion (which determination may be made prior to the Transitional Cash Collateral Deadline or Transitional Securities Collateral Deadline, as applicable) that it is unlikely to receive cash equal to any amount of Transferring Cash or Permitted Cover fungible with any Transferring Securities at or prior to the Transitional Cash Collateral Deadline or the Transitional Securities Collateral Deadline respectively,

the Clearing House shall be entitled to disapply Rule 1804(b)(i) in respect of a particular LIFFE Clearing Member or particular Permitted Cover or all or some LIFFE Clearing Members or Permitted Cover, as applicable. In such circumstances, any affected LIFFE Clearing Member shall be liable to pay the Clearing House such amounts in respect of Margin and other liabilities as are due pursuant to the Rules without taking into account any value attributed to Transferring Cash or Transferring Securities held in the manner described in Rule 1804(b)(i). The Clearing House will either issue a Circular whenever this Rule 1804(d) applies, if a number of LIFFE Clearing Members are affected, or otherwise shall notify any LIFFE Clearing Member affected, LIFFE and LCH.

- (e) In the event of any conflict, the provisions of the Rules and Procedures relating to interest or collateral charges do not apply to the extent that the same are inconsistent with the provisions of the Deed of Novation, Clearing Member Cash Instructions or Clearing Member Securities Instructions.
- (f) Interest or collateral charges due to or from a Clearing Member on Transferring Cash in respect of the period until close of business on the day of the Novation Time will be payable to or by such Clearing Member by or to LCH (in relation to any transferred Transferring Cash and any interest payable by LCH only to the extent that LCH receives interest payments from the Clearing House). Interest or collateral charges due to or from a

Clearing Member on Transferring Cash in respect of the period after close of business on the day of the Novation Time will be payable to or by a Clearing Member by or to the Clearing House (in relation to any interest payable by the Clearing House or any untransferred Transferring Cash only to the extent that the Clearing House receives interest payments from LCH). Any interest or collateral charges in respect of Transferring Cash which is held by LCH shall be due or charged at LCH's published rates. Any interest or collateral charges in respect of Transferring Cash which has been received by the Clearing House shall be due or charged at the Clearing House's published rates. Clearing Members shall pay the Clearing House or LCH interest or collateral charges on Transferring Cash as notified by either the Clearing House or LCH or may be paid interest on Transferring Cash by either the Clearing House or LCH, including in respect of amounts which pursuant to Clearing Member Cash Instructions would be payable by or to the other clearing house, where, for reasons of administrative convenience, the Clearing House or LCH agree to act as collection or paying agent on behalf of the other.

- (g) In relation to securities representing the Transferring Securities only:
- (i) any income or redemption amounts due to LIFFE Clearing Members on securities representing Transferring Securities received by LCH after the Novation Time shall be payable by LCH to LIFFE Clearing Members:
    - (A) to the extent the same relates to the period prior to the Novation Time, calculated on the basis of the rates, fee schedules, charges and arrangements for the passing-on of income or redemption amounts of LCH for its clearing members in respect of the LIFFE Markets on securities provided as 'cover' (as that term is used in the LCH Regulations) as at the Novation Time; and
    - (B) to the extent that LCH receives an equivalent amount from the issuer or its agent after the Novation Time but such amount relates in whole or in part to a payment that relates to the period after the Novation Time, as agent for the Clearing House, and calculated on the basis of the rates, fee schedules, charges and arrangements for the passing-on of income or redemption amounts of the Clearing House for LIFFE Clearing Members on securities provided as Permitted Cover as at Novation ~~Time~~and Time and such payment shall discharge any liability of the Clearing House and LCH to pay such income or redemption amounts to LIFFE Clearing Members; and
  - (ii) any income or redemption amounts due to LIFFE Clearing Members on securities representing Transferring Securities received by the Clearing House, regardless of the time of receipt, shall be payable by the Clearing House to LIFFE Clearing Members in accordance with the Rules calculated on the basis of the rates, fee schedules and charges levied by the Clearing House on LIFFE Clearing Members for income or redemption amounts on securities provided as Permitted Cover as at Novation Time. To the extent any such income or redemption amount relates to the time prior to the Novation Time, such payment shall discharge any liability of LCH to pay such income or redemption amounts to LIFFE Clearing Members.



- (h) In relation to securities representing the Transferring Securities and cash, to the extent these:
- (i) are not transferred to the account of the Clearing House, LIFFE Clearing Members shall pay to LCH any fees and charges levied by LCH calculated on the basis of the fees and charges levied by LCH to its clearing members in respect of the LIFFE Markets as at the Novation Time; and
  - (ii) are transferred to the account of the Clearing House, LIFFE Clearing Members shall pay to the Clearing House any fees and charges levied by the Clearing House calculated on the basis of the fees and charges levied by the Clearing House to LIFFE Clearing Members as at the Novation Time.
- (i) For FCM Clearing Members that have executed Clearing Member Cash Instructions, cash margin will not be treated as subject to the Pledged Collateral Addendum until such time as cash is actually received in the Clearing House's Concentration Account from LCH and credited in the name of the relevant FCM Clearing Member, and the representation and warranty provided by such FCM Clearing Member pursuant to Clause 2.2(vi) of the applicable Clearing Member Cash Instructions shall cease to have effect at such time. For FCM Clearing Members that have executed Clearing Member Securities Instructions, securities will not be treated as subject to the Pledged Collateral Addendum until such time as relevant securities are received in the Clearing House's account (other than at LCH) and credited in the name of the relevant FCM Clearing Member, and the representation and warranty provided by such FCM Clearing Member pursuant to Clause 2.2(viii) of the applicable Clearing Member Securities Instructions shall cease to have effect at such time. Prior to such time, such securities shall be treated as if provided under a title transfer arrangement, pursuant to the Clearing Member Securities Instructions.

**Rule 1805    *Delivery Contracts***

- (a) LCH and LIFFE have each agreed to administer certain deliveries of Deliverables pursuant to Delivery Contracts as agent for the Clearing House.
- (b) Satisfaction of the relevant provisions of the Delivery Procedures, LCH Regulations and LIFFE Rules applicable to: (i) the making and taking of physical deliveries; (ii) the delivery and receipt of notices and forms in respect of deliveries; (iii) in respect of securities deliveries, making and receiving corresponding cash payments; and (iv) in respect of deliveries other than securities deliveries, the making of cash payments to a LIFFE Clearing Member acting as Seller to a relevant Delivery Contract where, prior to the Novation Time payment was due or has been received by LCH from the LIFFE Clearing Member that is the Buyer in the corresponding Delivery Contract, in all cases at the times and in the manners required pursuant to the Delivery Procedures, LCH Regulations and LIFFE Rules, shall constitute due performance for the purposes of the Rules in relation to Delivery Contracts and performance in such circumstances by the LIFFE Clearing Member to LCH or by LCH to the LIFFE Clearing Member shall constitute good performance to or by the Clearing House respectively.

- (c) Subject to Rule 1805(d) below, any arbitration, dispute or alternative delivery procedure arising in connection with a Delivery Contract (other than in relation to any payment) shall be governed by and subject to the terms of the LCH Regulations and LIFFE Rules. The relevant provisions of the LCH Regulations and LIFFE Rules, as the LCH Regulations and LIFFE Rules apply to LCH and LIFFE respectively, will apply equally to the Clearing House solely for such purposes. All the provisions of the LCH Regulations and LIFFE Rules relating to deliveries (and definitions used therein, which shall prevail over any definitions in the Rules for the purposes of this Rule 1805 only) shall be deemed to be set out herein in full for the purposes of this Rule 1805 only.
- (d) The Clearing House shall have the same right as LIFFE and/or LCH to take such action against a LIFFE Clearing Member under the Rules in relation to obligations which are not fully performed or completed or which are only partially performed or completed at the Novation Time, regardless of whether any matter or event occurred or circumstance arose or relevant action or omission took place prior to the Novation Time.
- (e) Rule 1805(b) does not affect the applicability of the Rules or Procedures relating to original or variation margin, interim variation margin, contingent variation margin, settlement amounts, delivery value or any similar payments under a Delivery Contract (except for the payments set out in Rule 1805(b)), howsoever described arising in connection with Delivery Contracts. For the avoidance of doubt, all payments and transfers of or in respect of Margin or Guaranty Fund Contributions relating to Delivery Contracts must be made to the Clearing House in the normal way, in accordance with the Rules and Procedures.

**Rule 1806**     *Guaranty Fund Contributions*

- (a) Each LIFFE Clearing Member shall have deposited the required F&O Guaranty Fund Contributions (including any increase to previous F&O Guaranty Fund Contributions) with the Clearing House at least five Business Days prior to the scheduled Novation Time.

**Part 19**     ...

## Part 20 Transition Rules for ICE Endex in 2013

### Rule 2001 *Introduction*

- (a) These Endex Transitional Rules deal with certain matters occurring at and around the Endex Novation Time. These Endex Transitional Rules form part of the Rules and are intended to be interpreted together with the Rules. All terms used but not defined in these Endex Transitional Rules have the meaning given to them elsewhere in the Rules. In the event of any conflict between the Rules and these Endex Transitional Rules in relation to any matter to which these Endex Transitional Rules relate, these Endex Transitional Rules shall prevail.
- (b) These Endex Transitional Rules will cease to apply on a date notified by the Clearing House to Clearing Members in a Circular, following such consultation with ICE Endex as has been agreed to take place as between the Clearing House and ICE Endex.

### Rule 2002 *Additional Definitions*

- (a) The term "**CM Deed of Novation**" means a deed duly executed and delivered by an ECC Clearing Member as transferor, a Clearing Member as transferee and the Clearing House in respect of an Endex Novating Contract.
- (b) The term "**Delivery Contract**" means a contract between an ECC Clearing Member and ECC made in accordance with the ICE Endex and ECC Rules as a result of trading or otherwise, which is, immediately prior to the Endex Novation Time, subject to delivery, which has not, as at the Endex Novation Time, been cash settled or otherwise performed, discharged or closed out, void, voided, terminated or rescinded in full and which, for the avoidance of doubt, is not an Endex Novating Contract.
- (c) The term "**ECC**" means European Commodity Clearing A.G., a stock incorporation (*Aktiengesellschaft*) incorporated under German law with company number HRB 22362, registered with the Local Court of Leipzig, whose registered office is at Augustusplatz 9, 04109 Leipzig, Germany.
- (d) The term "**ECC Clearing Membership Agreement**" means a clearing membership agreement between an ECC Clearing Member and ECC.
- (e) The term "**ECC Regulations**" means the rules, regulations, default rules and published procedures of ECC relating to the clearing of ICE Endex, as amended from time to time.
- (f) The term "**Endex Deed of Novation**" means a deed duly executed and delivered by an ECC Clearing Member, ECC, and the Clearing House in respect of the Endex Novation, which deed European Energy Exchange A.G. may be a party to for the purposes of consenting to such Endex Novation.
- (g) The term "**Endex Novating Contract**" means a contract between an ECC Clearing Member and ECC made in accordance with the ICE Endex and ECC Rules as a result of trading or otherwise, which is open immediately prior to the Endex Novation Time and

which has not, as at the Novation Time, been cash settled or otherwise performed, discharged or closed out, void, voided, terminated or rescinded in full and which is not a Delivery Contract.

- (h) The term "**Endex Novation**" means the novation of Endex Novating Contracts pursuant to the Endex Deeds of Novation and these Endex Transitional Rules and other matters that occur at the Endex Novation Time pursuant to the Endex Deeds of Novation.
- (i) The term "**Endex Novation Time**" means the novation time that is determined in accordance with the Endex Deeds of Novation, which will be communicated to ECC Clearing Members by the Clearing House.
- (j) The term "**Endex Transitional Rules**" means these transitional rules.

### **Rule 2003**     *Contracts*

- (a) Notwithstanding Rule 401(a) and **Error! Reference source not found.**, any Contract that would otherwise arise pursuant to Rule 401(a) or **Error! Reference source not found.** prior to the Endex Novation Time due to trading on or reporting to ICE Endex prior to the Endex Novation Time shall not arise unless it is subject to the Endex Novation, in which case it shall arise at the Endex Novation Time in accordance with Rule 2003(b), subject to Rule 2005.
- (b) At the Endex Novation Time, pursuant to and in the manner specified in the Endex Deeds of Novation, the Clearing House (in place of ECC) and: (i) each ECC Clearing Member that has executed and delivered an Endex Deed of Novation; or (ii) if, in respect of any Endex Novating Contract, a CM Deed of Novation exists, such Clearing Member acting as transferee, will become party to a replacement ICE Endex Contract on the terms set out in these Rules in respect of each Endex Novating Contract to which that ECC Clearing Member is a party.
- (c) The status of a Transaction or Contract as void *ab initio* under Rule 403 shall apply equally to any Endex Novating Contract in respect of which incomplete or conflicting details are received by the Clearing House from ECC, ICE Endex, the ECC Clearing Member that is a party to the relevant Endex Deed of Novation and/or any Clearing Member that is a party to a CM Deed of Novation.

### **Rule 2004**     *Redesignation of ICE Futures Europe Contracts*

- (a) The Clearing House may, with effect from the Endex Novation Time, redesignate ICE Futures Europe Contracts as ICE Endex Contracts for the purposes of the Rules. Any such redesignated Contract shall remain in full force and effect as between the relevant Clearing Member and the Clearing House provided that, from the Endex Novation Time, the Rules shall apply to such Contract which was previously an ICE Futures Europe Contract as an ICE Endex Contract. The Contract Terms shall be amended and restated at the Endex Novation Time accordingly.

**Rule 2005**     *Guaranty Fund Contributions and Margin*

- (a) Each ECC Clearing Member shall have deposited the required F&O Guaranty Fund Contributions (including any increase to previous F&O Guaranty Fund Contributions) with the Clearing House at least five Business Days prior to the scheduled Endex Novation Time.
  
- (b) Each ECC Clearing Member and each Clearing Member that is a transferee pursuant to a CM Deed of Novation shall have satisfied applicable Original Margin obligations at, immediately prior to, and after the Endex Novation Time in respect of Endex Novating Contracts or ICE Endex Contracts to which it is a party or becomes a party to pursuant to Rule 2003(b) or Rule 2004. ECC Clearing Members and Clearing Members that are transferees pursuant to a CM Deed of Novation shall pre-fund Margin in respect of expected Endex Novating Contracts prior to the scheduled Endex Novation Time at the time specified by the Clearing House.

## EXHIBIT 1

### ICE CLEAR EUROPE LIMITED

#### CUSTOMER-CM CDS TRANSACTIONS STANDARD TERMS

##### BACKGROUND:

- (1) Clearing Member is a Non-FCM/BD Clearing Member, as defined in the rules (the "**Rules**") of ICE Clear Europe Limited (the "**Clearing House**") and is thereby permitted to submit certain CDS Trade Particulars which, if an Acceptance Notice is issued, will result in a cleared CDS Contract arising in accordance with the Rules and the CDS Procedures of the Clearing House.
- (2) Clearing Member and Segregated CDS Customer desire to agree to the operation of the Rules and the Procedures in relation to any Customer-CM CDS Transactions that may arise following the submission of the related CDS Trade Particulars, as further provided for in these Customer-CM CDS Transactions Standard Terms (these "**Standard Terms**").
- (3) Clearing Member and Segregated CDS Customer have established a "master" futures account, clearing agreement or other master agreement (the "**Cleared Transactions Master Agreement**", as amended from time to time) and, if applicable, a related collateral arrangement, whether contained in the same or another agreement (the "**Cleared Transactions Margin Terms**", as amended from time to time) with respect to cleared transactions, including such Customer-CM CDS Transactions (which Cleared Transactions Master Agreement may be supplemented by a cleared derivatives addendum, or similar document, as agreed by Clearing Member and Segregated CDS Customer (together, the "**Customer-Clearing Member Agreement**") and as amended and supplemented by these Standard Terms).

##### STANDARD TERMS:

1. **Defined Terms.** Terms used but not otherwise defined in these Standard Terms shall have the meaning set forth in the Rules or the Procedures, as applicable.
2. **Exhibit to Rules.** These Standard Terms are published by the Clearing House as an Exhibit to the Rules but do not form part of the Rules. Clearing Member and Segregated CDS Customer agree that any amendments, modifications, restatements or supplements in respect of such Exhibit to the Rules (including the withdrawal of any part of these Standard Terms) may be effective if made by the Clearing House pursuant to the provisions of Rule 109 as if the Exhibit were Rules and as if Rule 109 applied to Segregated CDS Customers in addition to, and in the same way as it applies to, Clearing Members. At the request of Clearing Member or the Clearing House, Segregated CDS Customer will enter into a written confirmation of the terms of any such amendment, modification, supplement or restatement.

3. ***Cleared Transactions.***

- (a) Clearing Member may designate, by specifying that certain CDS Trade Particulars submitted to the Clearing House are to be recorded in a Customer Position Account, that certain transactions between Clearing Member and Segregated CDS Customer shall arise at the same time as related CDS Contracts and shall constitute Customer-CM CDS Transactions.
- (b) Clearing Member and Segregated CDS Customer agree that a Customer-CM CDS Transaction shall arise automatically and without further action on the part of Clearing Member or Segregated CDS Customer at the Acceptance Time in respect of the related CDS Contract.
- (c) The terms of any Customer-CM CDS Transaction shall, save as contemplated by these Standard Terms, be identical to those of the related CDS Contract between Clearing Member and the Clearing House (as such CDS Contract may be amended from time to time in accordance with the Rules and/or CDS Procedures), except that:
  - (i) if the Clearing Member is the protection seller under the CDS Contract it shall be the protection buyer under the Customer-CM CDS Transaction and vice versa;
  - (ii) Segregated CDS Customer's recourse against Clearing Member shall be limited and Clearing Member's obligations to Segregated CDS Customer shall be conditional as provided for in Section 8(c) below; and
  - (iii) Customer-CM CDS Transactions shall also be subject to these Standard Terms and the terms of the Customer-Clearing Member Agreement.
- (d) If any Customer-CM CDS Transactions are governed by a Customer-Clearing Member Agreement which is not a separate agreement from any master agreement (each a "**Non-Cleared Master Agreement**") applicable to transactions between Clearing Member and Segregated CDS Customer other than Customer-CM CDS Transactions ("**Non-Cleared Transactions**"), Clearing Member and Segregated CDS Customer shall distinguish in their books and records Customer-CM CDS Transactions from Non-Cleared Transactions to the extent required to enable them to comply with the Rules, the Procedures and these Standard Terms.
- (e) For purposes of the Customer-Clearing Member Agreement, in the event of any inconsistency among or between the Customer-Clearing Member Agreement, these Standard Terms, the Rules and the Procedures with respect to Customer-CM CDS Transactions the following provisions shall prevail in the following order: (i) first, the Rules from time to time; (ii) second, subject to (m) below, the Procedures from time to time; (iii) third, these Standard Terms from time to time; and (iv) fourth, the Customer-Clearing Member Agreement.



- (f) Segregated CDS Customer agrees with Clearing Member that Customer-CM CDS Transactions shall be subject to the provisions of the Rules and the Procedures applicable to Customer-CM CDS Transactions as such Rules or Procedures are amended, modified, supplemented or restated from time to time. In particular but without limitation, Segregated CDS Customer hereby agrees that it shall be bound by, shall comply with and shall facilitate compliance by Clearing Member with the terms and conditions set forth in Parts 5 and 9 of the Rules and Rule 1516 in so far as they relate to Customer-CM CDS Transactions.
- (g) Segregated CDS Customer agrees that publication of a Circular by the Clearing House shall constitute valid notice by the Clearing House of any matter under or relating to the Rules, the Procedures, Customer-CM CDS Transactions or these Standard Terms.
- (h) Clearing Member and Segregated CDS Customer agree that, save in the circumstances contemplated by these Standard Terms and as provided for in any Customer-Clearing Member Agreement or other agreement between Clearing Member and Customer, each Customer-CM CDS Transaction is intended to reflect exactly the operation of the related CDS Contract. In any circumstances in which a CDS Contract is netted (in whole or in part), terminated or voided under the Rules, the related Customer-CM CDS Transaction will also be netted (in whole or in part), terminate or be void by reference to the same price as the CDS Contract is so netted, terminated or voided and a payment in respect of such price may be payable between Segregated CDS Customer and Clearing Member pursuant to the Customer-Clearing Member Agreement or as determined by the Clearing Member. Thereupon, Segregated CDS Customer and Clearing Member shall have no further rights and be under no further liability with respect to such Customer-CM CDS Transaction(s) (or, if applicable, part thereof) other than in respect of any unpaid payments under such Customer-CM CDS Transactions (which shall be payable as and when originally payable). Clearing Member may, at its discretion, elect to continue an equivalent transaction with Segregated CDS Customer as a Non-Cleared Transaction.
- (i) In addition, without limiting any rights that Clearing Member may have under the Customer-Clearing Member Agreement, if the Clearing House takes any step, including but not limited to the following events or actions, or any such event or action otherwise occurs (in each case including but not limited to any change in Applicable Law or any action taken by any Regulatory Authority pursuant to Applicable Law) in relation to a CDS Contract, Clearing Member, at its option and discretion, shall be entitled to take equivalent action (or, if it cannot take equivalent action, it is not advisable to do so or equivalent action would not deal with the matter in hand, other appropriate action) in good faith and in a commercially reasonable manner, in relation to the related Customer-CM CDS Transaction and/or against Segregated CDS Customer, including but not limited to terminating, and/or modifying the non-economic terms of, such Customer-CM CDS Transaction and/or making adjustments to any determination of amounts paid or payable under the Customer-Clearing Member Agreement:

- (i) imposition of a fine or disgorgement payment pursuant to Part 10, any arbitral award or any other payment obligation arising other than pursuant to the Contract Terms or Parts 5 or 11 of the Rules, where the conduct in question is caused by, or in any way due to, the Segregated CDS Customer and/or under the Customer-CM CDS Transaction;
  - (ii) any other event or action the effect of which is to create a material mismatch between the rights, obligations or exposures as between Clearing Member and the Clearing House pursuant to a CDS Contract on the one hand and the rights, obligations or exposures as between Clearing Member and Segregated CDS Customer, including without limitation pursuant to the related Customer-CM CDS Transaction, on the other hand;
  - (iii) any other event or action the effect of which is to result in any loss, liability, cost, claim, damages or expenses being incurred by Clearing Member in connection with a CDS Contract where such event or action does not form part of the CDS Contract (and so is not reflected in the related Customer-CM CDS Transaction).
- (j) Notwithstanding Section 3(c), Clearing Member and Segregated CDS Customer may agree different settlement arrangements between Clearing Member and Segregated CDS Customer so as to accommodate any particular requirements of Clearing Member or Segregated CDS Customer.
- (k) Any price or rate determined by the Clearing House as Calculation Agent in relation to a CDS Contract shall be used as the same price or rate by the Clearing Member in relation to the related Customer-CM CDS Transaction(s).
- (l) Segregated CDS Customer shall not be entitled to serve any type of notice under a Customer-CM CDS Transaction in circumstances in which or by means that the Clearing Member would not, by virtue of the Rules or CDS Procedures, be entitled to serve a corresponding notice on the Clearing House in relation to the corresponding CDS Contract. Clearing Member and the Clearing House shall be entitled to treat any service of a notice in breach of this provision as invalid.
- (m) Clearing Member may, but (subject as otherwise agreed, including but not limited to pursuant to the Settlement and Notices Terms) is not obliged to, deliver any Electronic Notices in relation to Customer-CM CDS Transactions at the times allowed under the Rules and Procedures.
- (n) These Standard Terms may, pursuant to the process provided for in paragraph 2 of these Standard Terms, from time to time, incorporate additional standard terms published by the Clearing House so as to establish mechanics for dealing with the relationship between CDS Contracts and Customer-CM CDS Transactions until such time as market infrastructure solutions are available to address the relevant operational issues. Such additional standard terms shall form part of these Standard Terms, may (if so specified) prevail over the applicable Procedures in respect of

Customer-CM CDS Transactions and may be amended and/or withdrawn only as provided for in paragraph 2 of these Standard Terms. Initially, such additional standard terms are the Settlement and Notices Terms as published by the Clearing House as an Exhibit to the Rules.

- (o) On each date on which the Customer has any open Customer-CM CDS Transaction, the Customer shall represent that the Clearing House is not prevented from entering into any Contract nor is the Clearing Member prevented from entering into any Customer-CM CDS Transaction as a result of any sanctions administered or imposed by the European Union, H.M. Treasury, the Office of Foreign Assets Control of the U.S. Department of the Treasury, the United Nations Security Council or any other relevant Governmental Authority affecting the Customer or any of its assets.

#### 4. *Margin Requirements.*

- (a) Subject as agreed otherwise in the Customer-Clearing Member Agreement, Clearing Member shall be entitled to require each of its Customers in respect of CDS Contracts to provide margin (or permitted cover in respect thereof) (such assets, "Customer Collateral") in an amount no less than the amount of Margin of each relevant type required on a gross basis by the Clearing House with respect to the relevant Open Contract Position(s), separately for each relevant class of Designated CDS Customer Account. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set and Customer in the same Designated CDS Customer Account, but without giving effect to any offset or permitted offset of such Open Contract Positions against Open Contract Positions relating to a different Customer.
- (b) Segregated CDS Customer agrees that Clearing Member may use any margin provided by Segregated CDS Customer under the Customer-Clearing Member Agreement to satisfy Clearing Member's obligations to the Clearing House under Rule 504 and Rule 505 and Segregated CDS Customer shall not be entitled to assert any equitable or other claim to any such Eligible Collateral and/or Permitted Cover that has been transferred to the Clearing House.

#### 5. *Events of Default and Termination.*

- (a) In the event of the declaration by the Clearing House of an Event of Default (as defined in the Rules) with respect to Clearing Member (such an event being an "**ICE-Declared Default**"), whether or not any other default (howsoever defined or described) has also occurred under the Customer-Clearing Member Agreement or otherwise, Segregated CDS Customer shall not be entitled to exercise any remedies with respect to Customer-CM CDS Transactions pursuant to the Customer-Clearing Member Agreement or otherwise, except as provided herein (and any other remedies being exercised at the time of the declaration of such

ICE-Declared Default shall cease and be superseded by the applicable provisions of these Standard Terms).

- (b) If an ICE-Declared Default occurs at a time when Clearing Member has not already terminated the relevant Customer-CM CDS Transactions by reason of the occurrence of an event of default or termination event relating to Segregated CDS Customer, Clearing Member may not take any action against Segregated CDS Customer that may interfere with the Default Portability Rule resulting in Segregated CDS Customer discharging its obligations to Clearing Member as provided for in Section 6(e) below. Save for such restriction, nothing in these Standard Terms will limit Clearing Member's remedies under the Customer-Clearing Member Agreement in respect of Customer-CM CDS Transactions if an event of default or termination event (or similar concept) with respect to Segregated CDS Customer occurs under the Customer-Clearing Member Agreement.

6. ***Post-default Portability; Termination and Valuation of Cleared Transactions.***

- (a) Segregated CDS Customer shall indicate to Clearing Member in such manner as the Clearing House may direct:
  - (i) Segregated CDS Customer's preference as to whether, in the event of an ICE-Declared Default, it would prefer the Clearing House to apply the Default Portability Rules and related processes to the Segregated CDS Customer's Customer-CM CDS Transactions and related CDS Contracts; and
  - (ii) the identity of any one or more designated "preferred" Transferee Clearing Member(s) to which it would prefer its Customer-CM CDS Transactions (and related CDS Contracts) to be Transferred pursuant to the Default Portability Rules in the case of an ICE-Declared Default (any such preference, a "**Default Portability Preference**").

Any Default Portability Preference notified by Segregated CDS Customer must apply to all Customer-CM CDS Transactions with Clearing Member. Any such Default Portability Preference by Segregated CDS Customer may be amended by notice to Clearing Member (who will, in turn, notify the Clearing House in accordance with the Rules and the Procedures), at any time prior to the occurrence of an ICE-Declared Default in respect of Clearing Member or, at the discretion of the Clearing House, by notice directly to the Clearing House in accordance with the Rules and the Procedures, following the occurrence of such an ICE-Declared Default.

- (b) Segregated CDS Customer hereby consents and agrees that, in the event of an ICE-Declared Default, whether or not Segregated CDS Customer has specified a Default Portability Preference, the Clearing House shall be entitled (but shall not be obliged) to apply the Default Portability Rules with respect to CDS Contracts to

which Clearing Member and Segregated CDS Customer's Cleared Customer-CM CDS Transactions relate, including by taking any of the following steps:

- (i) transferring, assigning, selling or novating Customer-CM CDS Transactions (and related CDS Contracts) to a Transferee Clearing Member;
  - (ii) terminating Customer-CM CDS Transactions (and related CDS Contracts) and arranging for the entry into of new replacement Customer-CM CDS Transactions (and related CDS Contracts) with a Transferee Clearing Member (by way of novation or otherwise); and/or
  - (iii) transferring Margin (in such amount as the Clearing House may determine) credited to the Customer Margin Account of Clearing Member to the Customer Margin Account of the Transferee Clearing Member and, if such a transfer occurs, Clearing Member's obligations to Segregated CDS Customer in respect of the transferred Margin shall be fully discharged.
- (c) In the event that the Clearing House arranges for a replacement CDS Contract and related Customer-CM CDS Transaction pursuant to Section 6(b)(ii), the Customer-CM CDS Transaction with the Transferor Clearing Member shall be deemed terminated at the same time that the replacement CDS Contract and related Customer-CM CDS Transaction is entered into. Segregated CDS Customer shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Clearing House to take action contemplated by Part 9 of the Rules, including, without limitation, the Transfer of CDS Contracts and Customer-CM CDS Transactions, the transfer of any related Margin or other collateral or cover (or contingent cover) for the same or the imposition of the Transferee Clearing Member's form of Customer-Clearing Member Agreement where so permitted under the Default Portability Rules.
- (d) Segregated CDS Customer hereby appoints the Clearing House as its lawful agent and attorney-in-fact to take such actions on behalf of the Segregated CDS Customer as the Clearing House determines necessary or appropriate in order to effect the Default Portability Rules with respect to Segregated CDS Customer's Customer-CM CDS Transactions and the Customer Margin Account, including executing any document or instrument with respect to the Transfer or replacement of the Customer-CM CDS Transaction and/or exercising rights and remedies to terminate or Transfer Customer-CM CDS Transactions, including (without limitation) the execution of any Transfer, or the exercise of any termination notice or the transfer of amounts recorded in the Customer Margin Account. Segregated CDS Customer shall take such actions as the Clearing House and/or a Transferee Clearing Member may request to give full effect to the Default Portability Rules, including without limitation execution of documentation confirming or agreeing to any terms specified by Transferee Clearing Member pursuant to Rule 904(l)(ii).

- (e) In connection with any Transfer of Customer-CM CDS Transactions pursuant to the Default Portability Rules, any termination payments owed between Segregated CDS Customer and Clearing Member in respect of the relevant Customer-CM CDS Transactions (determined in accordance with the Rules and the provisions of the Customer-Clearing Member Agreement), any termination payments owed between Clearing Member and the Clearing House in respect of the related CDS Contracts (which in each case shall be determined by the Clearing House pursuant to its default rules), any upfront Mark-to-Market Margin payments owed between Segregated CDS Customer and the Transferee Clearing Member with respect to the initiation of the replacement cleared transactions and any upfront Mark-to-Market Margin payments owed between such Transferee Clearing Member and the Clearing House with respect to the initiation of replacement CDS Contracts shall be equal.
- (f) In the event of an ICE-Declared Default:
- (i) If, as of the end of the period of up to three Business Days following an ICE-Declared Default in respect of Clearing Member during which the Clearing House will seek to apply its Default Portability Rules and related processes to Customer-CM CDS Transactions (the "**Transfer Period**"), the Customer-CM CDS Transactions have not been transferred or replaced pursuant to the Default Portability Rules, such Customer-CM CDS Transactions shall be deemed to have been terminated, and in such case an early termination date (or similar concept) in respect of the Customer-CM CDS Transactions shall occur under the Customer-Clearing Member Agreement, on the applicable date on which the Clearing House terminates the related CDS Contracts pursuant to Part 9 of the Rules.
  - (ii) Notwithstanding anything to the contrary in the Customer-Clearing Member Agreement or any other agreement or arrangement between Clearing Member and Segregated CDS Customer, the amount payable pursuant to the Customer-Clearing Member Agreement in respect of the termination of the Customer-CM CDS Transactions (the "**Cleared Transactions Termination Amount**") shall be determined on the basis of the termination value calculated by the Clearing House for the corresponding CDS Contracts pursuant to Part 9 of the Rules but subject always, in the case of amounts due from Clearing Member, to Section 8(c) below. Segregated CDS Customer hereby agrees and acknowledges that any determination made by the Clearing House with respect to the termination value of a CDS Contract or a Customer-CM CDS Transaction shall be conclusive and binding upon Segregated CDS Customer for this purpose to the same extent that any 'net sum' declared by the Clearing House is conclusive and binding on Clearing Member.
  - (iii) Segregated CDS Customer acknowledges and agrees that the allocation and, subject to Applicable Law, return of available amounts in the relevant Customer Margin Account shall be governed by Part 9 of the Rules, which



may reduce or defer Clearing Member's obligations to Segregated CDS Customer.

- (g) For the avoidance of doubt, nothing in these Standard Terms shall prevent other amounts being due and payable between Clearing Member and Segregated CDS Customer as provided for in the Customer-Clearing Member Agreement.

7. ***Consents to Disclosure.***

Segregated CDS Customer hereby consents to:

- (i) the Clearing House having the right to obtain information in relation to the Customer-CM CDS Transactions from any Trade Processing Platform, Deriv/SERV or any other trade information warehouse or data depository so as to enable the Clearing House to identify which CDS Contracts and Margin or Permitted Cover between the Clearing House and Clearing Member relate to such Customer-CM CDS Transactions;
- (ii) Clearing Member making any disclosures in connection with Segregated CDS Customer and Customer-CM CDS Transactions as are required by the Rules and/or Procedures or as are required by Applicable Law;
- (iii) disclosures to, use by and disclosures by the Clearing House of information relating to Segregated CDS Customer (including the Personal Data of its Data Subjects) pursuant to Rule 106; and
- (iv) submissions of and other actions relating to data concerning Customer-CM CDS Transactions by the Clearing House pursuant to Section 12, the Rules and the Procedures.

8. ***Certain Limitations.***

- (a) Segregated CDS Customer agrees and acknowledges for the benefit of the Clearing House and Clearing Member that: (i) the liability of the Clearing House to Segregated CDS Customer shall be excluded and limited as set forth in Rule 111 and specifically that the Clearing House shall have no liability or obligation to Segregated CDS Customer in respect of a Customer-CM CDS Transaction or otherwise nor shall it have any duty of care directly to Segregated CDS Customer, in any case whether in tort, contract, restitution, in respect of any Contract, pursuant to the Rules, pursuant to a Clearing Membership Agreement, pursuant to these Standard Terms or otherwise, save for any liability which by law may not be excluded, (ii) in no event shall Segregated CDS Customer attempt to interfere with the ability of the Clearing House to exercise its rights hereunder or as set forth in the Rules, the Procedures or any Clearing Membership Agreement, and (iii) it is not entitled to, and will not, petition a court or take any action or commence any proceedings against the Clearing House, directly or indirectly and will if any such action is taken fully indemnify the Clearing House against any costs, losses or other consequences of Segregated CDS



Customer taking any such action. Segregated CDS Customer agrees that Clearing Member acts as principal at all times in all its Contracts with the Clearing House.

- (b) The Clearing House shall have no responsibility for the compliance by Clearing Member or Segregated CDS Customer with its obligations under a Customer-Clearing Member Agreement. The Clearing House shall be under no obligation to enquire into, and shall be fully protected in relying on, any instructions or directions with respect to a CDS Customer Account or the assets recorded therein or transferred thereto or therefrom under the Rules received from a Person that the Clearing House believes to be authorised to act on behalf of Clearing Member.
- (c) Segregated CDS Customer agrees and acknowledges that the performance and payment obligations of Clearing Member to Segregated CDS Customer are limited by and contingent on the actual performance or payment by the Clearing House under the related CDS Contract and that Clearing Member shall have no responsibility for the compliance by the Clearing House (or any person other than that Clearing Member) with its obligations, including without limitation, under any CDS Contract, the Rules or the Procedures. In the event that the Clearing House defaults in or defers or varies the payment or performance of any obligation otherwise owed by it in respect of a CDS Contract corresponding to a Customer-CM CDS Transaction (including, without limitation, any shortfall in repayment of Permitted Cover or any recovery of less than 100% of amounts owed by the Clearing House or property provided to the Clearing House in circumstances in which Rule 912 applies),<sup>16</sup> Clearing Member will be entitled to make a corresponding deduction, withholding or other reduction from, or tolling or deferring of, any payment or performance otherwise owed by it under such corresponding Customer-CM CDS Transactions and/or to make its performance under such Customer-CM CDS Transactions conditional on performance by the Clearing House under the related CDS Contract (and where any such deduction may be attributable to both Customer-CM CDS Transactions and to Customer Account Contracts of other Segregated CDS Customers, Clearing Member shall allocate such deduction among such contracts on a pro rata basis) provided that if such defaulted or delayed payment or performance is subsequently obtained by Clearing Member from the Clearing House (in whole or in part), Clearing Member shall thereupon make the corresponding payment or performance (or portion thereof) to Segregated CDS Customer.

9. ***Certain Tax Matters.***

Subject always, and without prejudice, to any provisions of a Customer-Clearing Member Agreement: (i) if Clearing Member is required to pay to Clearing House any additional amount under Rule 301(j) or the Contract Terms with respect to a CDS Contract corresponding to a Customer-CM CDS Transaction, Segregated CDS Customer shall be obliged to pay to Clearing Member an amount equal to such additional amount (or the applicable portion thereof), but without duplication of any additional amount payable by

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<sup>16</sup> [This reference is to Rule 912 of the Continuing CDS Rule Provisions.](#)

Segregated CDS Customer under any relevant provision of the Customer-Clearing Member Agreement, (ii) for the avoidance of doubt, and without prejudice to the above, if Clearing House deducts or withholds any amount otherwise payable to Clearing Member on a CDS Contract pursuant to Rule 301 or the Contract Terms, Clearing Member shall be entitled to make a corresponding deduction from any amount otherwise payable by Clearing Member to Segregated CDS Customer under a corresponding Customer-CM CDS Transaction, and (iii) where such additional amount or deduction may be attributable to both Customer-CM CDS Transactions and to Customer-CM CDS Transactions of other customers, Clearing Member shall allocate such additional amount or deduction among such contracts on a pro rata basis.

10. ***Reliance on CDS Trade Particulars and submissions to Deriv/SERV etc.***

The Clearing House shall be entitled to assume, without enquiry, that (i) at each Acceptance Time at which a Customer-CM CDS Transaction arises, the respective obligations of Clearing Member and Segregated CDS Customer under such Customer-CM CDS Transaction constitutes its legal, valid and binding obligations enforceable in accordance with their respective terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles in general application (regardless of whether enforcement is sought in a proceeding in equity or at law); (ii) where Segregated CDS Customer or Clearing Member are acting out of an office in the United States of America, each of Clearing Member and Segregated CDS Customer represents to the other and to the Clearing House that it is an "eligible contract participant" as defined in the US Commodity Exchange Act, as amended and (iii) that the Clearing House is duly authorised by Clearing Member and Segregated CDS Customer to submit, in accordance with the Rules and the Procedures, details of any CDS Trade Particulars or Customer-CM CDS Transaction to Deriv/SERV or another service specified by the Clearing House and to amend or delete such records from time to time in accordance with the Rules and the Procedures, in each case subject to Applicable Law. For the avoidance of doubt, Clearing Member shall not take any actions in Deriv/SERV of a nature specified in this paragraph and neither the Clearing House nor Clearing Member will be liable to Segregated CDS Customer for any action or omission of the Clearing House as a result of having made such submissions. The sole remedy of Segregated CDS Customer in the case of any error shall be to request that Clearing Member request the Clearing House to amend or correct any error pursuant to the Rules or Procedures.

11. ***Third Party Rights.***

The Clearing House shall be entitled to rely upon and enjoy the benefit of the representations, warranties, agreements, obligations and covenants of the Customer under these Standard Terms and shall have the right to enforce such representations, warranties, agreements, obligations and covenants against the parties under the Contracts (Rights of Third Parties) Act 1999. Other than as set out in this Section 11, no persons other than Clearing Member and Segregated CDS Customer shall have the right to enforce any provision of these Standard Terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

12. **Miscellaneous.**

- (a) **Entire Agreement.** These Standard Terms (together with the Customer-Clearing Member Agreement and the Rules and the Procedures incorporated by reference herein) constitutes the entire agreement and understanding of Segregated CDS Customer and Clearing Member with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- (b) **Headings.** The headings used in these Standard Terms are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting these Standard Terms.
- (c) **Governing Law.** Any contractual or non-contractual disputes arising out of or in connection with the Customer-Clearing Member Agreement are governed by and shall be construed in accordance with the law specified in the Customer-Clearing Member Agreement and subject to the non-exclusive jurisdiction of the courts specified in the Cleared Transactions Master Agreement provided that Section 11 of these Standard Terms shall be governed by and shall be construed in accordance with the laws of England and Wales and is subject to arbitration under Rule 117 as if these Standard Terms were Rules and the parties were bound thereby as if they were both Clearing Members, notwithstanding any choice of law or jurisdiction in the Cleared Transactions Master Agreement. Clearing Member and Segregated CDS Customer hereby waive any right to object to any such proceedings on the basis of *forum non conveniens* or otherwise.

## EXHIBIT 2

### ICE CLEAR EUROPE LIMITED SETTLEMENT AND NOTICES TERMS

#### 1. APPLICATION AND INTERPRETATION

These settlement and notices terms (the "**Settlement and Notices Terms**") apply to all Customer-CM CDS Transactions and, where specified, to the clearing arrangements between an FCM/BD CDS Clearing Member and its FCM/BD Customers and, in each case, to the related CDS Contracts (the term "**CDS Contract**", as used in these Settlement and Notices Terms, is restricted to such CDS Contracts). Notwithstanding the previous sentence, a Clearing Member and its Customer may agree in their clearing arrangements or otherwise to vary or override the terms of these Settlement and Notices Terms in respect of Customer-CM CDS Transactions, in each case through their clearing arrangements or otherwise.

These Settlement and Notices Terms are published by the Clearing House as an exhibit to the Rules but do not form part of the Clearing House's Rules (the "**Rules**"), Procedures or Standard Terms. They constitute a separate document that is incorporated by reference in the Standard Terms and forms part of the terms of CDS Contracts and Customer-CM CDS Transactions (or, in relation to FCM/BD CDS Clearing Members, clearing agreements between FCM/BD CDS Clearing Members and their Customers). These Settlement and Notices Terms shall be governed by and construed in accordance with the law governing the CDS Contract, Customer-CM CDS Transaction or clearing arrangement to which they relate in any instance and subject to such dispute resolution mechanisms and procedures and such courts or other forum for hearing disputes as are applicable in respect of the CDS Contract, Customer-CM CDS Transaction or clearing arrangement to which they relate. Each Clearing Member and Customer to which these Settlement and Notices Terms apply hereby waives any right to object to any such choice of law or proceedings on the basis of *forum non conveniens*, that the governing law or forum is not specified on the face of this document or otherwise.

These Settlement and Notices Terms are intended to apply in their present form pending broader industry discussion of other possible solutions, possibly in connection with technological progress and may be amended as any further technological or industry developments take place. Any amendments, modifications, restatements or supplements in respect of these Settlement and Notices Terms shall be effective if made by the Clearing House pursuant to the provisions of Rule 109 as if these Settlement and Notices Terms were Rules and as if Rule 109 applied to Customers of CDS Clearing Members in addition to, and in the same way as it applies to, Clearing Members. At the request of a CDS Clearing Member or the Clearing House, a Customer of that CDS Clearing Member will enter into a written confirmation of the terms of these Settlement and Notices Terms or any amendment, modification, supplement or restatement made to them.

In the event of any inconsistency between the Rules or the CDS Procedures and these Settlement and Notices Terms in so far as the Rules or the CDS Procedures apply to Customer-CM CDS Transactions, these Settlement and Notices Terms shall prevail, govern and be binding on the parties. In the event of any inconsistency between the Rules or the CDS Procedures and these Settlement and Notices Terms in so far as the Rules or the CDS Procedures apply to CDS Contracts, Rule 102(f) shall apply.

If any CDS Contract is Transferred to a Transferee Clearing Member in accordance with the Rules and/or the CDS Procedures (together with, in the case of a Non-FCM/BD CDS Clearing Member, the related Customer-CM CDS Transaction), these Settlement and Notices Terms shall apply to the CDS Contract (and, where applicable, the Customer-CM CDS Transaction) existing following such Transfer, except to the extent and until otherwise agreed between the Customer and the Transferee Clearing Member or as determined by the Transferee Clearing Member pursuant to Rule 904(l)(ii).

Capitalised terms used, but not defined, in these Settlement and Notices Terms shall have the meanings given to them in the Rules, CDS Procedures, Credit Derivative Definitions and Standard Terms (together, the "**ICE Documentation**") as applicable, and in the order of priority specified in Rule 102(f) in the event and to the extent of any conflict.

These Settlement and Notices Terms are intended to establish the processes for dealing with certain aspects of Physical Notices. "**Physical Notices**" mean those notices that may be delivered in connection with CDS Contracts and, where applicable, Customer-CM CDS Transactions (other than Electronic Notices and other equivalent electronic notices under Customer-CM CDS Transactions which are or are required pursuant to the Rules or CDS Procedures to be given through Deriv/SERV). For the avoidance of doubt, Physical Notices include Manual MP Notices (and equivalent notices under Customer-CM CDS Transactions) and notices relating to physical settlement delivered pursuant to or in connection with a CDS Contract or Customer-CM CDS Transaction, including all notices in connection with the physical settlement processes to which these Settlement and Notices Terms apply.

For the avoidance of doubt, nothing herein is intended to or shall create any additional obligations or liability for Clearing Members to their Customers for the performance of the Clearing House, which is limited pursuant to the Standard Terms.

References to "**Sections**" herein are to sections of these Settlement and Notices Terms, unless specified otherwise.

## 2. THE SETTLEMENT AND NOTICES TERMS

### 2.1 Provisions Applicable to all Physical Notices

- (a) These Settlement and Notice Terms assume a chain of transactions (each a "**CDS Chain**") in which:
  - (i) a Clearing Member ("**Clearing Member A**"): (A) is (1) the protection buyer (either directly or on behalf of a Customer ("**Customer A**")); and (2) assuming the

Clearing House has created Matched Pairs as required by the ICE Documentation, the Matched CDS Buyer, in each case under its CDS Contract with the Clearing House; and (B) if there is a related Customer-CM CDS Transaction or Clearing Member A is an FCM/BD CDS Clearing Member holding the CDS Contract on behalf of Customer A, Customer A is the ultimate protection buyer; and

- (ii) a Clearing Member ("**Clearing Member B**"): (A) is (1) the protection seller (either directly or on behalf of a Customer ("**Customer B**") and (2) assuming the Clearing House has created Matched Pairs as required by the ICE Documentation, the Matched CDS Seller, in each case under its CDS Contract with the Clearing House; and (B) if there is a related Customer-CM CDS Transaction or Clearing Member B is an FCM/BD CDS Clearing Member holding the CDS Contract on behalf of Customer B, Customer B is the ultimate protection seller.
- (b) A Physical Notice from a Customer to its Non-FCM/BD CDS Clearing Member will only be deemed to be effective for purposes of a Customer-CM CDS Transaction if and when a Physical Notice of an equivalent type has been delivered by such Non-FCM/BD CDS Clearing Member pursuant to and in accordance with the related CDS Contract and is effective pursuant to the terms of such CDS Contract (which may, for the avoidance of doubt, be by delivery to the other Clearing Member in a Matched Pair as designee for the Clearing House in accordance with the ICE Documentation). If a Physical Notice is delivered by a Non-FCM/BD CDS Clearing Member to the Clearing House (which may, for the avoidance of doubt, be by delivery to the other Clearing Member in a Matched Pair as designee for the Clearing House in accordance with the ICE Documentation) under a CDS Contract, the Non-FCM/BD CDS Clearing Member's Customer will be deemed to have delivered a Physical Notice of an equivalent type and with identical content and effect (save as to the position of the parties) to that delivered by its Clearing Member, pursuant to and in accordance with the related Customer-CM CDS Transaction.
- (c) A Physical Notice that is effective against a Non-FCM/BD CDS Clearing Member pursuant to a CDS Contract, shall, subject to the terms of the clearing arrangement between such Clearing Member and its Customer, be deemed to constitute the effective delivery at the same time of a Physical Notice of an equivalent type and with identical content and effect (save as to the position of the parties) against the Customer under the related Customer-CM CDS Transaction, regardless of whether or when the Customer actually receives such or a corresponding Physical Notice from Clearing Member under the Customer-CM CDS Transaction.
- (d) Each FCM/BD CDS Clearing Member agrees for the benefit of each of its Customers that, if such Customer delivers any request or instruction to Clearing Member to deliver a Physical Notice under a CDS Contract (that such Clearing Member is permitted to deliver) and where such request or instruction is effective pursuant to both (i) their clearing arrangements and (ii) these Settlement and Notice Terms, the FCM/BD CDS Clearing Member will, subject to the terms of the CDS Contract and the ICE Documentation, deliver a corresponding Physical Notice under the relevant CDS Contract no later than two (2) hours after effective receipt by the FCM/BD CDS Clearing Member of such request or instruction. A Physical Notice that is effective against an FCM/BD CDS Clearing Member



pursuant to a CDS Contract, shall, subject to the terms of the clearing arrangement between such Clearing Member and its Customer, be deemed to have been copied to and bind its Customer at the same time, regardless of if or when the Customer actually receives such or a corresponding Physical Notice or copy of such Physical Notice from its Clearing Member or any other Person.

- (e) Each Non-FCM/BD CDS Clearing Member agrees for the benefit of each of its Customers that, if such Customer delivers any Physical Notice that it is permitted to deliver under a Customer-CM CDS Transaction and is effective pursuant to such Customer-CM CDS Transaction, these Settlement and Notice Terms and any clearing arrangements between them, the Non-FCM/BD CDS Clearing Member will, subject to the terms of the CDS Contract and the ICE Documentation deliver a corresponding notice under the relevant CDS Contract no later than two (2) hours after effective receipt by the Clearing Member of such Physical Notice.
- (f) Each Clearing Member agrees for the benefit of each of its Customers that, if it (i) receives a notice pursuant to a CDS Contract or (ii) gives a notice that is effective pursuant to the terms of a CDS Contract, it will, subject to the terms of the CDS Contract, the ICE Documentation, the clearing arrangements between them, and the terms of any related Customer-CM CDS Transaction, deliver a copy of such notice to Customer no later than two (2) hours after effective receipt or delivery by it of such notice.

## **2.2 Credit Event Notices and Notices to Exercise Movement Option**

- (a) No Customer may deliver any Credit Event Notice or Notice to Exercise Movement Option other than pursuant to the Electronic Notice Process.

## **2.3 Notices**

- (a) For the purposes of determining, as between each Clearing Member and its Customer only (A) when notices, requests or instructions delivered by a Customer to a Clearing Member pursuant to their clearing arrangements and, if applicable a Customer-CM CDS Transaction are effective; and (B) when notices received or given by a Clearing Member must be copied by a Clearing Member to its Customer, in each case pursuant to these Notice and Settlement Terms, the following shall apply:
  - (i) a notice, request or instruction received from a Customer or given by the Clearing Member pursuant to a Customer CDS Transaction on or after 9:00 am and on or prior to 4:00pm (in each case Calculation Agent City time) on a Calculation Agent City Business Day will be effective at such Calculation Agent City time on such Calculation Agent City Business Day;
  - (ii) a notice, request or instruction received from a Customer or given by the Clearing Member pursuant to a Customer CDS Transaction prior to 9:00 am (in each case Calculation Agent City time) on a Calculation Agent City Business Day will be effective at 9:00 am Calculation Agent City time on such Calculation Agent City Business Day; and



- (iii) a notice, request or instruction received from a Customer or given by the Clearing Member pursuant to a Customer CDS Transaction on a day that is not a Calculation Agent City Business Day will be effective at 9:00 am Calculation Agent City time on the next following Calculation Agent City Business Day.:

Terms used but not defined in this Section 2.3(a) shall have the meanings given to them in the relevant CDS Contract.

- (b) Any notice required to be delivered pursuant to these Settlement and Notices Terms shall be delivered in accordance with the terms of the relevant CDS Contract or, if applicable, Customer-CM CDS Transaction, the ICE Documentation and the clearing arrangements applicable between a Customer and its Clearing Member. Subject to paragraph 7.2 and paragraph 7.3 of the CDS Procedures and Section 2.3(a), section 1.10 (*Requirements Regarding Notices*) of the Credit Derivatives Definitions will apply to all such notices.

## 2.4 Delivery of Deliverable Obligations

- (a) Customer A, Clearing Member A, Clearing Member B and Customer B may, if they wish and subject to Applicable Law, in any instance where Physical Settlement applies, arrange among themselves for delivery versus payment as between any two of them in satisfaction of the obligations of the relevant parties in the CDS Chain agreeing to such arrangement. In a CDS Chain involving only one Customer, the parties in the CDS Chain may agree for the relevant Clearing Member making or receiving delivery or payment for its own account as principal to undertake delivery versus payment as between itself and the other Clearing Member's Customer in a similar manner. In any instance in which a Customer makes or receives delivery or payment on behalf of its Clearing Member pursuant to such arrangements, the Customer will be treated as a Representative and designee of the Clearing Member.
- (b) To the extent that no arrangement of a nature referred to in Section 2.4(a) is established, the remaining provisions of this Section 2.4 shall apply in connection with Physical Settlement of Customer CDS Transactions and Customer-CM CDS Transactions.
- (c) Delivery of Deliverable Obligations by Customer A under a Customer-CM CDS Transaction will only be deemed to have been effectively made if and when Clearing Member A has Delivered under the related CDS Contract Deliverable Obligations, having an outstanding principal balance (or, if applicable, a Due and Payable Amount) equal to that Delivered by Customer A to Clearing Member A, which may for the avoidance of doubt, be by way of Delivery to Clearing Member B as designee for the Clearing House in accordance with the ICE Documentation.
- (d) Each Clearing Member covenants separately for the benefit of each of its Customers A that if it is acting as Clearing Member A and receives a Deliverable Obligation from its Customer for purposes of settlement under a CDS Contract or

Customer-CM CDS Transaction, it will, subject to and in accordance with the relevant CDS Contract, the ICE Documentation and the clearing arrangements between such Clearing Member and its Customer, Deliver Deliverable Obligations (which, for the avoidance of doubt need not correspond to those Delivered by the Customer under the related CDS Contract) no later than the first following Business Day after the day on which a trade in the relevant Deliverable Obligations would, if effected on the day of receipt of such Deliverable Obligations from Customer A, be settled in accordance with customary practice.

- (e) For the purposes of sections 9.3, 9.4, 9.5, 9.6, 9.9 and 9.10 of the Credit Derivatives Definitions but subject to any other provision of these Settlement and Notices Terms, the ICE Documentation and the clearing arrangements between such Clearing Member and its Customer which provides for an alternative means of settlement (or no settlement), when Clearing Member B receives Delivery of Deliverable Obligations pursuant to a CDS Contract where Clearing Member B is party to a related Customer-CM CDS Transaction with Customer B, Delivery of Deliverable Obligations with an outstanding principal balance (or, if applicable, a Due and Payable Amount) equal to that Delivered to Clearing Member B will be deemed to have been made to Customer B, whether or not Customer B actually receives Delivery from Clearing Member B.
- (f) Each Clearing Member covenants separately for the benefit of each of its Customers B that if it is acting as Clearing Member B and receives Deliverable Obligations pursuant to the terms of a CDS Contract where the Clearing Member is party to a related Customer-CM CDS Transaction with Customer B, it will, subject to the ICE Documentation, the terms of such Customer-CM CDS Transaction, and the clearing arrangements between Clearing Member B and Customer B Deliver Deliverable Obligations with an outstanding principal balance (or, if applicable, a Due and Payable Amount) equal to that Delivered to Clearing Member B under the relevant CDS Contract on or prior to the first following Business Day after the date on which a trade in the relevant Deliverable Obligations would, if effected on the day of receipt of such Deliverable Obligations by Clearing Member B, settle in accordance with customary practice. For the purposes of this covenant only, Section 2.4(e) shall be deemed not to apply.

## 2.5 Fallback to Cash Settlement

- (a) If Customer A would otherwise be entitled to deliver Deliverable Obligations to Clearing Member A but a fallback to Cash Settlement applies, in each case under the relevant Customer-CM CDS Transaction between Clearing Member A and Customer A (or, in the case of an FCM/BD CDS Clearing Member, circumstances exist such that, if there were a Customer-CM CDS Transaction between Customer A and its FCM/BD CDS Clearing Member, there would be a fallback to Cash Settlement) (Customer A in such situation, "**Fallback Customer A**"), then subject as provided below: (i) the CDS Contracts between (A) Clearing Member A and the Clearing House; and (B) between the Clearing House and Clearing Member B (either directly or on behalf of Customer B); and (ii) any Customer-CM CDS

Transaction between Clearing Member B and Customer B shall also hereby be deemed to be subject to a fallback to Cash Settlement in accordance with either Rule 1513 or Article 9 of the Credit Derivatives Definitions, depending on the reason for the fallback

- (b) If Clearing Member A would otherwise be entitled to deliver Deliverable Obligations pursuant to a CDS Contract but a fallback to Cash Settlement applies, in each case pursuant to a CDS Contract (Clearing Member A in such circumstances "**Fallback Clearing Member A**" and Clearing Member B, as part of a Matched Pair, in such circumstances "**Fallback Clearing Member B**"), then subject as provided below: (i) any Customer-CM CDS Transaction between Clearing Member A and Customer A shall also hereby be deemed to be subject to a fallback to Cash Settlement; and (ii) any Customer-CM CDS Transaction between Clearing Member B and Customer B shall also hereby be deemed to be subject to a fallback to Cash Settlement in accordance with either Rule 1512, Rule 1513 or Article 9 of the Credit Derivatives Definitions, depending on the reason for the fallback.
- (c) If Clearing Member B would otherwise be entitled to deliver Deliverable Obligations to Customer B but a fallback to Cash Settlement applies, in each case under the relevant Customer-CM CDS Transaction between Clearing Member B and Customer B (or, in the case of an FCM/BD CDS Clearing Member, circumstances exist such that, if there were a Customer-CM CDS Transaction between Customer B and its FCM/BD CDS Clearing Member, there would be a fallback to Cash Settlement), then, subject as provided below, a fallback to Cash Settlement shall hereby be deemed to apply to the Customer-CM CDS Contract and / or CDS Contract but only as between Clearing Member B and Customer B, without affecting Settlement Method of any other CDS Contract.
- (d) Without prejudice to the provisions of the ICE Documentation in relation to CDS Contracts, as soon as reasonably practicable on becoming aware that a fallback to Cash Settlement applies: (i) Clearing Member A and Customer A; (ii) Clearing Member A, the Clearing House and Clearing Member B; or (iii) Clearing Member B and Customer B shall notify each other describing in reasonable detail the facts giving rise to the fallback. Sections 2.1 and 2.3 shall apply to such notices.
- (e) Where Section 2.5(a) or (b) applies, Clearing Member A shall determine the Cash Settlement Amount in accordance with the terms of the CDS Contract pursuant to section 9.8 (*Partial Cash Settlement Terms*) of the Credit Derivatives Definitions: (i) as if: (A) Clearing Member A were the Calculation Agent in respect of such CDS Contract; (B) Indicative Quotations were not available; and (C) the Valuation Date were the first Business Day after the date of such notice; and (ii) subject to Section 2.5(h). No other party to a CDS Contract or Customer-CM CDS Transaction in the relevant CDS Chain shall determine any separate or different Cash Settlement Amount and the Cash Settlement Amount determined by Clearing Member A shall apply to all CDS Contracts, Customer-CM CDS Transactions and clearing agreements in the CDS Chain. Sections 2.1 and 2.3 shall apply to any

notices delivered or served in connection with the determination or notification of the Cash Settlement Amount.

- (f) For the purposes of Section 3.5(e), section 9.8(k) of the Credit Derivatives Definitions is amended by inserting the following at the beginning thereof:

"For the purposes hereof, in addition to the requirements of Section 7.10 (Full Quotation), each firm Quotation shall:

- (A) be for a transaction with the party seeking the Quotation (or its designee) (the "**Relevant Party**") in which the Relevant Party agrees to Deliver the Deliverable Obligations to the Dealer submitting the firm quotation (the "**Quoting Dealer**"), which transaction shall be governed by documentation that is consistent with market practice applicable to the sale and purchase of Deliverable Obligations on the Valuation Date (which may be determined by the Determining Body), including without limitation a representation that the Quoting Dealer has completed all "know your customer" or similar requirements under all Applicable Laws and internal compliance procedures relating to a transaction with the Relevant Party and on the Reference Entity;
  - (B) be capable of acceptance by the Relevant Party (for such purposes, each firm Quotation must, inter alia, be obtained from a Dealer with whom the Relevant Party in its sole, unfettered and absolute discretion determines that it is able in accordance with all its internal compliance and policy requirements to transact and to Deliver the Deliverable Obligations) and be open for acceptance to the relevant party for at least 30 minutes; and
  - (C) be obtained on the basis that if the Relevant Party agrees to Deliver the Deliverable Obligations to such Quoting Dealer on the terms set forth herein, such Quoting Dealer agrees to pay the settlement amount (calculated and payable for this purpose in accordance with the relevant market standard documentation and based on the price so quoted) that would be payable for such Deliverable Obligations to the Relevant Party."
- (g) As soon as practicable after determining the Cash Settlement Amount pursuant to Section 2.5(f), Clearing Member A shall deliver a notice pursuant to the relevant CDS Contract, notifying such Cash Settlement Amount.
- (h) The Cash Settlement Date in respect of each of:
- (i) the CDS Contract between Clearing Member A (either directly or on behalf of Customer A) and the Clearing House under which Clearing Member A has determined a Cash Settlement Amount;
  - (ii) the CDS Contract between the Clearing House and Clearing Member B (either directly or on behalf of Customer B) in the Matched Pair with Clearing Member A; and

- (iii) any Customer-CM CDS Transaction either between Clearing Member A and Customer A or between Clearing Member B and Customer B, shall be the third Business Day after the date of the notice delivered by Clearing Member A pursuant to the relevant CDS Contract under Section 2.5(g).

## 2.6 Additional provisions relating to section 9.9 (Buy-in of Bonds Not Delivered) of the Credit Derivatives Definitions

- (a) No Clearing Member or Customer may deliver (or, in the case of a Customer of an FCM/BD CDS Clearing Member, request or instruct the delivery of) a Buy-In Notice except for a Clearing Member that is acting as Clearing Member B or a Customer that is acting as Customer B in a CDS Chain. If a Buy-In Notice (or instruction or request to deliver a Buy-in Notice, as applicable, is effectively given in respect of a CDS Contract or a Customer-CM CDS Transaction by Clearing Member B or Customer B (the relevant party being the "**Electing Seller**"), the Electing Seller may exercise the rights of Seller pursuant to and subject to section 9.9 of the Credit Derivatives Definitions under the CDS Contract or Customer-CM CDS Contract, as applicable but without prejudice to Sections 2.1 and 2.3.
- (b) Where a Buy-In Price is determined by Electing Seller, each other seller of protection in the CDS Chain shall be deemed to have effectively determined the same Buy-In Price for the transactions to which it is a party as seller of protection in the CDS Chain, provided that the Buy-In Price determined by the Electing Seller was determined in accordance with the terms of the relevant CDS Contract or Customer-CM CDS Contract, as applicable.

## 2.7 Additional provisions applicable to section 9.10 Notices

- (a) No Clearing Member or Customer may deliver (or, in the case of a Customer of an FCM/BD CDS Clearing Member, request or instruct the delivery of) a notice under section 9.10(a) of the Credit Derivatives Definitions (a "**9.10(a) Notice**") except for a Clearing Member that is acting as Clearing Member A or a Customer that is acting as Customer A in a CDS Chain. If a 9.10(a) Notice (or request or instruction to deliver a 9.10(a) Notice, as applicable) is effectively given in respect of a CDS Contract or a Customer-CM CDS Transaction by Clearing Member A or Customer A (the relevant party, being an "**Electing Buyer**"):
  - (i) the Electing Buyer may exercise the rights of Buyer pursuant to and in accordance with Section 9.10 of the Credit Derivatives Definitions under the CDS Contract (in which case Electing Buyer, if it is Customer B, may give instructions or requests in connection with such rights) or Customer-CM CDS Transaction, as applicable but without prejudice to Sections 2.1 and 2.3 hereof; and
  - (ii) when a certificate is signed and effectively delivered as required by section 9.9(a) of the Credit Derivatives Definitions by the Electing Buyer, each

other buyer of protection in the CDS Chain shall be deemed to have effectively delivered a corresponding certificate to its counterparty.

**AUCTION TERMS FOR F&O DEFAULT AUCTIONS**

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## 1. INTRODUCTION

- 1.1 These F&O Auction Terms for F&O Default Auctions (the "**F&O Auction Terms**") govern the auctioning of a lot representing an F&O Contract or number of F&O Contracts ("**F&O Contracts**") to which a Defaulter is or was a party, where such auction ("**F&O Auction**") is administered by the Clearing House pursuant to Part 9 of the ICE Clear Europe Rules (the "**Rules**"). These F&O Auction Terms are 'Procedures' as defined in the Rules and are subject to the Rules, including, without limitation, Rule 102. These F&O Auction Terms, and all non-contractual obligations arising out of or in connection with it, are governed by and shall be construed in accordance with English law.
- 1.2 These F&O Auction Terms shall apply to every F&O Auction conducted by the Clearing House pursuant to Part 9 of the Rules. However, they may be modified or supplemented for any particular F&O Auction pursuant to the relevant F&O Auction Specifications as set out in paragraph 2.6.
- 1.3 The Clearing House will conduct F&O Auctions in accordance with its default policies. In the event of a conflict between the terms of such default policies and these F&O Auction Terms (as modified or supplemented by any applicable F&O Auction Specification as set out in paragraph 2.6), these F&O Auction Terms shall prevail.
- 1.4 Subject to paragraph 1.5 below, these F&O Auction Terms, and all non-contractual obligations arising out of or in connection with it, are governed by and shall be construed in accordance with English law.
- 1.5 Solely as between an FCM/BD Clearing Member and the Clearing House, those provisions of these F&O Auction Terms inasmuch as they relate solely to an issue or matter concerning:
- (a) the pledging, transfer, holding, use and segregation of Pledged Collateral provided by an FCM/BD Clearing Member (or other property recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided by an FCM/BD Clearing Member); and/or
  - (b) the application of any net sum owed in favour of the FCM/BD Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided,

and, solely to the extent relevant to interpreting the foregoing provisions in such circumstances, relevant definitions and interpretative provisions in paragraph 1 of these F&O Auction Terms (such provisions, together or separately "**Pledged Collateral Matters**") shall be governed by and construed in accordance with the laws of the State of New York and, as applicable, the federal law of the United States of America.

- 1.6 For the avoidance of doubt, paragraph 1.5 is an exception to paragraph 1.4 and Rule 102(s) which provide that the F&O Auction Terms and Rules respectively shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding paragraph 1.5, the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:
- (a) all of the provisions of these F&O Auction Terms relating to the Designated System;
  - (b) any Dispute or issue arising as between a Non-FCM/BD Clearing Member or Sponsored Principal that is not a U.S. Sponsored Principal on the one hand and the Clearing House on the other hand;

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- (c) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided;
  - (d) any matter relating to Pledged Collateral of a Non-FCM/BD Clearing Member or a Sponsored Principal that is not a U.S. Sponsored Principal;
  - (e) any Pledged Collateral provided by an FCM/BD Clearing Member or Sponsored Principal pursuant to an English law Pledged Collateral Addendum; and
  - (f) the Contract Terms of all Contracts.
- 1.7 Where a dispute between an FCM/BD Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "**New York Courts**"). Consistent with the preceding sentence, the Clearing House and each FCM/BD Clearing Member hereby:
- (a) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
  - (b) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.
- 1.8 All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM/BD Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to paragraph 1.7 does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 heard in the New York Courts.
- 1.9 Nothing in paragraphs 1.4 to 1.10 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.
- 1.10 EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE F&O AUCTION TERMS OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:
- (a) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER

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PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND

- (b) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN PARAGRAPHS 1.4 to 1.10.

**2. THE AUCTION PROCESS**

- 2.1 Any F&O Auctions of F&O Contracts to which a Defaulter is or was party will take place after the Clearing House has issued a Circular in relation to the Event of Default in accordance with Rule 901/902 specifying that an auction or auctions are to take place (such Circular, the "**F&O Auction Announcement Circular**").
- 2.2 Each F&O Clearing Member is required to bid in every F&O Auction regardless of whether such F&O Clearing Member is at the time of the F&O Auction a party to any F&O Contract, has served a notice of termination for which the Termination Date has not yet passed or is in a Cooling-off Period. For these F&O Auction Terms the term 'F&O Clearing Member' shall be construed to exclude any F&O Clearing Member that is a Defaulter and the term 'Sponsored Principal' shall be construed to exclude any Sponsored Principal that is a Defaulter. Subject to paragraph 2.4 below, with respect to a lot, all F&O Clearing Members are required to bid for a minimum of F&O Contracts in each lot as determined by the Clearing House (the "**Minimum Bid Requirement**"). The sum total of the Minimum Bid Requirements may be set to an amount greater than 100% (but no greater than 150%) of the F&O Contracts in the relevant lot as may be determined by the Clearing House from time to time, in consultation with the F&O Default Committee. No Auction Participants other than F&O Clearing Members are subject to any minimum bid requirement.
- 2.3 F&O Clearing Members shall be deemed to have confirmed to the Clearing House their intention to bid in a particular F&O Auction prior to the time window for bidding and the Closing Time (as defined below). An F&O Clearing Member may bid for the account of a Customer, subject to paragraph 3.2 below. A bid for the account of a Customer or Sponsored Principals for whom such F&O Clearing Member acts as Sponsor directly submitted or made by the F&O Clearing Member will be counted towards the relevant F&O Clearing Member's Minimum Bid Requirement.
- 2.4 Each F&O Clearing Member's Minimum Bid Requirement shall be communicated to them individually by the Clearing House prior to the relevant F&O Auction in the format of the template notification set out in Annex B to these F&O Auction Terms. A Minimum Bid Requirement shall not apply to an F&O Clearing Member: (a) where such a Minimum Bid Requirement would be in breach of Applicable Law or the Rules; or (b) where the Clearing House, after being notified in writing by the relevant F&O Clearing Member that a Minimum Bid Requirement is inappropriate in the current circumstances, reasonably determines that the Minimum Bid Requirement does not apply. An F&O Clearing Member will notify the Clearing House promptly and in any event at least 12 hours prior to the opening of the relevant F&O Auction, in writing, if it reasonably considers that this paragraph 2.4 applies to it or should apply. Affiliated F&O Clearing Members may transfer, outsource or aggregate their Minimum Bid Requirements to apply to a single one of them subject to notifying the Clearing House prior to an F&O Auction. An F&O Clearing Member remains liable for any breach by its Affiliate of these F&O Auction Terms or the F&O Auction Specifications in respect of such F&O Clearing Member's Minimum Bid Requirement.
- 2.5 The Clearing House may divide the portfolio of a Defaulter into discrete F&O Auctions or different lots as it considers appropriate. The Clearing House may at its discretion determine which particular F&O Contracts or packages of F&O Contracts are to be the subjects of a particular F&O Auction lot and may establish F&O Auction lots by selecting by way of F&O Contract Set or generic type (e.g. oil, power,

## AUCTION TERMS FOR F&amp;O DEFAULT AUCTIONS

- emissions). The Clearing House may combine contracts with different currencies in the same lot. In these circumstances, F&O Auction Participants must still provide bids in a single currency, being that specified in the relevant F&O Auction Specifications. Payment obligations resulting from the F&O Auction will be in the specified currency. In creating any such lots, the Clearing House will consider if F&O Contracts that provide margin offsets for one another in the normal margining methodology of the Clearing House should be retained in the same lot. The Clearing House may auction lots in such order as it considers appropriate. Prior to the publication of an F&O Auction Announcement Circular or the circulation of the F&O Auction Specifications, the Clearing House may have engaged in close-out or hedging trades or other transactions in respect of the portfolio of a Defaulter. In exercising its discretion under this paragraph 2.5, the Clearing House, in consultation with the F&O Default Committee, shall consider, wherever possible, taking into account the Clearing House's margining methodology, including within each lot of F&O Contracts, any F&O Contracts which have been offset for the purposes of calculating the Defaulter's margin requirements.
- 2.6 In respect of each lot, the Clearing House will provide each F&O Clearing Member (and any other Person invited by the Clearing House to participate in the auction whose F&O Clearing Member has confirmed its willingness to clear resulting transactions) (such F&O Clearing Member, Customer or Sponsored Principal, a "**F&O Auction Participant**") in advance with information about F&O Contracts to be auctioned, timing for the bidding process, participation criteria, in the case of F&O Clearing Members, any applicable Minimum Bid Requirements and other matters in writing in the format of the template F&O Auction Specifications set out in Annex A to these F&O Auction Terms (such document, the "**F&O Auction Specifications**"). The F&O Auction Specifications may include amendments or additions to any provision of these F&O Auction Terms or may disapply any provision of these F&O Auction Terms. In the event of any conflict between the F&O Auction Specifications and these F&O Auction Terms in respect of any particular lot, the F&O Auction Specifications shall prevail. If any Person which has been provided a copy of any F&O Auction Specifications believes that he does not satisfy any of the specified participation criteria, he should contact the Clearing House immediately, and, if the Clearing House agrees that such Person does not satisfy the criteria, he shall refrain from bidding for the relevant lot. The Clearing House may restrict any such Person's access to F&O Auctions if it determines that a Person does not satisfy the specified participation criteria. The Clearing House may update or correct any details in the F&O Auction Specifications at any time prior to the commencement of bidding in the relevant F&O Auction.
- 2.7 F&O Auction Participants shall be treated equally as regards the provision of information relating to F&O Auctions by the Clearing House. Any Person who receives any information in connection with an F&O Auction or possible F&O Auction shall hold such information in confidence and in accordance with the Rules, and shall not disclose it to any other Person except where such disclosure is made: (i) with the prior written consent of the Clearing House; (ii) to a Regulatory Authority or Governmental Authority where a request is formally made to the Person by or on behalf of the same or pursuant to Applicable Laws in writing, provided that the Person making such disclosure notifies the Clearing House of its disclosure where it is lawful to do so; (iii) pursuant to an order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Laws, provided that the Person making such disclosure notifies the Clearing House of its disclosure where it is lawful to do so; or (iv) to a Customer or Sponsored Principal where such Customer or Sponsored Principal has expressed his interest in participating in the F&O Auction and is subject to a duty of confidentiality similar to that set out in this paragraph 2.7.
- 2.8 All bids must be made by submitting a bid form ("**Bid Form**") via ICE's file transfer server or otherwise as set out in the F&O Default Policy and in the format and in the manner specified by the Clearing House in the F&O Auction Specifications. Bids must be received during the time window and prior to the Closing Time (as defined below) specified by the Clearing House in the relevant F&O Auction Specifications. F&O Auction Participants (or their Clearing Members) may be required by the Clearing House to post additional Margin as a condition of the F&O Auction Participant being entitled to submit a valid bid.

## AUCTION TERMS FOR F&amp;O DEFAULT AUCTIONS

- 2.9 The F&O Auction will proceed pursuant to a 'sealed bid' process whereby the relevant F&O Auction Participants will be asked to submit bids for the lot or a particular percentage of the lot in the appropriate Bid Form. The F&O Auction Specifications may specify a minimum bid size. Any bid below any specified minimum bid size will be null and void unless the Clearing House, in its absolute discretion, determines otherwise. Successful bids will be determined in accordance with paragraph 5.3.
- 2.10 A Bid Form will be treated as invalid and void if it is illegible, spoiled or is incomplete, as applicable.
- 2.11 During such period after the Closing Time as is specified in the F&O Auction Specifications, the Clearing House will notify F&O Auction Participants to inform them either: (i) that there were successful bidders and that such bidders have been notified; or (ii) that no bids were successful as determined in accordance with paragraphs 5.1 and/or 5.3.
- 2.12 A successful bidder (or its Clearing Member, if applicable) may be required to post additional Margin after the Closing Time.

### 3. THE BIDDING PROCESS

- 3.1 F&O Clearing Members will make bids which, as a minimum, comply with any Minimum Bid Requirement notified to it. Any failure to comply with an applicable Minimum Bid Requirement shall be a breach of the Rules. The Clearing House is not obliged to solicit bids from F&O Clearing Members other than notifying F&O Clearing Members of any applicable Minimum Bid Requirement. Pursuant to Rule 908(i), if any F&O Clearing Member does not comply with any of its obligations under these F&O Auction Terms or any F&O Auction Specifications or chooses not to participate in any F&O Auction (except as provided for in these F&O Auction Terms), then the Guaranty Fund Contributions and Assessment Contributions of that F&O Clearing Member relating to F&O shall be applied to meet any shortfall, loss or liability in full, prior to the *pro rata* Guaranty Fund Contributions or Assessment Contributions (as applicable) of any other Clearing Member or Clearing House Contributions ranking equally with such Guaranty Fund Contributions being so applied. Further pursuant to Rule 908(i), after applying any Guaranty Fund Contribution or Assessment Contributions of F&O Clearing Members in accordance with the previous sentence, in the event of an F&O Auction having taken place, the Guaranty Fund Contributions and F&O Assessment Contributions of other F&O Clearing Members (required to be applied in respect of the Event of Default which resulted in the F&O Auction) shall not be applied *pro rata*, but instead shall be applied in sequence, with the F&O Clearing Members with less competitive bids in the F&O Auction having their Guaranty Fund Contributions and Assessment Contributions applied prior to F&O Clearing Members with more competitive bids. The competitiveness of bids shall be determined based on the weighted average price per unit of each F&O Clearing Member's bids, according to the following formula:  $\text{Weighted average price per unit} = \frac{\sum(\text{Price Sign} \times \text{Unsigned Price})}{\sum \text{Size}}$ . Any F&O Clearing Member with the same weighted average price per unit as another F&O Clearing Member will have their Guaranty Fund Contributions and Assessment Contributions applied on a *pro rata* basis as between such F&O Clearing Members within such sequence. The Clearing House F&O GF Contribution shall then be placed sequentially after the highest losing bidder and prior to the lowest winning bidder in the revised order of application. Nothing in this paragraph 3.1 is intended to result in any Assessment Contribution being applied prior to any Guaranty Fund Contribution of any Clearing Member or Clearing House Contribution, nor shall affect the order of application of any Clearing House Initial Contribution.
- 3.2 An F&O Auction Participant may submit multiple bids for each lot, or a percentage of each lot, in a particular lot on its own account or for the account of a Customer (including a Sponsored Principal), as the case may be, provided that such F&O Auction Participant ensures that all of its bids, whether for its account or for the account of its Customers, as the case may be, are submitted in the same Bid Form or otherwise as specified in the F&O Auction Specifications. A bid made by an F&O Auction Participant by, for, or on behalf of a Customer shall be identified as such and such bid shall be treated as a bid for the

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relevant Customer Account or Proprietary Account. A bid made by, for, or on behalf of a Sponsored Principal or by a Sponsor in such capacity shall be identified as such and treated as a bid for the relevant Individually Segregated Sponsored Account. An F&O Clearing Member can satisfy its Minimum Bid Requirement by submitting multiple bids with differing bid prices and bid sizes provided that, in aggregate, its submitted bids equals or exceeds the Minimum Bid Requirement and any individual bid is larger than any applicable minimum bid size. Successful bidders will be determined in accordance with paragraph 5.3.

- 3.3 All the requirements of the Rules concerning the provision of information to the Clearing House apply in respect of the submission of bids by an F&O Auction Participant.
- 3.4 Bids can only be submitted during the time window specified by the Clearing House in the F&O Auction Specifications. The time period for submission will end at the closing time specified by the Clearing House for the relevant F&O Auction in the F&O Auction Specifications ("**Closing Time**"). The Closing Time may be postponed for up to one hour by the Clearing House giving notice of such postponement to all F&O Auction Participants, following consultation to the extent practicable with the F&O Default Committee and the term "Closing Time" shall be construed accordingly.
- 3.5 A bid must be in respect of all F&O Contracts or a percentage of all F&O Contracts in the relevant lot. Any partial bids, such as bids which specify a particular F&O Contract, will be invalid and void. With respect to a particular lot, no F&O Auction Participant is permitted to bid, in aggregate, in excess of the number of F&O Contracts being auctioned in such lot.
- 3.6 No F&O Auction Participant may make a referential bid (for example a bid which purports to be a bid which is \$1 higher or lower than the highest or lowest bidder) or make a bid that is subject to conditions. Any such bid will be treated as invalid and void.
- 3.7 An F&O Auction Participant may amend or modify a submitted bid by resubmitting its entire Bid Form. In the event a Bid Form is resubmitted with any amendments or modifications the Clearing House will disregard any previous Bid Form submitted by such F&O Auction Participant and any such previous Bid Form will be null and void. After the Closing Time, all submitted Bid Forms are irrevocable provided that if the Clearing House is satisfied, upon the request of an F&O Auction Participant, that a genuine mistake has been made in the submission of a bid, the Clearing House may, at its own discretion, withdraw the bid, before the F&O Auction Clearing Price is determined.
- 3.8 Each bid will be deemed to have been submitted at the time it is recorded as being received by the Clearing House. Any bid received after the Closing Time will be treated as invalid and void.
- 3.9 Any bid that does not comply with the requirements of these F&O Auction Terms or the F&O Auction Specifications will be treated as invalid and void.

**4. PARTICIPATION BY CUSTOMERS AND SPONSORED PRINCIPALS IN THE AUCTION**

- 4.1 An F&O Clearing Member may make an unlimited number of separate bids in respect of its Customers or Sponsored Principals for whom it acts as Sponsor (in addition to any bids for its own account), in accordance with paragraph 3.2 above. An F&O Clearing Member must have all due approval, consent or authorisation from its Customer or Sponsored Principal to make the relevant bid.
- 4.2 An F&O Clearing Member shall become liable for the bids made on behalf of a Customer and for the entry into of F&O Contracts in the same way as it is liable for and becomes party to other F&O Contracts entered into for its Proprietary Account or any Customer Account (as applicable) or otherwise for Customers pursuant to the Rules. An F&O Clearing Member shall become liable as Sponsor for the bids made for, by

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or on behalf of a Sponsored Principal in the same way as it is liable for and becomes party to other F&O Contracts recorded in an Individually Segregated Sponsored Account.

- 4.3 Except as otherwise set out in these F&O Auction Terms and as provided for in the Rules, each F&O Auction Participant is hereby deemed to have agreed to become bound by these F&O Auction Terms and by the Rules as if it were a Clearing Member in respect of its conduct in relation to an F&O Auction.
- 4.4 The Clearing House reserves the right to verify any bid to ensure such bid will be cleared by an F&O Clearing Member or Sponsor and reserves the right to invalidate a bid where the Clearing House reasonably believes that such bid, if accepted, would not be cleared by an F&O Clearing Member or Sponsor (notwithstanding paragraph 4.2) or that such bid would be in breach of any position limits or other risk policies implemented by the Clearing House pursuant to the Rules. Any such invalidation will be made prior to the notifications made pursuant to paragraphs 2.11 and 5.8.

5. **SELECTION OF THE WINNING BID**

- 5.1 The Clearing House may at its discretion but giving due consideration to the F&O Default Policy, set any reserve price and/or any maximum price (which in either case may not be disclosed to any bidders). If no bids exceed the reserve price (if any) and are less than the maximum price, (if any) then, subject to paragraph 5.10, there will be no successful bidder for the lot subject to the F&O Auction in question and the F&O Auction for that lot shall be treated as a failed F&O Auction.
- 5.2 The Clearing House may at its discretion withdraw a lot prior to the Closing Time.
- 5.3 Promptly after the Closing Time, the Clearing House will sort bids submitted to it in the order of the price bid. The bids will be ordered sequentially, starting with the highest bid price, and ending with the lowest price. The price of the bid at which the sum of the number of F&O Contracts of bids equal to or greater than the price in question matches or exceeds the number of F&O Contracts being auctioned shall be the auction clearing price (the "**F&O Auction Clearing Price**") such price being either payable by the Clearing House to the F&O Auction Participant or its Clearing member or to the Clearing House by the F&O Auction Participant or its Clearing Member, as applicable. In the event that a bid is also invalid or void or no F&O Contract is established with the F&O Auction Participant submitting any bid for any reason, such bid will not be accepted.

Examples of how the F&O Auction Clearing Price is calculated is set out below, for illustrative purposes only:



## AUCTION TERMS FOR F&amp;O DEFAULT AUCTIONS

**Example 1**

Note in these examples a negative bid indicates a payment by the Clearing House

Ranking	Cash Bid	% of Portfolio	Cash/1%	Allocation % of Portfolio
1	£20,000	20%	£1,000	20%
2	£0	30%	£0	30%
3	-£2,500,000	25%	-£100,000	25%
4	-£3,000,000	25%	-£120,000	25%
5	-£3,900,000	30%	-£130,000	0%
6	-£6,000,000	40%	-£150,000	0%
7	-£7,750,000	50%	-£155,000	0%
8	-£6,400,000	40%	-£160,000	0%
9	-£3,300,000	20%	-£165,000	0%
10	-£43,000,000	20%	-£2,150,000	0%

Unless paragraph 5.5 applies, the F&O Auction Clearing Price will be -£120,000/1%. Portfolio will be allocated in full to bids above the F&O Auction Clearing Price.

**Example 2**

Ranking	Cash Bid	% of Portfolio	Cash/1%	Allocation % of Portfolio
1	£20,000	20%	£1,000	20%
2	£0	30%	£0	30%
3	-£2,500,000	25%	-£100,000	25%
4	-£3,000,000	30%	-£120,000	25%
5	-£3,900,000	30%	-£130,000	0%
6	-£5,250,000	35%	-£150,000	0%
7	-£7,750,000	50%	-£155,000	0%
8	-£6,400,000	40%	-£160,000	0%
9	-£3,300,000	20%	-£165,000	0%

Unless paragraph 5.5 applies, the F&O Auction Clearing Price will be -£120,000/1%. Portfolio will be allocated in full to bids 1,2 and 3 and allocated in part to bid 4.

## AUCTION TERMS FOR F&amp;O DEFAULT AUCTIONS

10	-£43,000,000	20%	-£2,150,000	0%
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**Example 3**

Ranking	Cash Bid	% of Portfolio	Cash/1%	Allocation % of Portfolio
1	£20,000	20%	£1,000	20%
2	£0	30%	£0	30%
3	-£2,500,000	25%	-£100,000	25%
4 (1)	-£3,000,000	30%	-£120,000	12.5%
4 (2)	-£3,000,000	30%	-£120,000	12.5%
6	-£3,900,000	30%	-£130,000	0%
7	-£5,250,000	35%	-£150,000	0%
8	-£7,750,000	50%	-£155,000	0%
9	-£6,400,000	40%	-£160,000	0%
10	-£3,300,000	20%	-£165,000	0%

Unless paragraph 5.5 applies, the F&O Auction Clearing Price will be -£120,000/1%. Portfolio will be allocated in full to bids 1,2 and 3. Bids 4(1) and 4(2) will receive a *pro rata* share of the remaining portfolio.

- 5.4 All F&O Contracts shall be allocated to winning F&O Auction Participants at the F&O Auction Clearing Price in a fair and consistent manner and in accordance with the bid size used in the calculation of the F&O Auction Clearing Price. In the event that there are multiple bids at the Auction Clearing Price, to the extent there is a shortfall of F&O Contracts being available, F&O Contracts shall be allocated *pro rata* according to the number of F&O Contracts the relevant F&O Auction Participants bid for at the relevant price, unless the Clearing House determines otherwise pursuant to any risk policies implemented by the Clearing House pursuant to the Rules. Bids below any applicable reserve price, above any applicable maximum price, or invalidated pursuant to paragraph 4.4, may, at the discretion of the Clearing House be excluded for the purposes of calculating the F&O Auction Clearing Price, allocating sizes at the F&O Auction Clearing Price or determining whether an F&O Clearing Member has met the Minimum Bid Requirement unless the Clearing House, in its discretion, decides otherwise.
- 5.5 The Clearing House may, in any given F&O Auction (the "**First F&O Auction**") at its discretion, determine the F&O Auction Clearing Price for less than 100% of the F&O Contracts if in the reasonable determination of the Clearing House, a material impact on the amounts payable or receivable by the Clearing House would result if 100% of the F&O Contracts were awarded in the F&O Auction. In such circumstances the Clearing House would call a second F&O Auction (a "**Second F&O Auction**") to auction off any remaining lots. The Clearing House may also, in accordance with the relevant F&O Default Policy, hold a Second F&O Auction in the event that there is a failed F&O Auction or not all F&O Contracts are allocated, whether due to Clearing Members failing to meet any applicable Minimum Bid Requirements, any minimum bid size, any reserve price or maximum price or otherwise.

An example of how this paragraph 5.5 would apply is set out below, for illustrative purposes only:

Ranking	Cash Bid	% of Portfolio	Cash/1%
1	£20,000	20%	£1,000
2	£0	30%	£0
3	-£3,000,000	30%	-£100,000
4	-£2,400,000	20%	-£120,000
5	-£3,900,000	30%	-£130,000
6	-£6,000,000	40%	-£150,000
7	-£7,750,000	50%	-£155,000
8	-£6,400,000	40%	-£160,000
9	-£3,300,000	20%	-£165,000
10	-£43,000,000	20%	-£2,150,000

The F&O Auction Clearing Price for 80% of the portfolio shall be -£100,000/1%

Price of remaining 20% will be determined in a Second F&O Auction

- 5.6 Any Second F&O Auction shall be announced pursuant to a further F&O Auction Announcement Circular and shall be held in accordance with these F&O Auction Terms. The Clearing House shall circulate an F&O Auction Specification for a Second F&O Auction. An F&O Auction Participant for the First F&O Auction shall be deemed to be an F&O Auction Participant for the Second F&O Auction. The Clearing House may at its discretion withdraw a lot in the Second F&O Auction prior to the relevant Closing Time. The Minimum Bid Requirement applicable to each F&O Clearing Member shall be reduced by any F&O Contracts actually won by such F&O Clearing Member (including any bids won by, for, or on behalf of, such F&O Clearing Member's Customers or Sponsored Principals for whom such F&O Clearing Member acts as Sponsor) at the F&O Auction Clearing Price pursuant to the First F&O Auction. Any such reductions in F&O Clearing Members' Minimum Bid Requirements will be shared *pro rata* as an increased Minimum Bid Requirement for all F&O Clearing Members who did not have any F&O Contracts allocated to them at the F&O Auction Clearing Price pursuant to the First F&O Auction.
- 5.7 In the case of a bid which results in the entry into a F&O Contract or F&O Contracts at the F&O Auction Clearing Price, the "**Winning Bidder**" will be the relevant F&O Clearing Member or Sponsored Principal.
- 5.8 Each bid constitutes an offer to the Clearing House to enter into F&O Contracts, such offer being made by the relevant F&O Clearing Member or Sponsored Principal. The Clearing House shall use reasonable endeavours to notify Winning Bidders within 15 minutes after the Closing Time of either the First F&O Auction or the Second F&O Auction, as the case may be. Immediately upon notification by the Clearing House to a bidder that it has a winning bid by e-mail, telephone, in writing or otherwise and without the need for any further step, this shall constitute acceptance of the offer by the Clearing House and resulting F&O Contracts shall be entered into between the Clearing House and the Winning Bidder in accordance with the Rules, on economically identical terms to the F&O Contracts that are the subject of the lot in the relevant F&O Auction.

**AUCTION TERMS FOR F&O DEFAULT AUCTIONS**

5.9 The Clearing House may abandon or alter the procedure for any F&O Auction, including conducting subsequent F&O Auctions, at any time prior to the entry into of F&O Contracts with Winning Bidders, taking into account such considerations as it deems necessary or desirable to protect the financial integrity of the Clearing House, the Clearing Members generally or the marketplace for any instruments cleared by the Clearing House, and such other matters as it may deem appropriate.

5.10 In the event of a failed F&O Auction for whatever reason, the Clearing House may either run a new F&O Auction and shall do so in accordance with paragraph 5.6 or withdraw the lot. There shall be no limit to the number of repeated F&O Auctions under this provision. If the Auction Clearing Price falls below any reserve price or above any maximum price, the Clearing House may at its discretion nonetheless accept bids at such Auction Clearing Price.

**6. POST-BID PROCEDURE**

6.1 The Winning Bidder will become a party to new F&O Contracts with the Clearing House on economically identical terms to the F&O Contracts that are the subject of the lot in the F&O Auction. F&O Contracts will be established with the Winning Bidder pursuant to a termination of F&O Contracts between the Defaulter and the Clearing House and the establishment of new, economically identical F&O Contracts between the Clearing House and the Winning Bidder pursuant to Rule 904. The Winning Bidder (or, if it is a Sponsored Principal, it and its Sponsor) will be treated as if it were a "Transferee Clearing Member" for purposes of Part 9 of the Rules provided that the provisions of Part 9 to the extent relating to Customers shall not apply.

6.2 Any Customer-CM F&O Transactions arising as a result of the F&O Auction will be established in accordance with the Rules and the Procedures in the same way as for F&O Contracts at the same time as F&O Contracts are entered into pursuant to paragraph 6.1.

6.3 New F&O Contracts resulting from the F&O Auction will be established between the Clearing House and the Winning Bidder in respect of any particular Set, at the F&O Auction Clearing Price determined by the Clearing House as at the time specified in accordance with paragraph 6.5.

6.4 The Winning Bidder may be subject to an additional Margin call as a consequence of it becoming party to F&O Contracts pursuant to an F&O Auction. Any call for Margin required under these F&O Auction Terms will take place pursuant to the Finance Procedures.

6.5 Records of new F&O Contracts in accounts at the Clearing House may be updated by the Clearing House after the time that new F&O Contracts arise. The Winning Bidder will become party to new F&O Contracts resulting from the F&O Auction at the time that it is notified by the Clearing House that it is the Winning Bidder, notwithstanding the time at which the establishment of new F&O Contracts is completed in the Clearing House's books and records.

6.6 Once new F&O Contracts have been established between the Winning Bidder and the Clearing House, the bid which gave rise to the F&O Contracts will be treated as valid regardless of any failure of the F&O Auction Participant to have satisfied any participation criteria or otherwise as to the validity of any bid.

**7. OTHER TERMS**

7.1 Neither the Clearing House nor any of its Affiliates makes any representation or warranty as to the accuracy of any records of the Defaulter or any of its Affiliates. In particular, the Clearing House makes no representation or warranty as to whether any F&O Contract recorded in a Proprietary Account, Customer Account or Individually Segregated Sponsored Account of the Defaulter is correctly recorded in such account or as to whether any consent of any Customer, Affiliate or Sponsor of the Defaulter is required to

**AUCTION TERMS FOR F&O DEFAULT AUCTIONS**

- any F&O Auction or the termination of F&O Contracts to which a Defaulter is party. The Clearing House makes no warranty, whether express or implied, as to quality, appropriateness or in respect of the merits of any investment decision relating to any lot. The Clearing House does not provide, and is not responsible or liable for, any investment advice in relation to any F&O Auction.
- 7.2 Although the information provided by the Clearing House is believed to be accurate subject to the qualifications in paragraph 7.1 above, neither the Clearing House nor any of its Affiliates, nor any of their respective agents, officers, directors, committee members, employees, or advisers makes any representation or warranty, express or implied, as to the accuracy or completeness of such information, including but not limited to the value or marketability of any F&O Contracts or Open Contract Positions. Each F&O Auction Participant is responsible for making its own determination as to whether to proceed with or without further investigation or as to its bidding on any lot.
- 7.3 The Clearing House is under no obligation to enforce these F&O Auction Terms against a bidder at the request of any other bidder.
- 7.4 All F&O Auction Participants are hereby on notice that the Clearing House is not a member of any professional or other association, society, institution or organisation of auctioneers or agents and is not therefore bound by the rules or practices of any such association, society, institution or organisation. The conduct of F&O Auctions may be carried out only to manage an Event of Default and does not constitute the ordinary day-to-day business of the Clearing House. Any standard rules, customs, good practice guidelines or guidance or other industry practices relating to auctions or agency sales are hereby disappplied and disclaimed. All and any rights of any Person bound by these F&O Auction Terms which may arise as a result of a liability of the Clearing House pursuant to common law duties applicable to auctioneers or selling agents are hereby expressly waived by all F&O Auction Participants. The implied term of care and skill under section 13 of the Supply of Goods and Services Act 1982 is hereby expressly excluded in respect of the conduct of any F&O Auction by the Clearing House. The Clearing House expressly disclaims any duty of care or skill in respect of the conduct of any F&O Auction by the Clearing House arising other than expressly pursuant to these F&O Auction Terms. The Clearing House will not provide and has not provided any valuation services in connection with any F&O Auction.
- 7.5 The time and date at which bids are due, the time and date for the establishment of F&O Contracts or calling of Permitted Cover or the Closing Time (subject to paragraph 3.4) may be delayed beyond the times and dates set forth in these F&O Auction Terms or specified in the F&O Auction Specifications if the Clearing House, in its discretion, considers this to be necessary or appropriate. Notwithstanding anything to the contrary in these F&O Auction Terms, to the fullest extent lawfully permissible, the Clearing House may postpone, cancel, adjourn or terminate an F&O Auction at any time, and may withdraw all or any portion of the F&O Contracts from any F&O Auction lot.
- 7.6 In respect of any F&O Auction, each F&O Auction Participant: (i) acknowledges that copies of the Auctions (Bidding Agreements) Acts 1927 and 1969 (as amended and including any amendments thereto) have been made available to it online at [www.legislation.gov.uk](http://www.legislation.gov.uk) for the duration of the F&O Auction; (ii) agrees and acknowledges that it has received sufficient information concerning the identity of the persons conducting the auction on behalf of the Clearing House; and (iii) waives any right to make any claim that it has not received any information or documentation of a nature referred to in this paragraph 7.6 and agrees in favour of the Clearing House not to make any statement to the contrary to any third party.
- 7.7 Without limiting the obligations of F&O Clearing Members, Sponsored Principals, Sponsors and Customers under the Rules, all F&O Auction Participants shall comply with Rule 203 of the Rules (including, without limitation, complying with their obligation not to commit any act of fraud or to engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering or which is in breach of any similar Applicable Laws).

- 7.8 It is the responsibility of each Winning Bidder to make any transaction or other reports or notifications to any Regulatory Authority or Governmental Authority (including, without limitation, any transaction reports) that it is required to make pursuant to Applicable Laws.

Annex A

ICE Clear Europe Limited

F&O Auction Specifications

**Lot [1]: [general description of lot] – [Name of Defaulter]**

ICE Clear Europe Ltd (the "**Clearing House**") is conducting an auction of certain open positions in contracts, presently held in respect of [*Name of Defaulter*], and in that connection ICE Clear Europe Ltd is requesting bids from F&O Auction Participants for certain lots. This document constitutes F&O Auction Specifications for purposes of the Clearing House's F&O Auction Terms for F&O Default Actions (the "**F&O Auction Terms**"). The F&O Auction Terms apply in full to this auction lot, save to the extent expressly modified in paragraph 5.

1. Participation Criteria

**[State any conditions and criteria if there are to be any restrictions on the categories of Persons who may be F&O Auction Participants]**

If any Person which has been provided with these F&O Auction Specifications is for any reason unable to meet a Minimum Bid Requirement applicable to him, he should contact the Clearing House immediately and refrain from bidding in the F&O Auction unless otherwise directed by the Clearing House. The Clearing House may restrict any such Person's access to F&O Auctions if it determines that a Person does not satisfy the specified participation criteria.

2. Subject matter of the lot

The lot comprises [*details of F&O Contracts*].

All F&O Contracts will be transferred to the relevant F&O Clearing Member or Sponsored Principal at the F&O Auction Clearing Price, for close of business on [*date*].

3. Bid Form [*To be updated based on example of bidding in F&O Default Policy*]

All bids for this lot must be submitted on the Bid Form in the schedule to this document by e-mail to [*email address*]. Any Bid Form which is illegible, spoiled or incomplete will be rejected and treated as void and invalid: see the F&O Auction Terms for further information. Each Bid Form must specify the amount of consideration (in [*currency*]) that the bidder will pay the Clearing House or will be prepared to be paid by the Clearing House (as applicable) in consideration for the entry into of all the F&O Contracts which are the subject matter of the lot.

All Bid Forms and any other communication relating to this F&O Auction lot should be sent to: [*email address*].

4. Timing

[Further details of the F&O Contracts included in this lot will be disclosed to all F&O Auction Participants at [*time*] on [*date*] (the "**Starting Time**").]

The Closing Time (deadline for receipt of bids) is [*time*] on [*date*].

The winner of the lot will be notified of his winning bid by the Clearing House between [*times*].



A conference call will be open from [*times*] on [*date*], during which time F&O Auction Participants will be notified by the Clearing House (i) that the winning bidder has been notified of the fact that it has won; or (ii) that no bid falling between the reserve price and any maximum price has been submitted. Dial in details are as follows:

[*Call details*]

The Clearing House will confirm whether each bid has been accepted by e-mail.

The winner of the F&O Auction will become party to new F&O Contracts immediately upon notification that it is the winner, pursuant to the F&O Auction Terms.

5. [Minimum bid size]

[Bids may only be for lot sizes which are at least [25%] of [*the F&O Contract size of a particular lot*]

6. [Currency]

[All bids to be made in the specified currency]

7. Modifications to F&O Auction Terms

[*Specify any*] / [*None.*]

**BID FORM**  
**for F&O Auction Lots related to [Name of Defaulter]**  
**made pursuant to the F&O Auction Terms of ICE Clear Europe**  
**and the relevant F&O Auction Specifications**

[Specify by inserting the amount and checking the appropriate box]

Clearing Member, Sponsor or Sponsored Principal name	F&O Auction Lot Number	Percentage of lot	Cash Amount (always a positive number) [(EUR)]	Member Pay or Receive	Clearing Participant Number	Desk (Hub) Account	Contact	Prop. Account or relevant Customer Account of Clearing Member (or Individually Segregated Sponsored Acct.)	Sponsored Principal, Customer or Client Name (if applicable)
<input type="checkbox"/>	1	<input type="checkbox"/> %	<input type="checkbox"/>	[Pay]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	1	<input type="checkbox"/> %	<input type="checkbox"/>	[Receive]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	2	<input type="checkbox"/> %	<input type="checkbox"/>	[Pay]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	2	<input type="checkbox"/> %	<input type="checkbox"/>	[Receive]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	3	<input type="checkbox"/> %	<input type="checkbox"/>	[Pay]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	

Signed by: \_\_\_\_\_

Authorised Signatory of F&O Auction Participant

State full legal name of F&O Auction Participant: \_\_\_\_\_

**Annex B**

**Form of Notice of Minimum Bid Requirement**

*[ICE Clear Europe Limited Letterhead]*

*[Name of F&O Clearing Member]*

*[Email Address]*

*[Date]*

**F&O Default Auction - Notification of Minimum Bid Requirement**

Further to *[reference to F&O Auction Announcement Circular]* (the "**Circular**"), the Clearing House hereby notifies you of the Minimum Bid Requirement (as defined in the Clearing House's F&O Auction Terms for F&O Default Auctions (the "**Auction Terms**")) applicable to you in respect of the F&O default auctions to be held in accordance with the Auction Terms, the Circular and the applicable auction specifications.

***[Set out Minimum Bid Requirement]***

F&O Clearing Members are referred to the F&O Auction Terms for further information on the Minimum Bid Requirement (and in particular paragraphs 2.4, 3.1 and 3.2 of the Auction Terms).

Signed

*[Name]*

*[Title]*

**AUCTION TERMS FOR FX DEFAULT AUCTIONS**

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1. **INTRODUCTION**

- 1.1 These FX Auction Terms for FX Default Auctions (the "**FX Auction Terms**") govern the auctioning of a lot representing an FX Contract or number of FX Contracts ("**FX Contracts**") to which a Defaulter is or was a party, where such auction ("**FX Auction**") is administered by the Clearing House pursuant to Part 9 of the ICE Clear Europe Rules (the "**Rules**"). These FX Auction Terms are 'Procedures' as defined in the Rules and are subject to the Rules, including, without limitation, Rule 102. These FX Auction Terms, and all non-contractual obligations arising out of or in connection with it, are governed by and shall be construed in accordance with English law.
- 1.2 These FX Auction Terms shall apply to every FX Auction conducted by the Clearing House pursuant to Part 9 of the Rules. However, they may be modified or supplemented for any particular FX Auction pursuant to the relevant FX Auction Specifications as set out in paragraph 2.6.
- 1.3 The Clearing House will conduct FX Auctions in accordance with its default policies. In the event of a conflict between the terms of such default policies and these FX Auction Terms (as modified or supplemented by any applicable FX Auction Specification as set out in paragraph 2.6), these FX Auction Terms shall prevail.
- 1.4 Subject to paragraph 1.5 below, these FX Auction Terms, and all non-contractual obligations arising out of or in connection with it, are governed by and shall be construed in accordance with English law.
- 1.5 Solely as between an FCM/BD Clearing Member and the Clearing House, those provisions of these FX Auction Terms inasmuch as they relate solely to an issue or matter concerning:
- (a) the pledging, transfer, holding, use and segregation of Pledged Collateral provided by an FCM/BD Clearing Member (or other property recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided by an FCM/BD Clearing Member); and/or
  - (b) the application of any net sum owed in favour of the FCM/BD Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided,

and, solely to the extent relevant to interpreting the foregoing provisions in such circumstances, relevant definitions and interpretative provisions in paragraph 1 of these FX Auction Terms (such provisions, together or separately "**Pledged Collateral Matters**") shall be governed by and construed in accordance with the laws of the State of New York and, as applicable, the federal law of the United States of America.

- 1.6 For the avoidance of doubt, paragraph 1.5 is an exception to paragraph 1.4 and Rule 102(s) which provide that the FX Auction Terms and Rules respectively shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding paragraph 1.5, the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:
- (a) all of the provisions of these FX Auction Terms relating to the Designated System;
  - (b) any Dispute or issue arising as between a Non-FCM/BD Clearing Member or Sponsored Principal that is not a U.S. Sponsored Principal on the one hand and the Clearing House on the other hand;

**AUCTION TERMS FOR FX DEFAULT AUCTIONS**

- (c) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided;
  - (d) any matter relating to Pledged Collateral of a Non-FCM/BD Clearing Member or a Sponsored Principal that is not a U.S. Sponsored Principal;
  - (e) any Pledged Collateral provided by an FCM/BD Clearing Member or Sponsored Principal pursuant to an English law Pledged Collateral Addendum; and
  - (f) the Contract Terms of all Contracts.
- 1.7 Where a dispute between an FCM/BD Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "**New York Courts**"). Consistent with the preceding sentence, the Clearing House and each FCM/BD Clearing Member hereby:
- (a) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
  - (b) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.
- 1.8 All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM/BD Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to paragraph 1.7 does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 heard in the New York Courts.
- 1.9 Nothing in paragraphs 1.4 to 1.10 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.
- 1.10 EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE FX AUCTION TERMS OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:
- (a) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER

PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND

- (b) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN PARAGRAPHS 1.4 to 1.10.

## 2. THE AUCTION PROCESS

- 2.1 Any FX Auctions of FX Contracts to which a Defaulter is or was party will take place after the Clearing House has issued a Circular in relation to the Event of Default in accordance with Rule 901/902 specifying that an auction or auctions are to take place (such Circular, the "**FX Auction Announcement Circular**").
- 2.2 Each FX Clearing Member is required to bid in every FX Auction regardless of whether such FX Clearing Member is at the time of the FX Auction a party to any FX Contract, has served a notice of termination for which the Termination Date has not yet passed or is in a Cooling-off Period. For these FX Auction Terms the term 'FX Clearing Member' shall be construed to exclude any FX Clearing Member that is a Defaulter and the term 'Sponsored Principal' shall be construed to exclude any Sponsored Principal that is a Defaulter. Subject to paragraph 2.4 below, with respect to a lot, all FX Clearing Members are required to bid for a minimum of FX Contracts in each lot as determined by the Clearing House (the "**Minimum Bid Requirement**"). The sum total of the Minimum Bid Requirements may be set to an amount greater than 100% (but no greater than 150%) of the FX Contracts in the relevant lot as may be determined by the Clearing House from time to time, in consultation with the FX Default Committee. No Auction Participants other than FX Clearing Members are subject to any minimum bid requirement.
- 2.3 FX Clearing Members shall be deemed to have confirmed to the Clearing House their intention to bid in a particular FX Auction prior to the time window for bidding and the Closing Time (as defined below). An FX Clearing Member may bid for the account of a Customer, subject to paragraph 3.2 below. A bid for the account of a Customer or Sponsored Principals for whom such FX Clearing Member acts as Sponsor directly submitted or made by the FX Clearing Member will be counted towards the relevant FX Clearing Member's Minimum Bid Requirement.
- 2.4 Each FX Clearing Member's Minimum Bid Requirement shall be communicated to them individually by the Clearing House prior to the relevant FX Auction in the format of the template notification set out in Annex B to these FX Auction Terms. A Minimum Bid Requirement shall not apply to an FX Clearing Member: (a) where such a Minimum Bid Requirement would be in breach of Applicable Law or the Rules; or (b) where the Clearing House, after being notified in writing by the relevant FX Clearing Member that a Minimum Bid Requirement is inappropriate in the current circumstances, reasonably determines that the Minimum Bid Requirement does not apply. An FX Clearing Member will notify the Clearing House promptly and in any event at least 12 hours prior to the opening of the relevant FX Auction, in writing, if it reasonably considers that this paragraph 2.4 applies to it or should apply. Affiliated FX Clearing Members may transfer, outsource or aggregate their Minimum Bid Requirements to apply to a single one of them subject to notifying the Clearing House prior to an FX Auction. An FX Clearing Member remains liable for any breach by its Affiliate of these FX Auction Terms or the FX Auction Specifications in respect of such FX Clearing Member's Minimum Bid Requirement.
- 2.5 The Clearing House may divide the portfolio of a Defaulter into discrete FX Auctions or different lots as it considers appropriate. The Clearing House may at its discretion determine which particular FX Contracts or packages of FX Contracts are to be the subjects of a particular FX Auction lot and may establish FX Auction lots by selecting by way of FX Contract Set or generic type (e.g. forwards, options). The Clearing House may combine contracts with different currencies in the same lot. In these circumstances, FX



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Auction Participants must still provide bids in a single currency, being that specified in the relevant FX Auction Specifications. Payment obligations resulting from the FX Auction will be in the specified currency. In creating any such lots, the Clearing House will consider if FX Contracts that provide margin offsets for one another in the normal margining methodology of the Clearing House should be retained in the same lot. The Clearing House may auction lots in such order as it considers appropriate. Prior to the publication of an FX Auction Announcement Circular or the circulation of the FX Auction Specifications, the Clearing House may have engaged in close-out or hedging trades or other transactions in respect of the portfolio of a Defaulter. In exercising its discretion under this paragraph 2.5, the Clearing House, in consultation with the FX Default Committee, shall consider, wherever possible, taking into account the Clearing House's margining methodology, including within each lot of FX Contracts, any FX Contracts which have been offset for the purposes of calculating the Defaulter's margin requirements.

- 2.6 In respect of each lot, the Clearing House will provide each FX Clearing Member (and any other Person invited by the Clearing House to participate in the auction whose FX Clearing Member has confirmed its willingness to clear resulting transactions) (such FX Clearing Member, Customer or Sponsored Principal, a "**FX Auction Participant**") in advance with information about FX Contracts to be auctioned, timing for the bidding process, participation criteria, in the case of FX Clearing Members, any applicable Minimum Bid Requirements and other matters in writing in the format of the template FX Auction Specifications set out in Annex A to these FX Auction Terms (such document, the "**FX Auction Specifications**"). The FX Auction Specifications may include amendments or additions to any provision of these FX Auction Terms or may disapply any provision of these FX Auction Terms. In the event of any conflict between the FX Auction Specifications and these FX Auction Terms in respect of any particular lot, the FX Auction Specifications shall prevail. If any Person which has been provided a copy of any FX Auction Specifications believes that he does not satisfy any of the specified participation criteria, he should contact the Clearing House immediately, and, if the Clearing House agrees that such Person does not satisfy the criteria, he shall refrain from bidding for the relevant lot. The Clearing House may restrict any such Person's access to FX Auctions if it determines that a Person does not satisfy the specified participation criteria. The Clearing House may update or correct any details in the FX Auction Specifications at any time prior to the commencement of bidding in the relevant FX Auction.
- 2.7 FX Auction Participants shall be treated equally as regards the provision of information relating to FX Auctions by the Clearing House. Any Person who receives any information in connection with an FX Auction or possible FX Auction shall hold such information in confidence and in accordance with the Rules, and shall not disclose it to any other Person except where such disclosure is made: (i) with the prior written consent of the Clearing House; (ii) to a Regulatory Authority or Governmental Authority where a request is formally made to the Person by or on behalf of the same or pursuant to Applicable Laws in writing, provided that the Person making such disclosure notifies the Clearing House of its disclosure where it is lawful to do so; (iii) pursuant to an order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Laws, provided that the Person making such disclosure notifies the Clearing House of its disclosure where it is lawful to do so; or (iv) to a Customer or Sponsored Principal where such Customer or Sponsored Principal has expressed his interest in participating in the FX Auction and is subject to a duty of confidentiality similar to that set out in this paragraph 2.7.
- 2.8 All bids must be made by submitting a bid form ("**Bid Form**") via ICE's file transfer server or otherwise as set out in the FX Default Policy and in the format and in the manner specified by the Clearing House in the FX Auction Specifications. Bids must be received during the time window and prior to the Closing Time (as defined below) specified by the Clearing House in the relevant FX Auction Specifications. FX Auction Participants (or their Clearing Members) may be required by the Clearing House to post additional Margin as a condition of the FX Auction Participant being entitled to submit a valid bid.

**AUCTION TERMS FOR FX DEFAULT AUCTIONS**

- 2.9 The FX Auction will proceed pursuant to a 'sealed bid' process whereby the relevant FX Auction Participants will be asked to submit bids for the lot or a particular percentage of the lot in the appropriate Bid Form. The FX Auction Specifications may specify a minimum bid size. Any bid below any specified minimum bid size will be null and void unless the Clearing House, in its absolute discretion, determines otherwise. Successful bids will be determined in accordance with paragraph 5.3.
- 2.10 A Bid Form will be treated as invalid and void if it is illegible, spoiled or is incomplete, as applicable.
- 2.11 During such period after the Closing Time as is specified in the FX Auction Specifications, the Clearing House will notify FX Auction Participants to inform them either: (i) that there were successful bidders and that such bidders have been notified; or (ii) that no bids were successful as determined in accordance with paragraphs 5.1 and/or 5.3.
- 2.12 A successful bidder (or its Clearing Member, if applicable) may be required to post additional Margin after the Closing Time.

**3. THE BIDDING PROCESS**

- 3.1 FX Clearing Members will make bids which, as a minimum, comply with any Minimum Bid Requirement notified to it. Any failure to comply with an applicable Minimum Bid Requirement shall be a breach of the Rules. The Clearing House is not obliged to solicit bids from FX Clearing Members other than notifying FX Clearing Members of any applicable Minimum Bid Requirement. Pursuant to Rule 908(i), if any FX Clearing Member does not comply with any of its obligations under these FX Auction Terms or any FX Auction Specifications or chooses not to participate in any FX Auction (except as provided for in these FX Auction Terms), then the Guaranty Fund Contributions and Assessment Contributions of that FX Clearing Member relating to FX shall be applied to meet any shortfall, loss or liability in full, prior to the *pro rata* Guaranty Fund Contributions or Assessment Contributions (as applicable) of any other Clearing Member or Clearing House Contributions ranking equally with such Guaranty Fund Contributions being so applied. Further pursuant to Rule 908(i), after applying any Guaranty Fund Contribution or Assessment Contributions of FX Clearing Members in accordance with the previous sentence, in the event of an FX Auction having taken place, the Guaranty Fund Contributions and FX Assessment Contributions of other FX Clearing Members (required to be applied in respect of the Event of Default which resulted in the FX Auction) shall not be applied *pro rata*, but instead shall be applied in sequence, with the FX Clearing Members with less competitive bids in the FX Auction having their Guaranty Fund Contributions and Assessment Contributions applied prior to FX Clearing Members with more competitive bids. The competitiveness of bids shall be determined based on the weighted average price per unit of each FX Clearing Member's bids, according to the following formula:  $\text{Weighted average price per unit} = \frac{\sum(\text{Price Sign} \times \text{Unsigned Price})}{\sum \text{Size}}$ . Any FX Clearing Member with the same weighted average price per unit as another FX Clearing Member will have their Guaranty Fund Contributions and Assessment Contributions applied on a *pro rata* basis as between such FX Clearing Members within such sequence. The Clearing House FX GF Contribution shall then be placed sequentially after the highest losing bidder and prior to the lowest winning bidder in the revised order of application. Nothing in this paragraph 3.1 is intended to result in any Assessment Contribution being applied prior to any Guaranty Fund Contribution of any Clearing Member or Clearing House Contribution, nor shall affect the order of application of any Clearing House Initial Contribution.
- 3.2 An FX Auction Participant may submit multiple bids for each lot, or a percentage of each lot, in a particular lot on its own account or for the account of a Customer (including a Sponsored Principal), as the case may be, provided that such FX Auction Participant ensures that all of its bids, whether for its account or for the account of its Customers, as the case may be, are submitted in the same Bid Form or otherwise as specified in the FX Auction Specifications. A bid made by an FX Auction Participant by, for, or on behalf of a Customer shall be identified as such and such bid shall be treated as a bid for the relevant Customer

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Account or Proprietary Account. A bid made by, for, or on behalf of a Sponsored Principal or by a Sponsor in such capacity shall be identified as such and treated as a bid for the relevant Individually Segregated Sponsored Account. An FX Clearing Member can satisfy its Minimum Bid Requirement by submitting multiple bids with differing bid prices and bid sizes provided that, in aggregate, its submitted bids equals or exceeds the Minimum Bid Requirement and any individual bid is larger than any applicable minimum bid size. Successful bidders will be determined in accordance with paragraph 5.3.

- 3.3 All the requirements of the Rules concerning the provision of information to the Clearing House apply in respect of the submission of bids by an FX Auction Participant.
- 3.4 Bids can only be submitted during the time window specified by the Clearing House in the FX Auction Specifications. The time period for submission will end at the closing time specified by the Clearing House for the relevant FX Auction in the FX Auction Specifications ("**Closing Time**"). The Closing Time may be postponed for up to one hour by the Clearing House giving notice of such postponement to all FX Auction Participants, following consultation to the extent practicable with the FX Default Committee and the term "Closing Time" shall be construed accordingly.
- 3.5 A bid must be in respect of all FX Contracts or a percentage of all FX Contracts in the relevant lot. Any partial bids, such as bids which specify a particular FX Contract, will be invalid and void. With respect to a particular lot, no FX Auction Participant is permitted to bid, in aggregate, in excess of the number of FX Contracts being auctioned in such lot.
- 3.6 No FX Auction Participant may make a referential bid (for example a bid which purports to be a bid which is \$1 higher or lower than the highest or lowest bidder) or make a bid that is subject to conditions. Any such bid will be treated as invalid and void.
- 3.7 An FX Auction Participant may amend or modify a submitted bid by resubmitting its entire Bid Form. In the event a Bid Form is resubmitted with any amendments or modifications the Clearing House will disregard any previous Bid Form submitted by such FX Auction Participant and any such previous Bid Form will be null and void. After the Closing Time, all submitted Bid Forms are irrevocable provided that if the Clearing House is satisfied, upon the request of an FX Auction Participant, that a genuine mistake has been made in the submission of a bid, the Clearing House may, at its own discretion, withdraw the bid, before the FX Auction Clearing Price is determined.
- 3.8 Each bid will be deemed to have been submitted at the time it is recorded as being received by the Clearing House. Any bid received after the Closing Time will be treated as invalid and void.
- 3.9 Any bid that does not comply with the requirements of these FX Auction Terms or the FX Auction Specifications will be treated as invalid and void.

#### **4. PARTICIPATION BY CUSTOMERS AND SPONSORED PRINCIPALS IN THE AUCTION**

- 4.1 An FX Clearing Member may make an unlimited number of separate bids in respect of its Customers or Sponsored Principals for whom it acts as Sponsor (in addition to any bids for its own account), in accordance with paragraph 3.2 above. An FX Clearing Member must have all due approval, consent or authorisation from its Customer or Sponsored Principal to make the relevant bid.
- 4.2 An FX Clearing Member shall become liable for the bids made on behalf of a Customer and for the entry into of FX Contracts in the same way as it is liable for and becomes party to other FX Contracts entered into for its Proprietary Account or any Customer Account (as applicable) or otherwise for Customers pursuant to the Rules. An FX Clearing Member shall become liable as Sponsor for the bids made for, by or

**AUCTION TERMS FOR FX DEFAULT AUCTIONS**

on behalf of a Sponsored Principal in the same way as it is liable for and becomes party to other FX Contracts recorded in an Individually Segregated Sponsored Account.

- 4.3 Except as otherwise set out in these FX Auction Terms and as provided for in the Rules, each FX Auction Participant is hereby deemed to have agreed to become bound by these FX Auction Terms and by the Rules as if it were a Clearing Member in respect of its conduct in relation to an FX Auction.
- 4.4 The Clearing House reserves the right to verify any bid to ensure such bid will be cleared by an FX Clearing Member or Sponsor and reserves the right to invalidate a bid where the Clearing House reasonably believes that such bid, if accepted, would not be cleared by an FX Clearing Member or Sponsor (notwithstanding paragraph 4.2) or that such bid would be in breach of any position limits or other risk policies implemented by the Clearing House pursuant to the Rules. Any such invalidation will be made prior to the notifications made pursuant to paragraphs 2.11 and 5.8.

**5. SELECTION OF THE WINNING BID**

- 5.1 The Clearing House may at its discretion but giving due consideration to the FX Default Policy, set any reserve price and/or any maximum price (which in either case may not be disclosed to any bidders). If no bids exceed the reserve price (if any) and are less than the maximum price, (if any) then, subject to paragraph 5.10, there will be no successful bidder for the lot subject to the FX Auction in question and the FX Auction for that lot shall be treated as a failed FX Auction.
- 5.2 The Clearing House may at its discretion withdraw a lot prior to the Closing Time.
- 5.3 Promptly after the Closing Time, the Clearing House will sort bids submitted to it in the order of the price bid. The bids will be ordered sequentially, starting with the highest bid price, and ending with the lowest price. The price of the bid at which the sum of the number of FX Contracts with equal or higher bids equals or is greater than the number of FX Contracts being auctioned shall be the auction clearing price (the "**FX Auction Clearing Price**") such price being either payable by the Clearing House to the FX Auction Participant or its Clearing Member or to the Clearing House by the FX Auction Participant or its Clearing member, as applicable. In the event that a bid is also invalid or void or no FX Contract is established with the FX Auction Participant submitting any bid for any reason, such bid will not be accepted.

Examples of how the FX Auction Clearing Price is calculated is set out below, for illustrative purposes only:

**Example 1**

Note in these examples a negative bid indicates a payment by the Clearing House

Ranking	Cash Bid	% of Portfolio	Cash/1%	Allocation % of Portfolio
1	£20,000	20%	£1,000	20%
2	£0	30%	£0	30%
3	-£2,500,000	25%	-£100,000	25%
4	-£3,000,000	25%	-£120,000	25%
5	-£3,900,000	30%	-£130,000	0%
6	-£6,000,000	40%	-£150,000	0%
7	-£7,750,000	50%	-£155,000	0%
8	-£6,400,000	40%	-£160,000	0%
9	-£3,300,000	20%	-£165,000	0%
10	-£43,000,000	20%	-£2,150,000	0%

Unless paragraph 5.5 applies, the FX Auction Clearing Price will be -£120,000/1%. Portfolio will be allocated in full to bids above the FX Auction Clearing Price.

**Example 2**

Ranking	Cash Bid	% of Portfolio	Cash/1%	Allocation % of Portfolio
1	£20,000	20%	£1,000	20%
2	£0	30%	£0	30%
3	-£2,500,000	25%	-£100,000	25%
4	-£3,000,000	30%	-£120,000	25%
5	-£3,900,000	30%	-£130,000	0%
6	-£5,250,000	35%	-£150,000	0%
7	-£7,750,000	50%	-£155,000	0%
8	-£6,400,000	40%	-£160,000	0%
9	-£3,300,000	20%	-£165,000	0%

Unless paragraph 5.5 applies, the FX Auction Clearing Price will be -£120,000/1%. Portfolio will be allocated in full to bids 1,2 and 3 and allocated in part to bid 4.

## AUCTION TERMS FOR FX DEFAULT AUCTIONS

10	-£43,000,000	20%	-£2,150,000	0%
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**Example 3**

Ranking	Cash Bid	% of Portfolio	Cash/1%	Allocation % of Portfolio
1	£20,000	20%	£1,000	20%
2	£0	30%	£0	30%
3	-£2,500,000	25%	-£100,000	25%
4 (1)	-£3,000,000	30%	-£120,000	12.5%
4 (2)	-£3,000,000	30%	-£120,000	12.5%
6	-£3,900,000	30%	-£130,000	0%
7	-£5,250,000	35%	-£150,000	0%
8	-£7,750,000	50%	-£155,000	0%
9	-£6,400,000	40%	-£160,000	0%
10	-£3,300,000	20%	-£165,000	0%

Unless paragraph 5.5 applies, the FX Auction Clearing Price will be -£120,000/1%. Portfolio will be allocated in full to bids 1,2 and 3. Bids 4(1) and 4(2) will receive a *pro rata* share of the remaining portfolio.

- 5.4 All FX Contracts shall be allocated to winning FX Auction Participants at the FX Auction Clearing Price in a fair and consistent manner and in accordance with the bid size used in the calculation of the FX Auction Clearing Price. In the event that there are multiple bids at the Auction Clearing Price, to the extent there is a shortfall of FX Contracts being available, FX Contracts shall be allocated *pro rata* according to the number of FX Contracts the relevant FX Auction Participants bid for at the relevant price, unless the Clearing House determines otherwise pursuant to any risk policies implemented by the Clearing House pursuant to the Rules. Bids below any applicable reserve price, above any applicable maximum price, or invalidated pursuant to paragraph 4.4, may, at the discretion of the Clearing House be excluded for the purposes of calculating the FX Auction Clearing Price, allocating numbers at the FX Auction Clearing Price or determining whether an FX Clearing Member has met the Minimum Bid Requirement unless the Clearing House, in its discretion, decides otherwise.
- 5.5 The Clearing House may, in any given FX Auction (the "**First FX Auction**") at its discretion, determine the FX Auction Clearing Price for less than 100% of the FX Contracts if in the reasonable determination of the Clearing House, a material impact on the amounts payable or receivable by the Clearing House would result if 100% of the FX Contracts were awarded in the FX Auction. In such circumstances the Clearing House would call a second FX Auction (a "**Second FX Auction**") to auction off any remaining lots. The Clearing House may also, in accordance with the relevant FX Default Policy, hold a Second FX Auction in the event that there is a failed FX Auction or not all FX Contracts are allocated, whether due to Clearing Members failing to meet any applicable Minimum Bid Requirements, any minimum bid size, any reserve price or maximum price or otherwise.

An example of how this paragraph 5.5 would apply is set out below, for illustrative purposes only:

Ranking	Cash Bid	% of Portfolio	Cash/1%
1	£20,000	20%	£1,000
2	£0	30%	£0
3	-£3,000,000	30%	-£100,000
4	-£2,400,000	20%	-£120,000
5	-£3,900,000	30%	-£130,000
6	-£6,000,000	40%	-£150,000
7	-£7,750,000	50%	-£155,000
8	-£6,400,000	40%	-£160,000
9	-£3,300,000	20%	-£165,000
10	-£43,000,000	20%	-£2,150,000

The FX Auction Clearing Price for 80% of the portfolio shall be -£100,000/1%

Price of remaining 20% will be determined in a Second FX Auction

- 5.6 Any Second FX Auction shall be announced pursuant to a further FX Auction Announcement Circular and shall be held in accordance with these FX Auction Terms. The Clearing House shall circulate an FX Auction Specification for a Second FX Auction. An FX Auction Participant for the First FX Auction shall be deemed to be an FX Auction Participant for the Second FX Auction. The Clearing House may at its discretion withdraw a lot in the Second FX Auction prior to the relevant Closing Time. The Minimum Bid Requirement applicable to each FX Clearing Member shall be reduced by any FX Contracts actually won by such FX Clearing Member (including any bids won by, for, or on behalf of, such FX Clearing Member's Customers or Sponsored Principals for whom such FX Clearing Member acts as Sponsor) at the FX Auction Clearing Price pursuant to the First FX Auction. Any such reductions in FX Clearing Members' Minimum Bid Requirements will be shared *pro rata* as an increased Minimum Bid Requirement for all FX Clearing Members who did not have any FX Contracts allocated to them at the FX Auction Clearing Price pursuant to the First FX Auction.
- 5.7 In the case of a bid which results in the entry into a FX Contract or FX Contracts at the FX Auction Clearing Price, the "**Winning Bidder**" will be the relevant FX Clearing Member or Sponsored Principal.
- 5.8 Each bid constitutes an offer to the Clearing House to enter into FX Contracts, such offer being made by the relevant FX Clearing Member or Sponsored Principal. The Clearing House shall use reasonable endeavours to notify Winning Bidders within 15 minutes after the Closing Time of either the First FX Auction or the Second FX Auction, as the case may be. Immediately upon notification by the Clearing House to a bidder that it has a winning bid by e-mail, telephone, in writing or otherwise and without the need for any further step, this shall constitute acceptance of the offer by the Clearing House and resulting FX Contracts shall be entered into between the Clearing House and the Winning Bidder in accordance with the Rules, on economically identical terms to the FX Contracts that are the subject of the lot in the relevant FX Auction.



**AUCTION TERMS FOR FX DEFAULT AUCTIONS**

5.9 The Clearing House may abandon or alter the procedure for any FX Auction, including conducting subsequent FX Auctions, at any time prior to the entry into of FX Contracts with Winning Bidders, taking into account such considerations as it deems necessary or desirable to protect the financial integrity of the Clearing House, the Clearing Members generally or the marketplace for any instruments cleared by the Clearing House, and such other matters as it may deem appropriate.

5.10 In the event of a failed FX Auction for whatever reason, the Clearing House may either run a new FX Auction and shall do so in accordance with paragraph 5.6 or withdraw the lot. There shall be no limit to the number of repeated FX Auctions under this provision. If the Auction Clearing Price falls below any reserve price or above any maximum price, the Clearing House may at its discretion nonetheless accept bids at such Auction Clearing Price.

**6. POST-BID PROCEDURE**

6.1 The Winning Bidder will become a party to new FX Contracts with the Clearing House on economically identical terms to the FX Contracts that are the subject of the lot in the FX Auction. FX Contracts will be established with the Winning Bidder pursuant to a termination of FX Contracts between the Defaulter and the Clearing House and the establishment of new, economically identical FX Contracts between the Clearing House and the Winning Bidder pursuant to Rule 904. The Winning Bidder (or, if it is a Sponsored Principal, it and its Sponsor) will be treated as if it were a "Transferee Clearing Member" for purposes of Part 9 of the Rules provided that the provisions of Part 9 to the extent relating to Customers shall not apply.

6.2 Any Customer-CM FX Transactions arising as a result of the FX Auction will be established in accordance with the Rules and the Procedures in the same way as for FX Contracts at the same time as FX Contracts are entered into pursuant to paragraph 6.1.

6.3 New FX Contracts resulting from the FX Auction will be established between the Clearing House and the Winning Bidder in respect of any particular Set, at the FX Auction Clearing Price determined by the Clearing House as at the time specified in accordance with paragraph 6.5.

6.4 The Winning Bidder may be subject to an additional Margin call as a consequence of it becoming party to FX Contracts pursuant to an FX Auction. Any call for Margin required under these FX Auction Terms will take place pursuant to the Finance Procedures.

6.5 Records of new FX Contracts in accounts at the Clearing House may be updated by the Clearing House after the time that new FX Contracts arise. The Winning Bidder will become party to new FX Contracts resulting from the FX Auction at the time that it is notified by the Clearing House that it is the Winning Bidder, notwithstanding the time at which the establishment of new FX Contracts is completed in the Clearing House's books and records.

6.6 Once new FX Contracts have been established between the Winning Bidder and the Clearing House, the bid which gave rise to the FX Contracts will be treated as valid regardless of any failure of the FX Auction Participant to have satisfied any participation criteria or otherwise as to the validity of any bid.

**7. OTHER TERMS**

7.1 Neither the Clearing House nor any of its Affiliates makes any representation or warranty as to the accuracy of any records of the Defaulter or any of its Affiliates. In particular, the Clearing House makes no representation or warranty as to whether any FX Contract recorded in a Proprietary Account, Customer Account or Individually Segregated Sponsored Account of the Defaulter is correctly recorded in such account or as to whether any consent of any Customer, Affiliate or Sponsor of the Defaulter is required to any FX Auction or the termination of FX Contracts to which a Defaulter is party. The Clearing House

makes no warranty, whether express or implied, as to quality, appropriateness or in respect of the merits of any investment decision relating to any lot. The Clearing House does not provide, and is not responsible or liable for, any investment advice in relation to any FX Auction.

- 7.2 Although the information provided by the Clearing House is believed to be accurate subject to the qualifications in paragraph 7.1 above, neither the Clearing House nor any of its Affiliates, nor any of their respective agents, officers, directors, committee members, employees, or advisers makes any representation or warranty, express or implied, as to the accuracy or completeness of such information, including but not limited to the value or marketability of any FX Contracts or Open Contract Positions. Each FX Auction Participant is responsible for making its own determination as to whether to proceed with or without further investigation or as to its bidding on any lot.
- 7.3 The Clearing House is under no obligation to enforce these FX Auction Terms against a bidder at the request of any other bidder.
- 7.4 All FX Auction Participants are hereby on notice that the Clearing House is not a member of any professional or other association, society, institution or organisation of auctioneers or agents and is not therefore bound by the rules or practices of any such association, society, institution or organisation. The conduct of FX Auctions may be carried out only to manage an Event of Default and does not constitute the ordinary day-to-day business of the Clearing House. Any standard rules, customs, good practice guidelines or guidance or other industry practices relating to auctions or agency sales are hereby disappplied and disclaimed. All and any rights of any Person bound by these FX Auction Terms which may arise as a result of a liability of the Clearing House pursuant to common law duties applicable to auctioneers or selling agents are hereby expressly waived by all FX Auction Participants. The implied term of care and skill under section 13 of the Supply of Goods and Services Act 1982 is hereby expressly excluded in respect of the conduct of any FX Auction by the Clearing House. The Clearing House expressly disclaims any duty of care or skill in respect of the conduct of any FX Auction by the Clearing House arising other than expressly pursuant to these FX Auction Terms. The Clearing House will not provide and has not provided any valuation services in connection with any FX Auction.
- 7.5 The time and date at which bids are due, the time and date for the establishment of FX Contracts or calling of Permitted Cover or the Closing Time (subject to paragraph 3.4) may be delayed beyond the times and dates set forth in these FX Auction Terms or specified in the FX Auction Specifications if the Clearing House, in its discretion, considers this to be necessary or appropriate. Notwithstanding anything to the contrary in these FX Auction Terms, to the fullest extent lawfully permissible, the Clearing House may postpone, cancel, adjourn or terminate an FX Auction at any time, and may withdraw all or any portion of the FX Contracts from any FX Auction lot.
- 7.6 In respect of any FX Auction, each FX Auction Participant: (i) acknowledges that copies of the Auctions (Bidding Agreements) Acts 1927 and 1969 (as amended and including any amendments thereto) have been made available to it online at [www.legislation.gov.uk](http://www.legislation.gov.uk) for the duration of the FX Auction; (ii) agrees and acknowledges that it has received sufficient information concerning the identity of the persons conducting the auction on behalf of the Clearing House; and (iii) waives any right to make any claim that it has not received any information or documentation of a nature referred to in this paragraph 7.6 and agrees in favour of the Clearing House not to make any statement to the contrary to any third party.
- 7.7 Without limiting the obligations of FX Clearing Members, Sponsored Principals, Sponsors and Customers under the Rules, all FX Auction Participants shall comply with Rule 203 of the Rules (including, without limitation, complying with their obligation not to commit any act of fraud or to engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering or which is in breach of any similar Applicable Laws).

- 7.8 It is the responsibility of each Winning Bidder to make any transaction or other reports or notifications to any Regulatory Authority or Governmental Authority (including, without limitation, any transaction reports) that it is required to make pursuant to Applicable Laws.

Annex A

ICE Clear Europe Limited

FX Auction Specifications

Lot [1]: *[general description of lot] – [Name of Defaulter]*

ICE Clear Europe Ltd (the "**Clearing House**") is conducting an auction of certain open positions in contracts, presently held in respect of *[Name of Defaulter]*, and in that connection ICE Clear Europe Ltd is requesting bids from FX Auction Participants for certain lots. This document constitutes FX Auction Specifications for purposes of the Clearing House's FX Auction Terms for FX Default Actions (the "**FX Auction Terms**"). The FX Auction Terms apply in full to this auction lot, save to the extent expressly modified in paragraph 5.

1. Participation Criteria

*[State any conditions and criteria if there are to be any restrictions on the categories of Persons who may be FX Auction Participants]*

If any Person which has been provided with these FX Auction Specifications is for any reason unable to meet a Minimum Bid Requirement applicable to him, he should contact the Clearing House immediately and refrain from bidding in the FX Auction unless otherwise directed by the Clearing House. The Clearing House may restrict any such Person's access to FX Auctions if it determines that a Person does not satisfy the specified participation criteria.

2. Subject matter of the lot

The lot comprises *[details of FX Contracts]*.

All FX Contracts will be transferred to the relevant FX Clearing Member or Sponsored Principal at the FX Auction Clearing Price, for close of business on *[date]*.

3. Bid Form *[To be updated based on example of bidding in FX Default Policy]*

All bids for this lot must be submitted on the Bid Form in the schedule to this document by e-mail to *[email address]*. Any Bid Form which is illegible, spoiled or incomplete will be rejected and treated as void and invalid: see the FX Auction Terms for further information. Each Bid Form must specify the amount of consideration (in *[currency]*) that the bidder will pay the Clearing House or will be prepared to be paid by the Clearing House (as applicable) in consideration for the entry into of all the FX Contracts which are the subject matter of the lot.

All Bid Forms and any other communication relating to this FX Auction lot should be sent to: *[email address]*.

4. Timing

*[Further details of the FX Contracts included in this lot will be disclosed to all FX Auction Participants at [time] on [date] (the "Starting Time").]*

The Closing Time (deadline for receipt of bids) is *[time]* on *[date]*.

The winner of the lot will be notified of his winning bid by the Clearing House between *[times]*.

A conference call will be open from *[times]* on *[date]*, during which time FX Auction Participants will be notified by the Clearing House (i) that the winning bidder has been notified of the fact that it has won; or (ii) that no bid falling between the reserve price and any maximum price has been submitted. Dial in details are as follows:

**[Call details]**

The Clearing House will confirm whether each bid has been accepted by e-mail.

The winner of the FX Auction will become party to new FX Contracts immediately upon notification that it is the winner, pursuant to the FX Auction Terms.

5. [Minimum bid size]

[Bids may only be for lot sizes which are at least [25%] of [*the FX Contract size of a particular lot*]]

6. [Currency]

[All bids to be made in the specified currency]

7. Modifications to FX Auction Terms

[Specify any] / [None.]

**BID FORM**  
**for FX Auction Lots related to [Name of Defaulter]**  
**made pursuant to the FX Auction Terms of ICE Clear Europe**  
**and the relevant FX Auction Specifications**

[Specify by inserting the amount and checking the appropriate box]

Clearing Member, Sponsor or Sponsored Principal name	FX Auction Lot Number	Percentage of lot	Cash Amount (always a positive number) [(EUR)]	Member Pay or Receive	Clearing Participant Number	Desk (Hub) Account	Contact	Prop. Account or relevant Customer Account of Clearing Member (or Individually Segregated Sponsored Acct.)	Sponsored Principal, Customer or Client Name (if applicable)
<input type="checkbox"/>	1	<input type="checkbox"/> %	<input type="checkbox"/>	[Pay]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	1	<input type="checkbox"/> %	<input type="checkbox"/>	[Receive]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	2	<input type="checkbox"/> %	<input type="checkbox"/>	[Pay]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	2	<input type="checkbox"/> %	<input type="checkbox"/>	[Receive]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	3	<input type="checkbox"/> %	<input type="checkbox"/>	[Pay]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	<i>etc.</i>	

Signed by: \_\_\_\_\_

Authorised Signatory of FX Auction Participant

State full legal name of FX Auction Participant: \_\_\_\_\_

**Annex B**

**Form of Notice of Minimum Bid Requirement**

*[ICE Clear Europe Limited Letterhead]*

*[Name of FX Clearing Member]*

*[Email Address]*

*[Date]*

**FX Default Auction - Notification of Minimum Bid Requirement**

Further to *[reference to FX Auction Announcement Circular]* (the "**Circular**"), the Clearing House hereby notifies you of the Minimum Bid Requirement (as defined in the Clearing House's FX Auction Terms for FX Default Auctions (the "**Auction Terms**")) applicable to you in respect of the FX default auctions to be held in accordance with the Auction Terms, the Circular and the applicable auction specifications.

***[Set out Minimum Bid Requirement]***

FX Clearing Members are referred to the FX Auction Terms for further information on the Minimum Bid Requirement (and in particular paragraphs 2.4, 3.1 and 3.2 of the Auction Terms).

Signed

*[Name]*

*[Title]*