



ICE Clear Europesm

Clearing Rules

~~16 September~~ 25 October 2016 – German CDS Clearing Member amendments

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(b)). In relation to an Individually Segregated Sponsored Account, the Sponsor is a Representative of the Sponsored Principal.

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 "**Sanction**" means any Applicable Law executing foreign policy, security, sanction, trade embargo, boycott, export control, foreign trade control, non-proliferation or anti-terrorism objectives or similar restrictions on any business with a particular jurisdiction, certain types of business or activity or specified Persons that is imposed, administered or enforced from time to time by: (i) the European Union; (ii) HM Treasury or the United Kingdom; (iii) OFAC or the United States of America and/or its President; (iv) the United Nations Security Council; or (v) any of their successors.

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 an 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 an 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 Customer**" means a Customer of a Non-FCM/BD Clearing Member in circumstances where, whether as a result of any requirement of Applicable Law, agreement or arrangement, a customer asset segregation, client money, client asset, trust or other client asset protection regime (being more than the mere requirement arising under EMIR to

Rule 201(a)

- (xxxix) 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;
- (xxxii) 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;
- (xxxiii) 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;
- (xxxiv) not be prevented from entering into any Contract or using the Clearing House 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~~ Sanctions affecting the Clearing Member ~~or any of its assets; (except, if it is a CDS Clearing Member incorporated in Germany and solely in respect of CDS business, solely to the extent that any obligation, or undertaking, representation or statement contemplated by this Rule 201(a)(xxxiv) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts);~~
- (xxxv) be incorporated or registered in and access the Clearing House from only jurisdictions whose Applicable Laws relating to insolvency, the regulation of clearing houses, Markets or central counterparties, the enforceability of Contracts and the Rules and such other matters as the Clearing House specifies are acceptable to the Clearing House (and an applicant may be required to supply a legal opinion of external counsel, addressed to the Clearing House, addressing such issues, at its cost); and comply with any additional restrictions or requirements imposed by the Clearing House as a result of activities in any such jurisdictions;
- (xxxvi) 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, provided that such additional conditions are proportional to the risk brought by the applicant. 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 203(a)

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);
- (xix) breach any Contract Terms; ~~or~~
- (xx) if it is subject to CASS 7.18 of the FCA rules, deliver any letter to the Clearing House in the manner referred to in Rule 102(q)(viii) in respect of any Proprietary Account, Segregated TTFCA Customer Omnibus Accounts for CDS, Segregated TTFCA Customer Omnibus Accounts for F&O or Segregated TTFCA Customer Omnibus Accounts for FX; or
- (xxi) if (A) it is a CDS Clearing Member incorporated in Germany; or (B) in relation to a Customer Account transaction of any CDS Clearing Member where the Customer is incorporated in Germany: submit any CDS Transaction Particulars for clearing or enter into any CDS Contract which would take place in circumstances where the CDS Clearing Member would be in breach of Rule 201(a)(xxxiv), Rule 405(a)(xi) or Rule 1901(d)(xiii) but for the exceptions therein relating to Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts, unless prior notice of at least 30 days has been provided by the CDS Clearing Member to the Clearing House in accordance with Rule 204(a)(xvi).

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 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); or
- (xiv) if it is a CDS Clearing Member incorporated in Germany and solely in respect of CDS business, if any Sanctions of H.M.Treasury or the Office of Foreign Assets Control of the U.S. Department of the Treasury would, were they applicable, restrict or prevent the CDS Clearing Member from entering into a CDS Contract or using the Clearing House in circumstances in which neither the equivalent Sanctions of the European Union nor the United Nations Security Council imposed any such restriction or prevention; and in the case of the entry into of any CDS Contract, such notice shall be given 30 days in advance;
- (xv) if (A) it is a CDS Clearing Member incorporated in Germany; or (B) in relation to a Customer Account transaction of any CDS Clearing Member where the Customer is incorporated in Germany: if any Sanctions of H.M.Treasury or the Office of Foreign Assets Control of the U.S. Department of the Treasury would, were they applicable, restrict or prevent any derivatives or spot trading

activities involving a Customer of the CDS Clearing Member in circumstances in which neither the equivalent Sanctions of the European Union nor the United Nations Security Council imposed any such restriction or prevention; and in the case of a Customer which has not previously transacted CDS through the CDS Clearing Member at the Clearing House, such notice shall be given at least 30 days in advance of submitting for Clearing any CDS Trade Particulars first identifying that Customer.

- (b) Where a Clearing Member is regulated by the FCA or PRA:
- (i) Notifications under Rule 204(a)(i) shall only be required where a change of Control is notifiable to the FCA or PRA; and in such cases the Clearing Member should provide the Clearing House contemporaneously with a copy of all submissions sent to the FCA or PRA 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 FCA or PRA under the Principles for Business in the FCA Rules or PRA 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.

Sponsored Principal Clearing 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 (or, in the case of a Sponsored Principal, the Sponsored Principal Clearing 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 Sponsor Agreement (or, in the case of a Sponsored Principal, the Sponsored Principal Clearing 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 and Rule 401(h) in respect of Disclosed Principal 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) if it is a Clearing Member, where the Contract is to be recorded in one of its Customer Accounts or is otherwise related to a Customer-CM Transaction, it 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~~ Sanctions affecting the Customer or any of its Customer's assets: (except, if it is a CDS Clearing Member incorporated in Germany or in relation to the Customer Account of any CDS Clearing Member where the Customer is incorporated in Germany, solely to the extent that any obligation, or undertaking, representation or statement contemplated by this Rule 405(a)(xi) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts).

- (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 Buying Counterparty and Selling Counterparty proposing to become or becoming party to any Contract, that:
- (i) the data submitted 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 duly authorised by it (including, in connection with a CDS Contract, that any CDS Trade Execution/Processing Platform used by it for the submission of CDS Trade Particulars has been duly authorised by it for the submission of data relating to CDS Trade Particulars in accordance with the CDS Procedures; and, in connection with an FX Contract, that any FX Trade Execution/Processing Platform used by it for the submission of FX Trade Particulars has been duly authorised by it for the submission of data relating to FX Trade Particulars in accordance with the FX Procedures); and
 - (ii) Market Rules (if applicable), the CDS Trade Execution/Processing Platform's procedures (if applicable), the FX Trade Execution/Processing Platform's procedures (if applicable), the rules of the Participating Exchange (if applicable) and all Applicable Laws have been complied with by it and any relevant Customer in respect of the Transaction or Participating Exchange Transaction.
- (c) In relation to each Contract that arises pursuant to Rule 401(a)(iii), 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 Buying Counterparty and Selling Counterparty proposing to become or becoming 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

Rule 1901(d)

companies and other bodies corporate) under applicable FCA Rules and PRA Rules;

- (xii) either (A) is a Person in respect of whom 'simplified due diligence' may be applied pursuant to the Money Laundering Regulations 2007; or (B) has been subject to customer due diligence measures by the Sponsor under the Money Laundering Regulations 2007; and
 - (xiii) is not prevented from entering into any Contract or using the Clearing House (nor is the Sponsor prevented from servicing the Individually Segregated Sponsored Account) 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~~ Sanctions affecting the the Sponsored Principal, ~~the~~ Sponsor or any of their assets: (except, solely in respect of CDS clearing, if the Sponsor or Sponsored Principal is incorporated in Germany, solely to the extent that any obligation, or undertaking, representation or statement contemplated by this Rule 1901(d)(xiii) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts).
- (e) Some or all of the criteria in Rule 1901(b) (except those set out in paragraphs (v), (vi), (x), (xi), (xii) or (xiii)) shall, at the discretion of the Sponsor, be deemed to be met on the part of the Sponsored Principal by the Sponsor, to the extent that the Sponsor takes on responsibility for servicing the Individually Segregated Sponsored Account or related Nominated Account. If the Sponsored Principal is a fund, some or all of the criteria in Rule 1901(b) (except those set out in paragraphs (v), (vi), (x), (xi), (xii) or (xiii)) may, at the discretion of the Sponsor, be deemed to be met on the part of the Sponsored Principal by the fund manager to the extent that the fund manager takes on responsibility for servicing the Individually Segregated Sponsored Account or related Nominated Account.
 - (f) The Clearing House may at its discretion attach further objective conditions to any application for Sponsored Principal 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.
 - (g) Applicants for Sponsored Principal status 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 1901(b). Applicants for Sponsored Principal status must provide information or documentation to their Sponsor (who shall, on request, be obliged to transfer on any of the same to the Clearing House) evidencing compliance (or lack thereof) with each of the criteria set out in or required pursuant to Rule 1901(d). Failure to supply such information or documentation to the Clearing

Exhibit I, Section 3

- (n) These CDS Standard Terms may, pursuant to the process provided for in paragraph 2 of these CDS 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 CDS 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 CDS 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~~ Sanctions affecting the Customer or any of its assets: (except, if it is a Customer incorporated in Germany or the Clearing Member is located in Germany, solely to the extent that any obligation, or undertaking, representation or statement contemplated by this paragraph 3(o) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts).

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) 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 of its Customer Accounts. 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 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) Customer agrees that Clearing Member may use any margin provided by Customer under the Customer-Clearing Member Agreement to satisfy Clearing Member's obligations to the Clearing House under Rule 504 and Rule 505 or Part 11. Customer shall not be entitled to assert any equitable or other claim to

additional standard terms published by the Clearing House so as to establish mechanics for dealing with the relationship between F&O Contracts and Customer-CM F&O 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 F&O Standard Terms, may (if so specified) prevail over the applicable Procedures in respect of Customer-CM F&O Transactions and may be amended and/or withdrawn only as provided for in paragraph 2 of these F&O Standard Terms.

- (o) On each date on which the Customer has any open Customer-CM F&O 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 F&O 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~~ [Sanctions](#) affecting the Customer or any of its assets.
- (p) Solely where National Grid is the Customer, these F&O Standard Terms shall be without prejudice to the Network Code, and National Grid shall not be stopped from relying upon or enforcing the provisions set out in the Network Code or exercising any remedy pursuant thereto, by virtue of either its status as a Customer or being bound by these F&O Standard Terms and the Rules.

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 F&O Contracts to provide margin (or permitted cover in respect thereof) 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 of its Customer Accounts. 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 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) Customer agrees that Clearing Member may use any margin provided by Customer under the Customer-Clearing Member Agreement to satisfy Clearing Member's obligations to the Clearing House under Rule 504 and Rule 505 or Part 11. Customer shall not be entitled to assert any equitable or other claim to any such collateral and/or Permitted Cover that has been transferred to the Clearing House.

- (n) These FX Standard Terms may, pursuant to the process provided for in paragraph 2 of these FX 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 FX Contracts and Customer-CM FX 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 FX Standard Terms, may (if so specified) prevail over the applicable Procedures in respect of Customer-CM FX Transactions and may be amended and/or withdrawn only as provided for in paragraph 2 of these FX Standard Terms.
- (o) On each date on which the Customer has any open Customer-CM FX 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 FX 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~~ Sanctions 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 FX Contracts to provide margin (or permitted cover in respect thereof) 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 of its Customer Accounts. 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 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) Customer agrees that Clearing Member may use any margin provided by Customer under the Customer-Clearing Member Agreement to satisfy Clearing Member's obligations to the Clearing House under Rule 504 and Rule 505 or Part 11. Customer shall not be entitled to assert any equitable or other claim to any such 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