



September 13, 2012

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

By Email: submissions@cftc.gov

Re: ICE Clear Europe Self-Certification of Rule Amendments Pursuant to
Commission Rule 40.6

Dear Mr. Stawick:

ICE Clear Europe Limited ("ICE Clear Europe"), a registered derivatives clearing organization ("DCO") under the Commodity Exchange Act, as amended (the "Act"), hereby submits to the Commodity Futures Trading Commission (the "Commission"), pursuant to Commission Rule 40.6 for self-certification, the attached amendments to its rules and procedures. The amendments are to become effective ten business days after submission, or such later date as ICE Clear Europe may determine.

Pursuant to the amendments, ICE Clear Europe will extend customer clearing to credit default swap contracts. The rule and procedure amendments consist of various changes to its existing rules and CDS procedures, including rules relevant to FCM clearing members, to establish the framework for clearing of CDS contracts by clearing members on behalf of customers. The amendments also contain a variety of technical and operational updates and enhancements designed to facilitate clearing of CDS contracts for both proprietary and customer accounts. The rule amendments potentially are relevant to the following core principles: (C) Participant and Product Eligibility, (F) Treatment of Funds, (G) Default Rules and Procedures and (L) Public Information, and the applicable regulations of the Commission thereunder.

ICE Clear Europe hereby certifies that the proposed rule amendments comply with the Act and the Commission's regulations thereunder.

ICE Clear Europe has received no opposing views in relation to the proposed rule amendments.

ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website concurrent with the filling of this submission.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at paul.swann@theice.com or +44 20 7065 7700, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Patrick Davis, Head of Legal and Company Secretary, at patrick.davis@theice.com or +44 20 7065 7738.

Very truly yours,



Paul Swann
President & Chief Operating Officer



[CDS CUSTOMER CLEARING AMENDMENTS]

ICE Clear Europesm

Clearing Rules

26 April 2012

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Exhibit 1: Customer-CM CDS Transaction Standard Terms

Exhibit 2: Settlement and Notices Terms

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 [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 Energy Assessment Contribution or a CDS 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 "**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 Energy Contract, has the meaning given in the Delivery Procedures or, in relation to certain Contract Terms, has the meaning given in ~~the~~or pursuant to the Contract Terms Procedures or ICE Futures Europe Rules.

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

The term "**Buying Clearing Member**" means: in respect of a Contract: (a) 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); (b) 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 or protection buyer, the Clearing Member that provides clearing services to that Customer in relation to the Transaction (or CDS Trade Particulars) in question (or, for Energy 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); ~~or~~ (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 Energy 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 ~~(b)~~ above has allocated an Energy Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Energy Transaction is allocated.

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

The term "Call" means an Option pursuant to which a Person with a Long position has the right to buy a Future or Futures from a Person with a Short position at the Strike Price and at a specified time.

The term "Capital":

(a) ~~(a)~~ with respect to a ~~Clearing Member that is not an FCM~~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 ~~applicable~~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) ~~(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~~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 1106 in respect of an Event of Default.

The term "CDS Assessment Contribution" has the meaning set out in Rule 1106.

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 ~~that to which the Clearing House is cleared party~~ in accordance with these Rules and the Procedures ~~or is otherwise described as a CDS Contract under the CDS Procedures~~ and, 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 1103(d)(ie).

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 ~~account~~ 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 ~~applicable~~[available to be applied](#) following an Event of Default in accordance with Rule 1103(c)(v)(B) or 1103(~~fg~~)(v)(C) and as maintained pursuant to Rule 1104(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 ~~applicable~~[available to be applied](#) following an Event of Default in accordance with Rule 1103(c)(iv) or 1103(~~fg~~)(iv)(B) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Contributions**" means the Clearing House CDS Contributions and the Clearing House Energy ~~Initial Contribution~~[Contributions](#).

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

The term "**Clearing House Energy GF Contribution**" means amounts allocated by the Clearing House as being ~~applicable~~[available to be applied](#) following an Event of Default in accordance with Rule 1103(b)(v)(B) or 1103(~~fg~~)(v)(B) and as maintained pursuant to Rule 1104(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Energy Initial Contribution**" means amounts allocated by the Clearing House as being ~~applicable~~[available to be applied](#) following an Event of Default in accordance with Rule 1103(b)(iv) or 1103(~~fg~~)(iv)(A) and as maintained pursuant to Rule 1104(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 ~~FCM~~ Clearing Members that have executed a Pledged Collateral Addendum, the relevant Clearing Membership Agreement will be interpreted as amended by ~~the applicable~~[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](#) used by the Clearing House and any Market from time to time.

The term "**Commodity**" means any kind of property which is capable of being delivered pursuant to an Energy Contract.

~~The term "**Complaints Procedures**" means the complaints procedures of the Clearing House from time to time.~~

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 "**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.

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 Energy Contracts only) the general conditions set out in the [Contract Terms Procedures](#); (ii) (in relation to ICE Futures Europe Contracts only) the ICE Futures Europe Rules; (iii) (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; (iv) (except in relation to Energy Contracts which are settled only in cash) if such Energy Contract becomes deliverable, the relevant ~~delivery~~[Delivery](#) Procedures for the class of Energy Contract and ICE Futures Rules; and (v) for CDS Contracts, the terms specified pursuant to Rule 1502.

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)(vi).

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 ~~as~~ (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 ~~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 Customers (whose transactions the Clearing Member requests be recorded in the Customer Account) and in which such Contracts are recorded 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 Customers or groups of Customers or may be designated for Energy Contracts only or for CDS Contracts only. Where an FCM Clearing Member provides services for FCM Customers, it shall have a separate DCM Customer Account for Contracts and monies relating to DCM Customers, Swap Customer Account for Contracts and monies relating to FCM Swap Customers, Non-DCM/Swap Customer Account for Contracts and monies relating to Non-DCM/Swap Customers and General Customer Account for Contracts and monies relating to General Customers. A Customer Account of an FCM Clearing Member must be a DCM Customer Account, Swap Customer Account, Non-DCM/Swap Customer Account or General Customer Account. A Clearing Member which is not an FCM Clearing Member shall have only a single General Customer Account.~~ 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 ~~an account (if any)~~ 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 ~~are recorded~~ 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 Notice**" means a notice issued by the Clearing House under Rule ~~901~~902(eb).

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 ~~Person~~Clearing Member or former Clearing Member in respect of whom a Default Notice has been issued.

The term "**Delivery Facility**" means any Person or facility used for the delivery of Commodities (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.

The term "**EFSS**" means 'exchange for swaps' under the ICE Futures Europe 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 Assessment Amount**" means the total amount of all Energy Assessment Contributions payable by Energy Clearing Members pursuant to Rule 1105(a) in respect of an Event of Default.

The term "**Energy Assessment Contribution**" has the meaning set out in Rule 1105(b).

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 ~~that are not CDS Contracts~~ [resulting from the clearing of Energy Transactions](#).

The term "**Energy Default Amount**" has the meaning set out in Rule 1103(~~dc~~)(ii).

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

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

The term "**Energy Transaction**" means an ICE Futures Europe 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 "~~FCM~~" ~~means a futures commission merchant registered as such with the CFTC.~~ **Failure To Pay**" [means 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 ~~1.34(e)~~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 "**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 Energy Contract or any obligation relating to an Energy Contract, an obligation to make payments) (and, in relation only to any obligation of the Clearing House or a CDS Clearing Member under ~~the Master Agreement that is part of the relevant~~ [a CDS Contract Terms](#), 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" as defined in the 2002 ISDA Master Agreement published by ISDA; or alternatively and to the exclusion of the foregoing; or~~, in relation to delivery of a Commodity pursuant to any Energy Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that Energy 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 Energy 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 "**GBP**" means the lawful currency from time to time of the United Kingdom.

The term "**General Customer**" means either: (i) a Customer of a ~~Clearing Member that is not an FCM~~ [Non-FCM/BD](#) Clearing Member; or (ii) for an [FCM/BD](#) Clearing Member, a Customer that is not a DCM Customer, ~~FCM-Swap Customer or~~, 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: ~~(i) the Customer Account of a Clearing Member that is not an FCM Clearing Member; or (ii) for an FCM Clearing Member, a Customer Account used for Contracts or monies that do not relate to DCM Customers, FCM Swap Customers or Non-DCM/Swap Customers.~~ a CDS Customer Account or 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 Energy Guaranty Fund and the CDS 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 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Guaranty Fund Period**" for the Energy Guaranty Fund, means a three-month period for which the total amount of Energy Guaranty Fund Contributions for the Energy Guaranty Fund is fixed (subject to any termination or suspension of any Energy Clearing Member's membership or status as an Energy Clearing Member, new Energy Clearing Members making Energy Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11); or, 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).

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 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~~[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~~[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 Group**" means the Clearing House and all its ~~Affiliated Persons~~[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~~[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~~[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 ~~"Initial Margin" means Portfolio Risk Margin, Physical Settlement Margin or other margin transferred in relation to CDS Contracts, including pursuant to Rule 502(f).~~ **"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~~no 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 ~~constituting a~~ "but which constitutes a Bankruptcy" in respect of such CDS Clearing Member ~~as defined in the Master Agreement between the relevant CDS Clearing Member and the Clearing House~~; 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 ~~London Court of International Arbitration~~ LCIA.

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 and 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, Initial Margin, ~~Portfolio Risk Margin, Physical Settlement Margin, Mark-to-Market Margin and other margin, security or collateral provided (by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum) to the Clearing House pursuant to the Rules or~~

~~the~~ 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 ~~the Permitted Cover~~ cash required to be provided ~~by Clearing Members to 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 Futures Europe, ICE OTC 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 Energy Contracts or an Energy 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 Futures Europe Rules and ICE OTC Participant Agreements, ICE OTC Broker Agreements and the procedures of each of ICE Futures Europe and the ICE OTC Operator.

~~The term "**Master Agreement**" has the meaning given to that term in Rule 1502(a)(i).~~

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 ~~recognised by the Clearing House for administrative convenience only and used by the Clearing Member for the business of its segregated Customers,~~ 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 ~~that is not a Nominated Customer Account,~~ 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 Energy 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~~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 Futures Europe Transaction, an ICE Futures Europe Contract and any other ~~Transaction~~transaction or Contract made on or subject to the rules of any other "foreign board of trade" as defined in the CEA ~~and will not include transactions in "security-based swaps" 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 ~~or~~, a Swap Customer or an SBS Customer with respect to a ~~Transaction~~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~~transactions or Contracts and another category of FCM/BD Customer in relation to other ~~Transactions~~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 ~~or~~, 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 Energy Contracts only, the Net Amount Position, where:

(a) *Contract Position* means:

~~(i)~~ (i) in relation to a Proprietary Position Account for 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)~~

(ii) in relation to a Proprietary Position Account for 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)~~

(iii) in relation to a Customer Position Account for 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)~~

- (iv) in relation to a Customer Position Account for 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)~~ (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; and
- ~~(vi)~~ (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;

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 Energy Contracts, means the price at which the ~~Open~~-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 Energy Contract subject to Clearing by the Clearing House that is an 'option' under article 83 of the ~~FSMA~~ 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 ~~collateral~~ pursuant to a Clearing Membership Agreement or ~~as collateral~~ pledge pursuant to a Pledged Collateral Addendum) to the Clearing House as ~~security~~ collateral for the obligations of a Clearing Member in respect of Energy Contracts pursuant to Part 5 ~~and includes~~ including any margin provided in relation to Energy 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 rather than the Non-DCM/Swap Customer Account.

The term "**Permitted Cover**" means cash in Eligible Currencies and other assets ~~or cash~~ determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions, ~~including cash in Eligible Currencies~~ 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, 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 ~~by Clearing Members~~ 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 ~~asuch~~ 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 ~~security interest~~ 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 ~~that~~ (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~~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 ~~by Clearing Members~~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 Energy Contracts only or for CDS Contracts only.

The "Proprietary Position Account" forms part of a Proprietary Account and the term ~~"Proprietary Account"~~ 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 ~~made entered into~~ by the Clearing Member ~~are recorded~~ (whether directly or indirectly) and ~~to which monies in respect of such Contracts are credited and debited~~/or related Open Contract Positions are recorded, which may be divided for administrative convenience only into sub-accounts ~~or may be designated~~including for Energy Contracts only ~~or~~, for CDS Contracts only or for Customer-related Contracts where the Customer is a non-Segregated Customer.

The term **"Put"** 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 Price"** in respect of 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, the Clearing Member or the Clearing House, whichever is obliged to make delivery of a Commodity (whether itself or through another Person).

The term "**Selling Clearing Member**" means: in respect of a Contract: (a) 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 (b) where a Non-FCM/BD Clearing Member's Customer is party to the corresponding Transaction (or specified in the CDS Trade Particulars) as seller or protection seller, the Clearing Member that provides clearing services to that Customer in relation to the Transaction (or CDS Trade Particulars) in question (or, for Energy 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); ~~or~~ (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 Energy 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 ~~(bc)~~ above has allocated an Energy Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Energy Transaction is allocated.

The term "**Set**" means:

- (a) ~~(a)~~ for Futures Contracts: a set or class of Contracts that are identical as to their terms (including the Commodity 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) ~~(b)~~ for Options Contracts: a set of Contracts that are identical as to their terms (including the Investment 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) ~~(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); and
- (d) ~~(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).

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 Energy Contract as determined in accordance with the ICE Futures Europe Rules (for Contracts traded on ICE Futures Europe) 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 Energy Contract ceases to be traded, then the Clearing House may treat as the Settlement Price for such Energy 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 Energy Contract as of the close of trading in such Energy 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 Future upon exercise of the Option.

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 ~~and~~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~~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.

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 ~~is~~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 ~~an account (if any)~~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 ~~and~~ 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 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 in which the Clearing House records such Contracts ~~are recorded~~ 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 Date**" means the date on which a Clearing Member's membership of the Clearing House terminates.

The term "**Trade Date Clearing**" ~~has the meaning given to it in the Procedures.~~ 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 ~~an ICE Futures Europe Transaction, an ICE OTC Transaction or a Bilateral CDS Transaction;~~ (i) in respect of the Clearing of CDS Contracts, CDS Trade Particulars; (ii) in respect of the Clearing of Energy 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) [not used]. 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 Energy 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 ~~any~~ 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 Energy 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 Energy 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 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. 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 ~~(by way of title transfer collateral pursuant to a Clearing Membership Agreement or as collateral pursuant to a Pledged Collateral Addendum) to the Clearing House by Clearing Members in respect of Energy Contracts~~ 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 Energy Contracts, as determined pursuant to Rule 503(e) and the ~~Procedures. The term "**Weekly Clearing**" has the meaning given to it in the Procedures~~ 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 Master 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 CDS Contracts only, the Master Agreement;~~
 - (iv) ~~(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 Market Rules;
 - (v) ~~(vi)~~ in the case of Energy 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);
 - (vi) ~~(vii) in the case of Energy Contracts only,~~ the Procedures (excluding any Contract Terms set out in the Procedures) save to the extent included in (iii);
 - (vii) ~~(viii)~~ Market Rules other than those referred to in ~~(v)~~iv above (excluding any document described in Rule 102(f)(i) to ~~(vii)~~vi incorporated by reference);
 - (viii) ~~(ix)~~ any Guidance; ~~and~~
 - (ix) ~~(x)~~ 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);

- (x) 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
- (xi) the Settlement and Notices Terms.
- (g) [Not used.] ^a
- (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), 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 Energy Clearing Member) as a Transferee or Transferor for purposes of delivery under an Energy 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).

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) ~~(j) Reference to the "conduct" of a Clearing Member includes any act, omission, conduct or behaviour in relation to the Rules. For the purposes of determining a Clearing Member's liability for any conduct (referred to in Rule 111 as a "disciplinary matter"), a Clearing Member shall be responsible for all conduct of that~~ the Clearing Member's Representatives, including conduct of a Clearing Member's Customer and such Customer's (excluding Customers and their Customers' clients), as if that such ~~conduct were the conduct of the Clearing Member itself; but notwithstanding the attribution of such conduct to the Clearing Member, the Representative responsible for such conduct (where relevant) may also be liable to be sanctioned for their conduct through sanctions imposed on the Clearing Member or otherwise.~~

(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) ~~(k)~~ 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, the ICE Futures Europe Rules and the standard form ICE OTC Participant Agreement.

(m) ~~(l)~~ 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) ~~(m)~~ 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) ~~(n)~~ 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) ~~(o)~~ 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 ~~and/or~~ Part 10).
- (q) ~~(p)~~ 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) ~~Non-DCM/Swap~~ Customer Account of one Customer Account Category be used to meet a loss or shortfall on that Clearing Member's or Defaulter's ~~DCM-Customer Account, Swap Customer Account or General Customer Account;~~ Customer Account of any other Customer Account Category.
 - (iii) ~~Swap Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's DCM-Customer Account, Non-DCM/Swap Customer Account or General Customer Account;~~

- (iv) ~~DCM Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Non-DCM/Swap Customer Account, Swap Customer Account or General Customer Account; or~~
- (v) ~~General Customer Account be used to meet a shortfall on that Clearing Member's or Defaulter's Non-DCM/Swap Customer Account, DCM Customer Account or Swap Customer Account;~~

(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) ~~(q)~~ 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) ~~recognition of~~ 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) ~~(r)~~ 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) ~~(s)~~ These Rules may be supplemented by processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (u) ~~(t)~~ References in these Rules to UK or English legislation or European Directives shall be interpreted as references to such legislation as implemented in England & 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 ~~relating to deliveries~~ 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 Energy Contract or Energy Transaction, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (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(~~qr~~).
- (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 ~~advanced~~[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 ~~liquidate~~[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) shall apply, either in relation to the Clearing House's services generally or the Contracts in question, as applicable, in the event of any termination under this Rule 105.

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;
 - (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 ~~section~~[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 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.

- [\(b\)](#) ~~(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) ~~(vii) amounts to a change in any Contract Terms;~~ involves the removal of an existing Contract Set or the addition of a new Contract Set; or
- (x) ~~(viii)~~ 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

- (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 ~~time fixed by the Rules for the doing of any act or acts may be extended, or the doing of any act or acts required by the Rules~~ 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 ~~extension or~~ waiver is necessary or in the best interests of the Clearing House.
- (b) ~~Without prejudice~~ Subject to the ~~generality of~~ Rule 110(a), 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, ~~provided that the time fixed for making transfers, deposits or payments shall not be extended beyond two hours after the time such transfer, deposit or payment is due, and no other extension shall continue in effect for more than 60 calendar days, unless it is approved by the Clearing House within such period.~~
- (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) ~~(e)~~ 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.

Rule 111 *Liability*

- (a) Each Clearing Member shall indemnify and hold harmless the Clearing House ~~and its officers and employees~~ against any and all losses, liabilities, damages, injuries, ~~delays,~~ costs and expenses (excluding any consequential losses, liabilities, damages, injuries, costs or expenses) incurred or suffered by the Clearing House or any of ~~them~~its officers or employees arising out of or in connection with ~~such Clearing Member's conduct, a breach by such Clearing Member of any of its obligations hereunder or under any Contract or a breach by the Clearing Member of any Applicable Laws~~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 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, ~~delay~~, 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;
 - (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, ~~delay~~, 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 ~~liquidation~~termination of any Contracts or the manner in which or the price at which any Contracts are ~~liquidated~~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 Commodity or Investment under a Contract or to pay the price or settlement price; or
 - (D) any other loss, liability, damage, injury, ~~delay~~, 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, ~~delay~~, 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 Commodity 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 and the Procedures, the Clearing House shall have no obligation physically to make or accept delivery of any Commodity 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, ~~delays~~, 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. ~~If any Eligible Person (as defined in the Clearing Membership Agreement), Transferor or Transferee of a Clearing Member successfully brings any claim or asserts any liability against the Clearing House at any time or the Clearing House otherwise is or becomes liable to any Customer, Transferor or Transferee of a Clearing Member, the relevant Clearing Member shall immediately become liable to indemnify the Clearing House in respect of such loss, liability, damage, injury, delay, cost or expense of the Clearing House and the Clearing House shall be entitled to collect such payment pursuant to Part 3.~~
- (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;

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 Futures Europe Transactions) be a member of ICE Futures Europe;
 - (iii) (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;
 - (iv) 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;
 - (v) maintain and, where applicable, procure that all of its ~~Controller maintains~~ Designated Controllers maintain, sufficient Capital in accordance with Rule 206;
 - (vi) ~~unless the Clearing House at its discretion agrees otherwise in writing, where the applicant is subject to Control by any Person or Persons~~ where a Controller Guarantee is or is to be provided by a Designated Controller, procure ~~in favour of that~~ the ~~Clearing House a~~ Controller Guarantee ~~or Controller Guarantees from such of its Controllers as the Clearing House may request~~ is executed in such form and delivered in such manner as the Clearing House may prescribe from time to time, ~~each such Controller Guarantee guaranteeing payment of all amounts due by such applicant;~~
 - (vii) be party to a Clearing Membership Agreement with the Clearing House;
 - (viii) 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;
 - (ix) 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;

- (x) 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;
- (xi) have in place business continuity procedures that satisfy the Clearing House's minimum requirements;
- (xii) 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;
- (xiii) have demonstrated its ability to make available to the Clearing House sufficient Margin and make Margin payments as required pursuant to these Rules;
- (xiv) have made the required Guaranty Fund Contributions;
- (xv) not be subject to an Insolvency;
- (xvi) 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;
- (xvii) 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);
- (xviii) not be subject to any circumstances pursuant to which an Event of Default could be declared were the applicant to be a Clearing Member;
- (xix) 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;
- (xx) 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;
- (xxi) hold ~~an account or accounts~~ [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;

- (xxii) 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;
 - (xxiii) 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;
 - (xxiv) 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
 - (xxv) 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). 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 ~~Controllers or~~ 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 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.

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);
 - (v) respond promptly to any direction by the Clearing House to provide information or documentation;
 - (vi) maintain ~~and, where applicable, procure that its Controller maintains,~~ 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 ~~Customer Account and Proprietary Account, if the Clearing Member has a Customer Account, separately for CDS Contracts and Energy Contracts, if applicable and separately for Swap Customer Account, Non-DCM/Swap Customer Account, DCM Customer Account and General Customer Account, if~~ [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) ~~(xii) [Not used.]~~ 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) ~~(G)~~ it is able continuously to monitor communication facilities for receipt of communications from the Clearing House; and
- (H) ~~(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 ~~liquidate~~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 fictitious CDS Trade Particulars;

- (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) or Rule 201(i) (in the case of ~~the~~ Rule 201(i), only if it is a CDS 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) or Rule 201(i) (in the case of ~~the~~ Rule 201(i), only if it is a CDS 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 ~~Controllers or Affiliates~~[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 ~~a Regulatory Authority~~[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 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, ~~or to the extent permitted pursuant to the Procedures shall procure that its Controller maintains,~~ at all times the requisite types and amounts of Capital ~~specified in as required pursuant to~~ the CDS Procedures and Finance Procedures, or otherwise as specified in writing by the Clearing House from time to time. ~~The Clearing House may, at any time and at its discretion, require that a Clearing Member maintains additional Capital or procure a Controller to maintain additional Capital~~ 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 ~~or General, 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 ~~Accounts and~~ 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.
~~Neither~~ 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 ~~Accounts~~ Account and Customer Accounts and to ensure its own compliance with Applicable Laws relating to conduct of business, client money ~~and~~, 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) ~~(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.

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 ~~CDS Clearing Member that is not an Energy~~ Clearing Member or the suspension of any Clearing Member's ability to clear CDS Contracts, specifying the name of the ~~CDS~~ Clearing Member affected.

Rule 209 Termination of Clearing Membership

- (a) The Clearing House shall be entitled to terminate the membership of any Clearing Member immediately upon 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;
 - (iv) following any material and unremedied breach by the Clearing Member of these Rules;
 - (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
 - (vi) upon an Insolvency in relation to that Clearing Member or any of its ~~Affiliates~~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.

(c)

- (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); or
 - (D) pursuant to Rule 1106(h).
- (ii) The membership of a Clearing Member which is a CDS Clearing Member but not an Energy 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) (e) The Clearing Member shall be entitled to terminate its membership of the Clearing House: (i) upon no less than three months' prior written notice to the Clearing House; (ii) upon the Insolvency of the Clearing House; (iii) pursuant to Rule 1105(h); or (iv) pursuant to Rule 1106(h). The membership of a Clearing~~

~~Member which is a CDS Clearing Member but not an Energy Clearing Member shall terminate automatically upon the occurrence and continuance of an 'Event of Default' (as defined in the Master Agreement between the Clearing House and such CDS Clearing Member) in respect of the Clearing House. In the event of the~~In the event of an Insolvency in respect of the Clearing House or ~~an 'Event of Default' as aforementioned~~Failure To Pay in respect of the Clearing House, Rule 912 applies and the rights and liabilities of each Clearing Member under CDS 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 ~~905~~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 ~~905~~906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member ~~(provided that, for the avoidance of doubt: (A) Rules 1105 and 1106 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); (B) Rules 901, 902, 903 and 904 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); and (C) without prejudice to the generality of (B), Rule 903(a)(xii) 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) and provided further that the net sum or net sums required to be determined in these circumstances pursuant to Rule 905 in respect of a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member will be made separately in relation to the rights and liabilities of that Clearing Member as Energy Clearing Member and as CDS Clearing Member and Rule 905 shall be interpreted accordingly. In circumstances in which this Rule 209(c)(iii) applies:~~

- (A) Rules 1105 and 1106 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(c) 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 is both an Energy Clearing Member and a CDS Clearing Member or a Clearing Member in respect of any other class of cleared Contract will be made separately in relation to the rights and liabilities of that Clearing Member as Energy Clearing Member and as CDS Clearing Member or as a Clearing Member in respect of any other class of cleared Contract and Rule 906 shall be interpreted accordingly; and
- (E) otherwise, Part 9 shall apply *mutatis mutandis* in relation to terminated CDS Contracts and rights, obligations and liabilities relating thereto.
- (iv) Any Clearing Member terminating its membership of the Clearing House under this Rule 209(c) shall provide notice of termination to the Clearing House.
- (d) 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, ~~Liquidate~~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) 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;
 - (iv) obliged to pay any Assessment Contribution for which it is liable pursuant to Part 11.

(f)

(i) A Clearing Member which is both a CDS Clearing Member and an Energy Clearing Member shall be entitled to terminate its status as either a CDS Clearing Member or an Energy 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 Energy Clearing membership, pursuant to Rule 1105(i); or

(D) in the case of CDS Clearing membership, pursuant to Rule 1106(i).

(ii) If a Clearing Member is both a CDS Clearing Member and an Energy Clearing Member, 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) ~~(f) A Clearing Member which is both a CDS Clearing Member and an Energy Clearing Member shall be entitled to terminate its status as either a CDS Clearing Member or an Energy Clearing Member: (i) upon no less than three months' prior written notice to the Clearing House; (ii) upon the Insolvency of the Clearing House; (iii) pursuant to Rule 1105(i); or (iv) pursuant to Rule 1106(i). If a Clearing Member is both a CDS Clearing Member and an Energy Clearing Member, its status as a CDS Clearing Member shall terminate automatically upon the occurrence and continuance of an 'Event of Default' (as defined in the Master Agreement between the Clearing House and such CDS Clearing Member) in respect of the Clearing House. Rules 209(c) (third sentence only)~~Rule 209(c)(iii), Rule 209(c)(iv), Rule 209(d) and Rule 209(e) shall apply *mutatis mutandis* in relation to any termination described in this Rule 209(f), as regards CDS Contracts or Energy Contracts (whichever the Clearing Member proposes to cease to clear or ceases to clear, as applicable) and Clearing related thereto only.

(g) [Not used].

(h) [Not used].

(i) ~~(g)~~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(~~h~~i).

(j) ~~(h)~~The Clearing House will issue a Circular promptly following any termination of membership of a ~~CDS Clearing Member that is not an Energy~~ Clearing Member or the termination of any Clearing Member's ability to clear Energy Contracts or CDS Contracts, specifying the name of the ~~CDS~~ Clearing Member affected.

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 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~~7, [the Contract Terms, the Delivery Procedures](#) and the [Finance Procedures](#); ~~and~~
 - (ii) in relation to each Contract that is an Option, the parties to such Contract shall be liable to make such payments as are required pursuant to Part ~~8~~8, [the Contract Terms, the Delivery Procedures](#); ~~and the Finance Procedures; and~~
 - (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.

- (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 unless and until the relevant electronic transfer of funds is actually received by the Clearing House in unencumbered, fully cleared and fully available funds.
- (g) Interest shall be ~~charged~~ paid by the Clearing Member to the Clearing ~~Member~~ 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, ~~or such other Clearing Member whom the Clearing House at its discretion determines should be responsible for meeting the amount of such loss, liability, or cost,~~ 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 ~~or such other Clearing Member whom the Clearing House at its discretion determines should be responsible for meeting the amount of such value added tax~~ 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.

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 ~~Accounts~~[Account](#) and [each of its](#) Customer Accounts (if any) on ~~the following Business Day~~[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(~~p~~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) ~~The~~Subject to Rule 102(q), the Clearing House shall be entitled to make any necessary adjustments to the Clearing Member's Proprietary ~~Accounts~~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~~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 Futures Europe Matched Transaction, the relevant orders are matched on ICE Futures Europe;
 - (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 Futures Europe Block Transaction, ICE Futures Europe 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 Futures Europe or the ICE OTC Operator as a result of the operation of their contra trade, error trade, invalid trade, cancelled trade, error correction or similar policies and rules and 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 ~~Members~~[Member](#) affected;
 - (vii) in the case of a Contract 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 Energy Contract that is allocated by one Clearing Member to another Clearing Member by agreement of both Clearing Members subsequent to that Energy 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 ~~903(a)(xii)~~905(c), ~~at~~ 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; ~~and~~
- (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) [not used]; and
- (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.
- (b) For Energy 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 ~~Contract~~CDS Trade Particulars submitted to the Clearing House by or on behalf of a Market, Deriv/SERV ~~or other data entry facility for CDS Contracts, any, Trade Processing Platform,~~ Clearing Member or ~~Customer~~Representative of a Clearing Member, whether or not a Clearing Member or ~~Customer~~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 ~~or~~, 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) ~~Clearing Members shall designate each Contract as related to one of its Proprietary Accounts or Customer Accounts (if any).~~ 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 Energy 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.

(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) [Not used].

(l) ~~(k)~~ 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 ~~or~~ 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 ~~actual or proposed~~ CDS Trade Particulars or CDS Contract (and Customer-CM CDS Transaction, where applicable) to Deriv/SERV or another service specified by the Clearing House ~~with~~. 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) ~~(l)~~ Where an Energy 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 Futures Europe Transactions, the ICE Futures Europe Rules; or

(ii) in the case of Energy Contracts arising as a result of ICE OTC Transactions, the Clearing Procedures.

(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) ~~(m)~~ 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 ~~recorded~~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 ~~recorded~~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 ~~recorded~~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 ~~General~~SBS Customers, in which case the Contract shall be ~~recorded~~designated by the Clearing Member in ~~the General~~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) ~~(v)~~ 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 ~~recorded~~designated by the Clearing Member in ~~the General~~accordance with Rule 401(g) as for the Non-CDS Customer Account and recorded by the Clearing

House in accordance with such designation;

- (vii) 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
- (viii) ~~(vi)~~ 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 recorded 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) ~~(n)~~ 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 or General, 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 ~~Contracts only~~ 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) ~~(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 ~~submitted for Weekly~~ recorded in Deriv/SERV before submission for Clearing.
- (c) ~~(b)~~ 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) ~~(e)~~ 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 ~~that~~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) ~~(d)~~ As between the Clearing House and each Clearing Member, all Contracts, these Rules, and the relevant Clearing Membership Agreement ~~and, if such Clearing Member is a CDS Clearing Member, the Master 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 ~~and, if such Clearing Member is a CDS Clearing Member, the Master Agreement~~, 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 *Energy Contracts that are Void from Inception*

- (a) No Energy 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 Energy 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 Energy 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 Energy 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, ~~Deriv/SERV or any other data entry facility for CDS Contracts~~, 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) ~~(viii)~~ 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 or the protection of a Market or marketplace in any class of Contracts.

(b) If any CDS 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 CDS 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 CDS Contract being void, voidable or unenforceable solely as a result of it having ~~been party to a Bilateral CDS Transaction~~submitted CDS Trade Particulars together with another CDS Clearing Member in circumstances in which ~~at the~~ CDS Contract to which ~~another~~the other CDS 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 CDS Contract. If the Clearing House exercises its discretion to avoid a CDS Contract or any CDS 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 CDS Contract(s):
- (i) direct the Clearing Member who was counterparty to the void or voided CDS Contract to enter into a replacement CDS Contract of equal economic terms to the void or voided CDS Contract or sign documentation confirming the validity of an existing CDS 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 CDS Contract as near as possible of equal terms to the CDS Contract that is void or voided or confirm the validity of an existing CDS 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 CDS Contracts, in which case:
 - (A) the Clearing Member who was counterparty to the void or voided CDS 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 CDS 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 CDS 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 CDS Contract or sign documentation confirming the validity of an existing CDS 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 CDS Contract or signing documentation confirming the validity of an existing CDS Contract, such restriction or prevention (in conjunction with the failure of the Clearing Member to enter into a replacement CDS Contract or sign effective documentation confirming the validity of an existing CDS 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 Energy Contract, any of the circumstances in Rule 404(a) arises or if, in the case of a CDS Contract only, any of the circumstances set out in Rule 404(b) arises and no replacement CDS 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 Energy Contract, any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b); and
 - (v) in the case of two CDS Contracts (resulting from the same ~~Bilateral~~ CDS ~~Transaction~~ Trade Particulars) being voided in circumstances in which the CDS Trade Particulars reflect a transaction (including any Bilateral CDS Transaction-~~itself~~) 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) ~~(A)~~ 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 ~~proposed~~voided CDS ~~Contract~~Contracts made pursuant to Rule 401(k);
 - ~~(C)~~ ~~relevant Bilateral CDS Transactions shall be deemed never to have been terminated; and~~
 - (C) ~~(D)~~ 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.
- (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.

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 ~~the Clearing Member is:~~
- ~~(i) acting as principal and not as agent; and~~
 - (i) ~~(ii)~~ 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;
 - (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)-or-, Rule 401(a)(xi) or Rule 401(~~ba~~)(xiii)), 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 ~~has been authorised by the Clearing Member and is complete and correct in all respects; and;~~
 - (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) and all Applicable Laws have been complied with by the Clearing Member and any relevant Customer in respect of the 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) and Rule 401(a)(ix), 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 ~~Customers and~~ 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); ~~and on a back-to-back basis with a Contract, and further except as provided in Part 16).~~
 - (iii) ~~any contracts giving rise to the Transaction were, immediately prior to the formation of a Contract pursuant to Rule 401(a), legally valid, binding and enforceable under Applicable Laws.~~
- (d) Clearing Members will become party to, and liable under, Contracts each and every time ~~a Transaction that gives rise to~~ 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 ~~placing~~ 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~~ 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 Energy 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), or Long and Short positions (for a Set of Options) within the Clearing Member's Open Contract Position in respect of one of a Clearing Member's Customer ~~Account~~Position Accounts.
- (c) Subject to its obligations under Rule 406(b), the Clearing House may at its discretion treat any Energy Contract pursuant to which a Clearing Member is the Buying Clearing Member and another Energy 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 Energy Contracts, subject to the Clearing Member having made all then due payments pursuant to the Contract Terms in respect of such Energy Contracts and to separate treatment of Open Contract Positions in the Clearing Member's Proprietary Account, ~~Non-DCM/Swap Customer Account (if any), Swap Customer Account (if any), DCM Customer Account (if any) and General Customer Account (if any)~~ 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 Energy 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 Energy Contract recorded in the Clearing Member's Proprietary Account; (B) any Energy Contract recorded in particular Customer Account of a Clearing Member; or (C) any Energy 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 trade² 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~~² 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~~² 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;~~and~~

- (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(~~p~~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~~and~~; (B) any CDS Contract recorded in ~~the Clearing Member's a particular~~ Customer Account ~~(if any) 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) [Not used].

(g) ~~(f)~~ 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 that, in relation to CDS, this shall be subject to any provision to the contrary in any agreement in writing between the Clearing House and a CDS Clearing Member). Such data may be provided by the Clearing House to any Market, Trade Processing Platform, Deriv/SERV or any other data entry facility for CDS 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(~~f~~g) is subject, in relation to CDS, to any further restrictions in any agreement in writing between the Clearing House and a CDS Clearing Member.

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

If ~~an~~ Energy 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 Energy 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;

- (iv) as a result of a CDS Contract arising pursuant to Rule ~~903(a)(xii)~~[905\(c\)](#) and Rule 401(a)(x); or
 - (v) as a result of a ~~sale or transfer~~[Transfer](#) of Contracts pursuant to Rule ~~902(a)(i)~~[904](#).
- (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.

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, 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, ~~Non-DCM/Swap-Customer-Account (if any), Swap-Customer-Account (if any), DCM-Customer-Account (if any) and General~~ and each Customer Account ~~(if any)~~ of a different Customer Account Category for each Clearing Member in accordance with the Finance Procedures.

(c) Variation 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

~~(e) Variation 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 Energy Contracts) or which is the settlement currency (save where ~~the~~either the Finance Procedures or any Circular made in accordance with the Finance Procedures require otherwise) (for CDS Contracts) pursuant to the Contract Terms.

- (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, ~~as specified in 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 ~~(whether pursuant to these Rules or otherwise)~~, 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.

Rule 503 *Margin Calls and Return of ~~Excess Margin~~ 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 Energy 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 Energy 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, ~~Non-DCM/Swap Customer Account (if any), Swap Customer Account (if any), DCM Customer Account (if any) and General~~ and each Customer Account ~~(if any)~~ 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 Energy Contracts are recorded on the Clearing House's books; and
 - (ii) in the case of Energy 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 Energy Contract was bought or sold; provided, however, that in the case of any Energy 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 Account and Customer 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 Procedures.~~

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, ~~expressed as a percentage of the Floating Rate Payer Calculation Amount for such a CDS Contract,~~ determined by the Clearing House in accordance with the ~~Procedures, such price being the amount that would be payable up front as an Initial Payment by the Buyer or Seller in order to enter into a CDS Contract of such a Set with a particular Floating Rate Payer Calculation Amount as at such time, divided by such Floating Rate Payer Calculation Amount. When such Initial Payment would be payable by a Buyer, the Mark-to-Market Price will be a negative percentage and when such Initial Payment would be payable by a Seller, the Mark-to-Market Price will be a positive percentage. When deemed at the Clearing House's discretion to be necessary in order to protect the interests of the Clearing House and Clearing Members, the Clearing House may set the Mark-to-Market Price for CDS Contracts of any Set at a price determined by the Clearing House at its discretion. When the Clearing House so uses its discretion so to set a Mark-to-Market Price, the reasons for doing so and the basis for the establishment of the Mark-to-Market Price in such circumstances shall be recorded by the Clearing House~~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 accordance with the Procedures.~~ 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) [Not used].
- (i) [Not used].
- (j) ~~(h)~~ The Clearing House shall return to a Clearing Member the amount of any ~~excess Margin~~Surplus Collateral, provided that the Clearing House receives a request for such a release from such Clearing Member ~~by~~prior to such time as may be specified by the Clearing House ~~on 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~~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 ~~provides assets~~ transfers Permitted Cover to the Clearing House ~~to be held by way of Margin pursuant to these Rules~~, 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 ~~the all~~ legal and beneficial ~~owner's~~ owners' unconditional consent for their use and application pursuant to these Rules);
 - (ii) ~~no such assets are subject to any Encumbrance whatsoever; and~~ 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) ~~(iii) the use or application of Margin by the Clearing House pursuant to these Rules~~ Clearing Member is not in breach of any of ~~the Clearing Member's~~ its contractual obligations towards any third party ~~or Applicable Laws~~ 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 ~~liquidate~~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) ~~liquidate~~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)~~-or~~, (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 (~~or, in either case~~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)~~-or~~, (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 (~~or, in any such case~~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

Part 7 Settlement and Delivery of Futures

Part 7 of the Rules does not apply to CDS Contracts. References to Contracts in this section are to Energy Contracts. References to ~~any Customer Accounts and Proprietary Accounts~~ Account in this section are references ~~to such accounts as are designated for~~ 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 Energy Clearing Members in relation to Energy 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) ~~(vi)~~ gross buy positions under its DCM Customer Account (if applicable);
 - (vii) ~~(vii)~~ gross sell positions under its DCM Customer Account (if applicable);
 - (viii) ~~(viii)~~ gross buy positions under its ~~General~~[Non-CDS](#) Customer Account (if applicable); and
 - (ix) ~~(ix)~~ gross sell positions under its ~~General~~[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 ~~those parts of~~ the [Delivery](#) Procedures ~~relating to delivery~~ 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, ~~those parts of~~ the [Delivery](#) Procedures ~~relating to delivery~~ 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) 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).
- (d) The Clearing House may, at its discretion, direct a Clearing Member who is a Seller under a Contract subject to delivery to deliver the Commodity 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

- (e) If a Buyer under a Contract rejects a Commodity 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) 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 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.
- (h) 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*

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.

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 ~~General~~Non-CDS Customer Account (if applicable);
and
- (ix) gross sell positions under its ~~General~~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(pq).

- (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. References to Contracts in this section are to Energy Contracts. References to ~~any Customer Accounts and Proprietary Accounts~~ Account in this section are references ~~to such accounts as are designated for~~ 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 Energy Clearing Members in relation to Energy 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 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 ~~General~~[Non-CDS](#) Customer Account (if applicable); and
 - (ix) gross Short positions under its ~~General~~[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.
- (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 *Notice of Assignment*

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 *Formation of new Futures Contracts*

- (a) Upon exercise of any 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 *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 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 807 *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.

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 **Part** _____ **9** _____

Events of Default affecting Clearing Members

Rule 901 ***Events of Default***

- (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 occurring with respect to that Clearing Member;
 - (iv) any Financial Indebtedness of that Clearing Member or any of its ~~Affiliated Persons~~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 ~~Affiliated Persons~~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 ~~Affiliated Persons~~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 ~~Affiliated Persons~~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; ~~or~~
 - (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) ~~(b)~~ If an Event of Default ~~is~~has been declared ~~in respect of a Clearing Member~~, the Clearing House may immediately suspend or terminate ~~such~~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) ~~(e)~~ 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 ~~905~~906 are to be paid.
- (c) ~~(d) 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.~~

Rule 902 Liquidation following an Event of Default

- (a) ~~Where a Person is subject to an Event of Default, the~~The Clearing House may take such steps pursuant to this Part 9 ~~and Part 11~~ 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 and its non-defaulting Clearing Members ~~and/or~~ to complete the process described in this Part ~~9 and Part 11~~. ~~All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be liquidated in the manner set out in Rule 903 below unless and to the extent that:~~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) ~~the Defaulter's rights and obligations under such Contracts are transferred or sold to and accepted by one or more other Clearing Members (each, a~~ "to arrange for Contracts to be subject to a Transfer to a Transferee Clearing Member"), ~~with the prior consent of the Clearing House in the case of each transfer or sale at a price agreed between the Clearing House and the relevant Transferee Clearing Member~~ in accordance with Rule 904 and effect the same;

- (ii) ~~the Clearing House~~if it determines ~~in~~at its discretion that the protection of the financial integrity of the Clearing House ~~does not require such a liquidation; 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; and
- (iii) ~~such liquidation is delayed because of the cessation or curtailment of trading on an Exchange which lists such Contracts; or~~
- (iii) ~~(iv)~~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, ~~in which case the Clearing House shall be entitled~~ to net, offset, mutually close out or terminate such Contracts ~~up to the extent~~(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 ~~be entitled (but shall not be required) to~~ amend the records of trades recorded in Deriv/SERV accordingly, ~~subject always to Rule 102(p); provided that~~the Clearing House shall not be obliged to amend such records if it

~~The Clearing House shall be entitled, at its discretion, to take or arrange for any of the steps described in Rule 902(a)(i), (ii), (iii) or (iv) as part of its default proceedings. If any Contracts recorded in a Defaulter's Customer Account are subject to any transfer or sale pursuant to Rule 902(a)(i):~~

- ~~(A) any Margin recorded in a Defaulter's Customer Account may, at the discretion of the Clearing House, be transferred from the Defaulter's Customer Account to the Transferee Clearing Member's Customer Account;~~
- ~~(B) to the extent that any transfer of Margin takes place in accordance with Rule 902(a)(A), the Defaulter shall have no claim against the Clearing House 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; and~~
- ~~(C) 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 902(a)(A) as if the same were Margin delivered to the Clearing House directly by the Transferee Clearing Member.~~

~~Any transfer, sale or acceptance pursuant to Rule 902(a)(i) may take place pursuant to a termination of Contracts between the Clearing House and a Defaulter and the entry into of new Contracts with the Transferee Clearing Member, rather than as a transfer or sale, at the discretion of the Clearing House.~~

no longer has the necessary authority or access to do so or is otherwise prevented or restricted from doing so by an Insolvency Practitioner.

- (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) ~~(b) If it is determined pursuant to Rule 902(a) not to liquidate~~ To the extent that any Contracts to which ~~the~~^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 ~~such~~ 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 ~~against~~^{with} whom they are executed to the Clearing House for

Clearing on a daily basis. Any costs ~~or~~ expenses, ~~including or~~ losses, sustained by the Clearing House in connection with transactions effected ~~for its account~~ pursuant to this Rule ~~902~~903(b) shall be charged to the Defaulter and any gains ~~(net of any costs and expenses)~~ 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 Energy 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) [Not used]

(e) ~~(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) ~~(d) If a CDS Contract is terminated pursuant to an automatic early termination provision or if a CDS Contract is terminated in circumstances in which the third sentence of Rule 209(e) applies, Rules 902(a), 902(b), 902(e), 903, 904 and 905 shall apply *mutatis mutandis* in relation to such terminated CDS Contract and rights, obligations and liabilities relating thereto. For the avoidance of doubt, in any case where this Rule 902(d) applies as a result of a CDS Contract being terminated in circumstances in which the third sentence of Rule 209(e) applies, Rules 903(a)(xii) and 904 shall not apply to the extent that the same are disappplied by Rule 209(e). 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) ~~(e) Where~~where a Clearing Member that is a Defaulter has a Pledged Collateral Account, the Clearing House shall be entitled, in addition to its other~~the~~ rights and remedies underreferred to in Rule 902, to exercise the rights of a secured party~~and,~~ 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 to 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 905.in order to facilitate any such transfer of Margin.

Rule 903 ***Method of Closing Out***

- (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 or Approved CDS Trade Processing Platform.
- (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.

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.
- ~~(a) Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) to which a Defaulter is party which, pursuant to Rule 902 are required to be liquidated in accordance with this Rule 903 (and any contracts to which the Defaulter is~~

~~party referred to in Rule 902(b) including those arising from hedging transactions made pursuant to Rule 902(b), which shall be treated as if they were "Contracts" subject to this Rule 903), shall be liquidated 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 (provided that in respect of Contracts, this does not include, where the Defaulter acts as agent, 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), including, 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. Without prejudice to the generality of the foregoing, at the Clearing House's discretion:~~

(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) ~~Any such liquidation~~The Clearing House may be effected by placingplace, 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 Energy Contracts having different expiration months or exercise dates or for CDS Contracts having different series or version numbers or scheduled termination dates, may be liquidated by 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), for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise but subject always to, and accounting for the close-out amounts under, Rule 906. 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) [Not used].
- (iv) ~~(iii)~~Any Contracts (including for those recorded in one of the Defaulter's Customer Position Accounts) which are sale and purchase Contracts of 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) ~~(iv)~~—An Option may be ~~liquidated by closing transactions, exercise or abandonment~~terminated, exercised or abandoned, at the discretion of the Clearing House, and in any case where an Option is exercised, the Clearing House may ~~liquidate the underlying~~terminate or close out the Future, if any, ~~resulting from~~arising as a result of such exercise in accordance with the provisions of this Rule ~~903.905~~.
- (vi) ~~(v)~~—Notwithstanding any other provision of this Rule ~~903, any such liquidation may be effected without placing orders for execution, by making appropriate book entries on the records of the Clearing House (including, without limitation, by pairing and cancelling~~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) ~~at a price, for Futures or Options 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 and the price for a CDS Contract will be the Mark-to-Market Price, in either case on the day such liquidation~~cancellation is ordered or for CDS Contracts at the Mark-to-Market Price, or at(or alternatively, such other price shall apply as the Clearing House may establish in accordance with the Procedures and its risk policies).
- (vii) ~~(vi)~~—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 ~~remain~~are credited to the Defaulter's Proprietary ~~Accounts or Margin Account, any of its~~ Customer Margin Accounts (~~as applicable, subject to Rule 102.502(pi) or are~~ 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(~~pq~~)), subject to an obligation to account ~~to the Defaulter~~ 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 ~~this~~ Part ~~9.1~~.
- (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) ~~(vii)~~ The Clearing House shall be entitled to settle any Contract in respect of which settlement may have been, or ~~may otherwise (but were it not for the an~~ Event of Default) could have been, requested by the Defaulter.
- (x) ~~(viii)~~ 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) ~~(ix)~~ The Clearing House shall be entitled to determine an amount due from the Defaulter in substitution ~~offor~~ for delivery obligations.
- (xii) ~~(x)~~ 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) ~~(xi)~~ 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.

- (c) ~~(xii)~~ 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 ~~903(a)(xii)~~905(c), an equal notional amount of CDS Contracts of each relevant Set to which the Defaulter was party shall ~~hereby be liquidated~~be treated as having been closed out and terminated at the same price.

- (d) ~~(b)~~ If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to ~~liquidate~~close out or terminate all Contracts to which the Defaulter is party pursuant to Rule ~~903(a)~~905(b) or Rule 905(c), the Clearing House may ~~liquidate~~close out or terminate such Contracts by taking opposite positions for Energy Contracts in Contracts in the current expiration month and for CDS Contracts in Contracts of a different series or version number or scheduled termination date and ~~liquidating~~terminating the resultant ~~offset~~terminated positions.
- (e) ~~(c)~~ ~~All liquidations made~~All terminations and closing out of Contracts pursuant to this Rule ~~903~~905 shall be for the account and ~~risk~~cost of the Defaulter.

Rule 904 *Amounts Payable to the Clearing House*

- (f) ~~Upon completion of the liquidation or transfer of the positions of a Defaulter pursuant to Rule 903, 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 shall indemnify, hold harmless and~~ be liable to the Clearing House ~~to make payment~~ in respect of all the ~~Clearing House's and relevant Markets' (if any)~~ losses, unpaid fees, liabilities, damages, injuries, ~~delay~~taxes, costs and expenses (including, without limitation, legal fees and disbursements) incurred or suffered by any of the Clearing House and relevant Markets (if any), 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 or the close-out, termination or Transfer of the Contracts of the Defaulter. 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 ~~Rule 905~~ *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 ~~conduct the following process such that the sums payable in respect of Contracts (which are not voidable and voided by the Clearing House pursuant to Part 4) between the Defaulter and the Clearing House may be aggregated or set~~ 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 ~~a net sum or net sums (each, N) in any~~ 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:

$$N = L - A - D - C - M - GFC - SC - OA + OL, \text{ where:}$$

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 ~~as calculated in accordance with Rule 905(h)~~ (which are not voidable and voided by the Clearing House pursuant to Part 4) taking into account any of the following actions under ~~Rules 902~~ 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 or sale~~ 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,

~~including~~ 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 ~~and~~ accountancy or other professional services, expenses and disbursements, the costs of ~~liquidation~~ transfer, termination or close out 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 legal, accountancy or other professional services costs or expenses of the Clearing House may be allocated to the Proprietary Account regardless of the Contracts to which they relate.

A = the aggregate amount of all sums payable to the Defaulter in respect of Contracts ~~as calculated in accordance with Rule 905(h)~~ (which are not voidable and voided by the Clearing House pursuant to Part 1), taking into account any of the actions referred to under L (i), (ii) or (iii) above ~~but~~ 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 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 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 Commodity or Investment 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 ~~hence~~ 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 ~~hence~~ 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 ~~hence~~ aggregated in the calculation under this Rule 906(a) with any amount ~~falling under~~ *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 ~~Original Margin, Initial Margin, Portfolio Risk Margin, Physical Settlement Margin or margin under Rule 502(g) or in satisfaction of such Margin requirements,~~ margin under Rule 502(g), 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 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) 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,

including in any such case under (i) or (ii) 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, ~~subject in any case to a deduction for any unsatisfied claims arising out of the default of the Defaulter before the Default in relation to which the calculation is being made, excluding any Margin that would otherwise fall under amount *M* transferred to a Transferee Clearing Member pursuant to Rule 902(a) and further excluding any Pledged Collateral returned to an FCM Clearing Member or any of its Customers pursuant to Rule 1604(e);~~ 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; ~~including any~~ or the Customer Account Gross-Net Amount;
- (ii) in the case of a Defaulter that was an FCM/BD CDS Clearing Member and one of its Designated CDS Customer Accounts, such part of any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral or the Customer Account Gross-Net Amount as is attributable to a particular CDS Sub-Account and is available in accordance with Rule 502(i) to meet a loss on that CDS Sub-Account;
- (iii) otherwise, any property provided by or on behalf of the Defaulter that constitutes Surplus Collateral.

including, in each of cases (i), (ii) and (iii), where applicable any such amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee ~~entered into~~ in favour of the Clearing House ~~surplus to applicable Margin requirements not falling under *M*,~~ but excluding any Pledged Collateral returned to ~~an FCM~~ a Clearing Member or any of its Customers pursuant to Rule ~~1604(e);~~ 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 any amount payable to the Defaulter due to any breach by the Clearing House of these Rules), in any case at the discretion of the Clearing House;~~

- (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 to meet a Gross Margin Shortfall,

but excluding in any case: (A) any Pledged Collateral returned to an FCMa Clearing Member or any of its Customers pursuant to Rule 1604(e); 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 all~~ All such amounts specified above ~~are~~ 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(pq), ~~905~~ 906(b) and 1103 and provided further that any amount is only included in respect of the relevant net sum to the extent allowed pursuant to Rule ~~905~~ 906(b).

- (b) Where the Defaulter has one or more Customer Accounts, the process set out in Rule ~~905~~ 906(a) shall, ~~subject to Part 11,~~ 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; ~~and~~
 - (iii) the Defaulter's DCM Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's DCM Customers;

- (iv) the Defaulter's ~~General~~SBS Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's ~~General~~SBS Customers; ~~and~~
- (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) ~~(v)~~ the Defaulter's Proprietary Account and other Contracts, rights, obligations and liabilities not falling under Rule ~~905~~906(b)(i) to ~~(ivvi)~~.

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, 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 Defaulter's Guaranty Fund Contributions, amounts under a Controller Guarantee or amounts payable under a letter of credit may be used for the purpose of calculating any net sum (provided that any such amounts are not double counted), subject to the restrictions in Rule 1103 and to Rule 102(p). The aggregate sums finally payable shall be separately certified under Rule 905(d).~~ 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 ~~both~~more of ~~the same~~that Defaulter's ~~relevant~~ Customer Accounts (and, if it does so, shall include any such amounts within ~~the amount M or for~~ the net sum to be calculated in relation to ~~the Defaulter's~~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 ~~amount M~~net sum for ~~any of the Defaulter's Customer Accounts and provided further that, if there is a shortfall to more than one class of the Defaulter's Customer Accounts, any Proprietary Account surplus shall first be applied as between the classes of Customer Accounts in proportion to the shortfalls for each class of Customer Account until there is no shortfall in respect of one or other of the classes of Customer Accounts and thereafter shall be applied to the Customer Account which remains subject to a shortfall. The Clearing House shall~~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 ~~class of Customer Account of a Defaulter to meet a shortfall on any~~

~~other class of Customer Account of the same Defaulter, as further set out in Rule 102(p). The Clearing House shall not aggregate, set off or apply any Margin surplus available to it in relation to a Customer Account to meet a shortfall on any of the Defaulter's Customer Accounts to meet a shortfall on the Defaulter's~~ Proprietary Account.

- (d) ~~(e)~~ 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 ~~905.906~~. Where there is more than one separately certified amount N certified under Rule ~~905.906~~(~~d~~e) as a result of Rule ~~905.906~~(b), each amount so certified shall be treated as a separate obligation which cannot be netted off against another ~~A~~certified amount N in respect of a different account of the Defaulter.
- (e) ~~(d)~~ 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 ~~until~~ 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 ~~905.906~~(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) ~~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.~~ 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) ~~The Clearing House will report to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part 9.~~ 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) ~~Where a Defaulter enters into Contracts in more than one capacity for purposes of section 187 of the Companies Act 1989, separate net sums shall be calculated pursuant to Rule 905(a) and 905(b) in respect of each capacity in which the Defaulter acts. 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 905 and may exercise any of its powers under this Part 9 accordingly.~~ 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) ~~For the purposes of calculating amounts *L* and *A* in Rule 905(a), the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:~~ 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 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 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 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~~ account is an account of the Defaulter or an account operated by an Insolvency Practitioner on behalf of the Defaulter;
 - (ii) ~~the price at which the Contract or Open Contract Position was sold, transferred, terminated or liquidated pursuant to this Part 9.~~ 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) ~~(i) 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 FCM Clearing Member is party as set forth in these Rules. Accordingly, the Clearing House and each such Clearing Member intend and agree that the Pledged Collateral provided to the Clearing House is provided pursuant to a "market charge" for purposes of the Companies Act 1989. 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]

Rule 909 [Not used]

Rule 910 [Not used]

Rule 911 [Not used]

Rule 912 Default procedure for certain termination events

- (a) If the Clearing House becomes aware of there being or occurring an Insolvency or Failure To Pay in respect of the Clearing House, the Clearing House will promptly issue a Circular specifying that the same has occurred.

- (b) In the event of any termination pursuant to:

- (i) Rule 209(c)(i)(B);
- (ii) Rule 209(c)(ii);
- (iii) Rule 209(f)(i)(B); or
- (iv) Rule 209(f)(ii).

the provisions of Rule 209(c)(iii) shall apply. Rule 209(c) and Rule 209(f) are default rules for such purposes and Rule 907(g) applies equally to such provisions.

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~~working~~ 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

- (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) ~~The~~[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) ~~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; 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) (1)
 - (i) ~~(+)(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) ~~(+)(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

- (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)~~

- ~~(a)~~ ~~(1)~~ 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.

[\(i\)](#) ~~(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.

[\(ii\)](#) ~~(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

Part 11 Guaranty Funds

Rule 1101 *Establishment and parameters of the Guaranty Funds*

- (a) There shall be two separate Guaranty Funds operated by the Clearing House: the CDS Guaranty Fund and the Energy Guaranty Fund. CDS Clearing Members shall be liable to make and maintain CDS Guaranty Fund Contributions. Energy Clearing Members shall be liable to make and maintain Energy 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 Energy Guaranty Fund will be expressed in USD and will be reviewed quarterly by the Clearing House. The total amount of the CDS 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. 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. Energy Guaranty Fund Contributions for each Energy 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.
- (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) Guaranty Fund Contributions of Clearing Members 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 or liquidation~~[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 Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period pursuant to Rule 1102(l)). Energy Guaranty Fund Contributions of a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member following termination of its membership of the Clearing House in relation to Energy 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 Energy Guaranty Fund beginning after the ~~transfer or liquidation~~[Transfer, close out or termination](#) of all of its Energy Contract positions at the Clearing House and the payment of all other amounts due to the Clearing House in respect of Energy Contracts (subject to Energy 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 Energy Guaranty Fund pursuant to Rule 1102(l)). CDS Guaranty Fund Contributions of a Clearing Member that is both an

Energy Clearing Member and a CDS Clearing Member following termination of its membership of the Clearing House in relation to CDS under Rule 209(f) 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 or liquidation~~[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)).

- (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.
- (i) In the event of application of any Guaranty Fund Contributions taking place pursuant to Rule 1103 or [Rule](#) 1104, 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 Energy Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House Energy Contributions by Circular; and
 - (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.

Energy Clearing Members must make required Energy 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 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. The Clearing House shall ensure that any specified new Clearing House Contributions are held by it in accordance with Rule 1104(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 Energy Assessment Contributions pursuant to Rule 1105 (subject only to the provisions of Rules 1105(h) and 1105(i)) or CDS Assessment Contributions pursuant to Rule 1106 (subject only to the provisions of ~~Rule~~[Rules](#) 1106(h) and 1106(i)).

- (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 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), 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 CDS GF Contributions and Clearing House Energy 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 ~~liability~~[shortfall or loss](#) following exhaustion of the assets specified in Rule ~~1103~~[1104](#) or in substitution of any such assets; and (ii) making reimbursement payments to Persons

- (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).
- (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.

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 Energy Guaranty Fund Contributions, no CDS Guaranty Fund Contributions, CDS Assessment Contributions or Clearing House CDS Contributions 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 CDS Guaranty Fund Contributions, no Energy Guaranty Fund Contributions, Energy Assessment Contributions or Clearing House Energy Contributions 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 both a CDS Clearing Member and an Energy Clearing Member and any Energy Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(~~f~~g)(ii)(A), no non-defaulting Energy Clearing Member shall be required to make any payment to replenish the Energy Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the Energy 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 Energy Guaranty Fund (other than pursuant to Rule ~~902~~903(~~ee~~), if the non-defaulting Energy Clearing Member becomes a Defaulter);

(v) if a Defaulter was both a CDS Clearing Member and an Energy Clearing Member and any CDS Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(~~f~~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 ~~902~~903(~~ee~~), if the non-defaulting CDS Clearing Member becomes a Defaulter); ~~and~~

(vi) [not used];

(vii) ~~(vi)~~-without limitation to the generality of Rule 102(~~p~~q), this Rule 1103 is subject to Rule 102(~~p~~q); ~~and~~

(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)).

(b) In the case of a Defaulter which was an Energy Clearing Member but not 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 of that Clearing Member (including in connection with any net sum calculated under Rule ~~905~~906), in the following order of recourse:

(i) first, any ~~amounts payable to the Defaulter in respect of Contracts, any Margin or Surplus Collateral and any other~~ amounts falling under A, D, C or M in Rule ~~905~~906(a), in the order specified in Rule ~~905~~906(a);

- (ii) second, ~~Energy~~ Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such ~~Energy~~ Guaranty Fund Contributions falling under amount *GFC* in Rule ~~905~~906(a);
 - (iii) third, any amounts falling under *SC* or *OA* in Rule ~~905~~906(a) in the order specified in Rule ~~905~~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 1103(b)(iv) to (vii)-~~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 Energy Initial Contribution;
 - (v) fifth:
 - (A) Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Energy 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 Energy GF Contribution,

on a basis *pro rata* to the sum of the total of all Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter and Energy Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House Energy 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, Energy 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 not an Energy 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 ~~905~~906), in the following order of recourse:

- (i) first, any ~~amounts payable to the Defaulter in respect of Contracts, any Margin or Surplus Collateral and any other~~ amounts falling under A, D, C or M in Rule ~~905~~906(a), in the order specified in Rule ~~905~~906(a);
- (ii) second, ~~CDS~~ Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such ~~CDS~~ Guaranty Fund Contributions falling under amount *GFC* in Rule ~~905~~906(a);
- (iii) third, any amounts falling under *SC* or *OA* in Rule ~~905~~906(a) in the order specified in Rule ~~905~~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 1103(c)(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) (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) [Not used].

(e) ~~(d)~~ In the case of a Defaulter which was both a CDS Clearing Member and an Energy Clearing Member, separate amounts shall be calculated in accordance with Rules ~~905~~906(a) and (b) as if they were "net sums", *mutatis mutandis* in respect of assets and liabilities relating to the Clearing of CDS Contracts ("CDS Default Amount") and the Clearing of Energy Contracts ("Energy 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 Energy Contracts, then the net sum declared in respect

of such account shall be the sole element of the Energy 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; and

(iii) if an Account in respect of which a positive net sum was produced was used for the Clearing of both Energy Contracts and CDS Contracts then:

(A) ~~(i)~~ 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 ~~905~~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 ("~~CDS—Default Amount~~"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)); and

(B) ~~(ii)~~ the Energy 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 ~~905~~906(a) in respect of Energy Contracts, Margin or Surplus Collateral in respect of Energy Contracts, Guaranty Fund Contributions to the Energy Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to Energy Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below ("~~Energy Default Amount~~").

"Non-Exclusive Assets" constitute any amounts or assets included or to be included within the calculation of the amount *N* in Rule ~~905~~906(a) not relating exclusively to either Energy Contracts or CDS Contracts. Non-Exclusive Assets may be included in the calculation of either the CDS Default Amount or the Energy Default Amount or split between both such calculations at the Clearing House's discretion, provided that:

(A) to the extent that both the CDS Default Amount and the Energy Default Amount represent or would (but for this provision) represent a loss or shortfall, the Non-Exclusive Assets must be included in the calculation of the CDS Default Amount and the Energy Default Amount in proportion to the Margin requirements of the Defaulter for CDS Contracts and Energy

Contracts respectively immediately prior to the Event of Default until one of the CDS Default Amount or Energy Default Amount would represent zero;

- (B) subject to the process in Rule 1103(e)(iii)(A) first being completed if applicable, to the extent that one of the CDS Default Amount or the Energy Default Amount represents or would (but for this provision) represent a surplus to the Clearing House and the other represents 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.

"**Non-Exclusive Liabilities**" constitute any liabilities included or to be included within the calculation of the amount *N* in Rule 905,906(a) not relating exclusively to either Energy Contracts or CDS Contracts. Non-Exclusive Liabilities may be included in the calculation of either the CDS Default Amount or the Energy Default Amount or split between both such calculations at the Clearing House's discretion, provided that:

- (A) ~~(C)~~ to the extent that both the CDS Default Amount and the Energy Default Amount represent or would (but for this provision) represent a surplus, the Non-Exclusive Liabilities must be included in the calculation of the CDS Default Amount and the Energy Default Amount in proportion to the Margin requirements of the Defaulter for CDS Contracts and Energy Contracts respectively immediately prior to the Event of Default until one of the CDS Default Amount or Energy Default Amount would represent zero; and

- (B) ~~(D)~~ subject to the process in ~~(C)~~Rule 1103(e)(iii)(A) first being completed if applicable, to the extent that one of the CDS Default Amount or the Energy Default Amount represents or would (but for this provision) represent a surplus to the Clearing House and the other represents 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.

- (f) ~~(e)~~ In any instance in which assets are to be applied pursuant to Rule 1103(~~f~~g)(ii), (iii), (iv) or (v), the Clearing House shall publish the amount of any CDS Default Amount or Energy Default Amount that is required to be calculated under Rule 1103(~~d~~e) in a Circular. For the avoidance of doubt, any CDS Default Amount or Energy Default Amount so published shall not constitute a "net sum" for purposes of Rule 905,906, the Companies Act 1989 or the Settlement Finality Regulations.

- (g) ~~(f)~~ In the case of a Defaulter which was both a CDS Clearing Member and an Energy 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 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 ~~905~~906), in the following order of recourse:

- (i) first, any ~~amounts payable to the Defaulter in respect of Contracts, any Margin or Surplus Collateral and any other~~ amounts falling under A, D, C or M in Rule ~~905~~906(a), in the order specified in Rule ~~905~~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 ~~905~~906(a), provided that:
 - (A) Energy Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any ~~liabilities~~shortfall or loss relevant to the Energy Default Amount;
 - (B) CDS Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any ~~liabilities~~shortfall or loss relevant to the CDS Default Amount; ~~and~~
 - (C) [not used];
 - (D) ~~(C)~~—subject to ~~paragraphs~~ Rule 1103(g)(ii)(A) and (B), any Energy Guaranty Fund Contributions of a Defaulter may be applied against any other ~~liabilities of the Defaulter~~shortfall or loss but only after the earliest date on which non-defaulting Energy Clearing Members are required to replenish the Energy 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 Energy Clearing Member; and
 - (E) ~~(D)~~—subject to ~~paragraphs~~ Rule 1103(g)(ii)(A) and (B), any CDS Guaranty Fund Contributions of a Defaulter may be applied against any other ~~liabilities of the Defaulter~~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(~~ag~~)(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;
- (iii) third, any amounts falling under SC or OA in Rule ~~905~~906(a) in the order specified in Rule ~~905~~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 1103(g)(iv) to (vii) ~~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) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);
- (iv) fourth:

- (A) the Clearing House Energy Initial Contribution, provided that it shall only be applied up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 1103(~~ef~~) and in circumstances in which the Energy Default Amount represents a shortfall or ~~liability~~loss; and
 - (B) 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(~~ef~~) and in circumstances in which the CDS Default Amount represents a shortfall or ~~liability~~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) the Clearing House Energy GF Contribution; and
 - (C) the Clearing House CDS GF Contribution~~;~~

provided that:

- (1) ~~(1)~~ Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House Energy GF Contribution shall only be applied towards and up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 1103(~~ef~~) and in circumstances in which the Energy Default Amount less any assets applied in accordance with ~~paragraph—(f)~~Rule 1103(g)(iv)(A) represents a shortfall or ~~liability~~loss; and
- (2) ~~(2)~~ 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(~~ef~~) and in circumstances in which the CDS Default Amount less any assets applied in accordance with ~~paragraph—(f)~~Rule 1103(g)(iv)(B) represents a shortfall or ~~liability~~loss;

and provided further that:

- (X) ~~(X)~~ Energy Guaranty Fund Contributions and the Clearing House Energy GF Contribution are applied on a basis *pro rata* to the sum of the total of all Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter in question and Energy Guaranty Fund Contributions of other Defaulters that have been or are to

be applied in connection with separate Default proceedings) and the Clearing House Energy GF Contribution at the time of the Event of Default; and

(Y) ~~(Y)~~ 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;

- (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, 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 Energy Default Amount and any shortfall relating to the CDS Default Amount; and
- (vii) seventh, Energy Assessment Contributions received by the Clearing House pursuant to Rule 1105 and CDS Assessment Contributions received by the Clearing House pursuant to Rule 1106.

(h) ~~(g)~~ 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 ~~Rule 1103~~ 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 ~~Rule 1103~~ Part 11.

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 ~~905~~ 906 and 1103. 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-~~positions from, if~~ that Clearing Member, ~~if it~~ 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 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 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(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. 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; 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 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; ~~or~~ (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(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 CDS Contributions in an account or accounts separate from Clearing House Energy Contributions. This Rule 1104(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: Energy*

- (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 Energy 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 Energy Clearing Member not having been met pursuant to:
- (i) Rule 1103(b)(i) to ~~1103(b)~~(vi); or
- (ii) Rule 1103(~~fg~~)(i) to ~~1103(f)~~(vi), only to the extent that the Energy Default Amount, less any assets applied in accordance with Rule 1103(~~fg~~)(iv)(A), Rule 1103(~~fg~~)(v)(B) and Rule 1103(~~fg~~)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the Energy Default Amount), represents a shortfall or ~~a liability~~loss.

Immediately upon the Clearing House certifying the Energy Assessment Amount in a Circular, all Energy Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay Energy Assessment Contributions to the Clearing House in accordance with Rule 1105(b).

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

$$\frac{EAA \times EGF(CM)}{EGF(all)}$$

where:

EAA is the Energy 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 Energy Assessment Amount shall be no greater than the amount equal to twice the total required Energy Guaranty Fund Contributions of all Energy Clearing Members immediately prior to the relevant Event of Default (less Energy Guaranty Fund Contributions of Defaulters and excluding the Clearing House Energy Contributions);

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

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

- (c) A Person that ceases to be an Energy Clearing Member shall be subject to obligations to pay Energy Assessment Contributions only in respect of:
- (i) Events of Default declared in relation to Clearing Members that are Energy 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 Energy Clearing Members occurring after the Termination Date but whilst it still has an Energy Guaranty Fund Contribution with the Clearing House,

provided that:

- (A) the aggregate amount of all Energy 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 Energy Guaranty Fund Contributions have been applied, an amount equal to twice that Person's Energy Guaranty Fund Contribution immediately prior to the

first Event of Default being declared which led to the relevant application of Energy 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 Energy Guaranty Fund Contribution on the date of service of the relevant notice of termination; and

- (B) Energy 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 Energy Assessment Amount is not met by Energy Assessment Contribution receipts from Energy Clearing Members due to non-payment by an Energy Clearing Member or Energy Clearing Members, Default of an Energy Clearing Member or Energy 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 Energy Assessment Contribution receipts shall be re-assessed against all Energy Clearing Members (other than Defaulters and Persons that have defaulted in making an Energy Assessment Contribution) in accordance with Rule 1105(a), as if ~~the~~such shortfall were the Energy Assessment Amount, provided that no Energy Clearing Member shall be liable to pay Energy Assessment Contributions in respect of a single Default for an amount greater than twice its Energy Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1105(c), further Energy Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire Energy Assessment Amount has been met in full by Energy Assessment Contributions.
- (e) All Energy Assessment Contributions shall become due and payable at such time as the Clearing House notifies to Energy Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any Energy 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 Energy Assessment Contribution in whole or in part from the Defaulter or a Person liable to pay an unpaid Energy 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 Energy Clearing Members (excluding any Defaulter) *pro rata* in respect of paid Energy 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~~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 Energy 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 Energy Assessment Contributions. Neither the exercise of powers of assessment by the

Clearing House nor the payment of Energy 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). Energy Assessment Contributions do not constitute Guaranty Fund Contributions.

- (h) Upon an Event of Default or Events of Default occurring and Energy Assessment Contributions becoming due, a Clearing Member liable to pay an Energy 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 Energy Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), an Energy Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the Energy Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further Energy Assessment Contribution payments pursuant to Rules 1105(c) and 1105(d). ~~Rules~~[Rule 209\(c\)–\(third sentence only\);\(iii\), Rule 209\(c\)\(iv\), 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 Energy Assessment Contributions was made.
- (i) [Upon an Event of Default or Events of Default occurring and Energy Assessment Contributions becoming due, a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member and which is liable to pay an Energy Assessment Contribution shall be entitled to terminate its status with the Clearing House as an Energy Clearing Member \(maintaining its status as a CDS Clearing Member\) with effect from the moment immediately prior to the time at which Energy Guaranty Fund Contributions](#)

- (j) ~~(i) Upon an Event of Default or Events of Default occurring and Energy Assessment Contributions becoming due, a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member and which is liable to pay an Energy Assessment Contribution shall be entitled to terminate its status with the Clearing House as an Energy Clearing Member (maintaining its status as a CDS Clearing Member) with effect from the moment immediately prior to the time at which Energy 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 Energy Clearing Member in such circumstances shall have no further obligation to replenish the Energy Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further Energy Assessment Contribution payments pursuant to Rules 1105(c) and 1105(d). Any Clearing Member terminating its status as an Energy 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 Energy 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 ~~1103(e)~~(v); or
 - (ii) Rule 1103(~~fg~~)(i) to ~~1103(f)~~(vi), only to the extent that the CDS Default Amount, less any assets applied in accordance with Rule 1103(~~fg~~)(iv)(B), Rule 1103(~~fg~~)(v)(C) and Rule 1103(~~fg~~)(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 ~~a liability~~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 ~~the~~[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). ~~Rules~~[Rule](#) 209(c) ~~-(third sentence only)-(iii).~~ [Rule 209\(c\)\(iv\).](#) [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 Energy 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 Energy 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.

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) enables 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) enables 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) enables 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) enables transfers, assignments and novations of Contracts between Clearing Members or following a Default;
 - (v) enables transfers of Non-Cash Collateral to or to the order of the Clearing House and Clearing Members;
 - (vi) enables Bilateral CDS Transactions [and CDS Trade Particulars](#) to give rise to CDS Contracts;
 - (vii) enables ICE OTC Block Transactions and ICE Futures Europe Block Transactions to give rise to Energy Contracts;
 - (viii) facilitates physical settlement obligations under CDS Contracts; and
 - (ix) facilitates 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 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, Energy Block Clearing Order, CDS Clearing Order or CDS Physical Settlement 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 (excluding any Energy 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 submitted for Weekly Clearing 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 ~~902(a)~~[903](#), Rule ~~903~~[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 OTC Block Transaction or ICE Futures Europe Block Transaction from the relevant Market (such Securities Transfer Order, a **"Energy Block Clearing Order"**);
- (iv) in respect of CDS Trade Particulars submitted for Clearing in relation to a Bilateral CDS Transaction ~~submitted for Weekly Clearing~~ already recorded in Deriv/SERV, the Clearing House providing a report to a Clearing Member after it has checked whether a ~~Bilateral CDS Transaction~~ Trade Particulars submitted for Clearing ~~is~~ are consistent with the records submitted by another Clearing Member and, where applicable, with the records in Deriv/SERV (such Securities Transfer Order, a ~~"Weekly~~ Subsisting CDS Clearing Order");
- (v) in respect of ~~a Bilateral CDS Transaction~~ CDS Trade Particulars other than as referred to in (iv) above submitted for ~~Trade Date~~ 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 ~~"Trade Date~~ New CDS Clearing Order" and, together with a ~~Weekly~~ Subsisting CDS Clearing Order, "CDS Clearing Order"); or
- (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"**).

- (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 ~~(which, for any CDS Contract arising as a result of Trade Date Clearing, is the Initial Payment)~~; 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 Energy Block Clearing Order shall apply and have effect in respect of the ICE OTC Transaction or ICE Futures Europe Transaction in question and any resulting Energy 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) 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 Energy Block Clearing Order:
 - (A) each Clearing Member that has submitted or confirmed details of the ICE OTC Block Transaction or ICE Futures Europe Block Transaction;
 - (B) any Affiliate of the Clearing Member that was party to an ICE OTC Block Transaction or ICE Futures Europe 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 ~~Bilateral CDS Transaction~~ [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; and

- (l) 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.
- (m) 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(f) and Rule 1205(g), 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 ~~is~~ 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 Energy 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) 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 ~~which is~~ 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 ~~Weekly~~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 ~~relating to any Bilateral CDS Transaction~~in the CDS Trade Particulars to which the ~~Weekly~~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 Energy Block Clearing Order or CDS Clearing 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 ~~or~~, Transaction or CDS Trade Particulars ever arisen ~~or~~, 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 ~~Bilateral~~ CDS ~~Transaction~~ 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.

- [\(f\)](#) ~~(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 Energy 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 Energy Block Clearing Order, any Market) rejects a Transaction [or CDS Trade Particulars](#) for Clearing.
- [\(g\)](#) ~~(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.
- [\(h\)](#) ~~(h)~~ 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 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 or Energy Block Clearing 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) 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(f) when standard Clearing and payment processes apply.
- (g) A New Contract Payment Transfer Order relating to an Energy Contract shall be satisfied immediately and automatically if and at the point that the relevant Energy 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

[\(c\)](#) ~~(e)~~ 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

[\(d\)](#) ~~(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.

[\(e\)](#) ~~(e)~~ Any notice by fax shall not be effective until hard copy confirmation is served pursuant to Rule 1207(d).

Part 15 Credit Default Swaps

Part 15 of the Rules does not apply to ~~Energy Contracts~~. Non-CDS 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) ~~(b)~~ 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) ~~(e)~~ The term "**CADP**" or "**CDS Alternative Delivery or Settlement Procedure**" has the meaning set out in Rule 1514.
- (e) ~~(d)~~ 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) ~~(e)~~ 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.
- ~~(f) The term "**CDS Procedures**" means the chapter of the Procedures relevant to CDS only.~~
- (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 ~~or, where applicable in accordance with the Procedures, a Regional CDS Committee 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) ~~(j)~~ The term "**Determining Body**" means the Credit Derivatives Determinations Committee or ~~the Regional CDS Committee or any~~ other relevant body or person ~~with that is expressed to have~~ jurisdiction to make the relevant determination under the Credit Derivatives Definitions or the ~~Procedures~~ CDS Procedures. The Credit Derivatives Determinations Committee is not a Representative or committee of the Clearing House.
- (o) ~~(k)~~ The term "**Failed Amount**" has the meaning given to that term in Rule 1512.
- (p) ~~(l)~~ 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. 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) ~~(m)~~ 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) ~~(n)~~ The term "**Matched CDS Contract**" means a Matched CDS Seller Contract or a Matched CDS Buyer Contract.
- (s) ~~(o)~~ 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) ~~(p)~~ 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) ~~(q)~~ 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) ~~(r)~~ 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(~~faa~~)(i).
- (bb) ~~(s)~~ 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.

- [\(cc\)](#) ~~(c)~~ The term "**Relevant Member State**" means any member state of the European Economic Area which has implemented the Prospectus Directive.
- [\(dd\)](#) ~~(d)~~ 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 ~~of the occurrence of a Restructuring~~ [\(and no](#) Credit Event ~~(and no~~ [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.
- [\(ee\)](#) ~~(e)~~ The term "**Restructuring Credit Event Notice**~~Announcement~~" means a Credit Event ~~Notice, describing~~ [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).
- [\(gg\)](#) ~~(g)~~ 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.
- [\(hh\)](#) ~~(h)~~ 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) ~~(y)~~ 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 ~~and~~, 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) ~~(z)~~—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.

[\(nn\)](#) ~~(aa) The terms "CDS Default Committee", "**Dispute Resolver**", "**Dispute Resolution Panel**", "**External Reviewer**", "**Regional CDS Committee**", "**Regional CDS Committee Credit Event Announcement**", "**Sovereign Contract**" and "**Trade Date Clearing**~~[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) ~~(bb)~~ 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 ~~*Incorporation of ISDA Master Agreement*~~Terms of CDS Contracts and Initial Payments

(a) The terms of each CDS Contract shall be as follows:

- ~~(i) those of the ISDA 2002 Master Agreement, as published by ISDA (as amended) between the Clearing House and the relevant Clearing Member ("Master Agreement");~~
- (i) (ii) in relation to a CDS Contract other than a Restructuring CDS Contract, such quantity, notional and other economic terms (as determined pursuant to the CDS Procedures) as were applicable to the Bilateral CDS Transaction (or portion thereof) submitted to the Clearing House in respect of the CDS Trade Particulars that gave rise to the CDS Contract and, subject, in relation to the case of a Restructuring CDS Contract, such quantity, notional and other economic 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; and
- (ii) (iii) the applicable terms set out in the Rules (including, without limitation, the CDS Procedures and the Credit Derivatives Definitions), 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 ~~Weekly Clearing~~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 ~~Bilateral CDS Transaction~~Trade Particulars submitted for Clearing ~~contains any~~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 ~~arising from Trade Date Clearing~~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)(~~vi~~)(ix). For the avoidance of doubt: (i) each CDS Contract arising from ~~Trade Date Clearing~~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, ~~that would have been due under the Bilateral~~ reflected in the CDS Transaction Trade Particulars submitted for ~~Trade Date~~ Clearing; and (ii) CDS Contracts arising in other circumstances (other than pursuant to ~~Weekly~~ 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) or (xi)) may include an obligation to pay an Initial Payment constituting a payment obligation of the relevant party thereto.

- (c) ~~For the avoidance of doubt, a Clearing Member that does not clear CDS Contracts is not required to execute a Master Agreement with the Clearing House.~~

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),
 - ~~(iv)~~ 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 ~~which the Clearing House is not a party~~ a Customer, the Clearing Member and its ~~counterparty~~ 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(~~faa~~) 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(~~faa~~) 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 ~~to which a Clearing Member is party~~ (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 ~~for each~~ in respect of the following ~~positions~~ accounts of ~~the~~ a CDS Clearing Member:

- ~~(a) its~~ Proprietary Account;
- ~~(b) gross protection buyer position on its Customer Account (if any);~~ and
- ~~(c) gross protection seller position on its~~ each of its Designated CDS Customer ~~Account~~ Accounts (if any).

Rule 1505 *Credit Event Notices, Notices of Physical Settlement, NOPS Amendment Notices and Notices to Exercise Movement Option*

- (a) ~~Neither~~ None of the Clearing House ~~nor~~, 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) ~~Neither~~None of the Clearing House ~~nor~~, 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 ~~and~~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) ~~(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 ~~a Credit Event Announcement has been made in respect of~~ an Applicable Credit Event other than Restructuring has occurred; or
- (ii) ~~(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 ~~Credit Event Announcement has been made in respect of a~~ Restructuring Credit Event has occurred
- (c) ~~(e)~~ 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) ~~(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 ~~to the~~ 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 respect of a Restructuring Credit Event~~, 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 ~~to the~~ 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; ~~and~~
- (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 ~~in respect of which a Credit Event Announcement has been made in respect of a or Triggered Restructuring Credit Event;~~ 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 ~~in respect of which a Credit Event Announcement has been made in respect of a Restructuring Credit Event;~~ or Triggered Restructuring CDS Contract Portion, as the case may be, and any Settlement Notices;

- (iii) ~~(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 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;
- (iv) ~~(iv)~~ 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
- (v) ~~(v)~~ 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) ~~(b)~~ ~~In~~ 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; ~~and~~
 - (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 ~~in respect of which a Credit Event Announcement has been made in respect of a~~ or Triggered Restructuring Credit Event; 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 ~~in respect of which a Credit Event Announcement has been made in respect of a Restructuring Credit Event~~ 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) ~~(e) In~~ 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 ~~notice to~~ Manual MP Notice or Settlement Notice to or on the Matched CDS Seller in accordance with the Contract Terms and Rule 1509(~~bc~~), such ~~notice~~ 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 ~~notice to~~ Manual MP Notice or any Settlement Notices to or on the Matched CDS Buyer in accordance with the Contract Terms and Rule 1509(~~ab~~), such ~~notice~~ 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) ~~(d) Following delivery by a Matched CDS Buyer or Matched CDS Seller of any notice of a nature referred to in Rule 1509(a) or (b) (any such notice, a "MP Notice"), the CDS Clearing Member that delivered such MP Notice shall, at the times and in the circumstances specified in the Procedures, deliver a written copy of such MP Notice to the Clearing House in accordance with the Procedures. Where required by the Procedures, the Clearing House will provide a copy of the copy of each MP Notice received by it to both CDS Clearing Members in each Matched Pair under which an MP Notice has been served or appears to have been served, in accordance with the Procedures. 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 and will require the relevant CDS Clearing Members to update~~ 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) ~~(e)~~ 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 cleared funds, 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;

- [\(vi\)](#) ~~(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;
- [\(vii\)](#) ~~(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
- [\(viii\)](#) ~~(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, ~~event of default or failure to pay~~ Bankruptcy or Failure To Pay by the Clearing House under these Rules, ~~any Master Agreement~~ 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;
- (c) if the Matched CDS Buyer elects to notify the Clearing House of such failure to pay in accordance with ~~paragraph Rule 1512~~ 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 ~~paragraph Rule 1512~~ 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
- (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 ~~Rules~~[Rule](#) 1509(~~ab~~) and (~~bc~~) 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 ~~Rule~~ 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 ~~in respect of a Restructuring Credit Event~~ 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 ~~1515, 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 relevant Clearing Members together with~~ 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) ~~Until further notice by the Clearing House, there will be no Customer Account available to Clearing Members in respect of CDS Contracts or Margin relating to CDS Contracts. As a result, all CDS Clearing Members must ensure that any Margin provided to the Clearing House~~ Accounts are available in relation to the Clearing of CDS Contracts is capable of being received by the Clearing House only in circumstances in which no acknowledgement by the Clearing House pursuant to the second sentence of Clause 5.3 of Clearing Membership Agreements applies in respect of the Margin. Accordingly, until such further notice, Accordingly:
 - (i) the third and fourth sentences of Clause 5.3 of the Clearing Membership Agreement ~~shall not apply~~ are applicable in relation to CDS Contracts; recorded in a Designated CDS Customer Account; and
 - (ii) Circular no. C08/032 ~~is inapplicable~~ applies in relation to CDS Contracts and related Margin relating to CDS Contracts; recorded in a Designated CDS Customer Account of a Non-FCM/BD CDS Clearing Member who falls within the scope of that Circular.
 - (iii) ~~Part 16 of the Rules does not apply to CDS Clearing Members;~~
 - (iv) ~~Pledged Collateral Accounts are not available to CDS Clearing Members; and~~

- ~~(v) notwithstanding any other provision of these Rules, the Rules shall be construed accordingly.~~

Rule 1517 *Supplemental Default Rules*

- ~~(a) 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 Procedures.~~
- ~~(b) 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.~~

(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, ~~Regional CDS Committee, Dispute Resolver, Dispute Resolution Panel, in accordance with the CDS Procedures or the~~ Credit Derivatives Determinations Committee, ~~External Reviewer or ISDA in accordance with the CDS Procedures 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(g).

- (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) ~~(d)~~ 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.

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 ~~or~~, 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 ~~(or~~ 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, 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 ~~such~~ 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) ~~The first sentence of Rule 402(a) and the whole of Rule 405(a)(i) shall not apply to an FCM Clearing Member in respect of a Transaction or Contract where it is acting for an FCM Customer. Notwithstanding the characterisation of the relationship between an FCM Clearing Member and its FCM Customer as an agency relationship as between such parties, where an FCM Clearing Member clears a Contract for an FCM Customer, such FCM Clearing Member becomes liable to the Clearing House, and the Clearing House becomes liable to the FCM Clearing Member, on such Contract as though the Contract were for the FCM Clearing Member's own account, subject in all cases to the provisions of this Part 16. Except as provided by Applicable Law and Rule 1605 with respect to a Customer Account (and further to the second sentence of Rule 402(a)), in performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights as against the Clearing House pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Eneumbrance (without affecting the rights of Customer as against the FCM Clearing Member with respect to such Contracts under Applicable Law) in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).~~ 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) ~~Neither Rule 402(a), Rule 405(d), Rule 408 nor~~ 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 ~~or Transaction. No such provision shall negate in any manner an FCM Customer's rights with respect to customer property held by an FCM Clearing Member (and not by the Clearing House).~~

- (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 ~~deleted, 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. ~~For purposes of the representation in Rule 504(e)(ii) in respect of Margin furnished with respect to a Pledged Collateral Account and for purposes of section 2.7 of each Pledged Collateral Addendum, the definition of "Encumbrances" shall be amended by deleting the phrase "retention of title."—Neither Rule 504(e)(ii) Nothing in the Rules~~ nor any Pledged Collateral Addendum, ~~in either case~~ (including without limitation section 2.7 thereof as modified hereby, 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 ~~to the FCM Clearing Member in respect of Contracts~~; provided that FCM/BD Clearing Member hereby agrees that any such security interest in ~~favor~~ 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 ~~FCM~~ 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) ~~For purposes of Rule 504(d), in the case of Pledged Collateral provided by an FCM Clearing Member, the reference therein to "perfecting the title" shall be deemed amended to "perfecting the security interest".~~
- (j) ~~(k)~~ 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 ~~to any FCM Customer~~ in respect of an Open Contract Position in a Customer Account of an FCM ~~Clearing Member or any transaction, agreement or arrangement between an FCM Clearing Member and an FCM Customer.~~ 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).
- ~~(m) Where the FCM Clearing Member is acting for a Customer, clause 3.2(i) of the Clearing Membership Agreement shall not apply in respect of that Customer.~~
- ~~(n)~~ (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~~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 ~~(linked 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 ~~Procedures~~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 ~~Clearing Member or in the event of the insolvency of the 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; ~~and~~
- (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 ICE Clear Europe 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) ~~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 converted and applied by the Clearing House: (i) pursuant to Rule 905 as cover for Margin against a liability of the Clearing Member relating to the relevant Pledged Collateral Account in respect of which it was provided; and (ii) only to the extent that such applied amount is required to be included in the net sum calculation to ensure that a net sum for the same Pledged Collateral Account would not represent an amount payable by the Clearing Member to the Clearing House. 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 separately from any net sum certified by the Clearing House pursuant to Rule 905, the value of such returned Pledged Collateral will be excluded from the calculation of any related net sum.~~

Rule 1605 *Margin and Segregation Rules*

- (a) An FCM/BD Clearing Member shall require each FCM/BD Customer to provide Marginmargin (or ~~Permitted Cover~~permitted cover in respect thereof) (such assets, "FCM/BD Customer Collateral") in an amount ~~no less than~~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 ~~of the~~ 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 ("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 Section 3E(b) of the Exchange Act and the applicable rules and regulations of the SEC.
- (d) ~~(e)~~ 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) ("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 (and, to the extent applicable, Securities Exchange Act Section 3E(b) 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 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) Prior to the effectiveness of the Swap Customer Segregation Requirements, Contracts registered in the Swap Customer Account and related FCM/BD Swap Customer Collateral shall be held in the cleared ~~OTC derivative~~ swaps account

class for purposes of Part 190 of the CFTC regulations. The Clearing House shall receive and hold such FCM/BD Swap Customer Collateral transferred to the Clearing House in the Clearing House Swap Segregated Account as customer property separated from the proprietary positions and margin of the FCM/BD Clearing Member and shall treat FCM/BD Swap Customer Collateral as belonging to the FCM/BD Customers of the FCM/BD Clearing Member. Subject to the foregoing, the FCM/BD Clearing Member and the Clearing House shall treat such FCM/BD Swap Customer Collateral in the manner required for segregated customer property with respect to futures contracts under CFTC Rules 1.20-1.30; provided that such customer property shall be accounted for and held separately from, and not in any event commingled with, any such segregated customer property for futures contracts; and provided, further, that such customer property may be commingled by the FCM/BD Clearing Member with customer property segregated or sequestered for purposes of the cleared ~~OTC derivatives~~swaps account class under the rules of other derivatives clearing organisations to the extent such rules are not inconsistent with the requirements hereof. With respect to such Open Contract Positions and related FCM/BD Swap Customer Collateral, the records required to be maintained under Rule 1605(e) will be those that would be required under CFTC regulations for positions subject to segregation under CFTC Rule 1.20 (including pursuant to CFTC Rules 1.32 and 1.36). The provisions of this Rule 1605(~~ed~~)(ii) shall apply equally to any FCM/BD that is a Customer of a Clearing Member but clears Contracts registered in the Swap Customer Account through an FCM/BD Clearing Member on behalf of the customers of such FCM/BD.

- (e) ~~(d)~~ 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/~~Swaps~~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) ~~(e)~~ 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.

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) ~~(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) ~~(b) Without limiting Rule 111, but subject to any contrary requirements of law: The Clearing House shall not be liable to any FCM Clearing Member, FCM Customer or other Person for any losses, claims, liabilities, damages or expenses arising out of or relating to the holding, investment or use of any Clearing House FCM Segregated Account or assets credited thereto from time to time (“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 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 responsibility for any investment decisions made or directed by an FCM Clearing Member (or any other Person) with respect to assets in a Clearing House FCM Segregated Account or for the results of any such investments and shall have no obligation to monitor any requirements set forth in any applicable 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. The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any instructions or directions with respect to a Clearing House FCM Segregated Account or the assets therein or transferred thereto or therefrom under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate FCM Clearing Member.~~
- (c) ~~(e)~~ 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) ~~(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 ~~the disclosure by its FCM Clearing Member to the Clearing House of such FCM Customer’s identity and information concerning the Open Contract Positions held by such FCM Clearing Member for such FCM Customer and related Margin as set forth in these Rules and as may be required by Applicable Law and, if the FCM Customer is itself an FCM, to the operation of Rule 1605(e)(ii).~~
- (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) ~~(e)~~ 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) ~~and to Clause 3.2(ii) of the Clearing Membership Agreement~~ (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 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~~
 - (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(~~fs~~) 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 ~~Clearing Member that is not an~~ 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) ~~(v)~~ 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) ~~(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).

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), 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 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

(VIII) CDS PROCEDURES

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1. ADDITIONAL DEFINITIONS

- 1.1 The terms "2005 Matrix Supplement", "Accreted Amount", "Accreting Obligation", "Auction Cancellation Date", "Auction Final Price Determination Date", "Bankruptcy", "Calculation Agent", "Credit Event", "Credit Derivatives Determinations Committees", "Confirmation", "Credit Event Backstop Date", "Credit Event Notice", "Credit Event Resolution Request Date", "Dealer", "Deliverable Obligation", "Deliverable Obligation Characteristics", "Delivery", "Delivery Date", "Event Determination Date", "Exercise Cut-Off Date", "Extension Date", "Failure to Pay", "Fallback Settlement Method", "Final List", "Final Price", "Floating Rate Payer Calculation Amount", "Highest ", "Indicative Quotation", "Loan", "Movement Option Cut-off Date", "NOPS Amendment Notice", "Not Contingent", "Notice Delivery Period", "No Auction Announcement Date", "Notice of Physical Settlement", "Notice of Publicly Available Information", "Notice to Exercise Movement Option", "Notifying Party", "Obligation", "Physical Settlement Amount", "Physical Settlement Date", "Potential Repudiation/Moratorium", "Publicly Available Information", "Quotation", "Reference Entity", "Reference Obligation", "Repudiation/ Moratorium", "Repudiation/Moratorium Extension Condition", "Repudiation/Moratorium Extension Notice", "Restructuring", "Substitute Reference Obligation", "Succession Event", "Succession Event Backstop Date", "Succession Event Notice", "Succession Event Resolution Request Date", "Successor", "Trade Date", "Transaction Auction Settlement Terms", "Transaction Type", "Valuation Date" and "Weighted Average Quotation" each have the meanings given to those terms in the Credit Derivatives Definitions. The terms "Credit Event Resolution Request Date", "DC Resolution", "DC Secretary", "External Reviewer", "Initial List", "Relevant City Business Day" and "Website" each have the meanings given to or used for those terms in the DC Rules.
- 1.2 The term "Acceptance Notice" ~~means a Weekly Acceptance Notice or a TD Acceptance Notice, as the case may be~~ has the meaning set out in paragraph 4.4(a).
- 1.3 The term "Acceptance Time" ~~has the meaning set out in paragraph 4.5~~ means the time specified pursuant to these Procedures for the acceptance of CDS Contracts, as referred to in Rules 401(a)(ix), (x) and (xi), being:
- (a) except as set out in (b) and (c) below, the time on a Business Day at which the Acceptance Notice was given, which time will be recorded in the Acceptance Notice;
- (b) where the Acceptance Notice relates to the Clearing of CDS Trade Particulars in respect of a Bilateral CDS Transaction already recorded in Deriv/SERV, 12:01 a.m. on the calendar day following the Business Day on which the Acceptance Notice was given or deemed to be given, unless otherwise stated in a Circular or notified to any Clearing Member with prior notice in writing; and
- (c) for CDS Contracts arising pursuant to Rule 401(a)(x), the time specified by the Clearing House in the relevant notice to the affected Clearing Members.
- 1.4 The term "~~Acceleration Supermajority~~ Affected CDS Clearing Member" has the meaning set out in paragraph ~~6.3(d)(iv)~~ 11.4 or 12.4, as applicable.
- 1.5 The term "~~Administrative Meeting~~ Affected Customer" has the meaning ~~set out~~ defined in paragraph ~~6.8(j)(ii)~~ 11.4 or 12.4, as applicable.
- 1.6 The term "~~Advocates~~ Automatic Early Termination Provisions" has the meaning ~~set out~~ specified in paragraph ~~6.8(k)~~ 9.2(b)(ii).
- 1.7 ~~The term "Affected CDS Clearing Member" has the meaning set out in paragraph 11.4.~~

- ~~1.8 The term "ANT Process" means the process (if any) provided or to be provided by DTCC (currently known as the "Automated New Trade" process) permitting the Clearing House alone to input to Deriv/SERV all relevant information in relation to a CDS Contract in order to establish, match and make "certain" the record of such CDS Contract in the relevant DTCC Account(s).~~
- ~~1.9 The term "Bilateral CDS Transaction Trade Date" has the meaning set out in the definition of Trade Date Clearing.~~
- ~~1.10 The term "Brief" has the meaning set out in paragraph 6.8(o)(i).~~
- 1.7 ~~1.11~~ The term "CDS Committee-Eligible Clearing Member" means a Clearing Member that has been approved by the Clearing House, following consultation with the CDS Risk Committee, for participation ~~in one or more Regional CDS Committees under paragraph 5 and~~ in the CDS Default Committee. The Clearing House may revoke (or reinstate) its approval of any Clearing Member as a CDS Committee-Eligible Clearing Member from time to time based on its determination as to whether a particular Clearing Member has been in compliance with the Rules.
- ~~1.12 The term "CDS Committee Procedures" means paragraph 6 of these Procedures.~~
- 1.8 ~~1.13~~ The term "CDS Default Committee" means a committee established pursuant to paragraph 5.1.
- 1.9 ~~1.14~~ The term "CDS Default Committee Member" has the meaning set out in paragraph 5.1.
- 1.10 ~~1.15~~ The term "CDS Default Committee Participant" has the meaning set out in paragraph 5.1.
- 1.11 ~~1.16~~ The term "CDS Default Committee Participant List" has the meaning set out in paragraph 5.2.
- ~~1.17 The term "CDS Master Agreement" means, in relation to any CDS Contract between a CDS Clearing Member and the Clearing House, the Master Agreement between that CDS Clearing Member and the Clearing House.~~
- ~~1.18 The term "CDS Region" means a region for which CDS Contracts are cleared by the Clearing House, as determined by the Clearing House.~~
- ~~1.19 The term "CDS Regional Business Day" means, with respect to a CDS Region, any day determined in accordance with the location and other parameters designated by the Clearing House as a day on which the business of clearing CDS Contracts may occur in the particular CDS Region.~~
- 1.12 ~~1.20~~ The term "CDS Risk Committee" means the committee of that name established by the board of the Clearing House.
- 1.13 ~~1.21~~ The term "CEN Triggering Period" means, in relation to any CDS Contracts of a Set in respect of which a Restructuring Credit Event has occurred, the period during which a CDS Buyer or CDS Seller may deliver a Restructuring Credit Event Notice in relation to all or part of such CDS Contract in accordance with the Contract Terms. Such period will start on the earliest of:
- (a) the date and time at which the RMP Matched Table is uploaded to Deriv/SERV (as referred to in paragraph ~~8.4~~7.3(e)(vi); and
 - (b) the day after the RMP Deadline Time,
- and will end on the relevant Exercise Cut-off Date.
- 1.14 ~~1.22~~ The term "**Chairperson**" has the meaning set out in paragraph ~~6.1(d)~~. The term "**CH Reversioning Date**" means, if the reversioning as referred to in the definition of the term "DTCC Reversioning Date" has not been completed, and notified by the Clearing House to Clearing Members.

prior to the opening of business on the second Business Day following the DC Restructuring Announcement Date, the later of:

- (a) such second Business Day; or
- (b) the Business Day after the Business Day on which the relevant index publisher provides a new version of the relevant index.

1.15 The term "Change in Tax Law" means (other than for the purpose of paragraph 9.2(a)(ii)(C)) the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant CDS Contract.

1.16 ~~1.23~~ The term "CM1" has the meaning set out in paragraph 4.1.

1.17 ~~1.24~~ The term "CM2" has the meaning set out in paragraph 4.1.

~~1.25 The term "Committee Member" has the meaning set out in paragraph 6.1(b).~~

1.18 ~~1.26~~ The term "Confidential Material" has the ~~meanings set out in paragraphs 5.8 and 6.12(a)(i)~~ meaning set out in paragraph 5.8.

1.19 The term "Consent", in paragraph 9.2, means any consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

1.20 ~~1.27~~ The term "~~Convened DC Voting Member~~Contractual Currency" has the meaning ~~given to such term in the DC Rules as published by ISDA from time to time~~ set out in paragraph 9.2.

1.21 ~~1.28~~ The term "Covered Party" has the ~~meanings~~ meaning set out in ~~paragraphs 5.8 and 6.12(a)~~ paragraph 5.8.

1.22 ~~1.29~~ The term "Customer Integration Date" means the first date on which a new version of the Rules becomes effective, on which the restrictions in a previously published version of the Rules on the Clearing of ~~Bilateral CDS Transactions and~~ CDS Contracts ~~for Customers cease~~ recorded in CDS Customer Accounts ceased to apply.

1.23 ~~1.30~~ The term "Daily Aggregate MTM Interest Amount" means, for any CDS Clearing Member for each currency on any day, the sum of the Mark-to-Market Margin Balances in such currency for that day in respect of that CDS Clearing Member. The Daily Aggregate MTM Interest Amount will be determined separately in respect of the CDS Clearing Member's Proprietary Account and any relevant Customer Account. Where the Daily Aggregate MTM Interest Amount is positive, it will be owed by the Clearing House to the relevant CDS Clearing Member; where it is negative, the relevant CDS Clearing Member will owe the absolute value of the Daily Aggregate MTM Interest Amount to the Clearing House.

1.24 ~~1.31~~ The term "DC Restructuring Announcement Date" means the date on which the DC Credit Event Announcement of a Restructuring Credit Event is made, provided that where such DC Credit Event Announcement is made after 6.30 p.m. on a Business Day or on a day which is not a Business Day, the DC Restructuring Announcement Date (only) will, for the purposes of the Rules, be the first following Business Day.

1.25 ~~1.32~~ The term "DC Rules" means the Credit Derivatives Determinations Committees Rules, as defined as the "Rules" in Section 1.22 of the Credit Derivatives Definitions. For the avoidance of doubt, the term "Rules" as defined in the Rules shall not replace, or otherwise affect the interpretation of, the term "Rules" in the Credit Derivatives Definitions.

~~1.33 The term "Dispute Resolution Panel" has the meaning set out in paragraph 6.5(a).~~

- ~~1.34 The term "**Dispute Resolver**" has the meaning set out in paragraph 6.5(b).~~
- 1.26 ~~1.35~~ The term "**DTCC**" means The Depository Trust and Clearing Corporation or any successor thereto.
- 1.27 ~~1.36~~ The term "**DTCC Accounts**" means the accounts in Deriv/SERV for the recording of transaction data in relation to CDS Contracts.
- 1.28 ~~1.37~~ The term "**DTCC Failure**" means any circumstances in which DTCC is unable to process all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option, if any, relating to a particular Restructuring Credit Event in the DTCC Accounts in a timely manner, where such failure affects all or substantially all CDS Clearing Members or the Clearing House.
- 1.29 The term "**DTCC Process**" means the process (if any) provided or to be provided by DTCC permitting the Clearing House alone to input to Deriv/SERV all relevant information in relation to a CDS Contract and any related Customer-CM CDS Transaction in order to establish, match and make "certain" the record of such CDS Contract and Customer-CM CDS Contract in the relevant DTCC Account(s).
- 1.30 ~~1.38~~ The term "**DTCC Reversioning Date**" means the date on which ~~DTCC completes its~~ the Clearing House notifies CDS Clearing Members that it has completed the reversioning process and updated records in Deriv/SERV in respect of all Old Index CDS transactions to ~~separate out, from the remainder, record them as excluding~~ the component transaction relating to a Reference Entity in respect of which a Restructuring Credit Event has occurred.
- ~~1.39 The term "**Effectiveness Convention**" has the meaning set out in paragraph 6.3(g).~~
- ~~1.40 The term "**Effectiveness Supermajority**" has the meaning set out in paragraph 6.3(d)(v).~~
- 1.31 ~~1.41~~ The term "**Electronic Notice**" ~~means and is a kind of~~ MP Notice ~~which is and means~~ a Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered pursuant to the Electronic Notice Process.
- 1.32 ~~1.42~~ The term "**Electronic Notice Process**" means the process for the delivery and receipt of Restructuring Credit Event Notices and Notices to Exercise Movement Option pursuant to paragraphs ~~8.4.7.3~~ 7.3(f)(i) and ~~8.4.7.3~~ 7.3(f)(ii).
- 1.33 ~~1.43~~ The term "**Eligible Employee**" has the meaning set out in paragraph 5.1.
- 1.34 ~~1.44~~ The term "**Excess Net Capital**" (i) in respect of a CDS Clearing Member or applicant that is or would become an FCM/BD Clearing Member shall equal its "excess net capital" as reported on its Form 1-FR-FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12 or (ii) in respect of any other CDS Clearing Member or applicant that is or would become a US CDS Clearing Member, the amount, if any, by which its Capital (determined as set forth in paragraph 2.2(b)(i)) exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to the Clearing House.
- ~~1.45 The term "**Exhibits**" has the meaning set out in paragraph 6.8(o)(ii).~~
- 1.35 ~~1.46~~ The term "**Existing Supplements**" has the meaning set out in paragraph ~~10.1.9.1~~ 9.1(c).
- ~~1.47 The term "**External RMP**" means all Matched Pairs matched and notified by the Clearing House pursuant to Rule 1508 other than Internal RMPs.~~
- 1.36 ~~1.48~~ The term "**Fitch**" has the meaning set out in paragraph 2.2(~~ba~~)(ii).
- 1.37 ~~1.49~~ The term "**Fungibility Date**" has the meaning set out in paragraph ~~11.5(a).~~

- ~~1.50~~ The term "~~Internal RMP~~" means a ~~Matched Pair~~ matched and notified by the Clearing House pursuant to Rule 1508 in which the same CDS Clearing Member is matched with itself, as a result of one CDS Sub Account of a CDS Clearing Member being matched with another CDS Sub Account of the same CDS Clearing Member.
- ~~1.51~~ The term "~~Issue~~" has the meaning set out in paragraph 6.7~~10.5~~(a).
- 1.38 ~~1.52~~ The term "Mark-to-Market Interest" means interest calculated daily in accordance with the market convention for the relevant currency by applying the applicable overnight rate referred to in paragraph 3.1 to the Mark-to-Market Margin Balance for the relevant period.
- 1.39 ~~1.53~~ The term "Mark-to-Market Margin Balance", in respect of CDS Contract(s) on any day, means the sum of all Mark-to-Market Margin delivered up to but excluding that day by the relevant CDS Clearing Member ~~in~~ respect of such CDS Contract(s) to the Clearing House less all Mark-to-Market Margin delivered up to but excluding that day by the Clearing House in respect of such CDS Contract(s) to such CDS Clearing Member, as determined at the close of business on such day.
- ~~1.54~~ The term "~~Mandatory Voting Member~~" has the meaning set out in paragraph 6.4(a).
- 1.40 ~~1.55~~ The term "Manual CDS Clearing Member" has the meaning set out in paragraph 8.4~~7.3~~.
- 1.41 ~~1.56~~ The term "Manual MP Notice" ~~means an~~ is a kind of MP Notice ~~and means any notice~~ delivered pursuant to the terms of a CDS Contract under the Manual Notice Process.
- 1.42 ~~1.57~~ The term "Manual Notice Process" means the process for the delivery, receipt and copying to the Clearing House of notices pursuant to paragraph 8.4~~7.3~~(g).
- 1.43 ~~1.58~~ The term "MCA/STS Changeover Time" means midnight on 29 November 2010.
- 1.44 ~~1.59~~ The term "Moody's" has the meaning set out in paragraph 2.2(~~ba~~)(ii).
- 1.45 ~~1.60~~ The term "NEMO Triggering Period" means, in relation to any CDS Contracts of a Set in respect of which a Restructuring Credit Event has occurred and for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, the period starting as follows:
- (a) where, in relation to the related CEN Triggering Period, a Restructuring Credit Event Notice was given pursuant to the Manual Notice Process at a time before the "Notify" function to be provided by Deriv/SERV has been made generally available to CDS Clearing Members, at 9 a.m. on the day falling one Business Day prior to the relevant Movement Option Cut-off Date for the Set of CDS Contracts; and
 - (b) otherwise at 9 a.m. on the Business Day immediately following the ~~end of~~ Exercise Cut-off Date applicable to the Buyer in relation to the related CEN Triggering Period,
- and ending on the Movement Option Cut-off Date.
- 1.46 ~~1.61~~ The term "New Trade" has the meaning set out in paragraph ~~11.3~~ 10.3(c)(i)(L).
- 1.47 ~~1.62~~ The term "Notification Cut-Off Time" means
- (a)
 - (i) ~~(a)-(i)~~ with respect to delivery of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, 5:00 p.m. on the Exercise Cut-off Date applicable to the Buyer;

- (ii) ~~(ii)~~ with respect to raising a dispute in respect of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, the later of: (A) one hour after the Clearing House notifies the Clearing Members of the Restructuring Credit Event Notices they have served or had served on them; or (B) 7:00 p.m. on the Exercise Cut-off Date; applicable to the Buyer;

(b)

- (i) ~~(b)-(i)~~ with respect to delivery of a Notice to Exercise Movement Option, 5:00 p.m. on the Movement Option Cut-off Date;

- (ii) with respect to raising a dispute in respect of a Notice to Exercise Movement Option, the later of:

- (A) ~~(ii)- with respect to raising a dispute in respect of a Notice to Exercise Movement Option, the later of: (A) one hour after the Clearing House notifies the Clearing Members of the Notices to Exercise Movement Option they have served or had served on them; or (B) 7:00 p.m. on the Movement Option Cut-off Date; and~~

- (B) 7:00 p.m. on the Movement Option Cut-off Date; and

- (c) with respect to delivery of a Notice of Physical Settlement or a NOPS Amendment Notice in relation to a Set of CDS Contracts, 4:30 p.m. on the second Business Day after the last date on which a Notice of Physical Settlement or a NOPS Amendment Notice, as applicable, may be served in respect of the Credit Event in question, pursuant to Section 3.2(c) of the Credit Derivatives Definitions.

1.48 ~~1.63~~ The term "**Office**" means a branch or office of a party, which may be such party's head or home office.

1.49 The term "**Old Index CDS**" means a CDS transaction based on an index where an ~~applicable~~ Applicable Credit Event has occurred in relation to a component transaction.

~~1.64 The term "**Oral Argument**" has the meaning set out in paragraph 6.8(q).~~

1.50 ~~1.65~~ The term "**Original Notional Amount**", in relation to any CDS Contract, has the meaning given to that term in the Contract Terms.

1.51 ~~1.66~~ The term "**Panel Member**" has the meaning set out Party", in paragraph ~~6.5(b)~~ 9.2, means a party to a CDS Contract.

1.52 ~~1.67~~ The term "**Permissible**Permitted Deliverable Obligation" means a Deliverable Obligation that satisfies Section 2.32(a) or 2.33(a) of the Credit Derivatives Definitions, if applicable.

1.53 ~~1.68~~ The terms "**Presented Position**" and "**Presented Positions**" have the meaning set out in paragraph ~~6.8(b)~~ term "Rate of Exchange" means the rate of exchange for the purchase of or conversion into the Contractual Currency, including any associated premiums or costs of exchange payable in connection with the same.

~~1.69 The term "**Primary Panel Member**" has the meaning set out in paragraph 6.6(b)(i).~~

~~1.70 The term "**Provider**" has the meaning set out in paragraph 6.12(b).~~

~~1.71 The term "**Quorum Majority**" has the meaning set out in paragraph 6.3(d)(i).~~

~~1.72 The term "**Quorum Stage 2 Supermajority**" has the meaning set out in paragraph 6.3(d)(iii).~~

- ~~1.73 The term "**Quorum Supermajority**" has the meaning set out in paragraph 6.3(d)(ii).~~
- ~~1.74 The term "**Regional CDS Clearing Member**" means a CDS Clearing Member that is party to CDS Contracts relevant to a CDS Region.~~
- ~~1.75 The term "**Regional CDS Committee**" has the meaning set out in paragraph 6.1(a).~~
- ~~1.76 The term "**Regional CDS Committee Credit Event Announcement**" means with respect to a Reference Entity, an announcement by the Clearing House in a Circular that the relevant Regional CDS Committee has determined that an event that constitutes a Credit Event with respect to a CDS Contract and a Reference Entity (or an Obligation thereof) has occurred in accordance with paragraph 6.2(a)(iii) and has made the other determinations envisaged by that paragraph.~~
- ~~1.77 The term "**Reimbursement Amount**" has the meaning set out in paragraph 6.8(1).~~
- 1.54 ~~1.78~~ The term "**Relevant CDS Default Committee Period**" has the meaning set out in paragraph 5.3.
- 1.55 ~~1.79~~ The term "~~**Relevant Period**~~" has the meaning set out in paragraph 6.6(b)(iii): **any Relevant Jurisdiction** means, with respect to a party, each jurisdiction (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of a CDS Contract is located, (c) in or from which the party submits CDS Trade Particulars to the Clearing House for Clearing and (d) in relation to any payment, from or through which such payment is made.
- 1.56 ~~1.80~~ The terms "**Resolve**", "**Resolved**" and "**Resolves**" ~~have the meaning set out in paragraph 6.10(a) provided that~~ in relation to a resolution of the Credit Derivatives Determinations Committee, ~~such terms~~ shall have the meaning given to them in the Credit Derivatives Definitions.
- 1.57 ~~1.81~~ The term "**Restructuring Matched Pair**" or "**RMP**" means a Matched Pair created pursuant to Rule 1508 in respect of a Restructuring Credit Event.
- 1.58 The term "**Revocation Right**" will apply in respect of the submission of CDS Trade Particulars for Clearing:
- (a) if one of the Clearing Members for whose account the submission for Clearing is made is a Defaulter;
 - (b) ~~1.82 The term "**Revocation Right**" will apply in respect of the submission of a Bilateral CDS Transaction for Clearing (a) if one of the Clearing Members for whose account the submission for Clearing is made is a Defaulter or (b) if and to the extent that either CDS Contract which would arise on Clearing at the Acceptance Time would have been void under Rule 403 (if Rule 403 applied to CDS Contracts in addition to Energy Contracts) or capable of being treated as voidable under Rule 404(a) (if Rule 404(a) applied to CDS Contracts in addition to Energy Contracts and the latter being read for purposes of this definition as if the words "in relation only to Energy Contracts," were not set out in any part of Rule 404(a) and "Energy Clearing Members" were read as "CDS Clearing Members") or Rule 404(b):~~ or
 - (c) if CDS Trade Particulars submitted by a Clearing Member do no correspond in all material respects with the CDS Trade Particulars submitted by the other Clearing Member.
- 1.59 ~~1.83~~ The term "**RMP Deadline Time**" means:
- (a) subject to (b) ~~and (e)~~ below, 11.59 p.m. on the latest of:
 - (i) the ~~fourth~~ third Business Day following the DC Restructuring Announcement Date;

- (ii) the ~~third~~second Business Day following the DTCC Reversioning Date, if any or, if earlier, the first Business Day following the CH Reversioning Date, if any; and
 - (iii) the date of publication by ISDA of the Final List; or
- ~~(b) subject to (c) below, if a Regional CDS Committee Credit Event Announcement has occurred, 11.59 p.m. on the ninth calendar day following the date of the actual decision by the relevant Regional CDS Committee to Resolve that a Restructuring Credit Event has occurred for which there is Publicly Available Information, as described in paragraph 6.2(a)(iii);~~
- (b) ~~(c)~~ either:
- (i) with respect to a Set of CDS Contracts for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a No Auction Announcement Date has been announced pursuant to section 12.12(a) of the Credit Derivatives Definitions, the later of:
 - (A) 11.59 p.m. on the ninth calendar day following the No Auction Announcement Date; and
 - (B) the ~~third~~second Business Day following the DTCC Reversioning Date, if any or, if earlier, the first Business Day following the CH Reversioning Date, if any; or
 - (ii) with respect to a Set of CDS Contracts for which neither "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" nor "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a No Auction Announcement Date has been announced pursuant to section 12.12 of the Credit Derivatives Definitions, the later of:
 - (A) 11.59 p.m. on the ninth calendar day following the No Auction Announcement Date; and
 - (B) the ~~third~~second Business Day following the DTCC Reversioning Date, if any or, if earlier, the first Business Day following the CH Reversioning Date, if any.

1.60 ~~1.84~~ The term "**RMP Matched Table**" means the data file, in computer-readable format, containing details of all RMPs, Matched Pairs and MP Amounts and the CDS Contracts and CDS Clearing Members to which they relate and reflecting the RMP Matching Reports, all in relation to the allocation of Matched Pairs pursuant to Rule 1508 following a Restructuring Credit Event.

1.61 ~~1.85~~ The term "**RMP Matching Report**" means the report given by the Clearing House, as referred to in paragraph ~~8.47~~3(e), to each CDS Clearing Member identifying the RMPs and allocations of Matched Pairs and the associated MP Amounts affecting the Open Contract Position of that CDS Clearing Member, which report comprises Matched Pair Notices for purposes of Rule 1508 in respect of each Matched Pair.

1.62 ~~1.86~~ The term "**S&P**" has the meaning set out in paragraph 2.2(~~b~~a)(ii).

1.63 The term "**Scheduled Settlement Date**" means a date on which a payment or delivery is to be made under paragraph 9.2 with respect to a CDS Contract.

1.64 The term "**Short Selling Regulation**" means Regulation (EU) no. 236/2012 of the European Parliament and of the Council dated 14 March 2012 on short selling and certain aspects of credit default swaps.

- 1.65 ~~1.87~~ The term "**Single Name Contract**" means a SNEC Contract or a Sovereign Contract, as the case may be.
- 1.66 ~~1.88~~ The term "**SNEC Contract**" has the meaning set out in paragraph ~~12.2~~11.2(g).
- 1.67 ~~1.89~~ The term "**Sovereign Contract**" has the meaning set out in paragraph ~~13.2~~12.2(g).
- 1.68 ~~1.90~~ The term "~~**Standard Quorum Number**~~" has the meaning set out in paragraph 6.3(b). **Stamp Tax** means any stamp, registration, documentation or similar tax.
- ~~1.91 The term "**Submission Deadline**" has the meaning set out in paragraph 6.8(j)(iii).~~
- ~~1.92 The term "**Tax**" has the same meaning as that given to the term in the relevant Master Agreement.~~
- 1.69 The term "**Tax**" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under a CDS Contract other than a Stamp Tax.
- 1.70 The term "**Tax Event**" has the meaning specified in paragraph 9.2(e)(ii).
- 1.71 ~~1.93~~ The term "~~**TD Acceptance Notice**~~**Tax Event Upon Merger**" has the meaning ~~set out~~specified in paragraph ~~4.4~~2.2(a)(ii).
- 1.72 ~~1.94~~ The term "**Tier 1**" has the meaning given to that term in Banking Consolidation Directive.
- 1.73 ~~1.95~~ The term "~~**Trade Date Clearing**~~" means the submission of a Bilateral CDS Transaction on the date on which it is entered into (the "~~**Bilateral CDS Transaction Trade Date**~~"), provided that is a Business Day, or on the immediately following Business Day for Clearing on the day of submission. **Transfer Time** has the meaning set out in paragraph 13.2(b)(v).
- 1.74 The term "**Transferee CDS Clearing Member**" has the meaning set out in paragraph 13.2(a).
- 1.75 ~~1.96~~ 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 Bilateral CDS Transactions for Trade Date 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 Bilateral CDS Transactions for Trade Date 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 Days' 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. Where an Affiliate of a CDS Clearing Member may submit Bilateral CDS Transactions for the account of that CDS Clearing Member as referred to in paragraph 4.6, any person which, as a Trade Processing Platform, is a Representative of such CDS Clearing Member shall be deemed to be additionally a Representative of such Affiliate for these purposes. **Transferor CDS Clearing Member** has the meaning set out in paragraph 13.2(a).
- 1.76 ~~1.97~~ The term "**Triggering Period**" means the CEN Triggering Period ending on the Exercise Cut-Off Date applicable to a Buyer or NEMO Triggering Period, as applicable.
- 1.77 ~~1.98~~ The term "**US CDS Clearing Member**" means a CDS Clearing Member or applicant that would become a CDS Clearing Member that is (i) an FCM or (ii) any other Person organised or incorporated under the laws of the United States of America or a state thereof.
- ~~1.99 The term "**Weekly Acceptance Notice**" has the meaning set out in paragraph 4.4(b).~~

~~1.100 The term "Written Materials" has the meaning set out in paragraph 6.8(e).~~

~~1.101 The term "Weekly Clearing" means the submission of a Bilateral CDS Transaction for Clearing other than pursuant to Trade Date Clearing.~~

~~1.78 1.102~~ Capitalised terms used in these Procedures but not defined in this paragraph ~~01~~ shall have the meaning given to such terms in the Rules, the relevant CDS Contract (including Credit Derivatives Definitions ~~and the Master Agreement as amended~~) or elsewhere in these Procedures (in that order of priority in the event of any conflict).

2. ADDITIONAL MEMBERSHIP REQUIREMENTS FOR CDS CLEARING MEMBERS

2.1 Rule 201(i) provides that CDS Clearing Members must meet such additional requirements applicable to CDS Clearing Members as are specified in the Procedures.

2.2 The following additional requirements are specified for the purposes of Rule 201(i) as requirements that a CDS Clearing Member must satisfy in order to attain or maintain such status:

(a) If it is not or would not be a US CDS Clearing Member:

- (i) it must have a minimum of \$5 billion of Tier 1 Capital; provided that this requirement may, at the discretion of the Clearing House, be met by a Controller if such Controller provides a guarantee in accordance with the Finance Procedures;
- (ii) at the time of admission, it must have a minimum long-term senior unsecured debt rating of at least the following from each of the following rating agencies (or any successor to the rating business thereof) that provides such a rating (with a minimum of one such rating): (A) "A2" from Moody's Investors Service ("**Moody's**"), (B) "A" from Standard & Poor's Ratings Services ("**S&P**"), a division of The McGraw-Hill Companies, Inc., (C) "A" from Fitch Ratings ("**Fitch**") or (D) the equivalent rating from any other rating agency that the Clearing House designates from time to time for this purpose; provided that, if such applicant does not have such a rating from any of the foregoing rating agencies, it demonstrates to the Clearing House that it otherwise satisfies, in the discretion of the Clearing House, stringent credit criteria, such satisfaction to be confirmed by an examination of its books and records; provided further that this requirement may, at the discretion of the Clearing House, be met by a Controller of the Clearing Member if such Controller provides a guarantee in accordance with the Finance Procedures; and provided further that this condition may be waived by the Clearing House at the recommendation of the CDS Risk Committee; and
- (iii) after the time of admission, it (or, if applicable, under paragraph 2.2(a)(ii), the relevant Controller) must not have a long-term senior unsecured debt rating below the following from any of the following rating agencies (or any successor to the rating business thereof) (provided that any such requirement, at the discretion of the Clearing House, may be treated as not being met if any such rating agency suspends or withdraws a rating): (A) "Baa2" from Moody's, (B) "BBB" from S&P, (C) "BBB" from Fitch or (D) the equivalent rating from any other rating agency the Clearing House designates from time to time for this purpose (or, if the first proviso of paragraph 2.2(a)(ii) applies, the CDS Clearing Member (or, if applicable under paragraph 2.2(a)(ii), the relevant Controller) ceases to satisfy objective criteria established by the Clearing House at its discretion).

(b) If it is or would be an US CDS Clearing Member:

- (j) If it is not incorporated in England and Wales, it has appointed a service of process agent pursuant to Rule 113(e).
- 2.3 If a Controller Guarantee has been provided, the Clearing Member to which the Controller Guarantee relates shall procure that the Controller:
- (a) at all times complies with the requirements of Rules 201(a)(viii), 202(a)(iii), 202(a)(v), 202(a)(vi), 202(a)(x) and 202(a)(xiii) as if the Controller were a Clearing Member, *mutatis mutandis* and such provisions applied to the Controller's business;
 - (b) would not breach any of the requirements of Rule 203, were the Controller to be a Clearing Member subject to the requirements of Rules 203, *mutatis mutandis* and such provisions applied to the Controller's business; and
 - (c) 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.
- 2.4 A CDS Clearing Member shall notify the Clearing House if any relevant rating falls below that specified in paragraph 2.2(a) or 2.2(b).
- ~~2.5 Clearing Members shall notify the Clearing House from time to time in accordance with the Procedures of details of an account at DTCC to which any cash settlement in respect of CDS Contracts are to be made.—~~
- 2.5 ~~2.6~~ In the case of a US CDS Clearing Member, if at any time and for so long as it has a required contribution to the CDS Guaranty Fund that exceeds 25% of its Excess Net Capital, the Clearing House may (in addition to imposing any other applicable restrictions under Part 2 of the Rules or otherwise under the Rules or Procedures) require such US CDS Clearing Member to provide additional Margin under Rule 502(g) and/or prepay and maintain with the Clearing House an additional contribution (the "Prepaid Contribution") to the CDS Guaranty Fund equal to the maximum CDS Assessment Contribution under Rule 1106 that would be applicable to it at such time if it were terminating its membership of the Clearing House following an Event of Default or Events of Default where CDS Guaranty Fund Contributions have been applied. Payment of the Prepaid Contribution shall not limit such US CDS Clearing Member's obligations to make additional contributions to the CDS Guaranty Fund as otherwise required by the Rules, provided that if such a US CDS Clearing Member terminates its membership of the Clearing House it may apply the Prepaid Contribution to its obligation to make CDS Assessment Contributions up to its maximum contribution under Rule 1106. Notwithstanding anything to the contrary herein, except in the case of an Event of Default with respect to such a US CDS Clearing Member, the Prepaid Contribution will not be deemed to be part of the CDS Guaranty Fund for purposes of the application of funds therefrom until such time as it is applied to the US CDS Clearing Member's obligations to make additional contributions to the CDS Guaranty Fund as provided in the preceding sentence.
- 2.6 ~~2.7~~ For purposes of Rule 205(a)(iii), a US CDS Clearing Member that is not an FCM Clearing Member shall provide to the Clearing House a copy of such forms as the Clearing House may determine to be necessary on a comparable schedule to that which an FCM Clearing Member would be required to follow in filing such forms with its Regulatory Authorities.

3. CERTAIN PROVISIONS RELATING TO MARGIN AND OTHER PROCEDURES

- 3.1 Mark-to-Market Interest will be calculated daily, including in respect of weekends and currency holidays, based upon the applicable overnight rate notified by the Clearing House from time to time to CDS Clearing Members for each of the currencies in which Mark-to-Market Margin is paid.

- 3.2 Mark-to-Market Interest will be calculated by the Clearing House in respect of Mark-to-Market Margin Balance relating to CDS Contracts as recorded by the Clearing House (on a 'trade by trade', 'gross' or 'net' basis) as referred to in Rule 406(d).
- 3.3 The Daily Aggregate MTM Interest Amount, if any, in any currency will be payable by the Clearing House (if positive) or the Clearing Member (as to the absolute value thereof if negative), as the case may be, in accordance with Part 3 of the Rules and the Finance Procedures.
- 3.4 The Finance Procedures, Membership Procedures, Business Continuity Procedures, ~~and~~ Complaints Procedures ~~and CDS Operational Procedures~~ also apply in relation to CDS Contracts and to CDS Clearing Members.

4. SUBMISSION AND ACCEPTANCE OF CDS CONTRACTS

- 4.1 Any ~~Bilateral CDS Transaction~~ Trade Particulars which ~~is~~ are submitted to the Clearing House by a CDS Clearing Member via ~~electronic means (including any Bilateral CDS Transaction forwarded to the Clearing House by Deriv/SERV or a Trade Processing Platform or other Representative on behalf of a Clearing Member (or its Affiliate as described in paragraph 4.64.5))~~ shall be capable of giving rise to a CDS Contract under Rule 401(a)(ix). Deriv/SERV shall be treated as a Representative of the CDS Clearing Member (and any Affiliate, if applicable) solely for the purposes of the submission of ~~data relating to Bilateral CDS Transactions submitted for Weekly~~ CDS Trade Particulars for Clearing. Pursuant to Rule 401(a)(ix) and Rule 1502, if ~~a Bilateral CDS Transaction is~~ Trade Particulars are so submitted to the Clearing House by the ~~parties thereto, each of which is a~~ relevant CDS Clearing ~~Member~~ Members ("CM1" and "CM2"), and ~~is~~ are accepted by the Clearing House pursuant to an Acceptance Notice ~~(and the other provisions of the Rules complied with)~~: (i) CM1 will be deemed to have entered into a CDS Contract with the Clearing House as its counterparty ~~rather than~~ in place of CM2; and (ii) CM2 will be deemed to have entered into a CDS Contract with the Clearing House as its counterparty in place of CM1. In each case, the CDS Contract will be on the Contract Terms specified in the Rules and Procedures. Rule 402(b) makes provision for the effect of this process on ~~the~~ rights, liabilities and obligations ~~of CM1 and CM2 under the~~ any Bilateral CDS Transaction.
- 4.2 Only Clearing Members (including their duly appointed Representatives) may submit ~~Bilateral CDS Transactions to the Clearing House provided that, where a Bilateral CDS Transaction is to be submitted for Trade Date Clearing, it must be submitted by the same Trade Processing Platform acting as duly appointed Representative on behalf of each of the Clearing Members who are party to the Bilateral CDS Transaction. Each Business Day, at the exact hours or during the time periods, as the case may be, from time to time fixed by the Clearing House for Weekly Clearing and Trade Date Clearing, respectively, CDS Clearing Members shall file with the Clearing House or its duly appointed Representatives confirmations, in the manner prescribed in the CDS Operational Procedures (which, in the case of electronic systems that submit matched Bilateral CDS Transactions to the Clearing House, shall be satisfied by confirmatory reports automatically generated by such system that contain the information set forth herein), covering Bilateral CDS Transactions submitted for Weekly Clearing or Trade Date Clearing, respectively, showing for each Bilateral CDS Transaction:~~ CDS Trade Particulars to the Clearing House.

4.3 CDS Trade Particulars submitted for Clearing must include:

- (a) the identity of both Clearing Members (or, in the case of CDS Trade Particulars submitted pursuant to paragraph 4.4(g), the single Clearing Member);
- (b) ~~which side of the Bilateral CDS Transaction each Clearing Member has taken;~~ the position of each Clearing Member as protection seller or protection buyer (or in the case of CDS Trade Particulars submitted pursuant to paragraph 4.4(g), whether the Clearing Member is to act as protection seller or protection buyer in respect of the CDS Contract to be recorded in its Customer Position Account and whether it is to act as protection seller or protection buyer in respect of the CDS Contract to be recorded in its Proprietary Position Account);

- (c) the relevant Set involved;
- (d) the quantity or notional and other economic terms involved;
- (e) the Customer Position Account, if any, in which a resulting CDS Contract is to be recorded, failing which it will be recorded in the Proprietary Position Account;
- (f) the relevant CDS Sub-Account;
- (g) ~~(e) whether the Bilateral CDS Transaction is submitted for Trade Date Clearing, in which case it will also include the amount of the Initial Payment (if any) payable, identify the identity of the Clearing Member obliged to make such payment and specify the date on which such payment would be due to be made under the Bilateral CDS Transaction (were it not to give rise to a CDS Contract) for payment;~~ and
- (h) ~~(f) such other information as may reasonably be required by the Clearing House (such requirement to have been notified previously by the Clearing House) to effect the matching of Bilateral CDS Transactions between the parties.~~

4.3 ~~If a Bilateral CDS Transaction confirmation of any Clearing Member does not correspond in all material respects with the confirmation of its counterparty to such Bilateral CDS Transaction, the Clearing House may, prior to issuing an Acceptance Notice, reject such Bilateral CDS Transaction and notify the relevant Clearing Members, setting forth the basis of such rejection. If a Bilateral CDS Transaction is submitted for Trade Date Clearing on behalf of the Clearing Member that has not previously confirmed in writing to the Clearing House that it is operationally ready to operate on the basis of Trade Date Clearing, the Clearing House shall reject such Bilateral CDS Transaction for Clearing.~~

4.4 In relation to any ~~Bilateral CDS Transaction~~ Trade Particulars submitted for Clearing:-

- (a) ~~Where it is submitted for Trade Date Clearing, the~~ The Clearing House shall, if such CDS Trade Particulars are submitted in accordance with and meet the requirements established by the Rules and these CDS Procedures, give notice as soon as reasonably practicable (in a final trade status report or other report identified for the purpose) in accordance with this paragraph 4.4 (~~a~~ an ~~"TD-Acceptance Notice"~~) to the relevant Clearing Members ~~submitting such Bilateral CDS Transaction~~ specifying that the Clearing House ~~accepts~~ has accepted such ~~Bilateral CDS Transaction for Clearing if such Bilateral CDS Transaction is submitted in accordance with and meets the requirements established by the Rules and these CDS Procedures~~ Trade Particulars for Clearing, provided that the Clearing House may decline to accept or may reject ~~a Bilateral CDS Transaction~~ CDS Trade Particulars for Clearing if it determines in good faith that, based on the exercise of prudent risk management standards or in accordance with paragraph 4.4(~~ed~~), it should not accept or should reject such ~~Bilateral CDS Transaction~~ Trade Particulars for Clearing or if it determines that a Revocation Right would apply in respect of such submission for Clearing. Subject to Part 4 of the Rules and this paragraph 4, ~~a TD~~ an Acceptance Notice will result in the relevant Clearing Member and the Clearing House entering into a CDS Contract at the Acceptance Time. ~~A Bilateral CDS Transaction may be submitted for Trade Date Clearing between 8:00 a.m. and 6:00 p.m. on its Bilateral CDS Transaction Trade Date, provided that is a Business Day, or between the same times on the immediately following Business Day and will be accepted or rejected by the Clearing House by 6:30 p.m. on the day submitted. A Bilateral CDS Transaction which has been rejected may, if eligible in accordance with the Rules and these CDS Procedures, be re-submitted for Clearing in accordance with this paragraph 4.4(a) or, following recording in Deriv/SERV, paragraph 4.4(b) below. A Bilateral CDS Transaction submitted for Trade Date Clearing after 6:00 p.m. on a Business Day or on a day that is not a Business Day shall, unless withdrawn prior to 8:00 a.m. on the following Business Day by the Trade Processing Platform which submitted it or unless otherwise notified by the Clearing House to the Clearing Member~~

~~or otherwise stated in a Circular, be deemed to have been submitted for Trade Date Clearing at 8 a.m. on such following Business Day. No TD Acceptance Notice shall result in any Contract arising pursuant to Rule 401(a)(ix) or (xi) until the relevant Acceptance Time determined under paragraph 4.5. With effect as from the Acceptance Time and unless and until reissued pursuant to paragraph 4.4(f)(i), the TD~~The ~~Acceptance Notice shall be definitive as to any CDS Contracts entered into between the Clearing House and any Clearing Member, regardless of whether any CDS Contract is based on any Bilateral CDS Transaction and regardless of any error. Following the issuance of a TD Acceptance Notice, the Clearing House will, using the ANT Process, promptly submit (for itself and for the Clearing Member which is its counterparty to the relevant CDS Contract) the terms of each new CDS Contract arising on Clearing to Deriv/SERV or another service specified by the Clearing House with identical terms as the original submission for clearing of the relevant Bilateral CDS Transaction (or the CDS Contracts specified in the TD Acceptance Notice, which shall prevail in the event of any conflict with the original submission for clearing) except for the substitution of the Clearing House as the counterparty to each of the Clearing Members and such other different terms as are set out in the Rules, these CDS Procedures and the Contract Terms. In relation to any Bilateral CDS Transaction submitted for Trade Date Clearing and the entry into of CDS Contracts resulting from a TD Acceptance Notice, each Clearing Member will suppress its own processes (and procure that its Representatives suppress their processes) for the submission of the terms of such Bilateral CDS Transaction to Deriv/SERV or another service specified by the Clearing House.~~ any error. Any Acceptance Notice relating to CDS Trade Particulars in respect of a Bilateral CDS Transaction already recorded in Deriv/SERV may be revoked by the Clearing House (but not any other Person) at the Clearing House's discretion at any time prior to the Acceptance Time but only if a Revocation Right applies in respect of the related submission for Clearing. Acceptance Notices will be given by electronic message.

CDS Trade Particulars may be submitted between 8:00 a.m. and 6:00 p.m. on a Business Day and will be accepted or rejected by the Clearing House by 6:30 p.m. on the day submitted. CDS Trade Particulars submitted after 6:00 p.m. on a Business Day or on a day that is not a Business Day shall, unless withdrawn prior to 8:00 a.m. on the following Business Day by the Trade Processing Platform which submitted it or unless otherwise notified by the Clearing House to the Clearing Member or otherwise stated in a Circular, be deemed to have been submitted at 8:00 a.m. on such following Business Day.

(b) ~~Where it is submitted for Weekly Clearing, the Clearing House shall give notice (in a final trade status report or other report identified for the purpose) from time to time in accordance with this paragraph 4.4 (a "Weekly Acceptance Notice") to the Clearing Members submitting such Bilateral CDS Transaction specifying that the Clearing House proposes to accept a Bilateral CDS Transaction for Clearing if such Bilateral CDS Transaction is submitted in accordance with and meets the requirements established by the Rules and these CDS Procedures, provided that the Clearing House may decline to accept a Bilateral CDS Transaction for Clearing if it determines in good faith that, based on the exercise of prudent risk management standards, it should not accept such Bilateral CDS Transaction for Clearing or if it determines that a Revocation Right would apply in respect of such submission for Clearing. Subject to Part 4 of the Rules and this paragraph 4, a Weekly Acceptance Notice will result in the Clearing Member and the Clearing House entering into a CDS Contract at the Acceptance Time. A Weekly Acceptance Notice delivered after 4:00 p.m. on a Business Day or delivered on a day that is not a Business Day shall, unless otherwise notified by the Clearing House to the Clearing Member or otherwise stated in a Circular, be deemed to have been issued on the following Business Day. No Weekly Acceptance Notice shall result in any Contract arising pursuant to Rule 401(a)(ix) until the relevant Acceptance Time determined under paragraph 4.5. Each Clearing Member shall check each Weekly Acceptance Notice that concerns CDS Contracts that it is proposed to enter into at the Acceptance Time and shall promptly notify the Clearing House of any error of which it is aware such that the Weekly Acceptance Notice can be corrected and re-issued~~

~~prior to the Acceptance Time. With effect as from the Acceptance Time and unless and until reissued pursuant to paragraph 4.4(f)(i), the Weekly Acceptance Notice shall be definitive as to any CDS Contracts entered into between the Clearing House and any Clearing Member, regardless of whether any CDS Contract is based on any Bilateral CDS Transaction and regardless of any error. Any Weekly Acceptance Notice may be revoked by the Clearing House (and not any third party) at the Clearing House's discretion at any time prior to the Acceptance Time but only if a Revocation Rights applies in respect of the related submission for Clearing. Following the issuance of a Weekly Acceptance Notice, the Clearing House will, using the ANT Process, promptly submit (for itself and for the Clearing Member which is its counterparty to the relevant CDS Contract) the terms of each new CDS Contract arising on Clearing to Deriv/SERV or another service specified by the Clearing House with identical terms as the original submission for clearing of the relevant Bilateral CDS Transaction (or the CDS Contracts specified in the Weekly Acceptance Notice, which shall prevail in the event of any conflict with the original submission for clearing) except for the substitution of the Clearing House as the counterparty to each of the Clearing Members and such other different terms as are set out in the Rules, these CDS Procedures and the Contract Terms, adjusted to take into account netting, aggregation, terminations and replacements of CDS Contracts pursuant to Rule 406. In relation to any Bilateral CDS Transaction submitted for Weekly Clearing and only with respect to the termination of Bilateral CDS Transactions and entry into of CDS Contracts resulting from a Weekly Acceptance Notice, each Clearing Member will suppress its own processes (and procure that its Representatives suppress their processes) for the submission of the terms of CDS Contracts to Deriv/SERV or another service specified by the Clearing House.~~ Following the issuance of an Acceptance Notice, the Clearing House will, using the DTCC Process, promptly (i) submit to Deriv/SERV or another service specified by the Clearing House (for itself, for the relevant Clearing Members and for any relevant Segregated Customer) the terms of each new CDS Contract arising at the Acceptance Time (and any related Customer-CM CDS Transaction), adjusted to take into account netting, aggregation, terminations and replacements of CDS Contracts pursuant to Rule 406, where applicable and (ii) terminate, if applicable, the record in Deriv/SERV of any relevant Bilateral CDS Transaction. Each Clearing Member and each Customer will suppress its own processes (and procure that its Representatives suppress their processes) for such submission and termination.

- (b) After the Acceptance Time, any CDS Contract may only be terminated (other than in accordance with its terms), rescinded or cancelled by the Clearing House:
- (i) pursuant to Rule 104, Rule 209, Rule 404, Rule 406 or Part 9 of the Rules;
 - (ii) ~~(e) After the Acceptance Time, any CDS Contract may only be terminated (other than in accordance with its terms), rescinded or cancelled by the Clearing House: (i) pursuant to Rule 104, Rule 209, Rule 404, Rule 406 or Part 9 of the Rules; (ii) if it if the Clearing House is presented with an agreement in writing between two Clearing Members with equally offsetting positions in the same Set and the Clearing House also agrees (in which case such equally offsetting CDS Contracts of both Clearing Members will be affected); or (iii) pursuant to CADP under Rule 1514.~~
 - (iii) pursuant to CADP under Rule 1514.
- (c) ~~(d)~~ Each Clearing Member acknowledges and agrees that the Clearing House may rely, without additional investigation, on the ~~terms of Bilateral CDS Transactions or apparent Bilateral CDS Transactions~~ data in CDS Trade Particulars submitted by a Trade Processing Platform for ~~Trade Date~~ Clearing that ~~have~~has been designated by such Trade Processing Platform as having been affirmed or confirmed by the relevant parties thereto (including as to the identity of the Clearing Members ~~to be party thereto~~specified therein), and that ~~each the relevant~~ Clearing Member shall be party to any CDS Contract arising as a result of such submission. A Clearing Member may give not less than one Business ~~Days~~Day's written

notice to the Clearing House, in accordance with the Procedures, that a Trade Processing Platform is no longer authorised to submit ~~Bilateral CDS Transactions~~Trade Particulars on its behalf, and following expiry of that notice period, the Clearing House will not accept for ~~Trade-Date~~ Clearing any ~~Bilateral CDS Transactions~~Trade Particulars submitted by such Trade Processing Platform that identify such Clearing Member (but without limiting the provisions of this paragraph with respect to any ~~Bilateral CDS Transactions~~Trade Particulars submitted before the expiry of that notice period).

- (d) ~~(e)~~ The Clearing House may establish limits for ~~Bilateral CDS Transactions~~Trade Particulars of various types which may be submitted by a CDS Clearing Member for ~~Trade-Date~~ Clearing ~~by reference to the expected change in~~based on the impact on the Margin requirements ~~which would result from Trade-Date Clearing of such Bilateral CDS Transactions and may establish requirements for~~and may require advance funding by a CDS Clearing Member of all or part of the estimated Margin which would be applicable as a result of the acceptance for ~~Trade-Date~~ Clearing of ~~Bilateral CDS Transactions of various types~~such CDS Trade Particulars. Such limits or requirements will be set in accordance with the established risk procedures applicable to all Clearing Members (such procedures as determined in consultation with the CDS Risk Committee). Any material change to the factors by reference to which the limits and/or requirements are set will be subject to consultation with the CDS Risk Committee. Such limits and/or requirements may be amended from time to time by the Clearing House (provided that they are set in accordance with such procedures) and need not be identical for, or apply to, all CDS Clearing Members. The Clearing House will give notice from time to time to each CDS Clearing Member of the limits and requirements, if any, applying to that CDS Clearing Member. The Clearing House may, without other reason, reject or refuse to accept for ~~Trade-Date~~ Clearing any ~~Bilateral CDS Transaction~~Trade Particulars for which a submitting CDS Clearing Member is not in compliance with such limits and requirements, if any, applying to it. The provisions of this paragraph 4.4~~(e)~~ are without prejudice and in addition to the Clearing House's powers under Part 6 of the Rules.
- (e) ~~(f)~~ If a CDS Contract ~~arising pursuant to the Clearing of a Bilateral~~and/or a Customer-CM CDS Transaction ~~for the account of two Clearing Members does~~do not reflect, subject to the provisions of the Rules and Procedures, the ~~terms of such Bilateral CDS Transaction~~data in the CDS Trade Particulars which were submitted or were intended to be submitted ~~for~~Clearing then:
- (i) where either the details in the Acceptance Notice did not so reflect the ~~terms of data in~~the ~~Bilateral CDS Transaction~~Trade Particulars actually submitted for Clearing or the details of the resulting CDS Contract~~(s) or Customer-CM CDS Transaction(s)~~ as recorded in Deriv/SERV do not reflect the Acceptance Notice, the Clearing House will, as appropriate, reissue a corrected Acceptance Notice and/or amend (and thereby correct) the records in Deriv/SERV ~~(including, where appropriate, any records in Deriv/SERV of any Customer-CM CDS Transaction)~~ and may require the affected Clearing ~~Members~~Member(s) and any Customer(s) to make or confirm matching amendments to such records; and
 - (ii) other than in circumstances falling in (i), the affected Clearing Members may agree among themselves ~~(or the affected Clearing Member, if there is only one Clearing Member that has become party to two CDS Contracts)~~ (in either case, without reference to or consent from the Clearing House) to submit for Clearing, pursuant to the "Misclear" function made available to the Clearing Members by the Clearing House, ~~a further Bilateral CDS Transaction~~Trade Particulars for the purpose of cancelling (by netting) the continuing rights and obligations resulting from the error, but unless and until they do so, such Clearing Members ~~and, where applicable, their Customers,~~ shall be bound by the terms of the relevant CDS Contracts ~~and Customer-CM CDS Transactions~~ notwithstanding such error.

- (f) ~~(g)~~ This paragraph 4.4(~~g~~f) applies only to CDS Contracts arising pursuant to Rule 401(a)(xi). The Clearing House will provide affected Clearing Members with ~~information relating to proposed~~CDS Trade Particulars which will give rise to CDS Contracts arising pursuant to Rule 401(a)(xi) on the Business Day of price submission. ~~Such information will include the price, Set, the identity of the other Clearing Member that the Clearing Member was matched with and such other economic terms as are referred to in paragraphs 11.2(c)(iii), 12.5(d) or 13.5(d) (as applicable), but excludes for the avoidance of doubt, data in respect of the price data submitted by any other Clearing Member to the Clearing House.~~ Provided that the Clearing House is not notified of any error or dispute relating to the ~~data, it~~CDS Trade Particulars prior to the Acceptance Time, such CDS Trade Particulars will be used ~~for the purposes of~~by the Clearing House for the purposes of booking new CDS Contracts. ~~A TD-Acceptance Notice~~The Clearing House will be deemed to have ~~been~~ issued ~~by the Clearing House at an Acceptance Notice specifying~~ the time ~~(which will be~~of deemed ~~to be~~issue as the Acceptance Time) when ~~the Clearing House~~it gives notice to the affected Clearing Member ~~in the relevant report specified for this purpose~~ that it has recorded the new CDS Contract in its systems. ~~The following provisions of this paragraph 4 shall apply to CDS Contracts arising pursuant to Rule 401(a)(xi) in the same way as they apply to Trade Date Clearing, mutatis mutandis: paragraphs 4.1 (penultimate sentence only), 4.4(a) (second sentence and the final four sentences only), 4.4(c), 4.4(e), 4.4(f), 4.5 (first sentence only), 4.11 (excluding the second sentence), 4.12, 4.13, 4.15 (last two sentences only) and 4.18. For such purposes, (i) the term "Bilateral CDS Transaction" shall be construed as relating to the data relating to proposed CDS Contracts referred to in the second sentence of this paragraph; (ii) references to "submission to Clearing" shall be construed as referring to the Clearing House processing the data that it created and notified to the relevant Clearing Member; and (iii) paragraph 4.4(f)(i) will apply in addition to the circumstances set out therein in any situation in which either: (A) the price of the CDS Contract was incorrect (with reference to the process set out in the CDS Operational Procedures); (B) the Set of the CDS Contract which was entered into is not the same as that in respect of which the relevant end of day price data were requested by the Clearing House; or (C) such "Bilateral CDS Transaction" was ineligible for submission to Clearing as a result of paragraphs 4.12 or 4.13. The Clearing House may decline to take any step that would result in the issuance of an Acceptance Notice in respect of a CDS Contract that would otherwise arise pursuant to Rule 401(a)(xi) if it determines in good faith that, based on the exercise of prudent risk management standards or in accordance with paragraph 4.4(e), it should not become party to a CDS Contract or if it determines that a Revocation Right would apply. No provision of the Rules or these CDS Procedures shall have the effect of binding any Clearing Member contractually to a Bilateral CDS Transaction in connection with any CDS Contract arising or proposed to arise under Rule 401(a)(xi), including without limitation, in any situation in which, prior to the Acceptance Time, such a proposed CDS Contract is rejected for Clearing.~~
- (g) Where a Clearing Member submits CDS Trade Particulars for its Customer Account, the CDS Contract, if any, arising at the Acceptance Time will be recorded in the CDS Sub-Account and DTCC Sub-Account specified by the relevant Clearing Member, in accordance with Rule 401(g). Pursuant to Rule 401(m), in the case of a Non-FCM/BD CDS Clearing Member, a Customer-CM CDS Transaction shall be established (or any pre-existing transaction between the Customer and Clearing Member shall be replaced or amended and restated as a Customer-CM CDS Transaction) at the Acceptance Time in respect of the related CDS Contract, such Customer-CM CDS Transaction being on the terms provided in the Rules and the Standard Terms. The relevant Clearing Member shall also specify the relevant corresponding DTCC Sub-Account.
- (h) A single Clearing Member may submit CDS Trade Particulars which would, on acceptance for Clearing, give rise to a CDS Contract for its Customer Account and a CDS Contract for its Proprietary Account and, for the purposes of this paragraph 4, will be treated as two Clearing Members in relation to such submission, one as protection buyer and one as protection seller.

- 4.5 ~~Rules 401(a)(ix), (x) and (xi) refer to a time to be specified pursuant to the Procedures for the acceptance of CDS Contracts ("Acceptance Time"). For CDS Contracts arising pursuant to Trade Date Clearing, the Acceptance Time shall be the time on a Business Day at which the TD Acceptance Notice was given. The Clearing House will include, in each TD Acceptance Notice, the time at which such notice is given. Such TD Acceptance Notice will be given by electronic message. For CDS Contracts arising pursuant to Weekly Clearing, the Acceptance Time shall be 12:01 a.m. on the calendar day following the Business Day on which the Weekly Acceptance Notice was given or deemed to be given, unless otherwise stated in a Circular or to any Clearing Member with prior notice in writing. For CDS Contracts arising pursuant to Rule 401(a)(x), the Acceptance Time shall be the time specified by the Clearing House in the relevant acceptance notice.~~

4.6

- (a) The Clearing House may accept the submission of ~~Bilateral~~ CDS ~~Transactions~~ Trade Particulars for ~~clearing~~ Clearing for the account of a Clearing Member from a Representative of such Clearing Member that is an Affiliate of such Clearing Member or from a Trade Processing Platform as the Representative of such Affiliate; provided that such Affiliate is ~~currently~~ then designated for this purpose as an authorised Representative of the Clearing Member in accordance with the Membership Procedures and such Trade Processing Platform is ~~currently~~ then designated as a Representative of the Clearing Member. Where an Affiliate of a CDS Clearing Member may submit CDS Trade Particulars for the account of that CDS Clearing Member as referred to in this paragraph 4.5, any person which, as a Trade Processing Platform, is a Representative of such CDS Clearing Member shall be deemed to be additionally a Representative of such Affiliate for these purposes.
- (b) Where ~~a Bilateral CDS Transaction is recorded in the name of~~ CDS Trade Particulars relate to an Affiliate of a CDS Clearing Member and ~~is~~ are submitted for Clearing ~~to be recorded in for~~ the account of that CDS Clearing Member ~~'s Proprietary Account'; other than where that Affiliate is a Segregated Customer:~~
- (i) ~~where Weekly Clearing applies, upon issuance of the relevant Acceptance Notice, the Clearing House is, in addition to other rights, authorised by both CDS such~~ Clearing Members (in each case, for itself and, where applicable, Member (on behalf of its Affiliate) to provide a termination notice to Deriv/SERV in respect of the any ~~related~~ related Bilateral CDS Transaction;
- (ii) ~~where Weekly Clearing applies, the Clearing House will enter details of two new CDS Contracts in Deriv/SERV, one in the name of each of the CDS Clearing Members, and each of the CDS Clearing Members will enter details of the new CDS Contract to which it and the Clearing House is a party, in each case in accordance with the Procedures applicable to other Bilateral CDS Transactions;~~
- (ii) ~~(iii) each such~~ each such Clearing Member ~~submitting a Bilateral CDS Transaction to which an Affiliate was party shall be~~ is responsible for ensuring that any give-up or novation agreements ~~or, other~~ or back-to-back CDS transactions or agency relationships between it and its Affiliate come in to effect and are properly documented at the appropriate time;
- (iii) ~~(iv) for the avoidance of doubt, each relevant Affiliate, to the extent that it is a Customer of a Clearing Member which submitted the Bilateral CDS Transaction, shall be treated as a non-segregated Customer for purposes of the Rules and, accordingly, the Clearing House is not party to any such Contract with the Affiliate and shall have no the provisions of Rule 111 concerning exclusions of liability to the Affiliate shall apply;~~

- (iv) Rules 402(b) and 404 shall apply as though the Affiliate was the Clearing Member referred to therein;
- (v) the Affiliate shall be deemed to have agreed to provide the CDS Clearing Member and Clearing House with such authority as would have been provided (if such Affiliate were a Segregated Customer pursuant to the Standard Terms or the Rules) to amend the records of Deriv/SERV; and
- (vi) ~~(v) the Affiliate shall be deemed to be on notice of this provision and~~ the Affiliate shall (in the absence of evidence of a contrary intention under ~~the any~~ relevant Bilateral CDS Transaction) be deemed to ~~agree to its be on notice of this provision and to have agreed to the~~ application ~~by of this provision by virtue of~~ the Affiliate's conduct in having the relevant ~~Bilateral CDS Transaction submitted for Clearing, so that Rules 402(b) and 404 shall operate in respect of any rights, liabilities or obligations of the Affiliate relating to, or arising out of or in connection with any Bilateral CDS 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 its affiliated Clearing Member in relation to the Bilateral CDS Transaction in question, excluding any right, liability or obligation to receive or make an Initial Payment under a Bilateral CDS Transaction submitted for Weekly Clearing (and accepted for Clearing) and excluding any performance due prior to the time at which a CDS Contract arises pursuant to Rule 401(a)) in the same way as such provisions apply in relation to the Transaction Rights or Obligations of the Clearing Member; and~~ Trade Particulars submitted for Clearing.
- (vi) ~~if Rule 404(e)(v) applies, the Bilateral CDS Transaction that must be submitted or, as the case may be, re-submitted to Deriv/SERV and which is deemed never to have been terminated is a Bilateral CDS Transaction to which the Affiliate (and not its affiliated CDS Clearing Member) is party.~~

~~4.7 Where, prior to the Acceptance Time, any Bilateral CDS Transaction is rejected for Clearing, or, where submitted for Weekly Clearing, the Weekly Acceptance Notice given in respect of it is revoked, the Transaction Rights or Obligations of the Clearing Members which are party thereto shall be deemed never to have been released and discharged pursuant to Rule 402(b).--~~

4.6 ~~4.8~~ The Clearing House will be entitled to assume and will assume that no Credit Event Notice relating to a Credit Event under a Bilateral CDS Transaction for which CDS Trade Particulars are submitted for Clearing has been delivered by either party to the other prior to the relevant Acceptance Time ~~for that Bilateral CDS Transaction~~ (other than any deemed delivery of a Credit Event Notice pursuant to a Credit Event Announcement). Each CDS Buyer and CDS Seller upon submitting ~~a Bilateral CDS Transaction~~ CDS Trade Particulars for ~~clearing~~ Clearing acknowledges and agrees that any Credit Event Notice (other than any deemed delivery of a Credit Event Notice pursuant to a Credit Event Announcement) delivered in relation to ~~a the relevant~~ Bilateral CDS Transaction for which is CDS Trade Particulars are accepted for Clearing shall be deemed, at the Acceptance Time, never to have been delivered. This paragraph shall have no effect on any Bilateral CDS Transaction for which is CDS Trade Particulars are not accepted for Clearing.

4.7 ~~4.9~~ The Clearing House will be entitled to assume and will assume that no Notice of Physical Settlement under a Bilateral CDS Transaction for which CDS Trade Particulars are submitted for Clearing has been delivered by one party to the other prior to the relevant Acceptance Time ~~for that Bilateral CDS Transaction~~. Each CDS Buyer and CDS Seller upon submitting CDS Trade Particulars relating to a Bilateral CDS Transaction for ~~clearing~~ Clearing acknowledges and agrees that any Notice of Physical Settlement delivered in relation to such a Bilateral CDS Transaction ~~which is accepted for Clearing~~ shall be deemed, at the Acceptance Time, never to have been delivered. This paragraph shall have no effect on any Bilateral CDS Transaction for which is CDS Trade Particulars are not accepted for Clearing.

~~4.10 Nothing in this paragraph 4 of itself is intended to result in any Bilateral CDS Transaction or Transaction Rights or Obligations being void or voided as between the original parties thereto.~~

4.8 ~~4.11~~ Any ~~Bilateral CDS Transaction~~ Trade Particulars which would give rise to two Single Name Contracts ~~on at the Acceptance Time shall not be eligible for~~ Clearing, where the Reference Entity is one of the CDS Clearing Members submitting the ~~Bilateral CDS Transaction for Clearing or an Affiliate thereof, shall not be eligible for Clearing~~ Trade Particulars for Clearing or a Group Company thereof (or is the Customer in respect of the CDS Sub-Account in which a CDS Contract would be recorded or a Group Company thereof). CDS Clearing Members shall ~~use reasonable endeavours not to~~ submit for Clearing any ~~Bilateral CDS Transaction which is~~ CDS Trade Particulars which are not, at the time of submission for Clearing, eligible for Clearing pursuant to this paragraph ~~4.11, 4.8.~~ Customers shall not take any action which would lead to the submission for Clearing of any CDS Trade Particulars which are not, at the time of submission for Clearing, eligible for Clearing pursuant to this paragraph 4.8 as a result of the Reference Entity being such Customer or one of its Group Companies. Unless, and only for such time as, it is prevented from doing so by Applicable Law, CDS Clearing Members shall, subject to the following sentence, notify the Clearing House as soon as reasonably practicable if any ~~Bilateral CDS Transaction~~ Trade Particulars submitted by it for Clearing (but in respect of which no Acceptance Notice has become effective) ~~is are~~ or ~~becomes become~~ is are or becomes become ineligible for Clearing pursuant to this paragraph ~~4.11. Such notification may be delayed for so long as the CDS Clearing Member is prevented by Applicable Laws from disclosing the information on the basis of which the notification is required. Any Bilateral~~ 4.8. Unless, and only for such time as, it is prevented from doing so by Applicable Law, Customers shall notify its CDS Clearing Member as soon as reasonably practicable if it becomes aware that any CDS Trade Particulars submitted for Clearing (but in respect of which no Acceptance Notice has become effective) are or become ineligible for Clearing pursuant to this paragraph 4.8 as a result of the Reference Entity being such Customer or one of its Group Companies. Any CDS Transaction Trade Particulars which ~~is are~~ is are submitted for Clearing but which ~~is are~~, or ~~becomes become~~ before the relevant Acceptance Time, ineligible for Clearing may be rejected by the Clearing House before the relevant Acceptance Time (whether or not paragraph ~~4.11, 4.8~~ applied at the time that the ~~Bilateral CDS Transaction was~~ CDS Trade Particulars were submitted for Clearing). This restriction shall not apply where the CDS Trade Particulars are submitted to close-out an Affected SR Contract.

4.9 ~~4.12~~ ~~Bilateral CDS Transactions which are~~ CDS Trade Particulars for Old Index CDS shall cease to be eligible to be submitted for Clearing:

- (a) in the case of a Restructuring Credit Event, upon the earlier of:-
 - (i) close of business on the DC Restructuring Announcement Date; and
 - (ii) the close of business of the day on which a No Auction Announcement Date or ~~Regional CDS Committee Credit Event Announcement~~ relevant to the Set in question occurs;
- (b) in the case of a Failure to Pay Credit Event or a Bankruptcy Credit Event, if the Acceptance Notice would fall after the earlier of:-
 - (i) the close of business on the calendar day following the Auction Final Price Determination Date with respect to the Component Transaction ; and
 - (ii) the close of business of the day on which an Auction Cancellation Date, or a No Auction Announcement Date ~~or a Regional CDS Committee Credit Event Announcement~~ relevant to the Set in question occurs; or
- (c) in any such case, such other time as is notified by the Clearing House in a Circular following consultation with the CDS Risk Committee.

In such circumstances, ~~Bilateral CDS Transactions~~ Trade Particulars similar to the Old Index CDS but excluding the Component Transaction affected by the Credit Event will become available for Clearing when, following consultation with the CDS Risk Committee, the relevant Set is notified as available for Clearing by the Clearing House by Circular, which notification will be given as soon as reasonably practicable. For the avoidance of doubt, ~~Bilateral CDS Transactions~~ Trade Particulars submitted for Clearing prior to the time specified in paragraphs ~~4.12~~ 4.9(a) will be capable of being accepted for Clearing, notwithstanding any occurrence of an event referred to in paragraph ~~4.12~~ 4.9(a) prior to the time of the relevant Acceptance Notice, subject always to paragraph ~~4.12~~ 4.9(c) and the rest of this paragraph 4.

4.10 ~~4.13~~ CDS Trade Particulars which would give rise to two Single Name Contracts ~~on Clearing at the Acceptance Time~~ in respect of which an applicable Credit Event occurs in relation to the relevant Reference Entity shall cease to be eligible to be submitted for Clearing:

- (a) In the case of a Restructuring Credit Event, upon the earliest of:-
 - (i) close of business on the DC Restructuring Announcement Date, provided that Clearing House may, in consultation with the CDS Risk Committee, designate by Circular any later date; and
 - (ii) the close of business of the day on which a No Auction Announcement Date ~~or Regional CDS Committee Credit Event Announcement~~ relevant to the Set in question occurs;
- (b) In the case of a Failure to Pay Credit Event or a Bankruptcy Credit Event, if the Acceptance Notice would fall after the earlier of:-
 - (i) the close of business on the calendar day following the Auction Final Price Determination Date; and
 - (ii) the close of business of the day on which an Auction Cancellation Date ~~or a No Auction Announcement Date or a Regional CDS Committee Credit Event Announcement~~ relevant to the Set in question occurs; or
- (c) in any such case, such other time as is notified by the Clearing House in a Circular following consultation with the CDS Risk Committee.

In the case only of a Restructuring Credit Event, such ~~Bilateral CDS Transactions~~ Trade Particulars will again become eligible for Clearing if the Acceptance Notice would fall after:

- (i) close of business on the calendar day following the ~~CDS Regional~~ Business Day following the latest possible Exercise Cut-off Date for the Restructuring Credit Event; or
- (ii) such other time as is notified by the Clearing House in a Circular following consultation with the CDS Risk Committee.

For the avoidance of doubt, ~~Bilateral CDS Transactions~~ Trade Particulars submitted for Clearing prior to the time specified in ~~paragraphs 4.13~~ paragraph 4.10(a) will be capable of being accepted for Clearing, notwithstanding any occurrence of an event referred to in any of ~~paragraphs 4.13~~ paragraph 4.10(a) prior to the time of the relevant Acceptance Notice, subject always to paragraph ~~4.13~~ 4.10(c) and the rest of this paragraph 4.

4.11 ~~4.14~~ In relation to a Succession Event, if the Clearing House determines that any ~~Bilateral CDS Transaction~~ actual, hypothetical or potential transaction reflected in CDS Trade Particulars submitted for Clearing ~~which would give rise to two CDS Contracts on Clearing~~ would have been subject to a Succession Event but will no longer be subject to such Succession Event ~~upon Clearing after the~~

Acceptance Time because of the Trade Date that would be specified with respect to the related CDS Contract, the Clearing House shall take such action as it deems necessary to ensure that such Succession Event is given effect with respect to such CDS Contracts arising ~~on Clearing at the~~ Acceptance Time, including, without limitation, declining to accept such ~~Bilateral CDS Transaction~~ Trade Particulars for Clearing or specifying an alternate Trade Date for purposes of Section 2.1 of the Credit Derivatives Definitions with respect to the relevant CDS Contract or portion thereof.

4.12 ~~4.15~~ CDS Clearing Members shall use reasonable endeavours not to submit any ~~Bilateral CDS Transaction~~ Trade Particulars which ~~is~~ are not eligible for Clearing pursuant to paragraph ~~4.12~~ 4.9, 4.10, 8.2 or ~~4.13~~ 8.3 as at the time such ~~Bilateral CDS Transaction~~ is CDS Trade Particulars are submitted for Clearing. Each CDS Clearing Member shall notify the Clearing House as soon as reasonably practicable if it is or becomes aware that any ~~Bilateral CDS Transaction~~ Trade Particulars submitted by it for Clearing (but in respect of which no Acceptance Notice has become effective) ~~is~~ are or ~~becomes~~ become ineligible for Clearing pursuant to paragraph ~~4.12~~ 4.9, 4.10, 8.2 or ~~4.13~~ 8.3. Any ~~Bilateral CDS Transaction~~ Trade Particulars which ~~is~~ are submitted for Clearing but which ~~is~~ are, or ~~becomes~~ become before the relevant Acceptance Time, ineligible for Clearing may be rejected by the Clearing House before the relevant Acceptance Time (whether or not the relevant provision of paragraph ~~4.12~~ 4.9, 4.10, 8.2 or ~~4.13~~ 8.3 applied at the time that the ~~Bilateral CDS Transaction was~~ CDS Trade Particulars were submitted for Clearing). If ~~a Bilateral CDS Transaction was~~ CDS Trade Particulars were eligible for Clearing at the time ~~it was~~ they were submitted for Clearing but ~~becomes~~ become ineligible for Clearing pursuant to paragraph ~~4.12~~ 4.9, 4.10, 8.2 or ~~4.13~~ 8.3 after the time that ~~it was~~ they were submitted for Clearing, then the Clearing House will use reasonable endeavours not to issue an Acceptance Notice in respect of ~~that Bilateral~~ those CDS ~~Transaction~~ Trade Particulars.

4.13 ~~4.16~~ If any ~~Bilateral CDS Transaction has~~ CDS Trade Particulars have been submitted for Clearing, ~~is~~ are or ~~becomes~~ become, pursuant to paragraph ~~4.12~~ 4.9 or ~~4.13~~ 4.10, ineligible for Clearing before the relevant Acceptance Time and ~~is~~ are not rejected by the Clearing House before the relevant Acceptance Time, then:

- (a) ~~In~~ in the case of an Old Index CDS where a Restructuring Credit Event has occurred in relation to a Component Transaction and the ~~relevant CEN Triggering Period~~ Exercise Cut-Off Date applicable to the Buyer has not ~~ended~~ occurred at the time that the Clearing House becomes aware of the situation, the Clearing House will endeavour:
 - (i) ~~To~~ to allocate the CDS Buyer and CDS Seller (the "**Late Buyer and Seller**") under the resulting Cleared CDS Contracts (the "**Late Cleared CDS Contracts**") into a single Matched Pair for the relevant Component Transaction in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount relating to such Component Transaction; and
 - (ii) ~~To~~ to treat the remainder of the Late Cleared CDS Contracts in the same way as other equivalent CDS Contracts of the relevant Set which had already been Cleared;
- (b) ~~In~~ in the case of an Old Index CDS where an Applicable Credit Event other than Restructuring has occurred in relation to a Component Transaction, the Clearing House will:
 - (i) ~~Where~~ where an Auction is held in respect of the relevant Reference Entity which would have applied to the relevant Component Transaction, (x) notify the Late Buyer and Seller under the Late Cleared CDS Contracts that they will be obliged to settle the rights and obligations arising in respect of the relevant Component Transaction as a result of such Credit Event at the auction price that would have been applicable to the relevant Component Transaction and (y) endeavour to treat the remainder of the Late Cleared CDS Contracts in the same way as other equivalent CDS Contracts of the relevant Set which had already been Cleared; and

- (ii) ~~Where~~where (i) does not apply and the relevant deadline in section 3.2(c) of the Credit Derivatives Definitions for the delivery of a Notice of Physical Settlement has not passed at the time that the Clearing House becomes aware of the situation, endeavour (x) to allocate the Late Buyer and Seller under the Late Cleared CDS Contracts into a single Matched Pair for the relevant Component Transaction in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount relating to such Component Transaction and (y) to treat the remainder of the Late Cleared CDS Contracts in the same way as other equivalent CDS Contracts of the relevant Set which had already been Cleared;
- (c) ~~In~~in the case of ~~a Bilateral CDS Transaction~~CDS Trade Particulars to which paragraph ~~4.134.10~~4.134.10 applies, where a Restructuring Credit Event has occurred and the ~~relevant CEN-Triggering-Period~~Exercise Cut-off Date applicable to the Buyer has not ~~ended~~occurred at the time that the Clearing House becomes aware of the situation, the Clearing House will endeavour to allocate the Late CDS Buyer and CDS Seller under the Late Cleared CDS Contracts into a single Matched Pair in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount of such ~~Bilateral CDS Transaction~~Trade Particulars; and
- ~~(d)~~(d)
- ~~(e)~~(e) ~~In~~in the case of ~~a Bilateral CDS Transaction~~CDS Trade Particulars to which paragraph ~~4.134.10~~4.134.10 applies, where an Applicable Credit Event other than Restructuring has occurred, the Clearing House will:
 - (i) where an Auction is held in respect of the relevant Reference Entity which would have applied to the Late Cleared CDS Contracts, notify the Late Buyer and Seller under the Late Cleared CDS Contracts that they will be obliged to settle the rights and obligations arising in respect of the Late Cleared CDS Contracts as a result of such Credit Event at the auction price that would have been applicable; and
 - (ii) where (i) does not apply and the relevant deadline in section 3.2(c) of the Credit Derivatives Definitions for the delivery of a Notice of Physical Settlement has not passed at the time that the Clearing House becomes aware of the situation, endeavour to allocate the Late Buyer and Seller under the Late Cleared CDS Contracts into a single Matched Pair in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount of such ~~Bilateral CDS Transaction~~Trade Particulars.

For the avoidance of doubt, if notwithstanding the use of reasonable endeavours to follow the process set out in this paragraph ~~4.16.4.13~~4.134.10, the outcome described in this paragraph ~~4.16.4.13~~4.134.10 has not resulted, the Clearing House may deal with the situation in other ways in accordance with the Rules or these CDS Procedures.

~~4.17 Without prejudice to the provisions of paragraph 4.4 which provide for CDS Contracts to arise only at the Acceptance Time, the Trade Date allocated to CDS Contracts arising from a TD Acceptance Notice in relation to a Bilateral CDS Transaction submitted for Trade Date Clearing shall be the Bilateral CDS Transaction Trade Date.~~

~~4.14 4.18~~ The Clearing House will, where required in order to give effect to the election of each CDS Clearing Member made pursuant to Rule 406(d), aggregate and net those CDS Contracts of the same Set in the same CDS Sub-Account of such CDS Clearing Member which are eligible for netting-~~pursuant to the CDS Operational Procedures~~; (a) on a weekly basis as part of ~~the~~its process for ~~Weekly~~ Clearing Bilateral CDS Transactions already recorded in Deriv/SERV; and (b) on such other dates as the Clearing House may determine. In addition, the Clearing House will aggregate and net relevant CDS Contracts in a CDS Sub-Account which are eligible for netting: (i) when a CDS Contract for such CDS Sub-Account arises pursuant to Rule 401(a)(vi), (x) or (xi); and (ii) when a CDS Contract recorded in such CDS Sub-Account is voided (and such voiding is duly notified by the Clearing House pursuant to Rule 404(e)) or, to the extent that termination and replacement is necessary in the circumstances, Rule 404(c)(i).

4.15 Where, in connection with Clearing, the Clearing House is to use the DTCC Process to submit, amend or terminate the records in Deriv/SERV of any CDS Contract or Customer-CM CDS Contract so far as those records relate to a Customer of a Clearing Member (in relation to any Customer, the "relevant Clearing Member"), the Clearing House will submit, amend or terminate such records on behalf of the relevant Clearing Member and Customer.

5. CDS DEFAULT COMMITTEE

- 5.1 The CDS Default Committee shall be comprised of not more than three CDS Committee-Eligible Clearing Members designated in accordance with paragraph 5.2 (each, a "**CDS Default Committee Participant**"). The CDS Default Committee shall act as a committee of the Clearing House with powers under the Rules pursuant to Rule 114. Each CDS Default Committee Participant shall designate an employee of it or one of its Affiliates with CDS trading experience by notice in writing to the Clearing House (an "**Eligible Employee**") to serve as its representative on the CDS Default Committee, along with one or more alternates in the event such person is not available on a timely basis (the designated employee or alternate, as applicable, a "**CDS Default Committee Member**"). A CDS Default Committee Participant may replace its designated CDS Default Committee Member or alternate(s) with an Eligible Employee from time to time by notice in writing to the Clearing House.
- 5.2 The Clearing House shall randomly order all CDS Committee-Eligible Clearing Members into a list (the "**CDS Default Committee Participant List**"). The procedure for any random ordering for the purposes of this paragraph 5.2 shall be determined by the Clearing House at its discretion. For this purpose, if two or more CDS Committee-Eligible Clearing Members are or become Affiliates, as determined by the Clearing House, they shall be treated as one on the CDS Default Committee Participant List; provided that, notwithstanding the foregoing, CDS Committee-Eligible Clearing Members that are Affiliates but that make separate contributions to the CDS Guaranty Fund shall be treated as separate on the CDS Default Committee Participant List but a maximum of one CDS Default Committee Participant representing all CDS Committee-Eligible Clearing Members that are Affiliates shall be entitled to sit on any CDS Default Committee established in accordance with these Procedures at a particular time.
- 5.3 The CDS Default Committee for the initial Relevant CDS Default Committee Period shall be comprised of the first three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List. For each Relevant CDS Default Committee Period thereafter, the then current CDS Default Committee Participants shall cease to be CDS Default Committee Participants and shall be moved to the end of the CDS Default Committee Participant List, and the next three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List shall be CDS Default Committee Participants. If at any time, there are fewer than three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List, all such CDS Committee-Eligible Clearing Members shall be CDS Default Committee Participants. The "**Relevant CDS Default Committee Period**" will be six calendar months (i.e., January through June and July through December), unless otherwise specified by the Clearing House.
- 5.4 Any CDS Clearing Member that ceases being a CDS Committee-Eligible Clearing Member shall be removed from the CDS Default Committee Participant List and, if such Clearing Member is serving on the CDS Default Committee at the time of removal, shall be replaced on the CDS Default Committee by the next CDS Committee-Eligible Clearing Member on the CDS Default Committee Participant List. Any Clearing Member that becomes (or resumes being) a CDS Committee-Eligible Clearing Member shall be added to the end of the CDS Default Committee Participant List.
- 5.5 If the Clearing House determines, whether upon the request of such CDS Default Committee Participant or upon the Clearing House's own initiative, that any CDS Default Committee Participant has a conflict or lacks impartiality with regard to an action to be undertaken by the CDS Default Committee (e.g., it or its Affiliate is the subject of the Event of Default), is not available to participate with regard to such actions in a timely manner, or should for any other reason be removed from or not participate in actions to be undertaken by the CDS Default Committee, the Clearing House shall

remove such CDS Default Committee Participant and, as promptly as practicable under the circumstances, replace it with the next CDS Committee-Eligible Clearing Member on the CDS Default Committee Participant List and, pending such replacement, the remaining CDS Default Committee Members shall continue to perform the responsibilities of the CDS Default Committee.

5.6 To the extent permitted by Applicable Laws, no CDS Default Committee Member or CDS Default Committee Participant shall be liable to the Clearing House, any Defaulter, any other Clearing Member or any other person for any actions taken or not taken in good faith in its role as CDS Default Committee Member or CDS Default Committee Participant.

5.7 The CDS Default Committee shall be entitled to:

- (a) assist and advise the Clearing House in determining and executing any transactions under Rules 902 or 903 in CDS only;
- (b) assist the Clearing House in determining (and thereafter adjusting) any sale or transfer prices, target prices or minimum target prices for such CDS;
- (c) assist the Clearing House in relation to the unwinding of any CDS Contracts which fall within paragraphs ~~4.11, 12.4~~4.8, 11.4 or ~~13.4, 12.4~~ and otherwise as provided in the Rules and Procedures in relation thereto;
- (d) provide the Clearing House with recommendations as to (i) how prudently to unwind the Open Contract Positions in CDS Contracts of a Defaulter that was a CDS Clearing Member ~~and relating to both Customer Account Positions and Proprietary Account Positions~~; (ii) how to implement the Default Portability Rules, if applicable; and (iii) the related close-out of CDS and other hedging transactions, if any; and
- (e) without prejudice to the generality of the foregoing, assist and advise the Clearing House in determining whether or not the entry into of any hedging transactions under Rule ~~902(b)~~903 would achieve, or would be likely to achieve, the purpose of an orderly unwind of any Contracts to which a Defaulter is party or a reduction of the risk specified in Rule ~~902(b)~~903.

The minimum target price shall be established by the Clearing House in consultation with the CDS Default Committee (taking into account the results of any prior auctions) as the price, as determined in the reasonable discretion of the Clearing House (taking into account the interests of non-defaulting Clearing Members), at which it would be reasonable for the Clearing House to enter into relevant Contracts or hedging contracts under Rule ~~902-903~~. Any minimum target price so determined by the Clearing House may be adjusted by the Clearing House in consultation with the CDS Default Committee for market changes, and to take into account the result of any sales or auctions under Rules 902 and 903, from the time of the initial determination of the minimum target price to the time any new Contracts are entered into.

5.8 Each CDS Default Committee Participant and CDS Default Committee Member (each, for purposes of this paragraph 5.8, a "Covered Party") shall be subject to the provisions of Rule 106 as if it were the Clearing House. Each Covered Party further agrees not to use any information subject to Rule 106 ("Confidential Material") for its own benefit or the benefit of any of its Affiliates. In the event that a Covered Party is served with or otherwise subject to legal process (including subpoena or discovery notice) requiring it to testify about, to produce, or otherwise to divulge Confidential Material, to the extent permitted by law the Covered Party subject to such process will as soon as practicable inform the Clearing House so that the Clearing House may seek a protective order, injunction or other remedy. In the event that such protective order, injunction or other remedy has not been obtained and the Covered Party is advised, in the opinion of counsel, that it is legally compelled to disclose any of the Confidential Material, the Covered Party may disclose only such Confidential Material so advised to be disclosed and shall not otherwise disclose Confidential Material.

- 5.9 Each CDS Default Committee Participant and CDS Default Committee Member shall be responsible for its own costs associated with its service in such position.
- 5.10 The Clearing House acknowledges and agrees that it will consider in good faith the recommendations of any CDS Default Committee in relation to matters over which the CDS Default Committee has competence.

~~6. REGIONAL CDS COMMITTEES AND DISPUTE RESOLUTION PROCEDURES~~

~~This paragraph 6 is subject to paragraph 6.2(d).~~

~~6.1 Composition of the Regional CDS Committees~~

- ~~(a) For each CDS Region, there shall be a committee, governed by this paragraph 6 of these CDS Procedures, responsible for making determinations and resolving disputes related to CDS Contracts for that CDS Region (each, a "Regional CDS Committee"). For each CDS Region, the Clearing House will also determine the location and parameters for determining whether a day is a CDS Regional Business Day in respect of the relevant CDS Region and the relevant local time.~~
- ~~(b) Each Regional CDS Committee will consist of one member (each, a "Committee Member") for each Regional CDS Clearing Member. Each Regional CDS Clearing Member shall notify the Clearing House of the identity of its authorised representative who will serve as its Committee Member for a Regional CDS Committee and also of its authorised alternative representative, who may serve as the Regional CDS Clearing Member's Committee Member in the absence of the Regional CDS Clearing Member's authorised representative, and any changes to the identity of its representatives from time to time. The Clearing House will maintain a list of all Regional CDS Clearing Members, their authorised representatives, and associated contact information for each Regional CDS Committee and may rely on the identity of a Regional CDS Clearing Member's authorised representative and authorised alternative representative previously notified to it until the Clearing House receives notice of any changes. Committee Members of Regional CDS Committees may be the same persons as are appointed by ICE Trust U.S. LLC for its regional CDS committees.~~
- ~~(c) For a particular CDS Region, a "Regional CDS Clearing Member" is a CDS Committee Eligible Clearing Member that meets the applicable criteria established for the relevant CDS Region by the Clearing House, in each case at the time of the relevant vote or other activity under paragraph 6 of these CDS Procedures. If any two or more Regional CDS Clearing Members in a particular CDS Region are or become Affiliates, as determined by the Clearing House, those Regional CDS Clearing Members together are entitled to appoint only a single Committee Member for the relevant Regional CDS Committee. If at any time affiliated Regional CDS Clearing Members in a particular CDS Region have identified more than one Committee Member for the relevant Regional CDS Committee, the affiliated Regional CDS Clearing Members will promptly notify the Clearing House which of the identified authorised representatives and authorised alternative representatives will represent them.~~
- ~~(d) For each Regional CDS Committee, the Clearing House will from time to time appoint a Committee Member from each Regional CDS Committee to serve as chairperson of the Regional CDS Committee for a term of one year (each, a "Chairperson"). If a Chairperson ceases to be a Committee Member of the relevant Regional CDS Committee or notifies the Clearing House of his or her resignation, the Clearing House will appoint another Committee Member to serve as Chairperson of the relevant Regional CDS Committee for the remainder of the outgoing Chairperson's term. Prior service as Chairperson does not disqualify a Committee Member from subsequent terms of service as Chairperson.~~

- (e) ~~Each Regional CDS Clearing Member shall be responsible for its own costs associated with its participation as a Regional CDS Clearing Member or as a Committee Member unless these CDS Procedures specifically provide otherwise.~~

6.2 ~~Role of the Regional CDS Committees.~~

- (a) ~~For the relevant CDS Region, the Regional CDS Committee shall, subject to paragraphs 6.2(d) and (e), be responsible for:~~
 - (i) ~~determining whether a Reference Entity under a CDS Contract has been the subject of a Succession Event and, if so, determining the legally effective date of the Succession Event and the identity of the Reference Entity's Successor(s), if any, provided that such determination will only be made where sufficient information is made available to the Regional CDS Committee to make such determination;~~
 - (ii) ~~where necessary in respect of a CDS Contract, determining whether a Reference Obligation no longer satisfies the applicable requirements under a CDS Contract and, if so, identifying any Substitute Reference Obligation, provided that such determination will only be made where sufficient information is made available to the Regional CDS Committee to make such determination;~~
 - (iii) ~~determining (1) whether an event that constitutes a Potential Repudiation/Moratorium with respect to a CDS Contract for which Repudiation/Moratorium is one of the Applicable Credit Events and for which there is Publicly Available Information has occurred with respect to an Obligation of the relevant Reference Entity on or prior to the Scheduled Termination Date of such CDS Contract (determined by reference to Greenwich Mean Time (or, if the Transaction Type of the relevant Reference Entity is Japan Corporate or Japan Sovereign (as such terms are defined in the 2005 Matrix Supplement), Tokyo time)) and (2)(x) whether an Applicable Credit Event for which there is Publicly Available Information has occurred with respect to a CDS Contract on or after the Credit Event Backstop Date (determined by reference to Greenwich Mean Time (or, if the Transaction Type of the relevant Reference Entity is Japan Corporate or Japan Sovereign (as such terms are defined in the 2005 Matrix Supplement), Tokyo time)) and on or prior to the Extension Date determined by reference to Greenwich Mean Time (or, if the Transaction Type of the relevant Reference Entity is Japan Corporate or Japan Sovereign (as such terms are defined in the 2005 Matrix Supplement), Tokyo time)) and, if so, (y) with respect to a notice delivered on or prior to the end of the last day of the Notice Delivery Period (including prior to the Trade Date) to the Regional CDS Committee requesting that the Regional CDS Committee determine a matter pursuant to this paragraph 6.2(a)(iii), the Event Determination Date (which shall be announced by the Clearing House in a Circular) which shall be the first date on which the Regional CDS Committee determines such notice was effective, and on which the relevant CDS Regional Committee was in possession of Publicly Available Information and provided that an Event Determination Date relating to a Restructuring Credit Event will only be deemed to have occurred in respect of any particular Restructuring CDS Contract or part thereof if a relevant party thereto delivers a Restructuring Credit Event Notice relating thereto on or before the Exercise Cut Off Date;~~
 - (iv) ~~if, where applicable in accordance with these Procedures, a Credit Event Announcement occurred with respect to a Reference Entity (or Obligation thereof) referenced in a CDS Contract and the CDS Contract is to be settled in accordance with the Fallback Settlement Method, resolving any questions presented by one or more Committee Members with respect to such CDS Contract regarding: (1) whether~~

- ~~a particular obligation is a Deliverable Obligation or, where relevant, a Permissible Deliverable Obligation; or (2) the Accreted Amount of any Accreting Obligation;~~
- ~~(v) with respect to a CDS Contract, making any determination requested of it or resolving any disputes referred to it by the Clearing House or its designee or by any Committee Member, excluding (1) making determinations or resolving disputes relating to withholding, gross up or reimbursement for or on account of any Tax or other Tax matters and (2) resolving disputes that are subject to arbitration pursuant to the Rules or Procedures;~~
 - ~~(vi) if settlement in accordance with the Fallback Settlement Method applies, determining, with respect to a Deliverable Obligation, any specific assignment, novation or other document or any other action that may be necessary, customary or desirable and reasonably requested by either party to a Matched Pair for the purpose of effecting physical settlement and, with respect to a Deliverable Obligation that is a Loan, the documentation customarily used in the relevant market for Delivery of any Deliverable Obligation that is a Loan at that time, as such documentation may be amended to the extent the relevant Regional CDS Committee determines is appropriate, which is consistent with the delivery and payment obligations of the parties under the relevant CDS Contract;~~
 - ~~(vii) following the occurrence of a Restructuring Credit Event, determining the form in which any New Trade shall be recorded; and~~
 - ~~(viii) upon determining, in relation to any CDS Contracts relating to an index, that an Applicable Credit Event has occurred with respect to a Reference Entity in such index, consulting with the Clearing House and with the CDS Risk Committee with a view to the Clearing House's publication on behalf of the Regional CDS Committee to CDS Clearing Members of a recommendation as to the amendments to be made to the terms of current and future CDS Contracts relating to such index which form part of CDS Clearing Members' Open Contract Positions (the "**RCE Solution**"), such RCE Solution to be published by the Clearing House on behalf of the Regional CDS Committee by means of a Circular as soon as reasonably practicable after the determination of the occurrence for the Applicable Credit Event, provided that the Regional CDS Committee shall not recommend an RCE Solution which is unacceptable to the Clearing House or the CDS Risk Committee.~~
- (b) Subject to paragraph 6.2(d) and (e) the Clearing House shall be responsible for performing any calculations or other determinations required of the Calculation Agent by a CDS Contract, other than those responsibilities specifically delegated to the Regional CDS Committees as provided in paragraph 6.2(a) or as otherwise delegated to the Regional CDS Committees by the Clearing House or as expressly provided otherwise. Any Calculation Agent determination made by the Clearing House under this paragraph 6.2(b) may be disputed by any Committee Member referring the determination to the relevant Regional CDS Committee.
 - (e) If there is a question presented to the Regional CDS Committee under paragraph 6.2(a)(iv) (1) with respect to whether a particular obligation is a Deliverable Obligation or a Permissible Deliverable Obligation, as applicable, and the answer to the question may differ based on the date as of which the question is answered (for example, the "Not Contingent" characteristic is at issue and there is a contingency that might cease to exist as of a particular date), the presenter of the question will identify the relevant date.
 - (d) Notwithstanding anything to the contrary in this paragraph 6.2 or elsewhere in these CDS Procedures, the Regional CDS Committee shall not consider a question under these CDS Procedures in respect of such CDS Contract (including where new information, relevant to the question to be considered, has become available) unless a request has been previously

~~submitted to ISDA, as DC Secretary, to convene the relevant Credit Derivatives Determinations Committee to resolve the answer to such question for the purposes of the relevant CDS Contract (and where new information as aforesaid has become available, that information has been made available to the DC Secretary with such a request) and ISDA has publicly announced that the relevant Credit Derivatives Determinations Committee has resolved not to determine the answer to such question or the relevant Credit Derivatives Determinations Committee is deemed to have rejected such question as the DC Secretary does not effectively receive agreement from a Convened DC Voting Member to deliberate such question in accordance with Section 2.2(a) of the Credit Derivatives Determinations Committee Rules as published by ISDA from time to time.~~

- (e) ~~For the avoidance of doubt, any determination by a Credit Derivatives Determinations Committee applicable to a CDS Contract shall be binding on the Clearing House and the relevant Clearing Members that are party to such CDS Contract and shall supersede any prior determination of the same question by the relevant Regional CDS Committee, Dispute Resolver or the Clearing House, as applicable, as provided in Section 9.1(c)(iii) of the Credit Derivatives Definitions (except as expressly stated otherwise in Section 9.1(c)(iii)(B) thereof, interpreted as if the relevant Regional CDS Committee, Dispute Resolver or the Clearing House, as applicable, were the Calculation Agent). In the event there is a pending question before a Regional CDS Committee or Dispute Resolver and the DC Secretary publishes on its Website notice of a Credit Derivatives Determinations Committee being convened to deliberate the same question, such Regional CDS Committee or Dispute Resolver shall cease considering such question and, in the event the question is raised again with such Regional CDS Committee or Dispute Resolver following such Credit Derivatives Determinations Committee's proceedings, the process of considering such question by such Regional CDS Committee or Dispute Resolver shall start over from the beginning.~~
- (f) ~~Where the applicable Regional CDS Committee has become entitled to consider the question in accordance with these Procedures:~~
 - (i) ~~a question presented to a Regional CDS Committee concerning whether or not an event constitutes a Credit Event (or, with respect to Repudiation/Moratorium, the event described in Section 4.6(a)(ii) of the Credit Derivatives Definitions) with respect to a CDS Contract which includes a description in reasonable detail of the facts and information required to be included in a Credit Event Notice and a Notice of Publicly Available Information shall be deemed, if the Regional CDS Committee determines that there was such a Credit Event, to be a delivery by the Notifying Party (or one of the Notifying Parties) to the other party of a Credit Event Notice and Notice of Publicly Available Information under all relevant CDS Contracts, whether or not they become CDS Contracts prior to or after such determination or submission, only for the purposes of determining the Credit Event Backstop Date pursuant to Section 1.23 of the Credit Derivatives Definitions and as otherwise provided in these CDS Procedures; and~~
 - (ii) ~~a question presented to a Regional CDS Committee concerning whether or not an event constitutes a Succession Event with respect to such CDS Contract which includes a description in reasonable detail of the facts required to be included in a Succession Event Notice shall be deemed, if the Regional CDS Committee determines that there was such a Succession Event, to be delivery by one party to the other party of a Succession Event Notice under all relevant CDS Contracts only for the purposes of determining the Succession Event Backstop Date pursuant to Section 2.2(i) of the Credit Derivatives Definitions and as otherwise provided in these CDS Procedures.~~

6.3 **Meetings of the Regional CDS Committee.**

- (a) ~~The Clearing House or the Chairperson may, and at the request of any two Committee Members the Chairperson will, call a meeting of the Regional CDS Committee on no less than three hours' notice. Meetings may commence at any time between 10:00 a.m. and 6:00 p.m. local time on a CDS Regional Business Day. As part of the notice to Committee Members of the meeting, the Clearing House or the Chairperson, as applicable, shall include a brief description of the circumstances, including (if applicable) which category described in paragraph 6.2(a) the Regional CDS Committee is being asked to consider. Meetings may be held in person or by telephone or videoconference.~~
- (b) ~~There will be no quorum for holding a meeting of a Regional CDS Committee. The quorum for holding a binding or non-binding vote will be a number of Committee Members equal to the Standard Quorum Number, unless otherwise indicated in these CDS Procedures. "Standard Quorum Number" means the greater of (i) 5 and (ii) 50 percent of the Regional CDS Clearing Members for the relevant Regional CDS Committee (rounded down to the nearest whole number).~~
- (c) ~~Each Committee Member will have a single vote on all matters before the Regional CDS Committee. In addition, each Clearing Member that has appointed a Committee Member agrees that it will cause its Committee Member (or any other person voting on such Committee Member's behalf), when casting a ballot in a binding vote, to vote for the answer that is, in such voter's good faith belief, the proper answer to the question, taking into account any ambiguities in the application of the terms of the CDS Contract to the particular question.~~
- (d) ~~The voting standards used in these CDS Committee Procedures have the following meanings:~~
 - (i) ~~A "Quorum Majority" means that there is a quorum for the vote and at least a majority of voting Committee Members have voted for a particular answer to the question posed.~~
 - (ii) ~~A "Quorum Supermajority" means that there is a quorum for the vote and at least two thirds of voting Committee Members have voted for a particular answer to the question posed.~~
 - (iii) ~~A "Quorum Stage 2 Supermajority" means that there is a quorum for the vote and at least two thirds of voting Committee Members have voted for a particular answer to the question posed. For a Quorum Stage 2 Supermajority, the denominator is the greater of (x) the number of Committee Members voting in the vote and (y) the number of Committee Members who voted in the most recent binding vote on the question.~~
 - (iv) ~~An "Acceleration Supermajority" means that there is a quorum for the vote of at least two thirds of Committee Members on a Regional CDS Committee and all voting Committee Members have voted for holding a binding vote on an Issue or any element thereof on a date earlier than the date described in paragraph 6.7(c).~~
 - (v) ~~An "Effectiveness Supermajority" means that there is a quorum for the vote of at least two thirds of Committee Members on a Regional CDS Committee and at least three quarters of voting Committee Members have voted for a particular Effectiveness Convention.~~

~~For purposes of each of these voting standards: (1) Committee Members who are present but abstain from voting are neither counted for purposes of determining whether there is a quorum nor counted in the denominator for purposes of determining whether the requisite threshold is met; and (2) Committee Members who are present but vote that they need more time to consider the question are both counted for purposes of determining whether there is a quorum~~

~~and counted in the denominator for purposes of determining whether the requisite threshold is met.~~

- ~~(e) A Committee Member may invite one or more employees of the Regional CDS Clearing Member that the Committee Member is representing (or of an Affiliate) to participate in a meeting of the Regional CDS Committee relating to an Issue for which the employee(s) have expertise. The Committee Member may appoint any such employee as its proxy or agent to vote in relation to a particular Issue. If it does so, the Committee Member must give notice of such appointment to the Regional CDS Committee.~~
- ~~(f) A Regional CDS Committee may seek advice or assistance from outside counsel or other outside experts by a Quorum Majority vote of Committee Members in favour. The costs associated with any such advice or assistance may not exceed \$100,000 per Regional CDS Committee in any one calendar year (or such other amount specified by the Clearing House), without the approval of the Clearing House.~~
- ~~(g) The decisions of a Regional CDS Committee will be effective at the time of the binding vote, unless the Regional CDS Committee has adopted an applicable Effectiveness Convention, in which case the decision will be effective as provided in the Effectiveness Convention. By an Effectiveness Supermajority vote in favour, a Regional CDS Committee may adopt a convention, or modify an existing convention, for determining when a particular decision is effective in one or more particular contexts or circumstances (an "**Effectiveness Convention**").~~
- ~~(h) The Clearing House may make publicly available the answer by which a Regional CDS Committee has Resolved a question with respect to an Issue or any element thereof. A Regional CDS Committee may make publicly available a written summary of the basis for the Resolution of an Issue (whether at Stage 1, Stage 2 or Stage 3) if such summary is supported by a Quorum Stage 2 Supermajority.~~

6.4 ~~Regional CDS Committee Mandatory Voting Members.~~

- ~~(a) The Clearing House shall maintain a list of Regional CDS Clearing Members for purposes of identifying Regional CDS Clearing Members whose Committee Member shall be required to participate in all meetings and votes relating to a matter before the Regional CDS Committee (a "**Mandatory Voting Member**"), absent a written certification to the Clearing House by the relevant Regional CDS Clearing Member that, in its judgment, neither its Committee Member nor anyone else within the Regional CDS Clearing Member's organisation is appropriate to serve in such capacity. A Regional CDS Clearing Member may not provide such a written certification solely on the basis that it does not trade the particular Set at issue.~~
- ~~(b) For each CDS Region, the Clearing House shall initially list the Regional CDS Clearing Members in random order. The Clearing House shall remove from the list those that cease to be Regional CDS Clearing Members and add to the list in a random position any new Regional CDS Clearing Members. If a Regional CDS Clearing Member serves as a Mandatory Voting Member, it shall be moved to the bottom of the list. The Clearing House will provide an updated list to the Regional CDS Clearing Members promptly after any update. If requested on a Quorum Majority vote by the relevant Regional CDS Committee, the Clearing House shall randomly re-order the list. The procedure for any random ordering for the purposes of this paragraph 6.4(b) shall be determined by the Clearing House at its discretion.~~
- ~~(c) If a Regional CDS Committee votes, whether binding or non-binding, with respect to:

 - ~~(i) an Issue under one of the sub-clauses in paragraph 6.2(a), including voting not to determine any such Issue or to dismiss such Issue;~~~~

- (ii) ~~an amendment to these CDS Committee Procedures proposed under paragraph 6.11(a); or~~
- (iii) ~~an Effectiveness Convention under paragraph 6.3(g);~~

~~and fails to achieve a quorum, the Chairperson shall notify the Clearing House, which shall, by proceeding in the order of the list, promptly identify a number of Regional CDS Clearing Members equal to the full quorum required for that vote (e.g., the Standard Quorum Number if the voting standard is a Quorum Majority or a Quorum Supermajority) whose Committee Member shall serve as Mandatory Voting Members for such vote or, in the case of paragraph 6.4(c)(i), until all aspects of the matter requiring the participation of Mandatory Voting Members have been fully Resolved.~~

6.5 **Role and Composition of the Dispute Resolution Panel.**

- (a) ~~For each CDS Region, the Clearing House may, as provided in this paragraph 6.5, maintain a list (each such list, a "**Dispute Resolution Panel**") of persons eligible to resolve, in accordance with this paragraph 6, disputes that are referred to Stage 2 procedures described in paragraph 6.8 by the relevant Regional CDS Committee under paragraphs 6.8(a)-6.8(e).~~
- (b) ~~Each Dispute Resolution Panel will consist of between 3 and 5 persons (each, a "**Panel Member**") selected in accordance with paragraph 6.5(c). If at any time, there are fewer than 3 Panel Members, the Clearing House shall select additional individuals to be added to the Dispute Resolution Panel in accordance with paragraph 6.5(c). The Panel Member charged with resolving a particular dispute (the "**Dispute Resolver**") will be selected from the relevant Dispute Resolution Panel in accordance with paragraph 6.6.~~
- (c) ~~The Clearing House shall nominate one or more individuals to be considered for membership on a Dispute Resolution Panel and shall notify the Committee Members for the relevant Regional CDS Committee of each such nomination. The Clearing House may nominate only individuals that it is satisfied are not current employees or directors of a Regional CDS Clearing Member for the relevant CDS Region or an Affiliate thereof. Unless 3 or more Committee Members for the relevant Regional CDS Committee object to the nomination within 30 days of the date the Clearing House notifies Committee Members of the nomination, the individual will become a Panel Member effective on the later of such 30th day and the date the individual signs an agreement with the Clearing House governing its role as Panel Member for a term specified in the agreement.~~
- (d) ~~The Clearing House may, and if directed by the relevant Regional CDS Committee as provided in this paragraph 6.5(d) shall, remove a Panel Member by terminating or by not renewing or extending the term of a Panel Member in accordance with the agreement between the Clearing House and the Panel Member; provided that a Panel Member who is then serving as Dispute Resolver may be removed only for cause. If a Panel Member is removed for cause while he or she is serving as Dispute Resolver, or withdraws from service as Dispute Resolver, a replacement Dispute Resolver shall be selected as if the dispute being resolved by the removed Panel Member had been newly referred to Stage 2 for resolution on the date of such Panel Member's removal or withdrawal. The Regional CDS Committee shall consider at least annually whether to direct the Clearing House to remove any Panel Members from the Dispute Resolution Panel for the relevant CDS Region. To so direct the Clearing House:~~
 - (i) ~~a Quorum Supermajority of Committee Members for the relevant Regional CDS Committee must vote in favour of the removal if the Panel Member is being removed in the middle of his or her term; and~~

- (ii) ~~a Quorum Majority of Committee Members for the relevant Regional CDS Committee must vote in favour of the removal if the Panel Member's term is not being renewed or extended.~~

6.6 ~~Selection of the Dispute Resolver~~

- (a) ~~When a Regional CDS Committee refers a dispute to the Dispute Resolution Panel, the Dispute Resolver will be selected as follows:~~
 - (i) ~~The Panel Member at the top of the Panel Member list, ordered as described in paragraph 6.6(b), at the time the Regional CDS Committee refers the dispute to the relevant Dispute Resolution Panel will be charged with resolving the dispute, unless that Panel Member has a conflict of interest or material interest or lacks impartiality with regard to resolution of the dispute or is not available to resolve the dispute within the time periods contemplated by the Stage 2 procedures set forth in paragraph 6.8(j). Each Panel Member must notify the Regional CDS Committee and the Clearing House of any such conflict of interest, material interest, lack of impartiality or lack of availability. If more than one question relating to a single Issue is referred to Stage 2 for resolution, then the Panel Member selected under this paragraph 6.6(a) shall be the Dispute Resolver for each such question.~~
 - (ii) ~~If that Panel Member indicates (or the Clearing House determines) such a conflict of interest or lack of impartiality or availability, the Panel Members on the relevant Dispute Resolution Panel will be charged in the order described in paragraph 6.6(b) to resolve the dispute until a Panel Member is identified without such a conflict or lack of impartiality or availability.~~
 - (iii) ~~If all Panel Members on the relevant Dispute Resolution Panel indicate (or the Clearing House determines) such a conflict of interest or lack of impartiality or availability, or if there are no Panel Members on the relevant Dispute Resolution Panel, the dispute shall be referred back to the Regional CDS Committee to be resolved in accordance with the Stage 3 procedures described in paragraph 6.9.~~
- (b) ~~The Panel Members on the Dispute Resolution Panel will be ordered as follows:~~
 - (i) ~~For each CDS Region, the Clearing House shall initially list the Panel Members in random order. At the end of each Relevant Period, the Clearing House shall randomly reorder the Panel Member list for the next Relevant Period. For any Relevant Period, the Panel Member at the top of the initial list for that Relevant Period will be the "Primary Panel Member". A Panel Member is not eligible to be the Primary Panel Member after having been the Primary Panel Member in the prior Relevant Period, unless the individual is the only remaining Panel Member, and the Clearing House shall randomly reorder the Panel Member list for a particular Relevant Period until this requirement is satisfied. The procedure for any random ordering for the purposes of this paragraph 6.6(b) shall be determined by the Clearing House at its discretion.~~
 - (ii) ~~The Clearing House shall remove from the Dispute Resolution Panel those individuals that cease to be Panel Members during the particular Relevant Period and add to the bottom of the list any new Panel Member. If a Panel Member on a list for a particular Relevant Period serves as a Dispute Resolver, the individual shall be moved to the bottom of the list for that Relevant Period.~~
 - (iii) ~~The "Relevant Period" will be six calendar months (i.e., January through June and July through December), unless otherwise specified by the Clearing House.~~

- (iv) ~~The Clearing House will provide an updated list of Panel Members to the Regional CDS Clearing Members promptly after any update to the Dispute Resolution Panel.~~

6.7 ~~Stage 1—The Regional CDS Committee with Quorum Supermajority Vote~~

- (a) ~~When a Regional CDS Committee is asked to consider the application of a particular set of circumstances to a category described in paragraph 6.2(a) (an "Issue"), one or more meetings shall be held where Committee Members will discuss the Issue and attempt to reach a consensus. To facilitate this process, the Regional CDS Committee may hold one or more non-binding votes to gauge the views of the Committee Members. A non-binding vote shall be held whenever called by the Chairperson or requested by two or more Committee Members.~~
- (b) ~~The Regional CDS Committee will attempt to reach a consensus on the phrasing of one or more questions the answers to which are necessary to Resolve an Issue. If the Regional CDS Committee cannot reach a consensus on the phrasing of any question, any two Committee Members may pose a question to be voted on by the Regional CDS Committee. To the extent practicable, the Regional CDS Committee should endeavour to Resolve through individual questions particular elements of an Issue even if unable to Resolve all elements of such Issue. For example, the Regional CDS Committee might Resolve the determination that a Reference Obligation no longer satisfies the applicable requirements under a CDS Contract even if unable to Resolve the determination of an appropriate Substitute Reference Obligation (or vice versa).~~
- (c) ~~Subject to paragraph 6.7(f), a binding vote on all elements of an Issue shall be held:~~
 - (i) ~~for an Issue described in paragraph 6.2(a)(iii) or 6.2(a)(iv), on the second CDS Regional Business Day after the CDS Regional Business Day of the initial meeting of the Regional CDS Committee regarding the Issue; and~~
 - (ii) ~~for any other Issue, on the ninth CDS Regional Business Day after the CDS Regional Business Day of the initial meeting of the Regional CDS Committee regarding the Issue;~~

~~unless, in the case of paragraph 6.7(c)(i), the date for a binding vote has been delayed by a vote in favour of such delay by a Quorum Supermajority of the Regional CDS Committee and, in the case of paragraph 6.7(c)(ii), the date for a binding vote has been delayed by a vote in favour of such delay by a Quorum Majority of the Regional CDS Committee for the first delay and a vote in favour of such delay by a Quorum Supermajority of the Regional CDS Committee for any subsequent delay.~~
- (d) ~~A Regional CDS Committee may hold a binding vote on any element of an Issue on a date earlier than the date described in paragraph 6.7(c):~~
 - (i) ~~on the CDS Regional Business Day of the initial meeting of the Regional CDS Committee regarding the Issue, if an Acceleration Supermajority vote in favour; or~~
 - (ii) ~~on any subsequent CDS Regional Business Day, if a Quorum Supermajority vote in favour.~~
- (e) ~~If, in a binding vote, a Quorum Supermajority vote for a particular answer to a question, that question is considered Resolved according to that answer. Once a question has been Resolved, it may not be reconsidered or voted on again by the Regional CDS Committee. For the sake of clarity, if a Regional CDS Committee Resolves that:~~
 - (i) ~~a Credit Event or a Potential Repudiation/Moratorium for which there is Publicly Available Information has not occurred with respect to a CDS Contract, but Publicly~~

~~Available Information not considered by the Regional CDS Committee becomes available to the Regional CDS Committee; or~~

- ~~(ii) a particular obligation is or is not a Deliverable Obligation or a Permissible Deliverable Obligation as of a particular date, but the analysis would be different if the Deliverable Obligation Characteristics or Credit Derivatives Definitions Section 2.32(a) or 2.33(a), as applicable, were applied on a different date;~~

~~a subsequent vote on such Issue is considered a new question rather than reconsideration of the prior question.~~

- ~~(f) A Regional CDS Committee may, in a binding vote, by a Quorum Majority, decide not to determine the relevant Issue or to dismiss the relevant Issue, in which case the Issue shall be treated as though it had never been raised for consideration by the Regional CDS Committee.~~

6.8 **Stage 2—Dispute Resolution**

- ~~(a) An Issue presented to the Regional CDS Committee will be referred to Stage 2 if:

 - ~~(i) the Regional CDS Committee holds a binding vote where a Quorum Supermajority are in favour of referring the Issue to Stage 2, in which case all elements of such Issue that have not been Resolved by the Regional CDS Committee through a binding vote will be referred to Stage 2; or~~
 - ~~(ii) (unless paragraph 6.7(f) applies) the Regional CDS Committee has not fully Resolved all elements of an Issue through a binding vote within the time period described in paragraph 6.7(e), in which case each element not Resolved will be referred to Stage 2.~~~~
- ~~(b) If an Issue is referred to Stage 2, the positions to be presented to the Dispute Resolver (each, a "**Presented Position**" and, collectively, the "**Presented Positions**") in respect of the elements of an Issue not Resolved by the Regional CDS Committee shall be determined as follows:

 - ~~(i) In the case of a question that was phrased to be answered with either "yes" or "no", the Presented Positions shall be both the "yes" and "no" answers.~~
 - ~~(ii) In the case of a question that was not phrased to be answered with either "yes" or "no", the Presented Positions shall include the answer or answers that receive the most votes. If only one answer receives the most votes, the Presented Positions shall also include the answer or answers receiving the next most votes.~~~~
- ~~(c) Where the Regional CDS Committee failed to reach a consensus on the phrasing of a question necessary to Resolve one or more elements of an Issue and there was more than one phrasing of a question voted on by the Regional CDS Committee in a binding vote, a Quorum Supermajority may determine the phrasing of the question to be addressed in Stage 2, and in the absence of a Quorum Supermajority favouring a particular phrasing, the Dispute Resolver shall select the phrasing of the question to be addressed in Stage 2.~~
- ~~(d) The Dispute Resolver for a particular dispute will follow the procedures set forth in this paragraph 6.8 in resolving the dispute. At any time before the Dispute Resolver announces his or her decision with respect to a question, the Regional CDS Committee may withdraw and Resolve the question by holding a vote where a Quorum Stage 2 Supermajority vote for a particular answer to the question. In that case, the Clearing House or the Regional CDS Committee shall notify the Dispute Resolver of the vote that has taken place and, if it receives any such notice from either the Clearing House or the Regional CDS Committee, the Dispute Resolver shall not render a decision on the particular question.~~

- ~~(e) The Dispute Resolver must, in his or her decision with respect to a question, select without alteration in any way from one of the Presented Positions (except pursuant to paragraph 6.8(e)).~~
- ~~(f) The Dispute Resolver will communicate to the Regional CDS Committee and the Clearing House in writing which of the Presented Positions he or she has selected with respect to a question, but shall not issue a written opinion explaining his or her reasoning. The decision of the Dispute Resolver will be effective at the time the decision is communicated, unless the time of effectiveness was specifically included in the Presented Position.~~
- ~~(g) Unless either the Regional CDS Committee has withdrawn and Resolved a question as described in paragraph 6.8(d) or any of the conditions described in paragraph 6.8(h) are met, the Dispute Resolver's decision with respect to a question will Resolve the question.~~
- ~~(h) A question necessary to Resolve one or more elements of an Issue referred to Stage 2 shall be referred back to the Regional CDS Committee to be Resolved in accordance with the Stage 3 procedures in paragraph 6.9 in any of the following circumstances:~~
 - ~~(i) the Dispute Resolver does not issue his or her decision with respect to the question within the time period described in paragraph 6.8(j);~~
 - ~~(ii) the Dispute Resolver has deviated from the requirements set forth in paragraph 6.8(e); or~~
 - ~~(iii) the Dispute Resolver informs the Regional CDS Committee and the Clearing House that he or she is unable to reach a decision with respect to the question.~~

~~In the case of paragraph 6.8(h)(iii), the Dispute Resolver shall not explain his or her reasoning for being unable to reach a decision.~~

- ~~(i) The Clearing House may publish any final decision made by the Dispute Resolver in such detail as the Clearing House deems appropriate by Circular (or another means of communication) where the matter under investigation is considered of relevance to the market in general or in the public interest, provided that any Clearing Member mentioned in the publication shall be afforded an opportunity to comment on the text of the publication during a period of not less than 48 hours prior to publication, such period commencing on a Business Day. The Clearing House may report the findings of any Dispute Resolver and hand over any documents or communicate any information it has acquired whether during the course of any process under these CDS Procedures or otherwise, to other Clearing Organisations, Regulatory Authorities or Governmental Authorities.~~
- ~~(j) The following schedule will apply to the dispute resolution procedures unless modified as described below:~~
 - ~~(i) Within one CDS Regional Business Day of an Issue being referred to Stage 2, the Dispute Resolver shall, if required by paragraph 6.8(e), select the phrasing of any question necessary to Resolve one or more elements of an Issue and communicate the selected phrasing to the Advocates and the Clearing House.~~
 - ~~(ii) Within two CDS Regional Business Days of an Issue being referred to Stage 2, the Dispute Resolver and the Advocates shall hold an administrative meeting (the "**Administrative Meeting**").~~
 - ~~(iii) Written Materials shall be submitted to the Dispute Resolver no more than five CDS Regional Business Days after the Issue is referred to Stage 2 (the "**Submission Deadline**").~~

- ~~(iv) Initial Oral Argument shall be heard at a time and on a CDS Regional Business Day specified by the Dispute Resolver, but in no event before the CDS Regional Business Day following the Submission Deadline.~~
- ~~(v) After the initial Oral Argument and at the option of the Dispute Resolver, additional Oral Argument may be heard at a time and on a CDS Regional Business Day specified by the Dispute Resolver.~~
- ~~(vi) The Dispute Resolver shall render his or her decision no later than four CDS Regional Business Days after the Submission Deadline.~~

~~The schedule for dispute resolution may be modified either (A) by a Quorum Stage 2 Supermajority vote of the Regional CDS Committee in favour of a modification or (B) by the Clearing House as it determines appropriate in light of extenuating circumstances. The Regional CDS Committee or the Clearing House, as applicable, shall as soon as reasonably practicable notify the other and the Dispute Resolver of any schedule modification.~~

- ~~(k) The Regional CDS Clearing Members who support a particular Presented Position shall identify one or more persons to coordinate their activities, present their arguments to the Dispute Resolver, and participate in Oral Arguments (the "Advocates") and shall notify the Clearing House and the Dispute Resolver of the identity and contact details of their Advocates. Advocates may, but need not, be outside counsel selected by the relevant Regional CDS Clearing Members.~~
- ~~(l) Any expenses incurred in connection with the support of a Presented Position during the Stage 2 dispute resolution process, up to a maximum of \$50,000 per Presented Position (or such other amount specified by the Clearing House) (the "Reimbursement Amount"), will be borne on a pro rata basis by the Regional CDS Clearing Members for the relevant CDS Region. Any expenses in excess of the Reimbursement Amount shall be borne by the Regional CDS Clearing Member incurring such expense unless the Regional CDS Clearing Members supporting the relevant Presented Position agree otherwise.~~
- ~~(m) In addition to the Administrative Meeting scheduled under paragraph 6.8(j)(ii), the Dispute Resolver may call other Administrative Meetings, in each case on no less than three hours notice. Administrative Meetings may be commenced at any time between 10:00 a.m. and 6:00 p.m. local time on a CDS Regional Business Day, or at any other time agreed to by the Dispute Resolver and all Advocates. All Advocates must be given the opportunity to be present at each Administrative Meeting. Administrative Meetings may be held in person or by telephone or videoconference.~~
- ~~(n) At an Administrative Meeting or an Oral Argument, the Dispute Resolver may, subject to the schedule for dispute resolution provided in paragraph 6.8(j), do any of the following:~~
 - ~~(i) schedule the time and CDS Regional Business Day of an Oral Argument;~~
 - ~~(ii) establish or alter the place, duration, format or means of an Oral Argument;~~
 - ~~(iii) alter the page limit of the Brief;~~
 - ~~(iv) request additional Written Materials or Oral Argument on a particular subject or in response to argument previously made in Written Materials or at Oral Argument; or~~
 - ~~(v) request or allow witness affidavits as Exhibits or witness testimony at Oral Argument.~~

- (o) ~~The materials that may be submitted to the Dispute Resolver by the Regional CDS Clearing Members in support of a Presented Position include the following (collectively, the "Written Materials"):~~
 - (i) ~~a brief addressing the question before the Dispute Resolver consisting of no more than twenty single-sided, double-spaced pages in Times New Roman twelve-point font, with one-inch margins (the "Brief"); and~~
 - (ii) ~~any exhibits in support of the Brief (the "Exhibits"). Unless requested or allowed by the Dispute Resolver, the Exhibits shall not contain any witness affidavits or additional argument.~~
- (p) ~~While an Issue is before the Dispute Resolver, no director, officer, employee or agent of a Regional CDS Clearing Member, or others acting on behalf of any such director, officer, employee or agent, may communicate with the Dispute Resolver except for the Advocates. There shall be no communications between the Dispute Resolver and an Advocate unless all other Advocates are given the opportunity to be present during such communication. For the avoidance of doubt, written communication (whether transmitted by email, facsimile, or post) between the Dispute Resolver and an Advocate must also be transmitted contemporaneously to all other Advocates.~~
- (q) ~~The Dispute Resolver shall hold one or more proceedings where the Advocates may orally present argument in favour of their Presented Position (each such proceeding an "Oral Argument"). Unless the Dispute Resolver has altered the duration of Oral Argument under paragraph 6.8(n)(ii), the Advocates for each Presented Position shall be allocated an aggregate of one hour in which to present argument. All Advocates must be given the opportunity to be present for the duration of an Oral Argument. Oral Argument may be held in person or by videoconference, or by other means established by the Dispute Resolver under paragraph 6.8(n)(ii). If requested or allowed by the Dispute Resolver, an Oral Argument may include testimony by witnesses.~~
- (r) ~~The place of expert determination in relation to CDS Contracts shall be London, England. Notwithstanding the foregoing, the Dispute Resolver may, after consultation with the Advocates, conduct an in-person Administrative Meeting or Oral Argument at any location he or she considers appropriate.~~

6.9 ~~Stage 3—The Regional CDS Committee with Quorum Majority Vote.~~

- (a) ~~Promptly but in any event within one CDS Regional Business Day after a question has been referred back to the Regional CDS Committee for resolution, as provided in paragraph 6.6(a)(iii) or paragraph 6.8(h), the Clearing House will call a meeting of the Regional CDS Committee for purposes of holding a binding vote from among the Presented Positions to Resolve the question. If a Quorum Majority vote for a particular Presented Position, the question is considered Resolved according to that Presented Position.~~
- (b) ~~If, at the initial Stage 3 vote on a question, a Quorum Majority is not achieved for any Presented Position, the Clearing House will call a meeting of the Regional CDS Committee on each subsequent CDS Regional Business Day for the purpose of holding a binding vote from among the Presented Positions to Resolve the question until such time as a Quorum Majority vote for a particular Presented Position. If a Quorum Majority vote for a particular Presented Position, the question is considered Resolved according to that Presented Position.~~
- (c) ~~In the case of votes subsequent to the initial vote, all Regional CDS Clearing Members shall be required to participate in the votes absent a written certification to the Clearing House by the relevant Regional CDS Clearing Member that, in its judgment, neither its Committee Member nor anyone else within the Regional CDS Clearing Member's organisation is~~

~~appropriate to serve in such capacity. A Regional CDS Clearing Member may not provide such a written certification solely on the basis that it does not trade the particular CDS Contract at issue.~~

6.10 ~~Effect of Resolution of Issues by a Regional CDS Committee or Dispute Resolver and Capacity persons acting under this paragraph 6.~~

- ~~(a) Under these CDS Committee Procedures, the term "**Resolved**" means, with respect to an Issue or an element thereof, that the answer to the Issue or such element is binding on all CDS Clearing Members that are party to CDS Contracts of a Set to which such Issue relates and the Clearing House. "**Resolve**" and "**Resolves**" will be construed accordingly.~~
- ~~(b) Any decision made by a Dispute Resolver in accordance with paragraph 6.8(g) shall be binding and enforceable as between affected Clearing Members and the Clearing House.~~
- ~~(c) Any Regional CDS Committee, Dispute Resolver, Dispute Resolution Panel or External Reviewer shall act as expert and not as arbitrator in connection with any matter over which any of them has competence.~~
- ~~(d) Notwithstanding any provision of the Procedures or these Rules, no Regional CDS Committee, Dispute Resolver, Dispute Resolution Panel, Credit Derivatives Determinations Committee, External Reviewer or ISDA given powers or rights pursuant to the CDS Procedures shall have competence:~~
 - ~~(i) to determine whether any Transfer Order should arise, become irrevocable or be otherwise affected by any of the provisions of Part 12 of the Rules or otherwise;~~
 - ~~(ii) to determine whether any Person is a Participant in the Designated System;~~
 - ~~(iii) to make any determination that would be inconsistent with any provision of the default rules (as such term is defined in the Companies Act 1989);~~
 - ~~(iv) to make any determination that would be inconsistent with any provision of the Companies Act 1989, the Settlement Finality Regulations, the Financial Collateral Regulations or any other Applicable Law; and~~
 - ~~(v) to adopt or apply any procedure to the extent that the same would conflict with the Human Rights Act 1998 or other Applicable Law.~~

6.11 ~~CDS Committee Rule Amendments.~~

- ~~(a) Any Regional CDS Committee may recommend an amendment to this paragraph 6 by providing to the Clearing House the text of the amendment along with detail regarding the vote in favour of the recommendation. Any such amendment, if proposed to be adopted by the Clearing House, may only be adopted subject to the requirements of Rule 109.~~

6.12 ~~Confidentiality~~

- ~~(a) Each of the Regional CDS Clearing Members, Committee Members, Advocates, Panel Members and Dispute Resolver (each, for purposes of this paragraph 6.12, a "**Covered Party**") shall be subject to the provisions of Rule 106 in relation to Confidential Material as if it were the Clearing House and Rule 106 applied in relation to Confidential Material. Without prejudice to the generality of the foregoing, each Covered Party shall be deemed to have agreed:~~
 - ~~(i) to maintain confidentiality as to all aspects of any procedures under this paragraph 6, including, without limitation, the presentation of any Issue to a Regional CDS~~

~~Committee, any discussions, deliberations, proceedings or results of any binding or non-binding vote relating to an Issue, any Written Materials or Oral Arguments, or any determinations produced by these proceedings (the "Confidential Material"); and~~

- ~~(ii) not to use any Confidential Material for its own benefit or the benefit of any of its Affiliates;~~

- ~~(b) In the event that a Covered Party is served with or otherwise subject to legal process (including subpoena or discovery notice) requiring it to testify about, to produce, or otherwise to divulge Confidential Material, to the extent permitted by law the Covered Party subject to such process will as soon as practicable inform the Clearing House and the provider(s) of such Confidential Material or the Regional CDS Clearing Members to which such Confidential Information relates (each a "Provider") (or, if the Covered Party is unsure of the Provider, will inform all Regional CDS Clearing Members for the relevant CDS Region) so that the Clearing House or any Provider may seek a protective order, injunction or other remedy. In the event that such protective order, injunction or other remedy has not been obtained and the Covered Party is advised, in the opinion of counsel, that it is legally compelled to disclose any of the Confidential Material, the Covered Party may disclose only such Confidential Material so advised to be disclosed.~~

~~6.13 Waiver of liability and disclaimer re Regional CDS Committee, Committee Members, Panel Members and Dispute Resolver~~

- ~~(a) Each Clearing Member, each Customer of any Clearing Member and the Clearing House shall be deemed to agree:-~~
 - ~~(i) that no Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver and no legal counsel or other third party professional retained by any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver in connection with any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver's performance of its duties under the Rules shall be liable, whether for negligence or otherwise, to any Clearing Member, any Customer of a Clearing Member or the Clearing House for any form of damages, whether direct, indirect, special, consequential or otherwise, that might arise in connection with any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver's performance of its duties, or any advice given by legal counsel or any other third party professional retained by any Regional CDS Committee, Committee Member, Panel Member or the Dispute Resolver in connection with any Regional CDS Committee, Committee Member, Panel Member or the Dispute Resolver's performance of its duties, under the Rules, except in the case of gross negligence, fraud or wilful misconduct on the part of the relevant Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver, legal counsel or other third party professional, as applicable; and~~
 - ~~(ii) to waive any claim, whether for negligence or otherwise, that may arise against any Regional CDS Committee, Committee Member, Panel Member or the Dispute Resolver and any legal counsel or other third party professional retained by any Regional CDS Committee, Committee Member, Panel Member or the Dispute Resolver in connection with any Regional CDS Committee, Committee Member, Panel Member or the Dispute Resolver's performance of its duties under the Rules, except in the case of gross negligence, fraud or wilful misconduct on the part of the relevant Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver, legal counsel or other third party professional, as applicable.~~

- (b) ~~No Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver and no outside legal counsel or other third party professional retained by any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver in connection with any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver's performance of its duties under the Rules shall undertake any duty of care or otherwise be liable to the Clearing House or any Clearing Member or any Customer of any Clearing Member for any form of damages, whether direct, indirect, special, consequential or otherwise, that might arise in connection with any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver's performance of its duties, or any advice given in connection with any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver's performance of its duties, under the Rules, except in the case of gross negligence, fraud or wilful misconduct on the part of the relevant Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver, legal counsel or other third party professional, as applicable. No Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver and no outside legal counsel or other third party professional retained by any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver shall undertake any duty or otherwise be liable to the Clearing House or any Clearing Member or any Customer of a Clearing Member for any action, including one based on negligence, that might arise in connection with any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver's performance of its duties, or any advice given by legal counsel or any other third party professional retained by any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver in connection with any Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver's performance of its duties, under the Rules, except in the case of gross negligence, fraud or wilful misconduct on the part of the relevant Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver, legal counsel or other third party professional, as applicable. Notwithstanding the above, outside legal counsel or a third party professional retained by a Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver may still be liable to such Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver.~~
- (e) ~~Nothing in this paragraph 6.13 shall restrict or exclude any liability of any outside legal counsel or third party professional retained by a Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver to its client or any other person that retained it or paid for its services. This paragraph 6.13 shall apply to any acts or omissions of a Clearing Member only in its capacity as a Committee Member, Panel Member or member of the Regional CDS Committee. Nothing in this paragraph 6.13 shall restrict or exclude the liability of any Clearing Member under any CDS Contract or otherwise under the Rules.~~

6. **7. CLEARING HOUSE CDS CONTRIBUTIONS**

6.1 ~~7.1 The Clearing House CDS Contributions shall be calculated as set out in this paragraph 7.~~

- 7.2 ~~On or before the first date on which Clearing Members are required to transfer CDS Guaranty Fund Contributions to the Clearing House, the~~ Clearing House CDS Initial Contribution shall be the EUR equivalent of USD 10 million, calculated at the exchange rate specified in paragraph 2.2 of the Finance Procedures ~~on the first date on which Clearing Members are required to transfer CDS Guaranty Fund Contributions to the Clearing House.~~ 28 July 2009. Thereafter, the Clearing House may increase the Clearing House CDS Initial Contribution from time to time and shall be obliged on or prior to the first anniversary of the Customer Integration Date to have made an aggregate Clearing House CDS Initial Contribution (including the initial USD 10 million equivalent) of the EUR equivalent of USD 25 million, calculated at the exchange rate specified in paragraph 2.2 of the Finance Procedures on the first anniversary of the Customer Integration Date. Such amounts are subject to any reduction following the application of any amount of Clearing House CDS Initial Contribution pursuant to Rule ~~1103-908.~~

- [6.2](#) ~~7.3~~ If on or after the first anniversary of the Customer Integration Date, the value, determined in the same way in which the value of Guaranty Fund Contributions is calculated, of the assets constituting the Clearing House CDS Initial Contribution is below the required amount of the Clearing House CDS Initial Contribution because of a decrease in the value of assets representing such Clearing House CDS Initial Contribution (including such decreases that occurred prior to such first anniversary or as the result of investments of the Clearing House CDS Initial Contribution, but excluding decreases resulting from the application of any amount of Clearing House CDS Initial Contribution pursuant to Rule 1103 and excluding any decreases due to exchange rate fluctuations described in paragraph ~~7.9~~[6.8](#)), the Clearing House shall be required, by the open of business on the following Business Day, to make additional Clearing House CDS Initial Contributions sufficient to cause the assets constituting the Clearing House CDS Initial Contribution to have a value, determined in the same way in which the value of Guaranty Fund Contributions is calculated but excluding the effects of any exchange rate fluctuations as aforesaid, of at least the required amount in EUR of the Clearing House CDS Initial Contribution.
- [6.3](#) ~~7.4~~ The Clearing House may ~~make~~[allocate amounts as](#) Clearing House CDS GF Contributions and, by the second anniversary of the Customer Integration Date, shall be obliged to have ~~made~~[allocated amounts as](#) Clearing House CDS GF Contributions (net of any decreases resulting from the application of any amount of Clearing House CDS GF Contributions pursuant to Rule 1103) on or before such second anniversary of the Customer Integration Date of at least the EUR equivalent of USD 25 million, calculated at the exchange rate specified in paragraph 2.2 of the Finance Procedures on the second anniversary of the Customer Integration Date (from time to time, the aggregate amount of Clearing House CDS GF Contributions being reduced by any application of any amount of Clearing House CDS GF Contributions pursuant to Rule 1103 for such period as is permitted under this paragraph ~~7.4~~[6.3](#)). If, prior to the second anniversary of the Customer Integration Date, the aggregate amount of Clearing House CDS GF Contributions is reduced by any application of any amount of Clearing House CDS GF Contributions pursuant to Rule 1103, the Clearing House shall be required, by the open of business on the following Business Day, to ~~contribute~~[allocate](#) additional [amounts as](#) Clearing House CDS GF Contributions equal to the amount by which the Clearing House CDS GF Contribution was applied and such additional amount shall constitute part of the Clearing House CDS GF Contribution.
- [6.4](#) ~~7.5~~ If on or after the second anniversary of the Customer Integration Date, the value, determined in the same way in which the value of Guaranty Fund Contributions is calculated, of the assets constituting the Clearing House CDS GF Contribution is below the required amount of the Clearing House CDS GF Contribution because of a decrease in the value of assets representing such Clearing House CDS GF Contribution (excluding any decreases due to exchange rate fluctuations described in paragraph ~~7.9~~[6.8](#)) or the application of any amount of Clearing House CDS GF Contribution pursuant to Rule 1103, the Clearing House shall be required, by the open of business on the following Business Day, to make additional Clearing House CDS GF Contributions sufficient to cause the assets constituting the Clearing House CDS GF Contribution to have a value, determined in the same way in which the value of Guaranty Fund Contributions is calculated but excluding the effects of any exchange rate fluctuations as aforesaid, of at least the required amount in EUR of the Clearing House CDS GF Contribution.
- [6.5](#) ~~7.6~~ For the purposes of calculating the amount of any application of any amount of Clearing House CDS Contribution pursuant to Rule 1103, the value of the Clearing House CDS Contribution shall be determined in EUR as of the date of such application. Subject to paragraph ~~7.9~~[6.8](#), any deficiency of the actual Clearing House CDS Contributions relative to the required amounts at the time of application shall remain the liability of the Clearing House, notwithstanding anything to the contrary in the Rules or Procedures.
- [6.6](#) ~~7.7~~ The Clearing House may make withdrawals from accounts containing the Clearing House CDS Initial Contribution or Clearing House CDS GF Contribution only to the extent the value of the relevant assets exceeds the required EUR requirement. The Clearing House may substitute assets constituting the Clearing House CDS Contributions only to the extent that assets constituting Guaranty Fund Contributions may be substituted by Clearing Members.

6.7 ~~7.8~~ The Clearing House shall have no obligation to contribute any additional Clearing House CDS Contributions in any situation in which final sentence of Rule 209(c) or the final sentence of Rule 209(f) applies in respect of any Clearing Member, except in either case in respect of any due and unpaid amounts at the time of such occurrence.

6.8 ~~7.9~~ Notwithstanding any other provision of this paragraph ~~7.6~~, the Clearing House shall not be obliged to top up any amount or part of any Clearing House CDS Contribution as a result of fluctuations in currency exchange rates between USD and EUR compared to the rates at which any EUR requirement for any Clearing House CDS Contribution was calculated, whether to ensure that any Clearing House CDS Contribution equals any USD amount specified in this paragraph ~~7.6~~ or otherwise. Notwithstanding any other provision of this paragraph ~~7.6~~ the Clearing House shall not be entitled to withdraw any amount or part of any Clearing House CDS Contribution as a result of fluctuations in currency exchange rates between USD and EUR compared to the rates at which any EUR requirement for any Clearing House CDS Contribution was calculated, whether to ensure that any Clearing House CDS Contribution equals any USD amount specified in this paragraph ~~7.6~~ or otherwise.

7. ~~8. CREDIT EVENTS AND PHYSICAL SETTLEMENT~~ CREDIT EVENTS AND PHYSICAL SETTLEMENT

8.1 ~~General~~

(a) ~~This paragraph 8 (including any dispute referred to below) is subject to paragraph 6.~~

8.2 ~~Not used.~~

7.1 Old Index CDS and Restructuring

In relation to each CDS Contract which is an Old Index CDS where a Restructuring Credit Event has occurred in relation to a component transaction, the Clearing House (for itself and on behalf of each relevant CDS Clearing Member and each relevant Customer) will submit relevant data to Deriv/SERV as soon as practicable after the DTCC Reversioning Date in order to record the relevant New Trades and any related Customer-CM CDS Transactions.

7.2 ~~8.3~~ Notices

(a) MP Notices delivered between a Matched CDS Buyer, the Clearing House and a Matched CDS Seller shall be delivered in accordance with the terms of the relevant CDS Contract, Part 15 of the Rules and these CDS Procedures ~~and, subject, Subject~~ to this paragraph ~~8.37.2~~ and paragraph ~~8.4.7.3~~, Section 1.10 of the Credit Derivatives Definitions will apply to ~~such notices~~ MP Notices and all other Credit Event Notices, Notices to Exercise Movement Option, Notices of Physical Settlement, NOPS Amendment Notices and other notices provided for by the Credit Derivatives Definitions delivered under a CDS Contract (and, pursuant to Rule 113, the provisions of Section 1.10 of Credit Derivatives Definitions prevail over the general timings and processes for notices set out in Rule 113). Any Manual MP Notices (including memoranda of telephone notices) and all other Credit Event Notices, Notices to Exercise Movement Option, Notices of Physical Settlement, NOPS Amendment Notices and other notices provided for by the Credit Derivatives Definitions under a CDS Contract shall be copied or sent to the following e-mail address of the Clearing House: cdsen@theice.com or the following fax number: +44 (0) 207 979 0119. The Clearing House shall have no responsibility to any CDS Clearing Member to verify in any manner the contents of any MP Notice received by it.

(b) ~~In addition to any changes or corrections permitted under the Credit Derivatives Definitions, if the Regional CDS Committee (or applicable Dispute Resolver), where it is entitled under paragraph 6.2(d) to do so, announces that it has Resolved that a particular obligation is not a Deliverable Obligation or, where relevant, a Permissible Deliverable Obligation in respect of~~

~~a Set of Matched CDS Contracts, a CDS Buyer that has specified such Deliverable Obligation in its Notice of Physical Settlement or NOPS Amendment Notice for a Matched CDS Contract of such a Set shall have a single opportunity by notice in writing to the Clearing House, copied to the relevant CDS Seller in the Matched Pair, within three CDS Regional Business Days after the date of the relevant actual decision to Resolve (which shall be deemed to be the date of such announcement by the Regional CDS Committee and determined without regard to any Effectiveness Convention or any time of effectiveness specified in a Presented Position), to replace such Deliverable Obligation to the extent it has not been previously Delivered and the Clearing House will be deemed to have given written notice accordingly to such CDS Seller of equivalent changes in respect of any Notice of Physical Settlement or NOPS Amendment Notice it has (or is deemed to have) delivered.~~

- ~~(e) In addition to the restrictions in Rule 1505, 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.~~

- ~~(b) (d) The Clearing House will circulate, by e-mail to all relevant CDS Clearing Members prior to the start of the CEN Triggering Period or, where Physical Settlement applies (other than following a Restructuring Credit Event) in accordance with Rule 1507, prior to 4: 30 p.m. on the tenth calendar day following either the No Auction Announcement Date, or Auction Cancellation Date or the day on which a Regional CDS Committee Credit Event Announcement relevant to the Set in question occurs, as applicable:~~

- (i) such details as it has received of CDS Clearing Members' address, fax number, telephone number, e-mail address and any other applicable notice details for the delivery of notices through the Manual Notice Process; and
- (ii) the fax number and e-mail address of the Clearing House for the delivery of notices or copies or memoranda of notices through the Manual Notice Process or otherwise in connection with the Credit Event in question (if different from those specified in paragraph 7.2(a)).

Manual MP Notices delivered by CDS Clearing Members to other CDS Clearing Members or to or copied to the Clearing House and any other notices, notifications or communications (other than Electronic Notices) delivered to the Clearing House or any CDS Clearing Member in connection with the Credit Event in question must be made to the contact details specified in ~~such e-mail, paragraph 7.2(a) or otherwise in such manner as is specified by the Clearing House in the e-mail circulated pursuant to this 7.2(b).~~

7.3 **8.4 Matched Pairs**

- (a) Matched Pairs will not be allocated in respect of any CDS Contracts for which the applicable Settlement Method is "Auction Settlement" following the occurrence of any Applicable Credit Event other than Restructuring.
- (b)
 - (i) For any CDS Sub-Account where CDS Contracts are recorded on a "trade by trade" basis or a "gross" basis (as referred to in Rule 406(d)), CDS Contracts will be netted and/or aggregated (as if the CDS Sub-Account were held on a "net" basis) prior to the processing of any Restructuring Credit Event so as to reflect the equivalent of an Open Contract Position in the relevant Set in respect of such CDS Sub-Account.
 - (ii) The Clearing House will, as soon as reasonably practicable following the completion of the process in paragraph ~~8.4~~7.3(b)(i), use an algorithm for purposes of allocating

Matched Pairs under Rules 1507 and 1508. This algorithm shall minimise, to the extent reasonably practicable, each of the following:

- (A) the number of Matched Pairs in respect of which the MP Amount is less than EUR 1,000,000 (or in the case of Sovereign Contracts USD 1,000,000) (or such other amount as may be notified by the Clearing House by Circular, after consultation with the CDS Risk Committee) or not an integral multiple of such amount;
 - (B) the number of Matched Pairs into which an individual Clearing Member is matched, provided that the MP Amount for any Matched Pair shall not exceed EUR 50,000,000 (or in the case of Sovereign Contracts USD 10,000,000) (or such other amount as may be notified by the Clearing House by Circular, after consultation with the CDS Risk Committee) and further provided that this shall not preclude the same CDS Seller and CDS Buyer being matched with each other in respect of more than one Matched Pair;
 - (C) the overall number of Matched Pairs; and
 - (D) the number of, and notional amounts in, ~~External RMPs~~ Matched Pairs with two different CDS Clearing Members.
- (c) For purposes of Rule 1507 and 1508, the Clearing House will allocate to each Matched Pair an MP Amount such that: (i) the sum of all MP Amounts of each CDS Buyer is equal to the aggregate Floating Rate Payer Calculation Amounts of such CDS Buyer in respect of all its CDS Contracts of ~~such~~ the same Set or Component Transactions of CDS Contracts of the same Set (as applicable); and (ii) the sum of all MP Amounts of each CDS Seller is equal to the aggregate of the Floating Rate Payer Calculation Amounts of such CDS Seller in respect of all its CDS Contracts of ~~such~~ the same Set or Component Transactions of CDS Contracts of the same Set (as applicable).
- (d) In the case of the allocation of Matched Pairs under Rule 1508, the Clearing House will, as soon as reasonably practicable ~~after, but not earlier than the Business Day immediately following, the completion of the process in paragraph 8.4(b)(ii), provide to~~ provide each CDS Clearing Member an RMP Matching Report ~~which the Clearing House will treat as being in final form pursuant to paragraph 8.4(e)(iv), subject to the provisions of this paragraph 8.4(d).~~ Each CDS Clearing Member to whom an RMP Matching Report is delivered shall check that the RMP Matching Report reflects their ~~net Open Contract Position~~ netted Contracts for each CDS Sub-Account with the Clearing House in respect of each Set that is subject to the Restructuring Credit Event. Any CDS Clearing Member which believes that the RMP Matching Report does not so reflect their net Open Contract Position shall notify the Clearing House of the same as soon as possible. ~~Any failure by a CDS Clearing Member to do so will result in any such error or apparent error not being addressed in the RMP Matching Report. For the avoidance of doubt, failure to notify the Clearing House of any error in a RMP Matching Report shall not, of itself, result in the relevant CDS Clearing Member accepting the accuracy of the contents of the RMP Matching Report.~~ If an error is notified to or noticed by the Clearing House ~~prior to the uploading of the RMP Matched Table as referred to in paragraph 8.4(e)(vi), the Clearing House will:~~ (i) provided that it has the time to do so, issue a replacement RMP Matching Report to any affected CDS Clearing Member; or (ii) take any other such steps as may be required to correct the error.
- (e) Matched Pair Notices.
- (i) If the Clearing House is obliged to issue Matched Pair Notices pursuant to Rule 1507 or 1508, it will endeavour to do so as soon as reasonably practicable after the latest

date on which an Acceptance Notice would, in the ordinary course, be issued in respect of any ~~Bilateral CDS Transactions~~ Trade Particulars relating to the relevant Set which had been submitted for Clearing before the relevant Set became ineligible for Clearing under paragraph ~~4.124.9~~ or ~~4.134.10~~ (as applicable).

- (ii) Matched Pair Notices may be delivered by the Clearing House by e-mail or fax or by posting to a secure section of the Clearing House's website which only the Clearing House and the relevant CDS Clearing Member may view, such that confidentiality (to the extent required under the Rules) is maintained. The Clearing House will give each CDS Clearing Member reasonable notice of any method of delivery to be used other than the Clearing House's secure website, unless a particular CDS Clearing Member and the Clearing House mutually agree upon an alternative form of notice being used. The Matched Pair Notice will be effective when received by, or available on the secure section of the Clearing House's website for inspection by, the relevant CDS Clearing Member, as applicable.
- (iii) The Clearing House shall issue Matched Pair Notices pursuant to Rule 1507 following an Applicable Credit Event other than a Restructuring Credit Event prior to 4:30 p.m. on the tenth calendar day following ~~either the No Auction Announcement Date, or Auction Cancellation Date or the day on which a Regional CDS Committee Credit Event Announcement relevant to the Set in question occurs,~~ as applicable.
- (iv) The Clearing House shall issue Matched Pair Notices to ~~the~~ CDS Clearing Members pursuant to Rule 1508 following a Restructuring Credit Event prior to the RMP Deadline Time, in the form of the RMP Matching Report for each CDS Clearing Member. Where there is a CH Reversioning Date, the Clearing House will, in its own systems, reversion Old Index CDS to exclude the relevant component transaction in respect of which a Restructuring Credit Event has occurred and record such Component Transaction in the form of a New Trade, in each case on the CH Reversioning Date.
- (v) As soon as practicable after the issue of the RMP Matching Reports, the Clearing House will, for itself ~~and~~, for Clearing Members and for any Segregated CDS Customers and Segregated CDS FCM/BD Customers, terminate the records in the DTCC Accounts of all CDS Contracts and any related Customer-CM CDS Transactions which ~~records are being replaced in accordance with~~ are the subject of the relevant RMP Matching Report and, using the ~~ANT~~DTCC Process, input matching records of CDS Contracts and any related Customer-CM CDS Transactions in the DTCC Accounts ~~as required by the Clearing House~~ to reflect the creation of the RMPs shown by the RMP Matching Reports. Each relevant CDS Clearing Member and each Segregated Customer shall cease to take any action which would result in any of the records of relevant CDS Contracts and any related Customer-CM CDS Transactions in the DTCC Accounts being amended after 12 noon on the day of the RMP Deadline Time, unless otherwise agreed with the Clearing House. The Clearing House and each relevant CDS Clearing Member shall use their best endeavours to rename trade identifiers in the DTCC Accounts appropriately and to ensure that the records of each affected CDS Contract to which it is party and any related Customer-CM CDS Transactions are "confirmed and certain" within the DTCC Accounts prior to that time. If the records of CDS Contracts and any related Customer-CM CDS Transactions which are so input into the DTCC Accounts by the Clearing House using the ~~ANT~~DTCC Process do not reflect the RMPs shown by the RMP Matching Reports, the Clearing House will amend (and thereby correct) such records in the DTCC Accounts and may require the affected Clearing Members or Segregated Customers to make or confirm matching amendments to such records.

Clearing Members and their Segregated Customers will be bound by the records originally so input unless and until they are so amended.

- (vi) The Clearing House shall, in the case of the allocation of Matched Pairs pursuant to Rule 1508, upload the RMP Matched Table to Deriv/SERV and issue confirmed RMP Matching Reports to CDS Clearing Members, setting out the details of the Matched Pairs that have been recorded in the DTCC Accounts, as soon as reasonably practicable but in any event not later than the RMP Deadline Time (provided that, the Clearing House shall not be treated as being in breach of any obligation to any Clearing Member if it is not able to do as a result of a failure of DTCC). The Clearing House ~~and~~ CDS Clearing Members and Customers recognise and acknowledge that in certain circumstances outside the control of the Clearing House, the CEN Triggering Period applicable to the Seller and the Buyer may be a period of fewer than two and five Business Days ~~-, respectively.~~
- (vii) In accordance with and to the extent permitted under Rule 1505(b), if the Clearing House fails to issue Matched Pair Notices or the RMP Matching Reports and to upload the RMP Matched Table by the relevant time, being the RMP Deadline Time or the time specified in paragraph 8.47.3(e)(iii), as applicable, CDS Clearing Members may deliver Credit Event Notices, Notices to Exercise Movement Option, Notices of Physical Settlement and NOPS Amendment Notices (as applicable) directly to the Clearing House until such time as the Matched Pair Notices or RMP Matching Reports, as applicable, have been issued or the RMP Matched Table, as applicable, has been uploaded. Such notices must be made by fax or e-mail to the contact details specified in accordance with paragraph 8.37.2(d).
- (f) Electronic Notice Process for Restructuring Matched Pairs.
 - (i) Subject to paragraphs 8.47.3(e)(vii), 8.47.3(f)(v), 8.47.3(f)(vi) and Rule 1505(b):
 - (A) a CDS Clearing Member, Segregated CDS Customer and Segregated CDS FCM/BD Customer (if any) may ~~only~~ deliver Restructuring Credit Event Notices and Notices to Exercise Movement Option ~~in relation to an RMP in respect of which it is the Matched CDS Buyer or Matched CDS Seller as,~~ but only in the form of an Electronic Notice through Deriv/SERV in accordance with the specific procedures of DTCC which are provided for the delivery of such notices through the DTCC Accounts; and
 - (B) any Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered otherwise than in accordance with such procedures as an Electronic Notice will be invalid and ineffective.
 - (ii) The Clearing House ~~and~~ each CDS Clearing Member acknowledge and Customer acknowledges that, subject to paragraph 8.47.3(f)(vi); (x) an Electronic Notice delivered ~~by a CDS Clearing Member~~ to the Clearing House in relation to a Matched CDS Buyer Contract or a Matched CDS Seller Contract recorded in ~~its~~ such CDS Clearing Member's DTCC Account, or (y) an electronic notice delivered by the Segregated CDS Customer in respect of a Customer-CM CDS Transaction, provided that it is delivered within the time limits set for such delivery by the Contract Terms and otherwise satisfies the requirements of the Contract Terms and is submitted properly in accordance with the applicable regulations, rules and procedures of Deriv/SERV, is intended to result (1) where (x) applies, in a corresponding Electronic Notice being created by Deriv/SERV and delivered ~~(and/or if such corresponding Electronic Notice will be deemed to have been created and delivered) on behalf of the Clearing House to the other CDS Clearing Member in respect of the Matched CDS Seller Contract or Matched CDS Buyer Contract, as applicable, in the~~

~~same Matched Pair~~ is not created and delivered, it shall be deemed to have been created and delivered) on behalf of the Clearing House to the other CDS Clearing Member in respect of the Matched CDS Seller Contract or Matched CDS Buyer Contract, as applicable, in the same Matched Pair and (2) where (y) applies, in an Electronic Notice being simultaneously delivered also to the Clearing House, through the DTCC Process, in respect of the related CDS Contract and in a corresponding Electronic Notice being created by Deriv/SERV and delivered (or if such corresponding Electronic Notice is not created and delivered, it shall be deemed to have been created and delivered) on behalf of the Clearing House to the other CDS Clearing Member in respect of the Matched CDS Seller Contract or Matched CDS Buyer Contract, as applicable, in the same Matched Pair. Where a CDS Clearing Member receives (or has been deemed to receive) such an Electronic Notice from the Clearing House in respect of a CDS Contract recorded in a Customer Account, the relevant Segregated Customer will be deemed to have received the same Electronic Notice in respect of the relevant CDS Contract, where it is a Segregated CDS FCM/BD Customer, or an equivalent Electronic Notice from the relevant CDS Clearing Member in respect of the related Customer-CM CDS Transaction where it is a Segregated CDS Customer. Where a Non-FCM/BD CDS Clearing Member delivers such an Electronic Notice to the Clearing House in respect of a CDS Contract recorded in its Customer Account, an equivalent Electronic Notice will be deemed to have been delivered at the same time by the relevant Segregated CDS Customer to such CDS Clearing Member in respect of the related Customer-CM CDS Transaction.

The time of delivery of both such Electronic Notices in respect of both the Matched CDS Buyer Contract and Matched CDS Seller Contract which are subject of the same Matched Pair shall be deemed to be the same and shall be the time that DTCC records as being the time at which the first Electronic Notice was ~~delivered~~ processed. An Electronic Notice which is or is deemed to be validly delivered in accordance with these CDS Procedures shall be treated as valid delivery of a Restructuring Credit Event Notice or Notice to Exercise Movement Option for purposes of the Credit Derivatives Definitions and Contract Terms of the relevant CDS Contract. ~~CDS Clearing Members and the Clearing House will not have any rights or be subject to any obligations under Rules 1509(a) (b) in relation to Electronic Notices and shall be under no obligations under the first two sentences of Rule 1509(d) in relation to Electronic Notices, and any related Customer-CM CDS Transaction.~~

- (iii) If, but only if, the Clearing House has received, before the end of the relevant Triggering Period, either (A) the notice required under paragraph 8.47.3(f)(v)(B)(2) from any CDS Clearing Member or (B) a notification of a DTCC Failure, as referred to in paragraph 8.47.3(f)(vi), then, by 6:00 p.m. on ~~each~~ the day of such notice or notification and each subsequent day of the relevant Triggering Period, the Clearing House will provide CDS Clearing Members with a report containing details of Electronic Notices that have been delivered by or to it, with a separate report or combined report also including details of any Manual MP Notices that have been delivered by ~~it~~ or to it and notified to the Clearing House. Without prejudice to the generality of paragraph 8.47.3(f)(x), if the contents of any such report are disputed, paragraph 8.47.3(g)(iv) applies.
- (iv) At the end of each Triggering Period, the Clearing House ~~and, where necessary, each CDS Clearing Member, to the extent that it has all necessary information,~~ will, where such records have not already been adjusted to the following effect by DTCC, adjust the records in the DTCC Accounts of the Matched CDS Contracts (and any related Customer-CM CDS Transactions) to which the RMPs relate to reflect any Restructuring Credit Event Notices and Notices to Exercise Movement Option (and the consequences of such notices) delivered ~~in relation to those RMPs~~ during the

relevant Triggering Period ~~(including delivery pursuant to the Manual Notice Process), including:~~ (A) where appropriate, sub-dividing such Matched CDS Contracts (and any related Customer-CM CDS Transactions) to reflect Triggered Restructuring CDS Contract Portions; ~~pursuant to Section 3.9 of the Credit Derivatives Definitions. To the extent that the Clearing House and any CDS Clearing Member do in fact have to adjust any such records in the DTCC Accounts at the end of the CEN Triggering Period, the Clearing House will update the RMP Matched Table to reflect such adjustments. The Clearing House and the relevant CDS Clearing Members will, where necessary, take such operational steps as are necessary in respect of the DTCC Accounts such that any Triggered Restructuring CDS Contract Portion in respect of which they have adjusted the records, as referred to above, so that such Triggered Restructuring CDS Contract Portion settles through the same processes as the;~~ and (B) taking such steps as are necessary for Triggered Restructuring CDS Contract Portions for which the relevant Restructuring Credit Event Notices and Notices to Exercise Movement Option (if any) that were delivered through the Manual Notice Process or Electronic Notice Process settle through the same processes. To the extent that the Clearing House adjusts any records in the DTCC Accounts at the end of the CEN Triggering Period applicable to the Buyer, the Clearing House will update the RMP Matched Table to reflect such adjustments.

(v) Rights and obligations to use the Manual Notice Process.

- (A) In addition to the circumstances set out in paragraph ~~8.47.3~~(f)(vi), a CDS Clearing Member (a "**Manual CDS Clearing Member**") (but not, for the avoidance of doubt, any Segregated Customer) shall be entitled to deliver Restructuring Credit Event Notices and Notices to Exercise Movement Option pursuant to the Manual Notice Process only if it is affected by a significant communications or information technology failure resulting in it being impossible or impractical for such CDS Clearing Member to deliver all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process on the last day of the relevant NEMO Triggering Period or CEN Triggering Period applicable to it as protection buyer or protection seller.

As between a CDS Clearing Member and its Customer (if any), the delivery or receipt by that CDS Clearing Member to or from the Clearing House of a Restructuring Credit Event Notice or a Notice to Exercise Movement Option in respect of a CDS Contract recorded in its Customer Account shall have the same effect as though such CDS Clearing Member had delivered or received, to or from the Clearing House, an Electronic Notice of the same under paragraph 7.3(f)(ii).

- (B) If a CDS Clearing Member delivers any Restructuring Credit Event Notice or ~~Notices~~Notice to Exercise Movement Option (as applicable) in accordance with the Manual Notice Process then:

- (1) it will be deemed to represent to the Clearing House that it is affected by a significant communications or information technology failure resulting in it being impossible or impractical for such CDS Clearing Member to deliver all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process;
- (2) it must deliver a notice, in or substantially in the form provided by the Clearing House on the Clearing Member-accessible section of

its website for such purpose, signed by a senior officer (such as managing director or equivalent) of such CDS Clearing Member to the Clearing House, certifying only that it is affected by a significant communications or information technology failure resulting in it being impossible or impractical for it to deliver all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process and that it has delivered one or more Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Manual Notice Process, such notice to be delivered promptly and, in any event, within 1 hour of such CDS Clearing Member's first so delivering a Restructuring Credit Event Notice or Notice to Exercise Movement Option in respect of any Restructuring Credit Event (but the CDS Clearing Member shall not be required to provide a copy of any Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) until the time specified in paragraph 8.4.7.3(g));

- (3) the Clearing House will (x) publish a Circular as soon as reasonably practicable after receiving a notice pursuant to paragraph 8.4.7.3(f)(v)(B)(2) which will name the CDS Clearing Member involved, refer to such CDS Clearing Member as having been subject to a significant communications or information technology failure and specify any amended timelines applicable for the processing of the Restructuring Credit Event in question and (y) notify all CDS Clearing Members of the name of the Manual CDS Clearing Member by fax or e-mail within 1 hour;
 - (4) the CDS Clearing Member must use reasonable endeavours to mitigate the effects on other CDS Clearing Members and the Clearing House of it using the Manual Notice Process, with reference to the principle that it is operationally simpler for all CDS Clearing Members to use the Electronic Notice Process and shall use reasonable endeavours to minimise the number of notices it delivers pursuant to the Manual Notice Process;
 - (5) the CDS Clearing Member must revert to using the Electronic Notice Process (and cease using the Manual Notice Process) as soon as reasonably practicable;
 - (6) the CDS Clearing Member must take reasonable endeavours to ensure that the communications or information technology issue does not recur; and
 - (7) if a separate significant communications or information technology failure occurs affecting the same or another CDS Clearing Member in respect of the same Restructuring Credit Event, this paragraph 8.4.7.3(f)(v) shall apply in full in respect of that separate failure.
- (C) Where, as a consequence of a Restructuring Credit Event Notice being delivered pursuant to the Manual Notice Process, the records of the relevant Triggered Restructuring CDS Contract Portion(s) in the DTCC Accounts are not the same as the records thereof held by the Clearing House: (1) the Clearing House and the two relevant CDS Clearing Members in the Matched Pair or, if applicable, the relevant CDS Clearing Member and the

relevant Customer will use all reasonable endeavours to reconcile the records as soon as possible; and (2) if agreement as to such reconciliation has not been reached within two Business Days of the Clearing House first notifying the two CDS Clearing Members involved of the inconsistency between the two sets of records, the matters will be resolved as disputes between the Clearing House and each of the two affected CDS Clearing Members in accordance with Paragraph 8.4.7.3(g)(ix) to (xii).

- (D) Any CDS Clearing Member (and any relevant Segregated Customers) in a Restructuring Matched Pair with a Manual CDS Clearing Member must continue to use the Electronic Notice Process unless this paragraph 8.4.7.3(f)(v) separately applies to it. For the avoidance of doubt, and without prejudice to the Clearing House's rights under Part 10 of the Rules or for breach of contract or misrepresentation, any breach by a CDS Clearing Member of the provisions of this paragraph 8.4.7.3(f)(v) shall not cause any Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered otherwise in accordance with the Contract Terms to be invalid or ineffective.

(vi) If DTCC notifies the Clearing House that there has been a DTCC Failure:

- (A) the Clearing House will (1) publish a Circular as soon as reasonably practicable after receiving such notice stating that a DTCC Failure has occurred, specifying a time (the "**DTCC Failure Time**") at which such DTCC Failure occurred and which may specify any amended timelines applicable for the processing of the Restructuring Credit Event in question and (2) notify all CDS Clearing Members of the DTCC Failure by fax or e-mail within 1 hour;
- (B) from and including the DTCC Failure Time to but excluding the DTCC Resolution Time (as defined below), the Electronic Notice Process shall cease to be applicable and CDS Clearing Members (but not, for the avoidance of doubt, any Segregated Customer) may only deliver and receive Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) in respect of a Matched CDS Contract in accordance with the Manual Notice Process;
- (C) the validity of any Restructuring Credit Event Notices and Notice to Exercise Movement Option (as applicable) delivered in accordance with the Electronic Notice Process prior to the DTCC Failure Time will not be affected by the DTCC Failure; and
- (D) all Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) delivered or purported to be delivered in accordance with the Electronic Notice Process at or after the DTCC Failure Time to but excluding the DTCC Resolution Time will not be valid.

If, subsequent to a DTCC Failure, DTCC notifies the Clearing House that the DTCC Failure is no longer in effect:

- (1) the Clearing House will (x) publish a Circular as soon as reasonably practicable after receiving such notice stating the DTCC Failure is no longer in effect and specifying the time at which the Electronic Notice Process is to become available (the "**DTCC Resolution Time**") which time must be at least 30 minutes following the time of publication of the Circular but may be as late

as 9 a.m. on a Business Day following the date of the Circular and (y) notify all CDS Clearing Members of the same by fax or e-mail within 1 hour; and

- (2) subject to paragraph 8.4.7.3(f)(v), as from the DTCC Resolution Time, CDS Clearing Members must cease delivering Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) pursuant to the Manual Notice Process and must instead deliver Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process.
- (vii) If a Restructuring Credit Event Notice or Notice to Exercise Movement Option is delivered between a Matched Pair in accordance with the Electronic Notice Process and a separate Restructuring Credit Event Notice or Notice to Exercise Movement Option is delivered as between the same Matched Pair in accordance with the Manual Notice Process, then, subject to paragraph 8.4.7.3(f)(viii), the validity or priority of any such Restructuring Credit Event Notice or Notice to Exercise Movement Option in the event of any conflict will be determined in accordance with the Contract Terms.
- (viii) If the Manual Notice Process is applicable, and a CDS Clearing Member is uncertain as to whether or not a Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) it or its Segregated Customer (if any) attempted to deliver under the Electronic Notice Process has actually been delivered, or was delivered prior to the DTCC Failure Time, that CDS Clearing Member shall be entitled to deliver a Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) pursuant to the Manual Notice Process to its Restructuring Matched Pair (copied to the Clearing House) specifying that such Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) is only to be effective to the extent that the other purported notice was not effective, provided that sufficient details are included of the notice attempted to be made under the Electronic Notice Process to allow the other party to the Restructuring Matched Pair and the Clearing House to identify the communications concerned. If the first Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) to which the attempted delivery related was actually delivered, then any subsequent Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered in accordance with the requirements of this paragraph 8.4.7.3(f)(viii) shall be treated as not having been delivered.
- (ix) If any Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) is delivered pursuant to the Manual Notice Process, neither CDS Clearing Members nor Segregated Customers shall ~~not~~ re-enter details of that Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) pursuant to the Electronic Notice Process (without prejudice to the obligation of CDS Clearing Members to reflect such notices pursuant to the "Notify" function made available by Deriv/SERV) . Any delivery of a second Restructuring Credit Event Notice in such a manner shall be treated as delivery of an additional and separate Restructuring Credit Event Notice ~~between the Restructuring Matched Pair~~ pursuant to the Electronic Notice Process. Any delivery of a second Notice to Exercise Movement Option for the same Triggered Restructuring CDS Contract Portion in such a manner shall be disregarded.
- (x) Paragraphs 8.4.7.3(g)(iv), (ix), (x), (xi), (xii) and (xiii) (in the latter case in relation to disputes falling under paragraph 8.4.7.3(g)(xiii)(B) only) shall apply to notices

delivered pursuant to the Electronic Notice Process in the same way as such paragraphs apply to notices under the Manual Notice Process.

- (xi) For the avoidance of doubt, the Electronic Notice Process does not apply to Notices of Physical Settlement or NOPS Amendment Notices.

- (g) Manual Notice Process.

~~The parties to~~ CDS Clearing Members in a Matched Pair must only use the Manual Notice Process to deliver (1) MP Notices that are Restructuring Credit Event Notices and Notices to Exercise Movement Option where permitted by paragraphs 8.4.7.3(f)(v) or 8.4.7.3(f)(vi); (2) Notices to Exercise Movement Option where permitted by paragraph 8.4.7.3(g)(xi); and (3) Notices of Physical Settlement and NOPS Amendment Notices. A Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered other than by the Electronic Notice Process will only be valid and effective if (x) it is in or substantially in the form (or in the case of a telephone notice, contains the information required by the form) provided by the Clearing House on the section of its website accessible to Clearing Members for such purpose and (y) it is delivered by fax, e-mail or telephone to the relevant contact address or number specified in accordance with paragraph 8.3(d). ~~Any memorandum of a notice given by telephone must also be in such form. The form of such notices provided by the Clearing House shall not include wording setting out any of the representations made automatically pursuant to paragraph 8.4(f)(v)(B.7.2(b)).~~ Notices of Physical Settlement and NOPS Amendment Notices between a Matched CDS Buyer and Matched CDS Seller in a Matched Pair pursuant to Rule 1509 may be delivered in any manner permitted for delivery of such notice in accordance with the terms of the CDS Contract and will only be valid and effective if delivered to the relevant contact address, fax number, telephone number or e-mail address provided in accordance with paragraph 8.3.7.2(d) (or as otherwise agreed between the parties in the Matched Pair and the Clearing House). Notwithstanding any provision of the terms of the CDS Contract, any notice under a Matched CDS Contract which is required to be copied or given to the Clearing House in accordance with the Rules must be copied or given to the Clearing House in writing or in any other manner permitted by the Clearing House. Only a CDS Clearing Member may deliver a Manual MP Notice to the Clearing House.

On each day on which a Manual MP Notice is served:

- (i) Each Manual MP Notice shall be effective ~~in accordance with Section 12 of the CDS Master Agreement~~, subject to this paragraph 8.4.7.3(g) and Section 1.10 of the Credit Derivatives Definitions. Rule 1509 applies in full in respect of each Manual MP Notice.
- (ii) Each CDS Clearing Member in receipt of a Manual MP Notice or which has served a Manual MP Notice shall deliver a copy of such Manual MP Notice (if it was a written notice) or a written memorandum of such Manual MP Notice (if it was oral) to the Clearing House at or prior to 5:00 p.m. on the day on which the Manual MP Notice was served or purported to be served. ~~Failure to deliver such a copy or written memorandum of a Manual MP Notice to the Clearing House shall not of itself result in the Manual MP Notice being invalid.~~ Any memorandum of a notice given by telephone must be in the same form as a written notice.
- (iii) The Clearing House shall deliver copies of each copy or memorandum of a Manual MP Notice received by it under and in accordance with paragraph 8.4.7.3(g)(ii) to both CDS Clearing Members in each relevant Matched Pair at or prior to 6:00 p.m. on the day on which the copy or memorandum was delivered to it.
- (iv) If a CDS Clearing Member wishes to dispute any Manual MP Notice of which a copy or a memorandum was delivered to it by the Clearing House under paragraph

~~8.4.7.3~~(g)(iii) (or, to the extent that this paragraph ~~8.4.7.3~~(g)(iv) is applicable pursuant to paragraph ~~8.4.7.3~~(f)(x), wishes to dispute a Restructuring Credit Event Notice or Notice to Exercise Movement Option referred to in a report under paragraph ~~8.4.7.3~~(f)(ii)), that CDS Clearing Member must inform the Clearing House of the existence of the dispute prior to the Notification Cut-off Time, and will use reasonable endeavours to inform the Clearing House within 1 hour of the time at which the report, copy or memorandum (in which the disputed notice is referred to) is first delivered to it by the Clearing House.

- (v) Subject to paragraph ~~8.4.7.3~~(g)(ix) below, neither the failure of any CDS Clearing Member to deliver a copy or memorandum of a Manual MP Notice to the Clearing House nor the failure of the Clearing House to deliver a copy or memorandum of a Manual MP Notice to any CDS Clearing Member of itself shall result in any notice under a CDS Contract being invalid.
- (vi) Notwithstanding any breach of paragraph ~~8.4.7.3~~(g)(ii) and without prejudice to any liabilities resulting from such breach, a CDS Clearing Member shall inform the Clearing House as soon as practicable upon becoming aware that a copy or memorandum of any Manual MP Notice was not delivered to the Clearing House on time, providing a copy or memorandum of such Manual MP Notice.
- (vii) To the extent that they are able to do so, the CDS Clearing Members in a Restructuring Matched Pair where one has delivered to the other a Restructuring Credit Event Notice or a Notice to Exercise Movement Option pursuant to the Manual Notice Process shall reflect the delivery and receipt of such notices using the "Notify" function provided by Deriv/SERV.
- (viii) Where neither CDS Clearing Member in a Matched Pair deliver a copy or memorandum of a Manual MP Notice to the Clearing House until after the Notification Cut-off Time;
 - (A) if such CDS Clearing Members do not dispute that such notice was delivered between themselves correctly in accordance with the Contract Terms (excluding this paragraph ~~8.4.7.3~~(g)), the CDS Clearing Members may either agree to settle directly with each other under Rule 1514 (CDS Alternative Delivery or Settlement Procedure, read for purposes of this paragraph ~~8.4.7.3~~(g)(viii)(A) only as if Rule 1514 applied to auction and cash settlement in addition to physical settlement) or, without such agreement, pursue a claim against each other in accordance with paragraphs ~~8.4.7.3~~(g)(ix) to ~~8.4.7.3~~(g)(xiii); and
 - (B) if such CDS Clearing Members do dispute that such notice was delivered between themselves correctly in accordance with the Contract Terms (excluding this paragraph ~~8.4.7.3~~(g)), paragraphs ~~8.4.7.3~~(g)(ix) to ~~8.4.7.3~~(g)(xiii) shall apply.
- (ix) Any dispute between any CDS Clearing Members in a Matched Pair or between any CDS Clearing Member in a Matched Pair and the Clearing House in relation to the effectiveness of any MP Notice or the issue of whether any MP Notice was served shall be resolved by arbitration under Rule 117. The two CDS Clearing Members in a Matched Pair and the Clearing House shall each be deemed to agree to joinder of any separate arbitrations under Rule 117 between either of the two CDS Clearing Members in the Matched Pair and the Clearing House.
- (x) Until such time as any dispute concerning an MP Notice is resolved, the Clearing House shall be entitled to calculate Margin requirements for each of the CDS

Clearing Members in a Matched Pair based on the maximum Margin requirement for each of the CDS Clearing Members that could result, in the opinion of the Clearing House, from any reasonably foreseeable outcome of any such dispute.

- (xi) Unless and until such time as any dispute concerning an MP Notice is resolved, neither the Clearing House nor any Clearing Member in respect of a Customer-CM CDS Transaction shall ~~not~~ be obliged to take any step that would have been required of it were the MP Notice to have been validly served. If any matter relating to a Restructuring Credit Event Notice (or alleged Restructuring Credit Event Notice) is disputed, then any Notice to Exercise Movement Option or purported Notice to Exercise Movement Option in relation to the CDS Contract under dispute may only be delivered pursuant to the Manual Notice Process. In such instances, the preconditions to using the Manual Notice Process (other than those set out in this paragraph 8.4.7.3(g)(xi)) and other requirements set out in paragraph 8.4.7.3(f)(v) shall not apply.
- (xii) Upon the rendering of a final decision pursuant to such arbitration, the Clearing House and the relevant CDS Clearing Members shall take such actions with respect to the disputed CDS Contract as the Clearing House determines appropriate to give effect to such decision, which may include, without limitation, effecting settlement pursuant to the Transaction Auction Settlement Terms and termination of the related CDS Contract, creating or increasing the parties' Open Contract Positions, paying any accrued but unpaid Fixed Amounts and/or recalculating the parties' Margin requirements, and the CDS Clearing Members shall perform their respective obligations in accordance with the Clearing House's determinations. Notwithstanding anything to the contrary herein or in any decision pursuant to such arbitration, the Clearing House shall not be obligated to take any other action nor shall the Clearing House be liable for any other damages, including, without limitation, punitive damages, consequential damages, incidental damages, lost profits, attorney's fees or other costs or pre- or post-judgment interest. Any other action or damages required by any such decision shall be the direct obligation of the relevant CDS Clearing Members to each other, and such CDS Clearing Members shall be entitled to pursue directly against each other whatever legal remedies may be available. For the avoidance of doubt, the Clearing House shall have no liability with respect to any such legal remedies between such CDS Clearing Members and the Clearing House shall have no obligation to participate in any related proceeding.
- (xiii) If the Clearing House receives notice, from either the CDS Seller or the CDS Buyer in a Matched Pair, after the Notification Cut-Off Time, in respect of an MP Notice that:
 - (A) Such MP Notice, being a Manual MP Notice, was allegedly timely delivered between the parties in such Matched Pair but a copy or memorandum thereof was not delivered to the Clearing House before the Notification Cut-Off Time; or
 - (B) Such MP Notice is under dispute as to whether it was timely delivered between the ~~parties~~ CDS Clearing Members in such Matched Pair,

then the Clearing House will notify the other party in such Matched Pair as soon as reasonably practicable. Upon such notification by the Clearing House, the CDS Buyer and CDS Seller in such Matched Pair shall be directly liable to each other, and shall be entitled to pursue directly against each other whatever legal remedies may be available, for the difference between (x) their respective Open Contract Positions (or proceeds thereof) in the relevant CDS Contract at the Clearing House by virtue of such notice being invalid against the Clearing House (in the case of (A) above) or by

virtue of the Clearing House acting based on its interpretation of the notice it received that was not timely delivered (in the case of (B) above) and (y) what such Open Contract Positions (or proceeds thereof) would have been if a copy of such allegedly valid MP Notice was validly provided to and given effect by the Clearing House at the time, if any, such MP Notice was validly delivered between the parties to the Matched Pair. For the purpose only of pursuing any such legal remedies for the difference between (x) and (y), the CDS Buyer and the CDS Seller in such Matched Pair shall be entitled to enforce the terms of their respective CDS Contracts against each other as if each of them were the counterparty to the other in place of the Clearing House, including the right to have the dispute settled pursuant to arbitration under Rule 117. With respect to the determination of such legal remedies, the validity of any allegedly valid MP Notice as between the relevant CDS Buyer and CDS Seller in the Matched Pair shall be unaffected by whether or not such notice is valid against the Clearing House. For the avoidance of doubt, but without prejudice to any liability or obligation of the Clearing House, the Clearing House shall have no liability with respect to any such MP Notice a copy of which was not timely and properly delivered to the Clearing House or a dispute with respect to which was not timely and properly notified to the Clearing House, including, without limitation, with respect to any such legal remedies between the CDS Buyer and CDS Seller in such Matched Pair, and the Clearing House shall have no obligation to participate in any related proceeding.

7.4

~~8.5~~ Delivery of Non DVP Obligations and Physical Settlement Amounts:

The following deadlines apply for the delivery of Non DVP Obligations and Physical Settlement Amounts for purposes of Rule 1510:

- (a) The Matched CDS Buyer shall notify the Clearing House under Rule 1510(a)(i) of readiness to deliver at or prior to 4:30 p.m. on the Business Day prior to the date on which Delivery is scheduled to occur. In such notice, the Matched CDS Buyer shall also specify the amount of any expenses to be payable to the Matched CDS Buyer under ~~paragraph~~ Section 9.2(c)(vi) of the Credit Derivatives Definitions.
- (b) The Clearing House shall notify the Matched CDS Seller under Rule 1510(a)(ii) of its obligation to pay the Clearing House (~~of~~ the Physical Settlement Amount in respect of the relevant Non DVP MP Amount and any amounts in respect of expenses notified by the CDS Buyer) pursuant to a request for payment through ECS in accordance with the Finance Procedures. Pursuant to the Finance Procedures, such a request for payment would standardly occur during the evening of the Business Day, or before 8 a.m. on the Business Day following the Business Day, after receipt of the notice referred to in Rule 1510(a)(i) and paragraph ~~8.5~~ 7.4(a).
- (c) The Matched CDS Seller shall pay the Clearing House under Rule 1510(a)(iii) such amounts as are due pursuant to the payment requested through ECS pursuant to the Finance Procedures. Pursuant to the Finance Procedures, payment would standardly be due and payable at 9:00 a.m. on the Business Day immediately following the date on which the Matched CDS Buyer notified the Clearing House of its readiness to deliver under Rule 1510(i) and paragraph ~~8.5~~ 7.4(a), provided that the request for payment through ECS had occurred in a timely manner in accordance with paragraph ~~8.5~~ 7.4(b).
- (d) The Clearing House shall notify the Matched CDS Buyer under Rule 1510(a)(iv) that it has received payment at or prior to 4:30 p.m. on the same Business Day as the Clearing House receives payment under Rule 1510(a)(iii), provided that payment is received by the Clearing House at or prior to 9:00 a.m. on the same Business Day as described in paragraph ~~8.5~~ 7.4(c).

- (e) The Delivery Period shall be 3 Business Days starting on the date following receipt by the CDS Buyer of the notice referred to in Rule 1510(a)(iv) and paragraph ~~8.5~~7.4(d) (exclusive of the date of receipt of such notice).
- (f) The Matched CDS Seller shall notify the Clearing House under Rule 1510(a)(vi) that Delivery has occurred by 4:30 p.m. on the same Business Day on which the Matched CDS Seller receives Delivery of the relevant Deliverable Obligations. Notices received after 4:30 p.m. will be deemed received on the next following Business Day, unless the Clearing House agrees otherwise.
- (g) The Clearing House shall be obliged to pay 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) in respect of the relevant Non DVP MP Amount and any expenses due to the CDS Buyer under ~~paragraph~~Section 9.2(c)(vi) of the Credit Derivatives Definitions through payments or transfers through ECS in accordance with the Finance Procedures. Pursuant to the Finance Procedures, payment would standardly be due and payable at 9:00 a.m. on the Business Day following the Business Day on which the Clearing House receives the notice referred to in Rule 1510(a)(vi) and paragraph ~~8.5~~7.4(f).
- (h) The first date on which the Matched CDS Seller may serve notice on the Clearing House under Rule 1510(a)(viii) requesting the Clearing House to repay the Physical Settlement Amount in respect of the Non DVP MP Amount, less the Delivered Percentage of such Physical Settlement Amount, is the first Business Day following the end of the Delivery Period.

7.5 ~~8.6~~ Disputes Relating to Deliverable Obligations

- (a) Prior to accepting Delivery of a particular obligation pursuant to a Notice of Physical Settlement or NOPS Amendment Notice, a CDS Seller may challenge whether the obligation is a Deliverable Obligation or, as applicable, a ~~Permissible~~Permitted Deliverable Obligation under the terms of a Matched CDS Contract, unless the obligation is listed and remains listed as a Deliverable Obligation or, as applicable, a ~~Permissible~~Permitted Deliverable Obligation in the Final List of Deliverable Obligations which is applicable to that Matched CDS Contract as of the applicable Delivery Date for such Deliverable Obligation. A challenge may only be made to the ~~Regional CDS Committee to the extent that it is not restricted or prevented by paragraph 6.2(d). Any such challenge must be made~~relevant Credit Derivatives Determinations Committee in the form of the presentation of an Issue pursuant to the ~~relevant Regional CDS Committee~~DC Rules.
- (b) Subject to paragraph ~~8.6~~7.5(c), any CDS Seller may refuse to accept Delivery of a particular obligation pursuant to a Notice of Physical Settlement or NOPS Amendment Notice if any challenge (as referred to in paragraph ~~8.6~~7.5(a)) has been made by that CDS Seller (or any other CDS Clearing Member that is a CDS Seller in relation to CDS Contracts of the same Set) as to whether the obligation is a Deliverable Obligation or, as applicable, a ~~Permissible~~Permitted Deliverable Obligation under the terms of the Matched CDS, until such time as the ~~Determining Body~~relevant Credit Derivatives Determinations Committee Resolves and announces that such obligation is a Deliverable Obligation or, as applicable, a ~~Permissible~~Permitted Deliverable Obligation under the terms of the Matched CDS Contract, provided that if the obligation is listed and remains listed as a Deliverable Obligation or, as applicable, a ~~Permissible~~Permitted Deliverable Obligation in the Final List of Deliverable Obligations which is applicable to that Matched CDS Contract as of the applicable Delivery Date for such Deliverable Obligation or, as applicable, a ~~Permissible~~Permitted Deliverable Obligation, no such challenge may delay the acceptance by the CDS Seller of Delivery of such obligation.

- (c) Any CDS Seller proposing to refuse to accept Delivery as referred to in paragraph [8.67.5\(b\)](#) must give notice forthwith to the Clearing House and to the Matched CDS Buyer in the relevant Matched Pair, specifying the Matched CDS Contracts to which the refusal relates. Delivery of such notice by the Matched CDS Buyer to the Matched CDS Seller shall constitute notice from the Clearing House to the Matched CDS Buyer of the Clearing House's refusal to accept Delivery of the relevant obligation.
- ~~(d) The Clearing House shall issue a Circular concerning any challenge presented to the relevant Regional CDS Committee as to whether an obligation is a Deliverable Obligation or, as applicable, a Permissible Deliverable Obligation under the terms of a Matched CDS Contract and a further Circular concerning any Resolution thereof by the Regional CDS Committee.~~
- (d) ~~(e)~~ As they relate to an obligation for which a challenge has been presented (as referred to in paragraph [8.67.5\(a\)](#)) as to whether the obligation is a Deliverable Obligation or, as applicable, a ~~Permissible~~[Permitted](#) Deliverable Obligation under the terms of a Matched CDS Contract, unless the obligation is listed and remains listed as a Deliverable Obligation or, as applicable, a ~~Permissible~~[Permitted](#) Deliverable Obligation in the Final List of Deliverable Obligations or, as applicable, a ~~Permissible~~[Permitted](#) Deliverable Obligation which is applicable to that Matched CDS Contract as of the applicable Delivery Date for such Deliverable Obligation or, as applicable, a ~~Permissible~~[Permitted](#) Deliverable Obligation, time periods and related rights and remedies relating to settlement, for example, under Sections 9.9 and 9.10 of the Credit Derivatives Definitions and any applicable cap on settlement, shall be suspended for the period commencing on the date the challenge is first presented until the date of the relevant actual decision to Resolve (which shall be the date on which such decision is announced and determined without regard to any Effectiveness Convention or any time of effectiveness specified in a Presented Position) or, if later, the date on which ISDA publicly announces the resolution of the relevant Credit Derivatives Determinations Committee as to whether or not such obligation is a Deliverable Obligation or, as applicable, a ~~Permissible~~[Permitted](#) Deliverable Obligation under the terms of a physically settled CDS Contract.
- (e) [This provision does not prevent a party from exercising any of its rights under Rule 118.](#)

7.6 ~~8.7~~ Physical Settlement Costs

- (a) Any payments required in relation to any costs or expenses of settlement of a Matched CDS Contract in accordance with the Fallback Settlement Method (other than the expenses referred to in paragraph [8.57.4](#)) shall be made in the following manner:
 - (i) where, but for this paragraph [8.77.6\(a\)](#), any such payment would fall to be made by the Clearing House to the Matched CDS Buyer or Matched CDS Seller, as though the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair to whom payment would not be due from the Clearing House) were designated by the Clearing House to make such payment on its behalf;
 - (ii) where, but for this paragraph [8.77.6\(a\)](#), any such payment would fall to be made to the Clearing House by the Matched CDS Buyer or Matched CDS Seller, as though the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair to whom payment would but for this paragraph [8.77.6\(a\)](#) be due from the Clearing House) were designated by the Clearing House to receive such payment on its behalf;
 - (iii) where a Matched CDS Seller or Matched CDS Buyer is designated to make payment pursuant to Rule 1509 and this paragraph [8.77.6\(a\)](#) and makes a relevant payment direct to the other party in the Matched Pair, the party that made payment shall not be entitled to any reimbursement from the Clearing House in respect of the payment

(without prejudice to any rights of any Matched CDS Seller to Matched CDS Buyer where there is a failure to Deliver); and

- (iv) where a Matched CDS Seller or Matched CDS Buyer is designated to receive a payment pursuant to Rule 1509 and this paragraph ~~8.7.6~~(a) and receives a payment direct from the other party in the Matched Pair, the party that received payment shall not be obliged to remit any amount in respect of such payment to the Clearing House (without prejudice to any rights of the Clearing House where there is a failure to Deliver).
- (b) In relation to Non DVP Obligations, the Matched CDS Seller shall be liable to pay to the Clearing House, as referred to in paragraph ~~8.5.7.4~~(b), the amount of any expenses due to the Matched CDS Buyer pursuant to Section 9.2(c)(vi) of the Credit Derivatives Definitions, as notified to the Clearing House by the Matched CDS Buyer as referred to in paragraph ~~8.5.7.4~~(a).
- (c) For the avoidance of doubt, the Clearing House shall not be liable to a Matched CDS Buyer or Matched CDS Seller for any of the costs and expenses of settlement of the Matched CDS Buyer or Matched CDS Seller, other than as set out in paragraphs ~~8.5.7.4~~(g) and ~~8.7.6~~(b).
- (d) If the Clearing House incurs actual costs or expenses of settlement in respect of a Matched CDS Contract, the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair that would incur or be liable for such costs or expenses were the Matched Pair to have been a CDS transaction between the Matched CDS Seller and the Matched CDS Buyer) shall be liable to reimburse the Clearing House in respect of such costs or expenses.

7.7 ~~8.8~~ Margin in relation to Physical Settlement

- (a) Initial Margin, Mark-to-Market Margin and Physical Settlement Margin shall continue to be called and payable in relation to any CDS Contract or Component Transaction which is to be settled in accordance with the Fallback Settlement Method except to the extent that: (i) the Physical Settlement Amount has been paid to the Clearing House in cleared funds and not returned to the CDS Seller as referred to in Rule 1510 and paragraph ~~8.5.7.4~~; or (ii) the Physical Settlement Amount has been paid to the relevant CDS Clearing Member in the Matched Pair as designee of the Clearing House and such designee has notified the Clearing House that physical settlement is complete in accordance with Rule 1511.
- (b) Where any Physical Settlement Amount is payable to the Clearing House by a CDS Seller, the Clearing House acknowledges and agrees that, in accordance with Rules 302 and 303, it will apply any Margin or other available funds on account in order to satisfy the obligation to pay the Physical Settlement Amount and shall only call the CDS Seller for additional cash to the extent that relevant Margin is less than the Physical Settlement Amount.
- (c) Margin transferred to the Clearing House by a CDS Clearing Member shall cease to be payable by a CDS Clearing Member (and shall be released by the Clearing House) in respect of any CDS Contract after the time at which the CDS Clearing Member has notified the Clearing House in accordance with Rule 1511 that settlement has, so far as it is aware, occurred successfully.

~~8.9~~ ~~Not used.~~

7.8 ~~8.10~~ CDS Alternative Delivery or Settlement Procedure

- (a) CADP Notices received by the Clearing House after 15:00 hours will be deemed to have been received on the next Business Day.

- (b) CADP Notices must be submitted in the form published by the Clearing House from time to time.

8. ~~9.~~ CLEARED CDS PRODUCTS: ELIGIBLE SETS

8.1 ~~9.1~~ The index series in respect of which CDS Contracts are eligible for Clearing are as notified from time to time by the Clearing House to Clearing Members by Circular. Each index series with an identical maturity and name will initially form a Set.

8.2 ~~9.2~~ The Clearing House may add to, amend or make deletions from the list of index series for CDS Contracts eligible for Clearing by issuing a Circular. Any such addition, amendment or deletion, other than the updating of any Index Series following the occurrence of an Applicable Credit Event or Succession Event, shall be made following consultation with the CDS Risk Committee, by issuing a further Circular, provided that the Clearing House shall not be required to consult in advance with the CDS Risk Committee for a deletion or suspension of a Set from such list in circumstances in which issuance of an Acceptance Notice in respect of CDS Trade Particulars or Clearing of CDS Contracts referring to such Set would be in breach of a restriction made under the Short Selling Regulation or of any other Applicable Law.

8.3 ~~9.3~~ CDS Contracts on certain single names are eligible for Clearing, as set out in Circulars published by the Clearing House from time to time, each item mentioned as eligible in any such Circular initially forming a Set. The Clearing House may add to, amend or make deletions from such list, following consultation with the CDS Risk Committee, by issuing a further Circular, provided that the Clearing House shall not be required to consult in advance with the CDS Risk Committee for a deletion or suspension of a Set from such list in circumstances in which issuance of an Acceptance Notice in respect of CDS Trade Particulars or Clearing of CDS Contracts referring to such Set would be in breach of a restriction made under the Short Selling Regulation or of any other Applicable Law.

~~9.4 The Clearing House will not make available for Clearing any Set of CDS Contracts which, having made reasonable enquiries, it is aware would not meet the requirements of the exemption granted by the Securities and Exchange Commission, exempting the Clearing House, Clearing Members and certain other third parties from the U.S. Securities Exchange Act of 1934 and the Securities Act of 1933 with respect to cleared CDS. Such requirements include that, in order to be eligible as a Set, the reference entity, the issuer of the reference security, or the reference security must be one of the following, for purposes of laws of the United States: (i) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (iii) a foreign sovereign debt security; (iv) an asset backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; (v) an asset backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or (vi) independent indexes comprised of these entities or securities, provided that an index will not be disqualified if, in the aggregate, reference entities (or reference securities) comprising 80% or more of the index's weighting satisfy the above information conditions with regard to reference entities or reference securities.~~

9. ~~10.~~ CONTRACT TERMS FOR ALL CDS CONTRACTS

9.1 ~~10.1~~ This paragraph ~~10.2~~ specifies additional Contract Terms applicable to all CDS Contracts cleared by the Clearing House to which the Credit Derivatives Definitions apply by virtue of the Contract Terms:

- (a) Subject to Rule 109, if a Convened DC (as defined in the DC Rules) resolves, pursuant to Section 3.8(a) of the DC Rules, (i) a question of interpretation regarding the provisions of the Protocol (as defined in the DC Rules) or (ii) to make any amendments to Schedule 1 of the Protocol, in each case that affect a CDS Contract, the Clearing House shall, as promptly as

practicable, make conforming changes to these CDS Procedures in order to implement such resolutions.

- (b) ~~Section 3.2(c)(i) of the Credit Derivatives Definitions is hereby amended by replacing "or" at the end of sub-paragraph (B) thereof with "and" and adding the following sub-paragraph (C): "(C) the tenth calendar day after the date of the Regional CDS Committee Credit Event Announcement (i.e., determined without regard to any Effectiveness Convention or any time of effectiveness specified in a Presented Position) or the actual decision by the relevant Dispute Resolver to Resolve".~~
- (b) ~~(e) Any reference in a CDS Contract to the 2003 ISDA Credit Derivatives Definitions (including any reference to the 2003 ISDA Credit Derivatives Definitions as supplemented or otherwise modified, including by incorporation of any additional provisions thereto (howsoever described) (the "Existing Supplements")) shall be deemed to be a reference to the 2003 ISDA Credit Derivatives Definitions as so supplemented and as further supplemented by the July 2009 Supplement.~~
- (d) ~~When a Resolution of the Regional CDS Committee is effective, under paragraph 6, that a Potential Repudiation/Moratorium for which there is Publicly Available Information has occurred on or prior to the Scheduled Termination Date (determined by reference to Greenwich Mean Time (or, if the Transaction Type of the relevant Reference Entity is Japan Corporate or Japan Sovereign (as such terms are defined in the 2005 Matrix Supplement), Tokyo time)) in relation to a CDS Contract (the "Notified CDS Contract"), as described in paragraph 6, provided that the question presented to the Regional CDS Committee concerning whether or not an event which constitutes a Potential Repudiation/Moratorium for purposes of such CDS Contract has occurred with respect to an Obligation of the relevant Reference Entity includes a description in reasonable detail of the facts and information required to be included in a Repudiation/Moratorium Extension Notice and a Notice of Publicly Available Information in relation to such Potential Repudiation/Moratorium and such question has been validly and properly received by the Regional CDS Committee (the date of such receipt, the "Valid Receipt Date") on or prior to the date that is fourteen calendar days after the Scheduled Termination Date of the relevant CDS Contract, the Repudiation/Moratorium Extension Condition will be deemed to be satisfied for the purposes of Section 4.6(d) of the Credit Derivatives Definitions with respect to all CDS Contracts (i) which relate to the same Reference Entity as the Notified CDS Contract, (ii) for which the event which constituted the Potential Repudiation/Moratorium in respect of the Notified CDS Contract would also constitute a Potential Repudiation/Moratorium falling not later than the Scheduled Termination Date (determined by reference to Greenwich Mean Time (or, if the Transaction Type of the relevant Reference Entity is Japan Corporate or Japan Sovereign (as such terms are defined in the 2005 Matrix Supplement), Tokyo time)) and (iii) for which the Scheduled Termination Date (determined by reference to Greenwich Mean Time (or, if the Transaction Type of the relevant Reference Entity is Japan Corporate or Japan Sovereign (as such terms are defined in the 2005 Matrix Supplement), Tokyo time)) falls not earlier than fourteen calendar days before the Valid Receipt Date, whether or not such CDS Contracts become CDS Contracts prior to or after the effectiveness of such Resolution.~~
- (e) ~~Except for purposes of Section 1.23 (Credit Event Backstop Date) of the Credit Derivatives Definitions or in respect of a Credit Event comprising a Restructuring Credit Event only, a Credit Event Notice and Notice of Publicly Available Information with respect to a CDS Contract will be deemed to have been effectively delivered by the Notifying Party when the Resolution of the Regional CDS Committee is effective, under paragraph 6, that a Credit Event has occurred for which there is Publicly Available Information, as described in paragraph 6.2(a)(iii), with respect to such CDS Contract. In respect of a Credit Event comprising a Restructuring Credit Event only, any Credit Event Notice specifying such Restructuring Credit Event, which is delivered in accordance with the Rules on or after the Resolution of the Regional CDS Committee is effective, under paragraph 6 of these CDS~~

~~Procedures, that such Credit Event (for which there was Publicly Available Information) has occurred, shall be deemed to include a sufficient Notice of Publicly Available Information.~~

- (c) ~~(f)~~ Section 1.8(a)(ii)(A)(I)(3)(y) of the Credit Derivatives Definitions is hereby modified by replacing the term "Auction Final Price Determination Date" with the phrase "date that is one Relevant City Business Day prior to the Auction Settlement Date".
- (d) ~~(g)~~ Section 1.30 of the Credit Derivatives Definitions is hereby modified by replacing the term "Auction Final Price Determination Date" in clause (ii) of the last sentence thereof with the phrase "date that is one Relevant City Business Day prior to the Auction Settlement Date".
- (h) ~~Section 1.8(d) of the Credit Derivatives Definitions is hereby modified by replacing "If, in accordance with the provisions above," with "If, in accordance with the provisions above, or if, where applicable in accordance with Procedures, a Regional CDS Committee Credit Event Announcement has occurred and,".~~
- (e) ~~(i)~~ The Settlement Method will be "Auction Settlement" and the Fallback Settlement Method will be "Physical Settlement" in accordance with paragraph 8.7 and the Rules.
- (f) ~~(j)~~ Where a Credit Event Announcement has occurred in respect of a CDS Contract, neither the CDS Buyer nor any relevant Segregated Customer (if any) of the CDS Buyer may ~~not~~ deliver a Notice of Physical Settlement, and delivery of any Notice of Physical Settlement will not be effective, until such time as the method of settlement for a particular Credit Event becomes the Fallback Settlement Method due to the occurrence of one of the events in Section 12.1 of the Credit Derivatives Definitions and, as referred to in Rule 1505(b), the Clearing House has (or, pursuant to Rule 1508, should have) notified CDS Buyers and CDS Sellers of their Matched Pairs and associated MP Amounts. For the avoidance of doubt, the effectiveness of any Notice of Physical Settlement and obligations relating thereto are subject to the suspension and finality provisions of Sections 6.5 and 9.1(c)(iii) of the Credit Derivatives Definitions. This is in addition to the restrictions on the delivery of a Notice of Physical Settlement set out in paragraph 8.7.
- (k) ~~In respect of a Regional CDS Committee Credit Event Announcement, the following modifications are made:~~
 - ~~(i) Section 1.8(a)(ii) of the Credit Derivatives Definitions shall be deemed modified by adding, following the term "DC Credit Event Announcement" the phrase "or Regional CDS Committee Credit Event Announcement, as applicable,";~~
 - ~~(ii) Section 1.8(a)(ii)(A) of the Credit Derivatives Definitions shall be deemed modified by adding, following the term "Credit Event Resolution Request Date" but before the comma the phrase "or the Event Determination Date Resolved by the Regional CDS Committee (or Dispute Resolver), as applicable";~~
 - ~~(iii) Section 1.26(a) of the Credit Derivatives Definitions shall be deemed modified by inserting "; or" at the end of subsection (iii) thereof but before the comma and adding the following as a new subsection (iv) at the end thereof:~~
 - ~~"(iv) if a Regional CDS Committee Credit Event Announcement occurs, the date that is 21 calendar days after the date of the actual decision by the relevant Regional CDS Committee (or Dispute Resolver) to Resolve (i.e. determined without regard to any Effectiveness Convention or any time of effectiveness specified in a Presented Position) that a Restructuring Credit Event has occurred for which there is Publicly Available Information, as described in paragraph 6.2(a)(iii) of the CDS Procedures with respect to the relevant CDS Contract,"; and~~

- (iv) ~~Section 1.26(b) of the Credit Derivatives Definitions shall be deemed modified by inserting "; or" at the end of subsection (ii) thereof but before the period and adding the following as a new subsection (iii) at the end thereof:~~

~~"(iii) a Regional CDS Committee Credit Event Announcement occurs, the date that is 21 calendar days after the date of the actual decision by the relevant Regional CDS Committee (or Dispute Resolver) to Resolve (i.e. determined without regard to any Effectiveness Convention or any time of effectiveness specified in a Presented Position) that a Restructuring Credit Event has occurred for which there is Publicly Available Information, as described in paragraph 6.2(a)(iii) of the CDS Procedures with respect to the relevant CDS Contract";~~

- (f) ~~Article IX of the Credit Derivatives Definitions is hereby amended by adding new Sections 9.1(e) and (f) as follows:-~~

~~"(e) In respect of any CDS Contract, the CDS Buyer and CDS Seller shall be deemed to agree at the time at which such CDS Contract arose:~~

- ~~(i) except as otherwise expressly provided in the Rules or the Procedures of the Clearing House, notwithstanding any provision in the Master Agreement between a Clearing Member and the Clearing House that governs the relevant CDS Contract that describes an alternative mechanism for resolving, in the absence of agreement between CDS Buyer and CDS Seller, any matter that is determined by the relevant Regional CDS Committee, any determination by the relevant Regional CDS Committee that is applicable to such CDS Contract shall be binding on CDS Buyer and CDS Seller to the extent that such determination of the Regional CDS Committee is made either by reference to the terms of the Credit Derivatives Definitions or by reference to the terms of any additional provisions published by ISDA and incorporated in the related Confirmation and provided that the effect of such determination would not reverse the most recent determination (if any) of the Credit Derivatives Determinations Committee with regard to such matter:-~~

~~(A) until such time as the Clearing House publicly announces that such determination of the Regional CDS Committee has been reversed by a subsequent determination of the Regional CDS Committee, if any, (subject to Section 9.1(e)(i)(B) below) or the Credit Derivatives Determinations Committee subsequently reaches a different determination with regard to such matter, provided that such subsequent determination of the Regional CDS Committee or the Credit Derivatives Determinations Committee shall have no effect in relation to any CDS Contract to the extent that a Settlement Date has occurred in relation to it; and/or~~

~~(B) unless the effect of such determination of the Regional CDS Committee would be to reverse a prior determination of the Regional CDS Committee or determination that an Event Determination Date has occurred, that has resulted in:~~

~~(I) the identification of one or more Successors;~~

~~(II) the identification of one or more Substitute Reference Obligations; or~~

- ~~(III) the occurrence of a Physical Settlement Date, as applicable, or to the extent that a Valuation Date, Delivery Date or Termination Date, as applicable, has occurred, in each case, on or prior to the date that the Clearing House publicly announces such determination of the Regional CDS Committee;~~
- ~~(C) notwithstanding the fact that:~~
 - ~~(I) the Credit Derivatives Definitions, as supplemented, or the relevant additional provisions published by ISDA and incorporated in the related CDS Contract, as applicable, may require such determination to be made by the Calculation Agent; or~~
 - ~~(II) in order to reach such determination of the Regional CDS Committee, the relevant Regional CDS Committee may be required to determine one or more factual matters before being able to reach such determination; and~~
- ~~(D) notwithstanding any actual or perceived conflict of interest on the part of a Committee Member of the Regional CDS Committee, legal counsel or other third party professional retained by such Committee Member in connection with such Committee Member's performance of its duties under the Rules;~~
- ~~(ii) that no Regional CDS Committee, Committee Member, Panel Member or Dispute Resolver is (A) under any obligation to research, investigate, supplement, or verify the veracity of, any information on which the relevant Regional CDS Committee bases its decision and (B) acting as a fiduciary for, or as an advisor to, CDS Buyer or CDS Seller in connection with the relevant CDS Contract;~~
- ~~(iii) that, in reaching any determination of the Regional CDS Committee that is applicable to such CDS Contract, none of the relevant Regional CDS Committee, any Committee Member, Panel Member or Dispute Resolver shall be under any requirement to consult with, or individually notify, CDS Buyer or CDS Seller, notwithstanding any provision of the Credit Derivatives Definitions, as supplemented, or of the relevant additional provisions published by ISDA and incorporated in the related Confirmation to the contrary; and~~
- ~~(iv) that, where the Regional CDS Committee decides not to determine an Issue or to dismiss an Issue, the CDS Buyer and CDS Seller will treat the Issue as not having been raised for consideration by the Regional CDS Committee."~~

(g) ~~(m)~~ For the purposes of Rule 1509 and 1510 and without prejudice to the representations given by the Clearing House and Clearing Members to one another pursuant to the Contract Terms and the Rules, Sections 9.2(a), 9.2(b), 9.2(c)(i) and 9.2(c)(iv) of the Credit Derivatives Definitions shall apply as between the Matched CDS Buyer and the Matched CDS Seller in a Matched Pair, such Matched CDS Buyer and Matched CDS Seller thereby having rights in respect of such representations for the purposes of the Contract (Rights of Third Parties) Act 1999, as though they were the Buyer and Seller respectively and Section 9.2(c)(iv) of the Credit Derivatives Definitions as incorporated in any CDS Contract shall be amended such that:

- (i) where the Clearing House is the designator, it is permitted to designate any CDS Clearing Member specified in Rule 1509 as its designee, notwithstanding that it is not an Affiliate (as defined therein);
- (ii) the phrase "deliver or receive any Notice of Physical Settlement (or NOPS Amendment Notice), Credit Event Notice, or Notice to Exercise Movement Option, or Deliver or take Delivery or pay or receive payment of the Physical Settlement Amount" were written in place of the phrase "Deliver or take Delivery"; and
- (iii) the phrase "such delivery, receipt, Delivery or payment" were written in place of the phrase "such Delivery".

(h) Sections 9.3, 9.4, 9.5 and 9.6 of the Credit Derivatives Definitions shall apply as between the relevant CDS Clearing Member and the Clearing House in respect of any CDS Contract.

(i) ~~(h)~~ Solely for the purposes of Rules 1512 and 1513, Section 9.8(k) of the Credit Derivatives Definitions is amended by inserting the following at the beginning thereof:

- (i) "For the purposes hereof, in addition to the requirements of Section 7.10, each firm Quotation shall:
 - (A) be for a transaction with the CDS Buyer (or its designee) (the "**Relevant Buyer**") in which, the Relevant Buyer 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, regulations and internal compliance procedures relating to a transaction with the Relevant Buyer and on the Reference Entity;
 - (B) be capable of acceptance by the Relevant Buyer (for such purposes, each firm Quotation must, inter alia, be obtained from a Dealer with whom the Relevant Buyer in its sole 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 Buyer 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 Buyer,

provided that:-

(D) if Rule 1512 applies: (I) on the same Business Day that the CDS Buyer (as if it were Calculation Agent) has attempted to obtain all Quotations that the Calculation Agent is required to attempt to obtain in accordance with Section 9.8(k) of the Credit Derivatives Definitions, the CDS Buyer shall offer the Clearing House the opportunity to provide a Quotation as if the Clearing House were a Dealer in accordance with Section 9.8(k) of the Credit Derivatives Definitions; and (II) if the Quotation provided by the Clearing House is higher than any Quotation obtained by

the CDS Buyer (as if it were Calculation Agent) from the Dealers in accordance with Section 9.8(k) of the Credit Derivatives Definitions (including, for the avoidance of doubt any Weighted Average Quotation) such Quotation shall be deemed be the Highest Quotation and the CDS Buyer (as if it were Calculation Agent) shall use such Quotation to determine the Final Price; and

(E) if Rule 1513(a)(ii) applies: (I) on the same Business Day that the Matched CDS Buyer (as if it were Calculation Agent) has attempted to obtain all Quotations that the Calculation Agent is required to attempt to obtain in accordance with Section 9.8(k) of the Credit Derivatives Definitions, the Matched CDS Buyer shall offer the Clearing House the opportunity to provide a Quotation as if the Clearing House were a Dealer in accordance with Section 9.8(k) (as amended) of the Credit Derivatives Definitions; and (II) If the Quotation provided by the Clearing House is higher than any Quotation obtained by the Matched CDS Buyer (as if it were Calculation Agent) from the Dealers in accordance with Section 9.8(k) of the Credit Derivatives Definitions (including, for the avoidance of doubt any Weighted Average Quotation) such Quotation shall be deemed be the Highest Quotation and the Matched CDS Buyer (as if it were Calculation Agent) shall use such Quotation to determine the Final Price.

(ii) Otherwise,".

9.2 The following additional provisions shall apply to all CDS Contracts:

(a) Part 1: Obligations

(i) General Conditions.

- (A) Each Party will make each payment or delivery specified in each CDS Contract to be made by it, subject to the other provisions of the Rules and the provisions of the Clearing Membership Agreement.
- (B) Each obligation of the Clearing House to a CDS Clearing Member under paragraph 9.2(a)(i)(A) above is subject to the condition precedent that no Event of Default has been declared in respect of that CDS Clearing Member.
- (C) Each obligation of the Clearing Member under paragraph 9.2(a)(i)(A) above is subject to the condition precedent that no Insolvency in respect of the Clearing House or Failure to Pay in respect of the Clearing House has occurred.

(ii) Deduction or Withholding for Tax.

- (A) Deduction. All payments pursuant to a CDS Contract will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, then in effect.
- (B) Gross-Up by the Clearing Member. If the Clearing Member is so required to deduct or withhold, then the Clearing Member will:
 - (1) promptly notify the Clearing House of such requirement;
 - (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be

deducted or withheld from any additional amount paid by the Clearing Member to the Clearing House pursuant to this paragraph 9.2(a)(ii)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the Clearing House;

(3) promptly forward to the Clearing House an official receipt (or a certified copy), or other documentation reasonably acceptable to the Clearing House, evidencing such payment to such authorities; and

(4) subject to paragraph 9.2(a)(ii)(C), pay to the Clearing House, in addition to the payment to which the Clearing House is otherwise entitled pursuant to the relevant CDS Contract, such additional amount as is necessary to ensure that the net amount actually received by the Clearing House (free and clear of any Tax, whether assessed against the Clearing Member or the Clearing House) will equal the full amount the Clearing House would have received had no such deduction or withholding been required.

(C) *Gross-Up by the Clearing Member; exception.* A Clearing Member will not be required to pay any additional amount to the Clearing House pursuant to paragraph 9.2(a)(ii)(B) to the extent that it would not be required to be paid but for (1) a present or former connection between the jurisdiction of the taxing authority imposing such Tax and the Clearing House, (2) any failure by the Clearing House to provide to the relevant Clearing Member such forms and documents as are required to be provided under paragraph 9.2(d)(i), provided this sub-paragraph (2) shall only apply if the relevant Clearing Member has notified the Clearing House in writing of such failure and the Clearing House has failed to provide such forms or documents within 5 Business Days after the receipt of such notice or (3) the failure of a representation made by the Clearing House pursuant to paragraph 9.2(c)(ii) to be accurate and true (unless the failure under this sub-paragraph (3) would not have occurred but for (a) any action taken by a taxing authority, or brought in a court of competent jurisdiction (regardless of whether such action is taken or brought with respect to a Party to the relevant CDS Contract) or (b) a Change in Tax Law, that in each case occurs after the Clearing House and the Clearing Member enter into the relevant CDS Contract (or, if applicable, the date that the Clearing House amends the relevant CDS Contract in accordance with the Rules to account for such Change in Tax Law)).

In the event that the failure under sub-paragraph (3) of the preceding paragraph would not have occurred but for the reasons described under subclause (a) or (b) thereof, the Clearing House shall use reasonable endeavours to provide to the Clearing Member a new representation (to the extent that it is appropriate) for the purpose of paragraph 9.2(c)(ii), promptly after learning of such failure (so long as the provision of such representation would not, in the Clearing House's judgment, materially prejudice the legal or commercial position of the Clearing House).

For the purpose of this paragraph 9.2(a)(ii)(C) only, Change in Tax Law shall have the following meaning:

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law).

(D) No Gross-Up by the Clearing House. If the Clearing House is so required to deduct or withhold, then the Clearing House will, in each case to the extent that it is reasonably able to do so:

- (1) promptly notify the Clearing Member of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the Clearing Member; and
- (3) promptly forward to the Clearing Member an official receipt (or a certified copy) evidencing such payment to such authorities.

In no circumstances shall the Clearing House be required to pay any amount in addition to the payment to which the Clearing Member is otherwise entitled pursuant to the CDS Contract in respect of any such deduction or withholding. However, the Clearing House will, at the Clearing Member's expense, use reasonable endeavours to cooperate with the Clearing Member to seek any credit or remission or other relief available with respect to any such Tax so deducted or withheld (so long as such cooperation would not, in the Clearing House's judgment, materially prejudice the legal or commercial position of the Clearing House).

(E) Liability of the Clearing House. If:

- (1) the Clearing House is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, to make any such deduction or withholding;
- (2) the Clearing House does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against the Clearing House.

then, except to the extent the Clearing Member has satisfied or then satisfies the liability resulting from such Tax, the Clearing Member will promptly pay to the Clearing House the amount of such liability (including any related liability for interest or penalties).

(F) Liability of the Clearing Member. If:

- (1) the Clearing Member is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, to make any such deduction or withholding in respect of which the Clearing Member would be required to pay an additional amount pursuant to paragraph 9.2(a)(ii);
- (2) the Clearing Member does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against the Clearing House.

then, except to the extent the Clearing Member has satisfied or then satisfies the liability resulting from such Tax, the Clearing Member will promptly pay to the Clearing House the amount of such liability (including any related liability for interest or penalties).

(b) **Part 2: Termination Provisions**

- (i) The Automatic Early Termination Provisions of this paragraph 9.2(b)(i) will not apply to the Clearing House and will apply to the Clearing Member only if it is incorporated in Switzerland or any other jurisdiction as the Clearing House may by notice or Circular specify, provided, however, that with respect to an event of Bankruptcy described in part (v) of the definition of Bankruptcy or, to the extent analogous thereto, part (ix) of the definition of Bankruptcy, the Automatic Early Termination Provisions (as defined below) will only apply if the relevant proceeding is instituted in or petition is presented to, a competent court or authority in the jurisdiction in which the Defaulter is incorporated or organised or has its head or home office or has the offices through which it enters into CDS Contracts.
- (ii) All open CDS Contracts of a CDS Clearing Member to which these Automatic Early Termination Provisions apply shall be immediately terminated upon the occurrence of an event of Bankruptcy described in parts (i), (iii), (vi), (vii) of the definition of Bankruptcy or, to the extent analogous thereto, part (ix) of the definition of Bankruptcy and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence of an event of Bankruptcy described in parts (iv) or (v) of the definition of Bankruptcy or, to the extent analogous thereto, part (ix) of the definition of Bankruptcy (the "Automatic Early Termination Provisions").
- (iii) The occurrence of any event of Bankruptcy specified in paragraph 9.2(b)(ii) above resulting in the termination of CDS Contracts pursuant to paragraph 9.2(b)(ii) above shall automatically and without the need for any action by the Clearing House constitute an Event of Default with respect to the relevant CDS Clearing Member. The Clearing House shall be deemed to have declared such Event of Default immediately upon the occurrence of such Event of Default but shall nonetheless be obliged to issue a Default Notice to the Defaulter and provide any copies of such Default Notice required pursuant to Rule 902 upon becoming aware of any such Event of Default.

(c) **Part 3: Representations and Warranties**

- (i) *Payer Tax Representation.* On each date on which a CDS Contract is entered into, the Clearing Member will represent to the Clearing House that it is not required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest payable pursuant to Rule 301(g)) to be made by it to the Clearing House pursuant to any CDS Contract. In making this representation, it may rely on:
 - (A) the accuracy of any representations made by the Clearing House pursuant to paragraph 9.2(c)(ii);
 - (B) the satisfaction of the agreement contained in paragraph 9.2(d)(i)(A)(1) or paragraph 9.2(d)(i)(A)(2) and the accuracy and effectiveness of any document provided by the Clearing House pursuant to paragraph 9.2(d)(i)(A)(1) or paragraph 9.2(d)(i)(A)(2); and
 - (C) the satisfaction of the agreement of the Clearing House contained in paragraph 9.2(d)(ii).

except that it will not be a breach of this representation where reliance is placed on sub-paragraph (B) above and the Clearing House does not deliver a form or

document under paragraph 9.2(d)(i)(A)(2) by reason of material prejudice to its legal or commercial position.

(ii) *Payee Tax Representations.* On each date on which a CDS Contract is entered into, but only where the Clearing Member (or any entity into which the Clearing Member is disregarded for U.S. federal income tax purposes) is a US entity or branch, the Clearing House will represent (and such representation will be deemed to be repeated at all times until the termination of all CDS Contracts between the Clearing House and that Clearing Member) to such Clearing Member that:

(A) it is a duly formed limited company as defined in the Companies Acts of 1985 and 2006 with its registered office for the purposes of the Companies Acts of 1985 and 2006 situated in England and Wales; and

(B) it is a (1) "non-US branch of a foreign person" as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and (2) "foreign person" as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations.

(iii) *Clearing House Warranties.* On each date on which a CDS Contract is entered into, the Clearing House will warrant to the CDS Clearing Member that is party to such CDS Contract that:

(A) *Status.* The Clearing House is duly organised and validly existing under the laws of England and Wales.

(B) *Powers.* The Clearing House has the power to enter into the CDS Contract and to deliver and to perform its obligations under the CDS Contract and has taken all necessary action to authorise such execution, delivery and performance.

(C) *No Violation or Conflict.* Such entry into, delivery and performance do not violate or conflict with any Applicable Law applicable to the Clearing House, any provision of its articles or memorandum of association or any order or judgment of any court or other Governmental Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

(D) *Consents.* All governmental and other consents that are required to have been obtained by the Clearing House with respect to the CDS Contract have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

(E) *Obligations Binding.* The Clearing House's obligations under the CDS Contract 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 and to other matters which are standardly excluded, restricted or qualified in legal opinions (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(F) *Absence of Certain Events.* No Insolvency or Failure To Pay has occurred and is continuing in respect of the Clearing House and no such circumstance or event would occur as a result of the Clearing House's entering into or performing its obligations under the Rules or any CDS Contract.

(G) *No Agency.* The Clearing House is entering into each CDS Contract as principal and not as agent of any person or entity.

(H) *Relationship between the parties.*

(1) The Clearing House has made its own independent decisions to enter CDS Contracts and as to whether the entry into of CDS Contracts is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary;

(2) The Clearing House is not relying on any communication (written or oral) of the Clearing Member which is party to a CDS Contract as investment advice or as a recommendation to enter into the CDS Contract, it being understood that information and explanations related to the terms and conditions of a CDS Contract will not be considered investment advice or a recommendation to enter into a CDS Contract;

(3) No communication (written or oral) received from such Clearing Member will be deemed to be an assurance or guarantee as to the expected results of that CDS Contract;

(4) The Clearing House 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 CDS Contract and it is also capable of assuming, and assumes, the risks of the CDS Contract; and

(5) The Clearing House is not acting as a fiduciary for or an adviser to such CDS Clearing Member in respect of the CDS Contract.

(I) *Absence of Litigation.* There is not pending or, to the knowledge of the Clearing House, threatened against it 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 any CDS Contract or its ability to perform its obligations under any CDS Contract.

The remedies of rescission and termination are hereby disclaimed and waived by each Clearing Member in respect of any breach by the Clearing House of any the above warranties.

(d) **Part 4: Agreements**

Each Party agrees with the other (or in the case of (ii) below, the Clearing House agrees with the Clearing Member) that, so long as either Party has or may have any obligation under any CDS Contract with the other Party or under any related Credit Support Document to which it is a Party:

(i) *Furnish Specified Information.*

(A) It will deliver to the other Party or, in certain cases under paragraph (2) below, to such government or taxing authority as the other Party reasonably directs;

(1) any forms, documents or certificates relating to taxation specified in paragraph 9.2(d)(i)(B) below; and

(2) upon reasonable demand by such other Party (or, in the case of the Clearing Member, upon reasonable request in writing by the Clearing Member), any form or document that may reasonably be required or reasonably requested in writing (and, in the case of the Clearing Member, any such form or document must be reasonably requested in writing) in order to allow such other Party or its Credit Support Provider to make payment pursuant to any CDS Contract or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the Party in receipt of such demand or request (or, in the case of the Clearing House, so long as the Clearing House reasonably believes that the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the Clearing House)), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other Party and to be executed and to be delivered with any reasonably required certification (or, in the case of any such form or document to be furnished by the Clearing House, with any such form or document to be as accurate as the Clearing House is reasonably able to make it and to be executed in a manner reasonably satisfactory to the Clearing House and to be delivered with any reasonably required certification which the Clearing House is reasonably able to deliver).

in each case by the date specified in paragraph 9.2(d)(i)(A)(2) or 9.2(d)(i)(B) or, if none is specified or in the case of any form, document or certificate to be furnished by the Clearing House, as soon as reasonably practicable.

(B) For the purposes of paragraph 9.2(d)(i)(A) above, where the Clearing Member is a US entity or branch, the Clearing House agrees to deliver an executed United States Internal Revenue Service Form W-8BEN (or successor thereto) promptly after the date on which that Clearing Member first becomes a CDS Clearing Member and promptly upon learning that any form previously provided by the Clearing House has become obsolete or incorrect.

(ii) *Maintain Authorisations.* The Clearing House will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to the Clearing of any CDS Contracts.

(iii) *Tax Agreement.* It will give notice of any failure of a representation made by it under paragraph 9.2(c)(ii) to be accurate and true promptly upon learning of such failure.

(iv) *Payment of Stamp Tax.* The Clearing Member will pay any Stamp Tax and any excise, sales, or value added Tax and any other similar Tax levied or imposed upon it or in respect of its execution or performance of any CDS Contract to which it is a Party by any jurisdiction, and will indemnify the Clearing House against any Stamp Tax and any excise, sales, or value added Tax and any other similar Tax (to the extent, in the case of any value added Tax, that the Clearing House is not able, in the Clearing House's opinion (acting reasonably) to obtain credit for, reclaim or recover

such value added Tax) levied or imposed upon the Clearing House or in respect of the Clearing House's execution or performance of any CDS Contract to which that Clearing Member is a Party by any jurisdiction.

(e) **Part 5: Transfer**

(i) The Clearing House may transfer any rights or obligations of the Clearing House in or under any CDS Contract where such transfer is effected by the Clearing House in accordance with the Rules.

(ii) If a Tax Event or a Tax Event Upon Merger occurs, then the Clearing House will not unreasonably withhold or delay its Consent to, or stipulate unreasonable conditions on a transfer under Rule 408(a)(i). The Clearing House acknowledges its obligations under Applicable Laws and the Rules to have transparent and non-discriminatory rules, based on objective criteria, governing access and to process applications for membership expeditiously and fairly based on objective criteria. The Clearing House acknowledges that any applicant for membership following a Tax Event that is an Affiliate of the Clearing Member will be deemed to have satisfied those of the membership criteria relating to the group of the applicant, to the extent that the Clearing Member has already demonstrated satisfaction of such requirements and these requirements continue to be met on an ongoing basis. As a result, the membership application process for such applicant will be subject to slightly reduced due diligence (given the knowledge already in possession of the Clearing House in relation to the relevant group) and, consequently, such application, if complete, is likely to be subject to a quicker approval process compared with an application by a person that is not an Affiliate of a Clearing Member. For the purposes of this paragraph 9.2(e)(ii) only, Tax Event and Tax Event Upon Merger shall have the following meanings:

"Tax Event." Due to (A) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a CDS Contract is entered into (regardless of whether such action is taken or brought with respect to a Party to the relevant CDS Contract) or (B) a Change in Tax Law, the Clearing Member will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date be required to pay to the other Party an additional amount pursuant to paragraph 9.2(a)(ii)(B)(4) (except in respect of interest payable pursuant to Rule 301(g)).

"Tax Event Upon Merger." The Clearing Member on the next succeeding Scheduled Settlement Date will be required to pay an additional amount pursuant to paragraph 9.2(a)(ii)(B)(4) (except in respect of interest payable pursuant to Rule 301(g)) as a result of a Party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date on which that Clearing Member first becomes a CDS Clearing Member) to, or reorganising, reincorporating or reconstituting into or as, another entity where such action does not constitute a Merger Without Assumption.

(f) **Part 6: Contractual Currency**

(i) *Payment in the Contractual Currency.* Each payment under any CDS Contract will be made in the relevant currency specified in the Contract Terms for that CDS Contract for that payment (the "Contractual Currency").

(ii) *Judgments.* To the extent permitted by Applicable Law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (A) for the payment of any amount owing in respect of that CDS Contract, (B) for the payment

of any amount relating to any early termination in respect of that CDS Contract or (C) in respect of a judgment or order of another court for the payment of any amount described in sub-paragraph (A) or (B) above, the Party seeking recovery, after recovery in full of the aggregate amount to which such Party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other Party the amount of any shortfall of the Contractual Currency received by such Party as a consequence of sums paid in such other currency and will refund promptly to the other Party any excess of the Contractual Currency received by such Party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the Rate of Exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the Rate of Exchange at which such Party is able, acting in good faith and using commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such Party.

- (iii) *Separate Indemnity.* To the extent permitted by Applicable Law, the indemnity in this paragraph 9.2(f) constitutes a separate and independent obligation from the other obligations in the Rules, will be enforceable as a separate and independent cause of action, will apply notwithstanding any indulgence granted by the Party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of any CDS Contract.
- (iv) *Evidence of Loss.* For the purpose of this paragraph 9.2(f), it will be sufficient for a Party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

(g) **Part 7: Miscellaneous**

Characterisation Notice. If, subject always to the representations given by each Party in relation to any CDS Contract (including without limitation those in Section 9.1(b)(i) of the Credit Derivatives Definitions) and to the legal, tax, financial accounting and regulatory treatment of any CDS Contract as a derivative as a matter of English law or regulation, either Party elects to treat a CDS Contract for any other tax, financial accounting or regulatory purpose as other than a derivative financial instrument or loan, the Party shall use reasonable efforts promptly to notify the other Party in writing of such election. For this purpose, a notice that contains information that identifies which types of CDS Contracts between the parties are subject to such election shall be sufficient.

(h) **Part 8: General Terms**

Each CDS Contract shall include the following terms and conditions set out in Part I of the "General Contract Terms and ICE OTC Standard Contract Terms and Eligibility Criteria" section of the Procedures as part of its Contract Terms as if the same were set out herein and applied to CDS Contracts, *mutatis mutandis*: paragraphs 3.1(c), 3.1(d)(iv), 3.1(e), 3.1(i), 3.1(j), 3.2(b) and 3.2(c). In the event of any conflict or inconsistency between any two provisions of the terms set out or referred to herein, the following order of priority shall apply:

- (i) first, these CDS Procedures other than the portion of these CDS Procedures referred to in (ii) below; and
- (ii) second, the relevant section of Part I of the "General Contract Terms and ICE OTC Standard Contract Terms and Eligibility Criteria" section of the Procedures.

10. ~~11.~~ CONTRACT TERMS FOR ITRAXX EUROPE CONTRACTS

10.1 ~~11.1~~ This paragraph ~~11.1~~10.1 specifies the additional Contract Terms applicable to all CDS Contracts cleared by the Clearing House of a nature described in paragraph ~~9.1~~8.1:

- (a) The provisions of paragraph ~~11.2~~10.2 will apply in respect of all such CDS Contracts for which the Acceptance Time falls on or after the MCA/STS Changeover Time.
- (b) In respect of all such CDS Contracts for which the Acceptance Time falls before the MCA/STS Changeover Time, the provisions of paragraph ~~11.3~~10.3 will apply until the MCA/STS Changeover Time and thereafter the provisions of paragraph ~~11.4~~10.4 will apply.
- (c) The provisions of paragraph ~~11.5~~10.5 will apply to all such CDS Contracts, irrespective of the date of the related Acceptance Time.

10.2 ~~11.2~~ iTraxx Europe (CDS Contracts with Acceptance Time on or after the MCA/STS Changeover Time)

- (a) Definitions specific to this paragraph ~~11.2~~10.2:
 - (i) **"iTraxx Contract"** means a CDS Contract in respect of any Eligible iTraxx Index and governed by any iTraxx Terms Supplement. Subject to the other requirements of these procedures, a CDS Contract will be an iTraxx Contract where the related-~~Bilateral CDS Transaction specifies~~ CDS Trade Particulars submitted for Clearing specify, as the relevant Index, any Eligible iTraxx Index, whether or not ~~that Bilateral CDS Transaction is itself~~ those CDS Trade Particulars themselves incorporated or are governed by an iTraxx Terms Supplement.
 - (ii) **"iTraxx Publisher"** means Markit Group Limited or one of its subsidiaries, or any successor sponsor of the Eligible iTraxx Indices it publishes.
 - (iii) **"iTraxx Rules"** means the provisions of the Rules and these CDS Procedures.
 - (iv) **"iTraxx Terms Supplement"** means each of the following: (a) a confirmation in the form of the confirmation (the **"iTraxx Confirmation"**) published on 23 November 2009 incorporating the iTraxx Europe Untranchd Standard Terms Supplement as published on 23 November 2009 (the **"Standard iTraxx CDS Supplement"**) or such electronic equivalent thereto as is used by Deriv/SERV and (b) such other document or supplement as may be specified in relation to any Eligible iTraxx Index by the Clearing House including any successor to any of the documents listed in sub-paragraphs (a) or (b) of this definition. For the purpose of each iTraxx Contract, reference in the iTraxx Terms Supplement and the Credit Derivatives Definitions to a "Credit Derivatives Transaction" shall be deemed to be references to a CDS Contract and references to an "iTraxx® Master Transaction" shall be deemed references to an iTraxx Contract.
 - (v) **"Eligible iTraxx Index"** means each particular series and version (of a Set which is eligible for Clearing) of an iTraxx index or sub-index, as published by the iTraxx Publisher, included from time to time in the List of Eligible iTraxx Indices.
 - (vi) **"List of Eligible iTraxx Indices"** means the list of Eligible iTraxx Indices, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each index: (a) the name and series, including any applicable sub-index designation; (b) the "Effective Date"; (c) one or more eligible "Scheduled Termination Dates" and the applicable "Fixed Rate" for each such date; (d) the Relevant iTraxx Terms Supplement; (e) the versions (and

related annex dates) eligible for Clearing; and (f) any inactive versions (and related annex dates), i.e., those that have been determined to be fungible with later versions.

- (vii) **"Relevant iTraxx Terms Supplement"** means, with respect to an Eligible iTraxx Index, the iTraxx Terms Supplement specified for such Eligible iTraxx Index in the List of Eligible iTraxx Indices.

(b) **Terms of the Cleared iTraxx Contract**

- (i) Any capitalised term used in paragraph ~~11.2~~10.2 but not defined in paragraph ~~11.2~~10.2 or elsewhere in the Rules or Procedures shall have the meaning provided in the Relevant iTraxx Terms Supplement.

- ~~(ii) For purposes of these CDS Procedures, the CDS Region for each iTraxx Contract is the European Region.~~

- ~~(iii)~~ (ii) Each iTraxx Contract will be governed by the Relevant iTraxx Terms Supplement, as modified by this paragraph ~~11.2~~10.2, whether or not the relevant ~~Bilateral CDS Transaction was~~CDS Trade Particulars were in a form comprising the Relevant iTraxx Terms Supplement. In the event of any inconsistency between the Relevant iTraxx Terms Supplement or the Confirmation (including in electronic form) for an iTraxx Contract and this paragraph ~~11.2~~10.2, this paragraph ~~11.2~~10.2 will govern.

- ~~(iii)~~ (iii) For the purposes of any determination as to whether ~~a~~an Applicable Credit Event has occurred in respect of a Reference Entity or an Obligation thereof:

(A) at any time up to but excluding June 20, 2009; or

- (B) if ~~(1)~~ a Credit Event Resolution Request Date occurs ~~or (2) a Credit Event Notice and a Notice of Publicly Available Information are deemed delivered pursuant to paragraph 6.2(f) by a Notifying Party, in either case~~ before June 20, 2009,

the Credit Event Backstop Date with respect to such determination shall be deemed to be the Effective Date.

- ~~(iv)~~ (iv) For the purposes of any determination as to whether a Succession Event has occurred in respect of a Reference Entity:

(A) at any time up to but excluding June 20, 2009; or

- (B) if ~~(1)~~ a Succession Event Resolution Request Date occurs ~~or (2) a Succession Event Notice is deemed delivered pursuant to paragraph 6.2(f), in either case~~ before June 20, 2009,

the Succession Event Backstop Date with respect to such Reference Entity shall be deemed to be the Effective Date.

(c) **Terms of iTraxx Contracts Governed by Standard iTraxx CDS Supplement**

With respect to each iTraxx Contract for which the iTraxx Confirmation and the Standard iTraxx CDS Supplement forms the Relevant iTraxx Terms Supplement, the following terms will apply:

- (i) The terms of the Standard iTraxx CDS Supplement are hereby amended as follows:

- (A) by the deletion of paragraph 2 thereof in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV;
 - (B) the provisions of paragraph 7.3(a) thereof relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 7 hereof) by the Clearing House permitted or authorised by the Rules;
 - (C) the provisions of paragraph 7.3(b)(ii) thereof shall be amended by adding at the end, immediately after "(such new Transaction, a New Trade)" the following: "and except that the Reference Obligation for the purposes of the New Trade will be the preferred SNEC Contract Reference Obligation for the Restructured Entity in question, as if so specified by the Clearing House following consultation with the CDS Risk Committee."
 - ~~(D) by adding the following as a new sub-paragraph (c) at the end of Paragraph 7.3 (Transfer and Termination of Component Transactions): "(c) If a Credit Event Announcement is made by the Regional CDS Committee in respect of an Applicable Credit Event, then from and including the calendar day immediately following the date of such Credit Event Announcement, the parties shall take such actions (if any) as shall be necessary to implement the RCE Solution (as defined in the CDS Procedures) published by the Regional CDS Committee in relation to such Credit Event Announcement."; and~~
 - (D) ~~(E)~~ by the deletion of paragraph 7.7 (De Minimis Cash Settlement).
- (ii) The terms of the iTraxx Confirmation are hereby amended as follows:
- (A) Deleting the words "ISDA Master Agreement" in the fourth line of the first paragraph and replacing it with "~~CDS Master Agreement~~Rules and Procedures of ICE Clear Europe";
 - (B) Deleting the fourth paragraph thereof and replacing it with the following: "This Confirmation supplements, forms a part of and is subject to the ~~CDS Master Agreement between the relevant CDS Clearing Member and the Clearing House~~Rules and Procedures of ICE Clear Europe (the **Agreement**). All provisions contained in, or incorporated by reference in, the Agreement shall govern this Confirmation except as expressly modified below.";
 - (C) The "Calculation Agent" is the Clearing House, except as expressly provided otherwise in the Rules or the CDS Procedures;
 - (D) The "Source of Relevant Annex" is "Publisher";
 - (E) There are no "Excluded Reference Entities";
 - (F) There are no "Additional terms"; and
 - (G) Deleting the contact details for notices and the account details.
- (iii) The following terms will be determined from the ~~iTraxx Confirmation which relates to the particular iTraxx Contract~~relevant CDS Trade Particulars submitted for Clearing or, with respect to each iTraxx Contract arising pursuant to Rule 401(a)(vi),

(x) or (xi), determined from the data provided by the Clearing House to the Clearing Member prior to the time at which such CDS Contract arose:

- (A) Which of the Eligible iTraxx Indices is the "Index", including its version and series number;
- (B) Which of the eligible Scheduled Termination Dates specified for the Index in the List of Eligible iTraxx Indices is the "Scheduled Termination Date";
- (C) The "Original Notional Amount";
- (D) The "Floating Rate Payer";
- (E) The "Fixed Rate Payer";
- (F) The "Annex Date";
- (G) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~[the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV](#); and
- (H) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~[the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV](#).

[10.3](#) ~~11.3~~ **iTraxx Europe (CDS Contracts with Acceptance Time before the MCA/STS Changeover Time; provisions applying until the MCA/STS Changeover Time)**

- (a) Definitions specific to this paragraph ~~11.3~~[10.3](#).
 - (i) **"iTraxx Contract"** means a CDS Contract in respect of any Eligible iTraxx Index and governed by a Master Confirmations Agreement. Subject to the other requirements of these procedures, a CDS Contract will be an iTraxx Contract where the ~~related Bilateral CDS Transaction specifies~~[CDS Trade Particulars submitted for Clearing specify](#), as the relevant Index, any Eligible iTraxx Index, whether or not ~~that Bilateral CDS Transaction is itself~~[those CDS Trade Particulars themselves incorporate or are](#) governed by a Master Confirmations Agreement.
 - (ii) **"iTraxx Publisher"** means Markit Group Limited or one of its subsidiaries, or any successor sponsor of the Eligible iTraxx Indices it publishes.
 - (iii) **"iTraxx Rules"** means the provisions of the Rules and these CDS Procedures.
 - (iv) **"Master Confirmations Agreement"** means each of the following: (a) an iTraxx Master Credit Derivatives Confirmation Agreement including the General Terms Confirmation (the **"General Terms Confirmation"**) as supplemented by the trade details applicable to the relevant iTraxx Master Transaction (the **"Master Confirmation"**) as set forth in the relevant Transaction Supplement (the **"Transaction Supplement"**), all in the form published by Markit Group Limited (formerly Mark-it Partners Ltd.) as the "Consolidated version dated 18 March 2005 incorporating the changes set out in the Series 2 Amendment Agreement" as amended as set out in the form of the amendment agreement published by Markit Group Limited (formerly Mark-it Partners Ltd.) as the "Series 4 Amendment to the iTraxx Master Credit Derivatives Confirmation Agreement dated as of 20 September 2005" or, in the case of the Transaction Supplement, such electronic equivalent thereto as is used by Deriv/SERV (together the **"Standard Master Confirmations Agreement"**) or (b) such other document or supplement as may be specified in

relation to any Eligible iTraxx Index by the Clearing House including any successor to any of the documents listed in sub-paragraph (a) of this definition. For the purpose of each iTraxx Contract, reference in the Master Confirmations Agreement and the Credit Derivatives Definitions to a "**Credit Derivatives Transaction**" shall be deemed to be references to a CDS Contract and references to an "iTraxx® Master Transaction" shall be deemed references to an iTraxx Contract.

- (v) "**Eligible iTraxx Index**" means each particular series and version (of a Set which is eligible for Clearing) of an iTraxx index or sub-index, as published by the iTraxx Publisher, included from time to time in the List of Eligible iTraxx Indices.
- (vi) "**List of Eligible iTraxx Indices**" means the list of Eligible iTraxx Indices, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each index: (a) the name and series, including any applicable sub-index designation; (b) the "Effective Date"; (c) one or more eligible "Scheduled Termination Dates" and the applicable "Fixed Rate" for each such date; (d) the Relevant Master Confirmations Agreement; (e) the versions (and related annex dates) eligible for Clearing; and (f) any inactive versions (and related annex dates), i.e., those that have been determined to be fungible with later versions.
- (vii) "**Relevant Master Confirmations Agreement**" means, with respect to an Eligible iTraxx Index, the Master Confirmations Agreement specified for such Eligible iTraxx Index in the List of Eligible iTraxx Indices.

(b) **Terms of the Cleared iTraxx Contract**

- (i) Any capitalised term used in paragraph ~~44.3~~10.3 but not defined in paragraph ~~44.3~~10.3 or elsewhere in the Rules or Procedures shall have the meaning provided in the Relevant Master Confirmations Agreement.
- ~~(ii) For purposes of these CDS Procedures, the CDS Region for each iTraxx Contract is the European Region.~~
- ~~(iii)~~ (ii) Each iTraxx Contract will be governed by the Relevant Master Confirmations Agreement, as modified by this paragraph ~~44.3~~10.3, as though the Clearing House and the relevant CDS Clearing Member had entered into the Relevant Master Confirmations Agreement, whether or not the relevant ~~Bilateral CDS Transaction~~ was Trade Particulars were in a form comprising the Relevant Master Confirmations Agreement. In the event of any inconsistency between the Relevant Master Confirmations Agreement or the Confirmation (including in electronic form) for an iTraxx Contract and this paragraph ~~44.3~~10.3, this paragraph ~~44.3~~10.3 will govern.
- ~~(iv)~~ (iii) For the purposes of any determination as to whether ~~a~~an Applicable Credit Event has occurred in respect of a Reference Entity or an Obligation thereof:
 - (A) at any time up to but excluding June 20, 2009; or
 - (B) if ~~(1)~~ a Credit Event Resolution Request Date occurs ~~or (2) a Credit Event Notice and a Notice of Publicly Available Information are deemed delivered pursuant to paragraph 6.2(f) by a Notifying Party, in either case~~ before June 20, 2009,

the Credit Event Backstop Date with respect to such determination shall be deemed to be the Effective Date.

(iv) ~~(v)~~ For the purposes of any determination as to whether a Succession Event has occurred in respect of a Reference Entity:

- (A) at any time up to but excluding June 20, 2009; or
- (B) if ~~(1)~~ a Succession Event Resolution Request Date occurs ~~or (2) a Succession Event Notice is deemed delivered pursuant to paragraph 6.2(f), in either case~~ before June 20, 2009,

the Succession Event Backstop Date with respect to such Reference Entity shall be deemed to be the Effective Date.

(c) **Terms of iTraxx Contracts Governed by Standard Master Confirmations Agreement**

With respect to each iTraxx Contract for which the Standard Master Confirmations Agreement forms the Relevant Master Confirmations Agreement, the following terms will apply:

- (i) The terms of the Standard Master Confirmations Agreement are hereby amended as follows:
 - (A) Adding, immediately before the words "each as published by" in the third line of the paragraph numbered 1 of the Master Confirmations Agreement and in the third line of the second paragraph of the General Terms Confirmation, the following: "and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)"
 - (B) Deleting, in the paragraph numbered 2 of the Master Confirmations Agreement, the phrase [1992/2002] ISDA Master Agreementdated as of []" and replacing it with "~~CDS Master Agreement~~[Rules and Procedures of ICE Clear Europe](#)";
 - (C) Deleting paragraphs numbered 5, 6.1, 6.2 and 6.3 of the Master Confirmations Agreement in their entirety;
 - (D) Deleting in its entirety the last paragraph of the definition of "Reference Obligation" in the General Terms Confirmation that begins: "If the Index Sponsor publishes a replacement Reference Obligation";
 - (E) Deleting the words "Effective Date" from the final sentence of the first paragraph of the General Terms Confirmation and replacing them with the words "Succession Event Backstop Date";
 - (F) Providing in the General Terms Confirmation that the Calculation Agent is the Clearing House, except as expressly provided otherwise in the Rules, the Credit Derivatives Definitions or the CDS Procedures;
 - (G) Providing in the General Terms Confirmation and Transaction Supplement that there are no Excluded Reference Entities;
 - (H) Adding in paragraph 5 of the General Terms Confirmation, immediately after "Applicable Convention Terms" the phrase "and the Fallback Settlement Method applies in accordance with Section 12.1 of the Credit Derivatives Definitions";
 - (I) Deleting paragraph 6 of the General Terms Confirmation in its entirety;

- (J) Deleting the square brackets at the beginning and end of paragraph 7.1 of the General Terms Confirmation;
- (K) The provisions of paragraph 7.3(a) of the General Terms Confirmation relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 7 hereof) by the Clearing House permitted or authorised by the Rules;
- (L) adding the following as new sub-~~paragraphs~~ paragraph (c) ~~and (d)~~ at the end of Paragraph 7.3 (*Transfer and Termination of Component Transactions*):
- "(c) If a Credit Event Announcement is made ~~other than by the Regional CDS Committee~~ in respect of a Restructuring Credit Event with respect to a Reference Entity (such Reference Entity, a "**Restructured Entity**"), from and including the calendar day immediately following the date of such Credit Event Announcement:
- (i) the Restructured Entity shall be deemed to have been removed from the Index and the Relevant Annex;
- (ii) the Component Transaction relating thereto shall continue in full force and effect between the parties as an independent Credit Derivative Transaction referencing the Restructured Entity with the same economic terms and conditions as the Component Transaction immediately before such Credit Event Announcement, except that this Paragraph 7.3 shall be deemed not to apply (such new Transaction, a "**New Trade**"); and
- (iii) as soon as reasonably practicable after the Credit Event Announcement, the parties shall confirm the terms of the New Trade in their respective booking systems. Unless Resolved otherwise by a relevant Determining Body, such New Trade shall be recorded as a Credit Derivative Transaction referencing solely the Restructured Entity evidenced by a Confirmation for use with the Credit Derivatives Physical Settlement Matrix (as defined in the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions published on March 7, 2005) and incorporating the Credit Derivatives Physical Settlement Matrix terms applicable to the relevant Transaction Type for the Restructured Entity; provided that the appropriate version of the Credit Derivatives Physical Settlement Matrix and the relevant Transaction Type shall be selected by the Calculation Agent, acting in good faith and in a commercially reasonable manner, such that the economic terms of the New Trade as closely as possible preserve the economic equivalent of the Component Transaction immediately before the Credit Event Announcement;~~(d) If a Credit Event Announcement is made by the Regional CDS Committee in respect of a Restructuring Credit Event with respect to the Restructured Entity, then from and including the calendar day immediately following the date of such Credit Event Announcement, the parties shall take such actions (if any) as shall be necessary to implement the RCE Solution (as defined in the CDS Procedures) published by the Regional CDS Committee in relation to such Credit Event Announcement."~~
- (M) Deleting paragraph 7.4 of the General Terms Confirmation in its entirety; and

- (N) The provisions in the Transaction Supplement relating to Additional Amounts shall be deemed deleted in their entirety for CDS Contracts arising pursuant to ~~Weekly Clearing~~the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.
- (ii) The following terms will be determined from the Transaction Supplement which relates to the particular iTraxx Contract submitted for Clearing:
 - (A) Which of the Eligible iTraxx Indices is the "Index", including its version and series number;
 - (B) Which of the eligible Scheduled Termination Dates specified for the Index in the List of Eligible iTraxx Indices is the "Scheduled Termination Date";
 - (C) The "Original Notional Amount";
 - (D) The "Floating Rate Payer";
 - (E) The "Fixed Rate Payer";
 - (F) The "Additional Amount Payer", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV; and
 - (G) The "Additional Amount", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.

10.4 **~~11.4~~ iTraxx Europe (CDS Contracts with Acceptance Time before the MCA/STS Changeover Time; provisions applying after the MCA/STS Changeover Time)**

- (a) All CDS Contracts to which paragraph ~~11.3~~10.3 applies and which form part of the Open Contract Position of a Clearing Member as at the MCA/STS Changeover Time will be deemed thereafter to be CDS Contracts on the terms set out in paragraph ~~11.2~~10.2 and to which such paragraph applies, as modified below. The Annex Date will be the date of publication of the version of the index referred to in the Relevant Master Confirmations Agreement.
- (b) For the purposes of paragraph ~~11.4~~10.4(a), the information in respect of each CDS Contract which would be determined (had the CDS Contract been one falling within paragraph ~~11.1~~10.1(a)) by reference to the iTraxx Confirmation relating to the particular iTraxx Contract submitted for Clearing (as referred to in paragraph ~~11.2~~10.2(c)) will instead be determined by reference to the CDS Contracts forming the relevant Open Contract Position of the relevant Clearing Member as at the MCA/STS Changeover Time.
- (c) From the MCA/STS Changeover Time, all CDS Contracts of a Set referencing a particular version and series of a particular Eligible iTraxx Index and having a particular Scheduled Termination Date and fixed rate and to which paragraph ~~11.3~~10.3 had, up to that moment applied, shall be, and shall be treated as, fully fungible with all CDS Contracts of a Set referencing the same version and series of the same Eligible iTraxx Index having the same Scheduled Termination Date and fixed rate to which paragraph ~~11.2~~10.2 applies.

10.5 **~~11.5~~ Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event**

- (a) Where the iTraxx Publisher of an Eligible iTraxx Index publishes one or more subsequent versions or annexes of the relevant series following a Credit Event or a Succession Event with

respect to a Reference Entity included in such series, and the Clearing House determines that iTraxx Contracts referencing the earlier version or annex of such series are fungible with iTraxx Contracts referencing a later version or annex of such series that is an Eligible iTraxx Index and so notifies CDS Clearing Members, iTraxx Contracts referencing the earlier version or annex of such series shall become iTraxx Contracts referencing such later version or annex of such series on the date determined by the Clearing House (the "**Fungibility Date**"). Any iTraxx Contracts referencing the earlier version or annex of such series submitted for clearing after the related Fungibility Date shall, upon acceptance for clearing, become an iTraxx Contract referencing the latest version or annex of such series, as the case may be, that the Clearing House has determined is fungible with such earlier version or annex.

- (b) The Clearing House may determine a different Fungibility Date applicable to individual iTraxx Contracts or groups of iTraxx Contracts or may determine a Fungibility Date applicable to all iTraxx Contracts referencing the earlier version or annex of a series described in paragraph ~~11.5~~ 10.5(a), as it deems appropriate.

11. ~~12.~~ **CONTRACT TERMS FOR SINGLE NAME CDS CONTRACTS**

11.1 ~~12.1~~ This paragraph ~~12.1~~ specifies the additional Contract Terms applicable to all SNEC Contracts. In the event of any inconsistency between the relevant ~~terms of a Bilateral CDS Transaction~~ data in CDS Trade Particulars submitted for Clearing and this paragraph ~~12.1~~, this paragraph ~~12.1~~ will govern.

11.2 ~~12.2~~ Definitions specific to this paragraph ~~12.1~~.

- (a) "**Eligible SNEC Reference Entities**" means each particular Reference Entity included from time to time in the List of Eligible SNEC Reference Entities by reference to a RED Code. Each RED Code shall be treated as referring to a separate Eligible SNEC Reference Entity.
- (b) "**Eligible SNEC Reference Obligations**" means, with respect to any SNEC Contract Reference Obligation for any Eligible SNEC Reference Entity, the Reference Obligations listed under the heading "Eligible Reference Obligations" for such SNEC Contract Reference Obligation and Eligible SNEC Reference Entity in the List of Eligible SNEC Reference Entities.
- (c) "**RED Code**" means each of the Reference Entity Database codes (as published by Markit Group Limited or any successor thereto).
- (d) "**List of Eligible SNEC Reference Entities**" means the list of Eligible SNEC Reference Entities, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each Eligible SNEC Reference Entity:
- (i) the name of such Eligible SNEC Reference Entity and the RED Code therefor;
 - (ii) the Relevant Physical Settlement Matrix;
 - (iii) the SNEC Contract Reference Obligation and each Eligible SNEC Reference Obligation therefor; and
 - (iv) each eligible "Scheduled Termination Date".
- (e) "**Permitted SNEC Fixed Rates**" means the Fixed Rates permitted for a SNEC Contract, as determined from time to time by the Clearing House and notified to CDS Clearing Members.
- (f) "**Relevant Physical Settlement Matrix**" means, with respect to a SNEC Contract, the "Credit Derivatives Physical Settlement Matrix" applicable to such SNEC Contract, as specified in respect of the relevant Eligible SNEC Reference Entity in the List of Eligible SNEC Reference Entities.

- (g) "SNEC Contract" means a single name European corporate credit default swap, in the form of the Standard SNEC Confirmation, in respect of any Eligible SNEC Reference Entity having a combination of characteristics listed as eligible for such Eligible SNEC Reference Entity in, and permitted by, the List of Eligible SNEC Reference Entities.
- (h) "SNEC Contract Reference Obligations" means, with respect to any Eligible SNEC Reference Entity, the Reference Obligation(s) therefor which are listed under the heading "SNEC Contract Reference Obligations" in the List of Eligible SNEC Reference Entities.
- (i) "Standard SNEC Confirmation" means the Credit Derivatives Confirmation for use with the Credit Derivatives Physical Settlement Matrix, as published by ISDA in December 2009, as amended as set out below.

11.3 ~~12.3~~ Modifications to List of Eligible SNEC Reference Entities

The Clearing House shall be entitled at any time subject to consultation with the CDS Risk Committee to determine that it will do the following (such changes only affecting ~~only~~ CDS Contracts ~~resulting from Bilateral CDS Transactions not yet Cleared~~ entered into after the time of such determination):

- (a) add and/or modify Permitted SNEC Fixed Rates,
- (b) add new Eligible SNEC Reference Entities, and add and/or modify any other entries in any of the fields in the List of Eligible SNEC Reference Entities, or
- (c) update the List of Eligible SNEC Reference Entities to give effect to determinations by the ~~Regional CDS Committee (or applicable Dispute Resolver) or~~ Credit Derivatives Determinations Committee, including, without limitation, determinations of Succession Events or Substitute Reference Obligations.

The Clearing House will notify the CDS Clearing Members by Circular of any such action.

11.4 ~~12.4~~ Self-referencing CDS

In addition to the notice requirements contained in Rule 204 and the Membership Procedures, a CDS Clearing Member shall, subject to the following sentence, provide notice to the Clearing House if (i) such CDS Clearing Member or an Eligible SNEC Reference Entity consolidates or amalgamates with, or merges into, or transfers all or substantially all of its assets to, the Eligible SNEC Reference Entity or such CDS Clearing Member, as applicable, or such CDS Clearing Member and an Eligible SNEC Reference Entity are the same entity or are or become Affiliates Group Companies in respect of one another, or such CDS Clearing Member is subject to an agreement pursuant to which any of the foregoing is reasonably likely to occur or (ii) any of the foregoing occurs in respect of an Eligible SNEC Reference Entity and one of the CDS Clearing Member's Segregated CDS Customers or Segregated CDS FCM/BD Customers in respect of which a CDS Contract exists with the Eligible SNEC Reference Entity as the reference entity (any such Customer, for the purposes of this paragraph 11.4, an "Affected Customer"). Such notification may be delayed for so long as the CDS Clearing Member is prevented by Applicable Laws from disclosing the information on the basis of which the notification is required. A Customer shall notify its Clearing Member if it becomes an Affected Customer with respect to any CDS Contract or Customer-CM CDS Transaction, provided that such notification may be delayed for so long as the Customer is prevented by Applicable Laws from disclosing the information on the basis of which the notification is required. If a CDS Clearing Member or its Affected Customer is subject to an event or agreement described in this paragraph ~~12.4~~ 11.4 or is party to any CDS Contract (or related Customer-CM CDS Transaction) resulting from the Clearing of ~~a Bilateral CDS Transaction~~ CDS Trade Particulars which, as at the relevant Acceptance Time, ~~was~~ were ineligible for Clearing pursuant to paragraph ~~4.11~~ 4.8 ~~regardless of whether or not the Clearing House receives any notification required under this paragraph 11.4~~, the Clearing House may conduct an auction process to terminate all ~~affected CDS Contracts (being the CDS Contracts referencing such Eligible SNEC Reference Entity) of such CDS Clearing Member (the "Affected CDS Clearing Member")~~ the CDS Contracts of such Clearing Member referencing such

Eligible SNEC Reference Entity where (i) above applies or all CDS Contracts of such Clearing Member referencing such Eligible SNEC Reference Entity which are recorded in its Customer Account for which the Segregated Customer is the Affected Customer where (ii) above applies (all such CDS Contracts being the "Affected SR Contracts") (for the purposes of this paragraph 11.4, such Clearing Member being, the "Affected CDS Clearing Member") (and any related Customer-CM CDS Transactions) and enter into equivalent CDS Contracts with other CDS Clearing Members by requesting firm quotations from all such CDS Clearing Members (each auction in such process, an "SR Auction"). Prior to determining the CDS Contracts to be subject to any such auction, where the Affected CDS Clearing Member acts as Buying Clearing Member and Selling Clearing Member in respect of ~~CDS~~Affected SR Contracts of the same Set, the Clearing House shall, in consultation with the CDS Default Committee as to the transaction sizes of resulting CDS Contracts to be auctioned (as below), net, offset, close out or terminate such ~~CDS~~Affected SR Contracts ~~up to the extent that, following such netting, offsetting, closing out or termination, CDS Contracts representing in aggregate the Open Contract Position of the Affected CDS Clearing Member in the relevant Set are recognised to~~ the extent appropriate for the purposes of the SR Auction and permitted by the Rules. For these purposes, the Clearing House will provide the Affected CDS Clearing Member with a report detailing the CDS Contracts to be subject to netting, offsetting, closing out or termination. Thereafter, the Clearing House (and the Affected CDS Clearing Member, and any Affected Customer) to the extent that ~~it has~~they have all necessary information, will adjust the records in Deriv/SERV to reflect such netting, offsetting, closing out or termination. The Clearing House will hold an auction unless the Clearing House, in its discretion and after consultation with the CDS Risk Committee, believes that the circumstances are such that an auction may be inappropriate, in which case the Clearing House may take such other action in consultation with the CDS Risk Committee as it considers reasonably necessary to achieve its primary aim in these circumstances of addressing the risks resulting from a CDS Clearing Member being party to a CDS Contract where the reference entity is that CDS Clearing Member or one of its ~~Affiliates~~Affected Customers or one of their Group Companies, while endeavouring, as far as is reasonably practicable in the circumstances without prejudicing the achievement of the primary aim, to avoid materially and adversely affecting the Affected CDS Clearing Member or any of its Customers. The Clearing House shall determine the timing and other particular characteristics of each SR Auction in consultation with the CDS Default Committee, including determining the size of the bid/offer spread and/or of the CDS Contracts to be auctioned, whether one or more SR Auctions are to be held and the timing and structure of such auctions (including the frequency at which firm bid and firm offer Quotations will be requested and the transaction size (that is, the Floating Rate Payer Calculation Amount)) and whether CDS Clearing Members (excluding the Affected CDS Clearing Member) will be required (as opposed to requested) to submit actionable quotations in an SR Auction, provided that CDS Clearing Members will not be notified of whether the CDS Contract(s) to be terminated pursuant to such process is for a CDS Clearing Member as CDS Buyer or CDS Seller.

The Clearing House will enter into CDS Contracts with the CDS Clearing Member(s) and in the amount and at the prices determined pursuant to the SR Auction, at which time the corresponding CDS Contracts of the Affected CDS Clearing Member and any related Customer-CM CDS Transactions shall be terminated by reference to the prices at which the Clearing House enters into such new CDS Contracts. The ~~Affected CDS Clearing Member, the~~ Clearing House, for itself and on behalf of the other CDS~~relevant~~ Clearing Members and any Customers, using the DTCC Process, shall submit to Deriv/SERV the terms of such reduction, termination or new CDS ~~Contract~~Contracts, as applicable ~~and~~. As between the Clearing House and the Affected CDS Clearing Member, the Affected CDS Clearing Member will bear the cost of the associated bid/offer spread and any reasonable, out-of-pocket costs and expenses of the Clearing House in connection with such SR Auction(s) and its entering into such new CDS Contracts. Amounts owed by the Affected CDS Clearing Member to (or receivable by it from) the Clearing House in connection with any such reduction or termination shall be determined by the Clearing House by reference to the SR Auction(s). In addition, any Initial Payments, Margin, or other payments or deliveries owed (including the dates of settlement with respect thereto) relating to the Open Contract Positions increased, created, reduced or terminated pursuant to this paragraph ~~12.4~~11.4 shall be as determined by the Clearing House with reference to the SR Auction(s) in accordance with the Procedures and, notwithstanding any other provision of the Rules, Initial Payments may be owed in respect to CDS Contracts entered into by the Clearing House pursuant to an SR Auction.

If an Affected Clearing Member is a Defaulter, this paragraph ~~12.4~~11.4 shall not restrict the rights of the Clearing House to close out, terminate or liquidate any Contract in any other manner in accordance with Part 9 of the Rules.

11.5 ~~12.5~~ Terms of the Cleared SNEC Contract.

~~(a) The CDS Region for each SNEC Contract is the European Region.~~

~~(a)~~ ~~(b)~~ The Standard SNEC Confirmation for each SNEC Contract shall be amended as follows:

- (i) by deleting, in the second paragraph, the phrase "as supplemented by each of the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions" and replacing it with the phrase "as supplemented by each of the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)";
- (ii) by deleting, in the third paragraph, the square brackets and deleting, in the third paragraph, the phrase "the ISDA Master Agreement dated as of [date]" and replacing it with the phrase "~~CDS Master Agreement~~"; Rules and Procedures of ICE Clear Europe.";
- (iii) in part numbered 2, by deleting references to the Initial Payment Payer and the Initial Payment Amount in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV and by deleting the square brackets in such part;
- (iv) by deleting parts numbered 4, 5, 6 and 7 in their entirety; and
- (v) by including a new part 4 as follows: "4. Additional Term: Section 2.31 (*Merger of Reference Entity and Seller*) of the Credit Derivatives Definitions shall not apply."

~~(b)~~ ~~(e)~~ The provisions specified below of the Standard SNEC Confirmation for each SNEC Contract shall be completed as follows:

- (i) The "Transaction Type" is Standard European Corporate.
- (ii) The "Matrix Publication Date" is the date of publication of the Relevant Physical Settlement Matrix.
- (iii) The "Reference Obligation(s)" are the SNEC Contract Reference Obligation(s) specified in the List of Eligible SNEC Reference Entities with respect to the relevant Eligible SNEC Reference Entity.
- (iv) The "Calculation Agent" is the Clearing House, except as provided in the Rules.
- (v) The "Fixed Rate Payer Payment Dates" are March 20, June 20, September 20 and December 20.

~~(c)~~ ~~(d)~~ For each SNEC Contract, the following terms will be determined according to the particular ~~Bilateral CDS Transaction~~Trade Particulars submitted for ~~clearing~~Clearing, subject to paragraph ~~12.4~~11.4 or, with respect to each SNEC Contract arising pursuant to Rule 401(a)(vi), (x) or (xi), according to the ~~data~~CDS Trade Particulars provided by the Clearing House to the Clearing Member prior to the time at which such CDS Contract arose:

- (i) Which of the Eligible SNEC Reference Entities is the "Reference Entity".
 - (ii) Which of the eligible Scheduled Termination Dates specified for the Reference Entity in the List of Eligible SNEC Reference Entities is the "Scheduled Termination Date".
 - (iii) The "Floating Rate Payer Calculation Amount".
 - (iv) The "Floating Rate Payer".
 - (v) The "Fixed Rate Payer".
 - (vi) The "Fixed Rate".
 - (vii) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~[the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV](#); and
 - (viii) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~[the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV](#).
- (d) ~~(e)~~ Each SNEC Contract will be governed by the terms set out in paragraph ~~109~~ and this paragraph ~~12.11~~, whether or not the relevant ~~Bilateral CDS Transaction was~~[CDS Trade Particulars were](#) in an equivalent form.

11.6 ~~12.6~~ Relevant Physical Settlement Matrix Updates

- (a) Where ISDA publishes a version of the Credit Derivatives Physical Settlement Matrix (a "New Matrix") that is subsequent to the version that is specified as the Relevant Physical Settlement Matrix for any SNEC Contract(s) (the "Existing Matrix"), and the Clearing House determines, subject to consultation with the CDS Risk Committee, that a SNEC Contract referring to the New Matrix would be fungible with a SNEC Contract referring to Existing Matrix (the date of such determination, the "Matrix Update Date" and each prior Credit Derivatives Physical Settlement Matrix subject to such determination, a "Superseded Matrix") and so notifies CDS Clearing Members, such SNEC Contracts shall, as of the close of business on the Matrix Update Date, become SNEC Contracts referencing the New Matrix as the Relevant Physical Settlement Matrix and the List of Eligible SNEC Reference Entities shall be updated accordingly provided that the Clearing House shall not make any such determination where the New Matrix, when compared with the Existing Matrix, contains any change to a term that would apply to such SNEC Contract. Any ~~Bilateral CDS Transaction~~[Trade Particulars](#) referencing a Superseded Matrix submitted for Clearing as a SNEC Contract shall, upon acceptance for Clearing, ~~become~~[give rise to](#) a SNEC Contract referencing the New Matrix.
- (b) The Clearing House may determine a different Matrix Update Date applicable to individual SNEC Contracts or groups of SNEC Contracts or may determine a Matrix Update Date applicable to all SNEC Contracts referencing a Superseded Matrix, as it deems appropriate.

11.7 ~~12.7~~ Amendments

- (a) Where ~~a Bilateral CDS Transaction which, upon Clearing~~[CDS Trade Particulars, after the Acceptance Time](#), would give rise to two CDS Contracts which would be SNEC Contracts but for the specification of an Eligible SNEC Reference Obligation as the "Reference Obligation", then the Clearing House shall be entitled at its discretion to treat such ~~Bilateral CDS Transaction, on Clearing~~[CDS Trade Particulars, at the Acceptance Time](#), as though ~~it~~[they](#) had

specified the SNEC Contract Reference Obligation specified for such Eligible SNEC Reference Obligation in the List of Eligible SNEC Reference Entities.

- (b) In addition to the acceptance process described in paragraph 4, the Clearing House's Acceptance Notice to the relevant CDS Clearing Members (or CDS Clearing Member, if applicable) in relation to the relevant ~~Bilateral CDS Transaction~~ Trade Particulars shall include details of any adjustment that will be made by the Clearing House pursuant to this paragraph. Submission of data in relation to CDS Contracts to Deriv/SERV under paragraph 4.4 shall take account of any such adjustments set out by the Clearing House in the Acceptance Notice.

12. ~~13.~~ **CONTRACT TERMS FOR SOVEREIGN CONTRACTS**

12.1 ~~13.1~~ This paragraph ~~13.12~~ specifies the additional Contract Terms applicable to all Sovereign Contracts. In the event of any inconsistency between the ~~relevant terms of a Bilateral CDS Transaction~~ CDS Trade Particulars submitted for Clearing and this paragraph ~~13.12~~, this paragraph ~~13.12~~ will govern.

12.2 ~~13.2~~ Definitions specific to this paragraph ~~13.12~~.

- (a) **"Eligible Sovereign Reference Entities"** means each particular Reference Entity included from time to time in the List of Eligible Sovereign Reference Entities by reference to a RED Code. Each RED Code shall be treated as referring to a separate Eligible Sovereign Reference Entity.
- (b) **"Eligible Sovereign Reference Obligations"** means, with respect to any Sovereign Contract Reference Obligation for any Eligible Sovereign Reference Entity, the Reference Obligations listed under the heading "Eligible Reference Obligations" for such Sovereign Contract Reference Obligation and Eligible Sovereign Reference Entity in the List of Eligible Sovereign Reference Entities.
- (c) **"RED Code"** means each of the Reference Entity Database codes (as published by Markit Group Limited or any successor thereto).
- (d) **"List of Eligible Sovereign Reference Entities"** means the list of Eligible Sovereign Reference Entities, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each Eligible Sovereign Reference Entity:
- (i) the name of such Eligible Sovereign Reference Entity and the RED Code therefor;
 - (ii) the Relevant Physical Settlement Matrix;
 - (iii) the Sovereign Contract Reference Obligation and each Eligible Sovereign Reference Obligation therefor;
 - (iv) each eligible "Scheduled Termination Date"; and
 - (v) with respect to any Sovereign Contract relating to such Eligible Sovereign Reference Entity, the currency in which the Floating Rate Payer Calculation Amount must be denominated and the currency to be used for the calculation of Margin.
- (e) **"Permitted Sovereign Fixed Rates"** means the Fixed Rates permitted for a Sovereign Contract, as determined from time to time by the Clearing House and notified to CDS Clearing Members by Circular.
- (f) **"Relevant Physical Settlement Matrix"** means, with respect to a Sovereign Contract, the "Credit Derivatives Physical Settlement Matrix" applicable to such Sovereign Contract, as

specified in respect of the relevant Eligible Sovereign Reference Entity in the List of Eligible Sovereign Reference Entities.

- (g) **"Sovereign Contract"** means a single name Standard Western European Sovereign (as defined in the Relevant Physical Settlement Matrix) credit default swap, in the form of the Standard Sovereign Confirmation, in respect of any Eligible Sovereign Reference Entity having a combination of characteristics listed as eligible for such Eligible Sovereign Reference Entity in, and permitted by, the List of Eligible Sovereign Reference Entities.
- (h) **"Sovereign Contract Reference Obligations"** means, with respect to any Eligible Sovereign Reference Entity, the Reference Obligation(s) therefor which are listed under the heading "Sovereign Contract Reference Obligations" in the List of Eligible Sovereign Reference Entities.
- (i) **"Standard Sovereign Confirmation"** means the Credit Derivatives Confirmation for use with the Credit Derivatives Physical Settlement Matrix, as published by ISDA in April 2010, as amended as set out below.

12.3 ~~13.3~~ Modifications to List of Eligible Sovereign Reference Entities

The Clearing House shall be entitled at any time subject to consultation with the CDS Risk Committee to determine to do the following (such changes affecting only CDS Contracts ~~resulting from Bilateral CDS Transactions not yet Cleared~~ arising after the time of such determination):

- (a) add and/or modify Permitted Sovereign Fixed Rates,
- (b) add new Eligible Sovereign Reference Entities, and add and/or modify any other entries in any of the fields in the List of Eligible Sovereign Reference Entities, or
- (c) update the List of Eligible Sovereign Reference Entities to give effect to determinations by the ~~European Regional CDS Committee (or applicable Dispute Resolver) or~~ Credit Derivatives Determinations Committee, including, without limitation, determinations of Succession Events or Substitute Reference Obligations.

The Clearing House will notify the CDS Clearing Members by Circular of any such action.

12.4 ~~13.4~~ Self-referencing CDS

In addition to the notice requirements contained in Rule 204 and the Membership Procedures, a CDS Clearing Member shall, subject to the following sentence, provide notice to the Clearing House if (i) such CDS Clearing Member consolidates or amalgamates with, or merges into, or transfers all or substantially all of its assets to, an Eligible Sovereign Reference Entity, or such CDS Clearing Member and an Eligible Sovereign Reference Entity are or become Affiliates Group Companies in respect of one another, or such CDS Clearing Member is subject to an agreement pursuant to which any of the foregoing is reasonably likely to occur or (ii) any of the foregoing occurs in respect of an Eligible Sovereign Reference Entity one of the CDS Clearing Member's Segregated CDS Customers or Segregated CDS FCM/BD Customers in respect of which a CDS Contract exists with the Eligible Sovereign Reference Entity as the reference entity (any such Customer, for the purposes of this paragraph 12.4, an "Affected Customer"). Such notification may be delayed for so long as the CDS Clearing Member is prevented by Applicable Laws from disclosing the information on the basis of which the notification is required. A Customer shall notify its Clearing Member if it becomes an Affected Customer with respect to any CDS Contract or Customer-CM CDS Transaction, provided that such notification may be delayed for so long as the Customer is prevented by Applicable Laws from disclosing the information on the basis of which the notification is required. If a CDS Clearing Member or its Affected Customer is subject to an event or agreement described in this paragraph ~~13.4~~ 12.4 or is party to any CDS Contract resulting from the Clearing of ~~a Bilateral CDS~~

~~Transaction~~CDS Trade Particulars which, as at the relevant Acceptance Time, ~~was~~were ineligible for Clearing pursuant to paragraph ~~4.11.4.8~~4.8 ~~regardless of whether or not the Clearing House receives any notification required under this paragraph 12.4,~~ the Clearing House may conduct an auction process to terminate all ~~affected CDS Contracts (being the CDS Contracts referencing such Eligible Sovereign Reference Entity)~~the CDS Contracts of such Clearing Member referencing such Eligible Sovereign Reference Entity where (i) above applies or all CDS Contracts of such Clearing Member referencing such Eligible Sovereign Reference Entity which are recorded in its Customer Account for which the Segregated Customer is the Affected Customer where (ii) above applies (all such CDS Contracts being the "Affected SR Contracts") (for the purposes of this paragraph 12.4, the "Affected CDS Clearing Member") (and any related Customer-CM CDS Transactions) and enter into equivalent CDS Contracts with other CDS Clearing Members by means of SR Auctions. Prior to determining the CDS Contracts to be subject to any such auction, where the Affected CDS Clearing Member acts as Buying Clearing Member and Selling Clearing Member in respect of ~~CDS~~Affected SR Contracts of the same Set, the Clearing House shall, in consultation with the CDS Default Committee as to the transaction sizes of resulting CDS Contracts to be auctioned (as below), net, offset, close out or terminate such ~~CDS~~Affected SR Contracts ~~up to the extent that, following such netting, offsetting, closing out or termination, CDS Contracts representing in aggregate the Open Contract Position of the Affected CDS Clearing Member in the relevant Set are recognised.~~to the extent appropriate for the purposes of the SR Auction and permitted by the Rules. For these purposes, the Clearing House will provide the Affected CDS Clearing Member with a report detailing the CDS Contracts to be subject to netting, offsetting, closing out or termination. Thereafter, the Clearing House ~~(and Affected CDS Clearing Member and any Affected Customer),~~ to the extent that ~~it has~~they have all necessary information, will adjust the records in Deriv/SERV to reflect such netting, offsetting, closing out or termination. The Clearing House will hold an auction unless the Clearing House, in its discretion and after consultation with the CDS Risk Committee, believes that the circumstances are such that an auction may be inappropriate, in which case the Clearing House may take such other action in consultation with the CDS Risk Committee as it considers reasonably necessary to achieve its primary aim in these circumstances of addressing the risks resulting from a CDS Clearing Member being party to a CDS Contract where the reference entity is that CDS Clearing Member or one of its ~~Affiliates~~Affected Customers or one of their Group Companies, while endeavouring, as far as is reasonably practicable in the circumstances without prejudicing the achievement of the primary aim, to avoid materially and adversely affecting the Affected CDS Clearing Member ~~or any of its Customers~~. The Clearing House shall determine the timing and other particular characteristics of each SR Auction in consultation with the CDS Default Committee, including determining the size of the bid/offer spread and/or of the CDS Contracts to be auctioned, whether one or more SR Auctions are to be held and the timing and structure of such auctions (including the frequency at which firm bid and firm offer Quotations will be requested and the transaction size (that is, the Floating Rate Payer Calculation Amount)) and whether CDS Clearing Members (excluding the Affected CDS Clearing Member) will be required (as opposed to requested) to submit actionable quotations in an SR Auction, provided that CDS Clearing Members will not be notified of whether the Open Contract Position to be terminated pursuant to such process is for a CDS Clearing Member as CDS Buyer or CDS Seller.

The Clearing House will enter into CDS Contracts with the CDS Clearing Member(s) and in the amount and at the prices determined pursuant to the SR Auction, at which time the corresponding CDS Contracts of the Affected CDS Clearing Member and any related Customer-CM CDS Transactions shall be terminated by reference to the prices at which the Clearing House enters into such new CDS Contracts. The ~~Affected CDS Clearing Member~~House, for itself and on behalf of the other ~~CDS~~relevant Clearing Members and any Customers, using the DTCC Process, shall submit to Deriv/SERV the terms of such reduction, termination or new CDS ~~Contract~~Contracts, as applicable, ~~and~~As between the Clearing House and the Affected CDS Clearing Member, the Affected CDS Clearing Member will bear the cost of the associated bid/offer spread and any reasonable, out-of-pocket costs and expenses of the Clearing House in connection with such SR Auction(s) and its entering into such new CDS Contracts. Amounts owed by the Affected CDS Clearing Member to (or receivable by it from) the Clearing House in connection with any such reduction or termination shall be determined by the Clearing House by reference to the SR Auction(s). In addition, any Initial Payments, Margin, or other payments or deliveries owed (including the dates of settlement with respect

thereto) relating to the Open Contract Positions increased, created, reduced or terminated pursuant to this paragraph ~~13.4~~12.4 shall be as determined by the Clearing House with reference to the SR Auction(s) in accordance with the Procedures and, notwithstanding any other provision of the Rules, Initial Payments may be owed in respect to CDS Contracts entered into by the Clearing House pursuant to an SR Auction.

If an Affected Clearing Member is a Defaulter, this paragraph ~~13.4~~12.4 shall not restrict the rights of the Clearing House to close out, terminate or liquidate any Contract in any other manner in accordance with Part 9 of the Rules.

12.5 ~~13.5~~ Terms of the Cleared Sovereign Contract.

~~(a) The CDS Region for each Sovereign Contract is the European Region.~~

(a) ~~(b)~~ The Standard Sovereign Confirmation for each Sovereign Contract shall be amended as follows:

- (i) by deleting, in the second paragraph, the phrase "as supplemented by each of the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions" and replacing it with the phrase "as supplemented by each of the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)";
- (ii) by deleting, in the third paragraph, the square brackets and deleting, in the third paragraph, the phrase "the ISDA Master Agreement dated as of [date]" and replacing it with the phrase "~~CDS Master Agreement~~Rules and Procedures of ICE Clear Europe";
- (iii) in part numbered 2, by deleting references to the Initial Payment Payer and the Initial Payment Amount in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV, and by deleting the square brackets in such part;
- (iv) by deleting parts numbered 4, 5, 6 and 7 in their entirety; and
- (v) by including a new part 4 as follows:

"4. Additional Terms: Section 2.31 (*Merger of Reference Entity and Seller*) of the Credit Derivatives Definitions shall not apply."

(b) ~~(c)~~ The provisions specified below of the Standard Sovereign Confirmation for each Sovereign Contract shall be completed as follows:

- (i) The "Transaction Type" is Standard Western European Sovereign.
- (ii) The "Matrix Publication Date" is the date of publication of the Relevant Physical Settlement Matrix.
- (iii) The "Reference Obligation(s)" are the Sovereign Contract Reference Obligation(s) specified in the List of Eligible Sovereign Reference Entities with respect to the relevant Eligible Sovereign Reference Entity.
- (iv) The "Calculation Agent" is the Clearing House, except as provided in the Rules.

- (v) The "Fixed Rate Payer Payment Dates" are March 20, June 20, September 20 and December 20.

- (c) ~~(d)~~ For each Sovereign Contract, the following terms will be determined according to the particular ~~Bilateral~~ CDS ~~Transaction~~ Trade Particulars submitted for ~~clearing~~ Clearing or, with respect to each Sovereign ~~Contracts~~ Contract arising pursuant to Rule 401(a)(vi), (x) or (xi), according to the ~~data~~ CDS Trade Particulars provided by the Clearing House to the Clearing Member prior to the time at which such CDS Contract arose:
- (i) Which of the Eligible Sovereign Reference Entities is the "Reference Entity".
 - (ii) Which of the eligible Scheduled Termination Dates specified for the Reference Entity in the List of Eligible Sovereign Reference Entities is the "Scheduled Termination Date".
 - (iii) The "Floating Rate Payer Calculation Amount".
 - (iv) The "Floating Rate Payer".
 - (v) The "Fixed Rate Payer".
 - (vi) The "Fixed Rate".
 - (vii) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~ the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV; and
 - (viii) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to ~~Weekly Clearing~~ the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.
- (d) ~~(e)~~ Each Sovereign Contract will be governed by the terms set out in paragraph ~~409~~ and this paragraph ~~13.12~~, whether or not the relevant ~~Bilateral CDS Transaction was~~ CDS Trade Particulars were in an equivalent form.

12.6 ~~13.6~~ Relevant Physical Settlement Matrix Updates

- (a) Where ISDA publishes a version of the Credit Derivatives Physical Settlement Matrix (a "New Matrix") that is subsequent to the version that is specified as the Relevant Physical Settlement Matrix for any Sovereign Contract(s) (the "Existing Matrix"), and the Clearing House determines, subject to consultation with the CDS Risk Committee, that a Sovereign Contract referring to the New Matrix would be fungible with a Sovereign Contract referring to Existing Matrix (the date of such determination, the "Matrix Update Date" and each prior Credit Derivatives Physical Settlement Matrix subject to such determination, a "Superseded Matrix") and so notifies CDS Clearing Members, such Sovereign Contracts shall, as of the close of business on the Matrix Update Date, become Sovereign Contracts referencing the New Matrix as the Relevant Physical Settlement Matrix and the List of Eligible Sovereign Reference Entities shall be updated accordingly provided that the Clearing House shall not make any such determination where the New Matrix, when compared with the Existing Matrix, contains any change to a term that would apply to such Sovereign Contract. Any ~~Bilateral~~ CDS ~~Transaction~~ Trade Particulars referencing a Superseded Matrix submitted for Clearing as a Sovereign Contract shall, upon acceptance for Clearing, ~~become~~ give rise to a Sovereign Contract referencing the New Matrix.
- (b) The Clearing House may determine a different Matrix Update Date applicable to individual Sovereign Contracts or Sets of Sovereign Contracts or may determine a Matrix Update Date

applicable to all Sovereign Contracts referencing a Superseded Matrix, as it deems appropriate.

12.7 ~~13.7~~ Amendments

- (a) Where ~~a Bilateral CDS Transaction which, upon Clearing~~CDS Trade Particulars, at the Acceptance Time, would give rise to two CDS Contracts which would be Sovereign Contracts but for the specification of an Eligible Sovereign Reference Obligation as the "Reference Obligation", then the Clearing House shall be entitled at its discretion to treat such ~~Bilateral CDS Transaction, on Clearing~~CDS Trade Particulars, at the Acceptance Time, as though ~~it~~they had specified the Sovereign Contract Reference Obligation specified for such Eligible Sovereign Reference Obligation in the List of Eligible Sovereign Reference Entities.
- (b) In addition to the acceptance process described in paragraph 4, the Clearing House's Acceptance Notice to the relevant CDS Clearing Members in relation to the relevant ~~Bilateral CDS Transaction~~Trade Particulars shall include details of any adjustment that will be made by the Clearing House pursuant to this paragraph. Such CDS Clearing Members' resubmission of the terms of such ~~Bilateral CDS Transaction~~Trade Particulars shall include the adjustments set out by the Clearing House in the Acceptance Notice.

13. CUSTOMER CLEARING OF CDS

13.1 Open Contract Positions and accounts

- (a) This paragraph 13.1 is subject always to the requirements of, and without prejudice to, Rule 102(p) and Part 9 of the Rules. It is acknowledged that, pursuant to the Tripartite Representation, CDS Contracts recorded in a particular DTCC Account of a Non-FCM/BD Clearing Member will reflect an identical open position as between the Non-FCM/BD Clearing Member and each of its Segregated CDS Customer under Customer-CM CDS Transactions, such that the CDS Contracts related to any particular Segregated CDS Customer reflected in a Customer Account are in a position so as to be subject to a Transfer pursuant to Rule 904 upon an Event of Default.
- (b) Provided that no Event of Default has been declared with respect to the CDS Clearing Member, in the event of the termination of a Customer-CM CDS Transaction (including but not limited to as a result of a default by a Segregated CDS Customer under the terms of a Cleared Transactions Master Agreement), the CDS Clearing Member may, to the extent permitted under Applicable Law:
 - (i) request of the Clearing House that a Customer Account Position or any part thereof be converted into CDS Contracts in the Proprietary Account (in which case, for the avoidance of doubt, the Proprietary Account Position will reflect, and Rule 406 will apply to, such converted CDS Contracts); or
 - (ii) submit to the Clearing House CDS Trade Particulars in respect of offsetting transactions, one leg of which is to be recorded in its Customer Position Account (in which case, for the avoidance of doubt, the resultant CDS Contract may be offset against CDS Contracts in the same CDS Sub-Account which relate to such Customer, pursuant to Rule 406).

For the avoidance of doubt, Rule 302 and the Finance Procedures apply in relation to the return of any Surplus Collateral at the Clearing House resulting from the termination of any CDS Contract.

13.2 Transfer of Contracts absent an Event of Default

- (a) Each CDS Clearing Member (other than a Defaulter) with a Designated CDS Customer Account (the "**Transferor CDS Clearing Member**") shall be required, upon request of a Segregated CDS Customer or Segregated CDS FCM/BD Customer in respect of whom it has CDS Contracts recorded in a CDS Sub-Account, to transfer such CDS Clearing Member's rights and obligations with respect to CDS Contracts recorded in that CDS Sub-Account (and, in the case of Non-FCM/BD CDS Clearing Members, any related Customer-CM CDS Transactions) to one or more other CDS Clearing Members (the "**Transferee CDS Clearing Members**") designated by such Segregated CDS Customer or Segregated CDS FCM/BD Customer, as the case may be, subject to the provisions of this paragraph 13.2 and, to the extent not inconsistent with this paragraph 13.2, to any terms agreed between the Transferor CDS Clearing Member and Segregated CDS Customer or Segregated CDS FCM/BD Customer, as the case may be. Such transfer shall be effected as soon as practicable following satisfaction of the conditions set forth in paragraph 13.2(b).
- (b) A transfer pursuant to paragraph 13.2(a) shall be subject to the following conditions:
- (i) the Transferor CDS Clearing Member shall have no obligation to locate or identify a Transferee CDS Clearing Member (which shall be the responsibility of the Segregated CDS Customer or Segregated CDS FCM/BD Customer, as the case may be);
 - (ii) the transfer must be in accordance with Applicable Laws, including any applicable Market Rules, and, to the extent permitted thereunder, any applicable agreement between the Transferor CDS Clearing Member and Segregated CDS Customer or Segregated CDS FCM/BD Customer, as the case may be;
 - (iii) the Transferor CDS Clearing Member, Transferee CDS Clearing Member and Segregated CDS Customer or Segregated CDS FCM/BD Customer, as the case may be, shall, through a Trade Processing Platform, have agreed and executed and submitted to the Clearing House an electronic transfer confirmation (the "**Transfer Confirmation**") in a form approved by the Clearing House (which may be written or electronic) which may include the following:
 - (A) the relevant CDS Contracts to be transferred (the "**Transferred CDS Contracts**") and the corresponding Customer-CM CDS Transactions, if any, to be transferred;
 - (B) the proposed transfer date (the "**Transfer Date**"), which shall be no earlier than the Business Day of submission of the Transfer Confirmation to the Clearing House and shall be a Business Day;
 - (C) whether relevant Initial Margin of the Transferor CDS Clearing Member recorded in the relevant Customer Margin Account in respect of the Transferred CDS Contracts is to be transferred to or to the account of the Transferee CDS Clearing Member or returned to the Transferor CDS Clearing Member for distribution to the Segregated CDS Customer or Segregated CDS FCM/BD Customer, as the case may be, or to its account or order;
 - (D) the amount of such Initial Margin, if any, to be so transferred or returned in respect of the Transferred CDS Contracts; and
 - (E) such other matters as the Clearing House may specify;
 - (iv) prior to the applicable transfer time determined by the Clearing House on the Transfer Date (such time, the "**Transfer Time**"), if required by the Clearing House,

- each of the Transferor CDS Clearing Member and the Transferee CDS Clearing Member shall have transferred additional Margin in the amount specified by the Clearing House to satisfy any additional Margin requirements as a result of the proposed adjustments in the relevant Customer Account Positions of the Transferor CDS Clearing Member and Transferee CDS Clearing Member resulting from the proposed transfer; and
- (v) the Clearing House has accepted such Transfer Confirmation, and the Transferor CDS Clearing Member and Transferee CDS Clearing Member have satisfied such other conditions as the Clearing House may have specified.
- (c) If such conditions are satisfied, then as of the Transfer Time, the transfer shall occur as set forth in the Transfer Confirmation in relation to the Transferred CDS Contracts and corresponding Customer-CM CDS Transactions, if any, and Rule 408(a)(i), and the Clearing House shall:
- (i) adjust the records of the relevant Customer Account Positions of the Transferor CDS Clearing Member to reflect the transfer of the Transferred CDS Contracts;
- (ii) adjust the records of the relevant Customer Account Positions of the Transferee CDS Clearing Member to reflect the transfer of the Transferred CDS Contracts;
- (iii) adjust the Margin requirements of the Transferor CDS Clearing Member and Transferee CDS Clearing Member to reflect such adjustments of relevant Customer Account Positions; and
- (iv) record the transfer of any Margin to be transferred from the Customer Margin Account of the Transferor CDS Clearing Member to the Customer Margin Account of the Transferee CDS Clearing Member or return such Margin to the Transferor CDS Clearing Member for distribution to the Segregated CDS Customer or Segregated CDS FCM/BD Customer, as the case may be, or to its account or order, as specified in the Transfer Confirmation.
- (d) Notwithstanding anything to the contrary herein, no CDS Clearing Member shall be required to accept a transfer of any Transferred CDS Contracts as a Transferee CDS Clearing Member without its consent.
- (e) Following the Transfer Time, the Clearing House may in accordance with the Procedures make submissions of data to, or amendments or terminations of data at, Deriv/SERV or another service specified by the Clearing House to reflect the adjustments to the relevant Customer Account Positions. The Clearing House may require each of the Transferor CDS Clearing Member and Transferee CDS Clearing Member (and may also require any Segregated CDS Customers) to make appropriate such submissions, amendments and terminations to reflect such transfer.
- (f) Notwithstanding anything to the contrary herein or in any Transfer Confirmation, if an Event of Default occurs with respect to a Transferor CDS Clearing Member prior to the transfer becoming irrevocable pursuant to Part 12 of the Rules, such transfer (and any related Transfer Confirmation) will be cancelled and of no effect and the Clearing House will not adjust the related Customer Account Positions pursuant to this paragraph 13.2.
- (g) In relation only to Non-FCM/BD CDS Clearing Members, unless otherwise agreed between the Transferor CDS Clearing Member and the Segregated CDS Customer and subject to any applicable legal or regulatory requirements, the Segregated CDS Customer must satisfy in full, at or prior to the proposed Transfer Time, any margin requirements ("**Pre-Transfer Margin Requirements**") imposed by the Transferor CDS Clearing Member with respect to:

- (i) any remaining Customer-CM CDS Transactions; and
- (ii) if the Segregated CDS Customer and Transferor CDS Clearing Member have expressly agreed (whether orally or in writing) to determine the margin requirements for contracts, transactions or positions of that Segregated CDS Customer other than Customer-CM CDS Transactions (collectively, "Non-cleared Positions") by taking into account the margin requirements for the Customer-CM CDS Transactions being transferred, such Non-cleared Positions;

in each case calculated after giving effect to such transfer. If there is an express agreement (whether written or oral) between the Transferor CDS Clearing Member and the Segregated CDS Customer with respect to the margining that will be imposed on Customer-CM CDS Transactions or Non-cleared Positions, the Transferor CDS Clearing Member shall determine the Pre-Transfer Margin Requirements in accordance with the terms of such agreement. So long as (x) the Pre-Transfer Margin Requirements specified in this paragraph 13.2(g) are satisfied and (y) no event of default has occurred with respect to the Segregated CDS Customer under the applicable Cleared Transactions Master Agreement, no consent of the Transferor CDS Clearing Member shall be required for such transfer.

13.3 Margin

- (a) If Customer-CM Collateral is not in the form of Permitted Cover, the relevant Clearing Member shall remain obliged to transfer only Permitted Cover to the Clearing House and to account accordingly for any transformation of assets with its Segregated CDS Customer (without prejudice to arrangements under which fees or rates of return may be determined) in accordance with the Standard Terms.
- (b) Clearing Member-Required Additional Collateral may be held in any lawful manner as agreed between the Segregated CDS Customer and the relevant Clearing Member. Subject to such agreement, Clearing Member-Required Additional Collateral may, but is not required hereunder to, be transferred to a Customer Margin Account of the relevant Clearing Member and will, if so transferred, be treated as Surplus Collateral to the extent that a greater value of Permitted Cover is credited to the relevant Customer Margin Account than the Initial Margin requirement for that Customer Margin Account.

13.4 Data in relation to Customer Clearing

- (a) Each Clearing Member shall keep and maintain written or electronic records showing, with respect to its CDS Customer Account:
 - (i) the identity of each of its Segregated CDS Customers or Segregated CDS FCM/BD Customers;
 - (ii) all Default Portability Preferences of each of its Segregated CDS Customers or Segregated CDS FCM/BD Customers; and
 - (iii) such other information as may be requested by the Clearing House in accordance with the Rules or these CDS Procedures from time to time.
- (b) Each CDS Clearing Member shall provide any data of a nature described in paragraph 13.4(a) to the Clearing House promptly upon demand. Data relating to the identity of Segregated CDS Customers and Segregated CDS FCM/BD Customers or Default Portability Preferences may be requested by the Clearing House with reference to anonymous customer serial codes for CDS Sub-Accounts. Each CDS Clearing Member shall provide accurate information to any Trade Processing Platform for purposes of identifying its Customers. Each Clearing

Member and Customer consents to a Trade Processing Platform providing all such information as is referred to in paragraph 13.4(a) to the Clearing House.

- (c) Each CDS Clearing Member that has a CDS Customer Account shall request each of its Segregated CDS Customers and Segregated CDS FCM/BD Customers to specify a Default Portability Preference or confirm that it has not specified a Default Portability Preference. Clearing Members and the Clearing House acknowledge that a Segregated CDS Customer or Segregated CDS FCM/BD Customer may designate permitted Transferee CDS Clearing Members at any time prior to or after an Event of Default being declared in relation to a Clearing Member.