

(VIII) CDS PROCEDURES

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~~3 January~~ [1 October](#) 2018

- (b) the Business Day after the Business Day on which the relevant index publisher provides a new version of the relevant index.
- 1.21 The term "**Change in Tax Law**" means (other than for the purpose of paragraph 8.2(a)(ii)(C)) the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant CDS Contract.
- 1.22 The term "**Consent**" in paragraph 8.2 means any consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.
- 1.23 The term "**Contractual Currency**" has the meaning set out in paragraph 8.2.
- 1.24 The term "**Daily Aggregate MTM Interest Amount**" means, for any CDS Clearing Member or Sponsored Principal for each currency on any day, the sum of the Mark-to-Market Interest on all Mark-to-Market Margin Balances in such currency for that day in respect of that CDS Clearing Member or Sponsored Principal. The Daily Aggregate MTM Interest Amount will be determined separately in respect of each Account. Where the Daily Aggregate MTM Interest Amount is positive, it will be owed by the Clearing House to the relevant CDS Clearing Member or Sponsored Principal; where it is negative, the relevant CDS Clearing Member or Sponsored Principal will owe the absolute value of the Daily Aggregate MTM Interest Amount to the Clearing House.
- 1.25 The term "**DC Restructuring Announcement Date**" means the date on which the DC Credit Event Announcement of a Relevant Restructuring Credit Event is made, provided that where such DC Credit Event Announcement is made after 6.30 p.m. on a Business Day or on a day which is not a Business Day, the DC Restructuring Announcement Date (only) will, for the purposes of the Rules, be the first following Business Day.
- 1.26 The term "**DC Rules**" means, in relation to a 2003-type CDS Contract, the Credit Derivatives Determinations Committees Rules, as defined as the "Rules" in Section 1.22 of the 2003 Credit Derivatives Definitions. For the avoidance of doubt, the term "Rules" as defined in the Rules shall not replace, or otherwise affect the interpretation of, the term "Rules" in the 2003 Credit Derivatives Definitions.
- 1.27 The term "**DC Secretary**" means ISDA or such other secretary of the Credit Derivatives Determinations Committees as may be appointed from time to time under the Credit Derivatives Determinations Committees Rules to carry out the functions required thereunder.
- 1.28 ~~1.27~~ The term "**DTCC**" means The Depository Trust and Clearing Corporation or any successor thereto.
- 1.29 ~~1.28~~ The term "**DTCC Accounts**" means the accounts in Deriv/SERV for the recording of transaction data in relation to CDS Contracts.
- 1.30 ~~1.29~~ The term "**DTCC Failure**" means any circumstances in which DTCC is unable to process all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option, if any, relating to a particular Relevant Restructuring Credit Event in the DTCC Accounts in a timely manner, where such failure affects all or substantially:
- (i) all Matched CDS Buyers and Matched CDS Sellers; or
 - (ii) the Clearing House.

- [1.31](#) ~~1.30~~ The term "**DTCC Process**" means the process (if any) provided or to be provided by DTCC permitting the Clearing House alone to input to Deriv/SERV all relevant information in relation to a CDS Contract and any related Customer-CM CDS Transaction in order to establish, match and make "certain" the record of such CDS Contract and Customer-CM CDS Transaction in the relevant DTCC Account(s).
- [1.32](#) ~~1.31~~ The term "**DTCC Reversioning Date**" means the date on which the Clearing House notifies Matched CDS Buyers and Matched CDS Sellers that it has completed the reversioning process and updated records in Deriv/SERV in respect of all Old Index CDS transactions to record them as excluding the Component Transaction relating to a Reference Entity in respect of which a Relevant Restructuring Credit Event has occurred.
- [1.33](#) ~~1.32~~ The term "**Electronic Notice**" is a kind of MP Notice and means a Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered pursuant to the Electronic Notice Process.
- [1.34](#) ~~1.33~~ The term "**Electronic Notice Process**" means the process for the delivery and receipt of Restructuring Credit Event Notices and Notices to Exercise Movement Option pursuant to paragraphs 6.3(f)(i) and 6.3(f)(ii).
- [1.35](#) ~~1.34~~ The term "**Excess Net Capital**" (i) in respect of a CDS Clearing Member or applicant that is or would become an FCM/BD Clearing Member shall equal its "excess net capital" as reported on its Form 1-FR-FCM or FOCUS report or as otherwise reported to the CFTC under CFTC Rule 1.12 or (ii) in respect of any other CDS Clearing Member or applicant that is or would become a US CDS Clearing Member, the amount, if any, by which its Capital (determined as set forth in paragraph 2.2(a)) exceeds the capital requirement that would be applicable to it if it were an FCM/BD, as determined pursuant to a methodology acceptable to the Clearing House.
- [1.36](#) ~~1.35~~ The term "**iTraxx Contract**" has the meaning set out in paragraph 9.
- [1.37](#) ~~1.36~~ The term "**Manual MP Notice**" is a kind of MP Notice and means any notice delivered pursuant to the terms of a CDS Contract under the Manual Notice Process.
- [1.38](#) ~~1.37~~ The term "**Manual Notifier**" has the meaning set out in paragraph 6.3(f)(v)(A).
- [1.39](#) ~~1.38~~ The term "**Manual Notice Process**" means the process for the delivery, receipt and copying to the Clearing House of notices pursuant to paragraph 6.3(g).
- [1.40](#) ~~1.39~~ The term "**Mark-to-Market Interest**" means interest calculated daily in accordance with the market convention for the relevant currency by applying the applicable overnight rate referred to in paragraph 3.1 to the Mark-to-Market Margin Balance for the relevant period.
- [1.41](#) ~~1.40~~ The term "**Mark-to-Market Margin Balance**", in respect of CDS Contract(s) and an Account on any day, means the sum of all Mark-to-Market Margin delivered up to but excluding that day by the relevant CDS Clearing Member or Sponsored Principal in respect of such CDS Contract(s) to the Clearing House less all Mark-to-Market Margin delivered up to but excluding that day by the Clearing House in respect of such CDS Contract(s) to such CDS Clearing Member or Sponsored Principal, as determined at the close of business on such day.
- [1.42](#) ~~1.41~~ The term "**MCA/STS Changeover Time**" means midnight on 29 November 2010.
- [1.43](#) ~~1.42~~ The term "**NEMO Triggering Period**" means:

- (a) in relation to any 2003-type CDS Contracts of a Set in respect of which a Restructuring Credit Event has occurred and for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, the period starting as follows:
 - (i) where, in relation to the related CEN Triggering Period, a Restructuring Credit Event Notice was given pursuant to the Manual Notice Process at a time before the "Notify" function to be provided by Deriv/SERV has been made generally available to CDS Clearing Members, at 9 a.m. on the day falling one Business Day prior to the relevant Movement Option Cut-off Date for the Set of CDS Contracts; and
 - (ii) otherwise at 9 a.m. on the Business Day immediately following the Exercise Cut-off Date applicable to the Buyer in relation to the related CEN Triggering Period,

and ending on the Movement Option Cut-off Date; and
- (b) in relation to any 2014-type CDS Contracts of a Set in respect of which an M(M)R Restructuring has occurred, the period starting at the close of business on the Exercise Cut-off Date and ending on the Movement Option Cut-off Date.

1.44 ~~1.43~~ The term "**New Trade**", in respect of a CDS Contract, has the meaning set out in the applicable Contract Terms.

1.45 ~~1.44~~ The term "**Notification Cut-Off Time**" means

- (a)
 - (i) with respect to delivery of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, 5:00 p.m. on the Exercise Cut-off Date applicable to the Buyer;
 - (ii) with respect to raising a dispute in respect of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, the later of:
 - (A) one hour after the Clearing House notifies the Matched CDS Buyers and Matched CDS Sellers of the Restructuring Credit Event Notices they have served or had served on them; or
 - (B) 7:00 p.m. on the Exercise Cut-off Date applicable to the Matched CDS Buyer;
- (b)
 - (i) with respect to delivery of a Notice to Exercise Movement Option, 5:00 p.m. on the Movement Option Cut-off Date;
 - (ii) with respect to raising a dispute in respect of a Notice to Exercise Movement Option, the later of:
 - (A) one hour after the Clearing House notifies the Matched CDS Buyers and Matched CDS Sellers of the Notices to Exercise Movement Option they have served or had served on them; or

- (B) 7:00 p.m. on the Movement Option Cut-off Date; and
- (c) with respect to delivery of a Notice of Physical Settlement or a NOPS Amendment Notice in relation to a Set of CDS Contracts, 4:30 p.m. on the second Business Day after:
- (i) in relation to a 2003-type CDS Contract, the last date on which a Notice of Physical Settlement or a NOPS Amendment Notice, as applicable, may be served in respect of the Credit Event in question, pursuant to Section 3.2(c) of the 2003 Credit Derivatives Definitions; and
 - (ii) in relation to a 2014-type CDS Contract, the NOPS Cut-off Date.

1.46 ~~1.45~~ The term "**Office**" means a branch or office of a party, which may be such party's head or home office.

1.47 ~~1.46~~ The term "**Old Index CDS**" means a CDS transaction based on an index where an Applicable Credit Event has occurred in relation to a Component Transaction.

1.48 ~~1.47~~ The term "**Original Annex Date**" means:

- (a) in respect of an iTraxx Contract, the first date of publication of the series of the Eligible iTraxx Index referred to in the relevant CDS Trade Particulars submitted for Clearing or, with respect to each iTraxx Contract arising pursuant to Rule 401(a)(vi) or (xi), determined from the data provided by the Clearing House to the Clearing Member or Sponsored Principal, as the case may be, prior to the time at which such CDS Contract arose; and
- (b) in respect of a CDX.NA Contract, the first date of publication of the series of the Eligible CDX.NA Index referred to in the relevant CDS Trade Particulars submitted for Clearing or, with respect to each CDX.NA Contract arising pursuant to Rule 401(a)(vi) or (xi), determined from the data provided by the Clearing House to the Clearing Member or Sponsored Principal, as the case may be, prior to the time at which such CDS Contract arose.

1.49 ~~1.48~~ The term "**Original Notional Amount**", in relation to any CDS Contract, has the meaning given to that term in the Contract Terms.

1.50 ~~1.49~~ The term "**Party**", in paragraph 8.2, means a party to a CDS Contract.

1.51 ~~1.50~~ The term "**Permitted Deliverable Obligation**" means, in respect of a 2003-type CDS Contract, a Deliverable Obligation that satisfies Section 2.32(a) or 2.33(a) of the 2003 Credit Derivatives Definitions, if applicable and, in respect of a 2014-type CDS Contract, a Deliverable Obligation that satisfies Section 3.31(a) or 3.32(a) of the 2014 Credit Derivatives Definitions, if applicable.

1.52 ~~1.51~~ The term "**Protocol Effective Date**" means the first "Amendment Effective Date", as such term is defined in the 2014 CDD Protocol.

1.53 ~~1.52~~ The term "**Protocol Excluded Corporate Reference Entity**" means each Eligible Single Name Reference Entity that is a Standard European Corporate (as specified in the List of Eligible Single Name Reference Entities) and is an Excluded Reference Entity (as defined in the 2014 CDD Protocol).

1.54 ~~1.53~~ The term "**Rate of Exchange**" means the rate of exchange for the purchase of or conversion into the Contractual Currency, including any associated premiums or costs of exchange payable in connection with the same.

1.55 ~~1.54~~ The term "**Relevant CDS Default Committee Period**" has the meaning set out in paragraph 5.3.

1.56 ~~1.55~~ The term "**any Relevant Jurisdiction**" means, with respect to a party, each jurisdiction (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of a CDS Contract is located, (c) in or from which the party submits CDS Trade Particulars to the Clearing House for Clearing and (d) in relation to any payment, from or through which such payment is made.

1.57 ~~1.56~~ The term "**Relevant Restructuring Credit Event**" means, in respect of a 2003-type CDS Contract, any Restructuring and, in respect of a 2014-type CDS Contract, an M(M)R Restructuring.

1.58 ~~1.57~~ The term "**Restructured Entity**" has the meaning set out in paragraph 9.5.

1.59 ~~1.58~~ The term "**Restructuring Credit Event Notice**" means a Credit Event Notice in respect of a Relevant Restructuring Credit Event.

1.60 ~~1.59~~ The term "**Restructuring Matched Pair**" or "**RMP**" means a Matched Pair created pursuant to Rule 1508 in respect of a Relevant Restructuring Credit Event.

1.61 ~~1.60~~ The term "**Revocation Right**" will apply in respect of the submission of CDS Trade Particulars for Clearing:

- (a) if one of the Clearing Members or Sponsored Principals for whose account the submission for Clearing is made is a Defaulter;
- (b) if and to the extent that either CDS Contract which would arise at the Acceptance Time would have been void under Rule 403 (if Rule 403 applied to CDS Contracts in addition to F&O Contracts) or capable of being treated as voidable under Rule 404(a) (if Rule 404(a) applied to CDS Contracts in addition to F&O Contracts and the latter being read for purposes of this definition as if the words "in relation only to F&O Contracts" were not set out in any part of Rule 404(a) and "Energy Clearing Members" were read as "CDS Clearing Members" and including Sponsored Principals) or Rule 404(b); or
- (c) if CDS Trade Particulars submitted by a Clearing Member or Sponsored Principal do not correspond in all material respects with the CDS Trade Particulars submitted by the other Clearing Member or Sponsored Principal.

1.62 ~~1.61~~ The term "**RMP Deadline Time**" means:

- (a) subject to (b) below, 11.59 p.m. on the latest of:
 - (i) the third Business Day following the DC Restructuring Announcement Date;
 - (ii) the second Business Day following the DTCC Reversioning Date, if any or, if earlier, the first Business Day following the CH Reversioning Date, if any; and
 - (iii) the date of publication by ISDA [or DC Secretary](#) of the Final List; or
- (b) with respect to:
 - (i) a Set of 2003-type CDS Contracts for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a

No Auction Announcement Date has been announced pursuant to section 12.12(a) of the 2003 Credit Derivatives Definitions:

- (ii) a Set of 2014-type CDS Contracts for which the relevant Credit Event is an M(M)R Restructuring, if a No Auction Announcement Date has been announced pursuant to section 6.11(a) of the 2014 Credit Derivatives Definitions; or
- (iii) a Set of 2003-type CDS Contracts for which neither "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" nor "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a No Auction Announcement Date has been announced pursuant to section 12.12 of the 2003 Credit Derivatives Definitions, the later of:
 - (A) 11.59 p.m. on the ninth calendar day following the No Auction Announcement Date; and
 - (B) the second Business Day following the DTCC Reversioning Date, if any, or, if earlier, the first Business Day following the CH Reversioning Date, if any.

[1.63](#) ~~1.62~~ The term "**RMP Matched Table**" means the data file, in computer-readable format, containing details of all RMPs, Matched Pairs and MP Amounts and the CDS Contracts and Matched CDS Buyers and Matched CDS Sellers to which they relate and reflecting the RMP Matching Reports, all in relation to the allocation of Matched Pairs pursuant to Rule 1508 following a Relevant Restructuring Credit Event.

[1.64](#) ~~1.63~~ The term "**RMP Matching Report**" means the report given by the Clearing House, as referred to in paragraph 6.3(e), to each Matched CDS Buyer and Matched CDS Seller, respectively, identifying the RMPs and allocations of Matched Pairs and the associated MP Amounts affecting the Open Contract Position of that Matched CDS Buyer and Matched CDS Seller, respectively, which report comprises Matched Pair Notices for purposes of Rule 1508 in respect of each Matched Pair.

[1.65](#) ~~1.64~~ The term "**Scheduled Settlement Date**" means a date on which a payment or delivery is to be made under paragraph 8.2 with respect to a CDS Contract.

[1.66](#) ~~1.65~~ The term "**Short Selling Regulation**" means Regulation (EU) no. 236/2012 of the European Parliament and of the Council dated 14 March 2012 on short selling and certain aspects of credit default swaps.

[1.67](#) ~~1.66~~ The term "**Single Name Contract**" means a CDS Contract having, as the Reference Entity, an Eligible Single Name Reference Entity.

[1.68](#) ~~1.67~~ The term "**Stamp Tax**" means any stamp, registration, documentation or similar tax.

[1.69](#) ~~1.68~~ The term "**Tax**" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under a CDS Contract other than a Stamp Tax.

[1.70](#) ~~1.69~~ The term "**Tax Event**" has the meaning specified in paragraph 8.2(e)(ii).

[1.71](#) ~~1.70~~ The term "**Tax Event Upon Merger**" has the meaning specified in paragraph 8.2(e)(ii).

[1.72](#) ~~1.71~~ The term "**Tier 1**" has the meaning given to that term in Banking Consolidation Directive.

[1.73](#) ~~1.72~~ The term "**Triggering Period**" means the CEN Triggering Period ending on the Exercise Cut-Off Date applicable to a Buyer or NEMO Triggering Period, as applicable.

[1.74](#) ~~1.73~~ The term "**US CDS Clearing Member**" means a CDS Clearing Member or applicant that would become a CDS Clearing Member that is (i) an FCM/BD or (ii) any other Person organised or incorporated under the laws of the United States of America or a state thereof.

[1.75](#) ~~1.74~~ These CDS Procedures are 'Procedures' as defined in the ICE Clear Europe rules (the "**Rules**") and are subject to the Rules, including, without limitation, Rule 102. Capitalised terms used in these CDS Procedures but not defined in this paragraph 1 shall have the meaning given to such terms in the Rules, the relevant CDS Contract (including the Applicable Credit Derivatives Definitions) or elsewhere in these CDS Procedures (in that order of priority in the event of any conflict).

[1.76](#) ~~1.75~~ Subject to paragraph ~~1.77~~[1.78](#) below, these CDS Procedures, and all non-contractual obligations arising out of or in connection with them, are governed by and shall be construed in accordance with English law and any Dispute under these CDS Procedures will be subject to arbitration under Rule 117.

[1.77](#) ~~1.76~~ Solely as between an FCM/BD Clearing Member and the Clearing House, paragraphs 3 and 6.7 of these CDS Procedures inasmuch as they relate solely to an issue or matter concerning:

- (a) the pledging, transfer, holding, use and segregation of Pledged Collateral provided by an FCM/BD Clearing Member (or other property, excluding for the avoidance of doubt the Contracts themselves recorded in such an Account, recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided by an FCM/BD Clearing Member); and/or
- (b) the application of any net sum owed in favour of the FCM/BD Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided,

and, solely to the extent relevant to interpreting the foregoing provisions in such circumstances, relevant definitions and interpretative provisions in paragraph 1 of these CDS Procedures (such provisions, together or separately "Pledged Collateral Matters") shall be governed by and construed in accordance with the laws of the State of New York and, as applicable, the federal law of the United States of America.

[1.78](#) ~~1.77~~ For the avoidance of doubt, paragraph ~~1.76~~[1.77](#) is an exception to paragraph ~~1.75~~[1.76](#) and Rule 102(s) which provide that the CDS Procedures and Rules respectively shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding paragraph ~~1.76~~[1.77](#), the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:

- (a) all of the provisions of these CDS Procedures relating to the Designated System;
- (b) any Dispute or issue arising as between a Non-FCM/BD Clearing Member or Sponsored Principal on the one hand and the Clearing House on the other hand;
- (c) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided;

- (d) any matter relating to Pledged Collateral of a Non-FCM/BD Clearing Member or Sponsored Principal;
- (e) any Pledged Collateral provided by an FCM/BD Clearing Member or Sponsored Principal pursuant to an English law Pledged Collateral Addendum; and
- (f) the Contract Terms of all Contracts.

1.79 ~~1.78~~ Where a dispute between an FCM/BD Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "**New York Courts**"). Consistent with the preceding sentence, the Clearing House and each FCM/BD Clearing Member hereby:

- (a) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
- (b) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.

1.80 ~~1.79~~ All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to paragraph ~~1.78~~1.79 shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM/BD Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction pursuant to paragraph ~~1.78~~1.79 and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to paragraph ~~1.78~~1.79 does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to paragraph ~~1.78~~1.79 heard in the New York Courts.

1.81 ~~1.80~~ Nothing in paragraphs ~~1.75 to 1.81~~1.76 to 1.82 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.

1.82 ~~1.81~~ EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE CDS PROCEDURES OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:

- (a) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH

OTHER PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND

- (b) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN PARAGRAPHS ~~1.75~~1.76 TO ~~1.81~~1.82.

2. ADDITIONAL MEMBERSHIP REQUIREMENTS FOR CDS CLEARING MEMBERS

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

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

- (a) It must have a minimum of \$50 million of Capital, such requirement being satisfied in accordance with Rule 206 and the Finance Procedures (which allow Capital requirements, at the discretion of the Clearing House, to be met by a Controller which has executed a Controller Guarantee). For purposes of the application of this paragraph 2.2(a) to a US CDS Clearing Member that is not an FCM/BD, Capital shall be its net capital as determined pursuant to a risk adjusted capital calculation methodology acceptable to the Clearing House.
- (b) If it is or would be a US CDS Clearing Member, it is regulated for capital adequacy (the "**Regulatory Capital Requirement**") by a competent authority such as the FCA, PRA, CFTC, SEC, Banque de France, Bundesbank, Bundesanstalt für Finanzdienstleistungsaufsicht, Swiss Federal Banking Commission, U.S. Federal Reserve Board, U.S. Office of the Comptroller of the Currency, or any other Regulatory Authority the Clearing House designates from time to time for this purpose, or it is an Affiliate of an entity that satisfies the Regulatory Capital Requirement and is subject to consolidated holding company group supervision.
- (c) A CDS Clearing Member must have executed an agreement concerning Intellectual Property (as referred to in Rule 406(g)) in a form acceptable to the Clearing House.
- (d) A CDS Clearing Member must be a user of Deriv/SERV or such other service as is specified by the Clearing House.
- (e) If any CDS Trade Particulars are submitted for Clearing which relate to a Bilateral CDS Transaction registered at Deriv/SERV in the name of an Affiliate of a CDS Clearing Member, the CDS Clearing Member must have provided an executed authority, in a form acceptable to the Clearing House, from the relevant Affiliate, pursuant to which the Clearing House is authorised to terminate the records in Deriv/SERV in respect of Bilateral CDS Transactions to which the Affiliate is party.
- (f) A CDS Clearing Member must be a member of, or have access to, at least one physical settlement system, other than any settlement system only required for Asset Package Delivery, that is customary for the settlement of all potentially applicable Deliverable Obligations under all CDS Contracts of all Sets which it is authorised to enter into, where such a physical settlement system exists.

2.3 In the case of a US CDS Clearing Member, if at any time and for so long as it has a required contribution to the CDS Guaranty Fund that exceeds 25% of its Excess Net Capital, the Clearing House

- (c) Any Matched CDS Seller proposing to refuse to accept Delivery as referred to in paragraph 6.5(b) must give notice forthwith to the Clearing House and to the Matched CDS Buyer in the relevant Matched Pair, specifying the Matched CDS Contracts to which the refusal relates. Delivery of such notice by the Matched CDS Buyer to the Matched CDS Seller shall constitute notice from the Clearing House to the Matched CDS Buyer of the Clearing House's refusal to accept Delivery of the relevant obligation.
- (d) As they relate to an obligation for which a challenge has been presented (as referred to in paragraph 6.5(a)) as to whether the obligation is (i) a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation under the terms of a CDS Contract, unless the obligation is listed and remains listed as a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation in the Final List of Deliverable Obligations or (ii) as applicable, a Permitted Deliverable Obligation which is applicable to that CDS Contract as of the applicable Delivery Date for such Deliverable Obligation or, as applicable, Permitted Deliverable Obligation, time periods and related rights and remedies relating to settlement, for example, under Sections 9.9 and 9.10 of the 2003 Credit Derivatives Definitions or Sections 9.7 and 9.8 of the 2014 Credit Derivatives Definitions and any applicable cap on settlement, shall be suspended for the period commencing on the date the challenge is first presented until the date of the relevant actual decision to Resolve (which shall be the date on which such decision is announced and determined without regard to any time of effectiveness specified in a "Presented Position", as defined in the DC Rules) or, if later, the date on which ISDA [or DC Secretary](#) publicly announces the resolution of the relevant Credit Derivatives Determinations Committee as to whether or not such obligation is a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation under the terms of a physically settled CDS Contract.
- (e) This provision does not prevent a party from exercising any of its rights under Rule 117.

6.6 Physical Settlement Costs

- (a) Any payments required in relation to any costs or expenses of settlement of a Matched CDS Contract in accordance with the Fallback Settlement Method (other than the expenses referred to in paragraph 6.4) shall be made in the following manner:
 - (i) where, but for this paragraph 6.6(a), any such payment would fall to be made by the Clearing House to the Matched CDS Buyer or Matched CDS Seller, as though the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair to whom payment would not be due from the Clearing House) were designated by the Clearing House to make such payment on its behalf;
 - (ii) where, but for this paragraph 6.6(a), any such payment would fall to be made to the Clearing House by the Matched CDS Buyer or Matched CDS Seller, as though the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair from whom payment would be due to the Clearing House) were designated by the Clearing House to receive such payment on its behalf;
 - (iii) where a Matched CDS Seller or Matched CDS Buyer is designated to make payment pursuant to Rule 1509 and this paragraph 6.6(a) and makes a relevant payment direct to the other party in the Matched Pair, the party that made payment shall not be entitled to any reimbursement from the Clearing House in respect of the payment