

# **ICE Clear Europe<sup>sm</sup>**

## **Clearing Rules**

~~12 December 2022~~ [\[●\]](#)

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Exhibit 1: Customer-CM CDS Transaction Standard Terms

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## ***Part 1 – General Provisions***

Contracts only) the relevant Market Rules; (iii) (except in relation to F&O Contracts which are settled only in cash) if such F&O Contract becomes deliverable or is a Contract of Sale, the relevant Delivery Procedures for the class of F&O Contract, the specified terms set out in the Contract Terms Procedures, as applicable; and (iv) for CDS Contracts, the terms specified pursuant to Rule 1502; and (v) for FX Contracts, the general conditions set out in the Rules and Procedures.

The term "**Control**" means the rights and powers exercised over a Person by a Controller and its cognate terms shall be construed accordingly.

The term "**Controller**" has the meaning given to that term in section 422 of the FSMA.

The term "**Controller Guarantee**" means a guarantee given by a Controller of a Clearing Member under Rule 201(a)(viii).

The term "**Credit Support Document**" means any guarantee or letter of credit or other security interest issued or granted to or for the benefit of the Clearing House that guarantees, covers or secures the Clearing Member's or a Sponsored Principal's obligations under any Contract, but excluding any Pledged Collateral Addendum.

The term "**Credit Support Provider**" means, in respect of a Clearing Member or Sponsored Principal, each provider of a Credit Support Document in relation to that Clearing Member.

The term "**Custodial Assets**" means any cash, deposit, holding, custody, interest, commodity, security, asset, right, investment(s) or re-investment(s), in any currency or being property of any kind, by or of the Clearing House (or any person acting for it or holding assets of the Clearing House or on account of the Clearing House) being or representing Original/Initial Margin, Variation Margin, Guaranty Fund Contributions or Permitted Cover (including any such assets transferred by a Defaulter) or the proceeds of any of the foregoing, Deliverables or settlement amounts.

The term "**Custodial Loss Amount**" means an amount *LAm* as certified by the Clearing House pursuant to Rule 919(c) pursuant to the calculation set forth in Rule 919(d), following a Custodial Loss or Losses (after application of the Custodial Loss Assets pursuant to Rule 919(b)).

The term "**Custodial Losses**" means any losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House (to the extent that the same are not subjected to any power of assessment under Rule 909 or any mechanism which has the effect of reducing the same pursuant to Rules 914 to 916) with respect to Custodial Assets, including from declines in the value thereof, arising as a result of or in connection with: (i) a default, Insolvency, failure or similar event with respect to any Custodian or Delivery Facility, system failure or force majeure event with respect to any Custodian or Delivery Facility, breach of any terms or contract by any Custodian or Delivery Facility or pursuant to any loss allocation or contribution provisions or liability of the Clearing House under the applicable rules, terms and conditions or other contractual provisions of any Custodian or Delivery Facility; or (ii) an embezzlement, defalcation, theft, system intrusion, cyber attack or any event similar to any of the foregoing with

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respect to Custodial Assets by any Person (other than the Clearing House or its directors, officers or employees), but excluding any Pledged Collateral Losses or Title Transfer Collateral Losses.

The term "**Custodial Loss Assets**" means assets of the Clearing House of a value specified pursuant to Rule 919(p) which are intended to be applied towards Custodial Losses or Non-Default Losses pursuant to Rule 919(b).

The term "**Custodian**" means any bank, custodian, sub-custodian, registry, nominee, agent, depository or settlement system, including any Approved Financial Institution, Concentration Bank, Intermediary Financial Institution, Investment Agent Bank, System Bank or TARGET2 Concentration Bank.

The term "**Customer**" means a Person who is a client or customer of a Clearing Member (which Customer may, subject to Applicable Law, be acting for one or more other clients or customers for purposes of the clearing of Contracts). In respect of a Sponsor, the term includes each of its Sponsored Principals.

The term "**Customer Account**" means any one customer account at the Clearing House of the various different Customer Account Categories and comprises in the case of each Customer Account the related Customer Position Account and Customer Margin Account.

The term "**Customer Account Category**" means:

- (i) in relation to an FCM/BD Clearing Member, any of the following categories of Customer Account of such FCM/BD Clearing Member:
  - (A) each different DCM Customer Account;
  - (B) each different Non-DCM/Swap Customer Account;
  - (C) each different Swap Customer Account;
  - (D) each different General Customer Account; and
  - (E) each different SBS Customer Account; and
- (ii) in relation to a Non-FCM/BD Clearing Member, any of the following categories of Customer Account of such Non-FCM/BD Clearing Member:
  - (A) each different Segregated Customer Omnibus Account For F&O;
  - (B) each different Segregated TTfCA Customer Omnibus Account For F&O;
  - (C) each different Segregated Customer Omnibus Account For CDS;
  - (D) each different Segregated TTfCA Customer Omnibus Account For CDS;
  - (E) each different Segregated Customer Omnibus Account For FX;

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The term "**Investment Loss Amount**" means an amount *LAm* as certified by the Clearing House pursuant to Rule 919(c) pursuant to the calculation set forth in Rule 919(d), following an Investment Loss or Losses (after application of the Investment Loss Assets pursuant to Rule 919(b)).

The term "**Investment Loss Assets**" means assets of the Clearing House of a value specified pursuant to Rule 919(p) which are intended to be applied towards Investment Losses or Non-Default Losses pursuant to Rule 919(b).

The term "**Investment Losses**" means any losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House, ~~–~~ (to the extent that the same are not subjected to any power of assessment under Rule 909 or any mechanism ~~under which has the effect of reducing the same pursuant to~~ Rules 914 to 916), arising in connection with the default of the issuer of any instrument and/or the counterparty to any repurchase or reverse repurchase contract or similar transaction in respect of any investment(s) or re-investment(s) by the Clearing House of assets being or representing Original/Initial Margin, Variation Margin, Guaranty Fund Contributions ~~or~~, Permitted Cover ~~in respect thereof~~ for settlement amounts (including any such assets transferred by a Defaulter) or the proceeds of any of the foregoing, ~~other than any such.~~ Notwithstanding the foregoing, the following are excluded from this definition: (i) Custodial Losses; (ii) Pledged Collateral Losses; (iii) Title Transfer Collateral Losses; and (iv) any losses, liabilities, damages, costs, claims, shortfalls or expenses resulting directly from a failure by the Clearing House to comply with its own investment policies. ~~For the avoidance of doubt, "Investment Losses" shall not include losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House as a result of a Custodian default.~~

The term "**Invoice Back**" means the process by which an offsetting Contract of the same Set as an existing Contract is created by the Clearing House pursuant to Rule 104(a)(i) or Rule 104(b) and Rule 401(a)(vi), with the role of Buying Counterparty or Selling Counterparty reversed and, at the Clearing House's discretion, a different price or premium and other terms as are determined by the Clearing House pursuant to Rule 104 or an existing Contract is terminated by the Clearing House pursuant to Rule 104(a)(i) or Rule 104(b) at a termination price and other terms as are determined by the Clearing House pursuant to Rule 104; and the terms "**Invoiced Back**", "**Invoicing Back**" and other similar expressions shall be construed accordingly.

The term "**LCIA**" means the London Court of International Arbitration or any successor thereto.

The term "**LCIA Rules**" means the arbitration rules of the LCIA.

The term "**Long**", in respect of an Option, refers to the positions of Persons entitled to exercise Options.

The term "**Loss Assets**" means ~~assets of the Clearing House of a value specified pursuant to Rule 919(p) which are intended to be applied towards Non-Default Losses or Investment Losses pursuant to Rule 919~~ Investment Loss Assets and Custodial Loss Assets.

The term "**Margin**" means Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or Sponsored Principal Clearing Agreement or by way of pledge pursuant to a Pledged Collateral Addendum) to the Clearing

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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 will include without limitation any such transaction or Contract that is an ICE Endex Transaction, an ICE Endex Contract, an ICE Futures Europe Transaction, an ICE Futures Europe Contract, an IFAD Transaction, an IFAD Contract, a Financials & Softs Transaction and a Financials & Softs Contract.

The term "**Non-DCM/Swap Customer**", in respect of an FCM/BD Clearing Member, means a Customer with respect to a transaction or Contract that is a Non-DCM/Swap and which Customer is required by Applicable Laws to be treated as a Non-DCM/Swap Customer. A Person may be a Non-DCM/Swap Customer in relation to certain transactions or Contracts and another category of FCM/BD Customer in relation to other transactions or Contracts.

The term "**Non-DCM/Swap Customer Account**", in respect of an FCM/BD Clearing Member, means a kind of Customer Account with the Clearing House that is not a DCM Customer Account, Swap Customer Account or SBS Customer Account in relation to which the FCM/BD Clearing Member: (i) acts in its capacity as a clearing member in relation to Non-DCM/Swaps (other than Permitted Co-mingled Contracts) connected with the provision of services to Non-DCM/Swap Customers; and (ii) enters into market contracts in the capacity of a clearing member in relation only to transactions connected with the provision of services to Non-DCM/Swap Customers.

The term "**Non-Default Losses**" means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House, that are ~~not~~neither Pledged Collateral Losses, Title Transfer Collateral Losses, Custodial Losses, Investment Losses, nor losses that are included in the calculation of the ICE Deposit Rate notified to Clearing Members pursuant to the Finance Procedures arising in connection with any event other than an Event of Default ~~and which threaten the Clearing House's solvency.~~

The term "**Non-FCM/BD CDS Clearing Member**" means any CDS Clearing Member that is not an FCM/BD Clearing Member.

The term "**Non-FCM/BD Clearing Member**" means any Clearing Member that is not an FCM/BD Clearing Member.

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Sponsored Principal Clearing Agreement or by way of pledge pursuant to a Pledged Collateral Addendum) to the Clearing House as collateral for the obligations of a Clearing Member or Sponsored Principal related to the risk and size of such Clearing Member's or Sponsored Principal's obligations relating to physical settlement of a CDS Contract, as determined pursuant to Rule 503(f)(i) and the Finance Procedures and as calculated or permitted to be called in accordance with the risk policies of the Clearing House from time to time, including the proceeds of realisation of the same.

The term "**Pledged Collateral**" means Margin (or Permitted Cover in respect thereof) provided by a Clearing Member or Sponsored Principal in respect of a Pledged Collateral Account by way of pledge pursuant to a Pledged Collateral Addendum and any proceeds of realisation of the same.

The term "**Pledged Collateral Account**" means a Proprietary Account or Customer Account (or any sub-account of such an account) in respect of which the Clearing House has designated (including by way of Rule 1603(c) or Circular) that some or all Margin (or Permitted Cover in respect thereof) is to be provided by a Clearing Member or Sponsored Principal by way of security interest in accordance with a Pledged Collateral Addendum rather than by way of title transfer pursuant to the Clearing Membership Agreement or Sponsored Principal Clearing Agreement.

The term "**Pledged Collateral Addendum**" means a pledged collateral addendum to a Clearing Membership Agreement or Sponsored Principal Clearing Agreement entered into between a Clearing Member or Sponsored Principal and the Clearing House and shall, for an FCM/BD Clearing Member, Non FCM/BD Clearing Member, Sponsored Principal and/or particular Account, refer to the relevant form of pledged collateral addendum for such Clearing Member, Sponsored Principal or Account as specified by the Clearing House from time to time.

The term "**Pledged Collateral Losses**" means any losses, liabilities, damages, costs, claims, shortfalls or expenses arising out of or relating to the holding of any Pledged Collateral or the assets in any Pledged Collateral Account.

The term "**Porting Notice**" has the meaning set out in the relevant Standard Terms.

The term "**Position Account**" means a Proprietary Position Account or Customer Position Account.

The term "**Position Holder**" has the meaning set out in Rule 407.

The term "**Position Limit**", of any Clearing Member or Sponsored Principal or in respect of any Account, means the limit(s) on Open Contract Positions established by the Clearing House pursuant to Rule 601.

The term "**Potential Event of Default**" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

The term "**PRA**" means the UK's Prudential Regulatory Authority or any successor thereto.



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The term "**Termination Close-Out Deadline Date**" means: (i) in respect of termination of clearing membership or status as a Sponsored Principal either generally or in respect of a particular Membership Category under Rule 209(a)(ii) to (iv) or Rule 209(c), the date falling 30 Business Days after the Termination Notice Time; (ii) in respect of a termination of clearing membership or status as a Sponsored Principal in respect of a particular Membership Category under Rule 917(c) or Rule 918, the date falling 20+x Business Days after the relevant Termination Notice Time where x= the total number of unexpired Business Days in the Cooling-Off Termination Period; (iii) notwithstanding (i) and (ii), in any case, such later date as the Clearing House may at its discretion permit and notify in writing to the affected Clearing Member or Sponsored Principal; or (iv) in respect of termination of clearing membership or status as a Sponsored Principal following an Event of Default under Rule 209(a)(i), is inapplicable.

The term "**Termination Close-Out Time**" means: (i) in respect of termination of clearing membership or status as a Sponsored Principal generally (other than following an Event of Default under Rule 209(a)(i)), the time at which a Clearing Member or Sponsored Principal ceases to be party to any open Contracts with the Clearing House; (ii) in respect of termination of clearing membership or status as a Sponsored Principal in respect of a particular Membership Category, the time at which a Clearing Member or Sponsored Principal ceases to be party to any open Contracts of the relevant Membership Category with the Clearing House; or (iii) in respect of termination of clearing membership or status as a Sponsored Principal generally following an Event of Default under Rule 209(a)(i), is inapplicable.

The term "**Termination Date**" means: (A) in respect of termination of clearing membership or status as a Sponsored Principal either generally or in respect of a particular Membership Category (other than following an Event of Default under Rule 209(a)(i)), the later of: (i) where applicable, the Termination Close-Out Deadline Date; and (ii) the date of the Termination Close-Out Time; or (B) in respect of termination of clearing membership or status as a Sponsored Principal generally following an Event of Default under Rule 209(a)(i), the date on which default proceedings are completed or such other date as is specified by the Clearing House in writing.

The term "**Termination Notice**" means a notice served by a Clearing Member of termination of its membership or of its membership of a particular Membership Category or by a Sponsored Principal of termination of its status as such in respect of a particular Membership Category under Rule 209(c)(i)(A) or Rule 917(c).

The term "**Termination Notice Time**" means the time of service by a Clearing Member or Sponsored Principal of a Termination Notice.

The term "**Title Transfer Collateral Loss**" means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered in connection with a reduction in value or change in exchange rates of Original/Initial Margin, Guaranty Fund Contributions or Permitted Cover, which have been transferred to the Clearing House other than by way of Pledged Collateral, where the Clearing House does not invest or reinvest the assets, for example instead holding the same class of asset (as that transferred to it) with a Custodian.

### **Part 3 – Financial Requirements and Payments**

(in its capacity as an Approved Financial Institution or Concentration Bank) in respect of the Business Day in question.

Nothing in this Rule 301(f) shall restrict or prevent the Clearing House or any Clearing Member from making any claim against an Approved Financial Institution which has failed to make a payment referred to under this Rule 301(f). In particular: (I) the Clearing House shall not be deemed to have had any loss, liability or shortfall made good or whole vis-à-vis an Approved Financial Institution by virtue of any further payment by a Clearing Member in addition to an attempted payment not credited to its account as a result of this Rule 301(f); and (II) an Approved Financial Institution which has failed to make any payment referred to in this Rule 301(f) shall remain fully liable to the Clearing House or relevant Clearing Member for any such failed payment or account balance notwithstanding a reimbursement or additional payment as between a Clearing Member and the Clearing House. In the event that:

- (x) a payment is received into a Clearing House Account at an Approved Financial Institution but the requirements of Rule 301(f)(ii) or Rule 301(f)(iii) are not satisfied;
- (y) an affected Clearing Member has satisfied its payment obligations through an additional payment which complies with the requirements of this Rule 301(f); and
- (z) the Clearing House makes a recovery or irrevocably receives any part or full payment from the Approved Financial Institution into one of its accounts at a Concentration Bank (which Concentration Bank is not subject to an Insolvency),

then to the extent such assets are received by and remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, the Clearing House will make payment to affected Clearing Members in respect of the recovery or receipt actually made by the Clearing House, net of the Clearing House's costs and expenses, *pro rata* in proportion to the amounts of the original missed payments of each affected Clearing Member.

No Clearing Member shall be declared subject to an Event of Default as a result of failing to make any payment due to the operation of either Rule 301(f)(ii) or Rule 301(f)(iii), unless and until the Clearing House has notified the Clearing Member of the failed payment in question and requested that the payment be made using alternative means and the Clearing Member has defaulted in making the latter payment (other than solely due to the operation of either Rule 301(f)(ii) or Rule 301(f)(iii)). Where the concentration function of an Approved Financial Institution that is not subject to an Insolvency is adversely affected by a non-payment (including by reason of an Event of Default, dispute or operational failure) of a particular Clearing Member, and the Clearing House is notified of such non-payment and the Clearing Member concerned, the Clearing House will re-issue new payment instructions for concentration payments excluding the non-payment of the relevant Clearing Member prior to requesting or requiring other

## Part 5 – Margin

- (i) Any Pledged Collateral recorded in a Pledged Collateral Account is transferred to the Clearing House as contingent cover for Margin on the basis that it may only be applied by the Clearing House in accordance with the terms of the Pledged Collateral Addendum: (i)(A) following an Event of Default pursuant to Rule 905 and Rule 906 as cover for Margin against a liability of the Clearing Member relating to the relevant Account of the Pledged Collateral Account (provided that the value of any Pledged Collateral returned directly to a Clearing Member or any Person on such Clearing Member's behalf will be excluded from the calculation of any relevant net sum); and (B) only to the extent that such applied amount is required to be included in the net sum calculation to ensure that the net sum for the relevant Account of the Pledged Collateral Account would not represent an amount payable by the Defaulter to the Clearing House; or (ii) pursuant to the Default Portability Rules. In any such circumstances, it will be applied by virtue of amounts representing the proceeds of Pledged Collateral being included in amount *M* of the relevant net sum pursuant to Rule 906(a). Any Pledged Collateral not applied in accordance with this provision and which is not transferred to a Transferee Clearing Member in accordance with Part 9 of the Rules shall be returned to the relevant Clearing Member or other payee as permitted under Part 9 of the Rules, as a result of such Clearing Member's, or other payee's entitlements to such Pledged Collateral and not as part of the net sum process arising pursuant to Part 9 of the Rules. Any such return by the Clearing House of Pledged Collateral outside of the net sum calculation shall discharge and satisfy in full the Clearing House's obligations to return such Pledged Collateral to the Clearing Member by the payee and all of their Customers and no Person shall have any further claim against the Clearing House in respect of such Pledged Collateral. To the extent any Pledged Collateral is, or is required under Applicable Law to be, returned to a Defaulter, it shall be returned separately from any net sum certified by the Clearing House pursuant to Rule 906.
- (j) ~~Without limiting Rule 111, but subject to any contrary requirements of law: the Clearing House shall not be liable to any Clearing Member's Customer or other Person for any losses, liabilities, damages, costs, claims, shortfalls or expenses arising out of or relating to the holding of any Pledged Collateral or the assets in any Pledged Collateral Account ("Custodial Losses"), except to the extent such Custodial Losses result from the gross negligence or wilful misconduct of the Clearing House. The Clearing House shall have no responsibility for any investment decisions made or directed by a Clearing Member (or any Representative thereof) with respect to assets representing Pledged Collateral or for the results of any such investments.~~ The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any requests, instructions or directions with respect to Pledged Collateral or the assets in any Pledged Collateral Account under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate Clearing Member.
- (k) Changes to the matters described in Rules 502(d) and (e) above, including assets eligible as Margin or Permitted Cover and the haircuts established with respect thereto, will be based on an analysis of appropriate factors as determined by the Clearing House, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spreads and correlations between relevant assets, liquidity in the trading market for those assets, composition of the relevant market,

**Part 9 – Default Rules**

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

- (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by and remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss as a result of the Event of Default (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(b), subject to Rule 1102(k));
  - (iv) fourth (subject to Rule 908(i)):
    - (A) F&O Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus F&O Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
    - (B) the Clearing House F&O GF Contribution,  
  
on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all F&O Guaranty Fund Contributions (excluding F&O Guaranty Fund Contributions of the Defaulter and F&O Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House F&O GF Contribution at the time of the Event of Default; and
  - (v) fifth (subject to Rule 908(i)), F&O Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (c) In the case of a Defaulter that was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS (but neither an F&O Clearing Member nor an FX Clearing Member nor authorised to clear F&O or FX), the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that Defaulter (including in connection with any net sum calculated under Rule 906), by applying the following assets in the order of recourse set out below:
- (i) first, any amounts falling under *N* in Rule 906(a) in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(c)(ii) to (v) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
  - (ii) second, the Clearing House CDS Initial Contribution;

**Part 9 – Default Rules**

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

- (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies as a result of the Event of Default (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by and remain available to the Clearing House in cleared funds ~~as a result of the Event of Default, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss~~ (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(c), subject to Rule 1102(k));
  - (iv) fourth (subject to Rule 908(i)):
    - (A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
    - (B) the Clearing House CDS GF Contribution,  
  
on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and
  - (v) fifth (subject to Rule 908(i)), CDS Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (d) In the case of a Defaulter that was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX (but neither an F&O Clearing Member nor a CDS Clearing Member nor authorised to clear F&O or CDS), the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that Defaulter (including in connection with any net sum calculated under Rule 906), by applying the following assets in the order of recourse set out below:
- (i) first, any amounts falling under *N* in Rule 906(a), in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs Rule 908(d)(ii) to (v) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);

## Part 9 – Default Rules

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

- (ii) second, the Clearing House FX Initial Contribution;
  - (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies as a result of the Event of Default (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by and remain available to the Clearing House in cleared funds ~~as a result of the Event of Default~~, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(d), subject to Rule 1102(k));
  - (iv) fourth (subject to Rule 908(i)):
    - (A) FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus FX Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and
    - (B) the Clearing House FX GF Contribution,  
on a basis *pro rata* (subject to Rule 908(i)), to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default; and
  - (v) fifth, (subject to Rule 908(i)), FX Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (e) In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rule 906(a) to (c) as if they were "net sums", *mutatis mutandis* in respect of assets and liabilities relating to the Clearing of F&O Contracts ("**F&O Default Amount**"), the Clearing of CDS Contracts ("**CDS Default Amount**") and the Clearing of FX Contracts ("**FX Default Amount**"), as follows:
- (i) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of F&O Contracts, then the net sum declared in respect of such account shall be the sole element of the F&O Default Amount in respect of such Account;
  - (ii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of CDS Contracts, then the net sum declared in respect of such account shall be the sole element of the CDS Default Amount in respect of such Account;

**Part 9 – Default Rules**

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

Rule 908(f) and in circumstances in which the F&O Default Amount represents a shortfall, loss or liability;

- (B) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS Initial Contribution, provided that it shall only be applied up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount represents a shortfall, loss or liability; and
  - (C) if a Defaulter was an FX Clearing Member or a Sponsored Principal that was authorised to clear FX, the Clearing House FX Initial Contribution, provided that it shall only be applied up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the FX Default Amount represents a shortfall, loss or liability;
- (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies as a result of the Event of Default (including the proceeds of any claim) of which the Clearing House is the beneficiary that ~~are~~have been received by and remain available to the Clearing House ~~as a result of the Event of Default in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss~~ (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(g), subject to Rule 1102(k)), provided that any proceeds of any such claim shall be applied to each Default Amount on a basis pro rata to the shortfall, loss or liability of each Default Amount (less any amounts applied to such Default Amounts pursuant to 908(g)(ii));
- (iv) fourth (subject to Rule 908(i)):
- (A) Guaranty Fund Contributions of Clearing Members other than the Defaulter in question or its Sponsor (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters and proceeds of the realisation thereof, if two or more Default proceedings take place concurrently and any such surplus is available);
  - (B) if a Defaulter was an F&O Clearing Member or a Sponsored Principal that was authorised to clear F&O, the Clearing House F&O GF Contribution;
  - (C) if a Defaulter was a CDS Clearing Member or a Sponsored Principal that was authorised to clear CDS, the Clearing House CDS GF Contribution in the order of priority set forth in the CDS Default Auction Procedures; and

**Part 9 – Default Rules**

**Rule 913 – Definitions used in the Remainder of this Part 9**

**Rule 913 Definitions used in the remainder of this Part 9**

- (a) The following additional definitions apply to the following sections of this Part 9:
- (i) The term "**Adjustment Amount**" means, in respect of all the Margin Account(s) of any Contributor and any Loss Distribution Day, an amount equal to the sum of the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Contributor less the sum of the Cumulative Actual Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Contributor, in each case in respect of the Loss Distribution Period in which such Loss Distribution Day falls.
  - (ii) The term "**Aggregate Cash Gains**" or "**ACG**" means, in respect of any Business Day, the sum of the Cash Gain in respect of all Cash Gainers on such Business Day.
  - (iii) The term "**Available Defaulter Resources**" means, following a particular Event of Default, all the quantifiable and certain resources on any particular date to the extent that the same: (A) are available to the Clearing House to meet losses and liabilities resulting from the Event of Default; (B) were posted as collateral in respect of an Account referred to in Rule 914(a)(ii)(B) or are otherwise available to be applied by the Clearing House in accordance with the Rules against losses or liabilities resulting from the Event of Default on such an Account; and (C) represent the cash proceeds or equivalent cash value (as calculated by the Clearing House) of Permitted Cover provided to the Clearing House by the Defaulter or other amounts, credits or assets that would otherwise be due to the Defaulter in the calculation of a net sum under Rule 906 and which have been evaluated as cash obligations (as calculated by the Clearing House). Available Defaulter Resources exclude for the avoidance of doubt all Available Non-Defaulter Resources, the Clearing House's own assets and capital, Clearing House Contributions and any assets or rights representing the proceeds of Permitted Cover, Margin, cover for Margin or Guaranty Fund Contributions provided by Clearing Members, Sponsors or Sponsored Principals that are not Defaulters. The principles in Rule 908 used for the calculation of relevant Default Amounts shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Defaulter Resources.
  - (iv) The term "**Available Non-Defaulter Resources**" means, following a particular Event of Default, the cash proceeds or equivalent cash value (as calculated by the Clearing House) of those Guaranty Fund Contributions, Clearing House Contributions, Assessment Contributions and any claims under any default insurance policies which are available to be applied pursuant to Rule 908, provided that Assessment Contributions and any claims under any default insurance policies shall only count as Available Non-Defaulter Resources if they have been received by and remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment



**Part 9 – Default Rules**

**Rule 913 – Definitions used in the Remainder of this Part 9**

Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, at the time the Clearing House performs a calculation of Available Non-Defaulter Resources. The principles in Rule 908 shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Non-Defaulter Resources.

- (v) The term "**Available Product Funds**" means the amount of resources available to the Clearing House in respect of a Relevant Contract Category, as calculated in accordance with Rule 916(f).
- (vi) The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vii) The term "**Cash Gain**" means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.
- (viii) The term "**Cash Gainer**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is greater than zero.
- (ix) The term "**Cash Gainer Adjustment**" has the meaning set out in Rule 914(c).
- (x) The term "**Cash Loser**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is equal to or less than zero.
- (xi) The term "**Cash Loser Adjustment**" has the meaning set out in Rule 914(d).
- (xii) The term "**Clearing House Event**" means a Failure To Pay or Insolvency occurring in respect of the Clearing House.
- (xiii) The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House, namely F&O Contracts, CDS Contracts and FX Contracts.
- (xiv) The term "**Contractual Payments**" means, in respect of each Margin Account and any Business Day, any of the following connected to such Margin Account on such Business Day: for CDS Contracts: any Fixed Amounts, Initial Payment, Physical Settlement Amount, Auction Settlement Amount or any Cash Settlement Amount; and for F&O Contracts any Exchange Delivery Settlement Price, Option premium, other settlement amount, Strike Price, settlement price or delivery price, exercise price or any other payment pursuant to the terms of a Contract. Where physical delivery or physical settlement of any Deliverable is due to be made by way of final settlement under a Contract of a Relevant Contract Category from the

**Part 9 – Default Rules**  
**Rule 914 – Reduced Gains Distribution**

**Rule 914      *Reduced Gains Distribution***

- (a) This Rule 914 shall only apply if the Clearing House has published its determination (any such determination, an "**RGD Determination**") that the following four (or, for the CDS Contract Category, five) conditions are all satisfied:
- (i) an Event of Default has been declared and the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of all of its different Proprietary Accounts and all of its different Customer Accounts, including, for Sponsored Principals, Individually Segregated Sponsored Accounts;
  - (ii) the Clearing House determines (whether in reliance on Rule 907(d) or otherwise) that one or more of the following circumstances has arisen:
    - (A) the sum of Outward MTM/VM Payments (and, for the FX and F&O Contract Categories only, Transfer Cost, if any) in respect of a particular Contract Category would, in its view, exceed Available Resources plus Received MTM/VM for the same Contract Category;
    - (B) Available Resources are insufficient to meet the shortfalls, losses or liabilities of the Clearing House on relevant Accounts of the Defaulter, which may be determined if, in its view:
      - (1) any Estimated Payable Net Sum would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, would be available to meet the losses of the Clearing House represented by any net sum payable by the Defaulter were such net sum to be of an amount equal to the Estimated Payable Net Sum; or
      - (2) any net sums payable by the Defaulter that are calculated and declared by the Clearing House under Rule 906 (to the extent that the same have not been received by the Clearing House in cleared funds from the Defaulter) in total would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, are to be applied to meet the losses of the Clearing House represented by such net sums;
- provided that, where there is more than one Event of Default with overlapping Relevant Post Default Periods, such determinations may be made with regard to the Transfer Costs, for the FX and F&O Contract Categories only, Available Resources, Estimated Payable Net Sums and net sums relating to all relevant Defaulters and Events of Default at that time;
- (iii) no Termination Circular has been issued in respect of the Relevant Contract Category;

## **Part 9 – Default Rules**

### **Rule 914 – Reduced Gains Distribution**

- (j) Notwithstanding Rule 1102(k), this Rule 914(j) shall apply where the Clearing House (1) receives amounts from a Defaulter (as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise) or another Clearing Member or Sponsored Principal or any insurer that would, had it been paid on time, have increased the Clearing House's Available Resources or Received MTM/VM on a Business Day on which any Margin Account Adjustment was made pursuant to this Rule 914 during a Loss Distribution Period; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher; or (3) declares an actual net sum under Rule 906 in circumstances in which an Estimated Payable Net Sum had previously been used as a basis for invoking its rights under this Rule 914 where the actual net sum is greater than the last Estimated Payable Net Sum. Where this Rule 914(j) applies, the Clearing House shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Clearing House, including, without limitation, the costs of recovering or recalculating any such amounts and only to the extent that the same remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss):
- (i) first to Contributors who are not then Defaulters (irrespective of whether they remain Clearing Members or Sponsored Principals at the time of the recovery) who became liable to pay Cash Gainer Adjustments during the Loss Distribution Period for the Contract Category to which the receipts relate, with the payments determined on a *pro rata* basis based on each Contributor's Adjustment Amount in respect of the Relevant Contract Category;
  - (ii) secondly, in accordance with Rule 1102(k).
- (k) Payments of Cash Gainer Adjustments and Cash Loser Adjustments may be made pursuant to Part 3 of the Rules and the Finance Procedures. Except as expressly provided in this Rule 914, this Rule 914 is without prejudice to the Clearing House's rights to set off or net any sum owed by a Clearing Member, Sponsor or Sponsored Principal to the Clearing House against any sum payable by the Clearing House to a Clearing Member, Sponsor or Sponsored Principal or to any other powers of the Clearing House under Parts 3, 9 or 11 or the Procedures.
- (l) In carrying out any calculations or making any determinations pursuant to this Rule 914, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (m) The Clearing House shall apply all Received MTM/VM and Available Resources solely to meet Outward MTM/VM Payments and Transfer Costs as envisaged under Parts 9 and 11 of the Rules and the Default Auction Procedures, to make reimbursement to Clearing Members and Sponsored Principals under Rule 914(j) and to fund its obligations to meet

**Part 9 – Default Rules**

**Rule 916 – Contract Termination following Certain Conditions or Under-priced Auction**

or estimates are now available (as applicable) (after deducting any administration and other costs of the Clearing House, including, without limitation, the costs of recovering or recalculating any such amounts and only to the extent that the same remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss):

- (i) first to Clearing Members and Sponsored Principals that are not Defaulters who would, but for this Rule 916, have received a Termination Price in full, with the payments determined on a *pro rata* basis based on the difference between the Discounted Product Repayment Amount and the Product Repayment Amount in respect of each Clearing Member or Sponsored Principal;
  - (ii) secondly, in accordance with Rule 914(j); and
  - (iii) for the avoidance of doubt, thirdly, under Rule 1102(k) (as modified by Rule 914(j)).
- (o) Nothing in this Rule 916 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member, Sponsored Principal, Sponsor or Defaulter in respect of any amount, obligation or asset (not being Available Resources or Available Defaulter Resources) which is owed or due but unpaid or unsatisfied by such Clearing Member, Sponsored Principal, Sponsor or Defaulter.
- (p) Payments of Negative Product Repayment Amounts, Positive Product Repayment Amounts and Discounted Product Repayment Amounts may be made following such netting with other payment obligations as are provided for in Part 3 and the Finance Procedures.

**Part 9 – Default Rules**

**Rule 919 – Non-Default Losses ~~and~~, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

**Rule 919 Non-Default Losses ~~and~~, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

- (a) This Rule 919 shall only apply if:
- (i) there has been a Non-Default Loss ~~or~~, Investment Loss, Custodial Loss, Pledged Collateral Loss or Title Transfer Collateral Loss; and
  - (ii) there has been no Clearing House Event.
- (b) Any Non-Default Loss will first be met by the Clearing House applying any Investment Loss Assets and Custodial Loss Assets that were available to it at the time of the event giving rise to the Non-Default Loss and after that, only by applying any other available capital or assets of the Clearing House. The first portion of any Investment Loss will ~~also~~ be met by the Clearing House first applying any Investment Loss Assets that were available to it at the time of the event giving rise to the Investment Loss prior to taking any action under Rule 919(c). The first portion of any Custodial Loss will be met by the Clearing House first applying any Custodial Loss Assets that were available to it at the time of the event giving rise to the Custodial Loss prior to taking any action under Rule 919(c). The obligations in this Rule 919(b) shall only apply to the extent that such Investment Loss Assets or Custodial Loss Assets remain available to the Clearing House in cleared funds, themselves not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.
- (c) Upon the Clearing House certifying an Investment Loss Amount or Custodial Loss Amount in a Circular of an amount greater than the Investment Loss Assets or Custodial Loss Assets, as applicable, that were available to it at the time of the event giving rise to the Investment Loss or Custodial Loss and which are due to be applied under Rule 919(b), all Clearing Members shall indemnify the Clearing House and become liable to pay Collateral Offset Obligations to the Clearing House in accordance with the formula set out in Rule 919(d). Any Circular under this Rule 919(c) shall specify:
- (i) the nature and extent of the Investment Loss or Custodial Loss, as applicable;
  - (ii) the date on which Collateral Offset Obligations will become due; and
  - (iii) such other matters as the Clearing House considers are relevant.
- (d) The Collateral Offset Obligation payable by each Clearing Member shall be the amount:

$$(\underline{HALAm} - LA) \quad \times \quad \frac{GF\&M(CM)}{GF\&M(all)}$$

subject to the caps in Rules 919(d)-(e).

where:

**Part 9 – Default Rules**

**Rule 919 – Non-Default Losses ~~and~~, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

HLALam is the Investment Loss Amount or Custodial Loss Amount, as applicable, certified by the Clearing House in a Circular;

*LA* is the total amount of available Loss Assets at the time of the event giving rise to the Investment Loss ~~and~~ Custodial Loss, as applicable, that have been or are to be attributed to meet the Investment Loss Amount or Custodial Loss Amount, as applicable;

*GF&M(CM)* is the total of all Original/Initial Margin, Variation Margin, Guaranty Fund Contributions ~~and~~, Permitted Cover ~~in respect thereof~~, Deliverables and settlement amounts for all Contract Categories recorded across all Accounts of the relevant Clearing Member at the time of the event giving rise to the Investment Loss or Custodial Loss, as applicable (provided that for a Defaulter, *GF&M(CM)* shall only equal the amount of such Original/Initial Margin ~~and~~, Variation Margin, Guaranty Fund Contribution, Permitted Cover, Deliverables and settlement amounts that is not otherwise used to offset amounts representing losses in the net sum calculation as a result of the Default); and

*GF&M(all)* is the total of all Original/Initial Margin, Variation Margin, Guaranty Fund Contributions ~~and~~, Permitted Cover ~~in respect thereof~~, Deliverables and settlement amounts for all Contract Categories recorded across all Accounts of all Clearing Members at the time of the event giving rise to the Investment Loss ~~(less~~ Custodial Loss, as applicable (excluding Original/Initial Margin, Variation Margin, Guaranty Fund Contributions ~~and~~, Permitted Cover ~~in respect thereof~~, Deliverables and settlement amounts provided by Defaulters that ~~is~~ are used to offset amounts representing losses in the net sum calculation pursuant to these Rules as a result of the Default and further excluding the Clearing House Contributions and Loss Assets).

- (e) The Collateral Offset Obligation of any Clearing Member shall at no time exceed the total of the Original/Initial Margin, Variation Margin, Guaranty Fund Contributions and Permitted Cover ~~in respect thereof~~, Deliverables and settlement amounts that it has transferred to the Clearing House or the transfer of which has become due to the Clearing House at the time of the event giving rise to the Investment Loss or Custodial Loss, as applicable, across all its Accounts.
- (f) All Collateral Offset Obligations shall arise on the date specified in the Circular under Rule 919(c). Any Collateral Offset Obligations falling due may, at the election of the Clearing House, be offset against the obligation of the Clearing House to return or pay any Original/Initial Margin, Variation Margin, Guaranty Fund Contributions ~~or other~~, Permitted Cover, Deliverables or settlement amounts to a Clearing Member and will be collected pursuant to a call for additional cash Margin or cash Guaranty Fund Contributions from a Proprietary Account of the Clearing Member in accordance with Rule 302 and the Finance Procedures. In the case of a Defaulter, Collateral Offset Obligations may, at the election of the Clearing House, be included in any net sum calculation or offset against any obligation to return or pay outside of the net sum calculation any Original/Initial Margin, Variation Margin, Guaranty Fund Contributions ~~or other~~, Permitted Cover, Deliverable or settlement amount that has not been included in the net sum calculation pursuant to these Rules as a result of the Default. Collection

## Part 9 – Default Rules

### Rule 919 – Non-Default Losses ~~and~~, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses

from a Proprietary Account is not intended to prevent the Clearing Member from passing on the cost of a Collateral Offset Obligation to any of its Customers under the relevant Customer-Clearing Member Agreement or Standard Terms, to the extent that the Collateral Offset Obligation relates to Margin on a Customer Account or is otherwise attributable to a Customer and to the extent permitted by Applicable Laws.

- (g) The Clearing House shall apply Collateral Offset Obligations resulting from an Investment Loss solely to meet Investment Losses referred to in a Circular under Rule 919(c). The Clearing House shall apply Collateral Offset Obligations resulting from a Custodial Loss solely to meet Custodial Losses referred to in a Circular under Rule 919(c).
- (h) If, after any Collateral Offset Obligations have fallen due, the Clearing House collects ~~amounts from any amount or asset from a Custodian, Delivery Facility,~~ issuer, counterparty or otherwise so as to reduce an Investment Loss or Custodial Loss, as applicable, in either case in cleared funds or unencumbered assets, the Clearing House shall be obliged to pay the amount or transfer the assets or value of ~~Permitted Cover so collected~~ assets so received by and remaining available to the Clearing House (less any expenses of the Clearing House, including without limitation any expenses incurred in connection with recovery) to the Clearing Members that ~~provided had met~~ such Collateral Offset Obligations *pro rata* in respect of satisfied Collateral Offset Obligations relating to the event in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House (not being Loss Assets) or other Persons applied to meet the Investment Loss or Custodial Loss following exhaustion of the assets specified in this Rule 919 or in substitution of any such assets. This obligation shall only apply to the extent that such amounts or assets remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.
- (i) No Collateral Offset Obligation shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.*, to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i) or to pay Assessment Contributions. Notwithstanding any Collateral Offset Obligations, Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, ~~and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to,~~ the Clearing House ~~in accordance with the Rules and Procedures~~, including obligations to pay Original/Initial Margin, Variation Margin, Guaranty Fund Contributions ~~and~~, Assessment Contributions and settlement amounts and shall continue to make and receive timely delivery of all Deliverables to and from the Clearing House will in accordance with the Rules and Procedures. Similarly, the Clearing House shall remain liable to pay or release Margin and Permitted Cover to Clearing Members in the usual way, subject to netting under Part 3 and the Finance Procedures to take into account the effect of any Collateral Offset Obligation, and to make and receive deliveries. All such payments and deliveries shall be made without regard to whether any payment which would have fallen due (were it not for the Collateral Offset Obligations) and without any offsetting or withholding of

**Part 9 – Default Rules**

**Rule 919 – Non-Default Losses ~~and~~, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.

- (j) If the Clearing House determines that it has provided for Collateral Offset Obligations in excess of that required or actually applied against an Investment Loss or Custodial Loss, as applicable (less Loss Assets applied) or makes a recovery that is due to Clearing Members under Rule 909~~(h)~~, it shall credit any excess or recovered amounts due to the Clearing Member's Proprietary Account. This obligation shall only apply to the extent that such amounts or assets remain available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss. Credit to a Proprietary Account is not intended to prevent the Clearing Member from passing on the credit related to a Collateral Offset Obligation to any of its Customers under the relevant Customer-Clearing Member Agreement and Standard Terms, to the extent that the Collateral Offset Obligation relates to Margin or Permitted Cover on a Customer Account or is otherwise attributable to a Customer. If a Proprietary Account becomes over-collateralised as a result of any such credit, any resulting Surplus Collateral will be available for withdrawal under Part 3 and the Finance Procedures in the normal way.
- (k) Liabilities of Clearing Members in respect of Collateral Offset Obligations under this Rule 919 shall apply independently from ~~any powers of assessment under Rule 909 and give~~ and in addition to any obligation in respect of any Assessment Contribution under Rule 909, Cash Loser Adjustment or Cash Gainer Adjustment under Rule 914, Partial Tear-Up Price under Rule 915 or Product Termination Amount under Rule 916, giving rise to a separate and additional payment obligation for Clearing Members. For the avoidance of doubt, none of the caps on ~~powers of assessment liabilities~~ Assessment Contributions arising pursuant to ~~Rule~~ Rules 209, 917 or 918 shall restrict or limit any liability of a Clearing Member in respect of Collateral Offset Obligations under this Rule 919. ~~The conditions in Rule 916(a)(ii)(B)(2) shall not be considered satisfied to the extent that they are only satisfied as a result of any Non-Default Loss or Investment Loss.~~
- (l) Any right being exercised or circumstances occurring that are governed by this Rule 919 shall not constitute any kind of Clearing House Event.
- (m) Payments of Collateral Offset Obligations may be made pursuant to Part 3 of the Rules and the Finance Procedures. This Rule 919 is without prejudice to the Clearing House's rights to set off or net any sum owed by a Clearing Member to the Clearing House against any sum payable by the Clearing House to a Clearing Member or to any other powers of the Clearing House under Parts 3, 9 or 11 or the Procedures, but the Clearing House may not take any action under those provisions to the extent inconsistent with the provisions of this Rule 919.
- (n) Nothing in this Rule 919 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member, Defaulter, Custodian, Delivery Facility or any



**Part 9 – Default Rules**

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other Person in respect of any amount, obligation or asset which is owed or due but unpaid or unsatisfied by such Clearing Member, Defaulter, Custodian or other Person.

- (o) In carrying out any calculations or making any determinations pursuant to this Rule 919, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (p) The Clearing House will notify Clearing Members from time to time, by Circular, of ~~the total amount of Loss Assets, which will be set at a level of USD 90 million as at the date of introduction of this Rule.:~~

(i) the total amount of Investment Loss Assets; and

(ii) the total amount of Custodial Loss Assets.

Such amounts, as so notified, shall be effective until the time of the next subsequent Circular issued under this Rule 919(p). The Clearing House's liability under Rule 919(b) in respect of any Investment Loss or Custodial Loss occurring after the date of any Circular under this Rule 919(p) shall be limited to the notified amount under this Rule 919(p) from time to time of Investment Loss Assets and Custodial Loss Assets, as applicable.

- (q) The total amount of any Investment Loss Assets applied in connection with any Investment Loss or Non-Default Loss and the total amount of any Custodial Loss Assets applied in connection with any Custodial Loss or Non-Default Loss shall be notified to Clearing Members in a Circular, prior to or promptly after the same being applied or replenished. The Clearing House may also replenish any regulatory capital, using its or its Affiliates' or other Persons' resources or otherwise, as is required to bring it in compliance with Applicable Laws at any time including following an Investment Loss, Custodial Loss or Non-Default Loss. However, no such recapitalisation shall result in any obligation of any Clearing Member to pay Collateral Offset Obligations being reduced nor the size of any Investment Loss or Custodial Loss being reduced. The Clearing House may replenish Investment Loss Assets or Custodial Loss Assets through re-applying retained earnings, where these are available. ~~To the extent that~~ If the Clearing House replenishes Investment Loss Assets or Custodial Loss Assets or its capital in such or other circumstances, ~~its liability for any further Non-Default Losses or Investment Losses shall not exceed the amount specified in Rule 919(p) or such other amount as is notified by Circular.~~ it shall issue a new Circular pursuant to Rule 919(p). In such circumstances, the Clearing House shall not be liable to apply or use any such replenished or new Investment Loss Assets or Custodial Loss Assets or its capital against any prior Non-Default Loss, Custodial Loss or Investment Loss under Rule 919(b).

**Part 9 – Default Rules**

**Rule 919 – Non-Default Losses ~~and~~, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

- (r) Without limiting Rule 111 ~~or~~, Rule 502 or Rule 919(s), but subject to any contrary requirements ~~of~~under Applicable Laws or this Rule 919, the Clearing House shall not be liable to any Clearing Member, Customer or other Person for any losses, liabilities, damages, costs, claims, shortfalls or expenses incurred by such Clearing Member, Customer or other Person arising out of or relating to any failure, in whole or in part, of any payment or securities services provider, including without limitation any Custodian, ~~Approved Financial Institution~~Delivery Facility, central securities depository or central bank.
- (s) Without limiting Rule 111 or Rule 502 or the Clearing House’s ability to charge a negative or reduced ICE Deposit Rate pursuant to the Finance Procedures, but subject to any contrary requirements under Applicable Laws:
- (i) the Clearing House shall not be liable to any Clearing Member, Customer or other Person for any Pledged Collateral Losses; and
- (ii) the Clearing Member, as beneficial owner (or Customer, where applicable, as beneficial owner to the extent that an interest on the part of the Customer is expressly permitted to subsist pursuant to these Rules and any Pledged Collateral Addendum), shall bear the risks of such losses on such assets, except to the extent that such Pledged Collateral Losses result directly from fraud, bad faith, gross negligence or wilful misconduct by the Clearing House or any of its Directors, officers, employees or committees (or any individual committee member).
- (t) If, after a Pledged Collateral Loss has been incurred by a Clearing Member, the Clearing House collects any amount from a Custodian, Delivery Facility, issuer, counterparty or otherwise in respect of such Pledged Collateral Loss in cleared funds or unencumbered assets, the Clearing House shall be obliged to pay the amount or value of assets so received by and remaining available to the Clearing House (less any expenses of the Clearing House, including without limitation any expenses incurred in connection with recovery) to the Clearing Members that had suffered such Pledged Collateral Losses *pro rata* in respect of Pledged Collateral Losses relating to the event in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other Persons applied to meet the Pledged Collateral Loss. Rules 919(h) (last sentence), 919(i), (j) (as regards recoveries only), (k) (except the words "giving rise to a separate and additional payment obligation for Clearing Members"), (l), (m) (second sentence only), (n), (o) and (r) shall apply equally to Pledged Collateral Losses and any recoveries thereon, *mutatis mutandis*, save that references to Collateral Offset Obligations shall be construed as references to Pledged Collateral Losses.
- (u) Without limiting Rule 111 or Rule 502 or the Clearing House’s ability to charge a negative or reduced ICE Deposit Rate pursuant to the Finance Procedures or the provisions of the Clearing Membership Agreement concerning collateral:

**Part 9 – Default Rules**

**Rule 919 – Non-Default Losses ~~and~~, Investment Losses, Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses**

- (i) the Clearing House shall not be liable to any Clearing Member, Customer or other Person for any Title Transfer Collateral Losses;
- (ii) pursuant to the Clearing Membership Agreement (but subject to this Rule 919), where title transfer collateral is delivered, the Clearing Member is entitled to redelivery of an equivalent asset to that which it delivered, without any compensation in respect of Title Transfer Collateral Losses or any other losses; and
- (iii) accordingly, the Clearing Member (and/or its Customer, where the relevant Customer-Clearing Member Agreement so provides) shall bear the risk of Title Transfer Collateral Losses.
- (v) Without limiting Rule 111 or Rule 502, a negative yield, negative interest rate, negative coupon or pre-agreed reduced principal repayment on a non-cash asset being or representing Original/Initial Margin, Guaranty Fund Contributions, Permitted Cover or any Deliverable shall not constitute an Investment Loss or Non-Default Loss and shall be for the account of the relevant Clearing Member (and/or its Customer, where the relevant Customer-Clearing Member Agreement so provides).
- (w) The Clearing House shall have no liability for any loss, liability, cost, claim, shortfall, or expense relating to any investment decision by any Clearing Member, Customer (or any Representative thereof) or any other Person, including any choice as between the different kinds of Permitted Cover, such as cash in particular currencies or securities of particular issuers, rates or tenors or other assets that are eligible to be transferred to the Clearing House, whether in the form of Variation Margin, Original/Initial Margin, Guaranty Fund Contributions, Permitted Cover, Deliverables or settlement amounts, nor for the results of any such choices or investments.

## Part 11 – Guaranty Funds

- (k) In the event of the Clearing House applying any Guaranty Fund Contributions of non-defaulting Clearing Members, Clearing House Contributions or insurance proceeds and then receiving any amounts from the Defaulter as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise (net of the Clearing House's costs of recovery), the Clearing House will make payment to relevant Persons whose Guaranty Fund Contributions have been applied, retain assets in respect of Clearing House Contributions or repay the relevant insurer, as applicable, in the reverse order to that specified in Rule 908 (subject to Rule 1103(e)) and in the case of payments to Clearing Members (and Clearing House Contributions that are not Clearing House Initial Contributions) on a pro rata basis (subject to Rule 908(i)), up to the amount by which the relevant Guaranty Fund was reduced (excluding the Guaranty Fund Contribution of the Defaulter) but without counting for interest, the amount of Clearing House Contributions that were applied or the amount of insurance proceeds that were applied, subject in either case to the Clearing House ~~first~~: (i) first retaining or repaying amounts up to the amount of any other assets of the Clearing House or other third parties applied to meet any shortfall or loss following exhaustion of the assets specified in Rule 908 or in substitution of any such assets; (ii) if applicable, first making reimbursement payments to Persons that have made Assessment Contributions (in the reverse order to that specified in Rule 908), in accordance with Rule 909(j); and (iii) if applicable, meeting any repayment obligations arising pursuant to 909(j), 914(j) or 916(n); and (iv) not having suffered any loss equivalent to an Investment Loss, Custodial Loss, Pledged Collateral Loss or Title Transfer Collateral Loss in respect of such received amounts.
- (l) If an Event of Default occurs prior to the end of a Guaranty Fund Period where the total amount of Guaranty Fund Contributions or the Guaranty Fund Contribution of any particular Clearing Member would otherwise subsequently be reduced in the next Guaranty Fund Period, the Clearing House shall at its discretion be entitled to defer the end of the current Guaranty Fund Period and start of the next Guaranty Fund Period until the completion of default proceedings or retain all then held Guaranty Fund Contributions made to any potentially affected Guaranty Fund. In either such circumstance, the Clearing House shall not be obliged to make any repayment to Clearing Members in respect of Guaranty Fund Contributions to any such Guaranty Fund until and subject to completion of the relevant Default proceedings pursuant to Part 9 and this Part 11. For the avoidance of doubt: in such circumstances, the Clearing House shall nonetheless be entitled to make periodic adjustments to Guaranty Fund Contributions as otherwise set out in these Rules at its discretion; and this Rule 1102(l) is without prejudice to Rule 1102(m) and Rule 1102(n).
- (m) If a Clearing Member's business changes in a material way, a Clearing Member's anticipated clearing volume of Contracts indicates a potential increase in risk to the Clearing House at any time during a Guaranty Fund Period or as otherwise required by the Finance Procedures, which determinations shall be made and conducted at the Clearing House's discretion, then the Clearing House may require the Clearing Member to increase the amount of its Guaranty Fund Contribution at the time specified by the Clearing House. Any such Guaranty Fund Contributions shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing

## Part 11 – Guaranty Funds

processing to the next levels of assets specified in Rule 908, subject to the payment order specified in Rule 1102(k). Finally, any amounts received from an insurer may be subject to losses similar to an Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss prior to being used. As a result, it is possible that:

- (A) there may be a delay in any insurance proceeds being received, meaning that in practice other assets applicable under Rule 908 may be called prior to insurance proceeds being received, subject to Rule 1102(k);
- (B) insurance receipts may be available to (and applied by) the Clearing House at an earlier order to that specified in Rule 908 if the total available Guaranty Fund Contributions exceed the Loss Threshold or in respect of a second or subsequent Default where the limit on claims for the Relevant Period has not been exhausted;
- (C) no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period;
- (D) proceeds of any claim under default insurance may need to be applied to meet losses across more than one Event of Default, if there is a First Defaulter and one or more Additional Defaulters in a Relevant Period;
- (E) the insurance policies (if any) may not provide cover in respect of certain Events of Default; or
- (F) there may be no default insurance either generally or in respect of any particular products cleared by the Clearing House.

If there is a First Defaulter and there are one or more Additional Defaulters during a Relevant Period, the proceeds of any claim under default insurance to the extent that the same remains available to the Clearing House in cleared funds, not having been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, shall be applied as between the losses, shortfalls or liabilities relating to each Defaulter at the relevant point in the waterfall in Rule 908 on the following basis: (i) first, a Defaulter shall be excluded from any application of such assets if, prior to or after application of Clearing House Contributions, there is no further loss, liability or shortfall; (ii) secondly, such assets shall be applied to reduce the losses, shortfalls or liabilities relating to a Defaulter whose Event of Default was first in time to be declared by the Clearing House, provided that any Events of Default occurring on the same day shall be treated as occurring simultaneously for purposes of this Rules 1103(e); and (iii) where there are simultaneous Events of Default, such assets shall be applied so as to reduce the losses, shortfalls or liabilities relating to each Defaulter on a pro-rata basis, based on the total of all unsatisfied Default Amounts relating to each such Defaulter (after applying Clearing House Contributions).

The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contract or Guaranty Fund applicable to any default insurance obtained by the Clearing House.