

# EXHIBIT A

ICE Clear US, Inc. Rules  
[RWP DRAFT 6/7/17](#)



## ICE CLEAR US, INC. RULES

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## Part 1 General Provisions

### Rule 101. Definitions

Unless the context otherwise clearly requires, all terms defined in the By-Laws shall have the same meanings when used in these Rules, and in addition the following terms shall have the following meanings when used in these Rules:

#### **Act**

The Commodity Exchange Act, as in effect from time to time.

#### **Approved Financial Institution**

A bank, trust company or other institution designated as such by the Board pursuant to Rule 501.

#### **Approved Foreign Currency**

Any currency other than the U.S. dollar which is deliverable under any Contract or which is approved by the Board for any purpose under the By-Laws or these Rules.

#### **Assessment Amount**

The meaning set forth in Rule 302.

#### **Bank Holiday**

Any day when banks in the State of New York generally are closed, as determined by the Corporation.

#### **By-Laws**

The by-laws of the Corporation, and the interpretations, resolutions, orders and directives of the Board thereunder, as in effect from time to time.

#### **Capital**

“Net capital” computed in accordance with Commission Regulation 1.17, except that unsecured receivables from any bank organized under the laws of the United States or of any state shall be included as current assets, so long as such receivables are outstanding no longer than 30 days from the date they are accrued. For purposes of Rule 301 and Rule 302, the Capital of any Clearing Member shall be computed as of the date of either (a) the most recent financial reports provided by such Clearing Member to the Corporation in accordance with ~~these~~[the](#) By-Laws and ~~these~~[these](#) Rules, or (b) such Clearing Member's latest audited financial statements, whichever is as of the more recent date.

#### **Compensated Deposit Account**

An interest-bearing or otherwise compensated deposit account maintained by the Corporation at an Approved Financial Institution that has been approved by the Board for the deposit of initial margin and that satisfies any applicable requirements under the Act and the Commission Regulations.

## **Corporation Default**

[The meaning set forth in Rule 806\(b\).](#)

## **Cross Margining Clearing Organization**

A clearing organization that has entered into a cross-margining agreement with the Corporation.

## **Cross Margining Program**

Any program established under a cross margining agreement between the Corporation and one or more Cross Margining Clearing Organizations pursuant to which Clearing Members receive Cross Margining treatment.

## **Customer**

The meaning set forth in Commission Regulation 1.3, as in effect from time to time.

## **Default Auction**

[The meaning set forth in Rule 803.](#)

## **Default Auction Priority**

[The meaning set forth in Rule 302.](#)

## **Default Auction Procedures**

[The meaning set forth in Rule 803.](#)

## **Defaulted Obligation**

The meaning set forth in Rule 302.

## **Defaulting Clearing Member**

The meaning set forth in Rule 302.

## **Deliverer**

The Clearing Member, whether acting for itself or for any other Person, that is the seller under any futures contract.

## **Designated Enforcement Staff**

The enforcement staff of the Exchange to which the Corporation has referred the investigation or settlement of, or the prosecution of disciplinary proceedings in connection with, any potential violation of the By-Laws and Rules, pursuant to Part 9 of the Rules.

## **Emergency**

The meaning set forth in Rule 708.

## **Event of Default**

The meaning set forth in Rule 801.

## **Exchange member**

A member of, and any person enjoying membership privileges on, an Exchange.

## **Exchange rules, rules of the Listing Exchange and rules of an Exchange**

The certificate of incorporation, by-laws, rules, regulations, resolutions, orders, directives and procedures of such Exchange, and any interpretations thereof duly adopted by such Exchange, as in effect from time to time.

## **Financial Emergency**

With respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member is not adequate for such Clearing Member to meet its obligations (including without limitation its obligations to comply with the By-Laws or these Rules) or to engage in business, or is such that it would not be in the best interests of the Corporation or the marketplace for such Clearing Member to continue in business.

## **Government Security**

A security which is a direct obligation of the United States government.

## **Guarantor**

[The meaning set forth in Rule 202.](#)

## **Guaranty Fund**

The meaning set forth in Rule 301.

## **Guaranty Fund Deposit Requirement**

The meaning set forth in Rule 301.

## **Monetary Default**

The meaning set forth in Rule 302.

## **Order for Relief**

The filing of a petition in bankruptcy in a voluntary case and the adjudication of bankruptcy in an involuntary case.

## **Partial Tear-Up**

[The meaning set forth in Rule 808.](#)

## **Partial Tear-Up Notice**

[The meaning set forth in Rule 808.](#)

## **Partial Tear-Up Price**

[The meaning set forth in Rule 808.](#)

## **Partial Tear-Up Time**

[The meaning set forth in Rule 808.](#)

### **Physical Emergency**

The meaning set forth in Rule 708.

### **Post-RGD Payments**

[The meaning set forth in Rule 807.](#)

### **Qualified Financial Institution**

A bank, trust company or other institution with access to the Fedwire system operated by the US Federal Reserve Bank that a Clearing Member may designate to the Corporation from time to time for the purposes of forwarding only US Dollar Denominated funds to the Corporation.

### **Receiver**

The Clearing Member, whether acting for itself or for any other Person, that is the buyer under any futures contract.

### **Remaining Defaulted Positions**

[The meaning set forth in Rule 808.](#)

### **Settlement Premium**

The settlement premium for any option determined in accordance with Rule 502A.

### **Settlement Price**

For any trading day for any Contract shall mean the settlement price thereof determined as follows: (i) on such trading day, the relevant Listing Exchange, at such time and in such manner as the Listing Exchange and the Corporation shall agree, shall notify the Corporation of the settlement price as determined by such Listing Exchange (the “**Exchange Settlement Price**”); (ii) the Corporation shall adopt the Exchange Settlement Price as the basis for determining the Settlement Price, except if clause (iii) applies; and (iii) if the Corporation determines that the Exchange Settlement Price is manifestly erroneous or is inconsistent with the Rules or the Rules of the Exchange, or otherwise determines that the Exchange Settlement Price does not reasonably reflect the value or price of the Contract, the Corporation shall determine fair market value or price of the Contract, which shall be the Settlement Price for such day, using its best efforts to consult with the Listing Exchange.

### **Tear-Up Position**

[The meaning set forth in Rule 808.](#)

### **Termination Price**

[The meaning set forth in Rule 806.](#)

### **Withdrawal Deposit**

The meaning set forth in Rule 212.

## **Withdrawing Clearing Member**

A Clearing Member that has notified the Corporation pursuant to the Rules of its intention to terminate its status as a Clearing Member or who has been notified by the Corporation pursuant to the By-Laws or these Rules of termination of its status as a Clearing Member.

### **Rule 102. 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 may be waived, by the Board whenever, in its judgment, such extension or waiver is necessary or in the best interests of the Corporation.

(b) The time fixed by the Rules for filing any report or other document, for submitting any information or for making deposits or payments of initial margin, variation margin or premiums may be extended by the President whenever, in his or her judgment, such extension is necessary or in the best interests of the Corporation. A written report of any such extension, stating the pertinent facts and the reason such extension was deemed necessary or expedient, shall be presented to the Board at its next regular meeting. Any such extension may continue in effect after the event or events giving rise thereto; provided, however, that the time fixed for making deposits or payments of initial margin, variation margin or premiums shall not be extended beyond two hours after the time such deposit or payment is due, and no other extension shall continue in effect for more than sixty calendar days, unless in either case it is approved by the Board within such period.

### **Rule 103. Action by the Corporation**

Except as otherwise specifically provided in the By-Laws or Rules, any action permitted or required by the By-Laws or Rules to be taken by the Corporation may be taken by the Board, the Chairman, the President or any other officer to whom authority has been delegated by the Board, the Chairman or the President.

### **Rule 104. Headings**

The headings of the various Rules appear for convenience only and shall not affect the meaning of the language contained in the Rules.

### **Rule 105. Notices to Clearing Members**

The delivery by hand, electronic mail, electronic transmission or telephone of any notice, order or other communication to a Clearing Member at the address, electronic address, or telephone number last designated by it shall be good and sufficient delivery thereof to such Clearing Member.

## Part 3 Guaranty Fund

### Rule 301. Guaranty Fund

The Corporation shall establish and maintain a Guaranty Fund.

(a) For the purposes of this Rule 301, the following terms shall have the following meanings:

(i) “Base Guaranty Fund Amount” shall mean the base amount as established by the Board from time to time for the calculation of the Guaranty Fund Deposit Requirements of the Clearing Members.

(ii) “Net Margin” shall mean, as of any day, the quotient derived by dividing by three (3) the sum of a Clearing Member’s net margin requirement as determined by the Corporation for the final trading day of each of the prior three calendar months (or for such other day in such months as the Board shall direct).

(iii) “Volume” shall mean, as of any day, the quotient derived by dividing by three (3) the total volume of futures contracts, options and other contracts or instruments involving all commodities on or subject to the rules of any Exchange which were cleared by the Corporation for the Clearing Member for the three calendar months prior to such day.

(iv) “Base Margin Amount” shall mean that portion of each Clearing Member’s Guaranty Fund Deposit Requirement which is based upon Net Margin as determined pursuant to paragraph (b)(i) of this Rule 301.

(v) “Margin Surcharge” shall mean that portion of each Clearing Member’s Guaranty Fund Deposit Requirement that is based upon the ratio of the Clearing Member’s Net Margin to Capital as determined pursuant to paragraph (b)(ii) of this Rule 301.

(vi) “Base Volume Amount” shall mean that portion of each Clearing Member’s Guaranty Fund Deposit Requirement which is based upon Volume as determined pursuant to subsection (b)(iii) of this Rule 301.

(vii) “Volume Surcharge” shall mean that portion of each Clearing Member’s Guaranty Fund Deposit Requirement that is based upon the ratio of the Clearing Member’s Volume to Capital as determined pursuant to subsection (b)(iv) of this Rule 301.

(b) Each Clearing Member shall deposit and maintain in the Guaranty Fund an amount calculated as follows:

(i) Base Margin Amount. The Clearing Member’s Net Margin shall be divided by the total Net Margin of all Clearing Members. The resulting quotient shall be multiplied by 80% of the Base Guaranty Fund Amount. The Clearing Member’s Base Margin Amount shall be equal to the lesser of the resulting product and twenty-four million dollars (\$24,000,000).

(ii) Margin Surcharge. The Clearing Member’s Net Margin shall be divided by its Capital. If the resulting quotient is less than 0.5, then the Clearing Member’s Margin Surcharge shall be zero (0). If the resulting quotient is equal to or greater than 0.5, then the Clearing Member’s Margin Surcharge shall be calculated as follows:

(A) If the quotient is equal to or greater than 0.5, but less than 0.75, then the Clearing Member's Margin Surcharge shall be equal to 10% of the Clearing Member's Base Margin Amount.

(B) If the quotient is equal to or greater than 0.75, then the Clearing Member's Margin Surcharge shall be equal to 20% of the Clearing Member's Base Margin Amount.

(iii) Base Volume Amount. The Clearing Member's Volume shall be divided by the total Volume of all Clearing Members. The resulting quotient shall be multiplied by 20% of the Base Guaranty Fund Amount. The Clearing Member's Base Volume Amount shall be equal to the lesser of the resulting product and seven million five hundred thousand dollars (\$7,500,000).

(iv) Volume Surcharge. The Clearing Member's Volume shall be multiplied by one thousand (1,000). The resulting product shall be divided by the Clearing Member's Capital. If the resulting quotient is less than five (5), then the Clearing Member's Volume Surcharge shall be zero (0). If the resulting quotient is equal to or greater than five (5), then the Clearing Member's Volume Surcharge shall be calculated as follows:

(A) If the quotient is equal to or greater than five (5), but less than twenty (20), then the Clearing Member's Volume Surcharge shall be equal to 50% of the Clearing Member's Base Volume Amount.

(B) If the quotient is equal to or greater than twenty (20), but less than forty (40), then the Clearing Member's Volume Surcharge shall be equal to 75% of the Clearing Member's Base Volume Amount.

(C) If the quotient is equal to or greater than forty (40), but less than sixty (60), then the Clearing Member's Volume Surcharge shall be equal to 100% of the Clearing Member's Base Volume Amount.

(D) If the quotient is equal to or greater than sixty (60), but less than eighty (80), then the Clearing Member's Volume Surcharge shall be equal to 150% of the Clearing Member's Base Volume Amount.

(E) If the quotient is equal to or greater than eighty (80), then the Clearing Member's Volume Surcharge shall be equal to 200% of the Clearing Member's Base Volume Amount.

(v) For each Clearing Member, the amount to be deposited and maintained in the Guaranty Fund shall be the sum of the Clearing Member's Base Margin Amount, Margin Surcharge, Base Volume Amount and Volume Surcharge computed pursuant to subsections (b)(i), (ii), (iii) and (iv) of this Rule 301, (the "**Guaranty Fund Deposit Requirement**") provided that:

(A) the amount that any Clearing Member shall be required to deposit in the Guaranty Fund which is attributable to the aggregate of the Clearing Member's Base Margin Amount and Base Volume Amount (but excluding the Clearing Member's Margin Surcharge and Volume Surcharge) shall not exceed such amount as the Board may fix from time to time;

(B) each Clearing Member shall be required to deposit and maintain in the Guaranty Fund at least two million dollars (\$2,000,000), or such other amount as the Board may fix from time to time;



(C) Reserved.

(D) each new Clearing Member shall be required to deposit such amount as determined by the Board provided, however, that in no event shall the amount of the deposit be less than the amount set forth in or determined by the Board pursuant to subsection (b)(v)(B) of this Rule 301. Each new Clearing Member must be a Clearing Member for one calendar month before its Guaranty Fund requirement is calculated as described in subsections (b)(i), (ii), (iii) and (iv) of this Rule 301. In making such calculations for the period before the new Clearing Member has been a Clearing Member for three calendar months, the new Clearing Member's Net Margin and Volume will be determined based on the actual number of calendar months (one (1) or two (2)) that the new Clearing Member has been a Clearing Member at the time of the calculation.

Subject to Rule 303 and Rule 212, the Board shall have the authority to cause the Base Margin Amount, Margin Surcharge, Base Volume Amount and Volume Surcharge of all Clearing Members to be recalculated at any time, and to require the Clearing Members to immediately deposit in the Guaranty Fund any amounts required to meet the recalculated Guaranty Fund Deposit Requirements, taking into account the minimum deposit requirements set forth in subsections (b)(v)(B) of this Rule 301. The Corporation shall establish the Base Guaranty Fund Amount such that at a minimum the Corporation will maintain pre-funded financial resources sufficient to enable it to meet its financial obligations to Clearing Members notwithstanding a default by the two Clearing Members (including any of their affiliated Clearing Members) creating the largest combined loss to the Corporation in extreme but plausible market conditions, consistent with the requirements of CFTC Rules 39.11 and 39.33.

(c) Except as provided in paragraph (b)(v) of this Rule 301, deposits in the Guaranty Fund may be made by any Clearing Member in the form of cash or securities which are Government Securities, and which have such maximum time to maturity as the Corporation may prescribe, or other securities which are permitted for customer funds for purposes of Rule 1.25 of the Commodity Futures Trading Commission (as amended from time to time) and approved by the Board for this purpose or pursuant to Rule 505(a)(i), provided, however, that each Clearing Member shall deposit a minimum of 50% of their Guaranty Fund requirement in the form of cash. Any permitted securities shall be valued in accordance with such methodology as may be adopted by the Board. The Board may place limits on the portion of any Clearing Member's deposit that may be satisfied by the use of any category of permitted securities. Deposits of securities shall be made by such means and subject to such agreements and undertakings as may be prescribed by the Corporation. To the extent that any Clearing Member deposits any securities in the Guaranty Fund, such Clearing Member thereby represents and warrants that such securities are owned by it free and clear of any security interests, liens, encumbrances, charges or adverse claims of any kind.

(d) Guaranty Fund deposits shall be held in a bank approved for the purpose by the Corporation, in an account or accounts separate from all other cash and securities held by the Corporation. The Corporation shall have the sole right to withdraw cash or securities from, or to authorize the sale or other disposition of any securities held in, such account or accounts subject to the rights of any assignee, pledgee or holder of a security interest in the Guaranty Fund or any cash or securities therein.

(e) So long as any Person is a Clearing Member and thereafter for the period until the Corporation returns such person's Guaranty Fund deposits as provided in paragraph (i) of this Rule 301, the Guaranty Fund deposits of such person may be applied by the Corporation:

(i) against any amounts that become due from such Person to the Corporation for any reason (including but not limited to initial margin, variation margin, option premiums, dues, assessment, fines and reimbursement of any amounts paid by the Corporation to a Cross Margining Clearing Organization under any Cross Margining Program) at any time it was a Clearing Member and for the period until the Corporation returns such Person's Guaranty Fund deposits as provided in paragraph (i) of this Rule 301;

(ii) against any amounts that are charged as provided in or pursuant to Rule 302 against the Guaranty Fund deposits of all Clearing Members at any time that such Person was a Clearing Member and for the period until the Corporation returns such Person's Guaranty Fund deposits as provided in paragraph (i) of this Rule 301; and

(iii) to provide such funds, on such terms and conditions, as the Board in its discretion, acting by a vote of not less than three-fourths of all directors eligible to vote, may deem necessary or appropriate to facilitate the transfer of customer accounts from a Clearing Member experiencing financial difficulty to another Clearing Member, if the Board shall determine by such vote that to do so is in the best interests of the Corporation.

(f) The Corporation may at any time and from time to time assign, transfer, pledge, repledge or otherwise create a lien on or security interest in, the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Corporation (plus interest, fees and other amounts payable in connection therewith) or pursuant to a repurchase agreement or similar transaction. Any such borrowing or repurchase agreement or similar transaction shall be on terms and conditions deemed necessary or advisable by the Corporation (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Clearing Member to the Corporation for which such cash, securities or other property was pledged to or deposited with the Corporation. Any funds so borrowed or obtained in repurchase agreements or similar transactions shall be used and applied by the Corporation solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used pursuant to the By-Laws and these Rules; provided that the failure of the Corporation to use such funds in accordance with this subsection shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest or repurchase transaction counterparty. Cash, securities and other property held in the Guaranty Fund, subject to the rights and powers of the Corporation with respect thereto as set forth in the By-Laws, these Rules and any agreements between any Clearing Member and the Corporation, and subject to the rights and powers of any person to which the Guaranty Fund or any cash, securities or other property held therein shall have been assigned, transferred, pledged, repledged or otherwise subjected to a lien or security interest, shall remain the property of the respective Clearing Members depositing such cash securities and other property.

(g) Subject to the rights of any assignee, transferee, pledgee or holder of a lien or security interest as provided in subsection (f) of this Section Rule 301, if at any time the amount of any cash, plus the value of any securities, on deposit in the Guaranty Fund for any Clearing Member

(i) shall exceed the amount required to be on deposit for such Clearing Member by more than such amount as the Board may prescribe, the Corporation will return the excess to such Clearing Member upon its written request.

(ii) shall be less than the amount required to be on deposit for such Clearing Member, such Clearing Member shall restore the deficiency (including, without limitation, a deficiency caused by the application of such Clearing Member's deposits in the Guaranty

Fund as described in paragraph (e) of this Rule 301) on demand (a “**Replenishment**”); provided, however, that a Clearing Member that has withdrawn as a Clearing Member shall not be required to restore a deficiency occurring after its Withdrawal Date, subject to any limitations in Rule 303 and Rule 212.

(h) Any interest earned on any securities deposited in the Guaranty Fund by a Clearing Member shall belong and be credited to such Clearing Member. The Corporation may invest any cash deposited in the Guaranty Fund in securities which are Government Securities and other securities in accordance with the Corporation’s investment policies and applicable law, and may engage in repurchase transactions with any cash or securities on deposit. Any interest, capital gain or other income earned on any such securities shall belong and be credited to the Corporation.

(i) Subject to the rights of any assignee, transferee, pledgee or holder of a lien or security interest as provided in subsection (f) of this Rule 301, whenever a Person ceases to be a Clearing Member, the Corporation shall return to such Person the amount of cash and securities on deposit in the Guaranty Fund for such Person, to the extent not charged to or applied against pursuant to this Section or otherwise under the By-Laws and these Rules, in accordance with Rule 212.

(j) If the Guaranty Fund or any part thereof is lost as a result of the insolvency of any bank or other depository, embezzlement, defalcation or any reason other than use pursuant to Rule 302, such loss may, in the discretion of the Board, be restored by application of the following sources of funds in the order listed (each such source to be fully utilized before the next following source is applied):

(i) such portion, if any, of the surplus of the Corporation as the Board determines to be available for such purpose; and

(ii) assessments levied by the Corporation upon the Clearing Members, which assessments shall be paid to the Corporation at such time and in such manner as the Board may specify, which shall be no later than the normal end of day settlement time for the Business Day on which such assessment is levied. The amount of a Clearing Member's assessment shall be the amount derived by multiplying the loss by a fraction, the numerator of which shall be the sum of the amount of such Clearing Member’s Base Margin Amount and Base Volume Amount (determined in each case without reference to the maximum Guaranty Fund deposit amounts imposed by subsections (b)(i), (b)(iii), and (b)(v)(A) of this Rule 301) on the day preceding the loss and the denominator of which shall be the total amount of the Base Margin Amount and the Base Volume Amount of all Clearing Members (determined in each case without reference to the maximum Guaranty Fund deposit amounts imposed by subsections (b)(i), (b)(iii) and (b)(v)(A) of this Rule 301) on such day.

(k) In the event that the Corporation accepts a transfer of cash or securities from a guaranty fund of any other clearing organization of which a Clearing Member is or was a member to satisfy in whole or in part the obligations of such Clearing Member to deposit and maintain funds in the Guaranty Fund, the Corporation shall (to the extent of the amount of the cash and the value of the securities so transferred) guaranty payment by such Clearing Member to such clearing organization of any amount, the payment of which would have been secured by such Clearing Member's deposit in the guaranty fund of such other clearing organization. If the Corporation is required to make any payment pursuant to such guaranty as to any Clearing Member, the Corporation may withdraw the amount thereof out of the Guaranty Fund, and such Clearing Member will restore the amount so withdrawn on demand.

(l) In the event that the Guaranty Fund or any part thereof shall have been applied as described in paragraph (e) of this Rule 301 or shall have been lost as described in paragraph (j) of this Rule 301, and the Corporation shall thereafter recover any amount so applied or lost from any Person liable therefor, the amount of such recovery (after deducting any expenses (including without limitation legal fees and expenses incurred in connection therewith) shall be credited to the Guaranty Fund deposits of each Clearing Member in that proportion which the amount required to be on deposit by such Clearing Member bears to the amount required to be on deposit by all Clearing Members as of the date upon which such application took place or such loss was incurred.

(m) Any expense (including without limitation legal fees and expenses) incurred by the Corporation in connection with the deposit by a Clearing Member of assets into the Guaranty Fund, or the return thereof to such Clearing Member, may at the option of the Corporation be charged to such Clearing Member.

(n) Notwithstanding anything to the contrary herein (but subject to subsection (j)(i) of this Rule 301 above), the Corporation shall not be liable if (1) the Guaranty Fund or any part thereof and/or (2) any margin (whether for the ~~proprietary~~house or customer account) or other assets provided by or held for the account of a Clearing Member are lost or decrease in value as a result of the (A) insolvency or failure of any bank or other depository or third party settlement system, (B) embezzlement, defalcation or theft by any person (other than the Corporation or its directors, officers, employees or representatives) or (C) any other reason other than use pursuant to the By-Laws or Rules.

Nothing in this paragraph (n) of Rule 301 will limit any liability of the Corporation for its own gross negligence or willful misconduct.

### **Rule 302. Monetary Defaults; Use of Guaranty Fund; Assessments**

(a) If any Clearing Member fails to deposit with, or pay to, the Corporation in full any initial margin, variation margin, option premium, guaranty fund contribution, Assessment or other sum (not including any dues or fines) under or in connection with any Contract, or fails to satisfy any reimbursement obligation to the Corporation in full under or in connection with any Cross Margining Program, when and as required by or pursuant to the rules of the Listing Exchange, the Rules of the Corporation or the terms of any Cross Margining Program, such failure shall constitute a "**Monetary Default**" and the amount owing shall constitute the "**Defaulted Obligation.**" If and at such times as the Corporation has in effect a procedure whereby deposits or payments of sums with or to the Corporation are effected by having the Corporation instruct the Clearing Members' banks to wire transfer funds from their accounts with such banks directly to the accounts of the Corporation, a Clearing Member shall be deemed to have failed to deposit or pay any sum when and as required if such Clearing Member's bank fails so to wire transfer funds when and as instructed by the Corporation.

(b) In the event that at any time a Monetary Default occurs on the part of any Clearing Member (the "**Defaulting Clearing Member**"), then:

(i) If and to the extent a Monetary Default relates to a Contract carried in any customer account carried by the Corporation for a Defaulting Clearing Member, the Guaranty Fund deposit, margin and other assets held by the Corporation for all ~~proprietary~~house accounts of the Defaulting Clearing Member shall be applied, and if the President, with the concurrence of the Chairman or the Vice Chairman, or, in the absence of both the Chairman and the Vice Chairman, three (3) directors, at least one (1) of whom is not an employee of the Corporation or an employee of any Affiliated Person of the Corporation, so determines, the margin held by the Corporation for all customer accounts of the Defaulting Clearing Member may be applied, to pay the Defaulted Obligation.

(ii) If and to the extent a Monetary Default relates to a Contract carried in any [proprietaryhouse](#) account carried by the Corporation for a Defaulting Clearing Member, the Guaranty Fund deposit, margin and such other assets as are held for the same or any other [proprietaryhouse](#) account of the Defaulting Clearing Member, shall be applied to pay the Defaulted Obligation. The Defaulting Clearing Member shall immediately restore any deficiencies in its margin and Guaranty Fund deposits resulting from any such application.

(c) If, after the application of funds in accordance with paragraph (b) of this Rule 302, the Defaulted Obligation has not been satisfied, and if the Defaulting Clearing Member fails to pay the Corporation the amount of the deficiency on demand, such Defaulting Clearing Member shall continue to be liable therefor, but the amount of the deficiency, until collected from the Defaulting Clearing Member, shall be met from the following sources of funds, provided, however, that the sources identified in subparagraphs (i), (ii), (iii), and (iv) shall be fully utilized before the sources identified in subparagraphs (v), (vi) and (vii) may be utilized, and, provided further that the sources identified in subparagraphs (v), (vi) and (vii) must be applied in the order listed (each such source to be fully utilized before the next following source is applied):

(i) such portion, if any, of the surplus of the Corporation as the Board determines to be available for such purpose;

(ii) if the President, with the concurrence of the Chairman or the Vice Chairman, or, in the absence of both the Chairman and the Vice Chairman, any director, so determines, a loan or repurchase agreement or similar transaction on such terms and conditions as they may determine to be necessary or appropriate (including without limitation granting an assignment, pledge or other lien on or security interest in the Guaranty Fund or the cash, securities and other property held in the Guaranty Fund or transferring such cash, securities or other property as provided in paragraph (f) of Rule 301);

(iii) if, and to the extent that, a Monetary Default relates to any Contract carried in any customer account carried by the Corporation for the Defaulting Clearing Member, the initial margin on deposit with the Corporation in all such customer accounts of the Defaulting Clearing Member to the extent that such deposits have not been applied pursuant to paragraph (b) hereof;

(iv) the Corporation Priority Contribution. As used herein, the “**Corporation Priority Contribution**” shall be a commitment of the Corporation to provide \$50 million in the aggregate as resources to be applied pursuant to this subsection (c)(iv) of Rule 302. If the Corporation Priority Contribution is applied, the Corporation will have no obligation to provide additional funds to replenish such contribution or otherwise provide additional funds in respect thereof;

(v) subject to subsection (g)(ii) ~~of~~ Rule 301, paragraph (d) of Rule 302 and any applicable default auction priority set forth in any Default Auction Procedures adopted under these Rules (a “Default Auction Priority”), the Guaranty Fund;

(vi) insurance proceeds, if any, received by the Corporation in connection with the Monetary Default giving rise to the Defaulted Obligation; and

(vii) assessments levied by the Corporation upon all the Clearing Members (other than the Defaulting Clearing Member) as hereafter provided in this Rule 302 (“**Assessments**”), subject to any applicable Default Auction Priority.

The total amount to be assessed at any one time pursuant to clause (vii) of this paragraph (c) is hereinafter called an “**Assessment Amount**.” For the avoidance of doubt, the Corporation

may at any time following the occurrence of a Monetary Default and in anticipation of any charge against the Guaranty Fund make Assessments upon Clearing Members to post Assessments, subject to the limitations set forth in ~~the By-Laws and~~ these Rules in respect of such Assessments.

(d) The amount of a Replenishment that each Clearing Member must deposit in the Guaranty Fund to satisfy its obligation, pursuant to subsection (g)(ii) ~~or of~~ Rule 301, to restore the Guaranty Fund deficiency in the event of the application of some part or all of the Guaranty Fund pursuant to subsection (c)(v) of this Rule 302 (the total Guaranty Fund amount so applied referred to herein as the “**Aggregate Guaranty Fund Deficiency**”), shall be determined by multiplying the Aggregate Guaranty Fund Deficiency by a fraction, the numerator of which shall be the sum of the amount of the Clearing Member’s Base Margin Amount and Base Volume Amount (determined in each case without reference to the maximum Guaranty Fund deposit amounts imposed by subsections (b)(i), (b)(iii) and (b)(v)(A) of Rule 301) for the period of three (3) calendar months prior to the Monetary Default, and the denominator of which shall be the total of the Base Margin Amounts and the Base Volume Amounts for such period for all Clearing Members (in each case determined without reference to the maximum Guaranty Fund deposit amounts imposed by subsections (b)(i), (b)(iii) and (b)(v)(A) of Rule 301). The resulting product shall constitute the amount of the Replenishment that each Clearing Member must restore to the Guaranty Fund pursuant to paragraph (g) of Rule 301 as a result of the application of the Guaranty Fund pursuant to subsection (c)(v) of this Rule 302.

(e) The amount of any Assessment pursuant to Rule 302 shall be computed by multiplying the Assessment Amount by a fraction, the numerator of which shall be the sum of the Clearing Member’s Base Margin Amount and Base Volume Amount determined (in each case without reference to the maximum Guaranty Fund deposit amounts imposed by subsections (b)(i), (b)(iii) and (b)(v)(A) of Rule 301) for the period of three (3) calendar months preceding the Monetary Default, and the denominator of which shall be the total of the Base Margin Amounts and the Base Volume Amounts for such period for all Clearing Members being assessed (in each case determined without reference to the maximum Guaranty Fund deposit amounts imposed by subsections (b)(i), (b)(iii) and (b)(v)(A) of Rule 301). The resulting product shall constitute the amount of the Assessment to be levied on such Clearing Member pursuant to this paragraph (e).

(f) If the Assessment as determined pursuant to paragraph (e) of this Rule 302 would exceed the maximum set forth in paragraph (g) of this Rule 302, or if the amount assessed against any Clearing Member shall exceed the amount paid by such Clearing Member, the excess shall be assessed against the other Clearing Members (other than the Defaulting Clearing Member and any Clearing Member that shall have been assessed the maximum permitted by paragraph (g)) in accordance with such subparagraph (e), as if the excess were the Assessment Amount. Assessments pursuant to this paragraph (f) shall be repeated until the entire Assessment Amount shall have been assessed, subject to the maximum limitations on Assessments set forth herein.

(g) Notwithstanding anything to the contrary herein, no Clearing Member (other than a Defaulting Clearing Member) shall be liable to provide Assessments as a result of charges or applications against the Guaranty Fund in respect of a single Monetary Default of another Clearing Member in an amount exceeding 200% of its Guaranty Fund Deposit Requirement.

(h) If in any case, because of the limitations contained in paragraph (g) of this Rule 302 or Rule 303, the maximum permitted Assessments are less than the Assessment Amount, the Board shall determine what if any further action to take, provided that under no

circumstances may the Board levy Assessments on any Clearing Member that would exceed such limitations.

(i) Subject to the conditions set forth in Rule 303, a Person which withdraws as a Clearing Member shall be subject only to assessments imposed to meet:

(i) Monetary Defaults occurring prior to the Clearing Member's "Withdrawal Date", subject to the limitations contained in paragraph (g) of this Rule 302;

(ii) assessments levied under paragraph (j) of Rule 301 prior to the Clearing Member's Withdrawal Date; and

(iii) the first Monetary Default, if any, occurring during the period from and after the Clearing Member's Withdrawal Date and prior to the Contribution Return Date, subject to the limitations contained in paragraph (g) of this Rule 302.

(j) All Assessments shall be due and payable within such time as the Corporation may prescribe, which shall be no later than the normal end of day settlement time for the Business Day on which such assessment is levied. If any Person shall not pay any Assessment when due, such Person shall continue to be liable therefor, but the Corporation may assess the Clearing Members (other than such Person, the Defaulting Clearing Member and any Clearing Member that shall have been assessed the maximum amount permitted by paragraph (g)) for the unpaid amount in accordance with paragraphs (e) and (f) of this Rule 302, subject to the limitations set forth herein.

(k) If, after ~~making any Assessments~~ applying any amounts pursuant to paragraph (c) to meet any Defaulted Obligation owing by a Defaulting Clearing Member as referred to in paragraph (c), or applying any Assessments to meet any Assessment not paid as referred to in paragraph (j), the Corporation collects the amount of such Defaulted Obligation or such unpaid Assessment in whole or in part from the Person or Persons liable therefor, the Corporation shall ~~refund~~ apply the amount so collected (net of any expenses, including without limitation any legal fees incurred in connection therewith) ~~pro-rata~~ to reimburse the Clearing Members ~~that had been assessed to meet such Defaulted Obligation or nonpayment and had paid the amount so assessed and/or the Corporation whose resources were so applied, in each case in the reverse order from the order in which such resources were applied under paragraph (c) or (j), as applicable, and in proportion to the amount applied. To the extent necessary for this purpose, each Clearing Member authorizes and appoints the Corporation to pursue any collections or recoveries on its own behalf and on behalf of the Clearing Members.~~

(l) The Corporation shall exercise the same degree of care in the administration, enforcement and collection of any claims against a Defaulting Clearing Member, any related guarantor, or its or their insolvency estate with respect to any Defaulted Obligation, unpaid Assessment or other deficiency of the Defaulting Clearing Member to the Corporation (such claims, "Defaulting Clearing Member Claims") as it exercises with respect to its own assets that are not subject to allocation pursuant to paragraph (k) above. In furtherance of the foregoing, the Corporation may determine, in its reasonable discretion, whether or not to commence, continue, maintain, sell, dispose of or settle or compromise any litigation, arbitration or other action with respect to any Defaulting Clearing Member Claim, without the consent of any Clearing Member or other person. The Corporation shall not be liable for losses arising from any error in judgment or for any action taken or omitted to be taken by it with respect to Defaulting Clearing Member Claims, except for such losses that result from the Corporation's gross negligence or willful misconduct. The Corporation may, in its discretion, assign to Clearing Members any Defaulting Clearing Member Claim, in whole or in

part, and such assignment shall satisfy in full the Corporation's obligations under Rule 302(k) and (l) with respect to any such claim (or portion thereof) or recoveries therefrom.

### **Rule 303. Cooling-off Periods**

(a) The following terms shall have the following meanings:

#### **Cooling-off Period**

The period commencing on the date of the Cooling-off Period Trigger Event and terminating 30 Business Days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 30 or fewer Business Days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling 30 Business Days after such subsequent Cooling-off Period Trigger Event.

#### **Cooling-off Period Trigger Event**

(i) Any call for an Assessment to be made pursuant to paragraph (e) of Rule 302 arising from a Monetary Default or Monetary Defaults; or (ii) the occurrence of a Sequential Guaranty Fund Depletion.

#### **Cooling-off Termination Period**

The period commencing on the date of each Cooling-off Period Trigger Event and terminating 10 Business Days thereafter. ~~A Cooling-off Termination Period shall be automatically extended if a~~ provided that if one or more subsequent Cooling-off Period Trigger ~~Event occurs 10 or fewer Business Days since the previous~~ Events occur during a Cooling-off ~~Period Trigger Event,~~ Termination Period, the Cooling-off Termination Period will be extended until the date ~~falling~~ that is 10 Business Days after ~~such subsequent Cooling-off Period Trigger Event~~ the last such event.

#### **Sequential Guaranty Fund Depletion**

In respect of a particular Clearing Member that is not a Defaulting Clearing Member, the occurrence of circumstances in which: (i) there have been two or more Monetary Defaults relating to different Clearing Members within a period of 30 or fewer Business Days; (ii) contributions to the Guaranty Fund from non-Defaulting Clearing Members have been applied in respect of at least two such Monetary Defaults; and (iii) the total amount of Replenishments that the Clearing Member has as a result paid to the Corporation to replenish its contributions to the Guaranty Fund exceeds its Guaranty Fund Deposit Requirement prior to the first such Monetary Default.

(b) Upon the occurrence of any Cooling-off Period Trigger Event, the Corporation shall issue a notice to Clearing Members of the commencement of the Cooling-off Period, setting out the date on which such period is scheduled to end (and the date on which the Cooling-off Termination Period is scheduled to end).

(c) From the commencement of, and solely for the duration of, the Cooling-off Period:

(i) The obligation to provide Replenishments under subsection (g)(ii) of Rule 301 and ~~the~~ paragraph (d) of Rule 302 shall ~~not continue to~~ apply to a Clearing Member ~~until the end of~~ during the Cooling-off Period, subject to Rule 303(c)(ii);

(ii) The aggregate of all Assessments due under paragraph (e) of Rule 302 from a Clearing Member for all Monetary Defaults occurring or declared during the Cooling-off Period (or resulting in the Cooling-off Period) and all Replenishments due under



subsection (g)(ii) of Rule 301 and paragraph (d) of Rule 302 shall not exceed 550% of the amount of the Clearing Member's Guaranty Fund Deposit Requirement immediately prior to the ~~commencement of the~~occurrence of the Monetary Default or Monetary Defaults as a result of which the Cooling-off Period commenced (with any Assessments or Replenishments levied in respect of the Monetary Default or Monetary Defaults as a result of which the Cooling-off Period commenced being counted towards ~~reducing~~ such maximum amount) (the "Maximum Aggregate Cooling-off Period Contribution"). A Clearing Member ~~in a Cooling-off Period~~ that has provided Assessments and/or Replenishments in such maximum amount in respect of a Cooling-off Period shall not be liable for any further ~~replenishments~~Replenishments of its contributions to the Guaranty Fund or Assessments in respect of any Monetary Default or Monetary Defaults occurring or declared during such Cooling-off Period, regardless of how many additional Monetary Defaults take place in such period;

(iii) For the avoidance of doubt, the per Monetary Default cap on Assessments set forth in paragraph (g) of Rule 302 shall apply in respect of each Monetary Default occurring or declared during the Cooling-off Period; and

(iv) ~~There shall be no rebalancing, re-setting or recalculation of~~During the Cooling-off Period, the Corporation may rebalance, re-set or recalculate Guaranty Fund Deposit Requirements to the Guaranty Fund or the total required contribution amount for purposes of determining liability for Replenishments or Assessments during the Cooling-off Period; provided that such adjustments will not affect the Maximum Aggregate Cooling-off Period Contribution or the other limitations provided in Rule 303(c)(ii);

provided, further, that the limits set out in this paragraph (c) of Rule 303 shall only apply with respect to a Clearing Member if such Clearing Member continues during the Cooling-off Period to pay the Corporation all other amounts when owed by it in all material respects (subject to the limitations set out in this paragraph (c) of Rule 303).

~~(d) At any time during the Cooling-off Termination Period, a Clearing Member may give a Withdrawal Notice to the Corporation in accordance with Rule 212~~Intentionally omitted.

(e) At the end of the Cooling-off Period (but subject to Rule 212 for Clearing Members that have served a Withdrawal Notice during or prior to the Cooling-off Termination Period), the restrictions and requirements of paragraph (c) of this Rule 303 shall cease to apply, ~~subject to Rule 212, going forward to each Clearing Member that has not served a Withdrawal Notice (other than the limitation on Assessments for Monetary Defaults occurring or declared during or prior to the Cooling-off Termination Period).~~

(f) (i) Nothing in this Rule 303 shall alter the Corporation's right to call for margin from any Clearing Member. ~~Without limiting~~

~~the foregoing,~~(ii) In addition to any margin otherwise required by the Corporation under the Rules, if during the Cooling-off Period, ~~each~~ a Clearing Member has provided Replenishments and/or Assessments in the aggregate equal to its Maximum Aggregate Cooling-off Period Contribution, then if such Clearing Member would, but for the provisions of Rule 303(c), at any time be required to provide a Replenishment, such Clearing Member shall provide to the Corporation, by the open of business on the Business Day following request by the Corporation and maintain with the Corporation during the remainder of the Cooling-off Period, additional initial margin (in addition to the initial margin otherwise required with respect to its open positions) in an amount ~~equal to its Guaranty Fund Deposit Requirement~~determined by the Corporation based on the amount of additional initial margin needed for the Corporation to maintain compliance with applicable minimum regulatory financial resources requirements during the remainder of the Cooling-off Period. Such

additional initial margin shall be calculated separately with respect to each of the house account and the customer account, on a net basis in each case, but in both cases shall be charged to the house account.

## Part 5 Margins and Premiums

### Rule 501. Approved Financial Institutions

(a) A bank, trust company or other institution may be designated by the Board as an Approved Financial Institution for any or all of the following purposes: acting as a depository for margins and option premiums on behalf of Clearing Members or acting in such other capacity as the Board may approve. To become designated as an Approved Financial Institution, a bank, trust company or other institution must submit an application in such form and containing such information as the Corporation from time to time may require and must meet such financial and other requirements as the Board may establish from time to time. A bank, trust company or other institution which has been designated by the Board as an Approved Financial Institution for any purpose may act as such until such designation is suspended or terminated in accordance with paragraph (b) of this Rule 501.

(b) If a bank, trust company or other institution does not meet all the requirements established by the Corporation pursuant to this Rule 501, or if the Board determines, based on such facts or considerations as the Board deems relevant or appropriate, that it would be in the best interests of the Corporation or its Clearing Members, the Board may:

(i) deny the application of such bank, trust company or institution for designation as an Approved Financial Institution,

(ii) suspend or terminate the status of such bank, trust company or institution as an Approved Financial Institution for any or all purposes, or

(iii) approve the application or permit the bank, trust company or other institution to continue as an Approved Financial Institution, subject in either case to such terms, conditions and limitations as the Board, in its judgment, deems appropriate.

(c) All checks or wire transfers by Clearing Members to the order of or to make payments to the Corporation must be drawn on or made by an Approved Financial Institution or, if applicable, a Qualified Financial Institution.

### Rule 502. Margin and Premium Requirement; Additional Margin

(a) Each Clearing Member shall deposit with or pay to the Corporation initial margin, variation margin and option premiums for each cleared Contract in such amounts, in such forms, at such times and in accordance with such systems as may be prescribed by or pursuant to these Rules.

(b) Initial margin requirements shall be as determined by the staff of the Corporation from time to time. Clearing Members shall collect initial margin from their customers, for non-hedge positions, at a level that exceeds the initial margin rate determined by the Corporation by such amount as the Corporation shall specify from time to time. Unless otherwise determined by the Board at any time, initial margin shall be determined in accordance with the Standard Portfolio Analysis of Risk System as implemented from time to time by the Corporation.

(c) Whenever the President, or in his or her absence, the President's delegate concludes that unstable conditions relating to one or more Contracts exist, or that the maintenance of an orderly market or the preservation of the fiscal integrity of the Corporation requires additional initial margin, or that any Clearing Member is carrying Contracts or incurring risks in its house, customer and/or cross-margining account(s) that are larger than is justified by the financial and/or operational condition of the Clearing Member, the President, or in his or her

absence, the President's delegate may require additional initial margin to be deposited with the Corporation within such time as may be specified by the President, or the President's delegate, as the case may be, or limit withdrawals of excess initial margin on deposit from such Clearing Member for such time as may be specified by the President, or the President's delegate, as the case may be. Such additional margin may be for one or more Contracts from one or more Clearing Members and for long, short or both positions.

(d) The Corporation shall retain the amount of initial margin deposited with respect to any futures contract for which a delivery notice has been issued until such time as provided for in the applicable Exchange Rules (or if not so provided, until all delivery and payment obligations in respect of such contract have been satisfied in full).

(e) The methodology for determining initial margin shall incorporate, among other relevant factors, and as more fully specified by the Corporation from time to time:

- (i) a minimum 2-day time horizon for the liquidation period with respect to the ~~proprietary~~house account of each Clearing Member, calculated on a net basis, and
- (ii) one or more measures designed to limit procyclicality, including by mitigating when possible disruptive or big step changes in margin requirements and by establishing procedures for computing margin requirements that include measures designed to limit procyclicality, as more fully specified by the Corporation from time to time. These will include measures that are equivalent to at least one of the following: (A) measures applying a margin buffer at least equal to 25% of the calculated margins, which the Corporation allows to be temporarily exhausted in periods where calculated margin requirements are rising significantly; (B) measures assigning at least 25% weight to stressed observations in the look-back period; or (C) measures ensuring that margin requirements are not lower than those that would be calculated using volatility estimated over a 10-year historical look-back period. Further, the Corporation's procyclicality measures shall be designed to deliver forward looking, stable and prudent margin requirements that limit procyclicality to the extent that the soundness and financial security of the Corporation is not negatively affected.

This Rule 502(e) shall not apply to initial margin with respect to Contracts that are qualifying futures contracts (or options) on agricultural commodities as designated by the Corporation from time to time.

(f) The amount of variation margin on any Business Day for each account of a Clearing Member for any day shall be the net gain or loss, as the case may be, on all futures contracts in such account, represented by the difference between (i) the Settlement Price on such day of each futures contract in the account and (ii) the price at which each such futures contract was bought or sold on such day or the Settlement Price for each such futures contract in the account on the previous Business Day, as the case may be; provided, however, that in the case of any futures contract on an index, the amount of the final variation margin payment shall be determined as specified in the rules of the Listing Exchange (if so specified).

(g) Without limitation of the Corporation's other rights to use or apply a Clearing Member's initial margin as permitted in the ~~By-laws or the~~ Rules, under applicable law or otherwise, the Corporation (i) may invest initial margin in the form of cash in accordance with the Corporation's investment policies and applicable law and (ii) may use a Clearing Member's cash, securities or other property constituting initial margin in its house account from time to time to meet temporary liquidity needs of the Corporation (whether or not such Clearing Member is in default), in a manner consistent with the Corporation's liquidity policies and

(i) In the event that the Corporation has Compensated Deposit Accounts at such Approved Financial Institution, the Corporation may on the request of a Clearing Member transfer amounts equal to all or specified portions of such Clearing Member's cash initial margin deposits to such Compensated Deposit Accounts and pay such Clearing Member compensation on such amounts, all on such terms and conditions as the Corporation may from time to time prescribe; provided however that:

(A) Not more than 25% of the initial margin requirement of any Clearing Member may be met by amounts so transferred into Compensated Deposit Accounts; and

(B) Not more than 25% of the total amount of initial margin held by the Corporation in any form may be held in Compensated Deposit Accounts at any one Approved Financial Institution; and

(ii) A Clearing Member may substitute for cash on deposit as initial margin securities, Approved Foreign Currencies and such other instruments as may be permitted by the Board. Such substitution shall be subject to Rule 505 in all respects effected by delivering to the Corporation, by the time specified by the Corporation on the day on which the Clearing Member wishes to make the substitution:

(A) the securities, Approved Foreign Currencies and/or other instruments; and

(B) a request for the release of the cash initial margin for which the securities, Approved Foreign Currencies or other instruments will be substituted.

(d) Subject to Rule 504(e), the Corporation shall return to a Clearing Member the amount of any excess initial margin on deposit from such Clearing Member, provided that the Corporation receives a request for such a release from such Clearing Member by such time as may be specified by the Corporation on the day such release is to be made.

(e) (i) Excess initial margins shall not be released pursuant to Rule 504(d) on any day if the excess margin is due to any house account of Clearing Member unless the Clearing Member has deposited and paid all margins, premiums and other amounts required from such Clearing Member for all its house accounts and customer accounts or otherwise pursuant to ~~the By-Laws and~~ these Rules; or, if the excess margin is due to any customer account of the Clearing Member, unless the Clearing Member has deposited and paid all margins and premiums required from all of its customer accounts pursuant to ~~the By-Laws and~~ these Rules for such accounts. Notwithstanding any provision to the contrary in these Rules, the Corporation may refuse to release the amount of excess initial margin on deposit in the house account of a Clearing Member which has requested such release if the President, or in his or her absence, the President's delegate concludes that the financial or operational condition of the Clearing Member is such that the release of excess initial margin would be contrary to the fiscal integrity of the Corporation; and may refuse to release the amount of excess initial margin on deposit in the customer account of a Clearing Member as to which the President or the President's delegate has made such a conclusion, unless the Clearing Member substantiates to the satisfaction of the Corporation that the amount to be released will be returned to one or more customers in accordance with applicable law.

(ii) A Clearing Member shall not permit any withdrawal from the account of a customer that would cause the net liquidating value plus the margin deposits that would remain in such account following the withdrawal to be less than the then prevailing initial margin requirement.

(f) Upon notice from the Corporation that a transfer of funds from a Clearing Member's account pursuant to Rule 504(a) was not effected as instructed by the Corporation for any reason, the Clearing Member shall deliver to the Corporation the amount required at such time and in such form as the Corporation may prescribe.

## Part 8 Defaults

### Rule 801. Defaults

If any of the following events (each, an "**Event of Default**") shall occur with respect to any Clearing Member (regardless of whether any such Event of Default is cured by any guarantor or other third party on behalf of such Clearing Member or otherwise):

(a) If such Clearing Member fails to meet any of its obligations under its Contracts with the Corporation;

(b) If such Clearing Member fails to pay any assessments levied upon it by the Corporation when and as provided in ~~the By-Laws~~[these Rules](#);

(c) If any Monetary Default occurs with respect to such Clearing Member;

(d) If such Clearing Member fails to make any required deposit in the Guaranty Fund when and as required pursuant to ~~the By-Laws or~~ these Rules;

(e) If the Corporation shall determine that such Clearing Member is not in compliance with the provisions of Rule 202 or Rule 203;

(f) If such Clearing Member commences a voluntary or a joint case in bankruptcy or files a voluntary petition or an answer seeking liquidation, reorganization, arrangement, readjustment of its debts or any other relief for the benefit of creditors under any bankruptcy or insolvency act or law of any jurisdiction, now or hereafter existing, or if such Clearing Member applies for or consents to the appointment of a custodian, liquidator, conservator, receiver or trustee (or other similar official) for all or a substantial part of its property; or if such Clearing Member makes an assignment for the benefit of creditors; or if such Clearing Member becomes or admits that it is insolvent;

(g) If an involuntary case is commenced against such Clearing Member in bankruptcy or an involuntary petition is filed seeking liquidation, reorganization, arrangement, readjustment of its debts or any relief for the benefit of creditors under any bankruptcy or insolvency act or law of any jurisdiction, now or hereafter existing; or if a custodian, liquidator, receiver or trustee (or other similar official) is appointed of the Clearing Member for all or a substantial part of its property;

(h) If a warrant of attachment, execution or similar process is issued against any substantial part of the property of the Clearing Member;

(i) If the Securities Investor Protection Corporation files an application for a protective decree with respect to such Clearing Member;

(j) If such Clearing Member holds a short futures contract position and does not tender a delivery notice on or before the time specified by the rules of the Listing Exchange on the last day on which such notices are permitted to be tendered, or fails to make delivery by the time specified in the rules of the Listing Exchange; or

(k) If such Clearing Member holds a long futures contract position and does not accept delivery or does not make full payment when due as specified in the rules of the Listing Exchange;

then, and in any such event, such Clearing Member shall automatically and without further action be suspended as a Clearing Member, except that such suspension may be temporarily postponed by the President if the President shall determine that such suspension would not

be in the best interests of the Corporation, in which case the President shall immediately call a special meeting of the Board as soon as practicable, at which the Board may reinstitute such suspension or take such other action as may be provided for in the By-Laws or Rules.

### **Rule 802. Liquidation on Termination or Suspension of Clearing Member**

(a) When a Person ceases to be a Clearing Member of the Exchange or is suspended as a Clearing Member of the Exchange, all open Contracts carried by the Corporation for such Clearing Member shall be liquidated in the manner set forth in Rule 803 as expeditiously as is practicable unless and to the extent that:

(i) Such open Contracts are transferred by the Clearing Member and accepted by one or more other Clearing Members, with the prior consent of the Corporation, or transferred by the Corporation to one or more other Clearing Members pursuant to an auction of the Contracts or other procedure instituted by the Corporation;

(ii) The President and the Chairman, or in the absence of the Chairman, the Vice Chairman or, in the absence of both the Chairman and the Vice Chairman, any director determine that, in their opinion, the protection of the financial integrity of the Corporation does not require such a liquidation; or

(iii) Such liquidation is delayed because of the cessation or curtailment of trading on the Exchange for such Contracts.

(b) If it is determined pursuant to paragraph (a)(ii) of this Rule 802 not to liquidate any open Contracts of a Person, or if the Corporation is unable for any reason to liquidate such open Contracts in a prompt and orderly fashion, ~~if the President and the Chairman, or in the absence of the Chairman, the Vice Chairman or, in the absence of both the Chairman and the Vice Chairman, any director~~Corporation determines to delay such liquidation, or if the Corporation otherwise determines it is appropriate to do so for the protection of the Corporation or its Clearing Members, the President or the President's designee may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such open Contracts, hedging transactions, including, without limitation, the purchase, grant or sale of Contracts. Such officers may delegate to one or more persons the authority to determine, within such guidelines as such officers shall prescribe, the nature and timing of such hedging transactions. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to such Person, and any gains, net of any costs and expenses, shall be credited to such Person.

### **Rule 803. Method of Closing Out**

(a) The open Contracts of any Person which, pursuant to Rule 802, are required to be liquidated pursuant to this Rule 803, shall be liquidated in such manner as the Corporation, in its discretion, may direct. Without limiting the generality of the foregoing:

(i) Any such liquidation may be effected by placing, with one or more Exchange members chosen at the discretion of the President, or, in the absence of the President, any Vice President, or in the absence of the President and each Vice President, any other officer, or by directly entering to the Exchange's trading platform, orders for the purchase, grant, exercise, or sale of Contracts. The President may designate and authorize an individual, and may hire a third party, to be responsible for the placement of such orders.

(ii) Contracts on opposite sides of the market, having different expiration months, may be liquidated by spread or straddle transactions (regardless of whether they are held for different accounts or different beneficial owners), in which case the price for each Contract

in any such spread or straddle shall be determined as follows: an amount equal to one-half of the price differential at which the spread or straddle is executed shall be added to the median between the settlement prices for Contracts having the same expiration months as the two Contracts involved on the prior trading day in order to determine the price for the Contract having the higher prevailing market value at the time the spread or straddle is executed, and subtracted from such median in order to determine the price for the Contract having the lower prevailing market value at the time the spread or straddle is executed. If the President believes that setting the prices as prescribed in the preceding sentence would produce an inequitable result in any particular case, the prices may be set in such other manner as may be approved either by any two Board members or by one such Board member and the President of the Corporation.

(iii) Options may be liquidated by closing transactions or by exercise, in the discretion of the President, and in any case where an option is exercised, the Corporation may liquidate the underlying futures contract, if any, resulting from such exercise in accordance with this Rule.

(iv) The Person whose Contracts are liquidated shall be liable to the Corporation for any commissions or other expenses incurred in liquidating such Contracts.

(v) Notwithstanding any other provisions of this Rule 803(a), any such liquidation may be effected without placing orders for execution, by making appropriate book entries on the records of the Corporation (including, without limitation, by pairing and canceling offsetting long and short positions in the same delivery months of a futures contract or in the same option series carried by a Clearing Member) at a price equal to the settlement price or settlement premium on the day such liquidation is ordered or at such other price as the Board may establish; provided, however, if an Order for Relief has been entered with respect to such Person, the Corporation will not effect any such liquidation by book entry except as may be permitted by Commission Regulations.

(b) If, as a result of the rules of the Listing Exchange limiting fluctuations in price or other circumstances, it is not possible to liquidate all net open Contracts pursuant to Rule 803(a)(i), the Corporation may liquidate such Contracts by taking opposite positions in the current expiration month and liquidating the resultant offset positions by a spread or straddle.

(c) If the Corporation determines that it is not practicable or advisable under the circumstances in light of liquidity, open interest, market conditions and other relevant factors to liquidate or attempt to liquidate some or all net open Contracts pursuant to Rule 803(a), the Corporation may determine to liquidate such net open Contracts pursuant to one or more default auctions (each a "Default Auction") to be conducted by the Corporation pursuant to the default auction procedures of the Corporation as in effect at the relevant time ("Default Auction Procedures"). In connection with a Default Auction, the Corporation may require that each Clearing Member (or specified categories of Clearing Members) participate in such auction in a minimum amount, and may provide in the Default Auction Procedures for consequences of a failure to so participate or for uncompetitive participation (as defined therein) and for a Default Auction Priority for the application of Guaranty Fund contributions and Assessments in payment of liquidation costs incurred through such Default Auction(s). The Default Auction Procedures may also specify the terms on which customers of Clearing Members may participate (directly or indirectly) in a Default Auction.

(d) The Corporation may also determine to liquidate some or all net open Contracts pursuant to one or more auctions not conducted under Default Auction Procedures in which participation by Clearing Members or others will be voluntary and without using a Default Auction Priority, on such other terms and conditions consistent with these Rules as are determined by the Corporation.



(ee) All liquidations made pursuant to this Rule 803 shall be for the account and risk of the Person which ceases to be a Clearing Member or which is suspended as a Clearing Member. NEITHER SUCH PERSON NOR ANY OTHER PERSON SHALL HAVE ANY CLAIM OR RIGHT AGAINST THE CORPORATION REGARDING THE TIMING OF LIQUIDATION OR THE MANNER IN WHICH OR THE PRICE AT WHICH CONTRACTS HAVE BEEN LIQUIDATED PURSUANT TO THIS RULE 803.

#### **Rule 804. Amounts Payable to the Corporation**

Upon completion of the liquidation or transfer of the positions of a Person pursuant to Rule 803, the Corporation shall be entitled on demand to recover from such Person all amounts due to the Corporation for all losses, liabilities and expenses (including without limitation legal fees and disbursements and costs and expenses incurred by the Corporation in liquidity, borrowing or similar arrangements under Rules 301(f) or 502(g)) incurred by the Corporation in connection with such liquidation or transfer.

#### **Rule 805. Reinstatement of Suspended Member**

Any Clearing Member suspended pursuant to Rule 801 may apply for reinstatement as provided in Rule 903.

#### **Rule 806. Close-Out Netting**

(a) Insolvency of the Corporation. If at any time the Corporation: (i) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition presented against it, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an Order for Relief or the making of an order for the Corporation's winding-up or liquidation, or (ii) approves resolutions authorizing any proceeding or petition described in clause (i) above (collectively, a "**Bankruptcy Event**"), all open positions in the Corporation shall be closed promptly in accordance with subsection (d).

(b) Default of the Corporation. If at any time the Corporation fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member that is due and owing in connection with a transaction cleared by the Corporation, for a period of thirty days from the date that the Corporation receives notice from the Clearing Member of the past due obligation, ~~the Clearing Member's open proprietary and customer~~ (any such event or a Bankruptcy Event, a "**Corporation Default**"), all open positions ~~at~~ of the Corporation shall, ~~at the election of that Clearing Member,~~ be closed promptly in accordance with subsection (d).

(c) Wind-Up of Contracts. If at any time the Board determines, by virtue of the number of Withdrawing Clearing Members or otherwise, that a winding up (offset) of all outstanding positions at the Corporation is prudent or desirable or that the Corporation's clearing service should be terminated, then all open positions at the Corporation shall be closed promptly in accordance with subsection (d).

(d) Close-Out Time. (i) In the event of the close-out of open positions pursuant to this Rule 806, the Corporation shall issue a notice (a "**Termination Notice**") specifying the applicable paragraph of this Rule under which close-out will occur, the Termination Time (as defined below) and such other matters as the Corporation determines appropriate.

(ii) The date and time of close out under this Rule (the "**Termination Time**") shall be as follows:

(A) in the case of close-out as a result of a Bankruptcy Event, at 5 p.m., New York time on the second Business Day following the date of the Bankruptcy Event;

(B) in the case of close-out as a result of a Corporation Default under subsection (b), at 5 p.m., New York time, on the second Business Day following the 30<sup>th</sup> day after the date the Corporation received notice of the relevant past due obligation under such subsection;

(C) in the case of close-out pursuant to Rule 806(c), the time specified in the Termination Notice, which shall be within one Business Day after issuance of such notice (and if no time is specified, 5 p.m. New York time on the Business Day following issuance of such notice).

(iii) Upon and with effect immediately as from the Termination Time, each open position subject to termination under this rule shall be automatically terminated at the Termination Price (as defined below), without the need for any further step by any party to such position. All positions open immediately prior to the close-out shall be valued in accordance with the procedures of subparagraphs (e) and (f) of this Rule 806.

~~(de)~~ Netting and Close-Out. At such time as a Clearing Member's positions are closed pursuant to this Rule 806, the obligations of the Corporation to a Clearing Member in respect of all of its proprietaryhouse positions, accounts, collateral and deposits to the Guaranty Fund shall be netted, in accordance with the Bankruptcy Code, the Act and the regulations adopted thereunder in each case, against the obligations of that Clearing Member in respect of both its proprietaryhouse and its customers' positions, accounts, collateral and its obligations to ~~the Guaranty Fund to~~ the Corporation. All obligations of the Corporation to a Clearing Member in respect of its customer positions, accounts, and collateral shall be separately netted against the positions, accounts and collateral of its customers in accordance with the requirements of the Bankruptcy Code, the Act and the regulations adopted thereunder in each case. ~~At the time a Bankruptcy Event takes place~~ As of the Termination Time for a Clearing Member's positions, the authority of the Corporation, pursuant to Rule 302, to make new assessments and/or require a Clearing Member to cure a deficiency in its Guaranty Fund deposit, ~~arising after the Bankruptcy Event~~, shall terminate, ~~and all positions open immediately prior to the close-out shall be valued in accordance with the procedures of paragraph (e) of this Rule.~~ but without limiting the obligations of Clearing Members to make such contributions or assessments for which the obligation arose prior to the Termination Time.

~~(ef)~~ Valuation. As ~~promptly as reasonably practicable, but in any event within thirty days of~~ (i) ~~the Bankruptcy Event~~, (ii) ~~if a Clearing Member elects to have its open positions closed as described in paragraph (b) of this Rule, the date of the election, or~~ (iii) ~~the determination by the Board to wind up all outstanding positions as described in paragraph (c) of this Rule~~ of the Termination Time, the Corporation shall fix a U.S. dollar amount (the "**Close-Out Amount**") to be paid to or received from the Corporation by each Clearing Member, after taking into account all applicable netting and offsetting pursuant to paragraph ~~(ee)~~ of this Rule. The Corporation shall value open positions subject to close-out ~~by using at a price (the~~ "**Termination Price**") that is the market ~~prices~~price for the relevant market (including without limitation any over-the-counter markets) at the ~~time that the positions were closed out~~ Termination Time, assuming the relevant markets were operating normally at such time. If the relevant markets were not operating normally at such moment, the Corporation shall ~~exercise~~ determine the Termination Price by exercising its discretion, acting in good faith and in a commercially reasonable manner, in adopting methods of valuation expected to produce

reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally. In determining a Close-Out Amount, the Corporation may consider any information that it deems relevant, including, but not limited to, any of the following:

- (i) prices for underlying interests in recent transactions, as reported by the market or markets for such interests;
- (ii) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest;
- (iii) relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and
- (iv) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data.

Amounts stated in a currency other than U.S. dollars shall be converted to U.S. dollars at the ~~current~~[prevailing market](#) rate of exchange, as [reasonably](#) determined by the Corporation [\(using a third party source, if practicable\)](#). If a Clearing Member ~~has a negative~~[owes the](#) Close-Out Amount, it shall promptly pay that amount to the Corporation [upon demand](#).

~~(f)~~ [\(g\) Interpretation in Relation to FDICIA](#). The Corporation intends that certain provisions of this Rule be interpreted in relation to certain terms (identified by quotation marks) that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 (“**FDICIA**”), as amended, as follows:

- (i) The Corporation is a “clearing organization.”
- (ii) An obligation of a Clearing Member to make a payment to the Corporation, or of the Corporation to make a payment to a Clearing Member, subject to a netting agreement, is a “covered clearing obligation” and a “covered contractual payment obligation.”
- (iii) An entitlement of a Clearing Member to receive a payment from the Corporation, or of the Corporation to receive a payment from a Clearing Member, subject to a netting contract, is a “covered contractual payment entitlement.”
- (iv) The Corporation is a “member,” and each Clearing Member is a “member.”
- (v) The amount by which the covered contractual payment entitlements of a Clearing Member or the Corporation exceed the covered contractual payment obligations of such Clearing Member or the Corporation after netting under a netting contract is its “net entitlement.”
- (vi) The amount by which the covered contractual payment obligations of a Clearing Member or the Corporation exceed the covered contractual payment entitlements of such Clearing Member or the Corporation after netting under a netting contract is its “net obligation.”
- (vii) The By-Laws and Rules of the Corporation, including this Rule 806, are a “netting contract.”

~~(g)~~ [\(h\) Cross-Margining Agreement](#). If a ~~Bankruptcy Event should occur~~[Termination Notice is issued under this Rule 806](#), the Corporation shall immediately seek to exercise its authority under the Cross-Margining Program to cause the immediate liquidation of all assets and

liabilities in all cross-margining accounts of Clearing Members and to reduce all such accounts to a single net obligation to or from the Clearing Member to be settled in accordance with the terms of the cross-margining agreement.

## **Rule 807. Reduced Gains Distribution**

(a) Definitions. The following terms shall have the indicated meanings:

### **Account**

The house account or customer account, as applicable.

### **Aggregate Cash Gains or ACG**

In respect of any Business Day, the sum of the Cash Gain in respect of all Cash Gainers on such Business Day.

### **Cash Gain**

In respect of any Cash Gainer and any Loss Distribution Day, the amount of Pre-Haircut Gains, Losses and Realized Cash Flows for such Account in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.

### **Cash Gainer**

In respect of each Contributing Clearing Member and any Loss Distribution Day, each Account in respect of which the Pre-Haircut Gains, Losses and Realized Cash Flows for such Account in respect of such Loss Distribution Day is greater than zero.

### **Cash Gainer Adjustment**

The meaning set out in Rule 807(f).

### **Cash Loser**

In respect of each Contributing Clearing Member and any Loss Distribution Day, each Account in respect of which the Pre-Haircut Gains, Losses and Realized Cash Flows for such Account in respect of such Loss Distribution Day is equal to or less than zero.

### **Contractual Payments**

In respect of each Account and any Business Day, any settlement or other payments (other than VM) owed with respect to a Contract in such Account on such Business Day. Notwithstanding the foregoing, amounts payable in respect of a delivery under a contract in accordance with Part 6 of these Rules will not constitute Contractual Payments.

### **Contributing Clearing Member**

A Clearing Member (other than a Defaulting Clearing Member).

### **Distribution Haircut or DH**

On each Loss Distribution Day, the fraction determined by the Corporation in accordance with the following formula:

$$\text{DH}(t) = \text{UL}(t) / \text{ACG}(t)$$

where:

UL means the Uncovered Loss for that day; and

ACG means the Aggregate Cash Gains for that day.

### **Last Successful Call**

The most recent Business Day in respect of which all Outward VM Payments and Contractual Payments owed by the Corporation to Clearing Members were paid in full under the Rules (and, for the avoidance of doubt, prior to implementation of Reduced Gains Distributions under this Rule 807).

### **Loss Distribution Day**

A Business Day in the Loss Distribution Period. For the avoidance of doubt, the Loss Distribution Day shall be the date in respect of which a Cash Gainer Adjustment is determined, even though settlement of the related payments occurs on the following Business Day.

### **Loss Distribution Period**

The period commencing from and including the date specified by the Corporation in a notice following an RGD Determination and ending as determined in Rule 807(d).

### **Outward VM Payments**

On any Business Day, amounts in respect of VM that the Corporation has calculated which would, but for this Rule 807, be payable in full by the Corporation to Contributing Clearing Members (whether relating to their House Account or Client Origin Account) following the determination of Settlement Prices for Contracts.

### **Post Default Period**

The period starting at the time of declaration of a Default of a Clearing Member and ending at the time the Corporation completes the default management process in respect of each Account of the Defaulting Clearing Member.

### **Pre-Haircut Gains, Losses and Realized Cash Flows**

In respect of each Account of each Contributing Clearing Member and any Business Day, the net amount which would be payable by the Corporation to such Clearing Member (expressed as a positive number) or by such Clearing Member to the Corporation (expressed as a negative number) by way of Contractual Payments or VM in respect of such Account on such Business Day in the absence of the application of the Distribution Haircut.

### **Received VM**

On a particular Business Day following a Default, the amount (expressed as a positive number) that the Corporation has actually received in immediately available funds from Clearing Members who are party to Contracts in respect of VM and Contractual Payments for such day.

### **Reduced Gains Distributions**

The implementation of reduced gains distributions through the adjustments provided in this Rule 807.

### **RGD Continuation Conditions**

The meaning set out in Rule 807(d).

### **RGD Determination**

The meaning set out in Rule 807(b).

**t**

In respect of any determination made in relation to a Business Day, such Business Day.

**t-1**

In respect of any determination made in relation to a Business Day, the Business Day immediately prior to such Business Day.

### **Total Outbound Pre-Haircut Amount or TPHA**

In respect of any Business Day, the sum of all positive Pre-Haircut Gains, Losses and Realized Cash Flows in respect of all Accounts of all Contributing Clearing Members on such Business Day (without offset for any negative Pre-Haircut Gains, Losses and Realized Cash Flows).

### **Uncovered Loss or UL**

In respect of the Corporation on any Loss Distribution Day, an amount calculated in accordance with the following formula:

$$\text{Uncovered Loss}(t) = \text{TPHA}(t) - \text{RM}(t)$$

where:

TPHA means the Total Outbound Pre-Haircut Amount; and

RM means the Received VM;

provided that (i) the Uncovered Loss as at the Last Successful Call shall be zero, and (ii) if the Uncovered Loss would be less than zero, it shall be deemed to be equal to zero;

provided, further, that, where there is more than one Default with overlapping Post Default Periods, the Uncovered Loss may be calculated with regard to Received VM for all relevant Defaulting Clearing Members and Defaults at that time.

### **VM**

Variation margin as provided in Rule 502. References in this Rule 807 to the payment of VM shall be construed as including obligations to transfer cash or other eligible margin as a result of changes in Settlement Prices (as the difference between Settlement Prices on different Business Days) following a recalculation of the Settlement Price and not to the total amount of VM that may have been paid by any Clearing Member or the Corporation

at any time. VM shall not include variation margin in respect of a contract subject to a delivery notice under Rule 602.

(b) *RGD Determination.* This Rule 807 shall only apply if so determined by the Board, (any such determination, an “**RGD Determination**”), where the following conditions are all satisfied:

(i) a Monetary Default or Monetary Defaults have occurred or been declared;

(ii) the Corporation has exhausted all available default resources under Rule 302 in respect of such Monetary Default or Monetary Defaults;

(iii) the Corporation determines that Reduced Gains Distribution under this Rule 807 is appropriate in connection with a Default Auction or Partial Tear-Up under Rule 808;

(iv) no Termination Notice has been issued; and

(v) there has been no Corporation Default.

(c) *Notice.* If there is an RGD Determination, the Corporation shall issue a notice to Clearing Members to that effect specifying:

(i) the date of commencement of any Loss Distribution Period; and

(ii) such other matters as the Corporation considers are relevant.

The Corporation shall issue such notice in accordance with its customary procedure for distribution of notices to Clearing Members by 7:30 p.m., New York time, on the date the RGD Determination is made (or as soon thereafter as is practicable under the circumstances). The Corporation will notify the staff of the Commission of an RGD Determination.

(d) *RGD Continuation.* Following the close of business on the Business Day following a Loss Distribution Day (a “**Potential Loss Distribution Day**”), the Corporation shall determine whether the RGD Continuation Conditions are satisfied and if so, whether such day should constitute an additional Loss Distribution Day. Notwithstanding anything to the contrary herein, the Loss Distribution Period for any Default (or series of Defaults subject to a Cooling-off Period) shall not extend more than five consecutive Business Days (such fifth Business Day, the “**Final Possible Loss Distribution Day**”).

The “**RGD Continuation Conditions**” shall be satisfied on any Potential Loss Distribution Day if the Corporation determines that favorable conditions for conducting a successful Default Auction of all remaining open positions of the Defaulting Clearing Member at a cost within any remaining default resources of the Corporation under Rule 302 are likely to be realized by the end of the maximum Loss Distribution Period.

(e) *Termination of RGD.* If, as of the close of business on a Potential Loss Distribution Day, the Corporation does not determine that the RGD Continuation Conditions are satisfied, or otherwise determines to terminate the Loss Distribution Period, then the Corporation may determine that either (i) that day shall not be a Loss Distribution Day and the Loss Distribution Period shall have terminated as of the last Loss Distribution Day or (ii) that day shall be the final Loss Distribution Day. In addition, a Loss Distribution Period shall end with immediate effect and without the need for any action on the part of any Clearing Member or the Corporation upon any Corporation Default or other determination to terminate all Contracts under Rule 806. If the Corporation conducts a successful Default Auction on any

Potential Loss Distribution Day, that day (or, if the Corporation so determines, the preceding Business Day) shall be the final Loss Distribution Day. If the Corporation has not conducted a successful Default Auction on the Final Possible Loss Distribution Day, the Corporation will conduct a Partial Tear-Up as of the close of business on such day in accordance with Rule 808.

(f) *Adjustment of VM payments for Cash Gainers.* For each Loss Distribution Day for each Account of each Contributing Clearing Member that is deemed to be a Cash Gainer, the amount payable by the Corporation in respect of the Pre-Haircut Gains, Losses and Realized Cash Flows for such Account for such day shall be reduced by an amount equal to any positive amount determined in accordance with the following formula separately for such Account (in each case, such amount the “**Cash Gainer Adjustment**”):

Cash Gainer Adjustment (t) = DH(t) x PHG(t) where:

PHG means the Pre-Haircut Gains, Losses and Realized Cash Flows; and

DH means the Distribution Haircut, expressed as a decimal provided that it shall be no greater than 1.

(g) *No Adjustment for Cash Losers.* Nothing in this Rule 807 shall reduce or offset the obligation of a Cash Loser to pay any VM or Contractual Payments owed by it in respect of a Loss Distribution Day.

(h) *Application of Cash Gainer Adjustments.* For each Loss Distribution Day, the Corporation shall apply any Cash Gainer Adjustment as set forth above as an offset against any payments receivable by the relevant Clearing Member or aggregate it with any required payment to the Corporation for the relevant Account. VM obligations and related adjustments pursuant to this Rule 807 of Contributing Clearing Members shall then be paid and collected following such netting with other payment obligations.

(i) *Notwithstanding the effects of this Rule 807 during a Loss Distribution Period:*

(i) *Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, the Corporation in accordance with the Rules and Procedures, including obligations to pay initial margin, variation margin, Guaranty Fund contributions and Assessments (subject always to the relevant limits set out in the Rules), Contractual Payments and amounts owed in respect of deliveries.*

(ii) *the Corporation will remain liable to pay or release initial margin to Clearing Members in the usual way, subject to netting to take account of any applicable Cash Gainer Adjustment with respect to variation margin and Contractual Payments. For the avoidance of doubt, the Corporation’s obligation to pay or release initial margin shall not be subject to reduction under this Rule 807 as a result of any Distribution Haircut.*

(iii) *All such other Clearing Members’ payments shall be made without regard to whether any payment which would have fallen due (were it not for the RGD Determination) has been made and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.*

(j) *Intentionally omitted.*



(k) Action by the Corporation under and in accordance with this Rule 807 shall not constitute a Corporation Default.

(l) Implementation of Reduced Gains Distributions shall not affect the determination of the Settlement Price on any Business Day. After the end of the Loss Distribution Period, the Corporation shall not determine further Cash Gainer Adjustments with respect to VM or Contractual Payments and shall calculate, collect and pay VM payments and Contractual Payments in the ordinary course, without adjustment to take into account any Cash Gainer Adjustments during the Loss Distribution Period except as provided in Rule 807(m) below.

(m) The Corporation shall pay to each Contributing Clearing Member an amount equal to the aggregate of Cash Gainer Adjustments made with respect to such Contributing Clearing Member during the Loss Distribution Period (“**Post-RGD Payments**”), on a pro rata basis to the extent of available funds remaining under Rule 302(b) or (c) (including any such funds obtained from recoveries pursuant to Rule 302(k), promptly after settlement of all obligations with respect to the relevant Monetary Default (including any Default Auction or Partial Tear-Up). For such purpose, Post-RGD Payments will constitute a Defaulted Obligation for purposes of Rule 302.

(n) Except as expressly provided in this Rule 807, this Rule is without prejudice to the Corporation’s rights to set off or net any sum owed by a Clearing Member to the Corporation against any sum payable by the Corporation to a Clearing Member or to any other powers of the Corporation under the Rules.

(o) In carrying out any calculations or making any determinations pursuant to this Rule 807, the Corporation may convert any amounts denominated in one currency into another currency chosen by the Corporation in its discretion and at a prevailing market rate of exchange reasonably determined by the Corporation (using a third party source, if practicable).

(p) For the avoidance of doubt, all calculations under this Rule 807 in respect of the customer account shall be determined separately in respect of the house account and customer account. All calculations under this Rule 807 in respect of the customer account shall be made on a net basis across all positions in such account. All calculation under this Rule 807 in respect of the house account shall be determined a net basis for all positions within such account (regardless of any desk or other subaccounts maintained thereunder for administrative purposes).

(q) For the avoidance of doubt, this Rule 807 shall not affect the obligations of Clearing Members to make or receive delivery, or to pay or receive amounts in respect thereof, in respect of any Contract in accordance with Part 6 of these Rules.

### **Rule 808. Partial Tear-Up**

(a) The provisions of this Rule 808 shall apply only if partial tear-up of open positions (“**Partial Tear-Up**”) is to occur, as determined by the Board. Notwithstanding anything to the contrary herein, Partial Tear-Up will not apply unless the Corporation has previously attempted one or more Default Auctions with respect to the open positions of the Defaulting Clearing Member. The Corporation will notify the staff of the Commission of a determination that Partial Tear-Up will apply.

(b) If Partial Tear-Up applies, the Corporation will issue a notice (a “**Partial Tear-Up Notice**”) stating:

(i) the remaining open positions of the Defaulting Clearing Member that have not otherwise been replaced or terminated through the default management process (the “**Remaining Defaulted Positions**”);

(ii) with respect to each other Clearing Member, the open positions of such Clearing Member that will be subject to Partial Tear-Up (the “**Tear-Up Positions**”);

(iii) the termination price (the “**Partial Tear-Up Price**”) for each Tear-Up Position; and

(iv) the date and time as of which Partial Tear-Up will occur, which will be 5 p.m. New York time on the Final Possible Loss Distribution Day (or 5 p.m. New York time on any earlier Business Day as of which the Corporation has determined that the final Default Auction has failed and/or that a Loss Distribution Period will not continue) (the “**Partial Tear-Up Time**”).

(c) The Corporation will determine and designate the Tear-Up Positions of Clearing Members pursuant to the following methodology: the Corporation will only designate Tear-Up Positions in the identical Contracts (on the opposite side of the market) and in an aggregate amount equal to that of the Remaining Defaulted Positions. The Corporation will designate Tear-Up Positions in a particular Contract only for Clearing Members that have an open position in such Contract, whether for their house account and/or customer account, as follows: the Corporation shall designate Tear-Up Positions in the house and customer accounts of all Clearing Members with open positions in the relevant Contracts in such accounts, on a pro rata basis (provided that solely to the extent such pro rata determination would result in creation of a Tear-Up Position with a fractional contract, the Corporation will round positions to whole contracts to avoid such result). With respect to a Tear-Up Position designated in a customer account of a Clearing Member, the Tear-Up Position shall be allocated by the Clearing Member on a pro rata basis across any customers that have open positions in such Contract in such account. Where the Corporation has in effect one or more hedging transactions related to the Remaining Default Positions which hedging transactions will not themselves be subject to Partial Tear-Up, the Corporation may offer to assign or transfer such hedging transactions to Clearing Members with related Tear-Up Positions, on such basis as the Corporation may reasonably determine.

(d) Upon and with effect from the Partial Tear-Up Time, every Tear-Up Position shall be automatically terminated at the Partial Tear-Up Price, without the need for any further step by any party to such Contract. Upon such termination, either the Corporation or the relevant Clearing Member, as the case may be, shall be obligated to pay to the other the applicable Partial Tear-Up Price (which, in either case, shall be satisfied only through applicable variation margin for such Tear-Up Position, determined for this purpose as though all variation margin payments had been made in any relevant Loss Distribution Period without regard to any Cash Gainer Adjustments). Upon the termination of a Tear-Up Position, the corresponding Remaining Defaulted Position of the Defaulting Clearing Member shall be deemed terminated at the Partial Tear-Up Price.

(e) The Partial Tear-Up Price for each Tear-Up Position shall equal the Settlement Price established for such position as of the Partial Tear-Up Time. Such Partial Tear-Up Price shall be determined without regard to any Adjustment Amounts applied pursuant to Reduced Gains Distributions under Rule 807.

(f) No action or omission by the Corporation pursuant to and in accordance with this Rule 808 shall constitute a Corporation Default.