

Part 3 – Financial Requirements and Payments

(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 301(f)(ii) or Rule 301(f)(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 to the extent such assets are received by and remain available to the Clearing House (in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss), 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 301(f)(ii) or Rule 301(f)(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 301(f)(ii) or Rule 301(f)(iii)). Where the concentration function of an Approved Financial Institution that is not subject to an Insolvency is adversely affected by a non-payment (including by reason of an Event of Default, dispute or operational failure) of a particular Clearing Member, and the Clearing House is notified of such non-payment and the Clearing Member concerned, the Clearing House will re-issue new payment instructions for concentration payments excluding the non-payment of the relevant Clearing Member prior to requesting or requiring other

Part 9 – Default Rules**Rule 908 – Application of Assets upon an Event of Default**

- (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by and remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss as a result of the Event of Default (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(b), subject to Rule 1102(k));
 - (iv) fourth (subject to Rule 908(i)):
 - (A) F&O Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus F&O Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
 - (B) the Clearing House F&O GF Contribution,

on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all F&O Guaranty Fund Contributions (excluding F&O Guaranty Fund Contributions of the Defaulter and F&O Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House F&O GF Contribution at the time of the Event of Default; and
 - (v) fifth (subject to Rule 908(i)), F&O Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (c) In the case of a Defaulter that was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS (but neither an F&O Clearing Member nor an FX Clearing Member nor authorised to clear F&O or FX), the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that Defaulter (including in connection with any net sum calculated under Rule 906), by applying the following assets in the order of recourse set out below:
- (i) first, any amounts falling under *N* in Rule 906(a) in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(c)(ii) to (v) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
 - (ii) second, the Clearing House CDS Initial Contribution;

Part 9 – Default Rules**Rule 908 – Application of Assets upon an Event of Default**

- (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies as a result of the Event of Default (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by and remain available to the Clearing House in cleared funds ~~as a result of the Event of Default, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss~~ (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(c), subject to Rule 1102(k));

- (iv) fourth (subject to Rule 908(i)):
 - (A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
 - (B) the Clearing House CDS GF Contribution,

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

- (v) fifth (subject to Rule 908(i)), CDS Assessment Contributions received by the Clearing House pursuant to Rule 909.

- (d) In the case of a Defaulter that was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX (but neither an F&O Clearing Member nor a CDS Clearing Member nor authorised to clear F&O or CDS), the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that Defaulter (including in connection with any net sum calculated under Rule 906), by applying the following assets in the order of recourse set out below:
 - (i) first, any amounts falling under *N* in Rule 906(a), in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs Rule 908(d)(ii) to (v) 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);

Part 9 – Default Rules**Rule 908 – Application of Assets upon an Event of Default**

- (ii) second, the Clearing House FX Initial Contribution;
 - (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies as a result of the Event of Default (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by and remain available to the Clearing House in cleared funds ~~as a result of the Event of Default, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss~~ (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(d), subject to Rule 1102(k));
 - (iv) fourth (subject to Rule 908(i)):
 - (A) FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus FX Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
 - (B) the Clearing House FX GF Contribution,

on a basis *pro rata* (subject to Rule 908(i)), to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default; and
 - (v) fifth, (subject to Rule 908(i)), FX Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (e) In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rule 906(a) to (c) as if they were "net sums", *mutatis mutandis* in respect of assets and liabilities relating to the Clearing of F&O Contracts ("**F&O Default Amount**"), the Clearing of CDS Contracts ("**CDS Default Amount**") and the Clearing of FX Contracts ("**FX Default Amount**"), as follows:
- (i) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of F&O Contracts, then the net sum declared in respect of such account shall be the sole element of the F&O Default Amount in respect of such Account;
 - (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 shall be the sole element of the CDS Default Amount in respect of such Account;

Part 9 – Default Rules**Rule 908 – Application of Assets upon an Event of Default**

Rule 908(f) and in circumstances in which the F&O Default Amount represents a shortfall, loss or liability;

- (B) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS Initial Contribution, provided that it shall only be applied up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount represents a shortfall, loss or liability; and
 - (C) if a Defaulter was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX, the Clearing House FX Initial Contribution, provided that it shall only be applied up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the FX Default Amount represents a shortfall, loss or liability;
- (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies [as a result of the Event of Default](#) (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by and remain available to the Clearing House ~~as a result of the Event of Default~~ [in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss](#) (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(g), subject to Rule 1102(k)), provided that any proceeds of any such claim shall be applied to each Default Amount on a basis pro rata to the shortfall, loss or liability of each Default Amount (less any amounts applied to such Default Amounts pursuant to 908(g)(ii));
- (iv) fourth (subject to Rule 908(i)):
- (A) Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters and proceeds of the realisation thereof, if two or more Default proceedings take place concurrently and any such surplus is available);
 - (B) if a Defaulter was an F&O Clearing Member or a Sponsored Principal that was authorised to clear F&O, the Clearing House F&O GF Contribution;
 - (C) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS GF Contribution in the order of priority set forth in the CDS Default Auction Procedures; and

Part 9 – Default Rules**Rule 913 – Definitions used in the Remainder of this Part 9****Rule 913 Definitions used in the remainder of this Part 9**

- (a) The following additional definitions apply to the following sections of this Part 9:
- (i) The term "**Adjustment Amount**" means, in respect of all the Margin Account(s) of any Contributor 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 Contributor less the sum of the Cumulative Actual Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Contributor, in each case in respect of the Loss Distribution Period in which such Loss Distribution Day falls.
 - (ii) 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.
 - (iii) 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, Sponsors or Sponsored Principals that are not Defaulters. The principles in Rule 908 used for the calculation of relevant Default Amounts shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Defaulter Resources.
 - (iv) The term "**Available Non-Defaulter Resources**" means, following a particular Event of Default, the cash proceeds or equivalent cash value (as calculated by the Clearing House) of those Guaranty Fund Contributions, Clearing House Contributions, Assessment Contributions and any claims under any default insurance policies which are available to be applied pursuant to Rule 908, provided that Assessment Contributions and any claims under any default insurance policies shall only count as Available Non-Defaulter Resources if they have been received by and remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment

Part 9 – Default Rules**Rule 913 – Definitions used in the Remainder of this Part 9**

Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, at the time the Clearing House performs a calculation of Available Non-Defaulter Resources. The principles in Rule 908 shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Non-Defaulter Resources.

- (v) The term "**Available Product Funds**" means the amount of resources available to the Clearing House in respect of a Relevant Contract Category, as calculated in accordance with Rule 916(f).
- (vi) The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vii) The term "**Cash Gain**" means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.
- (viii) The term "**Cash Gainer**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is greater than zero.
- (ix) The term "**Cash Gainer Adjustment**" has the meaning set out in Rule 914(c).
- (x) The term "**Cash Loser**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is equal to or less than zero.
- (xi) The term "**Cash Loser Adjustment**" has the meaning set out in Rule 914(d).
- (xii) The term "**Clearing House Event**" means a Failure To Pay or Insolvency occurring in respect of the Clearing House.
- (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 Exchange Delivery Settlement Price, Option premium, other settlement amount, Strike 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 Deliverable is due to be made by way of final settlement under a Contract of a Relevant Contract Category from the

Part 9 – Default Rules**Rule 914 – Reduced Gains Distribution**

- (j) Notwithstanding Rule 1102(k), this Rule 914(j) shall apply where the Clearing House (1) receives amounts from a Defaulter (as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise) or another Clearing Member or Sponsored Principal or any insurer that would, had it been paid on time, have increased the Clearing House's Available Resources or Received MTM/VM on a Business Day on which any Margin Account Adjustment was made pursuant to this Rule 914 during a Loss Distribution Period; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher; or (3) declares an actual net sum under Rule 906 in circumstances in which an Estimated Payable Net Sum had previously been used as a basis for invoking its rights under this Rule 914 where the actual net sum is greater than the last Estimated Payable Net Sum. Where this Rule 914(j) applies, the Clearing House shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Clearing House, including, without limitation, the costs of recovering or recalculating any such amounts and only to the extent that the same remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss):
- (i) first to Contributors who are not then Defaulters (irrespective of whether they remain Clearing Members or Sponsored Principals 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 Contributor's Adjustment Amount in respect of the Relevant Contract Category;
 - (ii) secondly, in accordance with Rule 1102(k).
- (k) Payments of Cash Gainer Adjustments and Cash Loser Adjustments may be made pursuant to Part 3 of the Rules and the Finance Procedures. Except as expressly provided in this Rule 914, this Rule 914 is without prejudice to the Clearing House's rights to set off or net any sum owed by a Clearing Member, Sponsor or Sponsored Principal to the Clearing House against any sum payable by the Clearing House to a Clearing Member, Sponsor or Sponsored Principal or to any other powers of the Clearing House under Parts 3, 9 or 11 or the Procedures.
- (l) 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.
- (m) 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 and Sponsored Principals under Rule 914(j) and to fund its obligations to meet

Part 9 – Default Rules**Rule 916 – Contract Termination following Certain Conditions or Under-priced Auction**

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 and only to the extent that the same remain available to the Clearing House [in cleared funds](#), not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss):

- (i) first to Clearing Members and Sponsored Principals that are not Defaulters who would, but for this Rule 916, have received a Termination Price in full, with the payments determined on a *pro rata* basis based on the difference between the Discounted Product Repayment Amount and the Product Repayment Amount in respect of each Clearing Member or Sponsored Principal;
 - (ii) secondly, in accordance with Rule 914(j); and
 - (iii) for the avoidance of doubt, thirdly, under Rule 1102(k) (as modified by Rule 914(j)).
- (o) Nothing in this Rule 916 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member, Sponsored Principal, Sponsor 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, Sponsored Principal, Sponsor 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.

Part 9 – Default Rules**Rule 919 – Non-Default Losses, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses****Rule 919 Non-Default Losses, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

- (a) This Rule 919 shall only apply if:
- (i) there has been a Non-Default Loss, Investment Loss, Custodial Loss, Pledged Collateral Loss or Title Transfer Collateral Loss; and
 - (ii) there has been no Clearing House Event.
- (b) Any Non-Default Loss will first be met by the Clearing House applying any Investment Loss Assets and Custodial Loss Assets that were available to it at the time of the event giving rise to the Non-Default Loss and after that, only by applying any other available capital or assets of the Clearing House. The first portion of any Investment Loss will be met by the Clearing House first applying any Investment Loss Assets that were available to it at the time of the event giving rise to the Investment Loss prior to taking any action under Rule 919(c). The first portion of any Custodial Loss will be met by the Clearing House first applying any Custodial Loss Assets that were available to it at the time of the event giving rise to the Custodial Loss prior to taking any action under Rule 919(c). The obligations in this Rule 919(b) shall only apply to the extent that such Investment Loss Assets or Custodial Loss Assets remain available to the Clearing House [in cleared funds](#), themselves not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.
- (c) Upon the Clearing House certifying an Investment Loss Amount or Custodial Loss Amount in a Circular of an amount greater than the Investment Loss Assets or Custodial Loss Assets, as applicable, that were available to it at the time of the event giving rise to the Investment Loss or Custodial Loss and which are due to be applied under Rule 919(b), all Clearing Members shall indemnify the Clearing House and become liable to pay Collateral Offset Obligations to the Clearing House in accordance with the formula set out in Rule 919(d). Any Circular under this Rule 919(c) shall specify:
- (i) the nature and extent of the Investment Loss or Custodial Loss, as applicable;
 - (ii) the date on which Collateral Offset Obligations will become due; and
 - (iii) such other matters as the Clearing House considers are relevant.
- (d) The Collateral Offset Obligation payable by each Clearing Member shall be the amount:

$$(LAm - LA) \quad \times \quad \frac{GF\&M(CM)}{GF\&M(all)}$$

subject to the caps in Rules 919(d)-(e).

where:

Part 9 – Default Rules**Rule 919 – Non-Default Losses, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

intended to prevent the Clearing Member from passing on the cost of a Collateral Offset Obligation to any of its Customers under the relevant Customer-Clearing Member Agreement or Standard Terms, to the extent that the Collateral Offset Obligation relates to Margin on a Customer Account or is otherwise attributable to a Customer and to the extent permitted by Applicable Laws.

- (g) The Clearing House shall apply Collateral Offset Obligations resulting from an Investment Loss solely to meet Investment Losses referred to in a Circular under Rule 919(c). The Clearing House shall apply Collateral Offset Obligations resulting from a Custodial Loss solely to meet Custodial Losses referred to in a Circular under Rule 919(c).
- (h) If, after any Collateral Offset Obligations have fallen due, the Clearing House collects any amount or asset from a Custodian, Delivery Facility, issuer, counterparty or otherwise so as to reduce an Investment Loss or Custodial Loss, as applicable, in either case in cleared funds or unencumbered assets, the Clearing House shall be obliged to pay the amount or transfer the assets or value of assets so received by and remaining available to the Clearing House (less any expenses of the Clearing House, including without limitation any expenses incurred in connection with recovery) to the Clearing Members that had met such Collateral Offset Obligations *pro rata* in respect of satisfied Collateral Offset Obligations relating to the event in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House (not being Loss Assets) or other Persons applied to meet the Investment Loss or Custodial Loss following exhaustion of the assets specified in this Rule 919 or in substitution of any such assets. This obligation shall only apply to the extent that such amounts or assets remain available to the Clearing House [in cleared funds](#), not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.
- (i) No Collateral Offset Obligation shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.*, to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i) or to pay Assessment Contributions. Notwithstanding any Collateral Offset Obligations, Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to the Clearing House, including obligations to pay Original/Initial Margin, Variation Margin, Guaranty Fund Contributions, Assessment Contributions and settlement amounts and shall continue to make and receive timely delivery of all Deliverables to and from the Clearing House in accordance with the Rules and Procedures. Similarly, the Clearing House shall remain liable to pay or release Margin and Permitted Cover to Clearing Members in the usual way, subject to netting under Part 3 and the Finance Procedures to take into account the effect of any Collateral Offset Obligation, and to make and receive deliveries. All such payments and deliveries shall be made without regard to whether any payment which would have fallen due (were it not for the Collateral Offset Obligations) and without any offsetting or withholding of

Part 9 – Default Rules**Rule 919 – Non-Default Losses, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.

- (j) If the Clearing House determines that it has provided for Collateral Offset Obligations in excess of that required or actually applied against an Investment Loss or Custodial Loss, as applicable (less Loss Assets applied) or makes a recovery that is due to Clearing Members under Rule 909(h), it shall credit any excess or recovered amounts due to the Clearing Member's Proprietary Account. This obligation shall only apply to the extent that such amounts or assets remain available to the Clearing House [in cleared funds](#), not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss. Credit to a Proprietary Account is not intended to prevent the Clearing Member from passing on the credit related to a Collateral Offset Obligation to any of its Customers under the relevant Customer-Clearing Member Agreement and Standard Terms, to the extent that the Collateral Offset Obligation relates to Margin or Permitted Cover on a Customer Account or is otherwise attributable to a Customer. If a Proprietary Account becomes over-collateralised as a result of any such credit, any resulting Surplus Collateral will be available for withdrawal under Part 3 and the Finance Procedures in the normal way.
- (k) Liabilities of Clearing Members in respect of Collateral Offset Obligations under this Rule 919 shall apply independently from and in addition to any obligation in respect of any Assessment Contribution under Rule 909, Cash Loser Adjustment or Cash Gainer Adjustment under Rule 914, Partial Tear-Up Price under Rule 915 or Product Termination Amount under Rule 916, giving rise to a separate and additional payment obligation for Clearing Members. For the avoidance of doubt, none of the caps on Assessment Contributions arising pursuant to Rules 209, 917 or 918 shall restrict or limit any liability of a Clearing Member in respect of Collateral Offset Obligations under this Rule 919.
- (l) Any right being exercised or circumstances occurring that are governed by this Rule 919 shall not constitute any kind of Clearing House Event.
- (m) Payments of Collateral Offset Obligations may be made pursuant to Part 3 of the Rules and the Finance Procedures. This Rule 919 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 919.
- (n) Nothing in this Rule 919 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member, Defaulter, Custodian, Delivery Facility or any other Person in respect of any amount, obligation or asset which is owed or due but unpaid or unsatisfied by such Clearing Member, Defaulter, Custodian or other Person.

Part 9 – Default Rules**Rule 919 – Non-Default Losses, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

- (o) In carrying out any calculations or making any determinations pursuant to this Rule 919, 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.
- (p) The Clearing House will notify Clearing Members from time to time, by Circular, of:
- (i) the total amount of Investment Loss Assets; and
 - (ii) the total amount of Custodial Loss Assets.

Such amounts, as so notified, shall be effective until the time of the next subsequent Circular issued under this Rule 919(p). The Clearing House's liability under Rule 919(b) in respect of any ~~Non-Default Loss~~, Investment Loss or Custodial Loss occurring after the date of any Circular under this Rule 919(p) shall be limited to the notified amount under this Rule 919(p) from time to time of Investment Loss Assets and Custodial Loss Assets, as applicable.

- (q) The total amount of any Investment Loss Assets applied in connection with any Investment Loss or Non-Default Loss and the total amount of any Custodial Loss Assets applied in connection with any Custodial Loss or Non-Default Loss shall be notified to Clearing Members in a Circular, prior to or promptly after the same being applied or replenished. The Clearing House may also replenish any regulatory capital, using its or its Affiliates' or other Persons' resources or otherwise, as is required to bring it in compliance with Applicable Laws at any time including following an Investment Loss, Custodial Loss or Non-Default Loss. However, no such recapitalisation shall result in any obligation of any Clearing Member to pay Collateral Offset Obligations being reduced nor the size of any Investment Loss or Custodial Loss being reduced. The Clearing House may replenish Investment Loss Assets or Custodian Loss Assets through re-applying retained earnings, where these are available. If the Clearing House replenishes Investment Loss Assets or Custodial Loss Assets or its capital in such or other circumstances, it shall issue a new Circular pursuant to Rule 919(p). In such circumstances, the Clearing House shall not be liable to apply or use any such replenished or new Investment Loss Assets or Custodial Loss Assets or its capital against any prior Non-Default Loss, Custodial Loss or Investment Loss under Rule 919(b).
- (r) Without limiting Rule 111, Rule 502 or Rule 919(s), but subject to any contrary requirements under Applicable Laws or this Rule 919, the Clearing House shall not be liable to any Clearing Member, Customer or other Person for any losses, liabilities, damages, costs, claims, shortfalls or expenses incurred by such Clearing Member, Customer or other Person arising out of or relating to any failure, in whole or in part, of any payment or securities services provider, including without limitation any Custodian, Delivery Facility, central securities depository or central bank.

Part 11 – Guaranty Funds

processing to the next levels of assets specified in Rule 908, subject to the payment order specified in Rule 1102(k). Finally, any amounts received from an insurer may be subject to losses similar to an Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss prior to being used. As a result, it is possible that:

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

If there is a First Defaulter and there are one or more Additional Defaulters during a Relevant Period, the proceeds of any claim under default insurance to the extent that the same remains available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, shall be applied as between the losses, shortfalls or liabilities relating to each Defaulter at the relevant point in the waterfall in Rule 908 on the following basis: (i) first, a Defaulter shall be excluded from any application of such assets if, prior to or after application of Clearing House Contributions, there is no further loss, liability or shortfall; (ii) secondly, such assets shall be applied to reduce the losses, shortfalls or liabilities relating to a Defaulter whose Event of Default was first in time to be declared by the Clearing House, provided that any Events of Default occurring on the same day shall be treated as occurring simultaneously for purposes of this Rules 1103(e); and (iii) where there are simultaneous Events of Default, such assets shall be applied so as to reduce the losses, shortfalls or liabilities relating to each Defaulter on a pro-rata basis, based on the total of all unsatisfied Default Amounts relating to each such Defaulter (after applying Clearing House Contributions).

The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contract or Guaranty Fund applicable to any default insurance obtained by the Clearing House.