

**ICE Clear Europe<sup>sm</sup>**  
**Clearing Rules**

**25 March**  **2019**

**[Rule 101]**

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

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

The term "**Applicable Credit Derivatives Definitions**" means, in relation to any provisions of the Rules or the Contract Terms applicable to a CDS Non-2014 Contract or any Component Transaction in the form of a CDS Non-2014 Contract, the 2003 Credit Derivatives Definitions and, in relation to any provisions of the Rules or the Contract Terms applicable to a 2014-type CDS Contract or any Component Transaction in the form of a 2014-type CDS Contract, the 2014 Credit Derivatives Definitions.

The term "**Applicable Law**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession, regulatory requirement, judgment or decision of a Governmental Authority and [any memorandum of understanding \(or equivalent\) between the Clearing House and one or more Governmental Authorities or between Governmental Authorities and](#), for the avoidance of doubt, includes all the provisions of EMIR, the FCA Rules, the PRA Rules, rules, regulations, guidance and approach documents of the Bank of England, the CEA, the rules and regulations of the CFTC, the Exchange Act, the rules and regulations of the SEC, any rules or regulations of any other Regulatory Authority and applicable Insolvency laws (including the U.S. Bankruptcy Code).

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

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

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

The term "**Bankruptcy**" means, in relation to a Person, where that Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it, by a Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such Governmental Authority; (v) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law

**[“MiFID II”]**

Regulation (EU) No 648/2012, and includes all delegated or implementing regulations, [national implementing measures in any member state](#), decisions and technical standards thereunder as interpreted in accordance with any applicable guidance publicly issued by ESMA or any Regulatory Authority.

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

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

The term "**National Grid**" has the meaning given in the Delivery Procedures.

The term "**Network Code**" has the meaning given in the Delivery Procedures.

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

The term "**Nominated Customer Bank Account**" means an account (if any) of a Clearing Member at an Approved Financial Institution, nominated by the Clearing Member in accordance with the Finance Procedures, used by the Clearing Member for transfers to or from the Clearing House of amounts due in respect of a particular Customer Account (or all its Margin-flow Co-mingled Accounts related to the same position-keeping account or all its Segregated Gross Indirect Accounts related to the same position-keeping account) which may be designated by a Clearing Member for payments in respect of a single Customer Account or Customer Accounts of a particular Customer Account Category (or all its Margin-flow Co-mingled Accounts related to the same position-keeping account or all its Segregated Gross Indirect Accounts related to the same position-keeping account). For the avoidance of doubt, a Nominated Customer Bank Account is not and does not form part of a Customer Account. The term includes a similar account nominated by a Sponsored Principal in accordance with Rule 1901(b) and 1902, which must be linked to the relevant Individually Segregated Sponsored Account.

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

The term "**Non-DCM/Swap**" means, in relation to an FCM/BD Clearing Member, a transaction or Contract that is not a U.S. Future, SBS or a Swap (as described in paragraphs (i) or (ii) of the definition thereof) and that is a "foreign future" or "foreign option" made on or subject to the rules of a "foreign board of trade", each as defined in the CEA or regulations thereunder, which

Particulars, or the Clearing Member or Sponsored Principal who (or whose Customer) was identified as the Reference Currency Seller in the corresponding FX Trade Particulars.

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

The term "**Regulatory Authority**" means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, Exchanges or Clearing Organisations (including, without limitation, the FCA, the PRA, any other Person given powers under the FSMA, the Bank of England, HM Treasury, the college (as defined in EMIR) or any member of such college, the European System of Central Banks, the [European Central Bank](#), [FINRA](#), the CFTC and the SEC).

The term "**Repository**" means a trade repository (as defined in EMIR) used for the reporting of Contracts (which may also be used for the recording of Transactions submitted for Clearing).

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

The term "**Resolution Step**", in respect of a Person other than the Clearing House, means a Governmental Authority exercising one or more of its stabilisation powers under the Banking Act 2009 or powers to adopt early intervention measures, powers to exercise resolution tools or resolution powers under national legislation of any European Economic Area jurisdiction implementing the Bank Recovery and Resolution Directive (Directive 2014/59/EU) or any similar or analogous steps under similar or analogous Applicable Laws in the European Economic Area or protective measures or restructuring procedures under the Swiss Banking Act (*Bundesgesetz über die Banken und Sparkassen*, SR 952.0) or the exercise of powers and functions in order to facilitate the resolution of the Person under any of the Banking Act 1959 of Australia, the Insurance Act 1973 of Australia, the Life Insurance Act 1995 of Australia or the Financial Sector (Business Transfer and Group Restructure) Act 1999 of Australia.

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

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

enabling the Non-FCM/BD Clearing Member to distinguish the assets and positions in F&O Contracts held for the account of its Segregated Customers).

The term "**Segregated Customer Omnibus Account For CDS**" means a kind of Customer Account with the Clearing House opened in the name of a Non-FCM/BD CDS Clearing Member for the recording of CDS Contracts to which that Non-FCM/BD CDS Clearing Member is a party as a result of it acting for one or more Segregated Customers, and related Margin (and in which no assets or positions relating to the Non-FCM/BD CDS Clearing Member's own account are recorded, enabling the Non-FCM/BD CDS Clearing Member to distinguish the assets and positions in CDS Contracts held for the account of its Segregated Customers).

The term "**Segregated Customer Omnibus Account For FX**" means a kind of Customer Account with the Clearing House opened in the name of a Non-FCM/BD Clearing Member for the recording of FX Contracts to which that Non-FCM/BD Clearing Member is a party as a result of it acting for one or more Segregated Customers, and related Margin (and in which no assets or positions relating to the Non-FCM/BD Clearing Member's own account are recorded, enabling the Non-FCM/BD Clearing Member to distinguish the assets and positions in FX Contracts held for the account of its Segregated Customers).

The term "**Segregated Gross Indirect Account**" means a kind of Customer Account of a Non-FCM/BD Clearing Member at the Clearing House for the recording of positions and related Margin, in which solely assets or positions relating to the Indirect Clients of a particular Customer are recorded, enabling the Clearing House to distinguish the assets and positions of one Indirect Client recorded in such account from the assets and positions of another Indirect Client recorded in the same account, and to distinguish the assets and positions recorded in such account from the assets or positions of other Indirect Clients and from assets or positions relating to the proprietary assets, positions and Margin of the same Customer and from any assets or positions of other Customers of the Clearing Member and from the assets or positions of the Clearing Member on its own account and also from assets or positions relating to Sponsored Principals, but in respect of which transfers of Permitted Cover to and from the Clearing House are co-mingled or netted with transfers of Permitted Cover relating to other Segregated Gross Indirect Accounts of the same Clearing Member that are recorded in the same position-keeping account, in accordance with Rules 302(a)(vii)-(viii) and 503(k) and the Clearing Procedures. A Segregated Gross Indirect Account is intended for usage as a "segregated account for the exclusive purpose of holding the assets and positions of the indirect clients of each client of the clearing member that are managed by the clearing member" for purposes of EMIR and MiFID II. A collection of Segregated Gross Indirect Accounts using the same position-keeping account as specified in the Clearing Procedures is referred to in some Clearing House documentation as a "Gross Omnibus Indirect Account".

The term "**Segregated TTFCA Customer**" means a Customer of a Non-FCM/BD Clearing Member which provides collateral to the Non-FCM/BD Clearing Member on a title transfer financial collateral arrangement basis or otherwise in circumstances in which no customer asset segregation, client money, client asset, trust or other client asset protection regime applies (other than the requirement arising under EMIR to distinguish from the Proprietary Account assets and positions of the Clearing Member) as between the Customer and the Non-FCM/BD Clearing

Contract and the position of the FX Clearing Member or Clearing House as Reference Currency Buyer or Reference Currency Seller).

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

The term "**Settlement Finality Directive**" means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, and includes any national implementing measures in any member state.

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

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

The term "**Soft Commodity EFRP**" means 'Soft Commodity EFRP' as defined in the ICE Futures Europe Rules or 'AAs' as defined in the LIFFE Rules.

The term "**Sponsor**" means a Clearing Member that has permission from the Clearing House to act as such, acting in its capacity as sponsor of an Individually Segregated Sponsored Account.

The term "**Sponsor Agreement**" means an agreement between a Sponsor and the Clearing House under which, *inter alia*, the Sponsor agrees to act as a Sponsor, the Sponsor agrees to be bound by and subject to these Rules in its capacity as such and pursuant to which the Sponsor nominates Sponsored Principals for whom it will act as Sponsor.

The term "**Sponsored Principal**" means the principal in respect of an Individually Segregated Sponsored Account. A Sponsored Principal must also be a client (as defined in EMIR) that is a Customer of the Sponsor and may be either a Segregated Customer or a Segregated TTFCustomer.

The term "**Sponsored Principal Clearing Agreement**" means an agreement between a Sponsored Principal and the Clearing House under which, *inter alia*, the Sponsored Principal agrees to act as a Sponsored Principal and the Clearing House agrees to provide Clearing in respect of Contracts of the Sponsored Principal and the Sponsored Principal agrees to be bound by and subject to these Rules. Without prejudice to the generality of Rule 102(b) or to the effectiveness of any other agreement between the Clearing House and a Sponsored Principal, for the avoidance of doubt, for Sponsored Principals that have executed a Pledged Collateral Addendum, the relevant Sponsored Principal Clearing Agreement will be interpreted as amended by that Pledged Collateral Addendum.

The term "**Standard Omnibus Indirect Account**" means a Standard Omnibus Indirect Account for F&O, Standard TTFCustomer Omnibus Indirect Account for F&O, Standard Omnibus Indirect

**[Rule 102]**

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

- (iv) Customer Account of any class be netted, combined or offset with any Contract recorded in any of that Clearing Member's or Defaulter's Proprietary Accounts;
- (v) particular Customer Account be netted, combined or offset with any Contract recorded in another Customer Account of the same Clearing Member or Defaulter;  
or
- (vi) particular Proprietary Account be netted, combined or offset with any Contract recorded in another Proprietary Account of the same Clearing Member or Defaulter;

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

For the avoidance of doubt and ease of reference, the following provisions or documents relevant to asset and account segregation also apply in respect of each Segregated Customer Omnibus Account For CDS, Segregated Customer Omnibus Account For F&O, Segregated Customer Omnibus Account For FX, Standard Omnibus Indirect Account For F&O, Standard Omnibus Indirect Account For CDS and Standard Omnibus Indirect Account For FX of each Clearing Member that is subject to CASS 7.18 of the FCA rules, as well as each Individually Segregated Sponsored Account, Margin-flow Co- mingled Account and Segregated Gross Indirect Account of such a Clearing Member in respect of which the Clearing House gives an acknowledgement in accordance with paragraph (viii) below:

- (vii) the third and fourth sentences of clause 5.3 of the Clearing Membership Agreement (and equivalent provisions of the Sponsored Principal Clearing Agreement and Sponsor Agreement, if applicable); and
- (viii) any letter delivered to the Clearing House pursuant to CASS 7.18, where the Clearing House has countersigned the same and returned it to the Clearing Member.

Any reference in these Rules or the Procedures to Rule 102(q) shall be deemed to include a reference to such provisions as are mentioned in paragraph (vii) and such letters as are mentioned in paragraph (viii), as are applicable to the Clearing Member concerned.

- (r) The Rules shall at all times be observed, interpreted and given effect to in the manner most conducive to the promotion and maintenance of recognition of:
  - (i) the Clearing House as a recognised clearing house under the FSMA, [an authorised central counterparty under EMIR](#), as having any status or licence granted by a Market or Delivery Facility, as a registered derivatives clearing organization

- (d) In this Rule 106 only, the terms "**Control**" (and derivations thereof), "**Process**" (and derivations thereof), "**Personal Data**" and "**Controller**" each have the meaning given to such terms in Regulation (EU) 2016/679 (General Data Protection Regulation)(including any relevant implementing measure or successor legislation thereto).
- (e) Each Clearing Member, Sponsored Principal and the Clearing House:
  - (i) acknowledges that the recording of telephone conversations between the trading, clearing and other relevant personnel of the Clearing Member or Sponsored Principal and the Clearing House or their Group Companies in connection with the Rules and any Contract, potential Contract or Transaction will take place to the extent permitted or required under applicable laws;
  - (ii) acknowledges, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any Dispute; and
  - (iii) acknowledges that the remainder of this Rule 106 shall apply to any such recordings made by the Clearing House.

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

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

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

- (a) Clearing Members and other Persons that provide or present any documentation or other materials to the Clearing House are required to make a copy (whether electronic or physical) prior to doing so and must maintain each such copy for at least ten years. Clearing Members that are authorised and regulated by the FCA or PRA will be deemed to satisfy this requirement if they comply with all applicable FCA Rules and PRA Rules ~~relating to~~ [or MiFID II rules on record-keeping in relation to their activities connected with the Clearing House.](#)
- (b) The Clearing House shall not be obliged to return or provide a copy of any document or other materials presented or provided by any Clearing Member or other Person to the Clearing House, except where an express right to such copy or return is set out in these Rules.

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

- (a) The Clearing House shall provide details (which, where appropriate, will include a reasoned account) of any Rule Change in a Circular. A Rule Change shall take effect and be binding on the Clearing House, Clearing Members, Sponsored Principals and other Persons who have agreed to be bound by the Rules on the relevant date specified by the



Clearing House in a Circular. Where the reason for any Rule Change is not manifest in the amended text of the Rules, the Clearing House will seek to provide an appropriate reasoned account of the Rule Change.

- (b) The Clearing House shall be entitled, at its discretion, to make any Rule Change at any time and without consulting Clearing Members or any other Persons where such Rule Change:
- (i) is of a minor nature and relates to Rules of an administrative or commercial nature;
  - (ii) is of a limited, technical nature, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (iii) relates to the Clearing House's fees, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (iv) is considered by the Clearing House to be necessary as a result of an Event of Default, Force Majeure Event or Financial Emergency which has been recognised by an affirmative vote of the Board at a quorate meeting (subject always to Rule 109(c)) and subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees;
  - (v) is required to ensure compliance by the Clearing House or any Clearing Member, Sponsored Principal or Customer with Applicable Laws, Accounting Standards or the requirements of any Governmental Authority or Regulatory Authority or is necessary or desirable to maintain the Clearing House's ~~status as a recognised clearing house under the FSMA~~ status as referred to in Rule 102(r), any Clearing House's status or licence granted by any Delivery Facility or Market, or any other legal or regulatory status it has under any other Applicable Law;
  - (vi) concerns the parameters for Margin or the Guaranty Fund or classes of or haircuts for Permitted Cover, if a consultation is reasonably considered by the Clearing House not to be appropriate;
  - (vii) results from, and is or can be implemented solely by, a change in:
    - (A) Market Rules made by the relevant Market;
    - (B) the Credit Derivatives Determinations Committees Rules made by the Persons lawfully entitled to amend that document; or
    - (C) any other document (excluding, for the avoidance of doubt, the Applicable Credit Derivatives Definitions) that is not published by the Clearing House but which is incorporated into or forms part of the Contract Terms of any Contract in circumstances in which, pursuant to the Rules, upon

commenced pursuant to Rule 117, the Clearing Membership Agreement or any Sponsor Agreement and shall deliver to the Clearing House an agreement substantially in the form specified by the Clearing House relating to such appointment countersigned by such agent. No Clearing Member shall give any notice of revocation to, or otherwise terminate the appointment of, any such agent unless prior to such termination it has validly appointed a replacement agent in England and Wales reasonably acceptable to the Clearing House to accept service of process issued out of the courts of England and Wales in relation to any arbitration commenced pursuant to Rule 117, the Clearing Membership Agreement or any Sponsor Agreement and has delivered to the Clearing House a copy of that agent's acceptance of that appointment substantially in the form specified by the Clearing House countersigned by such agent. If for any reason any agent appointed under this Rule 113(e) ceases to be such an agent, the Clearing Member shall forthwith appoint a replacement agent in England and Wales and deliver to the Clearing House a copy of the new agent's acceptance of that appointment substantially in the form specified by the Clearing House countersigned by such agent within 10 Business Days of such appointment. Nothing in these Rules, the Procedures, the Clearing Membership Agreement, any Sponsor Agreement or any Contract shall affect the right of the Clearing House to serve process in any other manner permitted by law.

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

- (a) Except as otherwise specifically set out herein, any action permitted or required to be taken by the Clearing House may be taken by the Board, the Chairman, the President, any other Board member or any other officer or committee to whom or which authority has been delegated by the Clearing House, the Board, the Chairman, the President or any committee.
- (b) Where there is a provision to the effect that an action may be taken or power exercised by the Clearing House, any action taken or power exercised by the Clearing House shall be without prejudice to the right of the Clearing House to exercise such powers and take such other steps (or not as the case may be) as it may think fit upon that or any other occasion.
- (c) The Clearing House may outsource operational functions, services or activities. If it does so, this shall not affect the Clearing House's responsibilities and liabilities under these Rules, any Clearing Membership Agreement, any Sponsored Principal Clearing Agreement, any Sponsor Agreement or Applicable Laws.

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

- (a) With a view to maintaining ~~recognition as a clearing house under the FSMA~~ its statuses referred to in Rule 102(r), the Clearing House may:
  - (i) make arrangements with any Person for monitoring compliance with and investigating alleged breaches of the Rules (and arrangements, Procedures and directions made, authorised or given thereunder); and

## Part 2 Clearing Membership

This Part 2 does not apply to Sponsored Principals save to the extent expressly set out in Part 19.

### Rule 201 *Clearing Membership Criteria*

- (a) In order to attain and maintain membership as a Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Clearing Member:
- (i) have paid the Clearing House's (non-refundable) application fee (if applicable) and provided completed membership application forms;
  - (ii) (if proposing to become a Clearing Member in relation to ICE Endex Transactions) be a member of ICE Endex;
  - (iii) (if proposing to become a Clearing Member in relation to ICE Futures Europe Transactions) be a member of ICE Futures Europe;
  - (iv) (if proposing to become a Clearing Member in relation to ICE Futures US Transactions) be a member of ICE Futures US;
  - (v) (if proposing to become a Clearing Member in relation to ICE Endex UK Transactions) each Clearing Member's Transferor and Transferee must: (A) be a member of ICE Endex UK or have other adequate arrangements in place to enable the Clearing Member, effectively and promptly, to manage the default of its Transferors and Transferees for ICE Endex UK Transactions; (B) be a User (as such term is defined in the Network Code); and (C) where a Clearing Member's Transferor or Transferee is not a Trader User, hold a Gas Transporter's Licence or a Shipper's Licence (as such terms are defined in the Network Code), which in either case is in force with no notice of revocation having been given in respect of such designations;
  - (vi) (if proposing to become a Clearing Member in relation to ICE Natural Gas Continental Spot Transactions) each Clearing Member's Transferor and Transferee must: (A) be a member of ICE Endex Continental or have other adequate arrangements in place to enable the Clearing Member, effectively and promptly, to manage the default of its Transferors and Transferees for ICE Natural Gas Continental Spot Transactions; (B) be a Licensed Shipper (as defined in the Delivery Procedures), with no notice of revocation having been given in respect of such designations;
  - (vii) be a user of or otherwise have access to at least one Repository (if any) for the Contracts it proposes to clear [where such Contract is required to be reported to a repository under Applicable Law](#);
  - (viii) (if proposing to become a Clearing Member in relation to Financials & Softs Transactions that are made on or reported to LIFFE) be a member of LIFFE;

**[Rule 201(a)]**

- (xx) have made the required Guaranty Fund Contributions;
- (xxi) not be subject to an Insolvency or Unprotected Resolution Step; ~~(xxii) - be either a Person that is not a natural person or a Person that is subject to business taxation for the purposes of Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments;~~
- (xxii) ~~(xxiii)~~ demonstrate operational competence in respect of the classes of contracts that it proposes to clear;
- (xxiii) ~~(xxiv)~~ be an "eligible contract participant", as defined in Section 1a of the U.S. Commodity Exchange Act;
- (xxiv) ~~(xxv)~~ if it is not incorporated in England and Wales, have appointed an agent for the service of process pursuant to Rule 113(e);
- (xxv) ~~(xxvi)~~ if it is to provide a Controller Guarantee from a Controller that is not incorporated in England and Wales, have appointed an agent for the service of process in respect of the Controller following the same provisions as are applicable to Clearing Members pursuant to Rule 113(e);
- (xxvi) ~~(xxvii)~~ if it is to clear transactions on behalf of Customers, have the necessary additional financial resources and operational capacity to perform this activity;
- (xxvii) ~~(xxviii)~~ not be subject to any circumstances pursuant to which an Event of Default could be declared were the applicant to be a Clearing Member;
- (xxviii) ~~(xxix)~~ have provided details of an office which is staffed during normal business hours and sufficient for its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive officer of the Clearing Member (who need not be physically located at such office) to which all notices, orders and other communications from the Clearing House may be transmitted or delivered;
- (xxix) ~~(xxx)~~ satisfy the Clearing House that it, its officers, directors and Controllers would each meet the requirements for an 'approved person' (for individuals) or 'controller' (for partnerships, companies and other bodies corporate) under applicable FCA Rules and PRA Rules;
- (xxx) ~~(xxxi)~~ hold a Nominated Bank Account or Accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House;
- (xxxi) ~~(xxxii)~~ if non-cash assets are to be used as Permitted Cover, have executed all necessary documentation relating to the transfer of such assets and not be in

dispute with the Clearing House in relation to the ownership over or rights relating to such non-cash assets;

(xxxii) ~~(xxxiii)~~ either (A) be a Person in respect of whom 'simplified due diligence' may be applied pursuant to the Money Laundering Regulations 2007; or (B) have been subject to customer due diligence measures under the Money Laundering Regulations 2007 to the Clearing House's satisfaction;

(xxxiii) ~~(xxxiv)~~ not be prevented from entering into any Contract or using the Clearing House as a result of any Sanctions affecting the Clearing Member (except, if it is a CDS Clearing Member incorporated in Germany and solely in respect of CDS business, solely to the extent that any obligation, or undertaking, representation or statement contemplated by this Rule 201(a)(xxxiv) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts);

(xxxiv) ~~(xxxv)~~ be incorporated or registered in and access the Clearing House from only jurisdictions whose Applicable Laws relating to Insolvency, Resolution Steps, the regulation of clearing houses, Markets or central counterparties, the enforceability of Contracts and the Rules and such other matters as the Clearing House specifies are acceptable to the Clearing House (and an applicant may be required to supply a legal opinion of external counsel, addressed to the Clearing House, addressing such issues, at its cost); and comply with any additional restrictions or requirements imposed by the Clearing House as a result of activities in any such jurisdictions;

(xxxv) ~~(xxxvi)~~ not be subject to statutory disqualification under Applicable Law;

- (b) The Clearing House may at its discretion attach further objective conditions to any application for Clearing Member status prior to such status being granted, provided that such additional conditions are proportional to the risk brought by the applicant. The Clearing House may grant approval to an applicant conditional upon satisfying certain requirements, provided that the applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.
- (c) Applicants for membership must provide information or documentation to the Clearing House evidencing compliance (or lack thereof) with each of the criteria set out in or required pursuant to Rule 201(a), and for CDS Clearing Member applicants only, Rule 201(i), and, in addition, for FX Clearing Member applicants only, Rule 201(j). Failure by an applicant to supply such information or documentation may result in an application being rejected or Clearing Member status or access to particular services being revoked.
- (d) All information supplied to the Clearing House in respect of an application for membership shall be deemed to have been provided by the Clearing Member to the Clearing House on the day on which that Clearing Member becomes a Clearing Member,

furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded) shall only be required if a notification is also required to the FCA or PRA under the Principles for Business in the FCA Rules or PRA Rules.

**Rule 205**      *Financial Reporting*

- (a) Each Clearing Member must file with the Clearing House in relation to the Clearing Member and, if so notified by the Clearing House at its discretion, any Controller:
  - (i) an audited financial statement including profit and loss accounts and balance sheet, with the auditor's report, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House within 90 days of the end of the Clearing Member's or relevant Controller's fiscal year;
  - (ii) a quarterly financial statement including management profit and loss accounts and balance sheet, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House, within 30 days of the end of each quarter; and
  - (iii) in the case of Clearing Members or their Controllers that are licensed, authorised or regulated by a Regulatory Authority, a copy of all financial returns, reports, statements and notices provided to the relevant Regulatory Authority as soon as so provided and, if any such material is other than a routine periodic financial return, statement or report required under Applicable Laws, a written statement setting out (to the extent known) the reasons why such Clearing Member or relevant Controller is filing it.
- (b) In the case of Clearing Members authorised and regulated by the FCA or PRA, the Clearing House shall be authorised, at its discretion but subject to the consent of the relevant Regulatory Authority, to obtain copies of financial filings, returns and reports directly from the FCA or PRA rather than from the Clearing Member. The Clearing Member will not be relieved of any of its obligations to the extent that the Clearing House does not obtain, or is unable to verify the accuracy of, any financial return or report obtained by it from the FCA or PRA.
- (c) Each Clearing Member shall file with the Clearing House such financial or other relevant information, in addition to what is explicitly required by this Rule 205, as may be requested by the Clearing House at its discretion from time to time.
- (d) All qualifications and reports of Clearing Members' auditors in any financial report must be satisfactory to the Clearing House.

**[Rule 207(d)]**

Customer Account recognised in the Clearing House's or any Clearing Member's books and records or those of any Approved Financial Institution nor any other Procedures or Rules of the Clearing House shall result in any obligation of the Clearing House towards any Customer of the Clearing Member, any other Person that is not a Clearing Member, whether under rules made under FSMA relating to client money, any other Applicable Laws or otherwise. It is the responsibility of the Clearing Member (and not the Clearing House) to ensure that its Nominated Proprietary Bank Accounts and Nominated Customer Bank Accounts are linked appropriately to each Proprietary Account and Customer Account and to ensure its own compliance with Applicable Laws relating to conduct of business, client money, segregation and use of client assets and segregation of Customer Transactions. Accordingly: (i) the Clearing House and each Clearing Member with that has a Customer Account ~~intends that it will be acting in a separate capacity for purposes of section 187 of the Companies Act 1989 in relation to any of its~~ agree that there will be no setting off against each other of positions and assets recorded in any of the Clearing Member's Customer Accounts to that in which it acts in relation to any of its ~~against any of the Clearing Member's Proprietary Accounts or any other Customer Account;~~ ~~(ii) of that Clearing Member, in any circumstances which would contravene section 182A of the Companies Act 1989;~~ (ii) the Clearing House and each Clearing Member with more than one Customer Account ~~intends that it will be acting in a separate and different capacity for purposes of section 187 of the Companies Act 1989 in relation to each of its~~ agree that there will be no setting off against each other of positions and assets recorded in each of the Clearing Member's different Customer Accounts, ~~which capacity in each case is a separate and different capacity from that which it acts in relation to any of its~~ against any of the Clearing Member's Proprietary Accounts or any other Customer Account; ~~each of that Clearing Member with more than one Proprietary Account intends that it will be acting in a separate and different capacity for purposes of, in any circumstances which would contravene section 187~~ 182A ~~of the Companies Act 1989 in relation to each of its different Proprietary Accounts, which capacity in each case is a separate and different capacity from that which it acts in relation to any of its Customer Accounts or any other Proprietary Account;~~ and (iii) ~~the Clearing House agrees with the Clearing Members acting in such different capacities~~ and each Clearing Member with more than one Proprietary Account agree that there will be no setting off against each other of positions and assets recorded in each of the Clearing Member's different Proprietary Accounts, against any of the Clearing Member's Customer Accounts or any other Proprietary Account of the Clearing Member, in any circumstances which would contravene section 182A of the Companies Act 1989. An FCM/BD Clearing Member shall be eligible to have any number of Proprietary Accounts, DCM Customer Accounts, Non-DCM/Swap Customer Accounts, Swap Customer Accounts, General Customer Accounts and SBS Customer Accounts. A Non-FCM/BD Clearing Member shall be eligible to have any number of Proprietary Accounts and any number of Customer Accounts of any Customer Account Category that is available for Non-FCM/BD Clearing Members, as well as being able to act as Sponsor in respect of any number of Individually Segregated Sponsored Accounts.

- (e) A Disclosed Principal Member shall be liable as principal to the Clearing House and responsible for all obligations arising in respect of the Proprietary Account referable to the Clearing Member that has appointed it as a Disclosed Principal Member, instead of

subject, as to enforceability, to equitable principles in general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

**Rule 406**      *Open Contract Positions*

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



records of the relevant Repository (if any) ~~designated by the Clearing House for F&O Contracts~~ used by each of them.

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

such termination taking effect shall cease to be subject to any transfer under this Rule 410. Termination of any Link Agreement shall not affect the validity of any existing Contract.

(vi) In the event of a default by a member of a Participating Exchange (where such member is not also a Clearing Member), where such default is defined or declared under the rules of the Participating Exchange, any Participating Exchange Transaction registered in the name of such affected Participating Exchange member shall not be transferred under the applicable Link Agreement pursuant to this Rule 410, provided that the Clearing House may elect to enter into one or more Contracts with F&O Clearing Members or with the relevant Cleared Exchange or Participating Exchange for the purpose of facilitating the replacement of the Participating Exchange Transactions of the defaulting member of such Cleared Exchange or Participating Exchange with a new contract with a non-defaulting Clearing Member.

#### **Rule 411      *Swap Data Repository ("SDR") Reporting***

For all swaps cleared by the Clearing House and resulting positions, the Clearing House will report creation and continuation data to the ICE Trade Vault swap data repository for purposes of complying with applicable CFTC rules governing the regulatory reporting of swaps. Upon the request of a counterparty to a swap cleared at the Clearing House, the Clearing House will provide the same creation and continuation data to a swap data repository selected by the counterparty as the Clearing House provided to the ICE Trade Vault swap data repository under the preceding sentence.

### **Part 5      Margin**

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

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

## Part 9 Default Rules

Without prejudice to the status of any other provision of these Rules, all the provisions of this Part 9 are intended to constitute 'default rules' for purposes of the Companies Act 1989, include a "default waterfall" for purposes of article 45 of EMIR and constitute "default ~~proceedings~~ procedures" for purposes of article 48 of EMIR, "default rules and procedures" for purposes of section 5b(c)(2)(G) of the CEA, "default arrangements" for the purposes of the Settlement Finality Regulations and "default procedures" for purposes of SEC Rule 17Ad-22. These rules are intended to comply with provisions of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges ~~and~~, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995) ~~relevant to default rules~~ in addition to other Applicable Laws. In addition to these Rules, the Clearing House relies on its legal rights under Applicable Laws in handling Events of Default, including under EMIR, FSMA, the Companies Act 1989, the Settlement Finality Directive, the Settlement Finality Regulations, the Financial Collateral Directive, the Financial Collateral Regulations and the U.S. Bankruptcy Code, as applicable.

### Rule 901 Events of Default affecting Clearing Members or Sponsored Principals

- (a) If any of the following events should occur with respect to any Clearing Member (regardless of whether it is cured by the Clearing Member, a guarantor or other third party on behalf of the Clearing Member or otherwise), such event shall, if so declared by the Clearing House, constitute an "**Event of Default**":
- (i) any breach by that Clearing Member of these Rules, the Procedures, the Clearing Membership Agreement, any Sponsor Agreement (or, in the case of a Sponsored Principal where this Rule is applicable pursuant to Rule 901(d), the Sponsored Principal Clearing Agreement) any other agreement with the Clearing House or Market Rules;
  - (ii) that Clearing Member being unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract;
  - (iii) a Monetary Default or Delivery Default occurring with respect to that Clearing Member;
  - (iv) any Financial Indebtedness of that Clearing Member or any of its Group Companies: (A) not being paid when due or within any originally applicable grace period; or (B) being declared to be or otherwise becoming due and payable prior to its specified maturity as a result of an event of default (however described);
  - (v) any commitment for any Financial Indebtedness of that Clearing Member or any of its Group Companies being cancelled or suspended by a creditor as a result of an event of default (however described);

series or version number or scheduled termination date or, for FX Contracts in Contracts of a different FX Settlement Date, and terminating the resultant terminated positions.

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

#### **Rule 906**      *Net Sums Payable*

- (a) Following discharge of a Defaulter's rights, obligations and liabilities under Contracts pursuant to this Part 9, the Clearing House shall carry out the following calculation separately in respect of each different Proprietary Account and each different Customer Account of the Defaulter. Upon termination of all Contracts following an Event of Default, the only obligation of the Clearing House or Defaulter, except for any obligation which had already fallen due for performance but at the time had not been performed (which obligations would be taken into account in the calculation of the net sum, save to the extent that any party has become subject to an irrevocable Transfer Order under [Part 12](#) or the Settlement Finality Regulations) shall be limited to calculation and payment of the net sum and such other obligations as are expressed to apply in Rule 209 or this Part 9. Following an Event of Default, there shall be no requirement for future payments or deliveries to be made in respect of any terminated Contracts (including in each case no requirement to pay or deliver any related Margin that has not at the time fallen due for payment, except as part of the net sum). The calculation set out below follows the requirements relating to ~~default rules of recognised clearing houses set out in~~ [requirements of the EMIR Regulation](#) as set out at section 29, [Part 5](#) of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses and [Central Securities Depositories](#)) Regulations 2001 (SI 2001/995), the requirements for a 'Default waterfall' in EMIR, and other requirements of Applicable Law. The methodology involves aggregating or setting off various amounts (as applicable) so as to produce separate net sums for each different Proprietary Account

and each different Customer Account of the Defaulter (each such net sum,  $N$ ) in each case defined by the formula:

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

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

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

~~(i) the effecting by the Clearing House of corresponding contracts (as defined in section 25(3) of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, SI 2001/995) in relation to Contracts to which the Defaulter is party;~~

(i) termination, liquidation or close out in relation to Contracts to which the Defaulter is or was party;

(ii) the Transfer of any of the Defaulter's Contracts to a Transferee Clearing Member (not being the Defaulter) or acceptance or entry into by a Clearing Member of any of the Defaulter's Contracts or contracts similar to any of the Defaulter's Contracts; and

(iii) the exercise by the Clearing House of any Option,

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

$A$  = the aggregate amount, expressed as a positive number, of all sums payable to the Defaulter in respect of Contracts recorded in the relevant Account (which are not voidable and voided by the Clearing House pursuant to Part 4), taking into account any of the actions referred to under  $L$  (i), (ii) or (iii) above, plus all amounts that were payable but remain unpaid by the Clearing House under the terms of Contracts, excluding, in respect of a Contract where the Defaulter acts as agent (if any), any rights attributable to

**[Rule 906]**

- (xii) each of the Defaulter's Margin-flow Co-mingled Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xiii) each of the Defaulter's Standard Omnibus Indirect Accounts For F&O, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xiv) each of the Defaulter's Standard TTFCOA Omnibus Indirect Accounts For F&O, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xv) each of the Defaulter's Standard Omnibus Indirect Accounts For CDS, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xvi) each of the Defaulter's Standard TTFCOA Omnibus Indirect Accounts For CDS, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xvii) each of the Defaulter's Standard Omnibus Indirect Accounts For FX, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xviii) each of the Defaulter's Standard TTFCOA Omnibus Indirect Accounts For FX, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xix) each of the Defaulter's Segregated Gross Indirect Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account; and
- (xx) each Individually Segregated Sponsored Account of the Defaulter or for which the Defaulter acted as Sponsor, including, and in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xxi) each of the Defaulter's Proprietary Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account not falling under Rule 906(b)(i) to (xx).

Each Clearing Member shall be deemed to represent, warrant and agree on an ongoing basis that, if it were to become a Defaulter, any net sums to be determined in accordance with paragraphs (i) to (xxi) above do not: (aa) (in relation to a Defaulter that has a Customer Account) involve any setting off against each other of positions and assets recorded in any of the Defaulter's Customer Accounts against any of the Defaulter's Proprietary Accounts or any other Customer Account of that Defaulter, in any circumstances which would contravene section 182A of the Companies Act 1989; (bb) (in relation to a Defaulter with more than one Customer Account) involve setting off

against each other of positions and assets recorded in each of the Defaulter's different Customer Accounts against any of the Defaulter's Proprietary Accounts or any other Customer Account of that Defaulter, in any circumstances which would contravene section 182A of the Companies Act 1989; and (cc) (in relation to a Defaulter with more than one Proprietary Account) involve any setting off against each other of positions and assets recorded in each of the Defaulter's different Proprietary Accounts, against any of the Defaulter's Customer Accounts or any other Proprietary Account of the Defaulter, in any circumstances which would contravene section 182A of the Companies Act 1989.

The Defaulter's Guaranty Fund Contributions and amounts received by the Clearing House under a Controller Guarantee or standby letter of credit of a Defaulter may be used for the purpose of calculating any net sum on any Account relating to that Defaulter (provided that any such amounts are not double counted), in accordance with Rule 906(a) and subject to the restrictions in Rule 908, Rule 102(q) and this Rule 906(b) as determined by the Clearing House. The aggregate sums finally payable shall be separately certified under Rule 906(e). Where and to the extent that the Clearing House determines to apply Guaranty Fund Contributions or amounts received by the Clearing House under a Controller Guarantee or standby letter of credit to any Customer Account, such amounts must first be applied to reduce any losses on Customer Accounts, on a *pro rata* basis among Customer Accounts which would otherwise have a net sum representing a shortfall or loss.

- (c) The Clearing House may aggregate, set off or apply any Margin, Surplus Collateral or other surplus assets available to it in relation to a Defaulter's Proprietary Account to meet a shortfall on any one or more of that Defaulter's Customer Accounts or Individually Segregated Sponsored Accounts for which the Defaulter acted as Sponsor (and, if it does so, shall include any such amounts within the net sum to be calculated in relation to such Customer Account), provided that if any amounts are so aggregated, set off or applied, the amount *A, D, C, M, SC* or *OA* (as applicable) and consequently the net sum payable by the Clearing House in relation to the Defaulter's Proprietary Account shall be reduced by the same amount as is so included within the net sum for the relevant Customer Account. The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts (or any Individually Segregated Sponsored Account of the Defaulter or for which the Defaulter acted as Sponsor) to meet a shortfall on another of that Defaulter's Customer Accounts (or an Individually Segregated Sponsored Account of the Defaulter or for which the Defaulter acted as Sponsor). The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts or any Individually Segregated Sponsored Account to meet a shortfall on the Defaulter's Proprietary Account. Where and to the extent that the Clearing House determines to apply Proprietary Account assets of a Defaulter to any Customer Account, such amounts must first be applied to reduce any losses on Customer Accounts, on a *pro rata* basis among Customer Accounts which would otherwise have a net sum representing a shortfall or loss.

**[Rule 907]**

- (i) If an Event of Default occurs affecting a CDS Clearing Member or Sponsored Principal with open CDS Contracts, the Clearing House shall convene the CDS Default Committee. The CDS Default Committee shall have the competences specified in the CDS Procedures.
- (j) Without prejudice to the status of any other provision of the Rules that is potentially applicable following an Event of Default as a default rule or similar concept for purposes of the Companies Act 1989 or similar concept under any of the Applicable Laws referred to in the opening paragraph of this Part 9:
  - (i) the provisions of the CDS Procedures relevant to a default shall apply if the Defaulter is or was a CDS Clearing Member and shall amount to default rules for the purposes of these Rules and Applicable Laws;
  - (ii) Part 12 and Rule 1604 contain additional default rules; and
  - (iii) where any defined term is used in a default rule or any general interpretative provision of these Rules is relevant to the interpretation of a default rule, the definition of that term or that interpretative provision is itself also a default rule.
- (k) If an FX Clearing Member or Sponsored Principal with open FX Contracts is declared to be a Defaulter, the Clearing House shall convene the FX Default Committee. The FX Default Committee shall have the competences specified in the Procedures.
- (l) The provisions of the FX Procedures relevant to a default shall apply if the Defaulter is or was an FX Clearing Member and shall amount to default rules for the purposes of the Rules and Applicable Laws.
- ~~(m) The Clearing House will, if so requested by a Clearing Member that is not a Defaulter, Transfer (to the extent this is not prohibited under any Applicable Laws) any Contracts, Margin or other Permitted Cover recorded in a Customer Account of that Clearing Member to a Proprietary Account of the same Clearing Member, in order to facilitate the management by the Clearing Member of a breach by a Customer of, or default of a Customer under, a Customer Clearing Member Agreement. For the avoidance of doubt, this Rule 907(m) applies equally to a request by a Sponsor following an Event of Default (whether or not declared) in respect of a Sponsored Principal or a breach by a Sponsored Principal of, or a default of a Sponsored Principal under, a Customer Clearing Member Agreement.~~
- (m)
  - (i) If an event has occurred with respect to a Customer, with respect to a Customer-Clearing Member Agreement, Customer-CM Transaction or otherwise, which would constitute any Event of Default hereunder (if it had occurred with respect to a Clearing Member), then:
    - (A) the Clearing Member may, through the ICE Systems or otherwise, request that the Clearing House take such steps as are necessary to Transfer any



Contracts, Margin or other Permitted Cover recorded in a Customer Account of that Clearing Member, to the extent relating to such Customer, to a Proprietary Account of the same Clearing Member (or a different Customer Account of the same Clearing Member in which the Customer is interested);

(B) the Clearing House may as a result of such request assume that such event means that the Customer is unable, or likely to be unable, to meet its obligations in respect of one or more 'market contracts' (as defined in the Companies Act 1989) and may therefore further assume that the Sponsored Principal (if applicable) is capable of being declared a Defaulter, or the Customer (were it to be a Clearing Member) would be capable of being declared a Defaulter, under this Part 9, and act upon any such request, through the ICE Systems or otherwise; and

(C) the Clearing House will: (1) to the extent permissible under Applicable Laws; (2) if so requested by a Clearing Member that is not a Defaulter; and (3) where such request contains a confirmation from the Clearing Member that such an event exists (upon which the Clearing House may rely, without enquiry, including for the purposes of Rule 111), act upon any such request, through the ICE Systems or otherwise.

(ii) If an event has occurred with respect to a Customer or an Indirect Client of a Customer or a Clearing Member, with respect to a Customer-Clearing Member Agreement, Customer-CM Transaction or otherwise, which would constitute any Event of Default hereunder (if it had occurred with respect to a Clearing Member), then:

(A) ~~(n) The~~ the Clearing Member may, through the ICE Systems or otherwise request that the Clearing House will, if so requested by a Clearing Member that is not a Defaulter, take such necessary steps to Transfer ~~(to the extent this is not prohibited under any Applicable Laws)~~ any Contracts, Margin or other Permitted Cover recorded in or related to a Standard Omnibus Indirect Account or Segregated Gross Indirect Account of that Clearing Member, or in the case of an FCM/BD Clearing Member, an indirect clearing position keeping subaccount linked to a Customer Account, to the extent relating to such Customer or Indirect Client, to a different Account or subaccount of the same Clearing Member or will update the records relating to such an Account or subaccount, in ~~order to facilitate the management by the Clearing Member of the default of a Customer under a Customer-Clearing Member Agreement or of an Indirect Client under any agreement between that Indirect Client and its Customer or the Clearing Member.~~ which the Customer is interested;

(B) the Clearing House may as a result of such request assume that such event means that the Customer or Indirect Client of a Customer or a Clearing Member is unable, or likely to be unable, to meet its obligations in respect

of one or more 'market contracts' (as defined in the Companies Act 1989) and may therefore further assume that the Sponsored Principal (if applicable) is capable of being declared a Defaulter, or the Customer or Indirect Client of a Customer or Clearing Member (were such Customer or Indirect Client to be a Clearing Member) would be capable of being declared a Defaulter, under this Part 9, and act upon any such request, through the ICE Systems or otherwise; and

- (C) the Clearing House will: (1) to the extent permissible under Applicable Laws; (2) if so requested by a Clearing Member that is not a Defaulter; and (3) where such request contains a confirmation from the Clearing Member that such an event exists (upon which the Clearing House may rely, without enquiry, including for the purposes of Rule 111), act upon any such request, through the ICE Systems or otherwise.

For the avoidance of doubt, this Rule 907(m) applies equally to a request by a Sponsor following an Event of Default (whether or not declared) in respect of a Sponsored Principal or a breach by a Sponsored Principal of, or a default of a Sponsored Principal under, a Customer-Clearing Member Agreement. Nothing in this Rule 907(m) shall limit any of the Clearing House's rights to declare a Sponsored Principal to be a Defaulter or to exercise any of its rights resulting from such a declaration under this Part 9.

#### **Rule 908      *Application of Assets upon an Event of Default***

- (a) Notwithstanding any other provision of these Rules:
- (i) if a Defaulter was only liable to make a Guaranty Fund Contribution relating to a single Membership Category, no Guaranty Fund Contributions, Assessment Contributions, or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising from the Event of Default;
  - (ii) if a Defaulter was only liable to make Guaranty Fund Contributions relating to two Membership Categories, no Guaranty Fund Contributions, Assessment Contributions or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising from the Event of Default;
  - (iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Members that are not Defaulters or accrued in each case after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default shall not be applied to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising in connection with that prior Event of Default;

## Part 12 Settlement Finality Regulations and Companies Act 1989

Without prejudice to the status of any other provision of these Rules, including Part 9, the provisions of this Part 12 are intended to also constitute 'default rules' for purposes of the Companies Act 1989 and constitute "default procedures" for purposes of article 48 of EMIR, "default rules and procedures" for purposes of section 5b(c)(2)(G) of the CEA, "rules on the moment of entry and irrevocability" of a system as referred to in Article 22a of the Settlement Finality Directive, "default arrangements" for the purposes of the Settlement Finality Regulations and "default procedures" for purposes of SEC Rule 17Ad-22. These rules are intended to comply with provisions of the Settlement Finality Regulations in addition to other Applicable Laws. In addition to these Rules, the Clearing House relies on its legal rights under Applicable Laws in handling Events of Default, including under EMIR, FSMA, the Companies Act 1989, the Settlement Finality Directive, the Settlement Finality Regulations, the Financial Collateral Directive, the Financial Collateral Regulations and the U.S. Bankruptcy Code, as applicable.

### Rule 1201 Introduction and Interpretation

- (a) The Clearing House is the system operator of a Designated System for the purposes of the Settlement Finality Regulations in respect of Transfer Orders. In addition, Part VII of the Companies Act 1989 applies in respect of Contracts, the 'default rules' and 'default proceedings' of the Clearing House and certain other matters related to the Clearing House.
- (b) Clearing Members and other Participants are subject to various obligations and requirements as a result of the Settlement Finality Regulations and Companies Act 1989. Clearing Members and other Participants must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Regulations or the Companies Act 1989. Furthermore, various modifications to Applicable Laws relating to Insolvency affecting Clearing Members and other Participants apply pursuant to the Settlement Finality Regulations and Companies Act 1989.
- (c) Each Participant in the Designated System is on notice of the provisions of this Part 12. Each Participant shall, by participating in the Designated System, be deemed to have agreed that:
  - (i) (without prejudice to the generality of the provisions of any Clearing Membership Agreement), the provisions set out in this Part 12 apply to and shall bind such Participant (and to any Insolvency Practitioner appointed for, or with powers in respect of, it) in connection with such Participant's participation in the Designated System; and
  - (ii) (without prejudice to the generality of Rule 102(f)), to the extent that there is any conflict between any provision of this Part 12 and any provision of any agreement (including any AFI Agreement) or any contractual or non-contractual obligation which may arise or exist from time to time between any Participant and the Clearing

Emissions Registry) becomes irrevocable within that other designated system or Emissions Registry.

- (k) A Linked Exchange Incoming Order or Linked Exchange Outgoing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(xiv).
- (l) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.
- (m) [Transfer Orders shall be legally enforceable, irrevocable and binding on parties in accordance with this Part 12 including on the occurrence of an Event of Default.](#)

**Rule 1204**    *Variations to or Cancellation of Transfer Orders*

- (a) This Rule 1204 applies only to a Transfer Order that is not irrevocable and:
  - (i) in the case of any Transfer Order, it is affected by manifest or proven error or an error that is agreed so to be by all affected Participants;
  - (ii) in the case of a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order, ISOC Credit/Debit Payment Transfer Order, Position Transfer Order, Security Derivative Delivery Order or Emission Allowance Delivery Order, it relates to a Contract which is (or a Transaction or CDS Trade Particulars which, if accepted, would be):
    - (A) void *ab initio* pursuant to Rule 403;
    - (B) avoided pursuant to Rule 404; or
    - (C) amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules; or
  - (iii) without prejudice to the generality of Rule 1204(a)(i), in the case of a Subsisting Transaction Clearing Order, if an error or omission is noted by or notified to the Clearing House prior to the Acceptance Time or the data in the CDS Trade Particulars or FX Trade Particulars to which the Subsisting Transaction Clearing Order relates is otherwise capable of being amended in accordance with the CDS Procedures or FX Procedures (as applicable);
  - (iv) in the case of a CDS Physical Settlement Order, if a NOPS Amendment Notice is validly delivered by the Matched CDS Buyer in accordance with Rule 1505 and Rule 1509; or
  - (v) without prejudice to the generality of Rule 1204(a)(i), (ii) or (iii), in the case of an F&O Block Clearing Order, Transaction Clearing Order, Linked Exchange Incoming Order or Linked Exchange Outgoing Order, it relates to a Transaction

## Part 15 Credit Default Swaps

Part 15 of the Rules does not apply to F&O Contracts or FX Contracts. References to Contracts in this section are to CDS Contracts. References to any Account in this section are references only to an Account in which CDS Contracts may be recorded and the terms 'Customer Margin Account', 'Customer Position Account', 'Proprietary Margin Account' and 'Proprietary Position Account' shall be construed accordingly. References to Customers in this section are solely to Customers of CDS Clearing Members in relation to CDS Contracts.

### Rule 1501 Definitions

- (a) The term "**2010 PD Amending Directive**" means Directive 2010/73/EU, and includes any national implementing measures in any member state.
- (b) The term "**Applicable Close-out Rate**" means:
  - (i) in respect of obligations which would have been payable but for paragraph 8.2(a)(i)(B) or (C) of the CDS Procedures, as the case may be, by a Defaulting Party, the Late Payment Rate; and
  - (ii) in respect of obligations which would have been payable but for paragraphs 8.2(a)(i)(B) or (C) of the CDS Procedures, as the case may be, by a Non-defaulting Party, the Non-default Rate.
- (c) The term "**Applicable Credit Event**", in relation to a CDS Contract, means any of the Credit Events specified in that CDS Contract as being applicable.
- (d) The term "**Asset Package Delivery Notice**" means the notification required to be given by a protection buyer to a protection seller pursuant to section 8.2 of the 2014 Credit Derivatives Definitions of the detailed description of the Asset Package, if any, that it intends to Deliver to the protection seller in lieu of the Prior Deliverable Obligation or Package Observable Bond, if any, specified in the Notice of Physical Settlement or NOPS Amendment Notice, as applicable.
- (e) The term "**CADP**" or "**CDS Alternative Delivery or Settlement Procedure**" has the meaning set out in Rule 1514.
- (f) The term "**CADP Notice**" means a notice delivered to the Clearing House and issued jointly by a Matched CDS Buyer and Matched CDS Seller concerning CADP in respect of a Matched Pair and related Matched CDS Contracts, in the form specified in the CDS Procedures.
- (g) The term "**CDS Buyer**" means a CDS Clearing Member (or, in respect of an Individually Segregated Sponsored Account, the Sponsored Principal or, in the circumstances set out in the definition of "Matched Pair", the Clearing House) that is party to a CDS Contract as protection buyer.

**[Rule 1603]**

- (g) For purposes of Rule 303 and Rule 406(c) and for the avoidance of doubt: (i) Rule 905, Contracts and other obligations in any class of Customer Account of an FCM/BD Clearing Member shall not be netted or offset against Open Contract Positions or other obligations in any Proprietary Account of that Clearing Member; and (ii) Open Contracts or other obligations in any class of Customer Account of any FCM/BD Clearing Member may not be netted or offset against Open Contract Positions or other obligations in any other class of Customer Account of that FCM/BD Clearing Member.
- (h) Notwithstanding anything to the contrary in Rule 502 and Rule 503, for each Customer Account if required by Applicable Law or otherwise if so specified in the relevant Procedures or by Circular, Margin shall be calculated and called for on a "gross" basis across all positions of the FCM/BD Customers of a particular FCM/BD Clearing Member.
- (i) The first sentence of Rule 504(b) is not applicable. The second sentence of Rule 504(b) is amended to read as follows: Except as provided by Applicable Law and Rule 1605 with respect to a Customer Account, the Clearing House will take no account of any right or interest which any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House. Nothing in the Rules nor any Pledged Collateral Addendum (including without limitation section 2.7 thereof as modified pursuant to Rule 1609) shall preclude an FCM/BD Clearing Member from providing Pledged Collateral to the Clearing House that was provided to the FCM/BD Clearing Member by an FCM/BD Customer and in which the FCM/BD Customer has granted the FCM/BD Clearing Member a security interest to secure the FCM/BD Customer's obligations; or preclude an FCM/BD Clearing Member from having a security interest granted by the FCM/BD Customer in such FCM/BD Customer's rights in respect of any Contracts cleared through such FCM/BD Clearing Member; provided that FCM/BD Clearing Member hereby agrees that any such security interest in favour of FCM/BD Clearing Member is in all respects subject to the rights of the Clearing House in respect of such Pledged Collateral or Contracts hereunder and under the Pledged Collateral Addendum and FCM/BD Clearing Member shall not, and shall not attempt to
- (i) exercise any rights or remedies or bring any proceeding or action with respect to such Pledged Collateral until such Pledged Collateral is released from the lien and security interest of the Clearing House hereunder and under the Pledged Collateral Addendum or
- (ii) otherwise interfere with, delay the exercise of or take any action to affect the Clearing House's rights hereunder or under the Pledged Collateral Addendum with respect to such Pledged Collateral or Contracts.
- (j) Without limiting Rule 111, save for any liability which it cannot exclude pursuant to Applicable Laws, the Clearing House shall have no obligation or liability in respect of an Open Contract Position in a Customer Account of an FCM/BD Clearing Member other than to the FCM/BD Clearing Member (acting as set forth in Rule 1603(d)) and no Person (including an FCM/BD Customer) other than an FCM/BD Clearing Member shall be entitled to enforce or exercise any rights or remedies with respect to such Open Contract Position as against the Clearing House. The Clearing House shall have no obligation or liability in respect of any transaction, agreement or arrangement between an FCM/BD Clearing Member and an FCM/BD Customer. This Rule 1603(j) shall not be

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each of the Novating Contracts whether arising prior to, on or subsequent to the Novation Time;

- (iii) the Position Transferee assumes in favour of the Clearing House and shall be vested with all the liabilities of the Position Transferor to the Clearing House whatsoever arising out of or under each of the Novating Contracts whether arising prior to, on or subsequent to the Novation Time, agrees to perform all the duties and to discharge all the obligations of the Position Transferor under each of the Novating Contracts whether arising prior to, on or subsequent to the Novation Time and agrees to be bound by all the terms and conditions of the Novating Contracts in every way as if the Position Transferee had been party to each of the Novating Contracts from inception instead of the Position Transferor;
- (iv) the Clearing House agrees to perform all its duties and discharge all its obligations under the Novating Contracts and to be bound by all the terms and conditions of the Novating Contracts in every way as if the Position Transferee had been party to each of the Novating Contracts from inception instead of the Position Transferor;
- (v) subject to paragraphs 7.3(a)(vii) and (viii), the Position Transferor and the Position Transferee shall be deemed to acknowledge and agree that the Clearing House shall on and as from the Novation Time have the right to enforce each of the Novating Contracts and pursue all claims and demands whatsoever or howsoever arising out of or in respect of each of the Novating Contracts whether arising prior to, on or subsequent to the Novation Time as if the Position Transferee had been party to each of the Novating Contracts from inception instead of the Position Transferor;
- (vi) subject to paragraphs 7.3(a)(vii) and (viii), the Clearing House and the Position Transferor shall be deemed to acknowledge and agree that the Position Transferee shall on and as from the Novation Time have the right to enforce all of the Novating Contracts and pursue all claims and demands whatsoever or howsoever arising out of or in respect of the Novating Contracts whether arising prior to, on or subsequent to the Novation Time as if the Position Transferee had been party to the Novating Contracts from inception instead of the Position Transferor;
- (vii) the Novation shall not affect any complaints made prior to the Novation Time or to be made by the Position Transferor against the Clearing House in relation to any matter or event occurring or circumstance arising prior to the Novation Time (in either case in connection with ~~paragraph 23 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, as amended~~[the Complaint Resolution Procedures](#)) or any Dispute relating to any matter or event occurring or circumstance arising prior to the Novation Time, other than a claim or demand for payment of an amount due but unpaid at the Novation Time pursuant to the terms of a Novating Contract;
- (viii) the Novation shall not affect any disciplinary, legal or other proceedings commenced against the Position Transferor by the Clearing House prior to the Novation Time or the right of the Clearing House to bring disciplinary, legal or other proceedings against the Position Transferor in relation to any matter or event occurring or circumstance arising (in whole or in part) prior to the Novation Time (~~in either case pursuant to Part 10 of the Rules or otherwise in connection with paragraph 22 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, as amended~~) or any Dispute relating to any matter or event occurring or circumstance arising (in whole or in part) prior to the Novation Time, other than a claim or demand for



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3.4 The Finance Procedures, Membership Procedures, Business Continuity Procedures and Complaint Resolution Procedures and (to the extent specified in paragraph 3 of the General Contract Terms) the General Contract Terms also apply in relation to CDS Contracts and to CDS Clearing Members.

#### 4. SUBMISSION AND ACCEPTANCE OF CDS CONTRACTS

4.1 Any CDS Trade Particulars which are submitted to the Clearing House by a CDS Clearing Member (or, in respect of an Individually Segregated Sponsored Account, a Sponsored Principal with authorisation to clear CDS) via a CDS Trade Execution/Processing Platform or other Representative on behalf of a Clearing Member (or such a Sponsored Principal) (or its Affiliate as described in paragraph 4.5) shall be capable of giving rise to a CDS Contract under Rule 401(a)(ix). Deriv/SERV shall be treated as a Representative of the CDS Clearing Member (or Sponsored Principal) (and any Affiliate, if applicable) solely for the purposes of the submission of CDS Trade Particulars for Clearing. Pursuant to Rule 401(a)(ix) and Rule 1502, if CDS Trade Particulars are so submitted to the Clearing House by the relevant CDS Clearing Members (or, in respect of an Individually Segregated Sponsored Account, Sponsored Principals with authorisation to clear CDS), being respectively protection buyer and protection seller under such CDS Trade Particulars, and are accepted by the Clearing House pursuant to an Acceptance Notice: (i) such protection buyer will be deemed to have entered into a CDS Contract with the Clearing House as its counterparty in place of such protection seller; and (ii) such protection seller will be deemed to have entered into a CDS Contract with the Clearing House as its counterparty in place of such protection buyer. In each case, the CDS Contract will be on the Contract Terms specified in the Rules and Procedures. Rule 402(b) makes provision for the effect of this process on rights, liabilities and obligations under any CDS Trade Particulars.

4.2 Only CDS Clearing Members (including their duly appointed Representatives) or Sponsored Principals with authorisation to clear CDS may submit CDS Trade Particulars to the Clearing House.

4.3 CDS Trade Particulars submitted for Clearing must be provided in an electronic format using the relevant interface designated for such purposes when presenting the trade to the Clearing House or the transaction submission system of the relevant CDS Trade Execution/Processing Platform (or such other format as is used by the Clearing House or a CDS Trade Execution/Processing Platform for such purposes from time to time as is notified to CDS Clearing Members) and include:

- (a) the identity of both Clearing Members (or, in respect of an Individually Segregated Sponsored Account, a Sponsored Principal) (or, in the case of CDS Trade Particulars submitted pursuant to paragraph 4.4(h), the single Clearing Member);
- (b) the position of each Clearing Member or Sponsored Principal as protection seller or protection buyer (or in the case of CDS Trade Particulars submitted pursuant to paragraph 4.4(h), whether a Clearing Member is to act as protection seller or protection buyer in respect of the CDS Contract to be recorded in one of its Customer Position Accounts and whether it is to act as protection seller or protection buyer in respect of the CDS Contract to be recorded in its Proprietary Position Account);
- (c) the relevant Set involved, including:
  - (i) in the case of CDS Trade Particulars relating to an Eligible Single Name Reference Entity that is a Standard European Corporate (as defined in the Relevant Physical Settlement Matrix, but excluding any Protocol Excluded Corporate Reference Entity):
    - (A) submitted for Clearing prior to the Protocol Effective Date, that the 2003 Credit Derivatives Definitions apply;

submitted in accordance with and meet the requirements established by the Rules and these CDS Procedures, give notice as soon as reasonably practicable (in a final trade status report or other report identified for the purpose) in accordance with this paragraph 4.4 (a "**Preliminary Notice**") to the relevant Clearing Members or Sponsored Principals (including by notice to a CDS Trade Execution/Processing Platform which submitted the relevant CDS Trade Particulars) specifying that the Clearing House is minded to accept such CDS Trade Particulars for Clearing, provided that the Clearing House may decline to issue such a notice if it determines in good faith that, based on the exercise of prudent risk management standards, it should not accept such CDS Trade Particulars for Clearing or if it determines that a Revocation Right would apply in respect of such submission for Clearing. following which the Clearing House shall give notice the sooner of (i) on a real-time basis or (ii) as soon as reasonably practicable (in any report identified for this purpose) specifying that the Clearing House has not accepted such CDS Trade Particulars for Clearing. CDS Trade Particulars will be subject to such pre-submission review and processing by the relevant CDS Trade Execution/Processing Platform as the Clearing House shall designate, and shall not be deemed to be formally submitted, received ~~or~~, accepted or rejected until such time as is designated for the completion of such pre-submission review and processing, to the extent permitted under Applicable Laws. Acceptance of CDS Trade Particulars for Clearing shall, in addition to the other criteria set forth herein, be subject to receipt by the Clearing House of any advance funding of Margin as may be required by the Clearing House in connection with the CDS Trade Particulars. Each Clearing Member or Sponsored Principal shall check each Preliminary Notice that concerns CDS Contracts that it is proposed to enter into at the Acceptance Time and shall promptly notify the Clearing House of any error of which it is aware. The parties' agreement to submit the Bilateral CDS Transaction for clearing shall be effective as of the Acceptance Time and at no time prior to that. An Acceptance Notice in respect of CDS Trade Particulars to which this sub-paragraph applies shall not be issued until after the completion of any applicable pre-submission review and processing and receipt of such Margin.

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

Following the issuance of an Acceptance Notice, the Clearing House will, using the DTCC Process, promptly (i) submit to Deriv/SERV or another service specified by the Clearing House (for itself, for the relevant Clearing Members or Sponsored Principals and for any relevant Customer) the terms of each new CDS Contract arising at the Acceptance Time (and any related Customer-CM CDS Transaction), adjusted to take into account netting, aggregation, terminations and replacements of CDS Contracts pursuant to Rule 406, where applicable and (ii) terminate, if applicable, the record in Deriv/SERV of any relevant Bilateral CDS Transaction. Each Clearing Member, Sponsor, Sponsored Principal and Customer will suppress its own processes (and procure that its Representatives suppress their processes) for such submission and termination.

- (b) After the Acceptance Time, any CDS Contract may only be terminated (other than in accordance with its terms), rescinded or cancelled by the Clearing House:
  - (i) pursuant to Rule 104, Rule 209, Rule 404, Rule 406 or Part 9 of the Rules;
  - (ii) if the Clearing House is presented with an agreement in writing to terminate between a CDS Buyer and CDS Seller with equally offsetting positions in the same Set and the

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**2 April 2019**

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to-Market Interest is payable by Clearing Members and the Clearing House as set out in the FX Procedures.

Payments in respect of interest will be made to Clearing Members in respect of cash, assets and securities held by the Clearing House as Margin, Guaranty Fund Contributions or Permitted Cover. The rate of return may vary for different cash and asset classes and between types of cover. IDR and accumulated interest over each month will be available to Clearing Members through the ECS-GUI.

Interest will be calculated on a simple daily basis and will become available for payment to Clearing Members, subject to any required deduction or withholding tax, monthly, on the fourth Business Day after the end of each month. Once credited, the interest is available to meet Margin payments or may be withdrawn by Clearing Members. If used to meet Margin payments, the interest then itself becomes eligible to accrue interest.

(v) *Income (interest and collateral) and Redemption*

The Clearing House will make payment to Clearing Members in respect of income and redemptions on non-cash assets transferred to the Clearing House as Margin, Guaranty Fund Contributions or Permitted Cover. Distributions will be executed direct to the Clearing Member by the relevant custodian pursuant to a standing instruction made by the Clearing House based on account information provided by the Clearing Member. Clearing Members are required to provide account details in relation to accounts in all applicable currencies to the Clearing House. Changes in account details must be notified at least five Business Days in advance.

Payments in respect of income on non-cash assets will be paid to Clearing Members in the same currency as the income is distributed by the relevant issuer or payment agent to the Clearing House or the relevant Custodian. Any required foreign exchange transaction following payment must be arranged by the Clearing Member and the costs of the same must be met by the Clearing Member. No currency exchange will be arranged by the Clearing House or its custodian.

If there is a failed payment in respect of income or redemption (e.g. as a result of account details being unavailable or incorrect), income may be retained by the Clearing House or custodian but will not be treated by the Clearing House as Permitted Cover. The Clearing House makes no representation or warranty to Clearing Members in respect of the promptness of payment by any issuer or payment agent, the custodian or any of its sub-custodians or agents (save for any liability which by law may not be excluded).

(vi) *Fees and rebates*

All Market fees, Clearing House fees, delivery fees and other fees payable to the Clearing House or a Market will be calculated and charged to each Clearing Member as such fees accrue (typically on a monthly basis).

Rebates, fee discounts and incentive program payments which have been directed by the payee or beneficiary to be paid to the account of a Clearing Member will be calculated and credited to the relevant account of the Clearing Member as such rebates, fee discounts and incentive program payments accrue (typically on a monthly basis) and may include payments for which the payer is a Market, payments for which the payer is the Clearing House or both.

Clearing House. The Clearing House will operate separate custody accounts in respect of each Clearing Member or Sponsored Principal, one custody account in respect of and linked to each of its Accounts (save for Margin-flow Co-mingled Accounts, where only one custody account will be available) and, in the case of Clearing Members, one account each in respect of its F&O Guaranty Fund Contributions, CDS Guaranty Fund Contributions and FX Guaranty Fund Contributions. ~~In addition, Non-cash Permitted Cover will be held in accounts of the Clearing House will operate up to three custody accounts in respect of each Proprietary Account of each Clearing Member: one for F&O, one for CDS and one for FX. Such accounts are labelled by the custodian with the name of the relevant Clearing Member, for administrative convenience only in the case of accounts that are not Pledged Collateral Accounts. Client accounts will not be maintained for Clearing Members undertaking only Proprietary Account business. This structure is at a Custodian, central securities depository (“CSD”) or international central securities depository (“ICSD”), which accounts are in the name of the Clearing House, as permitted under regulatory technical standards under EMIR. Such accounts may be managed by a third party agent. Returns, coupons, redemption amounts, dividends and any other accruals as arise from time to time in respect of any class of Permitted Cover will themselves be credited to the relevant Nominated Bank Account of the Clearing Member concerned. The arrangements are~~ intended to facilitate tax reporting and ~~avoids~~avoid any unnecessary withholding of tax at source. Returns on Permitted Cover held in a Guaranty Fund Contribution custody account will be for the credit of the relevant Proprietary Account.

- 7.3 In the event that a Clearing Member wishes to lodge U.S. Government securities as Permitted Cover, Clearing Members are required to complete and return a Form W-8BEN “Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding” (non-U.S. entities) or a Form W-9 “Request for Taxpayer Identification Number and Certification” (U.S. entities). In the event that a Sponsored Principal or Sponsor wishes to lodge U.S. Government securities as Permitted Cover, the Sponsored Principal is required to complete and return a Form W-8BEN “Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding” (non-U.S. entities) or a Form W-9 “Request for Taxpayer Identification Number and Certification” (U.S. entities) specifying the name and details of the Sponsored Principal. Clearing Members, Sponsors and Sponsored Principals must inform the Clearing House of any changes in relevant tax status or the information provided in any such form. Late provision of information may result in unnecessary tax withholdings, deductions, penalties or costs. The Clearing House shall not be liable to Clearing Members, Sponsors or Sponsored Principals for any such withholdings, deductions, penalties or costs, save as provided otherwise pursuant to the CDS