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**THIS VERSION OF THE RULES IS A DRAFT AND SUBJECT TO REGULATORY APPROVAL. CMECE WILL ADVISE CLEARING MEMBERS BY WAY OF NOTICE WHEN THIS VERSION OF THE RULES WILL COME INTO FORCE.**

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**CME CLEARING EUROPE LIMITED**

**CLEARING RULES**

**Last updated: 1 December 2014**

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## CHAPTER 1

### DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, for all purposes of the Rules, the following words shall have the meanings specified:

**Account** means any or all of the House Accounts and Client Accounts as the context requires;

**Account Type** means,

- (a) in relation to a Non-FCM Clearing Member, all its Accounts which fall into any of the following categories:
  - (i) House Account;
  - (ii) Individual Client Account; and
  - (iii) Omnibus Client Account; and
- (b) in relation to an FCM Clearing Member, all its Accounts which fall into any of the following categories:
  - (i) House Account;
  - (ii) FCM LSOC Client Account;
  - (iii) FCM FBOT Futures Client Account; and
  - (iv) FCM DCM Futures Client Account;

**Adopting Clearing Member** means, in relation to a Client, each Non-FCM Clearing Member which has agreed to accept any of the Contracts relating to the Client in accordance with Rule 3A.6 and, in the event of a Declaration of Default being issued to the Client's Non-FCM Clearing Member which is currently party to such Contract, Rule 8.4;

**Affected Client** means a Client (or potential Client) of an FCM Clearing Member in respect of which the applicable laws and regulations in the Client's jurisdiction of establishment or applicable in the context of the Client's activity on a Platform do not prevent the FCM Clearing Member from providing an Individual Client Account or an Omnibus Client Account (complying with Articles 39 and 48 of EMIR) to the Client;

**Affected Contract** means each Contract to which a Defaulting Clearing Member is a party and includes any Contract which arises as a result of the exercise of an option by the Clearing House pursuant to Rule 8.5.2;

**Affected Contract Transfer** has the meaning given in Rule 10.3.1(e);

**Affected Party** has the meaning given in Rule 2.9.1;

**Affected Product Class** means the Product Class:

- (a) in respect of which the Clearing House determines that less than 25% (twenty five per cent.) of the Assessments relating to that Product Class remains or is likely to be available once the Clearing House has met its obligations arising from Contracts with non-defaulting Clearing Members of that relevant Product Class;
- (b) to which a Planned Termination Event applies; or
- (c) to which a Limited Recourse Termination Event applies;

**Affiliate** means, when applied to any person, any subsidiary undertaking or parent undertaking of that person and any subsidiary undertaking of any such parent undertaking, and the terms subsidiary undertaking and parent undertaking shall have the meanings given to them in section 1162 of the Companies Act 2006;

**Affiliated Clearing Member** has the meaning given in Rule 3.11.1;

**Agent Bank** means a bank at which the Clearing House maintains an account for the purposes of making or receiving currency payments in accordance with the FX Delivery Procedure, acting in its capacity as such;

**Aggregate IRS Collect** means the aggregate of all the IRS Collects with respect to IRS Accounts;

**Aggregate IRS Pay** means the aggregate of all the IRS Pays with respect to IRS Accounts;

**Aggregate Seniorised Amount** is an amount determined by the Clearing House in accordance with its default management processes;

**Aggregate Standard Collect** means the aggregate of all the Standard Collects with respect to Standard Accounts, by Standard Contract Product Sub-Class in the case of an FCM Clearing Member;

**Aggregate Standard Pay** means the aggregate of all the Standard Pays with respect to Standard Accounts by Standard Contract Product Sub-Class in the case of an FCM Clearing Member;

**Aggregate Subordinated Amount** is an amount determined by the Clearing House in accordance with its default management processes;

**Agreed Amount** means, in relation to an FS Account and FS Individual Client Account, the amount agreed pursuant to the relevant FS Document;

**Allocated IRS Pay** means an IRS Pay as modified in accordance with Rules 8.6.4(b)(ii), 8.6.7, 8.10.6, 8.10.7 and/or 8.10.9;

**Allocated Precious Metals Account** means an account held with one of the members of LPMCL for the purposes of holding allocated Precious Metal and shall include any sub-account opened within it;

**Allocated Standard Pay** means a Standard Pay as modified in accordance with Rules 8.6.4(c)(ii), 8.6.7, 8.10.6, 8.10.7 and/or 8.10.9;

**Allocated Pay** means each of Allocated IRS Pay and Allocated Standard Pay;

**Appeals Body** has the meaning given in Rule 9.5.1;

**Applicable Law** means all law, statutory provisions and other rules, regulations and instruments in force from time to time, including the rules, guidance, principles and codes of practice of any Regulatory Authority or anything required by FATCA;

**Assessments** means amounts the Clearing House may assess with respect to Clearing Members in accordance with Rule 8.7 or the amount paid by a Clearing Member to satisfy such assessment, as the context requires, and includes all Eligible Assets comprising such Assessment and any rights relating to, and the proceeds of, any such Eligible Assets;

**Bank Account** means one or more bank accounts capable of holding Eligible Cash opened and maintained by the Clearing Member with a Settlement Bank for the purposes set out in Rule 4.2.2;

**Bank of England** means the Bank of England, including any successor body thereto;

**Banking Day** means any day on which banks in London are open for business;

**Beneficiaries** means each Beneficiary Clearing Member and each Beneficiary Client and the term **Beneficiary** shall refer to either one of them;

**Beneficiary Clearing Member** means a person:

- (a) that is a Non-FCM Clearing Member;
- (b) whose name is referenced in the name of an FS Account;

- (c) who has executed an FS Settlement Deed; and
- (d) who has been approved by the FS Security Trustee in accordance with clause 7.4 (Beneficiaries and FS Accounts) of the FS Security Trust Deed;

**Beneficiary Client** means, in relation to a Non-FCM Clearing Member, a person:

- (a) that is indicated as a Client in the books and records of the Clearing House;
- (b) whose name is referenced in the name of an FS account;
- (c) who has executed an FS Settlement Deed; and

who has been approved by the FS Security Trustee in accordance with clause 7.4 (Beneficiaries and FS Accounts) of the FS Security Trust Deed;

**Beneficiary Group** means, in relation to a Non-FCM Clearing Member:

- (a) the Clearing Member; and
- (b) every Client that has entered into an FS Settlement Deed with that Clearing Member;

**Block Transaction** means a block trade entered into and submitted to the Clearing House in accordance with the Exchange Rules;

**Board of Directors** means the Board of Directors of the Clearing House whose names have been submitted to Companies House as such from time to time;

**Business Day** means any day on which the Clearing House is open for business as set out on the Clearing House's Website or as communicated to Clearing Members from time to time by any other means;

**Cash Collateral Return** has the meaning given in Rule 10.3.11.1(k);

**Cash Collateral Transfer** has the meaning given in Rule 10.3.1(j);

**Cash Reinvestment Agent** has the meaning given in Rule 10.2;

**Cash Reinvestment Agreement** has the meaning given in Rule 10.1.1;

**CCP Default IRS Interim Asset** has the meaning given in Rule 2.5.5;

**CCP Default IRS Interim Liability** has the meaning given in Rule 2.5.5;

**CCP Default Single Contract Net Sum** has the meaning given in Rule 2.5.3;

**CCP Default Single Net Sum** means a Standard CCP Default Single Net Sum or an IRS CCP Default Single Net Sum;

**CCP Default Standard Interim Asset** has the meaning given in Rule 2.5.4;

**CCP Default Standard Interim Liability** has the meaning given in Rule 2.5.4;

**CCP Regime** means any resolution, insolvency or administration regime which is applied to the Clearing House in accordance with secondary legislation made under the Banking Act 2009;

**CCP Withdrawal of Authorisation Event** means the Clearing House has had its authorisation to provide Clearing Services withdrawn by the Bank of England;

**CEA** means the US Commodity Exchange Act;

**CEO** means the chief executive officer of the Clearing House from time to time;

**CFTC** means the US Commodity Futures Trading Commission;

**CFTC Regulations** means the regulations promulgated by the CFTC from time to time;

**Chairman** means the chairman of the Board of Directors from time to time;

**Clearing and Settlement Procedure** means the Clearing and Settlement Procedure in the Procedures;

**Clearing House** means CME Clearing Europe Limited;

**Clearing House Complaint** means a Complaint made by a Clearing Member that arises in connection with the performance of the Clearing House, or an alleged failure to perform any of the Clearing House functions so far as relating to the obligations to which it is subject under or by virtue of FSMA or the CEA, as applicable, or to matters arising out of such obligations;

**Clearing House Resources** means, in relation to an obligation of any person, the Collateral, Guarantee Fund, Assessments and Optional Payments that are available or (in the reasonable opinion of the Clearing House) are likely to become available to be applied to satisfy such obligation in accordance with the Rules;

**Clearing Member** means any person that has been granted membership of the Clearing House pursuant to Chapter 3, as such person is further classified as a Non-FCM Clearing Member or FCM Clearing Member, and includes a Defaulting Clearing Member;

**Clearing Member Complaint** means a Complaint made by a Clearing Member that relates to the conduct or behaviour or other actions of another Clearing Member in relation to that Clearing Member's clearing activities with the Clearing House;

**Clearing Member Common Data** has the meaning given in Rule 12.1.2;

**Clearing Member Counterparty Data** has the meaning given in Rule 12.1.2;

**Clearing Member Reports** means reports made by the Clearing House to the Trade Repository on behalf of the Clearing Member in accordance with Rule 12.1.2;

**Clearing Membership Agreement** means an agreement of the same name, the relevant form of which must be entered into between the Clearing House and each Clearing Member setting out each party's obligations in respect of the services of the Clearing House;

**Clearing Services** means the services provided to Clearing Members by the Clearing House (acting in such capacity) as contemplated by the Rules;

**Clearing System** means the system (including hardware, software, website and networks) owned by or licensed to the Clearing House and used by the Clearing House for the provision of the Clearing Services;

**Client** means a person for which a Clearing Member clears Transactions through the Clearing House, provided, however, that in relation to an FCM Clearing Member, the term Client excludes any Non-Public Client;

**Client Account** means each account opened for the Clearing Member in the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of Contracts, and the Collateral relating to such Contracts, entered into by a Clearing Member on behalf of one or more Clients which the Clearing Member has requested the Clearing House to open and shall include:

- (a) in relation to a Non-FCM Clearing Member, an Omnibus Client Account and an Individual Client Account, save that for the purposes of the Client Protection Agreement and the Security Trust Deed and with respect to an Omnibus Client Account, the term "Client Account" shall be construed to mean the Notional Sub-Account within the Omnibus Client Account rather than the Omnibus Client Account itself; and
- (b) in relation to an FCM Clearing Member, as applicable, (i) an FCM LSOC Client Account and each FCM LSOC Client Sub-Account within the FCM LSOC Client Account, but not any FCM LSOC Client Buffer Sub-Account or any FCM LSOC Client



Unallocated Sub-Account within the FCM LSOC Client Account; (ii) an FCM FBOT Futures Client Account; and (iii) an FCM DCM Futures Client Account;

**Client Acknowledgement** means, in relation to a Client of a Non-FCM Clearing Member, the agreement referred to in Rule 3A.4.1 which is in the form prescribed by the Clearing House;

**Client Agreement** means an agreement between a Non-FCM Clearing Member and a Client in relation to the submission of Transactions by such Clearing Member to the Clearing House on behalf of the Client and which governs their respective rights and obligations in relation to Corresponding Transactions pursuant to Rule 3A.2;

**Client Affected Contracts**, in relation to a Client of a Non-FCM Clearing Member, has the meaning given in Rule 3A.9.1;

**Client Clearing Documents** means, in relation to a Client of a Non-FCM Clearing Member, each Client Protection Agreement, Client Agreement, Client Acknowledgment and document designated as a Client Clearing Document by the Clearing House;

**Client Protection Agreement** means, in relation to a Client of a Non-FCM Clearing Member, the agreement referred to at Rule 3A.4.1(a) which is in the form prescribed by the Clearing House;

**CLS Account** means the account held by a Clearing Member, or accessed by a Clearing Member through a CLS member, for the purposes of making and receiving payments through the CLS System;

**CLS Bank** means CLS Bank International;

**CLS System** means the continuous linked settlement system provided by CLS Bank;

**CME Europe** means CME Europe Limited;

**CME Group Exchange** means any of the Chicago Mercantile Exchange Inc., Chicago Board of Trade Inc., New York Mercantile Exchange Inc. or Commodity Exchange Inc.;

**CME Repository Services User Agreement** means the agreement of the same name entered into between the Clearing Member and the Trade Repository in relation to the reporting of derivative trades in accordance with EMIR or the CEA and CFTC Regulations;

**Collateral** means, as applicable:

- (a) any Eligible Assets deposited with or delivered to the Clearing House in accordance with Chapter 6, the Clearing and Settlement Procedure and in relation to a Non-FCM

Clearing Member, the Fully Segregated Account Procedure to meet a Collateral Requirement and in respect of which the Clearing House has not returned to the Clearing Member Equivalent Assets or other assets in accordance with the Rulebook;

- (b) subject to Rules 8.3.10 and 8.4.23, any Excess Collateral in respect of which the Clearing House has not returned to the Clearing Member Equivalent Assets or other assets in accordance with the Rulebook;
- (c) in the case of an FCM Clearing Member, any FCM LSOC Client Buffer Collateral;
- (d) any other asset standing to the credit of the relevant Account of the Clearing Member which the Clearing House may reasonably consider to be Collateral; and
- (e) where the context requires, any rights relating to, and the proceeds of, any assets referred to in subparagraphs (a), (b) and (c); and
- (f) in any Rule (or other provision that uses this definition of Collateral) that contemplates Collateral being set off or aggregated with other assets or liabilities, the obligation of the Clearing House (including without limitation under Rule 3.10) to deliver Equivalent Collateral;

**Collateral Requirement** means, with respect to each Clearing Member, the amount of Eligible Assets which the Clearing House requires to be deposited with or delivered in respect of the Margin Requirement and Variation Requirement in respect of each Account as set out in Chapter 6 and the Clearing and Settlement Procedure;

**Collateral Value** means at any time, in respect of Eligible Assets provided as Collateral by a Clearing Member in relation to a Clearing Member's Contracts, the value of such Eligible Assets as determined by the Clearing House in accordance with Rule 6.1.12 that are credited to the Clearing Member's Accounts;

**Collateral Value Report** means the report of that name by which the Clearing Member which:

- (a) in relation to an Omnibus Client Account, instructs the Clearing House what portion of the value of the Collateral attributed to that Omnibus Client Account should be allocated to each Client within that Omnibus Client Account; and
- (b) in relation to an FCM Clearing Member that has established an IRS FCM LSOC Client Account or a Standard FCM LSOC Client Account under the LSOC With Excess Model, instructs the Clearing House on the portion of Collateral Value of all Collateral held for the relevant FCM LSOC Client Account that should be attributed to

each LSOC FCM Client Sub-Account and the FCM LSOC Client Buffer Sub-Account in that FCM LSOC Client Account;

**Collect** means a Clearing Member's obligation to pay an amount in respect of Variation Requirement to the Clearing House;

**Committee** means each committee of the Clearing House established for the purpose set out in the Rules;

**Complaint** means either or both of a Clearing House Complaint or a Clearing Member Complaint, as the context requires;

**Complaints Procedure** means the Complaints Procedure in the Procedures;

**Contract** means a contract entered into between the Clearing House and a Clearing Member pursuant to Rule 5.2;

**Contract CM** means a Non-FCM Clearing Member with its centre of main interests in England, Germany, Scotland, Sweden or any other jurisdiction as specified on the Website for such purpose;

**Contract CM Client** means a Client of a Contract CM;

**Contract Module** means:

- (a) the part of the Rules setting out the Contract Specifications and any additional provisions that apply in respect of a particular type of Transaction; or
- (b) when used in relation to CME Europe, the part of the Exchange Rules of CME Europe setting out the Contract Specifications relating to a particular type of Exchange Transaction entered into on CME Europe;

**Contract Order** has the meaning given in Rule 10.3.1(c);

**Contract Specification** means:

- (a) In relation to an OTC Transaction, the part of the Contract Module setting out the terms of a particular type of Transaction; or
- (b) In relation to an Exchange Transaction, the part of the Exchange Rules setting out the terms of the particular type of Exchange Transaction;

**Contract Transfer** has the meaning given in Rule 10.3.1(d);

**Contribution** means either the amount that a Clearing Member is required to contribute to the relevant Guarantee Fund or the amount contributed by a Clearing Member to such Guarantee Fund, as the context requires, from time to time and includes all Eligible Assets comprising such Contribution and any rights relating to, and the proceeds of, any such Eligible Assets;

**Cooling Off Period** means a Standard Cooling Off Period or an IRS Cooling Off Period;

**Corresponding Transaction** in relation to a Non-FCM Clearing Member means each transaction that is entered into between a Non-FCM Clearing Member and a Client with commercial terms which correspond to the commercial terms of a Contract cleared by such Clearing Member on behalf of a Client;

**Custodian** means an operator of a securities settlement system, or, where permitted or required by Applicable Law, a bank or a trust company with which the Clearing House may deposit Collateral and/or Contributions, and/or Assessments and/or Optional Payments made by the Clearing Member from time to time and shall, for the purposes of the Rules in Chapter 10, include an FS Custodian;

**Custody Agreement** has the meaning given in Rule 10.1.1;

**Custody Cash Transfer** has the meaning given in Rule 10.3.1(l);

**DCM Futures Client** means, in relation to an FCM Clearing Member, a Client for which the FCM Clearing Member clears Standard DCM Futures Contracts;

**Declaration of Default** has the meaning given in Rule 8.2.1;

**Defaulting Clearing Member** means a Clearing Member on which the Clearing House has served a Declaration of Default in accordance with Rule 8.2.1;

**Defaulting IRS Clearing Member** means a Defaulting Clearing Member which is an IRS Clearing Member;

**Default Management Overview Document** means the default management overview document of the Clearing House as made available to each Clearing Member from time to time;

**Default Management Service Provider** means any person to which a Clearing Member delegates certain risk and default management activities in accordance with Rule 3.2.3 and may include another Clearing Member, an Affiliate of the Clearing Member or another Clearing Member and a Client of another Clearing Member but may not be a Client of the Clearing Member;

**Defaulting Standard Clearing Member** means a Defaulting Clearing Member which is a Standard Clearing Member;

**Default Rules** means Rule 2.5, the Rules in Chapter 8, paragraph 2.16 of the Risk Management Procedure and the Default Management Overview Document;

**Defence** has the meaning given in Rule 9.4.7;

**Designated System** has the meaning given in Rule 10.2;

**Direct Debit Authority** means a form of agreement which, when executed by the Clearing Member in favour of a Settlement Bank with which the Clearing Member has a Bank Account, gives authority to the Clearing House to provide instructions in relation to such Bank Account, in a form acceptable to the Clearing House;

**Disciplinary Notice** has the meaning given in Rule 9.4.6;

**Disciplinary Panel** has the meaning given in Rule 9.4.3;

**Disciplinary Proceedings** has the meaning given in Rule 9.4.1;

**Distribution** means at any time, in respect of an Eligible Security, all interest, dividends and other property actually received by the Clearing House in respect of such Eligible Security;

**EFRP Transaction** means an exchange for related position transaction (which includes an exchange for physical, an exchange for risk and an exchange of options for options) entered into on the Exchange in accordance with the Exchange Rules;

**Eligible Assets** means Eligible Cash, Eligible Securities and/or (as the context requires) Eligible Precious Metals or the proceeds of realisation of such Eligible Securities or Eligible Precious Metals;

**Eligible Cash** means cash in a currency which the Clearing House has determined to be eligible for depositing as Collateral as set out in the Clearing and Settlement Procedure and may include different currencies in respect of different categories of Contract;

**Eligible Precious Metals** means allocated Gold that the Clearing House has determined to be eligible for depositing as Collateral as set out in the Clearing and Settlement Procedure;

**Eligible Security** means a security that the Clearing House has determined to be eligible for depositing as Collateral as set out in the Clearing and Settlement Procedure and Eligible Securities shall be construed accordingly and may include different securities in respect of different categories of Contract;

**Emergency Committee** means the committee formed for the purpose set out in Rule 8.1.3;

**Emergency Powers Committee** means the Emergency Powers Committee of the Clearing House;

**EMIR** means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

**Encumbrance** means any mortgage, charge, pledge, lien, option, restriction, right of set-off, right of first refusal, right of pre-emption, claim, right, interest or preference granted to any third party, or any other encumbrance or security interest of any kind (or an agreement or commitment to create any of the same);

**Equivalent Assets** means:

- (a) in respect of Eligible Cash, Eligible Cash in the same currency;
- (b) in respect of Eligible Securities, securities of the same type, nominal value, description and amount as the Eligible Securities or, if the Eligible Securities have been redeemed or undergone some other change after their transfer or delivery to the Clearing House, the proceeds of such redemption or other relevant asset; and
- (c) in respect of Eligible Precious Metals, precious metals of the same type, nominal value, description and amount as the Eligible Precious Metals, or, if the Eligible Precious Metals have been redeemed or undergone some other change after their transfer to the Clearing House, the proceeds of such redemption or other relevant asset;

**Equivalent Distribution** means interest, dividends and other property of the same type, nominal value, description and amount as Distributions on Eligible Assets the value of which:

- (a) is credited to any of the Clearing Member's Accounts as Collateral; and
- (b) is comprised in the Clearing Member's Contribution and any Assessments and any Optional Payments the Clearing Member has provided to the Clearing House;

**Euro** means the common single currency of the member states of the European Union that have adopted and continue to retain such currency in accordance with European Treaty law (as amended from time to time);

**Event of Default** has the meaning given in Rule 8.1.1;

**Excess Collateral** means:

- (a) in relation to an Account of a Non-FCM Clearing Member, such value of Eligible Assets provided to the Clearing House as Collateral which is greater than the higher of:
- (i) Margin Requirement applicable to the Clearing Member in respect of the Account; and
  - (ii) in relation to an FS Individual Client Account in respect of which the Agreed Amount has been notified to the Clearing House, the relevant Agreed Amount,
- and, in each case, identified as Excess Collateral by the Clearing Member;
- (b) in relation to an Account of an FCM Clearing Member (excluding any FCM LSOC Client Buffer Sub-Account or FCM LSOC Client Unallocated Sub-Account within the FCM LSOC Client Account), such value of Eligible Assets provided to the Clearing House as Collateral which is greater than the Margin Requirement applicable to the Clearing Member in respect of the Account, provided, however, that upon reclassification of any Excess Collateral in an FCM LSOC Client Sub-Account as FCM LSOC Client Unallocated Collateral in accordance with Rule 3B.2.3, such Collateral will no longer constitute Excess Collateral, and
- (c) in relation to an FCM LSOC Client Account, any FCM LSOC Client Buffer Collateral recorded in the FCM LSOC Client Buffer Sub-Account within such FCM LSOC Client Account;

**Exchange** means a regulated market as defined in Directive 2004/39/EC on markets in financial instruments, a person registered under the CEA as a designated contract market, or a foreign board of trade within the meaning of the CEA and CFTC Regulations (which may also be a regulated market as defined in Directive 2004/39/EC), in each case for which the Clearing House has agreed to clear Transactions in Exchange Contracts listed by such market;

**Exchange Contract** means a Contract satisfying the Contract Specification for an Exchange Transaction;

**Exchange Rules** means the rules of an Exchange;

**Exchange Transaction** means a Transaction which the Clearing House has agreed to clear as set out in the Website, that is entered into on the relevant Exchange or in accordance with the relevant Exchange Rules;

**Exchange Website** means the website of the relevant Exchange;

**FATCA** means:

- (a) sections 1471 to 1474 of the US Internal Revenue Code of 1986 or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the U.S. and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the U.S. Internal Revenue Service, the U.S. government or any governmental or taxation authority in any other jurisdiction;

**FBOT Futures Client** means, in relation to an FCM Clearing Member, a Client for which the FCM Clearing Member clears Standard FBOT Futures Contracts;

**FCA** means the Financial Conduct Authority, including any successor body thereto;

**FCM Clearing Member** means a Clearing Member that is registered as a futures commission merchant with the CFTC under the CEA and which clears Contracts for its Clients pursuant to such registration;

**FCM Clearing Member Procedure** means the relevant chapter of the Procedures relating to FCM Clearing Members;

**FCM DCM Futures Client Account** means, in relation to an FCM Clearing Member that is a Standard Clearing Member, a Client Account which relates to Standard DCM Futures cleared by the FCM Clearing Member on behalf of one or more Clients, along with Standard FBOT Futures Contracts that may also be cleared in such Client Account in accordance with Rule 3B.3.4;

**FCM FBOT Futures Client Account** means, in relation to an FCM Clearing Member that is a Standard Clearing Member, a Client Account which relates to Standard FBOT Futures cleared by the FCM Clearing Member on behalf of one or more Clients;

**FCM Futures Client Account** means, in relation to an FCM Clearing Member that is a Standard Clearing Member, an FCM FBOT Futures Client Account or an FCM DCM Futures Client Account;

**FCM LSOC Client Account** means, in relation to an FCM Clearing Member, a Standard FCM LSOC Client Account and/or an IRS FCM LSOC Client Account;



**FCM LSOC Client Buffer Collateral** has the meaning given to it in the FCM Clearing Member Procedure;

**FCM LSOC Client Buffer Sub-Account** has the meaning given to it in the FCM Clearing Member Procedure;

**FCM LSOC Client Sub-Account** means, in relation to an FCM Clearing Member, a Standard FCM LSOC Client Sub-Account and/or an IRS FCM LSOC Client Sub-Account;

**FCM LSOC Client Unallocated Collateral** has, in relation to an FCM Clearing Member that establishes an IRS FCM LSOC Client Account or a Standard FCM LSOC Client Account under the LSOC Without Excess Model, the meaning given in the FCM Clearing Member Procedure;

**FCM LSOC Client Unallocated Sub-Account** has, in relation to an FCM Clearing Member that establishes an IRS FCM LSOC Client Account or a Standard FCM LSOC Client Account under the LSOC Without Excess Model, the meaning given in the FCM Clearing Member Procedure;

**FCM Transferee Clearing Member** has the meaning given in Rule 3B.3.1;

**FCM Transferor Clearing Member** has the meaning given in Rule 3B.3.1;

**Fees and Charges Notice** means the Notice setting out the fees and charges of the Clearing House from time to time;

**Force Majeure Event** means any event outside the control of the Clearing House or the Clearing Member, as the case may be, which hinders or prevents the performance in whole or in part of any of its obligations under these Rules (other than an obligation of a Clearing Member to make payments which, for the avoidance of doubt, includes the provision of Collateral, Contributions and Assessments, unless the circumstances which constitute the event also prevent the Clearing House from making any payment required under the Rules or from having such payment made on its behalf in accordance with the Rules) including any breakdown, delay, malfunction or failure of transmission, communication or computer facilities or other systems or software, industrial action, act of terrorism, civil unrest, embargoes, strike, lack of energy supply, act of God, change in the Applicable Law or act and requirement of any Regulatory Authority or the failure by a Settlement Bank or Custodian or other provider of services on which the Clearing House relies for any reason, to perform its obligations;

**FS Account** means an account in the name of the Clearing House opened with an FS Custodian for the purpose of facilitating the transfer of FS Eligible Securities and will be designated in respect of a Non-FCM Clearing Member and Client;

**FS Custodian** means each Custodian which the Clearing House appoints as custodian in respect of an FS Account;

**FS Custody Agreement** means each bilateral or multi-party custody agreement entered into by, inter alia, the Clearing House and an FS Custodian in respect of FS Accounts;

**FS Documents** means any or all (as the context may require) of those agreements listed as FS Documents in the Fully Segregated Procedure and each document designated as an FS Document by the Clearing House;

**FS Eligible Securities** means any securities which are Eligible Securities save for those that the Non-FCM Clearing Member notifies the Clearing House as not being acceptable pursuant to the terms of the Client Agreement;

**FS Individual Client Account** has the meaning given in Rule 3A.10.2;

**FS Security Interest Document** means a document under which the Clearing House grants an Encumbrance over FS Accounts in favour of the FS Security Trustee;

**FS Security Trust Deed** means the security trust deed made between the Clearing House and the FS Security Trustee;

**FS Security Trustee** means each security trustee which the Clearing House appoints as security trustee to hold the benefit of an Encumbrance over an FS Account;

**FS Settlement Deed** means a deed entered into between the Clearing House, a Beneficiary Clearing Member and a Beneficiary Client in which the communication of the Agreed Amount and the delivery of FS Eligible Securities is agreed and each Beneficiary agrees to be bound by all obligations, authorisations and waivers applicable to Beneficiaries under such Deed;

**FSMA** means the Financial Services and Markets Act 2000;

**Fully Segregated Account Procedure** means, in relation to a Non-FCM Clearing Member, the Fully Segregated Account Procedure in the Procedures;

**FX Contract** means any Standard Contract which provides for the exchange of currencies;

**FX Delivery Procedure** means the FX Delivery Procedure in the Procedures;

**FX Obligation** has the meaning given in Rule 11.4.1;

**Futures Client** means, in relation to an FCM Clearing Member, a DCM Futures Client or an FBOT Futures Client;

**Gold** means either allocated or unallocated gold complying with the rules of the London Bullion Market Association relating to good delivery and fineness in effect from time to time as the context requires;

**Guarantee Fund** means either the Standard Guarantee Fund or the IRS Guarantee Fund, as applicable, and Guarantee Funds means both;

**Guarantee Fund Procedure** means the Guarantee Fund Procedure in the Procedures;

**Guarantor** means any person that provides a guarantee to the Clearing House in respect of the Clearing Member's obligations under the Rules;

**House Account** means:

- (a) in relation to a Non-FCM Clearing Member, the Standard House Account and/or the IRS House Account as the context requires;
- (b) in relation to an FCM Clearing Member, the Standard Swaps House Account, the Standard Futures House Account and/or the IRS House Account as the context requires;

**Indirect Client Account**, in relation to a Non-FCM Clearing Member, has the meaning given in Rule 3A.8.1;

**Individual Client Account** means, in relation to a Non-FCM Clearing Member, a Standard Individual Client Account and/or an IRS Individual Client Account as the context requires;

**Insolvency Event** means, in relation to a person, that the person ceases to trade, or is unable to pay its debts as they fall due or has a petition presented or a meeting convened for the purpose of its winding up (provided that such petition is not merely frivolous) or if it enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or an administration order is made in relation to it or it has a receiver or administrative receiver appointed over all or a substantial part of its assets or distraint is levied over any of its assets or any similar or analogous order is made or proceeding is commenced or officer is appointed or action is taken in the United Kingdom or in any jurisdiction outside the United Kingdom in consequence of debt;

**Investigation** has the meaning given in Rule 9.2.1;

**Investigation Notice** has the meaning given in Rule 9.3.1;

**Investment Agent** means the agent used to invest Eligible Cash received as Collateral in accordance with the Clearing House's investment policy;

**Investment Loss** means any loss or diminution in the value of, or depreciation that has occurred in or in connection with, any Collateral, Contributions, Assessments or Optional Payments received by the Clearing House as Eligible Cash as a result of any investment of such cash made by the Clearing House or on its behalf (including, without limitation, by an Investment Agent) but shall not include any losses that might arise as a result of a default (including, without limitation, fraud, negligence, wilful default or the occurrence of an Insolvency Event) with respect to:

- (a) a central securities depository or securities settlement system; or
- (b) a Custodian, Settlement Bank, Settlement Agent for Precious Metals or Agent Bank;
  - (i) which has been selected by the Clearing House following consultation with the Risk Committee and approval by the Board of Directors; and
  - (ii) which is monitored by the Clearing House in accordance with its normal procedures as consulted on with the Risk Committee;

**Invoice Back or Invoicing Back** means creating a Contract (the **Invoiced Back Contract**) that is on identical terms to an existing Contract save:

- (a) that if the Clearing Member is the buyer under the existing Contract, it will be the seller under the Invoiced Back Contract and vice versa; and
- (b) either:
  - (i) in relation to Standard Contracts, that the Clearing House may, acting in a commercially reasonable manner, determine any term of the Invoiced Back Contract including price; or
  - (ii) in relation to IRS Contracts, that the Clearing House may, acting in a commercially reasonable manner, determine any term of the Invoiced Back Contract provided that the price is determined on the basis of the then current valuation methodology of the Clearing House, which has been pre-approved by the Risk Committee;

**IRS Account** means an IRS House Account and

- (a) in relation to a Non-FCM Clearing Member, an IRS Individual Client Account, an IRS Omnibus Client Account or an IRS Notional Sub-Account;
- (b) in relation to an FCM Clearing Member, an IRS FCM LSOC Client Account or an IRS FCM LSOC Client Sub-Account;

**IRS Active Default Committee** has the meaning given to it in the terms of reference of the IRS Default Management Committee;

**IRS Assessment** means an Assessment made with respect to an IRS Clearing Member in accordance with Rule 8.7.3;

**IRS CCP Default Single Net Sum** has the meaning given to it in Rule 2.5.9;

**IRS Clearing Member** means a Clearing Member that has been accepted by the Clearing House as an IRS Clearing Member and remains as such and that may only enter into IRS Contracts pursuant to such status;

**IRS Collateral** means Collateral relating to an IRS Contract;

**IRS Collect** means a Collect relating to an IRS Account;

**IRS Contract** means a Contract satisfying a Contract Specification contained in the:

- (a) Contract Module for OTC IRS Contracts; or
- (b) CME Europe Contract Module for Interest Rate Products (which are classified by CME Europe as swaps, as that term is defined in the CEA and CFTC Regulation 1.3(xxx)) but only where they are entered into by a Clearing Member that is also a Standard Clearing Member;

**IRS Contribution Formula** means an IRS Clearing Member's share of the total potential residual loss based on a 30-day trailing average, weighted at 90% (ninety per cent.), and its share of total gross notional open interest at the Clearing House based on the 30-day trailing average, weighted at 10% (ten per cent.), in each case in respect of IRS Contracts;

**IRS Cooling Off Period** means the period starting on the date of the first IRS Declaration of Default and ending on:

- (a) if there are no further IRS Declarations of Default during the 25 (twenty five) Business Days following the original IRS Declaration of Default, the 25<sup>th</sup> Business Day after the date of the original IRS Declaration of Default, and
- (b) if one or more IRS Declarations of Default are issued during the 25 (twenty five) Business Days following the first IRS Declaration of Default or any subsequent IRS Declaration of Default during the 25 Business Days following any such previous IRS Declaration of Default, the 25<sup>th</sup> Business Day following the issuance of the last IRS Declaration of Default regardless of the number of IRS Declarations of Default that may be issued during such period;

**IRS Default Management Committee** means the IRS Default Management Committee established by the Clearing House acting in accordance with the terms of reference for the IRS Default Management Committee;

**IRS Declaration of Default** means a Declaration of Default in relation to which at least one Affected Contract is an IRS Contract;

**IRS Emergency Powers Committee** means the IRS Emergency Powers Committee of the Clearing House from time to time acting in accordance with its terms of reference;

**IRS FCM LSOC Client Account** means, in relation to an FCM Clearing Member that is an IRS Clearing Member, a Client Account which relates to IRS Contracts cleared by the IRS Clearing Member on behalf of one or more Clients along with Standard Futures Contracts that may also be cleared in such Client Account in accordance with the FCM Clearing Member Procedure, and includes any IRS FCM LSOC Client Sub-Account; the IRS FCM LSOC Client Account structure may also include, as applicable, an FCM LSOC Client Buffer Sub-Account and/or an FCM LSOC Client Unallocated Sub-Account, but such accounts are not Client Accounts;

**IRS FCM LSOC Client Sub-Account** means, in relation to an IRS FCM LSOC Client Account, a sub-account which relates to IRS Contracts, if any, cleared by an IRS Clearing Member on behalf of one Client within that IRS FCM LSOC Client Account;

**IRS Guarantee Fund** means the fund established by the Clearing House in relation to IRS Contracts pursuant to Chapter 7;

**IRS House Account** means the account opened for the Clearing Member in the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of all IRS Contracts other than the IRS Contracts recorded in any Client Account and the Collateral relating to such IRS Contracts;

**IRS Individual Client Account** means, in relation to an IRS Clearing Member that is a Non-FCM Clearing Member, a Client Account which relates to IRS Contracts entered into by the IRS Clearing Member on behalf of a single Client;

**IRS Interim Asset** has the meaning given to it in Rule 8.5.4;

**IRS Interim Liability** has the meaning given to it in Rule 8.5.4;

**IRS Membership Termination Date** means:

- (a) in relation to a termination pursuant to Rule 3.8.1, the date of the first reassessment of the IRS Clearing Members' Contributions after the Clearing House is reasonably satisfied that the IRS Clearing Member has fully discharged all its obligations in

respect of its membership as an IRS Clearing Member under the Rules and ceased to be a party to any IRS Contract following the giving or receiving of a notice, in accordance with Rule 3.8.1, to terminate the membership of such IRS Clearing Member and which is notified to the IRS Clearing Member as its membership termination date (it being acknowledged that the IRS Clearing Member will not be required to discharge any obligation in relation to the provision of any Contribution that would otherwise be reassessed to the IRS Clearing Member on such date); and

- (b) in relation to a termination pursuant to Rule 8.8, the Business Day immediately following the Cooling Off Period during which the IRS Clearing Member gave notice pursuant to Rule 8.8.1 provided that by such date the IRS Clearing Member has ceased to be a party to any IRS Contract, otherwise it will be such Business Day following the relevant Cooling Off Period on which the Clearing House is reasonably satisfied that the IRS Clearing Member has ceased to be a party to any IRS Contract, and such date will be notified to the IRS Clearing Member as its membership termination date;

**IRS Notional Sub-Account** means, in relation to an IRS Omnibus Client Account, a notional sub-account which relates to:

- (a) IRS Contracts if any entered into by an IRS Clearing Member on behalf of one Client within that IRS Omnibus Client Account; or
- (b) IRS Contracts, if any, entered into by an IRS Clearing Member on behalf of one or more Clients within that IRS Omnibus Client Account which the Clearing House cannot identify as relating to a particular Client;

**IRS Omnibus Client Account** means, in relation to an IRS Clearing Member that is a Non-FCM Clearing Member, a Client Account which relates to IRS Contracts entered into by an IRS Clearing Member on behalf of more than one Client;

**IRS Optional Payment** means an Optional Payment relating to an IRS Clearing Member's IRS Contracts;

**IRS Pay** means a Pay relating to an IRS Account;

**IRS Planned Termination Event** means the Clearing House, in consultation with the Risk Committee, on not less than 90 (ninety) days' written notice to all IRS Clearing Members, decides for any reason to terminate all IRS Contracts;

**IRS Portable Interim Asset** has the meaning given to it in Rule 8.4.9;

**IRS Portable Interim Liability** has the meaning given to it in Rule 8.4.9;

**IRS Shortfall** means, at any time, the amount (if any) by which;

(a) the Aggregate IRS Collects received by the Clearing House

are less than

(b) the Aggregate IRS Pays paid by the Clearing House,

or (if the steps under Rule 8.10 have not been completed at such time) the amount that the Clearing House determines would have been the relevant shortfall if the steps under Rule 8.10 had been completed at that time;

**IRS Single Net Sum** has the meaning given to it in Rule 8.5.6;

**IRS Variation Margin Requirement Haircut** has the meaning given to it in Rule 8.6.4(b)(i);

**LIBOR** means the London Interbank Offered Rate;

**Liquidation Test** means either:

(a) subject to a cap of 2 (two) days for Exchange Contracts and 7 (seven) days for all other Contracts, if the change in Variation Requirement is greater than the Related Risk; or

(b) subject to a cap of 2 (two) days for all types of Contract, if the change in Collateral Requirement is greater than the Related Risk;

**Limited Recourse Termination Event** means that the Clearing House determines:

(a) after consultation with the Risk Committee; and

(b) with approval by the Board of Directors,

that but for the effect of Rules 2.4, 8.6.3 and 8.10.11 (and any other Rule which has comparable effect to limited recourse and Variation Requirement haircutting), the relevant Clearing House Resources have been exhausted, or are or would be very likely to be insufficient:

(i) to satisfy all obligations, losses, costs and expenses of the Clearing House in relation to all Contracts in a Product Class; or

(ii) to satisfy a Shortfall.

**LPMCL** means London Precious Metals Clearing Limited;



**LSOC Client** means, in relation to an FCM Clearing Member, a Client for which the FCM Clearing Member clears IRS Contracts or Standard Swaps Contracts.

**LSOC With Excess Model** means, in relation to an FCM Clearing Member, an LSOC Client Account described as such in the FCM Clearing Member Procedure;

**LSOC Without Excess Model** means, in relation to an FCM Clearing Member, an LSOC Client Account described as such in the FCM Clearing Member Procedure;

**Major Investment Loss** has the meaning given in Rule 2.3.5(j);

**Margin Requirement** means the amount of Eligible Assets required by the Clearing House to be deposited with it as Collateral in respect of each Account to reflect the market risk that could materialise in the event of a Declaration of Default in relation to the Clearing Member and, in the case of an FX Contract, the liquidity risk relating to that Clearing Member;

**Matching Collateral** means Eligible Cash Collateral in the same currency as the relevant FX Obligation of the Defaulting Clearing Member;

**Maximum Recovery Share** has the meaning given in Rule 2.3.13(a)(i);

**Maximum Share** has the meaning given in Rule 2.3.12(a)(i);

**Maximum Recovery Share** has the meaning given in Rule 2.3.12(a);

**Maximum Share** has the meaning given in Rule 2.3.11(a)(i);

**Membership Category** has the meaning given to it in Rule 3.1.2;

**Membership Criteria** means the criteria set out in Rule 3.2 and any additional or alternative criteria applied to the relevant Membership Category, to Non-FCM Clearing Members or FCM Clearing Members or to types of Transaction pursuant to Rule 3.1.2;

**Membership Procedure** means the Membership Procedure in the Procedures;

**Membership Termination Date** means either a Standard Membership Termination Date or an IRS Membership Termination Date as the context requires;

**Net Settlement Amount** has the meaning set out in Rule 6.1.5;

**Nominee** has the meaning set out in Rule 3.2.1(l);

**Non-FCM Clearing Member** means any person that has been granted membership of the Clearing House pursuant to Chapter 3, other than an FCM Clearing Member;

**Non-FCM Transferee Clearing Member** has the meaning given in Rule 3A.6.1;

**Non-FCM Transferor Clearing Member** has the meaning given in Rule 3A.6.1;

**Non-Public Client** means, in relation to an FCM Clearing Member, any Affiliate or other third person for which a Clearing Member clears Transactions through the Clearing House and whose account when carried in the books and records of the FCM Clearing Member is classified as a proprietary account under CFTC Regulation 1.3(y);

**Notice** means any Notice published by the Clearing House as such;

**Notional Sub-Account** means, in relation to a Non-FCM Clearing Member, a Standard Notional Sub-Account and/or an IRS Notional Sub-Account as the context requires;

**Omnibus Client Account** means, in relation to a Non-FCM Clearing Member, a Standard Omnibus Client Account and/or an IRS Omnibus Client Account as the context requires;

**Opening Hours** means the hours during which the Clearing House is open for operations as set out on the Clearing House's Website or as communicated to Clearing Members from time to time by any other means;

**Optional Payment** has the meaning given to it in Rule 8.6.5;

**OTC FX Active Default Committee** has the meaning given to it in the terms of reference of the OTC FX Default Management Committee;

**OTC FX Clearing Member** means a Clearing Member that has been accepted by the Clearing House as a Standard Clearing Member to clear OTC FX Contracts and remains as such;

**OTC FX Contract** means a Contract or, in relation to an FCM Clearing Member, a Standard Swaps Contract, satisfying a Contract Specification contained in the OTC FX Contract Module;

**OTC FX Default Management Committee** means the OTC FX Default Management Committee established by the Clearing House acting in accordance with its terms of reference;

**OTC FX Declaration of Default** means a Declaration of Default in relation to which at least one Affected Contract is an OTC FX Contract;

**OTC Transaction** means a Transaction other than an Exchange Transaction;

**Paired FX Obligation** means any FX Obligations between the Defaulting Clearing Member and any one or more non-defaulting Clearing Members to settle all or any part of their FX Obligations;

**Palladium** means unallocated palladium complying with the rules of the London Platinum and Palladium Market Association relating to good delivery in effect from time to time as the context requires;

**Parent Undertaking** has the meaning given in section 1162 of the Companies Act 2006;

**Participant** has the meaning given in Rule 10.2;

**Participant Clearing Firm** means a firm that has been approved by the Risk Committee and the Board of Directors pursuant to Rule 3.1.1 which satisfies the Membership Criteria save for Rule 3.2.1(h);

**Pay** means the Clearing House's obligation to pay an amount in respect of Variation Requirement to a Clearing Member;

**Payment** has the meaning given in Rule 10.3.1(i);

**Payment Transfer Order** has the meaning given in Rule 10.2;

**Payment Type** means payment relating to any one of the following:

- (a) Variation Requirement; and
- (b) Margin Requirement;

**Planned Termination Event** means the Clearing House, in consultation with the Risk Committee, on not less than 90 (ninety) days' written notice to all relevant Clearing Members, decides for any reason to terminate all Contracts of the Affected Product Class;

**Platform** means a platform on which Transactions can be executed which is an Exchange or a multilateral trading facility as defined in Directive 2004/39/EC on markets in financial instruments or a swap execution facility as defined in the CEA and the CFTC Regulations and which Transactions the Clearing House has agreed to clear as set out on the Website;

**Platinum** means unallocated platinum complying with the rules of the London Platinum and Palladium Market Association from time to time as the context requires;

**Portable Contract Net Sum** has the meaning given to it in Rule 8.4.7;

**Portable Net Sum** has the meaning given to it in Rules 8.4.10 and 8.4.11;

**Porting Period** means the applicable period set out in the third column of the table in Rule 8.4.1;

**Porting Period** means the applicable period set out in the third column of the table in Rule 8.4.1;

**Position Limit** means a limit set by, as the context requires, either the Clearing House, the Exchange or a Regulatory Authority on the risk exposure of Contracts existing between a Clearing Member and the Clearing House;

**Positive Obligation** means, in relation to any Client Account, FCM LSOC Client Unallocated Sub-Account or FCM LSOC Client Buffer Sub-Account of an FCM Clearing Member, any obligation (present, future, contingent or otherwise) of the Clearing House to pay or deliver an amount or assets to the FCM Clearing Member in respect of any Contract or amount recorded in such Account;

**Precious Metal** means Gold, Silver, Platinum and Palladium;

**Precious Metal Forward Contracts** means OTC precious metal forward contracts as set out in the Contract Module from time to time, and which in relation to an FCM Clearing Member are classified as Standard Swaps Contracts;

**Procedures** means the procedures of the Clearing House published as such;

**Procured Clearing Member** has the meaning given in Rule 3B.2.2;

**Product Class** means, as the context requires, all IRS Contracts, all Standard Contracts or all Contracts;

**Receipt** has the meaning given in Rule 10.3.1(h);

**Recipient** has the meaning given it in Rule 6.3.9;

**Recovered Amount** has the meaning given in Rule 2.3.12;

**Regulatory Authority** means any relevant government entity or other authority, (including in relation to a Clearing Member, a self-regulatory authority), in any jurisdiction, which is responsible for authorising, supervising or otherwise regulating any part of the Clearing House or its services or the Clearing Member or its business, as appropriate, or has any other regulatory, investigative, administrative or quasi-judicial jurisdiction, power or other similar function in relation to any part of the Clearing House or its services or the Clearing Member or its business, as appropriate;

**Reinvestment Cash Transfer** has the meaning given in Rule 10.3.1(m);

**Related Risk** means the risk over the relevant period relative to the timing associated with the applicable Variation Requirement;

**Relevant Currency** has the meaning given in Rule 2.3.11(a);

**Relevant FX Clearing Member** means a Clearing Member that owes and/or is owed a FX Obligation to and/or by a Defaulting Clearing Member;

**Relevant Payment System** means CHAPS, TARGET2, Fedwire or any other payment system approved by the Clearing House;

**Replacement Cost** has the meaning given in Rule 11.6.3;

**Replacement Transaction** has the meaning given in Rule 11.7.6;

**Reporting Switch-On Date** has the meaning given in Rule 12.2.1;

**Reporting Switch-Off Date** has the meaning given in Rule 12.2.2;

**Representative** means, when applied to any person, any person which carries out or is responsible for any of its functions and shall include each director, officer, employee or agent of such person;

**Restricted Country** means a country that is subject to comprehensive economic sanctions administered by the US Department of the Treasury's Office of Foreign Assets Control;

**Restricted Persons** means a party that is identified on the Specially Designated National and Blocked Persons List of the US Department of the Treasury's Office of Foreign Assets Control;

**Risk Committee** means the Risk Committee of the Clearing House from time to time;

**Risk Management Procedure** means the Risk Management Procedure in the Procedures;

**Rulebook** means the rules of the Clearing House as set out herein as they may be amended from time to time;

**Rules** means:

- (a) where used in reference to one or more provisions of the Rulebook, those provisions of the Rulebook; or
- (b) otherwise, the Rulebook, the Contract Modules, Procedures and any Notices issued pursuant to the Rulebook and, for the purposes of any Rules concerning non-

compliance with or breach of or failure to discharge any of the Rules, shall include the provisions of the Clearing Membership Agreement

each as amended from time to time;

**Securities** has the meaning given in Rule 10.2;

**Securities Collateral Return** has the meaning given in Rule 10.3.1(g);

**Securities Collateral Transfer** has the meaning given in Rule 10.3.1(m);

**Securities Return** has the meaning given in Rule 10.3.1(b);

**Securities Substitution** has the meaning given in Rule 10.3.1(a);

**Securities Transfer Order** has the meaning given in Rule 10.2;

**Security CM** means a Non-FCM Clearing Member that is not a Contract CM;

**Security Trustee** means the security trustee who holds on trust the assets assigned to it by way of a Client Protection Agreement on behalf of a class of Clients, each of whom has elected to benefit from such trust in its Client Acknowledgement;

**Security Trust Deed** means the deed referred to at Rule 3A.4.1 which is in the form prescribed by the Clearing House;

**Settlement Agent for Precious Metals** means a bank which is a member of the LPMCL and acts as a settlement and custodian bank in relation to the delivery and safekeeping of allocated or unallocated Precious Metal (as the context requires), acting in its capacity as such;

**Settlement Bank** means a bank which has been approved by the Clearing House to receive Eligible Cash into and pay Eligible Cash from a Bank Account, for the purposes of the Rules, acting in its capacity as such;

**Settlement Bank Agreement** has the meaning given in Rule 10.1.1;

**Settlement Cycle** has the meaning given to it in Rule 6.1.6 and, in relation to Rule 8.10 only, also includes any other determination of the Clearing House in relation to the rights and obligations of each Clearing Member under Rule 8.10;

**Settlement Deadline** means 24 hours from the Step-in Time;

**Settlement Finality Regulations** has the meaning given in Rule 10.1.1;

**Settlement Finality Rules** has the meaning given in Rule 10.1.1;

**Shortfall** means, at any time, the amount (if any) by which with respect to the relevant Product Class or Standard Contract Product Sub-Class, as applicable;

- (a) the Aggregate IRS Collects or Aggregate Standard Collects or Aggregate Standard Swaps Collects or Aggregate Standard FBOT Futures or Standard DCM Futures Collects (as applicable) of such Product Class or Standard Contract Product Sub-Class received by the Clearing House

are less than

- (b) the Aggregate IRS Pays or Aggregate Standard Pays or Aggregate Standard Swaps Collects or Aggregate Standard FBOT Futures or Standard DCM Futures Collects (as applicable) of such Product Class or Standard Contract Product Sub-Class to be paid by the Clearing House,

or (if the steps under Rule 8.10 have not been completed at such time) the amount that the Clearing House determines would have been the relevant shortfall if the steps under Rule 8.10 had been completed at that time;

**Silver** means unallocated silver complying with the rules of the London Bullion Market Association relating to good delivery in effect from time to time as the context requires

**Single Net Sum** means a Standard Single Net Sum or an IRS Single Net Sum, or, in relation to a Client Protection Agreement and/or an FS Document, a CCP Default Single Net Sum;

**Standard Account** means:

- (a) in relation to a Non-FCM Clearing Member, a Standard House Account, a Standard Omnibus Client Account, a Standard Individual Client Account or a Standard Notional Sub-Account;
- (b) in relation to an FCM Clearing Member, a Standard Swaps House Account, a Standard Futures House Account, a Standard FCM LSOC Client Account, a Standard FCM LSOC Client Sub-Account, an FCM FBOT Futures Client Account or an FCM DCM Futures Client Account;

**Standard Assessment** means an Assessment with respect to a Standard Clearing Member in accordance with Rule 8.7.1;

**Standard CCP Default Single Net Sum** has the meaning given to it in Rule 2.5.8;

**Standard Clearing Member** means a Clearing Member that has been accepted by the Clearing House as a Standard Clearing Member and remains as such and that may only enter into Standard Contracts pursuant to such status;

**Standard Collateral** means Collateral relating to a Standard Contract;

**Standard Collect** means a Collect relating to a Standard Account;

**Standard Contract** means a Contract satisfying a Contract Specification contained in:

- (a) a Contract Module for Contracts other than IRS Contracts; or
- (b) the CME Europe Contract Module for Interest Rate Products (which are classified by CME Europe as swaps, as that term is defined in the CEA and CFTC Regulation 1.3(xxx)) but only where they are entered into by a Standard Clearing Member that is not also an IRS Clearing Member;

**Standard Contract Product Sub-Class** means the sub-classification of Standard Contracts into Standard Swaps Contracts, Standard FBOT Futures Contracts or Standard DCM Futures Contracts;

**Standard Contribution Formula** means a Standard Clearing Member's share of the average daily Margin Requirement for all Standard Clearing Member's in the previous quarter, weighted at 85% (eighty five per cent.), and its share of gross volume in the previous quarter, weighted at 15% (fifteen per cent.), in each case in respect of Standard Contracts;

**Standard Cooling Off Period** means the period starting on the date of the first Standard Declaration of Default and ending on:

- (a) if there are no further Standard Declarations of Default during the 5 (five) Business Days following the original Standard Declaration of Default, the fifth Business Day after the date of the original Standard Declaration of Default, and
- (b) if one or more Standard Declarations of Default are issued during the 5 (five) Business Days following the first Standard Declaration of Default, or any subsequent Standard Declaration of Default issued during the 5 (five) Business Days following any such previous Standard Declaration of Default, the fifth Business Day following the issuance of the last such Standard Declaration of Default regardless of the number of Standard Declarations of Default that may be issued during such period;

**Standard Declaration of Default** means a Declaration of Default in relation to which at least one Affected Contract is a Standard Contract;



**Standard Emergency Powers Committee** means the Standard Emergency Powers Committee of the Clearing House from time to time acting in accordance with its terms of reference;

**Standard DCM Futures Contract** means, in relation to an FCM Clearing Member that is a Standard Clearing Member, a Standard Futures Contract that is listed on an Exchange that is registered with the CFTC under the CEA as a designated contract market;

**Standard FBOT Futures Contract** means, in relation to an FCM Clearing Member that is a Standard Clearing Member, a Standard Futures Contract that is listed on an Exchange that is a foreign board of trade within the meaning of the CEA and CFTC Regulations;

**Standard FCM LSOC Client Account** means, in relation to an FCM Clearing Member that is a Standard Clearing Member, a Client Account which relates to Standard Swaps Contracts cleared by the Standard Clearing Member on behalf of one or more Clients along with Standard Futures Contracts that may also be cleared in such Client Account in accordance with the FCM Clearing Member Procedure, and includes any Standard FCM LSOC Client Sub-Account; the Standard FCM LSOC Client Account structure may also include, as applicable, an FCM LSOC Client Buffer Sub-Account and/or an FCM LSOC Client Unallocated Sub-Account, but such accounts are not Client Accounts;

**Standard FCM LSOC Client Sub-Account** means, in relation to a Standard FCM LSOC Client Account, a sub-account which relates to Standard Swaps Contracts, if any, cleared by a Standard Clearing Member on behalf of one Client within that Standard FCM LSOC Client Account;

**Standard Futures Contract** means, in relation to an FCM Clearing Member that is a Standard Clearing Member, a Standard Contract that is an Exchange Contract and classified by the Exchange as a “contract of sale of a commodity for future delivery,” also known as a “futures contract,” or an “option” on such a contract, as those terms are used in the CEA and/or the rules, regulations and interpretations of the CFTC;

**Standard Futures House Account** means in relation to an FCM Clearing Member, the account opened for the Clearing Member in the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of all Standard Futures Contracts other than the Contracts recorded in any FCM Futures Client Account and the Collateral relating to such Standard Futures Contracts;

**Standard Guarantee Fund** means the fund established by the Clearing House in respect of Standard Contracts pursuant to Chapter 7;

**Standard House Account** means in relation to a Non-FCM Clearing Member, the account opened for the Clearing Member in the books and records of the Clearing House in

accordance with Rule 4.2.1 in respect of all Standard Contracts other than the Contracts recorded in any Client Account and the Collateral relating to such Standard Contracts;

**Standard Individual Client Account** means, in relation to a Non-FCM Clearing Member that is a Standard Clearing Member, a Client Account which relates to Standard Contracts entered into by the Standard Clearing Member on behalf of a single Client;

**Standard Interim Asset** has the meaning given in Rule 8.5.3

**Standard Interim Liability** has the meaning given in Rule 8.5.3;

**Standard Membership Termination Date** means:

- (a) in relation to a termination pursuant to Rule 3.8.1, the date of the first reassessment of the Standard Clearing Members' Contributions after the Clearing House is reasonably satisfied that the Standard Clearing Member has fully discharged all its obligations in respect of its membership as a Standard Clearing Member under the Rules and ceased to be a party to any Standard Contract following the giving or receiving of a notice in accordance with Rule 3.8.1 to terminate the membership of such Standard Clearing Member and which is notified to the Standard Clearing Member as its membership termination date (it being acknowledged that the Standard Clearing Member will not be required to discharge any obligation in relation to the provision of any Contribution that would otherwise be reassessed to the Standard Clearing Member on such date); and
- (b) in relation to a termination pursuant to Rule 8.8, the Business Day immediately following the Cooling Off Period during which the Standard Clearing Member gave notice pursuant to Rule 8.8.1 provided that by such date the Standard Clearing Member has ceased to be a party to any Standard Contract, otherwise it will be such Business Day following the relevant Cooling Off Period on which the Clearing House is reasonably satisfied that the Standard Clearing Member has ceased to be a party to any Standard Contract and such date will be notified to the Standard Clearing Member as its membership termination date;

**Standard Notional Sub-Account** means, in relation to a Standard Omnibus Client Account, a notional sub-account which relates to:

- (c) Standard Contracts entered into by a Standard Clearing Member on behalf of one Client only within that Standard Omnibus Client Account; or
- (d) Standard Contracts, if any, entered into by a Standard Clearing Member on behalf of one or more Clients within that Standard Omnibus Client Account which the Clearing House cannot identify as relating to a particular Client;

**Standard Omnibus Client Account** means, in relation to a Non-FCM Clearing Member that is a Standard Clearing Member, a Client Account which relates to Standard Contracts entered into by the Standard Clearing Member on behalf of more than one Client;

**Standard Optional Payment** means an Optional Payment relating to a Standard Clearing Member's Standard Contracts;

**Standard Pay** means a Pay relating to a Standard Account;

**Standard Portable Interim Asset** has the meaning given to it in Rule 8.4.9;

**Standard Portable Interim Liability** has the meaning given to it in Rule 8.4.9;

**Standard Single Net Sum** has the meaning given to it in Rule 8.5.5;

**Standard Swaps Contract** means a Standard Contract that is traded as an OTC Transaction or that is an Exchange Contract that is not a Standard Futures Contract;

**Standard Swaps House Account** means in relation to an FCM Clearing Member, the account opened for the Clearing Member in the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of all Standard Swaps Contracts other than the Contracts recorded in any FCM Client LSOC Client Sub-Account and the Collateral relating to such Standard Swaps Contracts;

**Standard Variation Margin Requirement Haircut** has the meaning given to it in Rule 8.6.4(c)(i);

**Step-in Time** has the meaning given in Rule 11.7.3;

**Stress Test Methodology** means a model used by the Clearing House which estimates losses following default by various IRS Clearing Members and which assumes Defaulting IRS Clearing Members fail to make further Contributions or such other model as may be selected by the Risk Committee from time to time;

**Subordinated Bidder** means a category 1 bidder or a category 2 bidder both as determined by the Clearing House in accordance with its default management procedures;

**Swiss Collateral Management Agreement** means, in relation to a Clearing Member and a Client, the collateral management agreement entered into between the Clearing House, the Clearing Member, the Client and a Swiss FS Custodian in relation to Swiss FS Accounts;

**Swiss FS Custodian** means an FS Custodian incorporated under the laws of Switzerland;

**Swiss FS Account** means an FS Account opened with an FS Custodian incorporated in Switzerland;

**Temporary Contract** means, in relation to a Defaulting Clearing Member, a Relevant FX Clearing Member and the Unsettled FX Obligations between them, a Contract between the Clearing House and the Relevant FX Clearing Member on the same terms as the Unsettled FX Obligations, except that the Clearing House is a party instead of the Defaulting Clearing Member;

**Termination Date** means the Business Day immediately following the date on which the Clearing House enters into liquidation or administration or following a payment default by the Clearing House under Rule 2.5.1(c);

**Termination Swap** means, in relation to a Temporary Contract, a Contract with delivery obligations that are opposite to those in the Temporary Contract;

**Third Party Trade Delegate** means a Person, in its capacity as a broker, authorised by the Clearing Member to the Clearing House to submit Transactions to the Clearing House on behalf of a Clearing Member and/or a Client;

**TR Rulebook** means the rules of the Trade Repository as amended from time to time;

**Trade Repository** means **CME Trade Repository Limited**, or **CME Swap Data Repository**, as applicable;

**Transaction** means:

- (a) a transaction entered into by two Clearing Members;
- (b) a transaction that is deemed to exist between two Clearing Members on the submission to the Clearing System of matching details of an actual transaction entered into between a Client of each Clearing Member or one of the Clearing Members and a Client of the other; or
- (c) a transaction that is deemed to exist on the submission to the Clearing System of matching details of a transaction entered into between a Clearing Member acting on behalf of a Client and the same Clearing Member acting on its own account or on behalf of another Client

in each case, which satisfies the terms of a Contract Specification;

**Transaction Manager** has the meaning set out in Rule 3.2.1(m);

**Transfer Order** has the meaning given in Rule 10.2;

**Transferee Clearing Member** has the meaning given in Rule 5.3.1;

**Transferor** has the meaning given in Rule 6.3.9;

**Transferor Clearing Member** has the meaning given in Rule 5.3.1;

**Unallocated Precious Metals Account** means an account held with one of the members of LPMCL for the purposes of holding unallocated Precious Metal and shall include any sub-account opened within it;

**Unsettled FX Obligations** means FX Obligations that are still outstanding after the steps under Rule 11.7.5 (a) to (c) have occurred;

**User Licence Agreement** means the agreement of the same name entered into between the Clearing House and each Clearing Member;

**Variation Requirement** means, at any time, the amount of Eligible Assets payable as Collateral to the Clearing House, or the amount payable to the Clearing Member, in accordance with Rule 6.1.3 in respect of each Account to reflect the marking to market of the Contracts relating to that Account including any final settlement amounts;

**VM Haircut Settlement Cycle** has the meaning given to it in Rule 8.6.4;

**Winning Bidder** is the winning bidder, as determined by the Clearing House in accordance with its default management processes, in an auction held by the Clearing House as part of its default management processes; and

**Website** means the Clearing House's website at [www.cmeclearingeuropa.com](http://www.cmeclearingeuropa.com).

**1.2** In the Rules unless otherwise specified:

- 1.2.1 the table of contents and the headings are inserted for convenience only and do not affect the interpretation of the Rules;
- 1.2.2 references to Chapters are to the chapters of this Rulebook;
- 1.2.3 references to Rules are to the Rules or any particular one of the Rules;
- 1.2.4 references to any document are to that document as from time to time amended, restated, novated or replaced, however fundamentally;
- 1.2.5 references to a person include an individual, partnership, company, corporation, unincorporated body of persons and any government entity;
- 1.2.6 references to any statute or statutory provision include any subordinate legislation made under it;
- 1.2.7 references to any statute or statutory provision, or to any rule, regulation, interpretation or order of a Regulatory Authority, include any provision amending it or re-enacting or re-

adopting it (whether with or without modification) which is the same as, or substantially similar to, the obligations imposed by the specified statute or statutory provision, rule, regulation, interpretation or order;

- 1.2.8 references to time are to London time unless otherwise specified and are set out in the 24 hour clock convention;
- 1.2.9 words importing the plural include the singular and vice versa and the use of any gender includes the other gender;
- 1.2.10 the words other, including and in particular shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;
- 1.2.11 any reference to the discretion exercised by the Clearing House shall mean the Clearing House's sole, unfettered and absolute discretion; and
- 1.2.12 references to a negative sum means a sum due from a Defaulting Clearing Member and a positive sum means a sum due to a Defaulting Clearing Member.
- 1.3** Any sum calculated under Rule 2.5 (*Clearing House Insolvency*) or Chapter 8 (*Default*) as a result of netting or setting off amounts or applying amounts against each other is not a new obligation but the aggregate or reduction of existing obligations between the Clearing Member and the Clearing House in accordance with the relevant Rule.
- 1.4** References to "expiration" and "expiry" in Chapter 11 shall be construed in accordance with Rule 11.4.2.
- 1.5** The Board of Directors of the Clearing House shall have the authority to interpret the Rules. Save as otherwise provided, any such interpretations shall be final and conclusive.
- 1.6** This Rulebook shall be interpreted in conjunction with any Contract Module, Procedure and Notice. Each Clearing Member will be bound by such Contract Specification, Contract Modules, Procedures and Notices as may be relevant to it which shall be set out on the Website, or, in relation to an Exchange Transaction, on the Exchange Website.
- 1.7** In the event of any conflict between the Rulebook and the Clearing Membership Agreement, the Rulebook shall take precedence. In the event of any conflict between the Rulebook and the Procedures, the Rulebook shall take precedence. In the event of any conflict between the Rulebook and a Notice, the Rulebook shall take precedence except to the extent a Notice amends the Rulebook. In the event of any conflict between the Rulebook and a Contract Module, the Contract Module shall take precedence insofar as the conflict relates to the Contract Specification for the type of Contract governed by the

Contract Module. In the event of any conflict between the Rules and the User Licence Agreement, the Rules shall take precedence.

**1.8** In the event of any conflict between:

1.8.1 the Rules or the Clearing Membership Agreement, and

1.8.2 the FS Documents, Client Agreement or the Client Protection Agreement or the Security Trust Deed or the Client Acknowledgement,

the Rules and the Clearing Membership Agreement shall take precedence.

1.8.3 In the event of any conflict between the FS Documents, the Client Agreement, the Client Protection Agreement, the Security Trust Deed and the Client Acknowledgement:

(a) the FS Documents will take precedence over the Client Protection Agreement, the Security Trust Deed, the Client Agreement and the Client Acknowledgement;

(b) the Client Protection Agreement and the Security Trust Deed will take precedence over the Client Agreement; and

(c) the Client Acknowledgement will take precedence over the Client Agreement.

**1.9** If the Clearing House is unable to ascertain any amount or sum for any purpose including for any set-off, netting or aggregation under the Rules, the Clearing House may in good faith estimate that obligation (whether matured or contingent) and set-off, net or aggregate in respect of the estimate, subject to the Clearing House accounting to the Clearing Member or vice versa when the obligation is ascertained.

**1.10** If any Rule allows a delegate of either the CEO or the Board of Directors to take action or make any decisions, such delegate shall be of sufficient seniority to take such action or make such decision (in the reasonable opinion of the Clearing House).

**1.11** Where a Clearing Member is required to or does provide one or more Representatives for any of the Clearing House's committees, the Clearing Member will procure that its Representatives:

1.11.1 comply with their obligations under the relevant terms of reference and, where relevant, the Default Management Overview Document; and

1.11.2 enter into such confidentiality agreements, and comply with such confidentiality obligations, as the Clearing House may reasonably require.

- 1.12** Where a Clearing Member is required to provide information to the Clearing House, the Clearing House shall not be required to verify, and shall be entitled to rely on, such information.

DRAFT AND SUBJECT TO REGULATORY APPROVAL



## CHAPTER 2

### GENERAL PROVISIONS

#### 2.1 General

- 2.1.1 The Rules, together with the Clearing Membership Agreement and any other documentation given contractual force pursuant to these Rules, form a binding agreement with rights and obligations established between the Clearing House and each Clearing Member. No person other than the Clearing House has any obligation to Clearing Members under these Rules, the Clearing Membership Agreement or any Contract.
- 2.1.2 No Clearing Member or Contract CM Client shall assign, transfer or create any Encumbrance in relation to any of its rights or obligations under the Rules, the Clearing Membership Agreement or any Contract save as otherwise set out in the Rules.

#### 2.2 Amendments

- 2.2.1 The Clearing House may amend the Rulebook at any time by issuing a Notice setting out the text of the amended Rules and, where appropriate, a brief explanation of the reason for the amendment.
- 2.2.2 The Clearing House will publish any proposed amendment to the Rulebook for consultation and will invite Clearing Members to submit comments in writing within a specified deadline save that the Clearing House shall not be required to consult on any amendments to the Rulebook which:
- (a) are minor changes of an administrative or commercial character or where the Clearing House reasonably considers that the amendment would not significantly affect the rights, obligations or liabilities of Clearing Members or Contract CM Clients or that consultation is otherwise not appropriate;
  - (b) are considered by the Clearing House necessary to ensure compliance with the Applicable Laws or a requirement of a Regulatory Authority on the Clearing House or any Clearing Member or Contract CM Client;
  - (c) are considered by the Clearing House necessary as a result of an Event of Default or Force Majeure Event; or
  - (d) are otherwise considered by the Clearing House to be necessary for the purpose of mitigating a significant risk to the Clearing House (including by mitigating a significant risk to a Clearing Member) or for the purposes of Rule 3.7.

- 2.2.3 The Clearing House may consult on a proposed amendment to the Rulebook with only a limited number of Clearing Members if it reasonably considers it appropriate to do so including where, in the Clearing House's reasonable opinion, a proposed amendment will affect a limited number of Clearing Members or in the Clearing House's reasonable opinion, is a limited technical amendment.
- 2.2.4 Subject to Rule 2.2.9, a Notice setting out an amendment to the Rulebook shall state the date from which such amendment comes into effect, which shall not be earlier than ten (10) Business Days from the date of the Notice except that any of the amendments set out in Rule 2.2.2 may take immediate effect on the date of the Notice.
- 2.2.5 The Clearing House may amend the Procedures and Notices at any time by issuing a Notice setting out the text of the amended Procedure or Notice. Any such amendment shall have immediate effect unless otherwise required under Applicable Law or otherwise determined by the Clearing House, in each case as stated in the Notice.
- 2.2.6 No amendment to the Rules shall have the effect of extinguishing any right or discharging any liability incurred under the Rules before such amendment came into effect.
- 2.2.7 The Clearing House shall notify Clearing Members of any changes in its Business Days and Opening Hours from time to time by Notice.
- 2.2.8 Subject to Rule 8.10, if at any time the Clearing House decides to cease acting as a clearing house, either generally or in relation to a particular type of Contract, it shall give prior notice to Clearing Members where possible and as soon as reasonably practicable of the proposed withdrawal date. Where any Contract has not been closed out or settled, subject to any restriction under Applicable Law, the Clearing House shall use reasonable endeavours to give six (6) months' notice. If at any withdrawal date, any Affected Contracts remain open and in force or not otherwise closed pursuant to Rule 5.2.7, the Clearing House shall be entitled to offset, liquidate or require any such Contracts to cash settle on terms specified by the Clearing House.
- 2.2.9 Any amendment to Rules 2.3, 2.4, 2.5.8 to 2.5.23, 3.7, 3.8, 3.10.1, 3.10.2, 6.4 or Chapter 8 which significantly increases the:
- (a) exposure to the Clearing House in respect of any indemnity given by the Clearing Member;
  - (b) Assessments; or
  - (c) the time it takes to terminate membership of the Clearing House,

of a significant proportion of Clearing Members, or any amendments which have the effect of allowing the Clearing House to Invoice Back or use mandatory allocation in relation to a significant proportion of Clearing Members, and which does not fall within the situations set out in Rules 2.2.2(a) to 2.2.2(d), shall take effect on the day specified in the Notice in which such amendments are published, which shall not be less than twenty (20) Business Days after the date of such publication.

2.2.10 The Clearing House shall not amend the Rules in such a way as to introduce a power to Invoice Back Contracts. This Rule 2.2.10 is without prejudice to the Clearing House's ability to Invoice Back Contracts in accordance with Rules 2.9 or 3.7.1.

2.2.11 The Rules may be amended without any notice to, consultation with or consent from any Client.

*Amendments to Contract Specifications*

2.2.12 The Clearing House may not amend a Contract Specification with retroactive effect.

2.2.13 The Clearing House may amend a Contract Specification by Notice provided that, if the proposed amendment is, in the Clearing House's reasonable opinion, material:

- (a) it consults with the Risk Committee in advance of making such amendment; and
- (b) if the amendments will affect future obligations under existing Contracts, it consults with all affected Clearing Members in advance of making such amendment, and the Clearing House will take the recommendations of such affected Clearing Members into account, acting in good faith, when deciding whether to make any such amendments to any Contract Specification.

2.2.14 Notwithstanding Rules 2.2.12 and 2.2.13, the Clearing House may amend a Contract Module or any Contract Specification at any time in accordance with Rule 3.7.1. Any amendment to a Contract Specification will relate to all Contracts with the same Contract Specification.

2.2.15 Without prejudice to Rules 2.2.12 to 2.2.14, any amendment made to a Contract Module or Contract Specification shall have immediate effect unless otherwise stated in the Notice setting out the amended text.

*Amendments to Contract Modules*

2.2.16 Subject to Rules 2.2.8 and 2.2.12 to 2.2.14, the Clearing House may amend a Contract Module, including by way of addition or removal of a Contract Specification, by way of Notice.

*Acceptance of amendment Rules*

2.2.17 By making or receiving a payment in the next Settlement Cycle and/or submitting a Transaction for clearing in accordance with Chapter 5 after the time at which an amendment (made in accordance with Rules 2.2 or 3.7.1(k)) is stated to have effect in the relevant Notice, the Clearing Member is deemed to have accepted the amendment.

**2.3 Limitations of liability and indemnity**

2.3.1 Each Clearing Member shall indemnify the Clearing House, Chicago Mercantile Exchange, Inc. and any of its Parent Undertakings and each of their respective Representatives (each an **Indemnified Person**) against any and all losses, liabilities, damages, claims, costs or expenses suffered or incurred by the Indemnified Person:

- (a) arising out of or in connection with the Clearing Member's conduct or its breach of these Rules; or
- (b) arising out of or in connection with any Contract entered into by the relevant Clearing Member;

save to the extent that the losses, liabilities, damages, claims, costs or expenses arise as a result of the bad faith, fraud, wilful default or gross negligence of the Indemnified Person.

2.3.2 To the extent that the Clearing Member is required to indemnify the Indemnified Persons, it shall only be required to indemnify the Clearing House provided that:

- (a) the Clearing House notifies the Clearing Member as soon as reasonably practicable if it intends to claim under any such indemnity; and
- (b) the Clearing House takes reasonable steps to minimise its loss.

2.3.3 This Rule applies to a Non-FCM Clearing Member who is a beneficiary under an FS Security Trust Deed. Without prejudice to the generality of Rule 2.3.1, each such Clearing Member shall promptly reimburse and (on request from the Clearing House) indemnify or pre-fund the Clearing House against all losses, liabilities, damages, claims, costs and expenses incurred by the Clearing House to the FS Security Trustee under any provision of that FS Security Trust Deed which refers to this Rule 2.3.3. Each such Clearing Member is severally liable under this Rule 2.3.3 except that it shall only be liable:

- (a) to the extent that the obligation relates to the Clearing Member, a member of its Beneficiary Group and/or an FS Account related to any member of its Beneficiary Group (to be determined by the FS Security Trustee after the date on which all Contracts entered into between the Clearing Members and the Clearing House under

the Rules are terminated in accordance with Rule 2.5 and to be determined by the Clearing House before such time); and

- (b) in other cases, pro-rata with all other Clearing Members that are beneficiaries under all FS Security Trust Deeds in respect of which the FS Security Trustee is trustee. For this purpose, an obligation shall be shared pro-rata by a Clearing Member by multiplying the relevant obligation by:
  - (i) the number of FS Accounts relating to that Beneficiary Clearing Member's Beneficiary Group; divided by
  - (ii) the total number of all FS Accounts subject to any FS Security Trust Deeds in respect of which the FS Security Trustee is trustee.

2.3.4 Neither the Clearing House nor any of its Affiliates or Representatives shall have any liability or obligation under or in respect of a Transaction unless and until a Contract arises. The Clearing House's liabilities and obligations under any Contract will be limited to those set out in these Rules and the terms of the Contract.

2.3.5 Notwithstanding any other provision of the Rules, neither the Clearing House nor any of its Affiliates or Representatives shall be liable for any losses, liabilities, damages, claims, costs or expenses, whether in contract, tort or breach of statutory duty or otherwise, arising from or in connection with:

- (a) any suspension or closure of the Clearing House, an Exchange or the Trade Repository;
- (b) any failure or malfunction or defect or delay or interruption in, or inability to use, any systems or communications necessary for the use of the Clearing House (whether or not such systems or communications are under the control of the Clearing House);
- (c) any errors or inaccuracies in any information used in any systems of the Clearing House or provided by or to the Clearing House;
- (d) any warranties, representations and undertakings which might be implied, whether by statute or otherwise, in respect of any systems used or provided by the Clearing House including the Clearing System, an Exchange and Trade Repository, including as to fitness for purpose or for a particular use;
- (e) any exercise or failure to exercise any discretion or right conferred upon the Clearing House pursuant to the Rules;

- (f) any error, delay or inaccuracy in the submission of a Transaction or the transmission of information to or by the Clearing House and any unauthorised access to or use of the Clearing System;
- (g) the performance of any obligation of a Clearing Member or Client or Third Party Trade Delegate or other person;
- (h) subject to Rule 2.4.2, the acts or omissions of, or an Insolvency Event affecting, any third party including the Security Trustee, an Exchange, the Trade Repository, any Settlement Bank, Custodian (subject to 2.3.5(j)), Agent Bank, the CLS Bank or any entities providing access to the CLS System, Investment Agent, Central Security Depository, settlement agent or provider of data or other services or systems to the Clearing House, warehouse, shipping station or similar organisation or entity that may be involved with a delivery of any physically settled Contract, or any of their affiliates, sub-contractors or delegates;
- (i) any dispute relating to the validity, existence or terms of any Contract; or
- (j) any loss or diminution in the value of, or depreciation in or in connection with any, Collateral, Contributions, Assessments or Optional Payments provided to the Clearing House pursuant to the Rules:
  - (i) including the amount of any Investment Losses arising from one event or (in the reasonable discretion of the Clearing House) a series of connected events which exceeds USD 100 million, such excess being a **Major Investment Loss** which shall be borne by the Clearing Members in accordance with Rule 2.3.11; but
  - (ii) excluding other Investment Losses, which shall be borne by the Clearing House.

2.3.6 Neither the Clearing House nor any of its Affiliates or Representatives shall in any circumstances be liable to a Clearing Member or any other person for:

- (a) loss of or anticipated loss of profit, loss of or anticipated loss of revenue, loss of use, business interruption, loss of use of any equipment, loss of any contract or other business opportunity or goodwill or punitive loss; or
- (b) indirect loss or consequential loss,

regardless of whether the Clearing House has been advised of the possibility of such loss or whether such loss otherwise could have been foreseen.

- 2.3.7 Neither this Rule 2.3 nor any other Rule shall affect the application of section 291 FSMA nor exclude or restrict the liability of the Clearing House or any other person:
- (a) in respect of the fraud, bad faith, wilful default or gross negligence of the Clearing House;
  - (b) in respect of personal injury or death resulting from negligence, recklessness or an intentional act or omission; or
  - (c) otherwise to the extent it cannot be excluded or restricted in accordance with the Applicable Law.
- 2.3.8 Nothing in these Rules shall require the Clearing Member to indemnify the Clearing House to the extent not permissible in accordance with the Applicable Law.
- 2.3.9 The Clearing House has no obligations or liabilities under the Rules to any person other than a Clearing Member or (solely in respect of any obligation to transfer under Rule 8.4.6 or to pay under Rule 8.5.11(a)) to a Contract CM Client.
- 2.3.10 The Clearing Member shall notify the Clearing House in writing of any possible action, claim or proceeding against the Clearing House and the details thereof as soon as reasonably practicable.
- 2.3.11 A Major Investment Loss shall be borne by all Clearing Members in the following way:
- (a) the loss in each currency in which cash Collateral, Contributions, Assessments or Optional Payments is attributed to any of the Clearing Members in the books and records of the Clearing House (the **Relevant Currency**) shall be shared by each Clearing Member in the proportion (determined by the Clearing House acting reasonably and based on the blended exchange rate used by the Clearing House in its ordinary course of trading) that:
    - (i) the amount of cash Collateral, Contributions, Assessments and Optional Payments attributed to that Clearing Member in the books and records of the Clearing House in that Relevant Currency, if any (the **Maximum Share**); bears to
    - (ii) the amount of cash Collateral, Contributions, Assessments and Optional Payments attributed to all Clearing Members in the books and records of the Clearing House in that Relevant Currency, if any;
  - (b) the amount calculated under Rule 2.3.11(a) in respect of a Clearing Member shall be allocated:

- (i) pro-rata across all Accounts of that Clearing Member to which amounts in that Relevant Currency are attributed; and
  - (ii) pro-rata against the Collateral, Contributions, Assessments and Optional Payments in that Relevant Currency connected with each Account of that Clearing Member;
- (c) such allocation will reduce the value of such Collateral, Contributions, Assessments and Optional Payments (and the rights of each Clearing Member in respect of them) for all purposes including without limitation:
- (i) in relation to the obligation of the Clearing House to return Equivalent Assets under Rule 3.10 or otherwise;
  - (ii) determining the rights and obligations of the Clearing House and Clearing Members under Rule 2.4, Rule 2.5 or Chapter 8;
  - (iii) calculating the Net Settlement Amount pursuant to Rule 6.1.5;
  - (iv) re-assessing a Clearing Member's Contribution pursuant to Rules 7.2.3 and 7.2.4; and
  - (v) determining the amount of the Assessment that a Clearing Member owes pursuant to Rule 8.7; and
- (d) a Clearing Member shall not bear (under this Rule, Rule 2.3.11 or otherwise) more than its Maximum Share of any Major Investment Loss in each Relevant Currency.

2.3.12 In the event that a Major Investment Loss is shared pursuant to Rule 2.3.11, where any Investment Loss is recovered by the Clearing House in relation to a Relevant Currency (such amount net of the costs of recovery and taxes being the **Recovered Amount**), the Recovered Amount shall be shared in the following way:

- (a) the Recovered Amount shall be shared between each Clearing Member which shared in such Major Investment Loss in relation to that Relevant Currency in the same proportion as under Rule 2.3.11(a) (the **Maximum Recovery Share**);
- (b) the amount calculated under Rule 2.3.12(a) in respect of a Clearing Member which shared in such Major Investment Loss in relation to that Relevant Currency shall be allocated:
  - (i) in respect of:



- (A) Accounts of that Clearing Member which bore the loss under Rule 2.3.11(b); and
  - (B) Collateral, Contributions, Assessments and Optional Payments in that Relevant Currency that are connected with each such Account;
- (ii) any balance shall be allocated to the House Account of that Clearing Member for the account of (and on payment to) the relevant Client by the Clearing Member in the same proportion as the loss was borne under Rule 2.3.11(b);
- (c) such allocation will increase the value of such Collateral, Contributions, Assessments and Optional Payments (and the rights of each Clearing Member which shared in such Major Investment Loss in relation to that Relevant Currency in respect of them) for all purposes including without limitation:
- (i) in relation to the obligation of the Clearing House to return Equivalent Assets under Rule 3.10 or otherwise;
  - (ii) determining the rights and obligations of the Clearing House and Clearing Members under Rule 2.4, Rule 2.5 or Chapter 8;
  - (iii) calculating the Net Settlement Amount pursuant to Rule 6.1.5;
  - (iv) re-assessing a Clearing Member's Contribution pursuant to Rules 7.2.3 and 7.2.4; and
  - (v) determining the amount of the Assessment that a Clearing Member owes pursuant to Rule 8.7; and
- (d) a Clearing Member shall not receive (under this Rule, Rule 2.3.11 or otherwise) more than its Maximum Recovery Share in relation to each Relevant Currency.

2.3.13 In the event that an Insolvency Event occurs in relation to a counterparty to a reverse repurchase agreement entered into with the Clearing House, the Clearing House shall use reasonable endeavours to notify the Clearing Members in the event that the Clearing House becomes aware that an Investment Loss or Major Investment Loss has arisen or the Clearing House reasonably considers that an Investment Loss or Major Investment Loss is likely to arise.

2.3.14 Rule 2.3.1 applies to a Clearing Member at all times including in the event the Clearing House issues a Declaration of Default against the Clearing Member and the Clearing House may collect amounts owing to it pursuant to such Rule.

## 2.4 Limited recourse

2.4.1 This Rule 2.4 overrides all other provisions of the Rules, each Clearing Membership Agreement and any other agreement or arrangement.

2.4.2 Any liability (present, future, contingent or otherwise) of the Clearing House to a Clearing Member or any other person in connection with a Defaulting IRS Clearing Member or Defaulting Standard Clearing Member shall be recoverable by that Clearing Member or other person only from and to the extent of:

- (a) a portion of the Collateral held by the Clearing House pro-rata to the relevant Defaulting Clearing Member's Collateral and the related Guarantee Fund, Assessments and Optional Payments; less
- (b) assets which are not available to the Clearing House because:
  - (i) the Clearing House has applied or determined to apply them under the Rules; or
  - (ii) there has been a default (including, without limitation, fraud, negligence, wilful default or the occurrence of an Insolvency Event) with respect to:
    - (A) a Custodian or an Investment Agent; or
    - (B) a Settlement Bank, Settlement Agent for Precious Metals or Agent Bank:
      - (1) which has been selected by the Clearing House following consultation with the Risk Committee and approval by the Board of Directors;
      - (2) which is monitored by the Clearing House in accordance with its normal procedures as consulted on with the Risk Committee; and
      - (3) in the case of a default by an Investment Agent only, where there is no material breach by the Clearing House of its investment management policy outstanding.

The Clearing House shall have no further liability to a Clearing Member or any other person in relation to a loss or liability relating to a Defaulting Clearing Member.

2.4.3 If a Clearing Member receives any payment or asset (including by way of set-off or by way of enforcement of any Encumbrance) under the Rules or its rights under the Rules are otherwise discharged in breach of this Rule 2.4, then it will, promptly on becoming aware of

such payment or receipt of an asset or after receiving notice from the Clearing House of such payment or receipt of an asset, pay such amount or asset (or an amount equal to the discharged amount) to the Clearing House to be applied in accordance with these Rules.

2.4.4 For the purposes of Rule 2.4.2, the Clearing House may, in its reasonable discretion, determine the proportion of the relevant Guarantee Fund to be applied in relation to each Account of the relevant Clearing Member.

## **2.5 Clearing House Insolvency**

2.5.1 Subject to Rule 2.5.2, if the Clearing House:

- (a) enters into liquidation following satisfaction of the conditions in paragraph 34 of Schedule 17A FSMA;
- (b) enters into administration following satisfaction of the conditions in paragraph 34 of Schedule 17A FSMA; or
- (c) fails to pay on the due date amounts payable by it under the Rules to four (4) or more Clearing Members, provided such Clearing Members have given the Bank of England not less than seven (7) days' notice in writing,

all Contracts shall terminate automatically on the Termination Date and the following steps in this Rule 2.5 shall be taken. Each non-defaulting Clearing Member shall, as soon as reasonably practicable following the Termination Date, calculate the rights and liabilities of the Clearing House and the Clearing Member with respect to each of such Clearing Member's Accounts in accordance with this Rule 2.5.

2.5.2 Rule 2.5.1 shall not apply if the Clearing House enters into a CCP Regime unless it subsequently enters into liquidation or administration.

### *Discharge of Clearing Member's rights and liabilities*

2.5.3 Subject to Rule 2.5.2, following default by the Clearing House under Rule 2.5.1, each non-defaulting Clearing Member shall, in relation to each of its House Accounts, and, in the case of a Non-FCM Clearing Member, in relation to each of its Notional Sub-Accounts within an Omnibus Client Account and Individual Client Accounts, or in the case of an FCM Clearing Member, in relation to each of its FCM LSOC Client Sub-Accounts within an FCM LSOC Client Account or its FCM FBOT Futures Client Account or FCM DCM Futures Client Account, calculate a CCP Default Single Net Sum in accordance with the steps set out in this Rule 2.5 by aggregating any obligations for the payment of money, whether present or future, actual or contingent, by the Clearing Member under its Contracts and the Rules, aggregating any such obligations to the Clearing Member under each Contract and the

Rules, and offsetting the two aggregated amounts against one another so as to produce a **CCP Default Single Contract Net Sum** in respect of each such Account or Notional Sub-Account, as applicable, and then take the steps set out in Rule 2.5.8 or 2.5.9, if and as applicable, so as to produce a **CCP Default Single Net Sum** in respect of each such Account. The Contracts shall be valued as at the Termination Date.

- 2.5.4 If the CCP Default Single Contract Net Sum with respect to all Standard Contracts relating to an Account or Notional Sub-Account is due from the Clearing Member, then it is the **CCP Default Standard Interim Liability**. If the CCP Default Single Contract Net Sum with respect to all Standard Contracts relating to an Account or Notional Sub-Account is due to the Clearing Member, then it is the **CCP Default Standard Interim Asset**.
- 2.5.5 If the CCP Default Single Contract Net Sum with respect to all IRS Contracts relating to an Account or Notional Sub-Account or FCM LSOC Client Sub-Account is due from the Clearing Member, then it is the **CCP Default IRS Interim Liability**. If the CCP Default Single Contract Net Sum with respect to all IRS Contracts relating to an Account or Notional Sub-Account is due to the Clearing Member, then it is the **CCP Default IRS Interim Asset**.
- 2.5.6 For the purposes of discharging a Clearing Member's rights and liabilities and calculating a CCP Default Single Contract Net Sum and a CCP Default Single Net Sum, the Clearing House may close out, settle, terminate and/or offset any Contract including the application of Eligible Cash or the proceeds of the realisation of any Eligible Assets constituting Collateral credited with respect to each of the relevant Accounts or Notional Sub-Accounts of the Clearing Member. Collateral and Contributions in the form of Eligible Securities may be liquidated and amounts denominated in one currency may be converted into another currency, in each case at such time and at such rate as the Clearing House shall in its reasonable discretion determine.
- 2.5.7 The rights and liabilities of the Clearing Member referred to in Rule 2.5.6 shall include all rights and liabilities arising and any costs and expenses incurred in consequence of any such action.

*Standard CCP Default Single Net Sum calculation*

- 2.5.8 The following steps shall be taken
- (a) with respect to each Standard House Account, Standard Notional Sub-Account and Standard Individual Client Account of a Standard Clearing Member that is a Non-FCM Clearing Member:
    - (i) the Standard Clearing Member's Standard Collateral relating to the relevant Standard House Account, Standard Individual Client Account or Standard Notional Sub-Account (as applicable) shall be set off, or applied, against the

CCP Default Standard Interim Liability or aggregated with the CCP Default Standard Interim Asset relating to such Account;

- (ii) in relation to a Standard Notional Sub-Account any negative sum produced under Rule 2.5.8(a)(i) relating to that Standard Notional Sub-Account may be set off against:
  - (A) any Excess Collateral relating to the Omnibus Client Account of which the Notional Sub-Account forms part; and
  - (B) any positive sum produced under Rule 2.5.8(a)(i) relating to any other Standard Notional Sub-Account in the same Standard Omnibus Client Account; and
- (iii) the Standard Clearing Member's Contribution to the Standard Guarantee Fund shall be set off against any negative sum produced under Rule 2.5.8(a)(i) in relation to the Standard House Account or aggregated with any positive sum remaining after the completion of Rule 2.5.8(b),

the result being the **Standard CCP Default Single Net Sum**; and

- (b) with respect to each Standard Swaps House Account, Standard Futures House Account, Standard FCM LSOC Client Sub-Account, FCM FBOT Futures Client Account and FCM DCM Futures Client Account of a Standard Clearing Member that is an FCM Clearing Member:
  - (i) the Standard Clearing Member's Standard Collateral relating to the relevant Account shall be set off, or applied, against the CCP Default Standard Interim Liability or aggregated with the CCP Default Standard Interim Asset relating to such Account;
  - (ii) in relation to a Standard FCM LSOC Client Sub-Account any negative sum produced under Rule 2.5.8(b)(i) relating to that Standard FCM LSOC Client Sub-Account may be set off against:
    - (A) in the case of an FCM LSOC Client Account under the LSOC With Excess Model, the value of any Excess Collateral in such FCM LSOC Client Sub-Account; and
    - (B) the value of any FCM LSOC Client Buffer Collateral in that Standard FCM LSOC Client Account; and,
  - (iii) the Standard Clearing Member's Contribution to the Standard Guarantee Fund shall be set off against any negative sum produced under Rule 2.5.8(b)(i) in

relation to the Standard Swaps House Account or Standard Futures House Account or aggregated with any positive sum remaining after the completion of Rule 2.5.8(b)(ii),

the result being the **Standard CCP Default Single Net Sum**.

*IRS CCP Default Single Net Sum Calculation*

2.5.9 The following steps shall be taken with respect to each IRS House Account, IRS Notional Sub-Account and IRS Individual Client Account of an IRS Clearing Member:

(a) With respect to each IRS House Account, IRS Notional Sub-Account and IRS Individual Client of an IRS Clearing Member that is a Non-FCM Clearing Member:

(i) the IRS Clearing Member's IRS Collateral relating to the relevant IRS House Account, IRS Individual Client Account or IRS Notional Sub-Account (as applicable) shall be set off, or applied, against the CCP Default IRS Interim Liability or aggregated with the CCP Default IRS Interim Asset relating to such Account;

(ii) in relation to an IRS Notional Sub-Account any negative sum produced under Rule 2.5.9(a)(i) relating to that IRS Notional Sub-Account may be set off against:

(A) any Excess Collateral relating to the IRS Omnibus Client Account of which that IRS Notional Sub-Account forms part; and

(B) any positive sum produced under Rule 2.5.9(a)(i) relating to any other IRS Notional Sub-Account in the same IRS Omnibus Client Account; and

(iii) the IRS Clearing Member's Contribution to the IRS Guarantee Fund shall be set off against any negative sum produced under Rule 2.5.9(a)(i) in relation to the IRS House Account or aggregated with any positive sum remaining after the completion of Rule 2.5.9(b),

the result being the **IRS CCP Default Single Net Sum**; and

(b) with respect to each IRS House Account and IRS FCM LSOC Client Sub-Account of an IRS Clearing Member that is an FCM Clearing Member:

(i) the IRS Clearing Member's IRS Collateral relating to the relevant IRS House Account or IRS FCM LSOC Client Sub-Account (as applicable) shall be set off,

or applied, against the CCP Default IRS Interim Liability or aggregated with the CCP Default IRS Interim Asset relating to such Account;

- (ii) in relation to an IRS FCM LSOC Client Sub-Account any negative sum produced under Rule 2.5.9(b)(i) relating to that IRS LSOC Client Sub-Account may be set off against:
  - (A) in the case of an FCM LSOC Client Account under the LSOC With Excess Model, the value of any Excess Collateral in such FCM LSOC Client Sub-Account; and
  - (B) the value of any FCM LSOC Client Buffer Collateral in that IRS FCM LSOC Client Account; and
- (iii) the IRS Clearing Member's Contribution to the IRS Guarantee Fund shall be set off against any negative sum produced under Rule 2.5.9(b)(i) in relation to the IRS House Account or aggregated with any positive sum remaining after the completion of Rule 2.5.9(b)(ii),

the result being the **IRS CCP Default Single Net Sum**.

*Set off of Collateral relating to different Accounts*

2.5.10 To the extent that an amount is applied or included as part of the calculations of a CCP Default Single Net Sum pursuant to this Rule 2.5:

- (a) With respect to a Non-FCM Clearing Member:
  - (i) Collateral credited to a House Account of a Clearing Member may only be set off, or applied, against or included as part of the calculation of the CCP Default Single Net Sums in respect of that House Account of the Clearing Member;
  - (ii) Collateral credited to each Individual Client Account of a Clearing Member may only be set off, or applied, against or included as part of the calculation of the CCP Default Single Net Sum in respect of Contracts recorded to that Individual Client Account of that Clearing Member;
  - (iii) Collateral, excluding Excess Collateral, credited to each Notional Sub-Account of a Clearing Member may only be set off, or applied, against or included as part of the CCP Default Single Net Sum in respect of Contracts credited to that Notional Sub-Account of that Clearing Member or as contemplated in Rules 2.5.8(a)(ii) and 2.5.9(a)(ii); and

- (iv) Excess Collateral credited to an Omnibus Client Account may only be set off, or applied, against or included as part of the CCP Default Single Net Sum in respect of Contracts credited to that Omnibus Client Account and may be included as part of the calculation of a CCP Default Single Net Sum in accordance with Rules 2.5.8(a)(ii) and 2.5.9(a)(ii);
- (b) With respect to an FCM Clearing Member:
  - (i) Collateral credited to a House Account of the Clearing Member may be set off, or applied, against or included as part of the calculation of the CCP Default Single Net Sums in respect of that House Account of the Clearing Member, provided however that if an FCM Clearing Member has both a Standard Swaps House Account and Standard Futures House Account the two accounts will be combined and treated as a single House Account;
  - (ii) Collateral credited to each FCM LSOC Client Sub-Account of a Clearing Member may only be set off, or applied, against or included as part of the calculation of the CCP Default Single Net Sum in respect of Contracts recorded to that FCM LSOC Client Sub-Account of that Clearing Member; and
  - (iii) Collateral credited to an FCM FBOT Futures Client Account of the Clearing Member may only be set off, or applied, against or included as part of the calculation of the CCP Default Single Net Sum in respect of Contracts recorded to that FCM FBOT Futures Client Account;
  - (iv) Collateral credited to an FCM DCM Futures Client Account of the Clearing Member may only be set off, or applied, against or included as part of the calculation of the CCP Default Single Net Sum in respect of Contracts recorded to that FCM DCM Futures Client Account.

2.5.11 For the purposes of Rules 2.5.8 and 2.5.9:

- (a) With respect to a Non-FCM Clearing Member, the Collateral credited to each:
  - (i) Standard Individual Client Account:
    - (A) With respect to Collateral standing to the credit of an FS Account, is the value of that Collateral; and
    - (B) Otherwise, is a proportion (determined in accordance with the Rules and Procedures) of the value of the Collateral provided by the Clearing Member in respect of all of its Standard Individual Client Accounts.



- (ii) Standard Notional Sub-Account in a Standard Omnibus Client Account is a proportion (determined in accordance with the Rules and Procedures) of the Collateral provided by the Clearing Member in respect of all its Standard Omnibus Client Accounts.
  - (iii) IRS Individual Client Account:
    - (A) With respect to Collateral standing to the credit of an FS Account, is the value of that Collateral; and
    - (B) Otherwise, is a proportion (determined in accordance with the Rules and Procedures) of the value of the Collateral provided by the Clearing Member in respect of all of its IRS Individual Client Accounts.
  - (iv) IRS Notional Sub-Account in an IRS Omnibus Client Account is a proportion (determined in accordance with the Rules and Procedures) of the Collateral provided by the Clearing Member in respect of all its IRS Omnibus Client Accounts.
- (b) With respect to an FCM Clearing Member, the Collateral credited to each:
- (i) Standard FCM LSOC Client Sub-Account in a Standard FCM LSOC Client Account is a proportion (determined in accordance with the Rules and Procedures) of the Collateral provided by the Clearing Member in respect of its Standard FCM LSOC Client Account.
  - (ii) IRS FCM LSOC Client Sub-Account in an IRS FCM LSOC Client Account is a proportion (determined in accordance with the Rules and Procedures) of the Collateral provided by the Clearing Member in respect of its IRS FCM LSOC Client Account.

2.5.12 To the extent any fees, costs and expenses are due from a Clearing Member, they shall be aggregated separately with respect to fees, costs and expenses arising in connection with Standard Contracts and fees, costs and expenses arising in connection with IRS Contracts and the resulting sum(s) shall be set off against the Clearing Member's Collateral credited to the relevant House Account of the Clearing Member and its Contribution to the relevant Guarantee Fund.

2.5.13 Excess Collateral received by the Clearing House in respect of an Omnibus Client Account of a Non-FCM Clearing Member shall be used in relation to that Omnibus Client Account and may be used in accordance with Rules 2.5.8(a) (ii) and 2.5.9(a) (ii).

*CCP Default Single Net Sum calculations - General*

2.5.14 The Clearing House shall verify each CCP Default Single Net Sum calculated by a Clearing Member and shall pay any positive amount so verified in accordance with Rule 2.5.17(a) or 2.5.17(b), as applicable, as soon as practicable. Each Clearing Member shall pay any negative amount so verified in accordance with Rule 2.5.19.

2.5.15 The Clearing House shall inform the relevant Clearing Member whether it agrees or disagrees with a CCP Default Single Net Sum calculated by that Clearing Member. If the Clearing House agrees with a calculation, it shall certify that amount in accordance with Rule 2.5.16 and such calculation shall (in the absence of manifest error) be final and binding on all persons. If the Clearing House disagrees with a calculation, the Clearing House may appeal to the Appeals Body in accordance with Rule 9.5. The sum determined by the Appeals Body shall be certified by the Clearing House in accordance with Rule 2.5.16 and such calculation shall (in the absence of manifest error) be final and binding on all persons.

2.5.16 The Clearing House shall certify in relation to (a) each House Account of a Clearing Member, (b) each Individual Client Account or Notional Sub-Account of a Non-FCM Clearing Member and (c) each FCM LSOC Client Sub-Account, FCM FBOT Futures Client Account and FCM DCM Futures Client Account of an FCM Clearing Member, the CCP Default Single Net Sum as the amount payable by or to the Clearing Member or, in the case of a Client of a Non-FCM Clearing Member, by or to the Client or, if no amount is payable, zero and each such certificate shall be conclusive. The Clearing House shall make the certification to:

- (a) each Clearing Member; and
- (b) the Clearing House's Regulatory Authority.

2.5.17

(a) In respect of each Individual Client Account and Notional Sub-Account, the Clearing House shall, if a positive sum, pay the CCP Default Single Net Sum:

- (i) to the relevant Client (or to its order) or, if a Security Trustee has been appointed with respect to that Client, to the Security Trustee (or to its order) on trust for that Client, in each case if:

- (A) the relevant Clearing Member is (A) a Non-FCM Clearing Member and (B) a Defaulting Clearing Member and the Clearing House has determined pursuant to Rule 2.5.23 that Rule 2.5 shall apply to that Defaulting Clearing Member;

- (B) the Clearing House is satisfied that a Client Agreement, a Client Protection Agreement (if the relevant Clearing Member is a Security CM) and a Client Acknowledgement (either as part of the Client Protection Agreement or as a standalone agreement) is in full force and effect with respect to the relevant Client and no Applicable Law or regulation would require the payment returned to another party;
  - (C) the CCP Default Single Net Sum has been calculated with respect to Contracts and Collateral relating to one Client; and
  - (D) if there is an FS Individual Client Account with respect to the relevant Client, the Clearing House is satisfied that all the relevant FS Documents are in full force and effect with respect to that Client; or
- (ii) to the Clearing Member, for the account of the relevant Client, if any of the conditions set out in 2.5.17(a)(i) are not met.
- (b) In respect of the Client Accounts of an FCM Clearing Member:
- (i) In the case of a Standard FCM LSOC Client Account or an IRS FCM LSOC Client Account, the Clearing House shall pay to the FCM Clearing Member, if applicable, an amount equal to the sum of (A) the CCP Default Single Net Sum for each FCM LSOC Client Sub-Account within such FCM LSOC Client Account for which the CCP Default Single Net Sum is a position amount; (B) any surplus FCM LSOC Client Collateral Buffer standing to the credit of the FCM LSOC Client Buffer Sub-Account; and (C) in the case of an LSOC Client Account under the LSOC Without Excess Model, the value of any FCM LSOC Client Unallocated Collateral standing to the credit of the FCM LSOC Client Unallocated Sub-Account;
  - (ii) In the case of an FCM FBOT Futures Client Account, the Clearing House shall, if a positive sum, pay the CCP Default Single Net Sum to the FCM Clearing Member;
  - (iii) In the case of an FCM DCM Futures Client Account, the Clearing House shall, if a positive sum, pay the CCP Default Single Net Sum to the FCM Clearing Member.

2.5.18 In respect of a House Account the Clearing House shall, if a positive sum, pay the CCP Default Single Net Sum to the Clearing Member.

2.5.19 In respect of any Account or Notional Sub-Account, each Clearing Member shall, if a negative sum, pay the CCP Default Single Net Sum to the Clearing House.

2.5.20 A CCP Default Single Net Sum shall be due on the date falling two (2) Business Days after the date on which the last CCP Default Single Net Sum has been verified or calculated in accordance with Rule 2.5.14 or Rule 2.5.15, as applicable.

*FS Individual Client Accounts*

2.5.21 Notwithstanding Rules 2.5.8 and 2.5.9 and without prejudice to Rule 2.5.19, where the CCP Default Single Net Sum has been determined with respect to an FS Individual Client Account and is a positive sum the Clearing House may, in its absolute discretion, deliver Equivalent Assets to satisfy in whole or in part its obligation to pay the CCP Default Single Net Sum.

2.5.22 Should the Clearing House deliver Equivalent Assets in accordance with Rule 2.5.21, the Clearing House shall be discharged *pro tanto* from its obligation to deliver the corresponding value of the CCP Default Single Net Sum and such Equivalent Assets shall be given the value ascribed to them in the determination of the CCP Default Single Net Sum.

2.5.23 This Rule 2.5 is intended to apply only to non-defaulting Clearing Members except that the Clearing House may (in its sole discretion) determine at any time (whether or not any event has occurred or step has been taken under Rule 2.5) that all or any part of Rule 2.5 (and the resulting rights and obligations) shall also apply in respect of any one or more Defaulting Clearing Members. In all other cases, the provisions of Chapter 8 shall continue to apply to any Defaulting Clearing Member.

**2.6 Currency of payment and currency conversion**

2.6.1 For the purposes of any calculation under these Rules, the Clearing House may convert amounts denominated in one currency into another currency at such rate prevailing at the time of the calculation as it shall reasonably select.

2.6.2 Amounts payable to the Clearing House shall be paid in the currency specified in the relevant Contract Specification or in the currency otherwise required by the Rules. If the Clearing House receives payment in another currency, it may convert such amount at such rate prevailing at the time of the calculation as it shall reasonably select. The Clearing Member shall indemnify the Clearing House against any loss which the Clearing House may suffer as a result of such conversion.

2.6.3 Notwithstanding Rule 2.6.2, Variation Requirement may, at the discretion of the Clearing House, be payable in a currency other than that specified in the relevant Contract Specification provided that the other currency is limited to GBP, USD or EUR.

**2.7 Confidentiality**

2.7.1 The Clearing House will treat as confidential all information received from a Clearing Member or which is held by the Clearing House and relates to Contracts which the Clearing Member has entered into and/or the Clearing Services and shall not disclose it to any other person except:

- (a) where the Clearing House is in possession of the information free of any obligation of confidence to the Clearing Member at the time it is received by the Clearing House or obtains it from a third party which is not under a duty of confidence to the Clearing Member in respect of such information;
- (b) where the Clearing House develops the information independently and without reference to any of the Clearing Member's confidential information;
- (c) where it has the Clearing Member's consent to do so;
- (d) in connection with enquiries, proceedings or investigations by a Regulatory Authority, the court services or law enforcement agencies anywhere in the world or in order to enable the Clearing House to comply with its regulatory requirements or dialogue with its regulators as applicable, or where required pursuant to Applicable Law;
- (e) subject to imposing confidentiality obligations, to any Affiliate, any Exchange, any Committee, the Appeals Body or any professional advisers or subcontractors of the Clearing House to enable them to provide services to the Clearing House which are necessary or expedient for the operation of the Clearing House;
- (f) to any Client or Third Party Trade Delegate to which the information relates;
- (g) in connection with enquiries, proceedings or investigations by a Regulatory Authority, the court services or law enforcement agencies anywhere in the world or in order to enable the Clearing House to comply with its regulatory requirements or dialogue with its regulators as applicable, or where required pursuant to Applicable Law, or to a market infrastructure provider with whom the Clearing House has entered into an information sharing agreement consistent with its obligations under Applicable Law, in accordance with the terms of such information sharing agreement;
- (h) to any other Clearing Member for the purposes of a potential transfer, novation or assignment of a Transaction, a Contract or Collateral to such Clearing Member;
- (i) to any person or to the public if the information is or comes into the public domain other than as a result of a breach of this Rule by the Clearing House or its Representatives;

- (j) to a Trade Repository for the purposes of making any reports required by Applicable Law and the Clearing Member shall ensure that, if required, any of its Representatives, Clients or third parties whose services it uses in relation to Transactions it submits for clearing and whose confidential information is required to be included in such reports has consented to such disclosure by the Clearing House; or
- (k) to any other person to which, and on such terms as, the Clearing House considers it appropriate to disclose such information for the purposes of providing the Clearing Services.

2.7.2 Rule 2.7.1 shall not operate to restrict, diminish or affect:

- (a) the rights of the Clearing House in relation to Clearing Data (as defined in the User Licence Agreement); or
- (b) the IPRs (as defined in the User Licence Agreement) of the Clearing House.

2.7.3 Clearing Members shall be deemed to consent to any disclosure or non-disclosure of information by the Clearing House that is required or permitted by section 348 of FSMA or any other Applicable Law.

2.7.4 Each Non-FCM Clearing Member shall ensure that any of its Clients has consented in advance:

- (a) to the disclosure by the Clearing House of the information described in Rule 2.7 in accordance with Rule 2.7 on the understanding that such information may relate to the Client; and
- (b) to the Clearing House disclosing confidential information about the Client to the Clearing Member to the extent the Clearing House reasonably considers necessary to provide the Clearing Services.

## **2.8 Data protection**

2.8.1 The Clearing House is a data controller in relation to personal information provided by the Clearing Members and their Representatives and Clients. Each Clearing Member shall ensure that any of its Representatives or Clients whose personal data is provided to the Clearing House has consented in advance to such data being controlled and processed by the Clearing House and any of its Affiliates as described in this Rule 2.8 and that the disclosure of such personal data is lawful.

2.8.2 The Clearing House shall be entitled:

- (a) to disclose personal data to such persons and for such purposes as set out in Rule 2.7;
- (b) to market the Clearing House's own and any of its Affiliates' products and services to the Clearing Member and its Representatives and Clients and, where required by law, the Clearing House will ask for the relevant individual's consent at the time the Clearing House collects the relevant data to conduct any of these types of marketing;
- (c) to develop and sell new products using personal data in accordance with applicable data protection law; and
- (d) to transfer personal data anywhere in the world for the purposes set out in Rule 2.7 and in relation to such transfers the Clearing House shall comply with data protection laws as they apply to the Clearing House in the UK.

2.8.3 Each data subject may, on application to the Clearing House's Company Secretary and payment of a small fee to the Clearing House, receive a copy of the personal data held by the Clearing House in respect of it and require the Clearing House to correct any errors or inaccuracies or require the Clearing House to stop processing such personal data.

2.8.4 In this Rule 2.8, the terms "personal data", "controller" and "data subject" have the meanings given to such terms in the Data Protection Act 1998.

## **2.9 Force majeure**

2.9.1 If and to the extent that either the Clearing House or the Clearing Member is hindered or prevented by a Force Majeure Event from performing any of its obligations under these Rules, then the party so affected (the **Affected Party**) shall not be liable to the other (and the Clearing House shall not be liable to a Contract CM Client) for failure to perform such obligations provided that the Affected Party takes the steps set out in Rule 2.9.2. The determination that a Force Majeure Event has occurred by the Clearing House shall be made jointly by the CEO, the Chief Operating Officer, the Chief Risk Officer and the Chief Compliance Officer of the Clearing House.

2.9.2 On the occurrence of a Force Majeure Event, the Affected Party shall:

- (a) immediately notify the other party of the same in writing and, if the Clearing House is the Affected Party, it shall do so by issuing a Notice and shall also notify each of the Board of Directors and the Bank of England and the CFTC;
- (b) use reasonable endeavours to minimise the effects of the Force Majeure Event on the performance of its obligations under the Rules and resume full performance of such obligations without avoidable delay;

- (c) keep the other party informed of the development of the circumstances of the Force Majeure Event and the performance of its obligations under the Rules, including, without limitation, when it is no longer affected by the Force Majeure Event and, if the Clearing House is the Affected Party, it shall do so by issuing a Notice; and
- (d) if the Clearing House is the Affected Party, require any Clearing Member to take such action, including but not limited to action in accordance with Rule 11.6.6(b), as the Clearing House may direct in relation to any Contracts or Collateral deposited with the Clearing House affected by the Force Majeure Event.

2.9.3 If a Force Majeure Event continues for 5 (five) Business Days, the Clearing House will consult with the Risk Committee on any actions which the Clearing House proposes to take to protect the financial integrity of the Clearing House or in relation to any Contract affected by the continuing Force Majeure Event. For the avoidance of doubt, any action may include the Invoicing Back of any Contract affected by the continuing Force Majeure Event providing there is an objective justification for the Invoicing Back of such Contract or taking action in accordance with Rule 11.6.6(b).

## **2.10 Severability**

2.10.1 Each of the Rules is severable and distinct from the others. It is intended that every Rule and every part of each Rule shall be and remain valid and enforceable to the fullest extent permitted by law. If any Rule or part of a Rule is or at any time becomes to any extent invalid, illegal or unenforceable for any reason, it shall, to that extent, be deemed not to form part of these Rules, but the validity, legality and enforceability of the remaining Rules and parts of these Rules shall not be thereby affected or impaired.

## **2.11 Waiver**

2.11.1 Except as specifically provided for in these Rules, no waiver of any of these Rules or any part thereof shall be effective unless the same shall be in writing, and then such waiver shall be effective only in the specific instance, for the purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such Rule or part thereof.

2.11.2 The waiver of any right, and the failure to exercise any right or to insist on the strict performance of any of the Rules, shall not operate as a waiver of, or preclude any further or other exercise or enforcement of that or any other right.

2.11.3 Any times fixed by these Rules for the doing of any act or acts required by these Rules may be extended, waived or suspended by the Clearing House, the Board of Directors or such Committee as the Board of Directors may designate, whenever, in its, judgment, such extension, waiver or suspension is necessary or expedient.



## **2.12 Governing law and arbitration**

- 2.12.1 The Rules shall be governed by and construed in accordance with the laws of England and Wales, except as otherwise expressly provided herein.
- 2.12.2 Subject to Rule 2.12.4, any dispute between the Clearing House and Clearing Member arising out of or in connection with the Rules or any Contract, including any question regarding the validity of the Clearing Membership Agreement shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Rule.
- 2.12.3 The number of arbitrators shall be three (3). Each party shall appoint one (1) arbitrator and the remaining arbitrator shall be appointed by agreement between the arbitrators appointed by each party. The third arbitrator shall serve as chairman. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- 2.12.4 A Clearing Member may not submit a dispute, the subject matter of which could constitute a Complaint, to be resolved by arbitration in accordance with Rule 2.12.2 unless and until it has submitted a Complaint on such subject in accordance with the Rules and that Complaint has been subjected to the procedures set out in the Rules.
- 2.12.5 The commencement of any arbitral proceedings pursuant to Rule 2.12.2 shall be without prejudice to and shall not limit in any way the right of the Clearing House to instigate any procedure under the Rules, including without limitation in relation to any Event of Default or any Investigation or Disciplinary Proceedings.
- 2.12.6 The Clearing House will not be responsible for compliance or non-compliance by any person with the requirements under the UKLA Prospectus Rules concerning offers made to the public.

## **2.13 Waiver of sovereign immunity**

- 2.13.1 In the event that a Clearing Member or a Contract CM Client purports to be a state entity, such entity irrevocably acknowledges and accepts that the Rules and all agreements entered into or in connection herewith (including all appendices, schedules and exhibits thereto) and the performance or non-performance of its obligations under the Rules are commercial rather than public or governmental acts. In any event, the Clearing Member and each Contract CM Client hereby waives in relation to any disputes arising out of or in connection with the Rules under any law or in any jurisdiction, notwithstanding the dispute(s) relate(s) to acts of a sovereign or governmental character, any claim the Clearing Member or Contract CM Client may have or may acquire to immunity on the grounds of

sovereignty or otherwise (for itself/themselves and its/their property, present or subsequently acquired) from:

- (a) any jurisdiction and the service and pursuit of any proceedings in that jurisdiction
- (b) procedural privileges relating to the obligation to disclose documents or information; and
- (c) any relief, before or after proceedings have been commenced, including but not limited to orders for injunction, specific performance, or recovery of land; any set off, attachment or execution or enforcement of a judgment or arbitral award against its sovereign property (or in an action in rem for the arrest, detention or sale of its sovereign property) irrespective of that property's use or intended use, whether commercial or otherwise, including without prejudice to the generality of sovereign property, any assets held on behalf of a central bank, diplomatic assets, tax revenues or other payments to the sovereign or cultural, historic or scientific collections.

#### **2.14 No proceedings**

- 2.14.1 No Clearing Member or Contract CM Client shall take any action to commence an insolvency or reorganisation proceeding (including, without limitation, by presentation of a winding up petition) in relation to the Clearing House.
- 2.14.2 No Clearing Member or Contract CM Client shall take any action (including, but not limited to, commencing a court or arbitral proceeding) with the intention of or that would limit or interfere with the ability of the Clearing House to exercise its rights and perform its obligations (in each case, as interpreted by the Clearing House) under or in connection with the Rules.

#### **2.15 Disaster recovery testing**

- 2.15.1 Each Clearing Member shall participate in disaster recovery tests with the Clearing House.
- 2.15.2 The date and time of any disaster recovery tests shall be agreed between the Clearing House and the relevant Clearing Member(s), each acting reasonably.
- 2.15.3 Disaster recovery tests shall take place as often as the Clearing House, acting reasonably, deems necessary from a risk perspective, and, as a minimum, shall take place at least once per calendar year.

## CHAPTER 3

### MEMBERSHIP

#### 3.1 Types of membership and application

- 3.1.1 A clearing member applicant must, at a minimum, demonstrate to the Clearing House that it can satisfy the Membership Criteria. The process for applying for clearing membership is set out in the Membership Procedure. A copy of the application form is available on request. Subject to advice from the Risk Committee, the Board of Directors determines whether an applicant for membership as a Clearing Member satisfies the Membership Criteria. The Clearing House may only deny access to a clearing member applicant meeting the Membership Criteria where duly justified and based on a risk analysis.
- 3.1.2 The Clearing House has the following categories of membership; Standard Clearing Members and IRS Clearing Members (each a **Membership Category**), each of which has a separate Guarantee Fund. A Clearing Member in one Membership Category only has recourse to the Guarantee Fund relating to that Membership Category as set out in Rule 7.1. The Clearing House may create additional Membership Categories depending on the types of Transaction to be cleared. The Clearing House may apply different Membership Criteria in respect of different Membership Categories. A Clearing Member may only clear those types of Transaction in respect of which it is a Clearing Member of the relevant Membership Category. A Clearing Member may belong to multiple Membership Categories. Within a Membership Category, a Clearing Member will be further classified as either a Non-FCM Clearing Member or FCM Clearing Member. A Clearing Member must continue to satisfy the Membership Criteria applicable to its Membership Category and classification for so long as it remains a Clearing Member of that Membership Category and classification.
- 3.1.3 A Membership Category may allow the Clearing Member to clear different types of Transactions such as Transactions relating to different asset classes or to different Standard Contract Product Sub-Classes provided the Clearing Member complies with any Rules that relate specifically to the ability to clear a particular type of Transaction. The Guarantee Fund relating to a Membership Category relates to all Contracts with the Clearing Members within that Membership Category. The Clearing House may have recourse to the Guarantee Fund relating to a particular Membership Category regardless of which types of Transaction the Defaulting Clearing Member has the ability to clear.
- 3.1.4 The Rules apply to Clearing Members. Each Clearing Member shall, and shall use reasonable endeavours to procure that its Representatives act in accordance with the Rules. Different Rules may apply to Clearing Members in different Membership Categories and by classification as a Non-FCM Clearing Member or FCM Clearing Member. Different

Rules may also apply to different types of Transaction and the applicable Rules may include a Contract Module that is specific to the type of Transaction.

3.1.5 The Clearing House has no contractual relationship with Clients (save as set out in any Client Protection Agreement, Client Acknowledgement or FS Document into which the Clearing House may have entered into with a Client of a Non-FCM Clearing Member) or any Third Party Trade Delegate. A Non-FCM Clearing Member and (in respect of its House Accounts) an FCM Clearing Member will be party to and liable as a principal in respect of any Contracts and otherwise in relation to these Rules. An FCM Clearing Member will (in respect of its Client Accounts) be party to and liable on the terms of Rule 3B.1.3 in respect of any Contracts and otherwise in relation to these Rules. Third Party Trade Delegates and Affiliates are not subject to the Rules and do not have any of the rights or benefits of a Clearing Member (except to the extent that an Affiliate is also a Clearing Member). The Clearing House has no obligations or liabilities under the Rules to any person other than a Clearing Member or (solely in respect of any obligation to transfer under Rule 8.4.6 or to pay under Rule 8.5.11(a)) to a Contract CM Client.

3.1.6 A person seeking to become a Clearing Member solely for the purpose of clearing proprietary Transactions will be admitted as a Non-FCM Clearing Member. If the Clearing Member is organised under the laws of, and has the centre of its main interests located in, a state or territory of the United States, it may, if permitted to do so under Applicable Laws and subject to the Clearing House being satisfied that the Clearing Member has the legal and operational capacity to do so, clear Transactions in its House Account on behalf of any Affiliate or other third person whose account, when carried on the books and records of the Clearing Member is classified as a proprietary account under CFTC Regulation 1.3(y).

### **3.2 Membership Criteria**

3.2.1 To become a Clearing Member and maintain membership of the Clearing House, a person must at all times:

- (a) be incorporated as a body corporate, partnership or other business organisation or entity in any jurisdiction;
- (b) have all necessary authorisations, licences, permissions, approvals or equivalent in respect of each Regulatory Authority required to enter into and clear through the Clearing House Transactions, including, where relevant, Transactions with or on behalf of Clients and Third Party Trade Delegates;
- (c) comply with all Applicable Law and the requirements of each Regulatory Authority which has jurisdiction over the Clearing Member in the course of using the facilities provided by the Clearing House;

- (d) be subject to Applicable Law relating to money laundering and terrorist financing that requires it to undertake due diligence and identity verification measures on its Clients;
- (e) not be subject to an Insolvency Event or an Event of Default or any circumstances pursuant to which it is, or is likely to be, unable to discharge any obligation to the Clearing House;
- (f) comply with all regulatory capital requirements applicable to it;
- (g) maintain capital of at least the type and amount set out in the Membership Procedure;
- (h) in the case of a Standard Clearing Member, have provided to the Clearing House its Contribution to the Standard Guarantee Fund and, in the case of an IRS Clearing Member, have provided to the Clearing House its Contribution to the IRS Guarantee Fund, in each case in accordance with the Rules and the Membership Procedure;
- (i) have provided to the Clearing House sufficient Eligible Assets to satisfy its Collateral Requirement in accordance with the Rules;
- (j) have the Bank Accounts set out in Rule 4.2.2 and, if relevant, the accounts with the Agent Bank and the CLS Account set out in Rule 4.2.3;
- (k) be party to an executed Clearing Membership Agreement and such other agreements as set out in the Membership Procedure;
- (l) have nominated a Representative to be responsible for the Clearing Member's actions and represent the Clearing Member before the Clearing House and its Committees (a **Nominee**);
- (m) have nominated a Representative to be the Clearing House's key contact person and to register such of its and its Clients' Representatives as will be permitted to submit Transactions to the Clearing House (the **Transaction Manager**);
- (n) ensure that a Representative, who is sufficiently senior and familiar with the Rules and the Clearing Member's activities in relation to the Clearing House, is available to deal with any query or issue raised by the Clearing House;
- (o) with respect to an IRS Clearing Member and an OTC FX Clearing Member only:
  - (i) have nominated at least two (2) officers or employees to be members of the IRS Default Management Committee or the OTC FX Default Management Committee (as appropriate), one of which may be required to serve on the IRS

Active Default Committee or the OTC FX Active Default Committee (as appropriate) at any time, in accordance with its terms of reference, provided that, if two (2) IRS Clearing Members or two (2) OTC FX Clearing Members are Affiliated Clearing Members, this Rule 3.2.1(o)(i) need only be satisfied by one (1) of those IRS Clearing Members or OTC FX Clearing Members (as appropriate); and

- (ii) upon request of the Clearing House, submit nominations for an independent member of the Risk Committee;
- (p) not have been, or have any senior Representative (in director position or above) who has been, convicted of any offence involving fraud, theft, false accounting, offences against the administration of public justice, serious tax offences or other dishonesty or an offence relating to companies, insurance, banking, other financial services, consumer credit or consumer protection, money laundering, market abuse or insider dealing or be, or have any senior Representative (in director position or above) who is, under investigation for committing such an offence, if, in each case, such circumstance has or would be likely to have an adverse effect on the Clearing Member's ability to comply with the Rules;
- (q) satisfy the Clearing House as to its fitness and propriety, financial, operational, technical and risk management capacity and competence and have such personnel, facilities and organisational arrangements to be able to satisfy its obligations under the Rules;
- (r) not permit access, whether directly or indirectly, to the Clearing House to the following: parties that are (i) Restricted Persons; (ii) 50% or more owned by Restricted Persons; (iii) located in a Restricted Country; (iv) owned or controlled by the governments of Restricted Countries; (v) subject to restrictions administered or imposed by the UK HM Treasury or the European Union; (vi) subject to restrictions imposed by the United Nations Security Council, or any other Regulatory Authority or any other government entity with jurisdiction over the Contract; or (vii) anyone acting on behalf of any of the foregoing;
- (s) be engaged in or demonstrate immediate capacity to engage in the conduct of a Clearing Member in respect of the Transactions to be cleared and the performance of all the obligations of a Clearing Member set out in the Rules;
- (t) have available to the Clearing House for inspection, upon reasonable request by the Clearing House, its books and records regarding Transactions cleared by the Clearing House;

- (u) demonstrate that it is in compliance with the Rules;
- (v) satisfy any further requirements which the Clearing House may reasonably impose on a Clearing Member from time to time; and
- (w) with respect to a Standard Clearing Member clearing Exchange Transactions, have been accepted as and remain a member of the Exchange; and
- (x) in respect to an FCM Clearing Member, be registered with the CFTC as a futures commission merchant under the CEA and a member in good standing of the National Futures Association, and be organized under the laws of, and have the centre of its main interests located in, a state or territory of the United States.

3.2.2 The Membership Criteria set out in Rules 3.2.1(c) to (e) shall also apply to each of the Clearing Member's Parent Undertaking and Guarantors.

3.2.3 Without prejudice to Rule 3.2.1(s), and subject to the conditions set out in the Membership Procedure, a Clearing Member may delegate certain operational and risk functions to a Default Management Service Provider provided that:

- (a) any such arrangement shall be documented in a legally binding agreement governed by English law a draft of which shall be subject to prior review and approval by the Clearing House and may be reviewed by the Clearing House annually thereafter;
- (b) such Clearing Member shall have no less than two (2) Default Management Service Providers at any time and shall notify the Clearing House which is its primary and which is its secondary Default Management Service Provider;
- (c) each Default Management Service Provider satisfies the criteria in Rule 3.2.1(a) to (e); and
- (d) the Clearing Member and the Default Management Service Providers shall comply with any other conditions the Clearing House may impose from time to time.

3.2.4 A Clearing Member shall remain fully responsible for compliance with the Rules and shall be liable for any action taken by a Default Management Service Provider on its behalf. Without prejudice to the generality of the foregoing, a Clearing Member will be responsible for the liability for any obligations arising in connection with the submission of any bid in an auction on its behalf by a Default Management Service Provider.

3.2.5 Where a Clearing Member appoints a Default Management Service Provider, that Clearing Member may be subject to an increased Margin Requirement and an increased Contribution to the relevant Guarantee Fund.

3.2.6 The Clearing House may require a Clearing Member to terminate the appointment of a Default Management Service Provider with immediate effect at any time. If the Clearing House requires a Clearing Member to terminate the appointment of a Default Management Service Provider pursuant to this Rule 3.2.6, such Clearing Member shall be required to appoint an alternative Default Management Service Provider within such period as the Clearing House considers to be reasonable if the Clearing Member wishes to continue to use a Default Management Services Provider pursuant to Rule 3.2.3.

3.2.7 In the event that the primary Default Management Service Provider is unable to discharge its obligations, the appointing Clearing Member or the secondary Default Management Service Provider shall perform the obligations which were to be performed by the primary Default Management Service Provider.

3.2.8 A Clearing Member may only appoint a Default Management Service Provider that it is satisfied can perform all the obligations which it is being delegated without any risk of a conflict of interest. The Clearing Member shall ensure, in particular, that there are effective information barriers between the activities performed on behalf of the Clearing Member and those performed on behalf of any other person including the Default Management Service Provider.

### **3.3 Provision of information**

3.3.1 Each Clearing Member shall provide to the Clearing House in accordance with the Membership Procedure:

(a) its annual audited financial statements prepared in accordance with Applicable Law within five (5) Business Days of submission of the same to its primary Regulatory Authority for financial services or, if it does not have such a Regulatory Authority, within sixty (60) Business Days of its financial year end; and

(b) any other financial statements as are provided to the Clearing Member's primary Regulatory Authority for financial services within thirty (30) calendar days of such financial statements having been provided to such Regulatory Authority or, if it does not have such a Regulatory Authority, monthly unaudited financial reports within fifteen (15) Business Days of the relevant month end.

3.3.2 Each Clearing Member agrees that the Clearing House may at any time request information to which it is entitled under the Rules from a Regulatory Authority and that the Clearing House may receive such information and disclose it to any of its Affiliates and any Exchange, any Settlement Bank, Custodian or other person which provides data, services or systems to the Clearing House and any of their Affiliates, sub-contractors and delegates to the extent necessary or expedient for the purpose of the provision of those services. To



the extent such information is confidential in accordance with Rule 2.7.1, the Clearing House shall use its reasonable endeavours to ensure that any person receiving such information will keep that information confidential on equivalent terms to those set out in Rule 2.7.1.

- 3.3.3 Each Clearing Member shall have and maintain current written risk management policies and procedures that address the risks that it may pose to the Clearing House, and shall promptly provide a copy of such policies and procedures upon request to the Clearing House or the relevant Regulatory Authority, along with related information and documents including, without limitation, information and documents relating to the liquidity of its financial resources and to its settlement procedures.

### **3.4 Notification Requirements**

- 3.4.1 Each Clearing Member shall notify the Clearing House in writing immediately in the event of any of the following:

- (a) it ceases to be able to satisfy any of the Membership Criteria or reasonably believes it may cease to be able to do so;
- (b) any material changes are made to the information previously provided to the Clearing House including that relating to its Nominee, Transaction Manager and any Default Management Service Provider;
- (c) the Clearing Member is notified that a Regulatory Authority is to investigate the affairs of, or take disciplinary or other formal action against, the Clearing Member, its Guarantor or Parent Undertaking, unless the investigation or action is into matters which can be shown by the Clearing Member to have no connection whatsoever to the services offered by the Clearing House and could not amount to a breach of the Rules by the Clearing Member;
- (d) of anything relating to the Clearing Member of which the Clearing House would reasonably expect notice; or
- (e) any change in the location of its centre of main interests.

- 3.4.2 Each Clearing Member shall give the Clearing House prompt prior written notice of any material change in its form or organisation, ownership structure, or business operations, including:

- (a) a merger, combination or consolidation between the Clearing Member and another person;

- (b) a change in the direct or indirect beneficial ownership of 10% (ten per cent.) or more of the equity of the Clearing Member;
- (c) the sale of a significant part of the Clearing Member's business or assets to another person; and
- (d) a material change in its business operations.

3.4.3 The Clearing House shall be entitled to require each Clearing Member to provide it with a report on its large positions as notified by the Clearing House, as and when requested.

3.4.4 All information provided to the Clearing House shall be in English.

3.4.5 Each Clearing Member shall furnish to the Clearing House such documents in a timely manner with respect to any of the foregoing events as the Clearing House may from time to time reasonably request.

3.4.6 All information provided to the Clearing House by or on behalf of the Clearing Member shall be accurate, complete and not misleading and shall be provided in a format approved by the Clearing House.

3.4.7 Each Clearing Member shall notify the Clearing House in writing immediately upon becoming aware that its primary and/or secondary Default Management Service Provider is unable to comply with its obligations to the Clearing Member and provide a plan setting out how the Clearing Member intends to resolve the situation to the satisfaction of the Clearing House.

### **3.5 Prohibitions**

3.5.1 A Clearing Member shall not:

- (a) breach any Applicable Law or requirements of a Regulatory Authority or any of these Rules;
- (b) engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering, fraud or which is in breach of any similar Applicable Law;
- (c) engage in any other practice which the Clearing House reasonably considers to be capable of impairing the financial integrity of the Clearing House;
- (d) take any action which in the reasonable opinion of the Clearing House is likely to bring the Clearing House or any of the Clearing Members into disrepute or otherwise damage the reputation of the Clearing House;

- (e) provide to the Clearing House, report or disseminate false, misleading or inaccurate information about a Transaction or Contract;
- (f) breach any terms of a Contract or enter into any Contract intending to default on the same or having no reasonable grounds for believing that it would be possible to avoid such a default; or
- (g) use any of the facilities provided by the Clearing House in contravention of the Rules or other than for the purpose of conducting its business as a Clearing Member.

### **3.6 Right to audit**

3.6.1 The Clearing House shall be entitled to conduct audits on each Clearing Member's compliance with the Clearing Rules. Each Clearing Member shall:

- (a) provide such information, books and records as the Clearing House may, on prior notice, reasonably request; and
- (b) cooperate with the Clearing House in the same way as set out in Rule 9.2.2 for such purposes save that the Clearing Member shall not be required to permit access to its business premises if the Clearing House has not provided reasonable prior notice.

3.6.2 The Clearing House shall keep records in accordance with the requirements in EMIR and other Applicable Law.

### **3.7 General Actions available to the Clearing House**

3.7.1 Notwithstanding any other Rule, in order to protect the integrity of its clearing arrangements or to avoid the introduction of uncertainty, volatility or risk into the financial markets, the Clearing House may, in its absolute discretion, take any of the following actions:

- (a) require a Clearing Member to increase its capital;
- (b) increase a Clearing Member's Collateral Requirement;
- (c) require a Clearing Member to decrease the size or volume of its Contracts;
- (d) prohibit a Clearing Member from entering into any new Contracts;
- (e) require a Clearing Member to cease to take any action in respect of the Contracts to which it is party save as directed by the Clearing House;
- (f) transfer, which may include closing out and reopening Contracts, to another Clearing Member or Clearing Members some or all of its Contracts or Collateral (ensuring that such Contracts and/or Collateral recorded in a Client Account remain recorded in a

Client Account of the same type) provided that such other Clearing Member(s) gives it prior consent to the relevant Contracts and Collateral being transferred to it;

- (g) suspend a Clearing Member in accordance with Rule 3.9;
- (h) impose additional accounting, reporting and other financial and/or operational requirements on a Clearing Member;
- (i) close out or settle Contracts of a Clearing Member;
- (j) Invoice Back any Contract provided there is an objective justification;
- (k) notwithstanding Rules 2.2.12 to 2.2.14, amend the Rules to the extent it reasonably considers necessary for the purpose of mitigating a significant risk to the Clearing House (including by mitigating a significant risk to a Clearing Member); and/or
- (l) issue such other instructions and impose such other requirements and prohibitions as it considers appropriate to protect the integrity of the Clearing House or avoid the introduction of uncertainty, volatility or risk in the financial markets.

3.7.2 Where the Clearing House increases the Collateral Requirement pursuant to Rule 3.7.1, Clearing Members are required to deliver Eligible Cash as Collateral through the arrangements set out in Rule 4.2.2 or, if there is insufficient Eligible Cash within a Clearing Member's Bank Account to allow the delivery of Eligible Cash in accordance with Rule 4.2.2 to meet the increased Collateral Requirement, the Clearing Member is required to deliver Eligible Cash via a Relevant Payment System within one (1) hour of notification of such amount if notification is received during the hours when a Relevant Payment System is open and at least one (1) hour prior to a Relevant Payment System closing and otherwise, within one (1) hour of the time at which a Relevant Payment System first opens after such notification.

3.7.3 The decision to take any of the actions set out in Rule 3.7.1 will be made jointly by the CEO, Chief Operating Officer, Chief Risk Officer and Chief Compliance Officer of the Clearing House. Before taking any of the actions set out in Rule 3.7.1 the Clearing House shall notify each of the Board of Directors and the Bank of England.

3.7.4 Before taking any of the actions set out in Rules 3.7.1(j), 3.7.1(k) and/or (l) the Clearing House shall consult with the relevant Emergency Powers Committee.

3.7.5 The Clearing House may take the actions set out in Rule 3.7.1 in respect of any Clearing Member, Clearing Members in any Membership Category or all Clearing Members as it reasonably considers appropriate.

### **3.8 Termination of clearing membership**

- 3.8.1 Without prejudice to Rule 8.8, a Clearing Member may give written notice of its application to terminate its membership or membership of a particular Membership Category of the Clearing House at any time. The Clearing Member agrees that such termination shall become effective on the Membership Termination Date.
- 3.8.2 Subject to Rule 8.2.6 and Rule 9.4.16(e), the Clearing House may terminate the membership or membership of a particular Membership Category of the Clearing House of any Clearing Member by providing the Clearing Member with not less than thirty (30) Business Days' notice in writing.
- 3.8.3 Following the giving of notice by a Clearing Member of its intention to terminate its membership or membership of a particular Membership Category of the Clearing House pursuant to Rule 3.8.1, or receipt of notice of termination of membership or membership of a particular Membership Category of the Clearing House pursuant to Rules 3.8.2, 8.2.6 and 9.4.16(e) and until the relevant Membership Termination Date, the Clearing Member shall, in respect of each Membership Category to be terminated:
- (a) continue to deposit Eligible Assets to meet its Collateral Requirement and its required Contribution to each relevant Guarantee Fund and any Assessments and make all other payments due pursuant to these Rules or any Contracts to which it is party;
  - (b) make settlement in respect of, transfer to another Clearing Member or Clearing Members or close out any Contracts and follow any directions given by the Clearing House in respect of such Contracts;
  - (c) cooperate in the transfer of any Collateral deposited with the Clearing House relating to a Contract which is transferred to another Clearing Member or Clearing Members to the relevant Account relating to such other Clearing Member or Clearing Members;
  - (d) remain subject to claims against its Contribution and make any Assessments pursuant to Rules 7.2 and 8.7;
  - (e) remain subject to the Clearing House's jurisdiction as set out in Chapter 8 until any actions arising as a result of a Declaration of Default having been served on the Clearing Member have been completed; and
  - (f) take such other actions as the Clearing House deems necessary or appropriate to satisfy or discharge any of its remaining obligations under the Rules.
- 3.8.4 Following notice of the termination of a Clearing Member's membership or membership of a particular Membership Category of the Clearing House, the Clearing House may, at its reasonable discretion and in the interests of risk management, establish, amend or revoke

Position Limits for the Clearing Member. The Clearing House will inform the Clearing Members of their Position Limits as soon as reasonably practicable. In the event the Clearing House reduces a Clearing Member's Position Limits, it shall allow the Clearing Member reasonable time to properly manage its Contracts accordingly.

3.8.5 A Clearing Member shall remain subject to the Rules in Chapter 9 with respect to matters that occurred prior to the relevant Membership Termination Date provided that the Clearing House gives written notice of the commencement of an inquiry into such matters to the former Clearing Member within one (1) year of the relevant Membership Termination Date.

3.8.6 A Clearing Member's ability to clear a particular type of Transaction may be terminated without affecting the ability of the Clearing Member to clear another type of Transaction within the same Membership Category. In this event and for the purposes of Rules 3.7.5 and 3.10 only, Rule 3.8.3 and the definition of Membership Termination Date shall be construed as relating only to Contracts relating to the relevant type of Transaction.

### **3.9 Suspension**

3.9.1 A Clearing Member which is suspended may not submit Transactions to the Clearing House for clearing but shall continue to comply with the Rules and take such actions as the Clearing House deems necessary or appropriate.

### **3.10 Refund of Collateral, Contribution, Assessments and Optional Payments**

3.10.1 Without prejudice to Rule 8.8, if a Clearing Member or the Clearing House terminates the Clearing Member's membership of the Clearing House in respect of a Membership Category in accordance with Rule 3.8, the Clearing House terminates all IRS Contracts pursuant to Rule 8.10, the Clearing House terminates all Exchange Contracts pursuant to Rule 8.12 or the Clearing House terminates any or all Contracts pursuant to Rule 8.13, the Clearing House shall return that part of the terminating Clearing Member's Collateral, Contribution in respect of the relevant Guarantee Fund, Assessments and Optional Payments that:

- (a) has not been applied pursuant to the Rules as at:
  - (i) the relevant Membership Termination Date; or
  - (ii) as the context requires, the date that the Clearing House certifies as being the date on which all steps under Rule 8.10 have been completed; and
- (b) is not required by the Clearing House pursuant to the Rules; and
- (c) if the Clearing House has taken action pursuant to Rule 8.13, has not been transferred to another clearing house.

Where a Clearing Member is terminating its ability to clear a particular type of Transaction within a Membership Category in accordance with Rule 3.8.6, the part of the Clearing Member's Collateral, Contribution in respect of the relevant Guarantee Fund, Assessments and Optional Payments (if relevant) to be returned shall be determined by the Clearing House by reference to the Contracts that related to the relevant type of Transaction only.

3.10.2 The amount calculated pursuant to Rule 3.10.1 shall be returned to the terminating Clearing Member within thirty (30) Business Days of:

- (a) the Membership Termination Date; or
- (b) as the context requires, the date that the Clearing House certifies as being the date on which all steps under Rule 8.10 have been completed or the Clearing House reasonably determines as being the date on which all the steps under Rule 8.12 or 8.13 have been completed.

3.10.3 All amounts chargeable against a Clearing Member's Collateral, Contribution, Assessments and Optional Payments on account of Contracts of the relevant Membership Category entered into while it was a Clearing Member shall be deducted from the amount returned.

3.10.4 (a) A Clearing Member's right to repayment of its Collateral, Contribution, Assessments or Optional Payments received by the Clearing House; or

(b) A Contract CM Client's right under Rule 8.5.11(a),

or, in each case, any part of it, shall not be capable of assignment or transfer by the Clearing Member or the Contract CM Client or made subject to any Encumbrance that purports to rank in priority over, pari passu with, or subsequent to, the rights of the Clearing House. Any purported Encumbrance that is made by a Clearing Member or Contract CM Client in respect of such rights shall be void.

3.10.5 Notwithstanding any other provision of the Rules, no Clearing Member shall have any right, title or interest in any Collateral, Contribution, Assessments or Optional Payments that have been transferred to the Clearing House or to its Custodian save as otherwise agreed. A Clearing Member will, subject to the provisions of the Rules (in particular, the Default Rules), only have a right to the return of Equivalent Assets. If the Clearing House is expressed to have an obligation (pursuant to this Rule 3.10 or otherwise) to transfer to the Clearing Member an amount of cash or an asset in respect of Collateral, Contribution, Assessments or Optional Payments received by the Clearing House, the Clearing House shall only be obliged to transfer an Equivalent Asset to the Clearing Member's Bank Account or the account for Eligible Securities or the Allocated Precious Metals Account referred to in Rule 4.2.6. Notwithstanding the foregoing, the Clearing House reserves the right to transfer Eligible Cash in respect of Eligible Securities and Eligible Precious Metals if

an event occurs which introduces significant uncertainty, volatility or risk into the financial markets or a part thereof and the Clearing House is unable, using reasonable endeavours, to locate or obtain Equivalent Securities or Eligible Precious Metals and in any event to value such Eligible Assets as it may reasonably determine in accordance with the Clearing and Settlement Procedure. For these purposes, the Clearing House may not be able to locate or obtain Eligible Assets if the issuer of the Eligible Assets or a Custodian or other securities depository that was holding them fails or it is otherwise prohibitively expensive to purchase such Eligible Securities or Eligible Precious Metals or the Clearing House is concerned that the pricing of such Eligible Securities or Eligible Precious Metals is unreliable because the relevant markets are not sufficiently liquid, transparent or are otherwise not functioning properly.

### **3.11 Affiliate cross guarantee**

- 3.11.1 If any person directly or indirectly controls or owns 10% (ten per cent) or more of, or has the right to 10% (ten per cent) or more of the profits of two (2) or more Clearing Members, then each such Clearing Member shall be an **Affiliated Clearing Member** to the other.
- 3.11.2 Each Clearing Member shall, unless the Clearing House agrees otherwise, guarantee the obligations to the Clearing House under the Rules of all of its Affiliated Clearing Members and shall execute a written guarantee in a form acceptable to the Clearing House.



**CHAPTER 3A**  
**CLIENT CLEARING – NON-FCM CLEARING MEMBERS**

**3A.1 Clearing for Clients**

3A.1.1 A Non-FCM Clearing Member, if permitted to do so under Applicable Laws and subject to the Clearing House being satisfied that the Non-FCM Clearing Member has the operational capacity to do so, may clear Transactions through the Clearing House on behalf of any of its Clients provided it satisfies the provisions of this Chapter 3A and each other relevant provision of the Rules.

3A.1.2 Before a Non-FCM Clearing Member accepts any Transactions for a Client it shall ensure a written agreement is in place with that Client, pursuant to which the Client agrees that:

- (a) the Non-FCM Clearing Member acts as principal at all times to each Contract;
- (b) the Client has no contractual relationship with the Clearing House (save as set out in any Client Clearing Document, Client Protection Agreement, Client Acknowledgement, FS Document or guarantee into which the Clearing House may have entered in relation to a Client); and
- (c) the Client shall not have any rights under the Rules, any Contract, the Clearing Membership Agreement or otherwise, save for the rights (if any) which a Contract CM Client may have as a result of entering into a Client Acknowledgement or any liability which by law may not be excluded.

3A.1.3 Where a Non-FCM Clearing Member accepts any Transactions for a Client:

- (a) it shall provide such information about the Client or Affiliate (as the case may be) as the Clearing House may reasonably request to the Clearing House promptly on request by the Clearing House, including an authorised signatory list for each Client;
- (b) it must require each Client to comply with such security obligations as the Clearing House may reasonably require; and
- (c) it must use its reasonable endeavours to procure that each Client cooperates with the Clearing House in the event of any action being taken against the Non-FCM Clearing Member in the same way as set out in Rule 9.2.2 save that the Clearing House shall be required to give reasonable notice to the Client of any such cooperation it requires and, in particular, the Client shall not be required to permit access to its business premises without reasonable notice.

3A.1.4 The Non-FCM Clearing Member shall:

- (a) provide the Clearing House with an accurate, current and complete list of its Clients;
  - (i) when it first commences providing services to Clients in accordance with this Chapter 3A and (ii) subsequently, on a monthly basis; and
- (b) notwithstanding Rule 3A.1.4(a), provide to the Clearing House an accurate, current and complete list of its Clients upon request from the Clearing House,

notwithstanding Rule 3A.1.4(a) and (b), the Non-FCM Clearing Member may provide to the Clearing House an updated list of its Clients at any time.

- 3A.1.5 The Clearing House will not have any obligations or liabilities to persons other than the Non-FCM Clearing Member save as explicitly set out in the Rules and (in the case of a Contract CM Client) a Client Acknowledgement. The consequences of any Contracts arising, existing or being settled or subject to delivery are the sole responsibility of the Non-FCM Clearing Member.
- 3A.1.6 The Non-FCM Clearing Member is responsible and liable for all acts and omissions of each of its Clients and their Representatives in relation to the submission of Transactions to the Clearing House and the clearing of the Contracts resulting from such Transactions to the same extent that it is responsible and liable for the acts and omissions of itself and its Representatives.
- 3A.1.7 Where a Non-FCM Clearing Member accepts a Transaction for a Client, the Non-FCM Clearing Member shall require the Client to provide it with collateral with a value not less than the value of the Clearing Member's Collateral Requirement in respect of such Transaction, which may not necessarily take the same form of such Collateral, or the Non-FCM Clearing Member shall advance credit in respect of the Client of not less than the value of such Collateral.
- 3A.1.8 The Non-FCM Clearing Member shall, at the request of the Clearing House, immediately take action to ensure that no further Transactions are cleared on behalf of a Client by reducing its credit limits or other relevant limits relating to that Client to zero in the event the Clearing House reasonably believes the Client is in breach of any of the prohibitions referred to in Rule 3A.2.1(f).
- 3A.1.9 The Non-FCM Clearing Member represents and warrants that each of its Clients and Third Party Trade Delegates is an eligible counterparty or a professional client as defined by the FCA or are Clients who have an equivalent designation according to the rules of the relevant Regulatory Authority.
- 3A.1.10 A Non-FCM Clearing Member shall not enter into any Contract, provide any Collateral, use the Clearing Services or access the Clearing Services on behalf of, or for the ultimate benefit of, parties that are (i) Restricted Persons; (ii) 50% or more owned by Restricted

Persons; (iii) located in a Restricted Country; (iv) owned or controlled by the government of a Restricted Country; (v) subject to restrictions administered or imposed by the European Union or the UK HM Treasury; or (vi) subject to restrictions administered or imposed by the United Nations Security Council, any other Regulatory Authority or any other government entity with jurisdiction over the Contract; or (vii) anyone acting on behalf of any of the foregoing.

3A.1.11 A Non-FCM Clearing Member shall also not provide any Collateral representing debt or equity issued by, or assets related to, parties that are (i) Restricted Persons; (ii) 50% or more owned by Restricted Persons; (iii) located in a Restricted Country; (iv) owned or controlled by the government of a Restricted Country; (v) subject to restrictions administered or imposed by the European Union or the UK HM Treasury; (vi) subject to restrictions administered or imposed by the United Nations Security Council, any other Regulatory Authority or any government entity with jurisdiction over the Contract; or (vii) anyone acting on behalf of any of the foregoing.

3A.1.12 Each Non-FCM Clearing Member must comply with the relevant provisions of EMIR and other Applicable Law when providing services to its Clients. In particular, each Non-FCM Clearing Member must offer to each Client, at least, a choice of an Individual Client Account or an Omnibus Client Account. Each Non-FCM Clearing Member must inform its Clients of the costs and level of protection associated with the relevant Individual Client Account and Omnibus Client Account. The Non-FCM Clearing Member must record the choice of Individual Client Account or Omnibus Client Account which the Client makes in writing.

## 3A.2 Client Agreement

3A.2.1 The Non-FCM Clearing Member shall be party to a Client Agreement with each Client for which it holds an Individual Client Account or which is part of an Omnibus Client Account. The Client Agreement shall incorporate provisions with the following effect:

- (a) Corresponding Transactions shall be transacted pursuant to the terms of the Client Agreement and be segregated (contractually or otherwise) from any other transactions entered into between the Non-FCM Clearing Member and the Client;
- (b) the Client must have the right to terminate all Corresponding Transactions in the event the Clearing House issues a Declaration of Default to a Non-FCM Clearing Member in accordance with the Default Rules;
- (c) if a Corresponding Transaction is terminated due to the Clearing House issuing a Declaration of Default in accordance with the Default Rules, the net replacement value of the Corresponding Transaction shall be;
  - (i) where due to the Client, equal or be greater than; or

- (ii) where due from the Client, equal or be less than;

the value attributed by the Clearing House to the Contract to which the Corresponding Transaction relates following the issuance of such Declaration of Default;

- (d) the Non-FCM Clearing Member shall have the right in the event of an Insolvency Event relating to the Clearing House, to terminate the Corresponding Transaction;
- (e) that "two way payments" arise in the event of a termination of all Corresponding Transactions, the substantive effect of which is that either a Non-FCM Clearing Member or a Client will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated Corresponding Transactions effected under the Client Agreement is in its favour; and
- (f) that the prohibitions set out in Rule 3.5.1 as amended below are imposed on the Client in relation to the Client's submission of Transactions to the Clearing House and its activities in relation to the clearing of the Contracts that result from such Transactions:
  - (i) in Rules 3.5.1(a) and 3.5.1(b), the references to the Non-FCM Clearing Member are references to the Client;
  - (ii) Rule 3.5.1(f) is deleted; and
  - (iii) in Rule 3.5.1(g) the words "or other than for the purpose of conducting its business as a Clearing Member" are deleted.

3A.2.2 If a Contract is transferred to an Adopting Clearing Member in accordance with Rule 8.4.6, 8.4.12 or 8.4.13, the Corresponding Transaction entered into by the Client and the Defaulting Clearing Member will also terminate and a new Corresponding Transaction will be entered into between the Client and the Adopting Clearing Member.

3A.2.3 Any changes made to the terms of a Contract by the Clearing House shall be deemed to be reflected in the Corresponding Transaction.

3A.2.4 To the extent there is no Client Agreement in full force and effect or there is any deficiency in the Client Agreement, the Non-FCM Clearing Member and the Client will be deemed to have entered into a binding agreement into which the terms set out in Rule 3A.2.1 shall be deemed to have been incorporated.

3A.2.5 The Non-FCM Clearing Member shall notify the Clearing House in the event that any Client either appoints it as an Adopting Clearing Member or terminates an existing appointment as an Adopting Clearing Member.

### **3A.3 Collateral**

- 3A.3.1 Subject to Rule 3A.3.3, the arrangements for collateral in relation to Corresponding Transactions with Clients who have an Individual Client Account or which are part of an Omnibus Client Account must provide that collateral is provided by a Client to a Non-FCM Clearing Member in such form as agreed between the Client and the Non-FCM Clearing Member free and clear of any Encumbrances of the Client or of any other person (other than a lien routinely imposed on all securities in a relevant settlement system or central securities depository, not being the Clearing House) so that the Non-FCM Clearing Member has the right to deal with the collateral in any manner and an obligation to return equivalent collateral or the value thereof, in the form of cash or securities, to a Client.
- 3A.3.2 Where a Non-FCM Clearing Member holds cash in respect of a Client as client money in accordance with the FCA's Client Assets Handbook, the Non-FCM Clearing Member shall notify the Clearing House that the Client Account it requests in respect of such Client will be used to hold Eligible Cash that constitutes client money. The General Clearing House may impose additional requirements in relation to any such Client Accounts as set out in the Risk Management Procedure. For the avoidance of doubt, the Clearing House will not hold any securities as custodian, nor any cash as client money pursuant to the FCA's Client Assets Handbook.
- 3A.3.3 Notwithstanding Rule 3A.3.1, to the extent the FS Documents require different collateral arrangements to apply in relation to Contracts and Corresponding Transactions with Non-FCM Clearing Members and Clients who have an FS Individual Client Account, such alternative collateral arrangements shall apply between the Client, the Non-FCM Clearing Member and the Clearing House.

### **3A.4 Other agreements**

- 3A.4.1 Before accepting any Transactions for a Client which will be recorded in either an Individual Client Account or an Omnibus Client Account, to be submitted for clearing by the Clearing House:
- (a) each Security CM shall:
    - (i) enter into a Client Protection Agreement with the Clearing House and either;
      - (A) the Client and return a copy of the Client Protection Agreement to the Clearing House; or
      - (B) the Security Trustee, in which case the Security CM shall also enter into a Security Trust Deed with the Security Trustee and return a copy

of the Client Protection Agreement and Security Trust Deed to the Clearing House; and

(ii) where the Client is intended to benefit from the Security Trust Deed, enter into a Client Acknowledgement with the Clearing House and the Client and return a copy of the Client Acknowledgement to the Clearing House: where a Client Protection Agreement has been entered into with the Client, a Client Acknowledgement will be deemed to have been entered into; and

(b) each Contract CM shall enter into a Client Acknowledgement with the Clearing House and the Client and return a copy of the Client Acknowledgement to the Clearing House.

3A.4.2 Where any formalities or registration requirements apply in respect of the Client Protection Agreement (and any other document which the Clearing House may from time to time determine), a Non-FCM Clearing Member is required to comply with such requirements or to procure that such requirements are complied with. The Non-FCM Clearing Member shall provide such confirmation as may be required by the Clearing House to demonstrate compliance with such obligations.

### **3A.5 Non-FCM Clearing Member's records and information**

3A.5.1 The Non-FCM Clearing Member shall keep accurate and up-to-date records of the Contracts and Collateral relating to each Client in respect of which Contracts are recorded in an Individual Client Account or an Omnibus Client Account and the Collateral in respect of such Contracts. The Non-FCM Clearing Member shall provide information about the Contracts and Collateral relating to each Client to the Clearing House at its reasonable request, including, where requested, at the end of each Business Day. In particular, the Non-FCM Clearing Member or its insolvency practitioner shall, where requested, promptly provide such information to the Clearing House in the event the Clearing House issues a Declaration of Default in respect of the Non-FCM Clearing Member.

3A.5.2 The Non-FCM Clearing Member, or its insolvency practitioner following a Declaration of Default, shall promptly provide the information specified in Rule 3A.5.1 to the Clearing House:

(a) at the reasonable request of the Clearing House; and

(b) on a Declaration of Default

3A.5.3 The Clearing House shall provide to the Non-FCM Clearing Member on each Business Day information on the Contracts and the value of Collateral recorded in its books and records in relation to each of its Individual Client Accounts and Omnibus Client Accounts. The

Clearing House shall be entitled to assume that the Non-FCM Clearing Member agrees that such information is correct if it does not receive written notice from the Non-FCM Clearing Member otherwise within twenty-four (24) hours of the date when the information was published by the Clearing House. The Clearing House may correct its reports and make any adjustment for the relevant Account on the next Business Day following the receipt of notice from the Non-FCM Clearing Member. If the Non-FCM Clearing Member notifies the Clearing House that the information is not correct after twenty-four hours of the date when the information was published by the Clearing House, the Clearing House will use reasonable endeavours to make the adjustment to the relevant Account.

### **3A.6 Transfer**

3A.6.1 In relation to Clients in respect of which Contracts are recorded in a Client Account, the Clearing House will, notwithstanding Rule 5.3.1, effect a transfer of all rights and liabilities of a Non-FCM Clearing Member (the **Non-FCM Transferor Clearing Member**) under a portfolio of Contracts relating to a Client and the Collateral relating to such portfolio of Contracts to another Clearing Member (the **Non-FCM Transferee Clearing Member**) if requested to do so by the Client and provided:

- (a) the Non-FCM Transferor Clearing Member consents to such transfer, such consent to be promptly given where there are no conditions to such a transfer or where any conditions to such a transfer set out in the Client Agreement have been satisfied, which the Clearing House shall be entitled to assume provided the Non-FCM Clearing Member does not notify it otherwise within two (2) Business Days of the Clearing House notifying the Non-FCM Clearing Member of the Client's request;
- (b) the Non-FCM Transferee Clearing Member and the Clearing House consent to the transfer of such Contracts and the transfer would not cause the credit limits or Position Limits applicable to either the Non-FCM Transferee Clearing Member or the Client pursuant to Rules 5.1.7 and 5.1.8 to be exceeded; and
- (c) the Non-FCM Transferor Clearing Member, the Non-FCM Transferee Clearing Member and the Clearing House agree on the Collateral to be transferred in respect of the Contracts unless the Non-FCM Transferor Clearing Member or the Non-FCM Transferee Clearing Member agrees to provide alternative Eligible Assets to the Clearing House as Collateral in respect of the Contracts;
- (d) the Non-FCM Transferor Clearing Member, the Non-FCM Transferee Clearing Member and the Clearing House agree which of the Non-FCM Transferor Clearing Member and the Non-FCM Transferee Clearing Member will be responsible for providing any additional Assets that may be required as Collateral by the Clearing House during the course of or as a result of the transfer; and

- (e) the Clearing House has not issued a Declaration of Default in respect of either the Non-FCM Transferor Clearing Member or the Non-FCM Transferee Clearing Member,

upon transfer of a Contract pursuant to Rule 3A.6.1, the Transferor Clearing Member will be released and discharged from all its rights and obligations under the Contract and a the Transferee Clearing Member will assume all such rights and obligations under the Contract.

3A.6.2 For the avoidance of doubt Rule 3A.6.1 applies in respect of:

- (a) a transfer of some but not all of the Contracts and Collateral related to any Client Account; or
- (b) a transfer to more than one Non-FCM Transferee Clearing Member; and
- (c) a transfer to a Non-FCM Transferee Clearing Member which does not occur in a single transfer;

in each case at the request of the Client to which such Contracts relate.

### **3A.7 Amendments to Client Protection Agreement, Security Trust Deed and Client Acknowledgement**

3A.7.1 The Clearing House may publish revised standard forms of the Client Protection Agreement, Security Trust Deed and Client Acknowledgement from time to time. To the extent that the Clearing House publishes a proposed amendment to an existing Client Protection Agreement, Security Trust Deed and/or Client Acknowledgement which has been entered into by a Clearing Member and (if relevant) a Security Trustee, the Non-FCM Clearing Member and (in the case of a Client Acknowledgement only) the Contract CM Client shall grant its consent to such proposed amendment if the Clearing House is of the reasonable opinion that such amendment:

- (a) will not be materially prejudicial to the relevant Client(s) which benefit from such Client Protection Agreement, Security Trust Deed and/or Client Acknowledgement;
- (b) is of a formal, minor or technical nature or to correct a manifest or proven error;
- (c) is necessary to cure an ambiguity or inconsistency;
- (d) is necessary to reflect a change in the Rules; or
- (e) is as a result of Applicable Law.

### **3A.8 Indirect client clearing**



3A.8.1 Where a Non-FCM Clearing Member provides indirect client clearing services to any of its Clients it will notify the Clearing House which of its Client Accounts relate to such indirect client clearing services (each an **Indirect Client Account**) and the Clearing House shall establish the requisite Indirect Client Accounts in its books and records.

3A.8.2 The Non-FCM Clearing Member shall notify the Clearing House in the event that a Client that provides indirect client clearing services fails to discharge any of its obligations to the Non-FCM Clearing Member or the Non-FCM Clearing Member believes that a Client is, or is likely to be, unable to discharge any obligation to the Non-FCM Clearing Member.

3A.8.3 The Clearing House will, on receipt of sufficient evidence to enable it to reasonably believe that the Client has failed, or is unlikely to be able, to discharge any of its obligations take reasonable steps to facilitate the transfer of an Indirect Client Account by changing in its books and records the identity of the Client or the Non-FCM Clearing Member to which the Indirect Client Account relates and/or agreeing to a novation of a Client Protection Agreement or entering into a Client Protection Agreement with the new Client or Non-FCM Clearing Member.

### **3A.9 Early Termination of Corresponding Transactions due to the default of Client or otherwise under Client Agreement**

3A.9.1 If Corresponding Transactions are terminated, or will be terminated, due to the default of the Client or for any reason other than the Clearing House issuing a Declaration of Default with respect to the Non-FCM Clearing Member, and the Non-FCM Clearing Member notifies the Clearing House in writing, the following actions will be taken:

(a) with respect to all Contracts credited to an Individual Client Account or a Notional Sub-Account relating to the Client (the **Client Affected Contracts**), the Clearing House and the Non-FCM Clearing Member will:

(i) enter into equal and opposite Contracts to the Client Affected Contracts with respect to such Client Account and offset all Contracts with the result that no further Contracts remain outstanding; and

(ii) be deemed to have immediately entered into Contracts recorded in respect of the House Account which replicate the terms of the Client Affected Contracts; and

(b) the Clearing House shall not be required to verify, and shall be entitled to rely on, the information provided by the Non-FCM Clearing Member pursuant to this Rule 3A.9.1.

### **3A.10 FS Individual Client Accounts**

3A.10.1 A Non-FCM Clearing Member which clears a Client's Transactions through an Individual Client Account may request the Clearing House to establish an FS Account relating to that Individual Client Account in accordance with the Fully Segregated Account Procedure, provided that:

- (c) the requirements to enter into other agreements specified in Rule 3A.4 have been satisfied;
- (d) the relevant FS Documents have been duly entered into to the satisfaction of the Clearing House;
- (e) the Non-FCM Clearing Member assists, to the extent required by the FS Documents, the Clearing House, the relevant FS Custodian and the relevant Security Trustee to conduct "know your client" checks on the Client by providing any information reasonably requested by such party; and
- (f) any other requirement, reasonably requested by the Clearing House, is satisfied.

3A.10.2 Each Individual Client Account in respect of which the requirements in Rule 3A.10.1 have been, and remain satisfied, is an FS Individual Client Account.

**CHAPTER 3B**  
**CLIENT CLEARING – FCM CLEARING MEMBERS**

**3B.1 Clearing for Clients**

- 3B.1.1 An FCM Clearing Member, if permitted to do so under Applicable Laws and subject to the Clearing House being satisfied that the FCM Clearing Member has the legal and operational capacity to do so, may clear Transactions through the Clearing House on behalf of any of its Clients or Non-Public Clients provided that the FCM Clearing Member satisfies the provisions of this Chapter 3B, as applicable, and each other relevant provision of the Rules.
- 3B.1.2 Before an FCM Clearing Member accepts any Transactions for a Client it shall ensure a written agreement is in place with such person (which may be in the form of an addendum to an existing agreement), pursuant to which such person agrees that it is bound by the applicable provisions of the Rules by direct reference thereto or otherwise, as such Rules may be amended from time to time.
- 3B.1.3 Each Client of an FCM Clearing Member, by virtue of clearing any Transaction at the Clearing House through such FCM Clearing Member, is deemed to acknowledge and agree that:
- (a) the FCM Clearing Member is acting as the Client's agent, as that term is contemplated in the Part 39 regulations of the CFTC, for Contracts it clears for the Client, but not as a legal term under English law in relation to defining the rights and obligations between the Clearing House and FCM Clearing Member in respect of such Contracts under the Rules. As such:
    - (i) each FCM Clearing Member will be principal (and not agent) in relation to the Clearing House for the purposes of the rights and obligations defined under the rules in relation to any Contract or otherwise;
    - (ii) the Client does not (except as expressly set out in the Rules) have any rights against the Clearing House.
  - (b) the Contracts resulting from Transactions cleared by the FCM Clearing Member on Client's behalf are governed by applicable provisions of the Rules, the Client is bound by such provisions, and such provisions are enforceable by the Clearing House against the Client in accordance with their terms;
  - (c) the Client is bound by the terms of each Contract resulting from Transactions cleared by its FCM Clearing Member on the Client's behalf;

- (d) the Client has granted its consent to the FCM Clearing Member to deposit Collateral with the Clearing House in satisfaction of the Collateral Requirement attributable to Contracts resulting from Transactions cleared by its FCM Clearing Member on its behalf; and
- (e) the Client irrevocably authorises each FCM Clearing Member to deal with the relevant Positive Obligations contemplated in Rule 4.4 (and to agree that they may be applied) in accordance with the Rules, notwithstanding that they are held on trust under Rule 4.4.

3B.1.4 An FCM Clearing Member shall clear Transactions for a Non-Public Client in the relevant House Account of the FCM Clearing Member. Each Non-Public Client, by virtue of clearing any Transactions at the Clearing House through such FCM Clearing Member, is deemed to acknowledge and agree that the clearing of such Transactions is subject to the Rules. The FCM Clearing Member shall provide to the Clearing House promptly such information about its Non-Public Clients as the Clearing House may reasonably request.

3B.1.5 The Clearing House will not have any obligations or liabilities to persons other than the FCM Clearing Member save as explicitly set out in the Rules. The consequences of any Contracts arising, existing or being settled or subject to delivery are the sole responsibility of the FCM Clearing Member.

3B.1.6 The FCM Clearing Member is responsible and liable for all acts and omissions of each of its Clients and Non-Public Clients and their Representatives in relation to the submission of Transactions to the Clearing House and the clearing of the Contracts resulting from such Transactions to the same extent that it is responsible and liable for the acts and omissions of itself and its Representatives.

3B.1.7 The FCM Clearing Member shall require a Client to provide it with collateral in respect of the Client's open Contracts in its FCM LSOC Client Sub-Account or FCM Futures Account, as applicable, that has a value not less than the sum of (a) (i) the FCM's Clearing Member's Margin Requirement for such Contracts if they are hedge transactions for the Client or (ii) 110% of the FCM's Clearing Member's Margin Requirements for such Contracts if they are non-hedge transactions for the Client, plus (b) the Variation Requirement for such Transactions. Such collateral may not necessarily take the same form as such Collateral. Alternatively, the FCM Clearing Member shall advance credit in respect of the Client of not less than the value of such Collateral.

3B.1.8 An FCM Clearing Member may only hold Accounts for persons that have expressly agreed not to act for Customers of the Clearing House, directly or indirectly, that are (i) Restricted Persons; (ii) 50% or more owned by a Restricted Person; (iii) located in a Restricted Country; (iv) owned or controlled by the government of a Restricted Country; (v) subject to

restrictions administered or imposed by the UK HM Treasury or the European Union; (vi) subject to restrictions administered or imposed by the United Nations Security Council, or any other Regulatory Authority or any government entity with jurisdiction over the Contract; or (vii) or acting on behalf of any of the foregoing; and have themselves obtained the same express agreement from their customers.

3B.1.9 The FCM Clearing Member represents and warrants that each of its LSOC Clients is an eligible contract participant as defined in Section 1a(18) of the by the CEA and Regulation 1.3(m) of the CFTC.

3B.1.10 The Rules in this Chapter 3B shall be governed by and construed in accordance with the laws of the United States (including the CEA) and the State of New York.

3B.1.11 For the purposes of the Rules set forth in this Chapter 3B, the following words have the meanings specified:

**FCM FBOT Futures 30.7 Account** means each “30.7 account” (as defined in CFTC Regulation 30.7(g)) maintained by an FCM Clearing Member to hold collateral deposited by the FCM Clearing Member’s “30.7 customers” (as defined in CFTC Regulation 30.1(f)), including its FBOT Futures Clients;

**FCM Cleared Swaps Client Account** means each “Cleared Swaps Customer Account” (as defined in CFTC Regulation 22.1) maintained by an FCM Clearing Member to hold collateral deposited by the FCM Clearing Member’s “Cleared Swaps Customers” (as defined in CFTC Regulation 22.1), including its LSOC Clients;

**FCM DCM Futures Segregated Account** means each “futures account” (as defined in CFTC Regulation 1.3(vv)) maintained by an FCM Clearing Member, as required under Section 4d(a) of the CEA and the CFTC Regulations promulgated thereunder, to hold collateral deposited by the FCM Clearing Member’s futures customers (as defined in CFTC Regulation 1.3 (iii)), including its DCM Futures Clients;

**LSOC Segregated Depository Account** means each omnibus deposit account maintained by the Clearing House which contains Collateral deposited by FCM Clearing Members in respect of their FCM LSOC Client Accounts (including any FCM LSOC Client Buffer Collateral), along with accruals standing to the credit of such FCM LSOC Client Accounts and any FCM LSOC Unallocated Client Collateral, and as such is a “Cleared Swaps Customer Account” (as defined in CFTC Regulation 22.1);

**Permitted Depository** (a) in relation to the FCM Cleared Swaps Client Account and LSOC Segregated Depository Account, has the meaning given to it in CFTC Regulation 22.4, subject to the further terms of CFTC Regulation 22.9; (b) in relation to the FCM DCM Futures Segregated Account, Segregated DCM Futures Depository Account and the

Secured Amount FBOT Futures Depository Account, has the meaning given to it in CFTC Regulation 1.49; (c) in relation to the FCM FBOT Futures 30.7 Account, means a permissible location at which an FCM Clearing Member may deposit 30.7 customer funds (as defined in CFTC Regulation 30.1(h)) as specified in CFTC Regulation 30.7(b);

**Secured Amount FBOT Futures Depository Account** means each omnibus account maintained by the Clearing House which contains Collateral deposited by FCM Clearing Members in respect of their FCM FBOT Futures Accounts, along with accruals standing to the credit of such FCM FBOT Futures Accounts;

**Segregated DCM Futures Depository Account** means each omnibus deposit account maintained by the Clearing House which contains Collateral deposited by FCM Clearing Members in respect of their FCM DCM Futures Client Accounts, along with accruals standing to the credit of such FCM DCM Futures Client Accounts, and as such is a “futures account” as defined in CFTC Regulation 1.3(vv).

### 3B.2 **FCM Clearing Member’s records and information**

3B.2.1 Each FCM Clearing Member shall carry accounts for Clients and Non-Public Clients for which it accepts Transactions for clearing. The FCM Clearing Member shall keep accurate and up-to-date records of the Contracts and Collateral relating to each Client in respect of which Contracts are recorded in an FCM LSOC Client Sub-Account, an FCM FBOT Futures Client Account or an FCM DCM Futures Client Account and the Collateral and accruals standing to the credit of the Client in respect of such Contracts, and of the Contracts and Collateral relating to each Non-Public Client in respect of which Contracts are recorded in an FCM House Account and accruals standing to the credit of the Non-Public Client in respect of such Contracts. The FCM Clearing Member shall provide information about the Contracts and Collateral relating to each Client or Non-Public Client to the Clearing House at its reasonable request.

3B.2.2 Each FCM Clearing Member must comply with the relevant provisions of EMIR and other Applicable Law when providing services to its Clients. In particular, each FCM Clearing Member must offer to each Affected Client (but not any other Client), at least, a choice of an Individual Client Account or an Omnibus Client Account. For a Clearing Member that is prevented by Applicable Law from offering this choice, this offer must include, to the extent permitted and practicable under Applicable Law, an offer to procure the provision of such a choice by another Clearing Member (which may be an Affiliate of the FCM Clearing Member) (the **Procured Clearing Member**). Each FCM Clearing Member must inform, or procure the Procured Clearing Member to inform, its Affected Clients (but not any other Clients) of the costs and level of protection associated with the relevant Individual Client Account and Omnibus Client Account. The Affected Client may choose whichever of the Client Accounts it has been offered by the FCM Clearing Member and the Procured

Clearing Member (and whichever Clearing Member accordingly) and the FCM Clearing Member or the Procured Clearing Member must record the choice of Client Account which the Client makes in writing.

3B.2.3 When an FCM Clearing Member which clears a Transaction which is an IRS Contract or a Standard Swaps Contract for an FCM LSOC Client in accordance with Chapter 5 of the Rulebook, the FCM Clearing Member will carry the terms of the Contract in the Client's account in the FCM Clearing Member's books on terms that conform to the Contract Specification of such Contract.

### **3B.3 Transfer**

3B.3.1 In relation to Clients in respect of which Contracts are recorded in an FCM LSOC Client Sub-Account, an FCM FBOT Futures Client Account or an FCM DCM Futures Client Account, the Clearing House will, notwithstanding Rule 5.3.1, effect a transfer of all rights and liabilities of an FCM Clearing Member (the FCM Transferor Clearing Member) under a portfolio of Contracts relating to a Client and the Collateral relating to such portfolio of Contracts to another FCM Clearing Member (the FCM Transferee Clearing Member) upon being requested to do by the FCM Transferor Clearing Member and provided:

- (a) the FCM Transferee Clearing Member and the Clearing House consent to the transfer of such Contracts and the transfer would not cause the credit limits or Position Limits applicable to either the FCM Transferee Clearing Member or the Client pursuant to Rules 5.1.7 and 5.1.8 to be exceeded; and
- (b) the FCM Transferor Clearing Member, the FCM Transferee Clearing Member and the Clearing House agree on the Collateral to be transferred in respect of the Contracts unless the FCM Transferor Clearing Member or the FCM Transferee Clearing Member agrees to provide alternative Eligible Assets to the Clearing House as Collateral in respect of the Contracts;
- (c) the FCM Transferor Clearing Member, the FCM Transferee Clearing Member and the Clearing House agree which of the FCM Transferor Clearing Member and the FCM Transferee Clearing Member will be responsible for providing any additional Eligible Assets that may be required as Collateral by the Clearing House during the course of or as a result of the transfer; and
- (d) the Clearing House has not issued a Declaration of Default in respect of either the FCM Transferor Clearing Member or the FCM Transferee Clearing Member,

upon transfer of a Contract pursuant to Rule 3B.3.1, the FCM Transferor Clearing Member will be released and discharged from all its rights and obligations under the Contract and a

the FCM Transferee Clearing Member will assume all such rights and obligations under the Contract.

3B.3.2 For the avoidance of doubt Rule 3B.3.1 applies in respect of:

- (a) a transfer of some but not all of the Contracts and Collateral related to any Client; or
- (b) a transfer to more than one FCM Transferee Clearing Member; and
- (c) a transfer to a FCM Transferee Clearing Member which does not occur in a single transfer;

in each case at the request of the FCM Transferor Clearing Member.

### **3B.4 FCM Clearing Member Grant of Encumbrance**

3B.4.1 Each FCM Clearing Member grants the Clearing House an Encumbrance and a first priority unencumbered first lien upon:

(a) any:

- (i) Collateral or other property deposited by the FCM Clearing Member with the Clearing House in an LSOC Segregated Depository Account, including all substitutions for and proceeds of, any such Collateral or other property, excluding the value of any Collateral or other property recorded in an FCM LSOC Client Unallocated Sub-Account;
- (ii) related rights under the trust created under Rule 6.5; and
- (iii) any other rights that it has in an LSOC Segregated Depository Account;

(b) any:

- (i) Collateral or any other property deposited by the FCM Clearing Member with the Clearing House in a Secured Amount FBOT Futures Depository Account, including all substitutions for and proceeds of, any such Collateral or other property;
- (ii) related rights under the trust created under Rule 6.5; and
- (iii) any other rights that it has in a Secured Amount FBOT Futures Depository Account;

(c) any:



- (i) Collateral or any other property deposited by the FCM Clearing Member with the Clearing House in a Segregated DCM Futures Depository Account, including all substitutions for and proceeds of, any such Collateral or other property;
- (ii) related rights under the trust created under Rule 6.5; and
- (iii) related rights that it has in a Segregated DCM Futures Depository Account.

**3B.4.2 Each Encumbrance and first priority unencumbered first lien granted in:**

- (a) Rule 3B.4.1(a) is given solely in connection with Contracts cleared by such FCM Clearing Member for its Clients, that are recorded in an FCM LSOC Client Sub-Account;
- (b) Rule 3B.4.1(b) is given solely in connection with Contracts, cleared by such FCM Clearing Member for its Clients, that are recorded in an FCM FBOT Futures Client Account; and
- (c) Rule 3B.4.1(c) is given solely in connection with Contracts, cleared by such FCM Clearing Member for its Clients, that are recorded in an FCM DCM Futures Client Account,

in each case, as security for unconditional payment and satisfaction of the obligations of the FCM Clearing Member in relation thereto in accordance with the Rules and subject to Applicable Law.

**3B.4.3 Each FCM Clearing Member shall:**

- (a) execute such documents and take such other actions as the Clearing House may require to perfect, maintain and/or enforce such security interest granted to the Clearing House, and
- (b) create any further Encumbrance required by the Clearing House including, without limitation, an Encumbrance governed by or otherwise made in accordance with the laws of the location of the relevant Collateral or account.

**3B.4.4 The Clearing House may:**

- (a) enforce each Encumbrance created by this Rule 3B.4:
  - (i) against a Defaulting Clearing Member upon (and after) issue of the Declaration of Default;
  - (ii) on (and after) the Termination Date; and

- (iii) otherwise when permitted by these Rules or Applicable Law;
- (b) at such times, sell, appropriate or otherwise receive the benefit of the relevant Collateral in any way that it may decide; and
- (c) exercise any and all other rights available to it with respect to such Encumbrance, in accordance with the Rules and Applicable Law.

DRAFT AND SUBJECT TO REGULATORY APPROVAL

## **CHAPTER 4**

### **ACCOUNTS**

#### **4.1 Fees**

- 4.1.1 Each Clearing Member shall pay such fees and charges to the Clearing House as shall be specified by the Clearing House in the Fees and Charges Notice. For Clearing Members who clear Exchange Transactions such fees and charges shall include any fees and charges incurred as a result of such Exchange Transactions. The Clearing House may amend its fees and charges at any time by way of a Notice and shall endeavour, but shall not be obliged, to give prior notice of any amendment.
- 4.1.2 The Clearing House shall invoice each Clearing Member on a monthly basis for fees and charges incurred during the preceding month. All such fees and charges shall be reflected as a charge to, and deducted from, any House Account on such date as may be specified by the Clearing House.
- 4.1.3 The Clearing Member shall pay interest to the Clearing House on any due but unpaid amount from the date on which the amount becomes due and payable under the Rules until the date of delivery at such rate per annum as is set out on its Website and in the Fees and Charges Notice, compounded daily.
- 4.1.4 All amounts set out in the Rules and elsewhere as being payable to the Clearing House shall be deemed to be exclusive of any value added tax which is chargeable on the supply to which that amount relates. Accordingly, if value added tax is chargeable on any such supply and the corresponding amount, the relevant Clearing Member shall be responsible for paying it in addition to the amount stated as payable.
- 4.1.5 All amounts payable to the Clearing House in connection with these Rules and any Contract shall be paid without any deduction or withholding for or on account of tax unless such deduction or withholding is required by Applicable Law, in which case, the amount of the payment due shall be increased to an amount which (after making the deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.
- 4.1.6 All amounts payable by the Clearing House in connection with the Rules, any Equivalent Distribution and any Contract shall be paid without any deduction or withholding for or on account of tax unless such deduction or withholding is required by Applicable Law, in which case the Clearing House shall make that deduction or withholding and any payment required in connection therewith within the time allowed and in the minimum amount required by Applicable Law. Nothing in the Rules shall require the Clearing House to make

any additional payment or pay any compensation in respect of any such deduction or withholding.

- 4.1.7 Any stamp duty or stamp duty reserve tax (or any similar tax or duty) arising on, or in connection with, the transfer of Eligible Securities as Collateral, Contribution or Assessments is for the account of the Clearing Member.

## **4.2 Accounts**

- 4.2.1 The Clearing House shall maintain in its books and records, as requested, one or more IRS House Accounts and one or more Standard House Accounts and, for each Non-FCM Clearing Member which clears Transactions on behalf of Clients, such number and type of Client Accounts as the Clearing Member may request. Any Accounts maintained by the Clearing House are for administrative purposes only and will not affect the Clearing Member's liability for all accounts opened pursuant to its membership.

- 4.2.2 Each Clearing Member shall maintain one or more Bank Accounts (as are required pursuant to the Rules and/or Applicable Law) with one or more Settlement Banks and procure that each Settlement Bank shall act on the Clearing House's instructions with respect to such Bank Accounts in accordance with the Clearing Membership Agreement. Such instructions shall include instructions to debit the Bank Accounts for any amounts pursuant to the Rules including in respect of fees and charges, Collateral Requirement, Contributions, Assessments, Optional Payments, amounts due pursuant to the Contracts and penalties and instructions to provide information to the Clearing House as to whether the Settlement Bank is able to make such payments in relation to the Bank Accounts. The Clearing Member must ensure that each Bank Account is credited with adequate Eligible Cash or has appropriate arrangements in place in respect of it to enable the Settlement Bank to debit the Bank Account with such amounts at any time such amounts become due, notwithstanding any arrangements the Clearing Member may have in place with the Settlement Bank in relation to other amounts owing by the Clearing Member or other accounts of the Clearing Member. Each Clearing Member shall ensure that the Bank Account(s) it maintains are capable of making and receiving payments of any amounts due pursuant to the Rules in all relevant currencies as set out in the Rules or the Contract Specification for any Contract it has entered into.

- 4.2.3 Each Clearing Member who wishes to clear FX Contracts shall maintain one or more accounts (as required pursuant to the Rules and/or Applicable Law) with an Agent Bank in each currency in which it transacts FX Contracts and shall notify the Clearing House of the details of its accounts at the Agent Bank. Each Clearing Member who wishes to clear FX Contracts which are required to be settled through the CLS System shall also maintain a CLS Account, either directly or through a member of the CLS System, and shall notify the Clearing House of the details of its CLS Account. The Clearing Member shall notify the

Clearing House as soon as reasonably practicable, and in any event no later than the third Business Day preceding the next day on which the Clearing Member is due to make a delivery under an FX Contract, of any changes to the details of such account. To the extent a Clearing Member uses a member of the CLS System to access a CLS Account (which may be the same member of the CLS System as used by other Clearing Members) or uses an Agent Bank, failure by such third party or Agent Bank shall be deemed to be a failure by the Clearing Member and any action taken by such third party or Agent Bank shall be treated as being in the control of the Clearing Member.

- 4.2.4 Each Clearing Member shall maintain such other accounts as required by the Clearing House from time to time, and shall ensure that each institution providing such accounts shall act on the Clearing House's instructions as required by the Rules. To the extent the Clearing Member uses a third party to facilitate settlement, failure by such third party shall be deemed to be a failure by the Clearing Member.
- 4.2.5 In order to deposit allocated Gold to meet some or all of its Collateral Requirement, a Clearing Member shall open and maintain one or more Allocated Precious Metals Accounts.
- 4.2.6 Each Clearing Member that wishes to substitute Eligible Securities or Eligible Precious Metals for Eligible Cash shall maintain an account which is capable of holding Eligible Securities or Eligible Precious Metals and in respect of which the Clearing Member has authorised the transfer of Eligible Securities to the Custodian or the transfer of Eligible Precious Metals to the Settlement Agent for Precious Metals, on the instructions of the Clearing House.
- 4.2.7 The Clearing House may, in its absolute discretion, decline to accept any transfer of Eligible Cash, Eligible Securities or Eligible Precious Metals.
- 4.2.8 All amounts payable to the Clearing House shall, unless otherwise agreed by the Clearing House, be payable by electronic transfer from the Clearing Member's Bank Account at a Settlement Bank. The Clearing Member shall continue to be liable for such amounts unless and until actually received by the Clearing House in unencumbered, fully cleared and fully available funds.
- 4.2.9 Upon notice from the Clearing House that a transfer of funds from the Clearing Member's Bank Account has not been effected as instructed by the Clearing House, the Clearing Member shall deliver the amount required to the Clearing House on demand.

### **4.3 Set off and restrictions**

- 4.3.1 The Clearing House may set off any obligation (whether matured or contingent) due to it from a Clearing Member against any obligation (whether matured or contingent) owed by

the Clearing House to the Clearing Member, regardless of the place of payment, account, branch or currency of either obligation save that the Clearing House may not set off or otherwise apply by any means money credited to any Individual Client Account or Omnibus Client Account against any sum owed to the Clearing House in respect of any other Account or any Collateral or other funds credited to any FCM LSOC Client Account, FCM Client Sub-Account, FCM FBOT Futures Client Account or FCM DCM Futures Client Account against any sum owed to the Clearing House in respect of any other Account.

4.3.2 If the obligations in relation to Rule 4.3.1 are in different currencies, the Clearing House may convert either obligation at such rate of exchange prevailing at the time of the calculation for the purpose of the set off. The Clearing House shall be entitled to make any necessary adjustments to the Clearing Member's Accounts resulting from the exercise of its rights of set off.

4.3.3 Save for the prohibitions relating to Client Accounts set out in Rule 4.3.1, nothing in this Rule 4.3 will be effective to create a charge or other security interest. The rights of the Clearing House under Rule 4.3.1 and 4.3.2 are without prejudice to and in addition to any rights of set-off, lien, netting, liquidation, combination of accounts or appropriation under the Rules or otherwise.

**4.4 Trust in relation to each Client Account, FCM LSOC Client Unallocated Sub-Account and FCM LSOC Client Buffer Sub-Account (books and records)**

4.4.1 In relation to an FCM Clearing Member, each FCM Client Account, FCM LSOC Client Unallocated Sub-Account and FCM LSOC Client Buffer Sub-Account:

(a) the Clearing House shall owe, pay and discharge all Positive Obligations to the relevant FCM Clearing Member as trustee for each Client related to such Client Account, FCM LSOC Client Unallocated Sub-Account or FCM LSOC Client Buffer Sub-Account on the terms of this Rule 4.4; and

(b) the relevant FCM Clearing Member declares that it shall hold those Positive Obligations and any related rights on trust for the relevant Clients pro-rata (to be calculated by the FCM Clearing Member in accordance with Rule 4.4.2) and in accordance with:

(i) the FCM Clearing Member's segregation obligations under the relevant provisions of the CEA and the CFTC Regulations; and

(ii) should it enter into bankruptcy proceedings, the administration of that FCM Clearing Member's bankruptcy proceedings under the US Bankruptcy Code and CFTC Part 190 Regulations.

- 4.4.2 In relation to an FCM Clearing Member, there will be one trust for each Client Account, FCM LSOC Client Unallocated Sub-Account and FCM LSOC Client Buffer Sub-Account. The terms of each trust are that:
- (a) payment or discharge of a Positive Obligation by the Clearing House is conditional on all obligations of the relevant FCM Clearing Member to the Clearing House in relation to the relevant Client Account, FCM LSOC Client Unallocated Sub-Account or FCM LSOC Client Buffer Sub-Account first having been paid or discharged (including, without limitation, by way of set-off or netting against any Positive Obligation under Rule 2.5 or Chapter 8) in accordance with these Rules;
  - (b) the relevant FCM Clearing Member will (and will only be obliged to) distribute any Positive Obligation:
    - (i) less an amount in respect of any payment or discharge made by the FCM Clearing Member as contemplated in Rule 4.4.2(a);
    - (ii) subject to the provisions of any agreement between the FCM Clearing Member and the relevant Client (the distribution of such Positive Obligation being treated as any other payment due under such agreement); and
    - (iii) subject to and as may be limited by US law.
- 4.4.3 The Clearing House shall not have any obligations (including, without limitation, for negligence) under the trust to a beneficiary Client;
- 4.4.4 Notwithstanding the provisions of this Rule 4.4, a Positive Obligation shall continue to be dealt with in accordance with the other Rules and each FCM Clearing Member represents to the Clearing House (and shall procure at all times) that it is irrevocably authorised by each of its Clients to deal with the relevant Positive Obligation (and to agree that it may be applied) in accordance with the Rules.
- 4.4.5 In its capacity as trustee under this Rule 4.4, an FCM Clearing Member:
- (a) may, except as provided in this Rule 4.4, act in relation to the trust assets as if it were the sole legal and beneficial owner of them;
  - (b) except to the extent required expressly in a written agreement between the FCM Clearing Member and a Client or under the CEA or CFTC Regulations, has no obligation to a Client; may act or refrain from acting with or without instructions; and is not liable for any loss, cost or expense of a Client.
- 4.4.6 The rights, powers, authorities and discretions given to an FCM Clearing Member as trustee under this Rule 4.4 shall be supplemental to the Trustee Act 1925 and the Trustee

Act 2000 and in addition to any which may be vested in the FCM Clearing Member by law or regulation or otherwise.

4.4.7 Section 1 of the Trustees Act 2000 shall not apply to the duties of an FCM Clearing Member in relation to the trusts constituted by this Rule 4.4. Where there are any inconsistencies between the Trustee Act 1925 and the Trustee Act 2000 and the provisions of this Rule 4.4, the provisions of this Rule 4.4 shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Rule 4.4 shall constitute a restriction or exclusion for the purposes of that Act.

#### **4.5 Direct Debit Authority**

4.5.1 Pursuant to Rule 4.2.2, a Clearing Member shall at all times be party to a Direct Debit Authority in respect of each of its Bank Accounts at each Settlement Bank and any other accounts as directed by the Clearing House. The Clearing Member shall ensure that each Settlement Bank will act upon any instructions received from the Clearing House in relation to each Bank Account, notwithstanding that such instructions may result in an overdraft on any Bank Account, without any further reference to or authority from the Clearing Member.

4.5.2 A Clearing Member shall provide a copy of each Direct Debit Authority to the Clearing House. The Clearing Member shall promptly notify the Clearing House if the Direct Debit Authority is revoked, terminated or amended. The Clearing Member may not revoke or otherwise terminate any Direct Debit Authority unless and until it has notified the Clearing House of its intention to do so and set up a Bank Account at another Settlement Bank in respect of which it has entered into a Direct Debit Authority with that Settlement Bank.



## **CHAPTER 5**

### **CLEARING**

#### **5.1 Submission of Transactions to the Clearing House**

- 5.1.1 Transactions may be submitted to the Clearing House by one of the routes set out in the Procedures or the relevant Contract Module.
- 5.1.2 Each Transaction must be designated as relating to the relevant Account of the Clearing Member.
- 5.1.3 All Exchange Transactions entered into on behalf of a Client of a Non-FCM Clearing Member that are not designated by reference to a particular Account will be automatically designated as relating to a Standard Omnibus Client Account of the Clearing Member chosen by the Clearing House. The Clearing Member may re-allocate an Exchange Contract that has been recorded in such Account to another Client Account. Such re-allocation should be carried out within the time period set out in the Clearing and Settlement Procedure. Any Exchange Contracts, or related Collateral, which are not re-allocated as relating to another Client Account will remain in the Standard Omnibus Client Account referred to in this Rule 5.1.3.
- 5.1.4 The Clearing House may only accept a Transaction:
- (a) which satisfies the relevant Contract Specification;
  - (b) in relation to an OTC Transaction only, which is included in the Clearing House's product referential file and conforms to the Clearing House's specified fluctuation rates;
  - (c) in respect of which each party is a Clearing Member or authorised by a Clearing Member to submit the Transaction to the Clearing House; and
  - (d) which satisfies the Clearing House's credit checks and does not cause any of the Clearing Member's Position Limits to be exceeded.
- 5.1.5 The Clearing House may decline to accept any Transaction if it:
- (a) conflicts or appears to conflict with information received by the Clearing System from another source;
  - (b) is or appears to be incomplete or erroneous in any way or results or appears to result from a communications or information technology error or other problem;

- (c) is a Transaction in respect of which the Clearing Member is, or the Clearing House reasonably considers that the Clearing Member is, in breach of any of the Rules including Rule 3.5;
- (d) is one which any Regulatory Authority or Exchange requires or requests the Clearing House to treat as void or voided; or
- (e) is otherwise made or received in such circumstances or such manner that acceptance of the Contract would, in the Clearing House's discretion, be inadvisable.

5.1.6 The Clearing House will, where permitted by Applicable Law, notify the Clearing Member in the event that it exercises its discretion to decline a Transaction.

5.1.7 The Clearing House may at any time impose a credit limit on each Clearing Member beyond which the Clearing House will not automatically accept Transactions for clearing in accordance with Rule 5.2.2 and the Clearing House may at any time reduce or increase such credit limit. The Clearing Member may allocate its credit limit among its Accounts (including its Client Accounts) as it considers appropriate and shall notify the Clearing House of such allocation and any changes in it through the Clearing System. In the event the Clearing House reduces a Clearing Member's credit limits, it shall allow the Clearing Member reasonable time to properly manage its Contracts accordingly.

5.1.8 The Clearing House may, at its discretion, establish, amend or revoke Position Limits for any Clearing Members, and shall give notice to such Clearing Member as soon as reasonably practicable. The Clearing House may enforce Position Limits which an Exchange or Regulatory Authority has imposed on a Clearing Member and of which it has notice. For the avoidance of doubt, the Clearing House shall not amend or revoke any Position Limits set by either an Exchange or Regulatory Authority without receiving an instruction from the relevant Exchange or Regulatory Authority to do so. The Clearing House shall use its reasonable endeavours to notify the Clearing Member as soon as reasonably practicable if the Clearing Member exceeds its Position Limits. In exercising its discretion under this Rule 5.1.8, the Clearing House may take into account such factors as it considers appropriate, including the financial, operational and risk management capacity and competence of the Clearing Member. In the event the Clearing House reduces a Clearing Member's Position Limits which it has established it shall allow the Clearing Member reasonable time to properly manage its Contracts accordingly. In the event that an Exchange or Regulatory Authority reduces a Clearing Member's Position Limit, the Clearing Member must ensure that it complies with any such amended Position Limit within the timeframe set by the relevant Exchange or Regulatory Authority. Any Position Limits established by the Clearing House may be in addition to any Position Limits imposed on a Clearing Member by an Exchange or Regulatory Authority.

5.1.9 A Clearing Member will be bound by any Contract that results from a Transaction as a result of the submission of such Transaction by any of its Representatives or Clients or Third Party Trade Delegates or by a Platform on which the Transaction is executed regardless of the circumstances including whether the person submitting the Transaction was authorised to do so or whether the Transaction caused the Clearing Member to breach any credit limit or Position Limit or was in breach of any requirements or restrictions of the Rules.

## **5.2 Novation of Transactions**

5.2.1 Each OTC Transaction submitted to the Clearing System which reflects prevailing market price at the time of submission and, subject to Rule 5.2.3, each Exchange Transaction other than a Block Transaction or EFRP Transaction submitted to the Clearing House shall be novated upon:

- (a) receipt of such OTC Transaction by the Clearing House;
- (b) successful completion of credit checks on each Clearing Member which is a party to the OTC Transaction (including any credit limits applicable to a person on whose behalf the Clearing Member is acting) or acceptance by each Clearing Member which is a party to the OTC Transaction; and
- (c) registration of the OTC Transaction in the Clearing System.

5.2.2 Each OTC Transaction submitted to the Clearing House which does not reflect prevailing market price at the time of submission, and each Block Transaction and each EFRP Transaction shall be novated once each of the following has occurred:

- (a) receipt of the OTC Transaction, Block Transaction or EFRP Transaction by the Clearing House;
- (b) successful completion of credit checks on each Clearing Member which is, or is acting on behalf of, a party to the OTC Transaction, Block Transaction or EFRP Transaction (including any credit limits applicable to a person on whose behalf the Clearing Member is acting) or acceptance by each Clearing Member which is, or is acting on behalf of, a party to the OTC Transaction, Block Transaction or EFRP Transaction;
- (c) registration of the OTC Transaction, Block Transaction or EFRP Transaction in the Clearing System; and
- (d) receipt by the Clearing House of sufficient Collateral in respect of the Transaction or on receipt of confirmation from the Settlement Bank of the Clearing Member which is,

or is acting on behalf of, a party to the OTC Transaction, Block Transaction or EFRP Transaction of payment of any Net Settlement Amount in respect of such OTC Transaction, Block Transaction or EFRP Transaction.

5.2.3 Each Transaction executed on CME Europe or CME Group Exchange other than a Block Transaction or EFRP Transaction shall be novated at the time at which orders that create an Exchange Transaction are matched on the Exchange as determined by the Rules of CME Europe.

5.2.4 Upon novation as set out in Rules 5.2.1, 5.2.2 and 5.2.3, two Contracts are created on identical terms to the Transaction and:

- (a) the Clearing House shall assume, for one Contract, the position of seller to the buyer and, for the other Contract, the position of buyer to the seller, in each case in respect of the Transaction;
- (b) the Clearing House shall have all the rights and be subject to all the liabilities of each Clearing Member which was, or was deemed to be, party to the Transaction with respect to such Contract; and
- (c) each Clearing Member which has, or is deemed to have, any rights or obligations under the Transaction shall be released and discharged from all such rights and liabilities.

5.2.5 For the purposes of Rules 5.2.1 and 5.2.2, the Clearing House shall determine in good faith whether any OTC Transaction submitted to the Clearing House reflects prevailing market price at the time of submission.

5.2.6 Each Non-FCM Clearing Member and (in respect of its House Accounts) each FCM Clearing Member shall act as principal (and not as agent) to each Contract to which it is party and otherwise in relation to these Rules. Each FCM Clearing Member will (in respect of its Client Accounts) act on the terms of Rule 3B.1.3 in respect of each Contract to which it is a party and otherwise in relation to these Rules. The Clearing House will (except as expressly provided in Rule 4.4) treat each Clearing Member as being fully, legally and beneficially entitled to the rights pursuant to the Contracts and each Contract as being free from Encumbrances in favour of any person other than the Clearing House.

5.2.7 Each Contract shall remain open and in force and shall continue to be binding on the Clearing Member and the Clearing House until:

- (a) it expires or is settled;
- (b) it is transferred to another Clearing Member; or

(c) it is closed out or otherwise liquidated,

whichever is the earliest.

5.2.8 The terms of any Contract may only be amended, waived or varied with the prior written consent of the Clearing House.

5.2.9 The following general terms shall be deemed to be included in, or apply to, each Contract Specification:

(a) No Contract shall be required to be in writing (including electronic) nor any document be required to be signed, delivered or executed or other entry made in any record or book in order for it to become binding on the parties. Notwithstanding the foregoing, if at any time, the Clearing House considers it necessary or desirable to better implement or protect the rights and obligations of any party to a Contract, the Clearing Member shall, at its own expense, use all reasonable endeavours to enter into and execute all documents reasonably required to so implement or protect. In such circumstances, each party shall also procure that any necessary third party including a Client or Third Party Trade Delegate shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to any Contract;

(b) While the terms of each Contract shall generally be construed and applied in accordance with the contract specification for any equivalent contract cleared by an Affiliate of the Clearing House, the Board of Directors shall be entitled to construe and apply such terms in any other way in which it is reasonable to do so;

(c) Each of the terms in each Contract Specification is severable and distinct from others. It is intended that every such term shall be and remain valid and enforceable to the fullest extent permitted by law. If any term is or at any time becomes to any extent invalid, illegal or unenforceable for any reason, it shall to that extent be deemed not to form part of the Contract Specification but the validity, legality and enforceability of the remaining terms in the Contract Specification shall not be thereby affected or impaired;

(d) No waiver of any term of a Contract shall be effective unless the same shall be in writing, and then such waiver shall be effective only in the specific instance, for the purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such term or part thereof. The waiver of any right, and the failure to exercise any right or to insist on the strict performance of any of the Contract, shall not operate as a waiver or, or preclude any further or other exercise or enforcement of that or any other right;

- (e) No person who is not the Clearing House nor a Clearing Member, including for the avoidance of doubt a Client and a Third Party Trade Delegate, shall have any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract;
- (f) Each Contract shall be governed by and construed in accordance with the laws of England and Wales; and
- (g) The Clearing House may, in its sole discretion, delay the performance of its obligations under a Contract with a Clearing Member until that Clearing Member has performed its obligations to the Clearing House under that Contract.

5.2.10 The Clearing House will accept or reject each Exchange Transaction and OTC Transaction executed on a Platform submitted to it for clearing as soon as technologically practicable assuming fully automated systems are used from the point of submission of such Transaction to the Clearing House.

### 5.3 Transfer of Contracts

5.3.1 All rights and liabilities of a Clearing Member (the **Transferor Clearing Member**) under a Contract recorded in respect of a House Account, which shall include the Collateral relating to such Contract, may be transferred to another Clearing Member (the **Transferee Clearing Member**) with the prior agreement of the Transferor Clearing Member, the Transferee Clearing Member and the Clearing House. The Clearing House will normally only agree to a transfer if:

- (a) the transfer is being made to correct an error in the clearing of a Contract and the transfer is completed within two (2) Business Days of the date of transfer;
- (b) the transfer is in connection with, or as a result of a non-recurring transaction pursuant to which the business of one Clearing Member is acquired by, merged with or assumed by the business of another Clearing Member; or
- (c) the Clearing House reasonably considers that the transfer is in the interests of the Clearing House.

5.3.2 Upon transfer of a Contract pursuant to Rule 5.3.1, the Contract, together with related Collateral, is transferred from the Transferor Clearing Member to the Transferee Clearing Member so that the rights and obligations of the Clearing House and the Transferor Clearing Member under the original Contract are released and discharged and a new Contract on the same terms is created between the Clearing House and the Transferee Clearing Member.

## 5.4 Avoidance of Contracts

5.4.1 The Clearing House shall have the discretion to avoid any Contract if such Contract, whether in whole or in part, is or reasonably appears to the Clearing House to:

- (a) conflict or appear to conflict with information received by the Clearing House in relation to such Contract from another source, including (without limitation) information received from an Exchange, any other Clearing Member or any Regulatory Authority;
- (b) results or appears to result from a communications or information technology error or problem;
- (c) is or appears to be connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws;
- (d) is one which any Regulatory Authority or Exchange requires or requests in writing that the Clearing House treat as void;
- (e) is one which Applicable Law provides is void, voidable or unenforceable by the Clearing House or which any Applicable Law requires the Clearing House to treat as void;
- (f) is one in respect of which the Clearing House has increased the Collateral Requirement and the Clearing Member has not provided the required Collateral to meet the increased Collateral Requirement by the required time; or
- (g) is otherwise made in such circumstances and in such manner that avoidance of the Contract would be advisable for the Clearing House's own protection or the protection of Clearing Members generally.

5.4.2 In the circumstances set out in Rule 5.4.1, the Clearing House may, at its discretion, take either or both of the following steps:

- (a) direct the Clearing Member who was party to the void or voided Contract to enter into a replacement contract of equal or as near equal as possible economic terms to the void or voided Contract as a replacement contract; and/or
- (b) enter into such contracts for its own account as necessary for the Clearing House to achieve a balanced book of the relevant Contract for the account and risk of the Clearing Member, including any associated costs, expenses and losses incurred in establishing such contracts.

5.4.3 Nothing in this Rule 5.4 is intended to result in any Transaction or the rights or obligations under a Transaction being void or voided by the original parties thereto.

## **5.5 Information and reporting**

5.5.1 The Clearing House shall make available to the Clearing Member information about each Transaction it has submitted to the Clearing House and each Contract. The Clearing Member shall report any error in any such information within twenty-four (24) hours of the date of the Contract to which the error relates. The Clearing House may correct its reports and make any adjustment for the relevant Contract on the next Business Day following receipt of the notice from the Clearing Member. If the Clearing Member notifies the Clearing House that the information is not correct after twenty-four (24) hours of the date when the information was published by the Clearing House, the Clearing House will use reasonable endeavours to make the adjustment to the relevant Contract.

5.5.2 The Clearing Member shall be permitted to manage the information about each Transaction that is made available to it pursuant to Rule 5.5.1.

## **5.6 Clearing for third parties**

5.6.1 In the event that a Transaction executed on a Platform is submitted to the Clearing House for clearing, the Rules shall apply to such trades and the resulting Contracts to the exclusion of any other terms and to the extent there is a conflict with any other terms, the Rules shall take precedence. Notwithstanding the foregoing, if the Clearing House does not accept a Transaction executed on a Platform for clearing, the Rules shall cease to apply to such Transaction until it is resubmitted for clearing.

5.6.2 The Clearing House shall have sole authority to:

- (a) in addition to its rights under Rule 5.1.4, determine whether to accept or reject any Transaction executed on a Platform which is submitted for clearing and, for the avoidance of doubt, the Platform may not make such determination and may only communicate the Clearing House's determination;
- (b) suspend or terminate the connection of any Platform to the Clearing House and/or the Clearing System at any time due to technical, operational or risk management issues relating to the Platform;
- (c) determine whether to accept the counterparty risk relating to any Transaction executed on a Platform; and



- (d) determine whether Contracts resulting from Transactions executed on a Platform are economically equivalent to other Contracts and whether they can be netted or offset against other Contracts, including in accordance with EMIR and the CEA.

5.6.3 In the event that a Transaction executed on a Platform that has been accepted for clearing becomes invalid or is otherwise terminated or is subject to a price adjustment or other amendment under the rules of the Platform, the Contract to which the Transaction relates shall not be amended without the consent of the Clearing House.

5.6.4 A Transaction executed on a Platform may not be submitted for clearing unless it complies with all Applicable Law and the technological, operational and risk management standards of the Clearing House and any relevant Regulatory Authority, including that of the Platform.

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## CHAPTER 6 COLLATERAL

### 6.1 General

- 6.1.1 Each Clearing Member shall deposit with or deliver to the Clearing House in respect of each Account such amounts of Eligible Assets as set out in this Chapter 6 and the Clearing and Settlement Procedure to reflect Margin Requirement and Variation Requirement.
- 6.1.2 Each Non-FCM Clearing Member shall designate in respect of which Account the Collateral is deposited or delivered and whether the Collateral constitutes Excess Collateral which designation shall be by value in relation to Omnibus Client Accounts. Each FCM Clearing Member shall designate in respect of which Account the Collateral is deposited or delivered and whether the Collateral constitutes Excess Collateral, provided, however, that the determination of Excess Collateral in relation to any FCM LSOC Client Sub-Account shall also be subject to Rule 3B2.3 or 3B.2.4, as applicable.
- 6.1.3 The Clearing House shall determine the Variation Requirement, where relevant, in respect of each Account by marking to market the Contracts relating to that Account in accordance with the Procedures since the previous Settlement Cycle. Any profit arising as a result of marking Contracts to market shall be credited to the relevant Account and, subject to any rights of the Clearing House pursuant to the Rules, shall be paid to the Clearing Member. Any loss arising in respect of a Contract shall be debited to the Clearing Member's Account to which that Contract relates and shall be payable to the Clearing House.
- 6.1.4 The Clearing House shall determine the Margin Requirement in respect of each Account.
- 6.1.5 The Collateral Requirement minus the Collateral (if any) held in respect of each Account is the **Net Settlement Amount** in respect of that Account. For the purpose of this determination, where the Account is an FS Individual Client Account, the amount of Eligible Securities delivered to the FS Account shall only discharge the relevant portion of the Margin Requirement and not any Variation Requirement in respect of such Account. **Net Settlement Amount** shall be determined and construed accordingly. Where the Net Settlement Amount is payable to the Clearing House, the Clearing Member shall deposit with or deliver to the Clearing House Eligible Assets with a value equal to the Net Settlement Amount.
- 6.1.6 The Clearing House shall determine the Variation Requirement and the Margin Requirement in respect of each Account at least twice daily but may at its discretion only settle or require settlement of the Net Settlement Amount once daily, each such determination process (regardless of whether it involves settlement) being a **Settlement Cycle**. Notwithstanding the foregoing, the Clearing House reserves the right to run a

Settlement Cycle and increase a Clearing Member's Collateral Requirement in respect of any Account at any time. The Clearing Member shall deposit with or deliver to the Clearing House the Net Settlement Amount or such increased Collateral Requirement at the end of each Settlement Cycle or as otherwise required by the Clearing House.

- 6.1.7 The Margin Requirement and Variation Requirement for each Account will be determined in the manner designated by the Clearing House for such Account from time to time and in accordance with the Risk Management Procedure; provided that when deemed necessary, at the discretion of the Clearing House, in order to protect the interests of the Clearing House and Clearing Members, the Clearing House may set the Margin Requirement and the Variation Requirement for any Account on the basis of a price determined by the Clearing House at its sole discretion provided that the Clearing House shall use its reasonable endeavours to notify Clearing Members of such price.
- 6.1.8 Where the Net Settlement Amount is payable to the Clearing House, where it relates to an FS Individual Client Account it may be provided in the form of Eligible Securities to the FS Account or otherwise it shall be provided in the form of Eligible Cash. The Clearing Member may subsequently substitute part or all of such Collateral with an amount of Eligible Securities or Eligible Precious Metals which is of an equivalent value as at the date of the substitution.
- 6.1.9 Each Clearing Member may at any time deposit with or deliver to the Clearing House any additional amount of Collateral as it may wish in respect of each Account. Such Collateral shall be deposited or delivered in the form of Eligible Assets or as otherwise specified in the Clearing and Settlement Procedure.
- 6.1.10 If, at any time, the Clearing House has Excess Collateral on deposit in respect of an Account, the Clearing Member may, save as otherwise agreed, request the transfer of Equivalent Assets in an amount equal to such Excess Collateral (or the substitution of Eligible Securities or Eligible Precious Metals of a lower market value to reduce the Excess Collateral). If, at any time, the Clearing House has FCM LSOC Client Unallocated Collateral in respect of an FCM LSOC Client Unallocated Sub-Account, the Clearing Member may request the transfer of Equivalent Assets in an amount equal to such FCM LSOC Client Unallocated Collateral, as provided in Rule 3B.2.3.
- 6.1.11 This Rule applies notwithstanding any other Rule. It applies to Excess Collateral credited to an FS Individual Client Account and to the assets in any FS Account that are identified by the Clearing Member as comprising such Excess Collateral. If the relevant FS Security Trustee has a lien or right of retention over such Excess Collateral in accordance with the relevant FS Security Trust Deed and the Clearing House has received written notice of the same from the FS Security Trustee, then neither the Clearing House nor the relevant Clearing Member shall exercise any right or take any action under Rules 2.5 or 3.7 or

Chapter 8 or (to the extent that it relates to a Defaulting Clearing Member) Chapter 11 in relation to such Excess Collateral until the FS Security Trustee has notified the Clearing House that the liability in respect of which such lien or right of retention has arisen and been discharged.

6.1.12 The market value of all Contracts and Collateral shall be determined by the Clearing House in such manner and at such intervals as set out in the Rules, the Clearing and Settlement Procedure and otherwise at the Clearing House's discretion. In particular, the Clearing Member acknowledges that:

- (a) the Clearing House may attribute a value to any Eligible Securities or Eligible Precious Metals which is less than the face or market value of such Eligible Securities or Eligible Precious Metals;
- (b) the Clearing House may, from time to time, change the way in which it values Eligible Securities or Eligible Precious Metals or the extent to which the value it attributes to Eligible Securities or Eligible Precious Metals is less than the face or market value of such Eligible Securities or Eligible Precious Metals; and
- (c) this may affect the Clearing Member's Collateral Requirement.

6.1.13 When determining whether an IRS Clearing Member has sufficient IRS Collateral to meet its Collateral Requirement, the Clearing House shall not include in its calculation any IRS Collateral deposited by an IRS Clearing Member during an IRS Cooling Off Period pursuant to an election made under Rule 6.1.14.

6.1.14 If, during an IRS Cooling Off Period, the Clearing House determines that there has been a material change in the business of an IRS Clearing Member which results in an increase (from the beginning of the IRS Cooling Off Period to the date of determination) of 10% (ten per cent.) or more in the aggregate Margin Requirement in respect of that IRS Clearing Member's IRS Contracts in all its IRS Accounts, then, in addition, to such increased Margin Requirement:

- (a) the Clearing House may (in accordance with Rule 7.2.2) assess that IRS Clearing Member for an amount in excess of the limits set out in Rule 8.7 and such IRS Clearing Member shall provide the required Contribution to the IRS Guarantee Fund; and
- (b) the IRS Clearing Member may satisfy its obligations under Rule 6.1.14 by delivering Eligible Assets as Collateral to the Clearing House on the following terms:
  - (i) during the IRS Cooling Off Period, such Eligible Assets shall be treated for all purposes as Collateral (not Contribution) of the IRS Clearing Member except

that it shall not satisfy any Collateral Requirement but it shall satisfy the requirement to provide Contribution under Rule 6.1.14 and calculations of IRS Assessments shall be made accordingly; and

- (ii) on the first Business Day following the IRS Cooling Off Period, the Clearing House shall recalculate the IRS Guarantee Fund and transfer to the IRS Guarantee Fund the relevant amount of Eligible Assets provided as IRS Collateral pursuant to Rule 6.1.14(b)(i) as needed to satisfy the Clearing Member's revised Contribution and such transferred amount shall thereafter form part of and be treated for all purposes as a Contribution to the IRS Guarantee Fund. Any amount of Eligible Assets provided as IRS Collateral pursuant to Rule 6.1.14(b)(i) in excess of the Clearing Member's revised Contribution shall be returned to the Clearing Member at its request and will otherwise be used to satisfy the Clearing Member's Collateral Requirement.

6.1.15 To the extent a Clearing Member fails to make a payment or delivery in respect of an Account in accordance with the Rules, the Clearing House may in its discretion apply the Margin Requirement which relates to the corresponding Account to satisfy such payment or delivery.

## **6.2 Collateral reports**

6.2.1 The Clearing House shall make available to each Clearing Member a report showing the Collateral Value, Margin Requirement, Variation Requirement and Net Settlement Amount in respect of each of the Clearing Member's Accounts at the end of each Business Day.

6.2.2 The Clearing Member shall report any error in any report made available by the Clearing House within twenty-four (24) hours of the time when the report is provided by the Clearing House, and the Clearing House may correct its reports and make any adjustment to the Net Settlement Amount for the relevant Account on the following Business Day.

## **6.3 Holding of Collateral**

6.3.1 Unless otherwise agreed in writing with the Clearing House:

- (a) except as contemplated in Rule 6.3.1(b), all Clearing Member (including FCM Clearing Members) shall provide Collateral by way of outright transfer of full ownership of Eligible Cash or title to Eligible Securities or Eligible Precious Metals, to or to the order of the Clearing House, pursuant to this Rule 6.3; and
- (b) an FCM Clearing Member shall provide Collateral relating to any Client Account by way of an Encumbrance in accordance with Rule 3B.4.

- 6.3.2 The Clearing House shall deposit Eligible Cash received as Collateral in a bank account and it may be invested through an Investment Agent. The Clearing House shall deposit Eligible Securities received as Collateral with a Custodian or, in relation to an FS Account, with an FS Custodian. The Clearing House shall deposit Eligible Precious Metals received as Collateral with its Settlement Agent for Precious Metals. Such Eligible Assets will be held in the name of the Clearing House unless Applicable Law or the Rules require otherwise or the Clearing House determines otherwise. The Clearing House shall deposit and invest Eligible Cash, and deposit Eligible Securities and Precious Metals in respect of Client Accounts of FCM Clearing Members in accordance with Rules 3B.4.2 and 3B.4.3 and applicable CFTC Regulations as provided therein.
- 6.3.3 Subject to Rule 6.3.2, the Clearing House shall deposit Eligible Assets received as Collateral as set out in the Risk Management Procedure.
- 6.3.4 The Clearing House will maintain records of its redelivery obligations in respect of Collateral received from or on behalf of the Clearing Member.
- 6.3.5 In relation to a Non-FCM Clearing Member and, other than in relation to its Client Accounts, an FCM Clearing Member, all rights, title and interest in:
- (a) Eligible Assets that are transferred to or to the order of the Clearing House as Collateral; and
  - (b) an Equivalent Asset that is transferred to or to the order of the Clearing Member;
- shall vest in the Clearing House or Clearing Member as the case may be, free and clear of any Encumbrances of the transferor or of any other person (other than a lien routinely imposed on all securities in a relevant settlement system or central securities depository, not being the Clearing House). All Distributions in respect of Eligible Assets shall belong to the Clearing House.
- 6.3.6 Subject to the relevant FS Documents with respect to the relevant FS Accounts only, the Clearing House shall have the right to deal with any Eligible Assets and Distributions in any manner including (without limitation) by partially or wholly investing Eligible Cash for its own account pursuant to the investment policy adopted by the Clearing House or by granting an Encumbrance in favour of the FS Security Trustee.
- 6.3.7 Unless otherwise agreed, the Clearing House shall:
- (a) transfer to or to the order of the Clearing Member an Equivalent Distribution in respect of each Distribution irrevocably received by the Clearing House; and

- (b) transfer to or to the order of the Clearing Member interest on Eligible Cash transferred to the Clearing House as Collateral at such rate as the Clearing House shall in its discretion determine from time to time.

unless an Event of Default has occurred with respect to the Clearing Member, in which case, the Clearing House shall have the right to withhold the transfer to the Clearing Member until such time as the Event of Default has been remedied or a Declaration of Default is issued. In the event that a Declaration of Default is issued, any amounts withheld by the Clearing House shall form part of the calculation of the Portable Net Sum, Single Net Sum or CCP Default Single Net Sum pursuant to Rules 2.5, 8.4 or 8.5 as relevant.

6.3.8 Nothing in these Rules is intended to or does create an Encumbrance or give the Clearing Member a proprietary interest in respect of any Eligible Assets or Distributions except in the case of a Non-FCM Clearing Member in accordance with the FS Security Interest Document.

6.3.9 On each day that either the Clearing Member or the Clearing House as the case may be (the **Transferor**), transfers an asset or arranges a transfer of an asset to or to the order of the other (the **Recipient**) under the Rules, the Transferor represents to the Recipient that it is the sole legal and beneficial owner of that asset free of any Encumbrance (other than a lien routinely imposed on all securities in a relevant settlement system or central securities depository, not being the Clearing House), provided that in relation to Client Accounts of FCM Clearing Members the Transferor represents to the Recipient that it is the sole legal owner of the asset free of any Encumbrance with full rights and authority to transfer the asset and, if the Transferor is an FCM Clearing Member, it has full right and authority to grant the Encumbrance in accordance with Rule 3B.4.

6.3.10 The provisions of this Rule 6.3:

- (a) relate to the provision of margin in relation to market contracts under Part VII of the Companies Act 1989;
- (b) with respect to the provision or margin in relation to a Client Account, create a qualifying collateral arrangement under Part VII of the Companies Act 1989; and
- (c) in respect of a Non-FCM Clearing Member or (in relation to its House Accounts) an FCM Clearing Member create a title transfer financial collateral arrangement under the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226).

## 6.4 Payment Netting

6.4.1 If on any date amounts would otherwise be payable:

- (a) in the same currency;
- (b) from or to (as the case may be) the same Bank Account;
- (c) with respect to the same Payment Type; and
- (d) with respect to the same Account Type,

by the Clearing House to a non-defaulting Clearing Member or vice versa then, on such date, the obligations of the Clearing House and that Clearing Member to pay any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by the Clearing House exceeds the aggregate amount that would have otherwise been payable by the Clearing Member (or vice versa), such amount will be automatically replaced by an obligation upon the person which would have been due to pay the larger aggregate amount to pay to the other person an amount equal to the difference between the larger aggregate amount and the smaller aggregate amount.

6.4.2 The Clearing House may, in good faith, determine in respect of two or more Payment Types or two or more Account Types or payments from or to two or more Bank Accounts that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Payment Types, those Account Types or from or to those Bank Accounts.

## **6.5 Trust in relation to Collateral from FCM Clearing Members**

6.5.1 This Rule 6.5 applies to each LSOC Segregated Depository Account, Secured Amount FBOT Futures Depository Account, Segregated DCM Futures Depository Account (as each term is defined in Rule 3B.1.11).

6.5.2 The Clearing House declares that it shall hold:

- (a) all Collateral standing to the credit of each LSOC Segregated Depository Account (and all related rights) on trust for all FCM Clearing Members with FCM LSOC Client Accounts to be shared by an FCM Clearing Member in the proportion that:
  - (i) the Collateral credited to that FCM Clearing Member's FCM LSOC Client Account; bears to
  - (ii) the Collateral credited to all FCM LSOC Client Accounts;
- (b) all Collateral standing to the credit of each Secured Amount FBOT Futures Depository Account (and all related rights) on trust for all FCM Clearing Members



with FCM FBOT Futures Client Accounts to be shared by an FCM Clearing Member in the proportion that:

- (i) the Collateral credited to that FCM Clearing Member's FCM FBOT Futures Client Account; bears to
  - (ii) the Collateral credited to all FCM FBOT Futures Client Accounts; and
- (c) all Collateral standing to the credit of each Segregated DCM Futures Depository Account (and all related rights) on trust for all FCM Clearing Members with FCM DCM Futures Client Accounts to be shared by an FCM Clearing Member in the proportion that:
- (i) the Collateral credited to that FCM Clearing Member's FCM DCM Futures Client Account; bears to
  - (ii) the Collateral credited to all FCM DCM Futures Client Accounts.

6.5.3 In its capacity as trustee under this Rule 6.5, the Clearing House:

- (a) may, except as provided in this Rule 6.5 and subject to any limitations arising because Collateral is secured by the Encumbrance described in Rule 3B.4, act in relation to the trust assets as if it were the sole legal and beneficial owner of them;
- (b) shall hold the assets which are the subject of the trust under this Rule 6.5 in accordance with its segregation obligations under the relevant provisions of the CEA and the CFTC Regulations; and
- (c) shall have no additional obligations to an FCM Clearing Member.

6.5.4 The rights, powers, authorities and discretions given to the Clearing House as trustee under this Rule 6.5 shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Clearing House by law or regulation or otherwise.

6.5.5 Section 1 of the Trustee Act 2000 shall not apply to the duties of the Clearing House in relation to the trusts constituted by this Rule 6.5. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Rule 6.5, the provisions of this Rule 6.5 shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Rule 6.5 shall constitute a restriction or exclusion for the purposes of that Act.

## **CHAPTER 7**

### **GUARANTEE FUND**

#### **7.1 General**

- 7.1.1 The Clearing House shall maintain a Standard Guarantee Fund to which each Standard Clearing Member shall contribute as provided in this Chapter 7 and the Guarantee Fund Procedure.
- 7.1.2 The use of the Standard Guarantee Fund shall be limited to the satisfaction of claims against, or obligations of, the Clearing House arising from the issuance of a Declaration of Default in respect of a Standard Clearing Member including the costs associated with the application of the Default Rules in relation to such Defaulting Standard Clearing Member. The Contributions to the Standard Guarantee Fund of non-defaulting Standard Clearing Members shall not be used to satisfy any claims against, or obligations of, the Clearing House arising in relation to IRS Contracts.
- 7.1.3 The Clearing House shall maintain an IRS Guarantee Fund to which it and each IRS Clearing Member shall contribute as provided in this Chapter 7 and the Guarantee Fund Procedure.
- 7.1.4 The use of the IRS Guarantee Fund shall be limited to the satisfaction of claims against, or obligations of, the Clearing House arising from the issuance of an IRS Declaration of Default including the costs associated with the application of the Default Rules in relation to such Defaulting IRS Clearing Member. The Contributions to the IRS Guarantee Fund of non-defaulting IRS Clearing Members shall not be used to satisfy any claims against, or obligations of, the Clearing House arising in relation to Standard Contracts.
- 7.1.5 If there is any dispute, the Clearing House shall allocate obligations and claims between the Guarantee Funds in its discretion.

#### **7.2 Calculation of Contributions**

- 7.2.1 Each Standard Clearing Member shall be required to provide to, and maintain with, the Clearing House a Contribution to the Standard Guarantee Fund of such amount as is notified to the Clearing Member from time to time. The Guarantee Fund Procedure contains an explanation of the calculation of the Standard Guarantee Fund.
- 7.2.2 Each IRS Clearing Member shall be required to provide to, and maintain with, the Clearing House a Contribution to the IRS Guarantee Fund of such amount notified to the IRS Clearing Member from time to time. The Guarantee Fund Procedure contains an explanation of the calculation of the IRS Guarantee Fund.

- 7.2.3 Each Standard Clearing Member's Contribution shall be re-assessed at the end of each calendar quarter or more frequently if the Clearing House so determines (including after each Standard Cooling Off Period). The Standard Clearing Member's Contribution shall be re-assessed at the above intervals throughout a Standard Cooling-Off Period but, without prejudice to Rule 8.7, the Standard Clearing Member shall not be required to make any Contribution during this period. The Clearing House shall notify the Standard Clearing Member of any change in the amount of the Contribution to the Standard Guarantee Fund which the Standard Clearing Member is required to make.
- 7.2.4 Each IRS Clearing Member's Contribution shall be re-assessed at the end of each calendar month or more frequently if the Clearing House so determines (including after each IRS Cooling Off Period with respect to the IRS Guarantee Fund). The IRS Clearing Member's Contribution shall be re-assessed at the above intervals throughout an IRS Cooling-Off Period but, save as set out in Rule 6.1.14 and without prejudice to Rule 8.7 the IRS Clearing Member shall not be required to make any Contribution during this period. The Clearing House shall notify the IRS Clearing Member of any change in the amount of the Contribution to the IRS Guarantee Fund which the IRS Clearing Member is required to make.
- 7.2.5 The Clearing Member shall provide any additional Contribution to the Clearing House before 15:00 on the next Banking Day following the date on which the Clearing House makes such notification pursuant to Rules 7.2.3 and 7.2.4 and agrees that the Clearing House may debit any such additional Contribution from the Clearing Member's Bank Account in accordance with Rule 4.2.2.
- 7.2.6 If, following a re-assessment of a Clearing Member's Contribution to a Guarantee Fund, the Contribution such Clearing Member has already made to a Guarantee Fund is greater than the Contribution the Clearing House requires, the Clearing Member may request the Clearing House to return excess Eligible Assets or may make arrangements with the Clearing House to substitute Eligible Securities of a lower market value.

### **7.3 Form of Contributions, Assessments and Optional Payments**

- 7.3.1 Unless otherwise agreed in advance with the Clearing House, the required Contribution to a Guarantee Fund, any required Assessment and any Optional Payment shall be provided in the form of Eligible Cash. The Clearing Member may subsequently substitute part or all of a Contribution with an amount of Eligible Securities which is of an equivalent value as at the date of substitution.
- 7.3.2 The Clearing Member acknowledges, in relation to Contributions that:

- (a) the Clearing House may attribute a value to any Eligible Securities which is less than their face or market value;
- (b) the Clearing House may, from time to time, change the way in which it values Eligible Securities or the extent to which the value it attributes to Eligible Securities is less than their face or market value; and
- (c) this may affect the Clearing Member's obligations to transfer amounts of Eligible Assets as Contributions.

#### **7.4 Holding of Contributions, Assessments and Optional Payments**

- 7.4.1 The Clearing Member shall provide Contributions, Assessments and Optional Payments to the Clearing House by way of outright transfer of full ownership of such cash or title to such securities, as appropriate, to or to the order of the Clearing House.
- 7.4.2 Rules 6.3.5 to 6.3.10(a) shall apply to Contributions, Assessments and Optional Payments provided to the Clearing House in the same way as such Rules apply to Collateral.

#### **7.5 Recourse to a Guarantee Fund**

- 7.5.1 If, after the Clearing House has applied in accordance with Rule 7.1.2 part or all of the Contribution of a non-defaulting Standard Clearing Member to discharge some or all of the Defaulting Standard Clearing Member's liabilities in relation to Standard Contracts, the Clearing House makes a recovery in respect of those liabilities, the amount of such recovery (net of any deductions made at the discretion of the Clearing House to reflect its costs of recovery and any related tax liability) shall be credited to the non-defaulting Standard Clearing Members whose Contributions were applied in relation to such Defaulting Standard Clearing Member in proportion to (but not exceeding) the amounts so applied from the Standard Guarantee Fund, whether or not they are still Standard Clearing Members.
- 7.5.2 If, after the Clearing House has applied in accordance with Rule 7.1.4 part or all of the Contribution of a non-defaulting IRS Clearing Member to discharge some or all of the Defaulting IRS Clearing Member's liabilities in relation to IRS Contracts, the Clearing House makes a recovery in respect of those liabilities, the amount of such recovery (net of any deductions made at the discretion of the Clearing House to reflect its costs of recovery and any related tax liability) shall be credited to the non-defaulting IRS Clearing Members whose Contributions were applied in relation to such Defaulting IRS Clearing Member in proportion to (but not exceeding) the amounts so applied from the IRS Guarantee Fund, whether or not they are still IRS Clearing Members.

7.5.3 If there is any dispute, the Clearing House shall allocate liabilities and Contributions between the Guarantee Funds in its discretion.

DRAFT AND SUBJECT TO REGULATORY APPROVAL

## CHAPTER 8

### DEFAULT

#### 8.1 Application of the Default Rules

- 8.1.1 The Clearing House may take the actions set out in the remainder of these Default Rules in respect of a Clearing Member in the event of any of the following circumstances (each an **Event of Default**):
- (a) the Clearing Member fails to discharge any obligation to the Clearing House, whether under the Clearing Membership Agreement, the Rules or any Contract or otherwise;
  - (b) the Clearing Member notifies the Clearing House that it is, or is likely to be, unable to discharge any obligation to the Clearing House, whether under the Clearing Membership Agreement, the Rules or any Contract or otherwise;
  - (c) the Clearing House believes that a Clearing Member is, or is likely to be, unable to discharge any obligation to the Clearing House, whether under the Clearing Membership Agreement, the Rules or any Contract or otherwise.
- 8.1.2 Without prejudice to the generality of Rule 8.1.1, the Clearing House may take into account any or all of the following events in determining whether an Event of Default has occurred:
- (a) the Clearing Member or any of its Affiliates or Affiliated Clearing Members or Default Management Service Providers is subject to an Insolvency Event; or
  - (b) the Clearing House reasonably considers that the financial condition of the Clearing Member or any of its Affiliates or Affiliated Clearing Members or Default Management Service Providers is such that to allow the Clearing Member to continue its operation as such would introduce an unacceptable level of risk to the Clearing House or its Clearing Members.
- 8.1.3 The CEO, or any other executive director of the Clearing House whom the CEO has authorised for the purpose, has absolute discretion to determine whether an Event of Default exists and, if such a determination is made, whether to take the actions set out in the remainder of the Default Rules. The CEO or such other executive director may consult the Emergency Committee for both purposes. The composition of the Emergency Committee shall be determined by the Clearing House from time to time.

## 8.2 Actions on a Declaration of Default

8.2.1 If, being satisfied that an Event of Default has occurred, the CEO or other executive director decides to take the actions set out in the remainder of the Default Rules, the Clearing House shall, having first notified the Bank of England:

- (a) notify such decision in writing to the Defaulting Clearing Member (a **Declaration of Default**);
- (b) provide a copy of the Declaration of Default in writing to the Bank of England and electronically to the CFTC; and
- (c) publish a Notice of the Declaration of Default on the Website.

8.2.2 A Declaration of Default will be given by the Clearing House by:

- (a) email to the email address provided by the Defaulting Clearing Member for service of notices under the Clearing Membership Agreement or the email address of any member of the board of directors or any other person specified by the Bank of England and the Declaration of Default will be deemed to be issued on receipt by the Clearing House of an automated delivery receipt or confirmation of receipt from the relevant server if given by email;
- (b) fax to the fax number provided by the Defaulting Clearing Member for service of notices under the Clearing Membership Agreement and the Declaration of Default will be deemed to be issued on a confirmed completion of transmission if given by fax; or
- (c) publication of a Notice on the Website.

Notwithstanding the foregoing, the Clearing House may give confirmation of a Declaration of Default to the Defaulting Clearing Member by personal delivery or recorded or special delivery post in accordance with the Clearing Membership Agreement.

8.2.3 Upon the Clearing House issuing a Declaration of Default, the Defaulting Clearing Member shall:

- (a) subject to Rule 8.2.3(c), cease to take any action in respect of its Contracts;
- (b) subject to Rule 8.2.3(c), not enter into any new Contracts; and
- (c) comply with directions of the Clearing House.

8.2.4 Upon the Clearing House issuing a Declaration of Default, each non-defaulting Clearing Member shall work cooperatively with the Clearing House, the Risk Committee and, if

applicable, the relevant Default Management Committee. In particular, each non-defaulting Clearing Member shall:

- (a) if an IRS Clearing Member, cooperate in convening the IRS Default Management Committee and, if applicable, the IRS Active Default Committee, in accordance with its terms of reference and the Default Management Overview Document including, if applicable, by procuring that any individual referred to in Rule 3.2.1(o) that is a member of the IRS Active Default Committee performs his or her role as such;
- (b) if an OTC FX Clearing Member, cooperate in convening the OTC FX Default Management Committee and, if applicable, the OTC FX Active Default Committee, in accordance with its terms of reference and the Default Management Overview Document including, if applicable, by procuring that any individual referred to in Rule 3.2.1(o) that is a member of the OTC FX Active Default Committee performs his or her role as such;
- (c) if requested, provide commercially reasonable bids for Contracts hedging Affected Contracts in accordance with the Default Management Overview Document;
- (d) participate in any auction of the Defaulting Clearing Member's open positions under any Affected Contracts, in accordance with the Default Management Overview Document;
- (e) not enter into any new Transactions with the Defaulting Clearing Member save to the extent directed by the Clearing House; and
- (f) comply with any reasonable directions of the Clearing House.

8.2.5 Upon the Clearing House issuing an IRS Declaration of Default an IRS Active Default Committee shall be convened, as appropriate.

8.2.6 Upon the Clearing House issuing a Declaration of Default or at any time afterwards, the Clearing House may terminate the Defaulting Clearing Member's membership of the Clearing House by giving written notice to the Defaulting Clearing Member. The Defaulting Clearing Member shall remain subject to Rules 3.8.3 and 3.8.5.

8.2.7 Upon or shortly after the Clearing House issuing a Declaration of Default, it shall specify on the Website the timetable according to which it expects to be able to take the actions set out in Rules 8.4 or 8.4B (as applicable) and 8.5.

8.2.8 The Default Management Overview Document is incorporated by reference into this Chapter 8 and the Clearing House shall act in accordance with it in relation to Contracts on the occurrence of an Event of Default in respect of a Clearing Member including where it



enters into hedging transactions or auctions Affected Contracts pursuant to Rule 8.5.2. The Clearing House may from time to time override the implementation or application of the Default Management Overview Document to the Clearing House or as against some or all of the Clearing Members in respect of one or more Defaulting Clearing Members. The override of the implementation or application of the Default Management Guidelines may only be brought into effect where the Clearing House deems it necessary to manage material risks of the Clearing House (where material risks are those which could materially adversely impact the on-going financial soundness, integrity or the proper performance of the Clearing House) or is otherwise required to meet the Clearing House's continuing legal or regulatory obligations under Applicable Law. Any determination by the Clearing House to override the implementation or application of the Default Management Overview Document shall be notified to the Clearing Members and the Risk Committee.

8.2.9 For the purposes of Chapter 8 and Rule 2.5:

- (a) In relation to Non-FCM Clearing Members, the Standard House Accounts of each relevant Standard Clearing Member shall be amalgamated to create one Standard House Account and the IRS House Accounts of each relevant IRS Clearing Member shall be amalgamated to create one IRS House Account and references to a House Account, IRS House Account or Standard House Account in Chapter 8 and Rule 2.5.1 shall be construed accordingly; and
- (b) In relation to FCM Clearing Members, the Standard Swaps House Accounts of each relevant Standard Clearing Member shall be amalgamated to create one Standard Swaps House Account, the Standard Futures House Accounts of each relevant Standard Clearing Member shall be amalgamated to create one Standard Futures House Account and the IRS House Accounts of each relevant IRS Clearing Member shall be amalgamated to create one IRS House Account. and references to a House Account, IRS House Account, Standard Swaps House Account or Standard Futures Swaps Account in Chapter 8 and Rule 2.5.1 shall be construed accordingly.

### **8.3 Segregation between House Account and each Client Account when applying the Default Rules**

*Segregation when calculating Portable Net Sums, Single Net Sums and other amounts*

8.3.1 If the Defaulting Clearing Member is:

- (a) a Contract CM, then each transfer under Rule 8.4.6 shall be made separately; or
- (b) not a Contract CM, then a separate Portable Net Sum shall be calculated in accordance with Rules 8.4.7 to 8.4.13.

8.3.2 In each case, a separate Portable Net Sum shall be calculated in accordance with Rule 8.4 in respect of Affected Contracts which relate to each of the Defaulting Clearing Member's Individual Client Accounts and each Notional Sub-Account within each of its Omnibus Client Accounts and related rights and liabilities, when the Defaulting Clearing Member is a Non-FCM Clearing Member.

8.3.3 A separate Single Net Sum shall be calculated in accordance with Rule 8.5 in respect of:

- (a) Affected Contracts which relate to each of the Defaulting Clearing Member's House Accounts and related rights and liabilities; and
- (b) if required under Rules 8.4.2 or 8.4.17, Affected Contracts which relate to each of the Defaulting Clearing Member's:
  - (i) Individual Client Accounts or Notional Sub-Accounts and related rights and liabilities, when the Defaulting Clearing Member is a Non-FCM Clearing Member; and
  - (ii) FCM LSOC Client Sub-Accounts and Futures Client Accounts (as applicable) and related rights and liabilities, when the Defaulting Clearing Member is an FCM Clearing Member.

8.3.4 A separate Collect, Pay, Allocated Standard Pay or Allocated IRS Pay shall be calculated in accordance with Rules 8.6.4 and 8.10, as applicable, in respect of the Contracts which relate to each Account and:

- (a) when the Defaulting Clearing Member is a Non-FCM Clearing Member, each Notional Sub-Account of a relevant Clearing Member and the related rights and liabilities in each case; and
- (b) when the Defaulting Clearing Member is an FCM Clearing Member, each FCM LSOC Client Sub-Account, FCM FBOT Futures Client Account and FCM DCM Futures Client Account (as applicable) and the related rights and liabilities in each case.

*Set off of Collateral relating to different Accounts*

8.3.5 To the extent that the Clearing House applies or includes an amount pursuant to Rules 8.4 or 8.5:

- (a) When the Defaulting Clearing Member is a Non-FCM Clearing Member:
  - (i) Standard Collateral credited to the Standard House Account of the Defaulting Standard Clearing Member may be set off, applied against or included in

respect of the rights and obligations relating to the following Accounts of the Defaulting Standard Clearing Member in the following order to the extent that there is sufficient surplus Collateral after completion of each step:

- (A) the Standard House Account;
  - (B) pro-rata between each Standard Individual Client Account and Standard Omnibus Client Account; and
  - (C) pro-rata between each IRS Individual Client Account and IRS Omnibus Client Account;
- (ii) IRS Collateral credited to the IRS House Account of the Defaulting Clearing Member may be set off, applied against or included in respect of the rights and obligations relating to the following Accounts of the Defaulting IRS Clearing Member in the following order to the extent that there is sufficient surplus Collateral after completion of each step:
- (A) the IRS House Account;
  - (B) pro-rata between each IRS Individual Client Account and IRS Omnibus Client Account; and
  - (C) pro-rata between each Standard Individual Client Account and Standard Omnibus Client Account;
- (iii) Collateral credited to each Individual Client Account of the Defaulting Clearing Member may only be set off, applied against or included in respect of the rights and obligations relating to the Contracts credited to that Individual Client Account of that Defaulting Clearing Member;
- (iv) Collateral, excluding Excess Collateral, credited to each Notional Sub-Account of the Defaulting Clearing Member may only be set off, applied against or included in respect of the rights and obligations relating to the Contracts credited to that Notional Sub-Account of that Defaulting Clearing Member or as contemplated in Rule 8.4.10(b), 8.4.11(b), 8.5.5(a)(ii) and 8.6.6(a)(ii); and
- (v) Excess Collateral credited to an Omnibus Client Account may only be set off, applied against or included in respect of the rights and obligations relating to Contracts credited to that Omnibus Client Account and may be applied against or included in accordance with Rules 8.4.4(b), 8.4.5(b), 8.4.10(b), 8.4.11(b), 8.5.5(a)(ii) and 8.5.6(a)(ii).

- (b) When the Defaulting Clearing Member is an FCM Clearing Member:

- (i) Standard Collateral credited to the Standard Swaps House Account of the Defaulting Standard Clearing Member may be set off, applied against or included in respect of the rights and obligations relating to the following Accounts of the Defaulting Standard Clearing Member in the following order to the extent that there is sufficient surplus Collateral after completion of each step:
- (A) the Standard Swaps House Account;
  - (B) pro-rata between each Standard FCM LSOC Client Sub-Account, each IRS FCM LSOC Client Sub-Account, the FCM FBOT Futures Client Account and the FCM DCM Futures Client Account, in each case to the extent applicable; and
  - (C) if applicable, pro rata between the IRS House Account and the Standard Futures House Account;
- (ii) Standard Collateral credited to the Standard Futures House Account of the Defaulting Standard Clearing Member may be set off, applied against or included in respect of the rights and obligations relating to the following Accounts of the Defaulting Standard Clearing Member in the following order to the extent that there is sufficient surplus Collateral after completion of each step:
- (A) the Standard Futures House Account;
  - (B) pro-rata between each Standard FCM LSOC Client Sub-Account, each IRS FCM LSOC Client Sub-Account, the FCM FBOT Futures Client Account and the FCM DCM Futures Client Account, in each case to the extent applicable;
  - (C) if applicable, pro-rata between the IRS House Account and the Standard Swaps House Account;
- (iii) IRS Collateral credited to the IRS House Account of the Defaulting Clearing Member may be set off, applied against or included in respect of the rights and obligations relating to the following Accounts of the Defaulting IRS Clearing Member in the following order to the extent that there is sufficient surplus Collateral after completion of each step:
- (A) the IRS House Account;

- (B) pro-rata between each IRS FCM LSOC Client Sub-Account, each Standard FCM LSOC Client Sub-Account, the FCM FBOT Futures Client Account and the FCM DCM Futures Client Account, in each case to the extent applicable; and
  - (C) if applicable, pro rata between the Standard Swaps House Account and Standard Futures House Account;
- (iv) Collateral credited to the FCM LSOC Client Buffer Sub-Account in the Standard FCM LSOC Client Account of the Defaulting Clearing Member may be set off, applied against or included in respect of the rights and obligations relating to the following Accounts of the Defaulting Standard Clearing Member in the following order to the extent that there is sufficient surplus Collateral after completion of each step:
  - (A) pro-rata between each Standard FCM LSOC Client Sub-Account; and
  - (B) pro-rata between each IRS FCM LSOC Client Sub-Account;
- (v) Collateral credited to the FCM LSOC Client Buffer Sub-Account in the IRS FCM LSOC Client Account of the Defaulting Clearing Member may be set off, applied against or included in respect of the rights and obligations relating to the following Accounts of the Defaulting IRS Clearing Member in the following order to the extent that there is sufficient surplus Collateral after completion of each step:
  - (A) pro-rata between each IRS FCM LSOC Client Sub-Account; and
  - (B) pro-rata between each Standard FCM LSOC Client Sub-Account;
- (vi) Collateral credited to each FCM LSOC Client Sub-Account of the Defaulting Clearing Member may only be set off, applied against or included in respect of the rights and obligations relating to the Contracts credited to such FCM LSOC Client Sub-Account of the Defaulting Clearing Member;
- (vii) Collateral credited to an FCM LSOC Client Unallocated Sub-Account of the Defaulting Clearing Member may not under any circumstances be set off, applied against or included in respect of the rights and obligations relating to any other Account of the Defaulting Clearing Member;
- (viii) Collateral credited to the FCM FBOT Futures Client Account or to the FCM DCM Futures Client Account of the Defaulting Clearing Member may only be set off, applied against or included in respect of the rights and obligations

relating to the Contracts credited to such FCM FBOT Futures Client Account or FCM DCM Futures Client Account of the Defaulting Clearing Member.

8.3.6 For the purposes of Rules 8.4.4, 8.4.5, 8.4.10, 8.4.11, 8.5.5 and 8.5.6:

- (a) Standard Individual Client Account:
  - (i) with respect to Collateral standing to the credit of an FS Account, is the value of that Collateral; and
  - (ii) otherwise, is a proportion (determined by the Clearing House in accordance with the Rules and the Procedures) of the value of the Collateral provided by Clearing Member in respect of such Standard Individual Client Account;
- (b) Standard Notional Sub-Account in a Standard Omnibus Client Account is a proportion (determined by the Clearing House in accordance with the Rules and the Procedures) of the value of the Collateral provided by the Clearing Member in respect of all its Standard Omnibus Accounts;
- (c) IRS Individual Client Account:
  - (i) with respect to Collateral standing to the credit of an FS Account, is the value of that Collateral; and
  - (ii) otherwise, is a proportion (determined by the Clearing House in accordance with the Rules and the Procedures) of the value of the Collateral provided by Clearing Member in respect of such IRS Individual Client Account;
- (d) IRS Notional Sub-Account in an IRS Omnibus Client Account is a proportion (determined by the Clearing House in accordance with the Rules and the Procedures) of the value of the Collateral provided by the Clearing Member in respect of all its IRS Omnibus Client Accounts;
- (e) When the Defaulting Clearing Member is an FCM Clearing Member, the Collateral credited to each:
  - (i) Standard FCM LSOC Client Sub-Account is a proportion (determined by the Clearing House in accordance with the Rules and the Procedures) of the value of the Collateral provided by the Clearing Member in respect of such Standard FCM LSOC Client Account;
  - (ii) IRS LSOC Client Sub-Account is a proportion (determined by the Clearing House in accordance with the Rules and the Procedures) of the value of the

Collateral provided by the Clearing Member in respect of such IRS FCM LSOC Client Account.

*Set off of other amounts*

8.3.7 Notwithstanding any law, regulation (including, without limitation, the Insolvency Rules 1986) or otherwise, when calculating each Portable Net Sum, Single Net Sum or CCP Default Single Net Sum and any other amount under these Rules:

(a) a liability of the Clearing House to a Clearing Member may only be set off, or applied, against or netted with a liability of such Clearing Member to the Clearing House in accordance with these Rules, the relevant Clearing Membership Agreement and as otherwise agreed by the Clearing House and the Clearing Member;

(b) a liability of a Non-FCM Clearing Member to the Clearing House under or in connection with an Individual Client Account or an Omnibus Client Account (and any related Contract and Collateral) may only be set off, or applied, against or netted with a liability of the Clearing House to a Clearing Member under or in connection with the same Account or, with the exception of the calculation of a CCP Default Single Net Sum, the House Account, save that costs and expenses arising from actions taken under Rule 8.5.2 may be included in the rights and liabilities calculated with respect to each Client Account pursuant to Rule 8.5.2; and

(c) a liability of an FCM Clearing Member to the Clearing House or of the Clearing House to an FCM Clearing Member under or in connection:

(i) with an FCM LSOC Client Sub-Account (and any related Contract and Collateral) may only be set off, or applied, against or netted with a liability of the Clearing House to that FCM Clearing Member or (as the context requires) of that FCM Clearing Member to the Clearing House under or in connection with the same Account or a House Account or an FCM LSOC Client Buffer Sub-Account in the same Account (in the order of priority specified in Rule 2.5.10 or (as the context requires) Rule 8.3.5), save that costs and expenses arising from actions taken under Rule 8.5.2 may be included in the rights and liabilities calculated with respect to each Client Account pursuant to Rule 8.5.2; and

(ii) with an FCM Futures Client Account (and any related Contract and Collateral) may only be set off, or applied, against or netted with a liability of the Clearing House to that FCM Clearing Member or (as the context requires) of that FCM Clearing Member to the Clearing House under or in connection with the same Account or a House Account (in the order of priority specified in Rule 2.5.10 or

(as the context requires) Rule 8.3.5), save that costs and expenses arising from actions taken under Rule 8.5.2 may be included in the rights and liabilities calculated with respect to the Client Account pursuant to Rule 8.5.2.

8.3.8 For the purposes of Rules 8.5.5 or 8.5.6, the Clearing House may, in its reasonable discretion, determine the proportion of:

- (a) the Standard Guarantee Fund in relation to Standard Contracts;
- (b) the IRS Guarantee Fund in relation to IRS Contracts; and
- (c) the Single Net Sum relating to each House Account of the Defaulting Clearing Member,

to be applied in relation to each of the Defaulting Clearing Member's Client Accounts and, except in relation to Rule 8.3.8(c), each House Account, as applicable.

8.3.9 To the extent any fees, costs and expenses are due from the Defaulting Clearing Member, they shall be aggregated separately with respect to fees, costs and expenses arising in connection with Standard Contracts and fees, costs and expenses arising in connection with IRS Contracts and:

- (a) the resulting sum(s) shall be set off against the Collateral credited to the relevant House Account of the Defaulting Clearing Member and its Contribution to the relevant Guarantee Fund; and
- (b) to the extent any amount remains outstanding following completion of Rule 8.3.9(a), the relevant assets set out in Rule 8.6 shall be applied in the order set out in such Rule to satisfy the outstanding amount.

8.3.10 If the Clearing House issues a Declaration of Default:

- (a) in respect of a Non-FCM Clearing Member, the Clearing House shall:
  - (i) use Excess Collateral received by the Clearing House in respect of an Individual Client Account in the same way as it uses any other Collateral relating to the Individual Client Account;
  - (ii) use Excess Collateral received by the Clearing House in respect of an Omnibus Client Account in relation to that Omnibus Client Account and may use it in accordance with Rules 8.4.4(b), 8.4.5(b), 8.4.10(b), 8.4.11(b), 8.5.5(ii) and 8.5.66(a)(ii).
- (b) in respect of an FCM Clearing Member, the Clearing House shall:



- (i) use Excess Collateral received by the Clearing House in respect of an FCM LSOC Client Sub-Account in an FCM LSOC Client Account under the LSOC With Excess Model in the same way as it uses any other Collateral relating to such FCM LSOC Client Sub-Account; and
- (ii) use Excess Collateral received by the Clearing House in respect of the FCM Futures Client Account only in relation to that FCM Futures Client Account.

8.3.11 For the purposes of Rules 8.4.4, 8.4.5, 8.4.7, 8.4.10, 8.4.11, 8.4.23, 8.5.5 and 8.5.6 the Clearing House may, or may instruct a third party to:

- (a) liquidate Collateral and Contributions in the form of Eligible Securities; and
- (b) convert amounts denominated in one currency into another currency,

in each case at such time and at such rate as the Clearing House shall in its reasonable discretion determine.

**8.4 Porting of Individual Client and Omnibus Client Accounts** *A summary of how this Rule works and the main legal implications is set out in the Clearing House's Disclosure Document on the Website . <http://www.cmegroup.com/europe/clearing-europe/resources.html>*

*Conditions to porting*

8.4.1 This Rule 8.4 applies when the Defaulting Clearing Member is a Non-FCM Clearing Member, and in respect of each Individual Client Account and each Notional Sub-Account within each Omnibus Client Account of the Defaulting Clearing Member and the related Affected Contracts and Collateral if, subject to Rule 8.4.2, in relation to such Account or Notional Sub-Account:

- (a) the Clearing House is satisfied:
  - (i) that a Client Agreement, a Client Protection Agreement (in relation to a Security CM only) and a Client Acknowledgement is in full force and effect with respect to each relevant Client at the date of the proposed actions under this Rule 8.4; and
  - (ii) it is under no obligation which would require the payment or delivery under the Client Protection Agreement and/or the Security Trust Deed and/or Rule 8.4.6 to be returned to a third party; and
  - (iii) if there is an FS Individual Client Account with respect to the relevant Client, that the relevant FS Custody Agreement is in full force and effect;

- (b) the Clearing House has the information, which may be that provided in accordance with Rule 3A.5, it requires to make the calculations set out in this Rule 8.4 and is satisfied as to its accuracy;
- (c) an Adopting Clearing Member which is not a Defaulting Clearing Member agrees to accept all relevant Contracts and related Collateral and doing so will not cause the credit limits or Position Limits applicable to either the Adopting Clearing Member or the Client pursuant to Rule 5.1.7 or Rule 5.1.8 to be exceeded;
- (d) the relevant Client has requested that the Clearing House takes the steps in Rules 8.4.12 or 8.4.13 (if the Defaulting Clearing Member is a Security CM) or Rule 8.4.6 (if the Defaulting Clearing Member is a Contract CM);
- (e) the Clearing House is satisfied that sufficient additional Eligible Assets have been or (on or before the recording of the Portable Net Sum under Rule 8.4.12(a) or (as the context may require) the transfer under Rule 8.4.6) will be provided to it as Collateral by the relevant Adopting Clearing Member in accordance with the Rules; and
- (f) if a Portable Net Sum is to be ported from one FS Individual Client Account to another FS Individual Client Account, the Clearing House is satisfied that:
  - (i) the Adopting Clearing Member is able to open an FS Account in respect of the Client with any of the FS Custodians; and
  - (ii) the Adopting Clearing Member will, and will arrange for the Client to, enter into all applicable FS Documents within a reasonable period to be determined by the Clearing House,

in which case, the Clearing House shall use all reasonable endeavours to perform the actions set out in this Rule 8.4. If the Clearing House has not been able to perform the actions set out in this Rule 8.4 within the applicable Porting Period then it may carry out the actions set out in Rule 8.5 in relation to that Client Account.

<b>Product</b>	<b>Account type</b>	<b>Porting Period (measured from the issue of a Declaration of Default)</b>
<b>IRS Contracts</b>	Gross Omnibus Client Account (paragraph 2.13 Risk Management Procedure)	36 hours
	Individual Client Account	48 hours

<b>Standard Contracts</b>	Net Omnibus Client Account (paragraph 2.12 Risk Management Procedure)	8 hours
	Gross Omnibus Client Account Client Account (paragraph 2.13 Risk Management Procedure)	12 hours
	Individual Client Account	24 hours

8.4.2 The Clearing House may, in its absolute discretion, extend the period during which it will not carry out the actions set out in Rule 8.5 in relation to a Client Account beyond the Porting Period, including, but not limited to, if it is able to rely on a guarantee provided by the relevant Client in respect of any Variation Requirement due in respect of Contracts recorded in either an Individual Client Account or as FS Individual Client Account. In any event, whether or not the Clearing House extends the period during which it will not carry out the actions set out in Rule 8.5 in relation to a Client Account, the Clearing House may carry out the actions set out in Rule 8.5 before the end of the applicable Porting Period in the following circumstances:

- (a) at any time, in relation to an Individual Client Account or a Notional Sub-Account in the event the Client to which that Individual Client Account or Notional Sub-Account relates requests the Clearing House to do so; or
- (b) after four (4) hours have elapsed from the issue of the Declaration of Default, in the event the Clearing House reasonably believes that taking any of the actions in this Rule 8.4 in relation to any Client Account would introduce an unacceptable level of risk or volatility to the Clearing System or to the Clearing House.

Without prejudice to the foregoing provision, the Clearing House will not, as permitted by Rule 8.3.11, liquidate Collateral recorded in respect of a Client Account or Notional Sub-Account during the Porting Period in accordance with this Rule 8.4.2 save that it may, in its absolute discretion, do so in any of the following circumstances:

- (i) the Client agrees to or requests the liquidation of the Collateral recorded in respect of the Client Account or Notional Sub-Account; or
- (ii) the Clearing House reasonably believes that liquidating such Collateral will facilitate the likelihood of taking the actions set out in Rule 8.4.6, 8.4.12 or 8.4.13 in respect of the Client Account or the Notional Sub-Account; or

- (iii) the Clearing Member has notified the Clearing House that an Insolvency Event has occurred in relation to the Client or that the Client is otherwise in default of its obligations under the Client Agreement or that the Clearing Member reasonably believes that an Insolvency Event is likely to occur in relation to the Client and is reasonably imminent; or
- (iv) the Clearing House reasonably believes (such belief to be based on the results of a Liquidation Test) that the value of the Collateral and/ or the Contracts recorded in respect of the Client Account or Notional Sub-Account is diminishing and potentially threatening collateral haircuts or undermining the Clearing House's ability to make Variation Requirement payments in respect of the Contracts recorded in such Client Account or Notional Sub-Account.

Clearing Members should be aware that it may be significantly more difficult for the Clearing House to take the actions set out in this Rule 8.4.2 in relation to Exchange Contracts recorded in relation to a Standard Omnibus Client Account and Standard Contracts, including those recorded in relation to a Standard Omnibus Client Account of the type referred to in paragraph 2.13 of the Risk Management Procedure.

If any of the conditions set out in Rule 8.4.1(f) are or will not be satisfied due to failure of the Adopting Clearing Member and/or the relevant Client to enter into the FS Documents and/or open an FS Account with an FS Custodian, the Adopting Clearing Member shall indemnify the Clearing House against any loss, cost or expense suffered by the Clearing House in determining the Portable Net Sum on such basis.

*Discharge of Defaulting Clearing Member's rights and liabilities*

8.4.3 Following the issuance by the Clearing House of a Declaration of Default, subject to Rule 8.3:

- (a) Rules 8.4.4 to 8.4.6 shall apply if the Defaulting Clearing Member is a Contract CM; and
- (b) Rules 8.4.7 to 8.4.13 shall apply if the Defaulting Clearing Member is a Security CM.

*Contract CM pre-porting and porting*

8.4.4 Before a transfer under Rule 8.4.6, the Clearing House may take the following steps with respect to each Standard Individual Client Account and Standard Notional Sub-Account of the Defaulting Standard Clearing Member:

- (a) the Standard Collateral relating to the relevant Standard Individual Client Account or Standard Notional Sub-Account may be set off, or applied, against any liabilities of

the Defaulting Standard Clearing Member in connection with such Standard Individual Client Account or Standard Notional Sub-Account; and

- (b) in relation to a Standard Notional Sub-Account, in the absolute discretion of the Clearing House, any negative sum produced under Rule 8.4.4(a) relating to that Standard Notional Sub-Account may be set off against:
  - (i) any Excess Collateral relating to the Omnibus Client Account of which that Standard Notional Sub-Account forms part; and
  - (ii) any positive sum produced under Rule 8.4.4(a) relating to any other Standard Notional Sub-Account in the same Standard Omnibus Client Account.

8.4.5 Before a transfer under Rule 8.4.6, the Clearing House may take the following steps with respect to each IRS Individual Client Account and IRS Notional Sub-Account of the Defaulting IRS Clearing Member:

- (a) the IRS Collateral relating to the relevant IRS Individual Client Account or IRS Notional Sub-Account may be set off, or applied, against any liabilities of the Defaulting IRS Clearing Member in connection with such IRS Individual Client Account or IRS Notional Sub-Account; and
- (b) in relation to an IRS Notional Sub-Account, in the absolute discretion of the Clearing House, any negative sum produced under Rule 8.4.5(a) relating to that IRS Notional Sub-Account may be set off against:
  - (i) any Excess Collateral relating to the Omnibus Client Account of which that IRS Notional Sub-Account forms part; and
  - (ii) any positive sum produced under Rule 8.4.5(a) relating to any other IRS Notional Sub-Account in the same IRS Omnibus Client Account.

8.4.6 The Clearing House shall in relation to each Individual Client Account and each Notional Sub-Account in respect of which all of the conditions set out in Rule 8.4.1 are satisfied, transfer the rights and obligations relating to the relevant Contracts and Collateral (except for those arising under Rule 2.3.1 and otherwise as a result of any relevant Event of Default or the circumstances that caused it) from the Defaulting Clearing Member to the relevant Adopting Clearing Member by:

- (a) removing all Contracts and Collateral from the Defaulting Clearing Member's relevant Individual Client Account or Notional Sub-Account; and
- (b) entering such Contracts and Collateral in the Adopting Clearing Member's relevant Individual Client Account or Notional Sub-Account.

*Security CM pre-porting and porting*

- 8.4.7 The Clearing House shall, in relation to each Individual Client Account and each Notional Sub-Account, seek to discharge all of the Defaulting Clearing Member's rights and liabilities under the relevant Affected Contracts by closing out, settling, terminating and/or offsetting all such Affected Contracts and aggregating any obligations for the payment of money, whether present or future, actual or contingent, in respect of such Affected Contracts and the Rules and offsetting the aggregated amounts against each other so as to produce a **Portable Contract Net Sum** in relation to each such Individual Client Account or Notional Sub-Account. Such Portable Contract Net Sum shall be determined as of the date on which the Clearing House intends to re-establish the Affected Contracts in the Adopting Clearing Member's relevant Client Account and on such terms as the Clearing House shall determine.
- 8.4.8 The rights and liabilities of the Defaulting Clearing Member shall include all those arising in consequence of any action taken by the Clearing House under Rule 8.4.7.
- 8.4.9 If the Portable Contract Net Sum in relation to an Individual Client Account or a Notional Sub-Account is due from the Defaulting Clearing Member, then it is the **IRS Portable Interim Liability** or the **Standard Portable Interim Liability**, as the case may be (expressed as a negative sum). If the Portable Contract Net Sum is due to the Defaulting Clearing Member, then it is the **IRS Portable Interim Asset** or the **Standard Portable Interim Asset**, as the case may be (expressed as a positive sum).

*Standard Portable Net Sum calculation - Standard Contracts*

- 8.4.10 The following steps shall be taken with respect to each Standard Individual Client Account and each Standard Notional Sub-Account of the Defaulting Standard Clearing Member:
- (a) the Standard Collateral relating to the relevant Standard Individual Client Account or Standard Notional Sub-Account shall be set off against the relevant Standard Portable Interim Liability or aggregated with the relevant Standard Portable Interim Asset; and
  - (b) in relation to a Standard Notional Sub-Account, in the absolute discretion of the Clearing House, any negative sum produced under Rule 8.4.10(a) relating to that Standard Notional Sub-Account may be set off against:
    - (i) any Excess Collateral relating to the Omnibus Client Account of which that Standard Notional Sub-Account forms part; and
    - (ii) any positive sum produced under Rule 8.4.10(a) relating to any other Standard Notional Sub-Account in the same Standard Omnibus Client Account,

the result being a **Portable Net Sum**.

*IRS Portable Net Sum calculation - IRS Contracts*

8.4.11 The following steps shall be taken with respect to each IRS Individual Client Account and each IRS Notional Sub-Account of the Defaulting IRS Clearing Member:

- (a) the IRS Collateral relating to the relevant IRS Individual Client Account or IRS Notional Sub-Account shall be set off against the relevant IRS Portable Interim Liability or aggregated with the relevant IRS Portable Interim Asset; and
- (b) in relation to an IRS Notional Sub-Account, in the absolute discretion of the Clearing House, any negative sum produced under Rule 8.4.11(a) relating to that IRS Notional Sub-Account may be set off against:
  - (i) any Excess Collateral relating to the Omnibus Client Account of which that IRS Notional Sub-Account forms part; and
  - (ii) any positive sum produced under Rule 8.4.11(a) relating to any other IRS Notional Sub-Account in the same IRS Omnibus Client Account,

the result being a **Portable Net Sum**.

8.4.12 If the Portable Net Sum in relation to an Individual Client Account or Notional Sub-Account is due to the Defaulting Clearing Member, then the Clearing House shall in relation to such Individual Client Account or Notional Sub-Account:

- (a) debit an amount equal to the Portable Net Sum from the Defaulting Clearing Member's relevant Client Account and credit an equivalent amount in the Adopting Clearing Member's relevant Client Account relating to that Client; and
- (b) on the same day, replace such Portable Net Sum with Contracts and Collateral in the Adopting Clearing Member's relevant Client Account which differ from the Affected Contracts and Collateral which had been credited to the Defaulting Clearing Member only to the extent that the Adopting Clearing Member shall be the counterparty of the Clearing House in place of the Defaulting Clearing Member and to reflect an adjustment which has been made in accordance with Rules 8.4.10 and 8.4.11 to the Collateral that had been credited to the Defaulting Clearing Member's Client Account.

8.4.13 If the Portable Net Sum in relation to an Individual Client Account or a Notional Sub-Account is zero or is due from the Defaulting Clearing Member, then the Clearing House shall in relation to such Individual Client Account or Notional Sub-Account:

- (a) credit an amount equal to the Portable Net Sum to the Defaulting Clearing Member's relevant Client Account and debit an equivalent amount from the Adopting Clearing Member's relevant Client Account relating to that client; and
- (b) on the same day, replace such Portable Net Sum with Contracts and Collateral in the Adopting Clearing Member's relevant Client Account which differ from the Affected Contracts and Collateral which had been credited to the Defaulting Clearing Member only to the extent that the Adopting Clearing Member shall be the counterparty of the Clearing House in place of the Defaulting Clearing Member and to reflect an adjustment which has been made in accordance with Rules 8.4.10 and 8.4.11 to the Collateral that had been credited to the Defaulting Clearing Member's Client Account.

*Portable Net Sum calculations - General*

- 8.4.14 The Clearing House will exercise its discretion in Rules 8.4.10 and 8.4.11 in such a way as to seek to achieve a fair and equitable allocation of any Excess Collateral and any positive or negative sums, as applicable, relating to an Omnibus Client Account.
- 8.4.15 In this Rule 8.4, a reference to closing out, settling, terminating, offsetting, aggregating or any other action includes the Clearing House calculating the rights and obligations of the Clearing House in relation to any relevant Clearing Member or Client as if the Clearing House had taken such action.
- 8.4.16 To the extent there is any Collateral standing to the credit of a Swiss FS Account after the application of any amounts against a Standard Portable Interim Liability or an IRS Portable Interim Liability under Rules 8.4.10(a) or 8.4.11(a) it shall be applied in accordance with the terms of the relevant Swiss Collateral Management Agreement.

*Conditions to porting no longer satisfied*

- 8.4.17 If, after the calculation of the Portable Net Sum, any of the conditions set out in Rule 8.4.1 are no longer satisfied in relation to any Individual Client Account or Notional Sub-Account, the Clearing House shall not undertake the steps in Rules 8.4.12, 8.4.13, 8.4.18 to 8.4.23 and shall instead follow the provisions set out in Rule 8.5 with respect to that Individual Client Account or Notional Sub-Account. In such case, any action taken pursuant to this Rule 8.4 shall be deemed not to have been taken.

*Certification and porting of each Portable Contract Net Sum and Portable Net Sum*

- 8.4.18 The Clearing House shall, if required, in relation to each Individual Client Account and each Notional Sub-Account in respect of which the Clearing House calculates a Portable Net Sum and all of the conditions set out in Rule 8.4.1 are satisfied, certify the Portable Contract Net Sum and the Portable Net Sum to:



- (a) the relevant office holder acting in relation to the Defaulting Clearing Member; and
- (b) the Clearing House's Regulatory Authority.

8.4.19 The Defaulting Clearing Member consents to the steps in this Rule 8.4. The Adopting Clearing Member will have the rights and be bound by the obligations of the Contracts and Collateral described in Rules 8.4.6, 8.4.12 and 8.4.13, as the case may be. If there is a Margin Requirement on the Client Account after a transfer under Rules 8.4.6, 8.4.12 or 8.4.13, the Adopting Clearing Member will be required to provide sufficient additional Eligible Assets as Collateral to the Clearing House in accordance with the Rules.

8.4.20 The Clearing House shall use reasonable endeavours to perform its obligations and exercise its powers under this Rule 8.4:

- (a) in respect of some but not all of the Contracts and Collateral related to any Individual Client Account or Notional Sub-Account: or
- (b) in relation to more than one Adopting Clearing Member,

in each case at the request of the Client to which such Individual Client Account or Notional Sub-Account relates. In any such case, the Client, the Clearing House and each relevant Adopting Clearing Member shall agree on the Contracts and Collateral to be transferred. If Rule 8.4.20(a) or 8.4.20(b) applies, Rules 8.4.12 and 8.4.13 shall be construed accordingly.

*Security Trustee*

8.4.21 The Security Trustee may take such actions and exercise such powers as are set out in the Security Trust Deed in relation to any Individual Client Account or Notional Sub-Account relating to each Client on whose behalf the Security Trustee has entered into a Client Protection Agreement.

*Clearing House may rely on information*

8.4.22 In taking the actions in this Rule 8.4 or Rule 8.5, the Clearing House may rely on the information provided by the Clearing Member to the Clearing House or by the Clearing House to the Clearing Member pursuant to Rule 3A.5.

8.4.23 In the event that the Clearing House is able to transfer the rights and obligations relating to the Contracts and Collateral or the Portable Net Sum relating to each Notional Sub-Account in a single Omnibus Client Account to a single Adopting Clearing Member pursuant to Rule 8.4.6 or Rules 8.4.12 or 8.4.13 respectively, it shall include in the amounts to be transferred any Excess Collateral that is not otherwise accounted for.

**8.4B Porting of FCM LSOC Client Sub-Accounts and FCM Futures Client Account**

8.4B.1 If the Defaulting Clearing Member is an FCM Clearing Member, any actions taken by the Clearing House regarding the liquidation or porting of Contracts and Collateral carried by the FCM Clearing Member on behalf of its LSOC Clients or Futures Clients in the Defaulting Clearing Member's FCM LSOC Client Sub-Accounts, FCM FBOT Futures Client Account or FCM DCM Futures Client Account shall be taken in the reasonable discretion of the Clearing House, in accordance with the Rules and relevant Default Management Overview Document, and in compliance with the CEA, CFTC Regulations and applicable bankruptcy laws such as the CFTC Part 190 Regulations. Subject to Rule 2.3.7, the Clearing House shall have no responsibility or liability for any action taken or not taken with respect to the FCM LSOC Client Accounts, FCM LSOC Client Sub-Accounts and/or FCM Futures Client Accounts of the Defaulting Clearing Member in accordance with such laws or regulations or the directions of a bankruptcy trustee or Regulatory Authority.

8.4B.2 This Rule applies in respect of each FCM LSOC Client Sub-Account, FCM FBOT Futures Client Account or FCM DCM Futures Client Account if, in relation to such Client Account:

(a) an FCM Clearing Member which is not a Defaulting Clearing Member agrees to accept all relevant Contracts and related Collateral;

(b) the relevant LSOC Client or all relevant Futures Clients have, or are deemed to have, consented to the relevant Contracts and Collateral being ported; and

(c) the bankruptcy trustee or CFTC as applicable has consented to the Contracts and Collateral being ported,

in which case, the Clearing House will use all reasonable endeavours to port the Contracts and Collateral carried by the FCM Clearing Member on behalf of its LSOC Clients or Futures Clients in respect of each such Client Account. If the Clearing House has not been able to port an Account within the applicable period set out below, then it may, subject to compliance with the CEA, CFTC Regulations and applicable bankruptcy laws, liquidate such Contracts and Collateral.

<b>Product</b>	<b>Account type</b>	<b>Porting Period (measured from the issue of a Declaration of Default)</b>
<b>IRS Contracts</b>	FCM LSOC Client Sub-Account	36 hours
<b>Standard Contracts</b>	FCM LSOC Client Sub-Account	12 hours
	FCM FBOT Futures Client	8 hours

	Account	
	FCM DCM Futures Client Account	8 hours

8.4B.3 Notwithstanding Rule 8.4B.2, the Clearing House may liquidate the Contracts and Collateral carried by the FCM Clearing Member on behalf of its LSOC Clients or Futures Clients in respect of any FCM LSOC Client Sub-Account, FCM FBOT Futures Client Account or FCM DCM Futures Client Account before the end of the applicable porting period above if, after four (4) hours have elapsed from the issue of the Declaration of Default, the Clearing House reasonably believes that porting would introduce an unacceptable level of risk or volatility to the Clearing System or to the Clearing House, provided this is in compliance with the CEA, CFTC Regulations and applicable bankruptcy laws.

8.4B.4 Each relevant Client shall be deemed to have consented for the purpose of Rule 8.4B.2(b) by having selected the FCM Clearing Member as its Clearing Member.

## 8.5 Calculation and certification of Single Net Sum – House and Client Accounts

*A summary of how this Rule works and the main legal implications is set out in the Clearing House's Disclosure Document on the Website. <http://www.cmegroup.com/europe/clearing-europe/resources.html>*

*Discharge of Defaulting Clearing Member's rights and liabilities*

8.5.1 Following the issuance by the Clearing House of a Declaration of Default, the Clearing House shall, subject to Rule 8.3, in relation to each of the Defaulting Clearing Member's House Accounts and (to the extent required by Rule 8.4) (i) when the Defaulting Clearing Member is a Non-FCM Clearing Member, each Notional Sub-Account within an Omnibus Client Account and Individual Client Account of the Defaulting Clearing Member, or (ii) when the Defaulting Clearing Member is an FCM Clearing Member, each FCM LSOC Client Sub-Account and FCM Futures Client Account, take the steps set out in this Rule 8.5. The Clearing House shall, in respect of each such Account or Notional Sub-Account, seek to discharge all of the Defaulting Clearing Member's rights and liabilities under all of the Affected Contracts by taking any of the actions set out in Rule 8.5.2, and thereafter by aggregating any obligations for the payment of money, whether present or future, actual or contingent, by the Defaulting Clearing Member under such Affected Contracts and the Rules, aggregating any such obligations to the Defaulting Clearing Member under each Affected Contract and the Rules, and offsetting the two aggregated amounts against one another so as to produce a **Single Contract Net Sum** in respect of each such Account or Notional Sub-Account.

8.5.2 For the purposes of discharging a Defaulting Clearing Member's rights and liabilities and calculating a Single Contract Net Sum and a Single Net Sum, the Clearing House may take any of the following actions or any combination of the following actions with respect to each of the relevant Accounts or Notional Sub-Accounts of the Defaulting Clearing Member:

- (a) closing out, settling, terminating and/or offsetting any Affected Contract including the application of Eligible Cash or the proceeds of the realisation of any Eligible Assets constituting Collateral credited to the Defaulting Clearing Member's Account or Notional Sub-Account in respect of such Affected Contract;
- (b) exercising any option granted by an Affected Contract;
- (c) entering into hedging transactions in relation to any Affected Contracts; and/or
- (d) auctioning any of the Defaulting Clearing Member's open positions under any Affected Contracts,

in each case and in respect of each Single Contract Net Sum, on such terms as the Clearing House shall determine and the rights and liabilities of the Defaulting Clearing Member referred to in Rule 8.5.1 shall include all rights and liabilities arising and any costs and expenses incurred in consequence of any such action. For avoidance of doubt, when the Defaulting Clearing Member is an FCM Clearing Member that is a Standard Clearing Member, the foregoing steps set out in this Rule 8.5.2 shall apply separately with respect to each Standard LSOC Client Sub-Account, the FCM FBOT Futures Client Account and the FCM DCM Futures Client Account.

8.5.3 If the Single Contract Net Sum with respect to all Affected Contracts which are Standard Contracts is due from the Defaulting Clearing Member, then it is the **Standard Interim Liability**. If the Single Contract Net Sum with respect to all Affected Contracts which are Standard Contracts is due to the Defaulting Clearing Member, then it is the **Standard Interim Asset**.

8.5.4 If the Single Contract Net Sum with respect to all Affected Contracts which are IRS Contracts is due from the Defaulting Clearing Member, then it is the **IRS Interim Liability**. If the Single Contract Net Sum with respect to all Affected Contracts which are IRS Contracts is due to the Defaulting Clearing Member, then it is the **IRS Interim Asset**.

*Standard Single Net Sum calculation*

8.5.5 The following steps shall be taken:

- (a) When the Defaulting Clearing Member is a Non-FCM Clearing Member, with respect to each Standard House Account and (to the extent required by Rule 8.4) Standard

Notional Sub-Account and Standard Individual Client Account of the Defaulting Standard Clearing Member:

- (i) the Defaulting Standard Clearing Member's Standard Collateral relating to the relevant Standard House Account, Standard Individual Client Account or Standard Notional Sub-Account (as applicable) shall be set off, or applied, against the Standard Interim Liability or aggregated with the Standard Interim Asset relating to such Account;
- (ii) in relation to a Standard Notional Sub-Account, in the absolute discretion of the Clearing House, any negative sum produced under Rule 8.5.5(a)(i) relating to that Standard Notional Sub-Account may be set off against:
  - (A) any Excess Collateral relating to the Omnibus Client Account of which the Notional Sub-Account forms part; and
  - (B) any positive sum produced under Rule 8.5.5(a)(i) relating to any other Standard Notional Sub-Account in the same Standard Omnibus Client Account;
- (iii) a proportion of the Defaulting Standard Clearing Member's Contribution to the Standard Guarantee Fund shall, and any Standard Single Net Sum relating to the Standard House Account of the Defaulting Standard Clearing Member may, be set off against any negative sum produced under Rule 8.5.5(a)(i) and 8.5.5(b)(ii), as applicable, or in relation to the Standard House Account, such Standard Guarantee Fund shall be aggregated with any positive sum produced under Rule 8.5.5(a)(i); and
- (iv) a proportion of any positive IRS Single Net Sum relating to the Defaulting Clearing Member's IRS House Account which remains after such IRS Single Net Sum has been applied pursuant to Rule 8.5.6 may be set off against any negative sum produced under Rules 8.5.5(a)(i), 8.5.5(a)(ii) and 8.5.5(a)(iii) as applicable,

the result being the **Standard Single Net Sum**.

- (b) When the Defaulting Clearing Member is an FCM Clearing Member, with respect to each Standard Swaps House Account and Standard Futures House Account (to the extent required by Rule 8.4), Standard LSOC Client Sub-Account and FCM Futures Client Account of the Defaulting Standard Clearing Member:

- (i) the Defaulting Standard Clearing Member's Standard Collateral relating to the relevant Standard Swaps House Account, Standard Swaps Futures Account,

Standard LSOC Client Sub-Account or FCM Futures Client Account (as applicable) shall be set off, or applied, against the Standard Interim Liability or aggregated with the Standard Interim Asset relating to such Account;

- (ii) in relation to a Standard LSOC Client Sub-Account, any negative sum produced under Rule 8.5.5(a)(i) relating to that Standard LSOC Client Sub-Account may be set off against any Collateral relating to the FCM Collateral Buffer Sub-Account within the Standard LSOC Client Account and if applicable, any Collateral relating to the FCM Collateral Buffer Sub-Account within the IRS LSOC Client Account, to the extent remaining after any set off against any IRS LSOC Client Sub-Accounts for which a negative sum is produced under Rule 8.5.5(a).
- (iii) a proportion of the Defaulting Standard Clearing Member's Contribution to the Standard Guarantee Fund shall, and any Standard Single Net Sum relating to the Standard Swaps House Account or Standard Futures House Account of the Defaulting Standard Clearing Member may, be set off against any negative sum produced under Rule 8.5.5(a)(i) and 8.5.5(a)(ii), as applicable, or in relation to the Standard Swaps House Account or Standard Futures House Account, such Standard Guarantee Fund shall be aggregated with any positive sum produced under Rule 8.5.5(a)(i); and
- (iv) a proportion of any positive IRS Single Net Sum relating to the Defaulting Clearing Member's IRS House Account which remains after such IRS Single Net Sum has been applied pursuant to Rule 8.5.6 may be set off against any negative sum produced under Rules 8.5.5(a)(i), 8.5.5(a)(ii) and 8.5.5(a)(iii) as applicable,

the result being the **Standard Single Net Sum**.

*IRS Single Net Sum calculation*

8.5.6 The following steps shall be taken

- (a) When the Defaulting Clearing Member is a Non-FCM Clearing Member, with respect to each IRS House Account and (to the extent required by Rule 8.4) IRS Notional Sub-Account and IRS Individual Client Account of the Defaulting IRS Clearing Member:
  - (i) the Defaulting IRS Clearing Member's IRS Collateral relating to the relevant IRS House Account, IRS Individual Client Account or IRS Notional Sub-Account (as applicable) shall be set off, or applied, against the IRS Interim Liability or aggregated with the IRS Interim Asset relating to such Account;

- (ii) in relation to an IRS Notional Sub-Account, in the absolute discretion of the Clearing House, any negative sum produced under Rule 8.5.6(a)(i) relating to that IRS Notional Sub-Account may be set off against:
  - (A) any Excess Collateral relating to the IRS Omnibus Client Account of which that IRS Notional Sub-Account forms part; and
  - (B) any positive sum produced under Rule 8.5.6(a)(i) relating to any other IRS Notional Sub-Account in the same IRS Omnibus Client Account;
- (iii) a proportion of the Defaulting IRS Clearing Member's Contribution to the IRS Guarantee Fund shall and any IRS Single Net Sum relating to the IRS House Account of the Defaulting IRS Clearing Member may be set off against any negative sum produced under Rule 8.5.6(a)(i) and 8.5.6(a)(ii), as applicable, or in relation to the IRS House Account, such IRS Guarantee Fund shall be aggregated with any positive sum produced under Rule 8.5.6(a)(i); and
- (iv) a proportion of any positive Standard Single Net Sum relating to the Defaulting Clearing Member's Standard House Account which remains after such Standard Single Net Sum has been applied pursuant to Rule 8.5.5 may be set off against any negative sum produced under Rules 8.5.6(a)(i), 8.5.6(a)(ii) and 8.5.6(a)(iii), as applicable,

the result being the **IRS Single Net Sum**.

- (b) When the Defaulting Clearing Member is an FCM Clearing Member, with respect to each IRS House Account and (to the extent required by Rule 8.4) and IRS LSOC Client Sub-Account of the Defaulting IRS Clearing Member:
  - (i) the Defaulting IRS Clearing Member's IRS Collateral relating to the relevant IRS House Account or IRS LSOC Client Sub-Account (as applicable) shall be set off, or applied, against the IRS Interim Liability or aggregated with the IRS Interim Asset relating to such Account;
  - (ii) in relation to an IRS LSOC Client Sub-Account, any negative sum produced under Rule 8.5.6(b)(i) relating to that IRS LSOC Client Sub-Account may be set off against any Collateral relating to the FCM Collateral Buffer Sub-Account within the IRS LSOC Client Account and if applicable, any Collateral relating to the FCM Collateral Buffer Sub-Account within the Standard LSOC Client Account, to the extent remaining after any set off against any Standard LSOC Client Sub-Accounts for which a negative sum is produced under Rule 8.5.5(b);

- (iii) a proportion of the Defaulting IRS Clearing Member's Contribution to the IRS Guarantee Fund shall and any IRS Single Net Sum relating to the IRS House Account of the Defaulting IRS Clearing Member may be set off against any negative sum produced under Rule 8.5.6(b)(i) and 8.5.6(b)(ii), as applicable, or in relation to the IRS House Account, such IRS Guarantee Fund shall be aggregated with any positive sum produced under Rule 8.5.6(ix); and
- (iv) a proportion of any positive Standard Single Net Sum relating to the Defaulting Clearing Member's Standard Swaps House Account or Standard Futures House Account which remains after such Standard Single Net Sum has been applied pursuant to Rule 8.5.5 may be set off against any negative sum produced under Rules 8.5.6(b)(i), 8.5.6(b)(ii) and 8.5.6(b)(iii), as applicable,

the result being the **Standard Single Net Sum**.

*Single Net Sum calculations - General*

8.5.7 The Clearing House may in its discretion decide to:

- (a) when the Defaulting Clearing Member is a Non-FCM Clearing Member, to delay the calculation of the Single Net Sums in relation to Individual Client Accounts and Notional Sub-Accounts until it has calculated the Standard Single Net Sum relating to the Standard House Account or the IRS Single Net Sum relating to the IRS House Account, as the case may be, so that the Standard Single Net Sum or the IRS Single Net Sum in relation to the relevant House Account may be applied in accordance with Rules 8.5.5(b)(a)(iv) or 8.5.6(a)(a)(iv); or
- (b) when the Defaulting Clearing Member is an FCM Clearing Member, to delay the calculation of the Single Net Sums in relation to FCM LSOC Client Sub-Accounts and FCM Futures Client Account until it has calculated the Standard Single Net Sum relating to the Standard Swaps House Account or Standard Futures House Account or the IRS Single Net Sum relating to the IRS House Account, as the case may be, so that the relevant Single Net Sum in relation to the relevant House Account may be applied in accordance with Rules 8.5.5(b)(iv) or 8.5.6(b)(iv); or
- (c) decide to apply the Clearing House's resources in accordance with Rule 8.6 without having first set off amounts pursuant to Rules 8.5.5(b)(iv) and/or 8.5.6(a)(iv).

8.5.8 The Clearing House will exercise its discretion in Rules 8.5.5 and 8.5.6 in such a way as to seek to achieve a fair and equitable allocation of any IRS Interim Assets or Standard Interim Assets and IRS Interim Liabilities or Standard Interim Liabilities, as applicable, relating to each Omnibus Client Account or each FCM LSOC Client Account or FCM Futures Client Account, as applicable.



8.5.9 To the extent there is any Collateral standing to the credit of a Swiss FS Account after the application of any amounts against a Standard Interim Liability or an IRS Interim Liability under Rules 8.5.5(a) or 8.5.6(a), it shall be applied in accordance with the terms of the relevant Swiss Collateral Management Agreement.

*Certification of each Single Net Sum*

8.5.10 The Clearing House shall certify:

- (a) in relation to each House Account and (to the extent required by Rule 8.4) and to each Individual Client Account or Notional Sub-Account, when the Defaulting Clearing Member is a Non-FCM Clearing Member, or to each FCM LSOC Client Sub-Account or FCM Futures Client Account, as applicable, when the Defaulting Clearing Member is an FCM Clearing Member:
  - (i) the Single Contract Net Sum; and
  - (ii) the Single Net Sum as the amount payable by or to the Defaulting Clearing Member or, if no amount is payable, zero; and
- (b) when the Defaulting Clearing Member is a Non-FCM Clearing Member, to the extent required by Rule 8.4, in relation to each Individual Client Account or Notional Sub-Account the fact that the Portable Net Sum has not been transferred to an Adopting Clearing Member pursuant to Rules 8.4.12 or 8.4.13;

and each such certificate shall be conclusive. The Clearing House shall make the certification to:

- (i) the relevant office holder acting in relation to the Defaulting Clearing Member;  
and
- (ii) the Clearing House's Regulatory Authority.

*Payment of each Single Net Sum*

8.5.11 When the Defaulting Clearing Member is a Non-FCM Clearing Member, in respect of an Individual Client Account or Notional Sub-Account, the Clearing House shall, if a positive sum, pay the Single Net Sum:

- (a) to the relevant Client (or to its order) or, if a Security Trustee has been appointed with respect to that Client, to the Security Trustee (or to its order) on trust for that Client, in each case if the Clearing House is satisfied that:

- (i) a Client Agreement, a Client Protection Agreement (if the Defaulting Clearing Member is a Security CM) and a Client Acknowledgement (either as part of the Client Protection Agreement or as a standalone agreement) is in full force and effect with respect to the relevant Client;
  - (ii) the Single Net Sum has been calculated with respect to Contracts and Collateral relating to one Client of the Defaulting Clearing Member; and
  - (iii) no other Applicable Law or regulation would require the payment returned to another party and, if there is an FS Individual Client Account with respect to the relevant Client, that the relevant FS Custody Agreement is in full force and effect; or
- (b) to the Defaulting Clearing Member or a relevant office holder acting in relation to the Defaulting Clearing Member, for the account of the relevant Client if the Clearing House is not satisfied that a Client Agreement, a Client Protection Agreement (if the Defaulting Clearing member is a Security CM) and a Client Acknowledgement is in full force and effect with respect to the relevant Client or an Applicable Law or regulation would require the payment returned to the Defaulting Clearing Member.

For the avoidance of doubt, the references to “Applicable Law” in this Rule 8.5.11 shall not be construed as restricting or negating the applicability of EMIR or FSMA or any obligation of the Clearing House, a Clearing Member or a Client under EMIR or FSMA or the Rules.

8.5.12 In respect of a House Account the Clearing House shall, if a positive sum, pay the Single Net Sum to the Defaulting Clearing Member or the relevant office holder acting in relation to the Defaulting Clearing Member.

8.5.13 In respect of any Account or Notional Sub-Account, FCM LSOC Client Sub-Account or FCM Futures Client Account (as applicable), each Clearing Member shall, if a negative sum, pay the Single Net Sum to the Clearing House.

*Notifications to the Defaulting Clearing Member*

8.5.14 The Clearing House shall notify the Defaulting Clearing Member or a relevant office holder acting in relation to the Defaulting Clearing Member or its estate of the actions taken in relation to the Defaulting Clearing Member under the Default Rules.

*Liquidation of Collateral and Contributions*

8.5.15 For the purposes of Rules 8.5.5 and 8.5.6, the Clearing House may liquidate Collateral and Contributions in the form of Eligible Securities at such time and at such rate as the Clearing House shall in its reasonable discretion determine.

*FS Individual Client Accounts*

- 8.5.16 Without prejudice to Rule 8.5.11, where the Single Net Sum has been determined with respect to an FS Individual Client Account and is a positive sum the Clearing House may, in its absolute discretion, deliver Equivalent Assets to satisfy in whole or in part its obligation to pay the Single Net Sum.
- 8.5.17 Should the Clearing House deliver Equivalent Assets in accordance with Rule 8.5.16, the Clearing House shall be discharged *pro tanto* from its obligation to deliver the corresponding value of the Single Net Sum and such Equivalent Assets shall be given the value ascribed to them by the Clearing House in its determination of the Single Net Sum.

**8.6 Application of Clearing House resources, VM Haircut Settlement Cycles and Optional Payments**

*Clearing House resources*

- 8.6.1 To the extent that the assets referred to in Rules 8.5.5 or 8.5.6 are insufficient or if the Clearing House is required to pay an amount under Rule 8.3.9, the Clearing House shall use the following assets to satisfy any outstanding amount in the order set out below:
- (a) to satisfy any outstanding amount in relation to a Standard Single Net Sum:
    - (i) the Clearing House's contribution to the Standard Guarantee Fund;
    - (ii) the Contributions of the non-defaulting Standard Clearing Members to the Standard Guarantee Fund; and
    - (iii) Standard Assessments received by the Clearing House pursuant to Rule 8.7.1; and
  - (b) to satisfy any outstanding amount in relation to an IRS Single Net Sum:
    - (i) the Clearing House's contribution to the IRS Guarantee Fund;
    - (ii) the Contributions of the non-defaulting IRS Clearing Members to the IRS Guarantee Fund;
      - (A) first, Contributions of a Subordinated Bidder (if any) up to an amount equal to the Aggregate Subordinated Amount for such Subordinated Bidder and where there is more than one Subordinated Bidder, an amount of the Contribution of each Subordinated Bidder equal to the relevant Aggregate Subordinated Amount will be applied pro rata;

(B) secondly, the remaining IRS Guarantee Fund of all non-defaulting IRS Clearing Members (excluding the Contributions to the IRS Guarantee Fund of each Winning Bidder equal to the Aggregate Seniorised Amounts for such Winning Bidders) will be applied pro rata; and

(C) thirdly the remaining IRS Guarantee Fund of all Winning Bidders will be applied pro rata; and

(iii) IRS Assessments received by the Clearing House pursuant to Rule 8.7.3.

8.6.2 If the Clearing House has notified the Bank of England that its contribution to either Guarantee Fund falls below the minimum amount it is required to contribute to either or both of the Guarantee Funds, the Clearing House shall replenish such amount within one month of such notification. If the Clearing House issues any Declaration of Default before the Clearing House has replenished such amount then the amounts available to be used in accordance with Rules 8.6.1(a)(i) and/or 8.6.1(b)(i) (as the case may be) will, notwithstanding any minimum amount previously set by the Clearing House, be limited to the residual amount of the Clearing House's contribution.

8.6.3 The obligations of the Clearing House to make payments in respect of Contracts are limited as set out in Rule 2.4, and the Clearing Members shall have no recourse to the Clearing House other than as set out in Rule 2.4.

*VM Haircut Settlement Cycle and Optional Payments*

8.6.4 If, at any time, the Clearing House determines that less than 25% (twenty five per cent.) of the IRS Assessments or less than 25% (twenty five per cent.) of the Standard Assessments, whether or not already collected, remains available to the Clearing House or is likely to be available once the Clearing House has met its obligations arising from Contracts with non-defaulting Clearing Members in the relevant Membership Category, subject to Rule 8.6.8, the Clearing House may:

(a) with respect to each Account of a non-defaulting Clearing Member in the relevant Membership Category:

(i) run a Settlement Cycle;

(ii) notify each non-defaulting Clearing Member holding such Account of any Variation Requirement determined by the Settlement Cycle which the non-defaulting Clearing Member will pay in accordance with Rule 6.1.1;

(iii) on the basis of the Settlement Cycle, determine the Collect or the Pay;

- (b) if applicable, with respect to each IRS Account of a non-defaulting IRS Clearing Member:
- (i) deduct from the Aggregate IRS Collects actually received by the Clearing House (and those that the Clearing House reasonably believes will be received in accordance with the Rules) the aggregate of (A) the Aggregate IRS Pays and (B) any fees, costs and expenses incurred by the Clearing House in performing the actions set out in Rule 8.6.4 that relate to IRS Contracts and are not already covered by Rule 8.3.9 (the difference being the **IRS Variation Margin Requirement Haircut**); and
  - (ii) allocate the IRS Variation Margin Requirement Haircut pro rata to each IRS Account with an IRS Pay;
- (c) if applicable, with respect to each Standard Account of a non-defaulting Standard Clearing Member:
- (i) deduct from the Aggregate Standard Collects actually received by the Clearing House (and those that the Clearing House reasonably believes will be received in accordance with the Rules) the aggregate of (A) the Aggregate Standard Pays and (B) any fees, costs and expenses incurred by the Clearing House in performing the action set out in Rule 8.6.4 that relate to Standard Contracts and are not already covered by Rule 8.3.9 (the difference being the **Standard Variation Margin Requirement Haircut**) and
  - (ii) allocate the Standard Variation Margin Requirement Haircut pro rata to each Standard Account with a Standard Pay,

on such terms as the Clearing House shall determine (each such Settlement Cycle, a **VM Haircut Settlement Cycle**). Prior to requesting Optional Payments in accordance with Rule 8.6.5, the Clearing House may, in its sole discretion, run more than one VM Haircut Settlement Cycle in respect of the relevant Membership Category provided the condition in this Rule 8.6.4 is met. To the extent Variation Requirement is retained by the Clearing House following a VM Haircut Settlement Cycle, it may be used by the Clearing House in its sole discretion.

8.6.5 Subject to Rule 8.6.8, if, having run one or more VM Haircut Settlement Cycles, the Clearing House determines, in consultation with the Risk Committee, that to run another VM Haircut Settlement Cycle would result in insufficient additional resources to satisfy the losses incurred by the Clearing House as a result of one or more Defaults, the Clearing House may request that each non-defaulting Clearing Member makes a payment to the Clearing House (an **Optional Payment**). The Clearing House will request that each

Optional Payment is at least equal to the amount which would be such Clearing Member's Contribution to the relevant Guarantee Fund at the end of the current Cooling Off Period, assuming the Clearing House does not issue any further Declarations of Default, but the Clearing Member may contribute any higher or lower amount. The following terms shall apply to each Optional Payment:

- (a) no Clearing Member shall be obliged to make an Optional Payment;
- (b) the Clearing House shall notify each non-defaulting Clearing Member in writing of the requested amount of the Optional Payment;
- (c) payment of an Optional Payment shall be made:
  - (i) in accordance with the provisions set out in Chapter 7; and
  - (ii) before the deadline for payment specified by the Clearing House in accordance with Rule 8.6.8;
- (d) no Optional Payment may be withdrawn once made;
- (e) no Optional Payment may be used by the Clearing House until all other resources of the Clearing House specified in Rule 8.6.1(a) or (b), as applicable, have been exhausted in accordance with the Rules; and
- (f) each Optional Payment may only be used to satisfy losses to, or to meet any obligations of, the Clearing House incurred with respect to the Membership Category to which the Optional Payment relates.

8.6.6 Subject to Rule 8.6.8, if the Clearing House determines that the Optional Payments it has received (and those it is reasonably likely to receive) with respect to a Membership Category will be insufficient to satisfy the losses it has incurred with respect to such Membership Category, the Clearing House may run a final VM Haircut Settlement Cycle in accordance with Rule 8.6.4 with respect to that Membership Category.

8.6.7 On the last day of the relevant Cooling Off Period or such later day as the Clearing House reasonably determines, the Clearing House shall with respect to each Account of a non-defaulting Clearing Member in the relevant Membership Category:

- (a) calculate the net Collect or Pay by aggregating the results of all the relevant VM Haircut Settlement Cycles and ignoring the amount actually paid or received by the Clearing House in this respect;
- (b) recalculate the IRS Variation Margin Requirement Haircut and the Standard Variation Margin Requirement Haircut based on:

- (i) the net Collect or Pay amounts calculated pursuant to paragraph (a); and
  - (ii) the actual results or expected changes in the other amounts contemplated in Rules 8.6.4(b) and 8.6.4(c);
- (c) reallocate;
- (i) that recalculated IRS Variation Margin Requirement Haircut pro rata to each IRS Account with a net IRS Pay; and
  - (ii) that recalculated Standard Variation Margin Requirement Haircut pro rata to each Standard Account with a net Standard Pay; and
- (d) pay to the Clearing Member or require the Clearing Member to pay to the Clearing House the difference (if any) between the amounts calculated and paid under Rule 8.6.4 and under this Rule 8.6.7. Each Clearing Member shall pay to the Clearing House any amount required under this Rule 8.6.7(d) within 2 (two) Business Days.

8.6.8 In order to take each of the actions set out in Rules 8.6.4, 8.6.5 and 8.6.6, the Clearing House shall publish a Notice on the Website stating:

- (a) that it may have insufficient resources;
- (b) with respect to which Membership Category the action is being taken;
- (c) in the case of action to be taken under Rule 8.6.4 or 8.6.6, specifying the date on which a VM Haircut Settlement Cycle will take place (which may be the date on which such Notice is published on the Website); and
- (d) in the case of action to be taken under Rule 8.6.5, specifying the deadline by which the Clearing House must receive any Optional Payment.

8.6.9 Any failure by the Clearing House to take any action under Rules 8.6.4 and/or 8.6.6 will not invalidate any action taken by the Clearing House pursuant to any other Rule nor give rise to any liability whatsoever on the part of the Clearing House.

8.6.10 If, having requested an Optional Payment, the Clearing House determines it is again able to meet its obligations arising from Contracts with non-defaulting Clearing Members and all or part of the Optional Payments received by the Clearing House have not been used, such unused Optional Payments shall be returned to the relevant Clearing Members in accordance with Rule 3.10 and if some but not all of the Optional Payments received have not been used, Optional Payments shall be returned to the relevant Clearing Members pro-rata to the amount of each Clearing Member's Optional Payment.

- 8.6.11 If, having taken the actions set out in Rules 8.6.4 to 8.6.6 in relation to the Contracts of one or more Product Classes, the Clearing House determines that a Limited Recourse Termination Event has occurred with respect to a Product Class, the Clearing House may then take the actions set out in Rules 8.10.8 to 8.10.16 with respect to that Product Class.
- 8.6.12 This Rule 8.6.12 applies if, having completed the foregoing processes in this Rule 8.6, the amount received by the Clearing House in respect of Assessments and Optional Payments of non-defaulting Clearing Members made in relation to a Declaration of Default and/or received from the Defaulting Clearing Member exceeds the amount required to satisfy the losses of the Clearing House relating to such Declaration of Default. The Clearing House shall pay an amount equal to such excess in the following order to the extent there is sufficient surplus excess after completion of each step and, to the extent there is insufficient surplus excess to complete a particular step, payment shall be made pro-rata to each relevant Clearing Member's relevant payment:
- (a) first, to reimburse each non-defaulting Clearing Member for an amount up to such Clearing Member's Optional Payment, if any;
  - (b) secondly, to reimburse each non-defaulting Clearing Member for an amount up to the amount by which their Allocated Pay was less than their Pay; and
  - (c) thirdly, to reimburse amounts to the Clearing House and non-defaulting Clearing Members in reverse order to the order in which assets were used in accordance with Rule 8.6.1, so that with respect to Standard Contracts reimbursement will start with Rule 8.6.1(a)(iii) and with respect to IRS Contracts reimbursement will start with Rule 8.6.1(b)(iii).
- 8.6.13 Notwithstanding that this Rule 8.6 refers and gives rights and liabilities to "non-defaulting Clearing Members", the Clearing House may (in its sole discretion) determine at any time that all or any part of this Rule 8.6 (and the resulting rights and obligations) shall also apply to a Defaulting Clearing Member.

## **8.7 Assessments following a Declaration of Default**

### *Standard Assessment*

- 8.7.1 During each Standard Cooling Off Period, the Clearing House shall have a right to collect from each non-defaulting Standard Clearing Member an amount (in addition to the Contribution) that does not exceed a total of 550% (five hundred and fifty per cent) of its Contribution to the Standard Guarantee Fund as at the date on which that Standard Declaration of Default is issued. The Clearing House may only collect one Standard Assessment from each non-defaulting Standard Clearing Member during each Standard Cooling Off Period.



8.7.2 The Clearing House may only use the amount referred to in Rule 8.7.1 if there remains an unsatisfied obligation after the Clearing House has used in full the contributions set out in Rules 8.6.1(a)(i) and 8.6.1(a)(ii) and in the following circumstances:

- (a) if there are no further Standard Declarations of Default during the relevant Standard Cooling Off Period, the Clearing House may only use a total of 275% (two hundred and seventy five per cent.) of each non-defaulting Standard Clearing Member's Contribution to the Standard Guarantee Fund as at the date on which the first Standard Declaration of Default in the relevant Standard Cooling Off Period was issued; and
- (b) if there are one or more further Standard Declarations of Default during the relevant Standard Cooling Off Period, the Clearing House may use a total of 550% (five hundred and fifty per cent.) of each non-defaulting Standard Clearing Member's Contribution to the Standard Guarantee Fund as at the date on which the first Standard Declaration of Default in the Standard Cooling Off Period was issued.

*IRS Assessment*

8.7.3 During each IRS Cooling Off Period, the Clearing House shall (subject to Rule 6.1.14) have a right to collect from each non-defaulting IRS Clearing Member an amount (in addition to the Contribution) determined by the Clearing House, using its Stress Test Methodology, that does not exceed such IRS Clearing Member's proportionate share of the theoretical third and fourth largest IRS Clearing Members' losses produced by such Stress Test Methodology (such amount and proportionate share as determined by the Clearing House), provided that the theoretical third and fourth largest IRS Clearing Members' losses produced by such Stress Test Methodology is subject to a minimum of 50% (fifty per cent.) of the total IRS Guarantee Fund prior to the start of the IRS Cooling Off Period. The Clearing House may only collect one IRS Assessment from each non-defaulting IRS Clearing Member during each IRS Cooling Off Period.

8.7.4 The Clearing House may only use the amount referred to in Rule 8.7.3, if there remains an unsatisfied obligation after the Clearing House has used in full the Contributions set out in Rule 8.6.1(b)(i) and 8.6.1(b)(ii).

*Assessments - General*

8.7.5 Each non-defaulting Clearing Member is required to provide the Assessments to the Clearing House through the arrangements set out in Rule 4.2.2, or if there is insufficient Eligible Cash within a Clearing Member's Bank Account to allow the delivery of Eligible Cash in accordance with Rule 4.2.2, the Clearing Member is required to deliver Eligible Cash within one (1) hour of notification of such amount if notification is received during the

hours when a Relevant Payment System is open and otherwise, within one (1) hour of the time at which a Relevant Payment System first opens after such notification. Subject to the limits set out in Rules 8.7.1 and 8.7.3, a Clearing Member may be required to pay the Assessments in more than one instalment during a Cooling Off Period.

8.7.6 With respect to Assessments, the Clearing House shall use its reasonable endeavours to notify non-defaulting Clearing Members and provide estimates of the amounts required in advance of any formal notifications.

8.7.7 After each Cooling Off Period, each non-defaulting Clearing Member's Contribution will be assessed pursuant to the Clearing House's assessment methodology. The Clearing House shall notify each Clearing Member of the new amount of Contribution in accordance with Rule 7.2.

## **8.8 Termination relating to an Event of Default**

8.8.1 During a Cooling Off Period, a non-defaulting Clearing Member may give written notice of its application to terminate its membership or membership of a particular Membership Category of the Clearing House in accordance with Rule 3.8.1.

8.8.2 A non-defaulting Clearing Member shall not have any obligations (and none of its assets, Contribution, Assessments or Optional Payments shall be applied) in respect of any Event of Default occurring after the Membership Termination Date relating to that non-defaulting Clearing Member. For the avoidance of doubt, if a Clearing Member terminates its ability to clear a particular type of Transaction without terminating its ability to clear all types of Transaction within that Membership Category in accordance with Rule 3.8.6, this Rule 8.8.2 shall not apply and the Clearing Member shall remain liable to have its assets, Contribution and Assessments applied in respect of any Event of Default occurring after the Membership Termination Date relating to any type of Transaction within that Membership Category.

## **8.9 Notification to other Clearing Members and Clients and cooperation with the Regulatory Authorities**

8.9.1 The Clearing House may notify the non-defaulting Clearing Members and their Clients of the actions taken under the Default Rules at various points in the process.

8.9.2 The Clearing House may share information (including information received from or about any Clearing Member), and otherwise cooperate, with any Regulatory Authority, clearing house or exchange and any insolvency practitioner in relation to the issue of a Declaration of Default.

## **8.10 Termination of all Contracts of a Product Class**

8.10.1 This Rule 8.10 is intended to form part of the default rules of the Clearing House (as contemplated in the Companies Act 1989, Part VII) to the extent that it relates to a Defaulting Clearing Member.

*Termination of clearing services*

8.10.2 The Clearing House may terminate all Contracts of one or both Product Classes or, in the case of an FCM Clearing Member that is a Standard Clearing Member, all Contract in one or both of the Standard Contract Product Sub-Classes, in accordance with this Rule 8.10 at any time on or following:

- (a) a Planned Termination Event; or
- (b) a Limited Recourse Termination Event.

8.10.3 On and after the Termination Date, each Clearing Member shall:

- (a) subject to Rule 8.10.3(c), cease to take any action in respect of its Contracts of the Affected Product Class;
- (b) subject to Rule 8.10.3(c), not enter into any new Contracts of the Affected Product Class; and
- (c) comply with any directions of the Clearing House.

*Planned Termination Event*

8.10.4 Following a Planned Termination Event, the Clearing House shall use its reasonable endeavours to transfer all or some of the Contracts of the Affected Product Class and related Collateral of non-defaulting Clearing Members which have agreed to such transfer to another clearing house which has agreed to accept such Contracts. The Clearing House shall conduct any such transfer on such terms as may be agreed between it and the other clearing house and the relevant Clearing Members. The Clearing Members shall promptly take such actions as are reasonably requested by the Clearing House for this purpose.

8.10.5 If the Clearing House determines that a transfer pursuant to Rule 8.10.4 is not practicable in respect of all or some of the Contracts of the Affected Product Class, it shall give written notice to all relevant Clearing Members of the date of termination of all Contracts of the Affected Product Class and shall seek to discharge all of the non-defaulting Clearing Members' rights and liabilities under the Contracts of the Affected Product Class pursuant to Rule 8.10.7. Such written notice shall be given by the Clearing House publishing a Notice on the Website.

8.10.6 The Clearing House may run one or more VM Haircut Settlement Cycles on any day starting on the date of a notice given pursuant to Rule 8.10.5 until the final Settlement Cycle contemplated in Rule 8.10.7. The provisions of Rule 8.6.4 (without the requirements relating to IRS Assessments or Standard Assessments) shall apply to each such VM Haircut Settlement Cycle.

8.10.7 On or as soon as reasonably practicable after the Termination Date with respect to a Planned Termination Event, the Clearing House may take the following steps with respect to each Account relating to an Affected Product Class of each non-defaulting Clearing Member:

- (a) run a final Settlement Cycle;
- (b) terminate all Contracts of the Affected Product Class at the price determined in the final Settlement Cycle;
- (c) notify each non-defaulting Clearing Member of any Variation Requirement determined by the final Settlement Cycle which the non-defaulting Clearing Member will pay in accordance with Rule 6.1.1; and
- (d) on the basis of the final Settlement Cycle and the provisions of Rule 8.6.7, determine the Collect or the Pay with respect to each Account of each non-defaulting Clearing Member,

on such terms as the Clearing House shall determine and the rights and liabilities of each Clearing Member shall include all those arising in consequence of any such action taken by the Clearing House.

*Limited Recourse Termination Event*

8.10.8 On or as soon as reasonably practicable after a Limited Recourse Termination Event, the Clearing House may:

- (a) publish a Notice on the Website informing Clearing Members and specifying the Affected Product Class and the date of the termination of all Contracts of the Affected Product Class; and
- (b) seek to discharge all of the non-defaulting Clearing Members' rights and liabilities under the Contracts of the Affected Product Class pursuant to Rule 8.10.10.

8.10.9 The Clearing House may run one or more VM Haircut Settlement Cycles on any day starting on the date of a notice given pursuant to Rule 8.10.8 until the final Settlement Cycle contemplated in Rule 8.10.10. The provisions of Rule 8.6.4 (without the requirements

relating to IRS Assessments or Standard Assessments) shall apply to each such VM Haircut Settlement Cycle.

8.10.10 On or as soon as reasonably practicable after the Termination Date with respect to a Limited Recourse Termination Event, the Clearing House may take the following steps with respect to each Account relating to an Affected Product Class of each non-defaulting Clearing Member:

- (a) run a final Settlement Cycle (which may take place at any time of day);
- (b) terminate all Contracts of the Affected Product Class at the price determined in the final Settlement Cycle;
- (c) notify each non-defaulting Clearing Member of any Variation Requirement (separately, in the case of an FCM Clearing Member, by Standard Contract Product Sub-Class, if applicable) determined by the final Settlement Cycle which the non-defaulting Clearing Member will pay in accordance with Rule 6.1.1;
- (d) on the basis of the final Settlement Cycle and the provisions of Rule 8.6.7, determine the Collect or the Pay;
- (e) if the Affected Product Class is IRS Contracts:
  - (i) calculate the IRS Variation Margin Requirement Haircut; and
  - (ii) calculate the Allocated IRS Pay for each Account with an IRS Pay; and
- (f) if the Affected Product Class is Standard Contracts:
  - (i) calculate the Standard Variation Margin Requirement Haircut (separately, in the case of an FCM Clearing Member, by Standard Contract Product Sub-Class, if applicable); and
  - (ii) calculate the Allocated Standard Pay for each Account with a Standard Pay (separately, in the case of an FCM Clearing Member, by Standard Contract Product Sub-Class, if applicable);

on such terms as the Clearing House shall determine and the rights and liabilities of each relevant Clearing Member shall include all those arising in consequence of any such action taken by the Clearing House.

8.10.11 The obligations of the Clearing House to make payments in respect of Contracts of an Affected Product Class are limited as set out in Rule 2.4 and the relevant Clearing

Members shall have no further recourse to the Clearing House other than as set out in Rule 2.4.

*Payments following the Termination Date*

- 8.10.12 The Clearing House shall notify each non-defaulting Clearing Member which clears Contracts of the Affected Product Class of the Pay, Collect or Allocated Pay with respect to each of its Accounts.
- 8.10.13 Each non-defaulting Clearing Member with a Collect shall pay such amount to the Clearing House. Once the Clearing House is satisfied it has received all the Collects with respect to an Affected Product Class, it shall make payment to each non-defaulting Clearing Member with an Account related to that Affected Product Class which has a Pay or Allocated Pay.
- 8.10.14 The Clearing House may adjust payments to account for the default of any IRS Clearing Member in settling a Pay.
- 8.10.15 This Rule 8.10.15 applies if (having completed the process in Rule 8.10.10) the amount received by the Clearing House in respect of Aggregate Collects with respect to an Affected Product Class exceeds the aggregate amount of Allocated Pays relating to the same Affected Product Class. The Clearing House shall pay an amount equal to such excess in the following order:
- (a) first, to reimburse non-defaulting Clearing Members which clear Contracts of the Affected Product Class for an amount up to such Clearing Member's Optional Payment, if any;
  - (b) secondly, to reimburse non-defaulting Clearing Members of the Affected Product Class for an amount up the amount of any Variation Margin Requirement Haircuts; and
  - (c) thirdly, to reimburse amounts to the Clearing House and non-defaulting Clearing Members of the Affected Product Class in reverse order to the order in which assets were used in accordance with, in respect of IRS Contracts Rule 8.6.1(b), starting with Rule 8.6.1(b)(iii) and ending with Rule 8.6.1(b)(i), or, in respect of Standard Contracts, Rule 8.6.1(a), starting with Rule 8.6.1(a)(iii) and ending with Rule 8.6.1(a)(i).
- 8.10.16 Notwithstanding that this Rule 8.10 refers and applies to "non-defaulting Clearing Members" of the relevant Product Class, the Clearing House may (in its sole discretion) determine that at any time all or any part of this Rule 8.10 (and the resulting rights and obligations) shall also apply to a Defaulting Clearing Member of the relevant Product Class.

8.10.17 This Rule 8.10 shall only apply if none of the events in Rule 2.5.1 have occurred. If at any time following the occurrence of a Planned Termination Event and/or a Limited Recourse Termination Event, including at any time when the Clearing House is implementing any provision of this Rule 8.10, any of the events under Rule 2.5.1 occurs, this Rule 8.10 shall cease to apply and instead Rule 2.5.1 and the process set out therein shall apply.

### **8.11 Following termination of all Contracts of an Affected Product Class**

8.11.1 If, following termination of all Contracts of an Affected Product Class pursuant to Rule 8.10, the Clearing House decides to recommence clearing Contracts of that Affected Product Class, it will publish a Notice on its Website to that effect and Clearing Members will be able to clear Contracts of that Affected Product Class provided that such Clearing Members fulfil the Membership Criteria and otherwise comply with the Rules, including, without limitation, by making the required Contribution(s) to the Guarantee Fund(s) as recalculated at the appropriate time.

### **8.12 Termination of Clearing Services in respect of Exchange Transactions**

8.12.1 This Rule 8.12 is intended to form part of the default rules of the Clearing House (as contemplated in the Companies Act 1989, part VII) to the extent that it relates to a Defaulting Standard Clearing Member.

8.12.2 If, at any time, the Clearing House decides to withdraw all or any part of the Clearing Services in respect of all or a particular type of Exchange Transaction, it will issue a Notice to all affected Clearing Members.

8.12.3 Prior to issuing a Notice in accordance with Rule 8.12.2, the Clearing House shall consult with each relevant Exchange, Regulatory Authority and affected Clearing Member.

8.12.4 The Notice issued in accordance with Rule 8.12.2 shall specify the process to be used to wind up the Clearing Services or any part of them in respect of the relevant Exchange Transactions.

### **8.13 Termination of all Contracts**

8.13.1 This Rule 8.13 is intended to form a part of the default rules of the Clearing House (as contemplated in the Companies Act 1989, Part VII) to the extent that it related to a Defaulting Clearing Member.

8.13.2 The Clearing House may terminate all Contracts in accordance with this Rule 8.13 at any time on or following a CCP Withdrawal of Authorisation Event.

8.13.3 On and after a CCP Withdrawal of Authorisation Event, each Clearing Member shall:

- (a) subject to Rule 8.13.3(c), cease to take any action in respect of any Contract;
- (b) subject to Rule 8.13.3(c), not enter into any new Contracts; and
- (c) comply with any directions of the Clearing House.

8.13.4 Following a CCP Withdrawal of Authorisation Event, the Clearing House shall use its reasonable endeavours to transfer all or some Contracts and related Collateral of non-defaulting Clearing Members which have agreed to such transfer to another clearing house which has agreed to accept such Contracts. The Clearing House shall conduct any such transfer on such terms as may be agreed between it and the other clearing house and the relevant Clearing Members. The Clearing Members shall promptly take such actions as are reasonably requested by the Clearing House for this purpose.

8.13.5 If the Clearing House determines that a transfer pursuant to Rule 8.13.4 is not practicable in respect of some or all Contracts, it shall give written notice to all Clearing Members of the date of termination of all Contracts and shall seek to discharge all of the non-defaulting Clearing Members' rights and liabilities under the Contracts pursuant to Rule 8.13.6. Such written notice shall be given by the Clearing House publishing a Notice on the Website.

8.13.6 As soon as reasonably practicable after the date stated in the Notice published pursuant to Rule 8.13.5, the Clearing House may take the following steps:

- (a) run a final Settlement Cycle;
- (b) notify each non-defaulting Clearing Member of any Variation Requirement determined by the final Settlement Cycle which the non-defaulting Clearing Member will pay in accordance with Rule 6.1.1; and
- (c) on the basis of the final Settlement Cycle, determine the Collect or Pay with respect to each Account of each non-defaulting Clearing Member,

on such terms as the Clearing House shall determine and the rights and liabilities of each Clearing Member shall include those arising in consequence of any such action taken by the Clearing House.

8.13.7 The Clearing House shall notify each non-defaulting Clearing Member of the Pay or Collect with respect to each of its Accounts.

8.13.8 Each non-defaulting Clearing Member with a Collect shall pay such amount to the Clearing House. Once the Clearing House is satisfied it has received all the Collects, it shall make payment to each non-defaulting Clearing Member with a Pay.



- 8.13.9 The Clearing House may adjust payments to account for the default of any Clearing Member in settling a Collect.
- 8.13.10 Notwithstanding that this Rule 8.13 refers and applies to non-defaulting Clearing Members, the Clearing House may (in its sole discretion) determine that at any time all or any part of this Rule 8.13 shall also apply to a Defaulting Clearing Member.
- 8.13.11 This Rule 8.13 shall only apply if none of the events in Rule 2.5.1 have occurred. If at any time following the occurrence of a CCP Authorisation Withdrawal Event, including at any time when the Clearing House is implementing any provision of this Rule 8.13, any of the events under Rule 2.5.1 occurs, this Rule 8.13 shall cease to apply and instead Rule 2.5.1 and the process set out therein shall apply.

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## CHAPTER 9

### COMPLAINTS, ENFORCEMENT AND BREACHES

#### 9.1 Complaints

- 9.1.1 Any Complaint shall be made in accordance with the Complaints Procedure.
- 9.1.2 The Clearing House shall consider a Complaint in accordance with this Chapter 9 of the Rules and the Complaints Procedure:
- (a) a Clearing House Complaint shall be dealt with in accordance with the Complaints Procedure; and
  - (b) if a Clearing Member Complaint alleges a breach of the Rules, the Clearing House will commence an Investigation and may commence Disciplinary Proceedings in accordance with the Rules.
- 9.1.3 The Clearing House shall notify a Clearing Member which makes a Clearing Member Complaint of the steps it has taken to review such Complaint and the outcome.
- 9.1.4 If the Clearing House, in its discretion, considers it appropriate or if it is otherwise required to do so under Applicable Law, the Clearing House may provide details to a Regulatory Authority about any Complaint, matter or concern which it considers requires investigation and about any outcome of an Investigation or Disciplinary Proceeding.

#### 9.2 Investigations

- 9.2.1 The Clearing House may investigate breaches or alleged breaches of the Rules, whether or not such breaches or alleged breaches have arisen as a result of a Clearing Member Complaint, at its own instigation, a disputed notification of breach received in accordance with Rule 9.7.3, or otherwise in accordance with the provisions of Rule 9.3 (the **Investigation**).
- 9.2.2 A Clearing Member shall cooperate fully with any Investigation irrespective of whether such Clearing Member is the subject of or otherwise involved in the Investigation. Without limitation, each Clearing Member shall:
- (a) provide to the Clearing House such information in whatsoever form as the Clearing House may reasonably request, within the timescale specified;
  - (b) permit Representatives of the Clearing House access, with or without notice, during business hours to any of the Clearing Member's business premises (which for the avoidance of doubt includes those premises in which records are stored) in order to carry out the Investigation;

- (c) make its Representatives readily available for meetings with the Representatives of the Clearing House conducting the Investigation, as the Clearing House may reasonably request, and use its best endeavours to procure that such persons answer truthfully, fully and promptly, all questions that are put to them;
- (d) produce and give the Representatives of the Clearing House conducting the Investigation reasonable access to documents, records, files, tapes and computer systems which are within the Clearing Member's possession or control and provide any facilities which such Representatives may reasonably request; and
- (e) print information in the Clearing Member's possession or control which is held on computer or otherwise convert it into a readily legible document or any other record that may be reasonably requested by the Representatives of the Clearing House conducting the Investigation.

### 9.3 Investigation process

- 9.3.1 If the Clearing House considers that a Complaint, matter or concern requires investigation or if the Clearing Member has requested an investigation in accordance with Rule 9.7.3, the Clearing House shall issue a notice of Investigation (**Investigation Notice**) to the Clearing Member concerned to the effect that an Investigation has been commenced and setting out a brief description of the matter under Investigation.
- 9.3.2 Once the Clearing House has carried out the Investigation it shall send to the relevant Clearing Member a preliminary letter that describes its preliminary factual conclusions and the action it proposes to take in the light of such breach.
- 9.3.3 The Clearing House shall also invite the Clearing Member to either attend a meeting or to send written comments to the Clearing House, in each case, to enable the Clearing Member to correct any factual error that it reasonably considers has been made in the preliminary letter. After the meeting or the receipt of written comments from the Clearing Member, as the case may be, the Clearing House shall finalise its initial findings and present them in writing to the Clearing Member.
- 9.3.4 After sending its initial findings to the Clearing Member, the Clearing House may exercise one (1) or more of the following powers in relation to the Clearing Member concerned:
  - (a) subject to Rule 9.7, decide that no further action should be taken against the Clearing Member;
  - (b) issue a private written warning to the Clearing Member;
  - (c) instigate Disciplinary Proceedings in accordance with Rule 9.4;

- (d) carry out further enquiries if the Investigation indicates that this is necessary in order to conclude satisfactorily the Investigation;
- (e) refer all or a portion of the investigation to a Regulatory Authority;
- (f) publish, notwithstanding Rule 9.7 and subject to any objection by the Bank of England, details of the breach of the Rules on the Website.

9.3.5 The Clearing House shall notify the Clearing Member in writing of the power to be exercised. The Clearing House may, in an appropriate case, take different actions in relation to Clearing Members concerned in the same Disciplinary Proceedings or in different Disciplinary Proceedings on the same or similar facts.

#### **9.4 Disciplinary Proceedings**

9.4.1 The Clearing House shall commence the disciplinary proceedings set out in this Rule 9.4 (the **Disciplinary Proceedings**) only when it is reasonably satisfied that the Clearing Member has breached the Rules, whether as a result of an Investigation or otherwise.

9.4.2 The Clearing House may decide at any time to terminate the Disciplinary Proceedings or reach a settlement with the Clearing Member on such terms as it considers appropriate, at any stage during the Disciplinary Proceedings.

9.4.3 For the purposes of each Disciplinary Proceeding the Board of Directors shall nominate the members of a disciplinary panel, as it deems appropriate, which shall accordingly be referred to for the purposes of this Rule 9.4 as the **Disciplinary Panel**. The Disciplinary Panel will be comprised in accordance with 9.4.3(a) to 9.4.3(f) below:

- (a) Each Disciplinary Panel shall consist of a chairman sitting with two other persons. Such persons, including the chairman, that are appointed to the Disciplinary Panel may be market practitioners, members of the Risk Committee, experts, lawyers or other suitable persons at the discretion of the Clearing House.
- (b) Neither employees nor directors of the Clearing House shall be appointed to a Disciplinary Panel.
- (c) No Clearing Member subject to disciplinary proceedings or any of their Affiliates, Representatives or customers shall be appointed to a Disciplinary Panel.
- (d) No person shall serve on or sit with a Disciplinary Panel if he has a personal or financial interest in, or has been involved in any investigation into the matter under consideration.

- (e) No person shall serve on or sit with a Disciplinary Panel if an undertaking with which he is associated has any commercial relationship with any of those parties listed in Rule 9.4.3(c) that may cause actual or potential material conflict.
- (f) Expert assessors may be appointed, at the discretion of the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but not to vote.

9.4.4 In the event of any member of the Disciplinary Panel having or acquiring a personal, or financial interest in the outcome, or a commercial relationship as described in Rule 9.4.3(e), or in any other way being or becoming incapacitated or permanently unavailable, the chairman of the Disciplinary Panel (or in the case of the chairman of the Disciplinary Panel, the Chairman of the Board of Directors of the Clearing House) may direct that the Disciplinary Panel shall continue to act with a reduced number or appoint another person to take the place of the retiring member of the Disciplinary Panel (and the disciplinary proceedings shall then proceed as if such person had been originally appointed in lieu of the first person) or may direct that a new Disciplinary Panel should be appointed to rehear the matter.

9.4.5 In the event of equality of votes, the chairman shall have a second or casting vote in reaching any determination.

9.4.6 To commence the Disciplinary Proceedings the Clearing House shall send to the Clearing Member concerned a written notice (the **Disciplinary Notice**), which contains details of the alleged breach of the Rules and sufficient information to enable the Clearing Member to understand and respond to such allegations.

9.4.7 The Clearing Member shall have twenty (20) Business Days from receipt of the Disciplinary Notice to provide a statement of defence (the **Defence**) in respect of the allegations. The Defence shall set out the plea that the Clearing Member intends to make and any admissions of fact. If no Defence has been served within that timeframe the Clearing Member shall be deemed to have accepted the facts and matters alleged in the Disciplinary Notice.

9.4.8 After due consideration of the Defence, the Clearing House may either:

- (a) proceed with the Disciplinary Proceedings;
- (b) terminate the Disciplinary Proceedings; or
- (c) amend the Disciplinary Notice in accordance with Rule 9.4.9.

9.4.9 The Clearing House may at any time amend a Disciplinary Notice provided that:

- (a) the amendment is relevant to the allegation or breach of the Rules;

- (b) the essential character of the allegation or the breach of the Rules has not been changed; and
- (c) the Clearing Member would not be substantially prejudiced in any defence it may put before the Disciplinary Panel.

9.4.10 The Disciplinary Panel may order an adjournment at any stage upon an application by the Clearing House to enable an alleged separate or unrelated breach of the Rules which it reasonably believes the Clearing Member to have committed to be investigated further.

9.4.11 Following the amendment of a Disciplinary Notice, the Clearing Member shall have ten (10) Business Days to make any necessary changes to its Defence. If no amended Defence has been served within that timeframe the Clearing Member will be deemed to have accepted the facts and matters alleged in the amended Disciplinary Notice and indicated that its original Defence stands.

9.4.12 The Disciplinary Panel shall hear submissions on the matter of the alleged breach of the Rules and shall determine whether there has been a breach of the Rules and, if so, the appropriate sanction that shall be imposed. In carrying out this function, the Disciplinary Panel may adopt such procedure as it thinks fit. The Disciplinary Panel may:

- (a) order the disclosure by the Clearing House or Clearing Member of such further information, documents or other evidence as may be necessary;
- (b) issue directions and take such other steps as it considers appropriate to clarify the facts and issues and determine the case;
- (c) if it considers appropriate, but only with the express agreement of the Clearing House and the Clearing Member concerned, decide to determine the case upon written submissions and evidence placed before it;
- (d) in all other cases, give the opportunity to, or require, the Clearing House and the Clearing Member to attend hearings before the Disciplinary Panel and the Clearing House and the Clearing Member may call witnesses to give evidence and be questioned;
- (e) allow the Clearing Member and the Clearing House to be assisted or represented by any person, whether or not legally qualified;
- (f) require hearings to be held in private unless the Clearing Member or Clearing House requests otherwise and the other party consents; and
- (g) appoint its own legal advisers.

- 9.4.13 The Disciplinary Panel shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach.
- 9.4.14 The Disciplinary Panel shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact made by a court or any other Regulatory Authority.
- 9.4.15 The Disciplinary Panel shall communicate in writing its findings and particulars of any sanction determined to the Clearing House and to the Clearing Member concerned. Such findings and sanctions shall be deemed conclusive and binding upon expiry of the time permitted for appeal or receipt by the Clearing House of any earlier written notice from the Clearing Member that such right of appeal will not be exercised. Subject to Rule 9.14.16(b), such findings and sanctions shall not be made public.
- 9.4.16 The Disciplinary Panel may impose one or more of the following sanctions:
- (a) issue a private written warning to the Clearing Member;
  - (b) issue of a public notice of censure;
  - (c) impose a fine of any amount;
  - (d) require the disgorgement of any gain made by the Clearing Member or its Representatives in connection with the breach of the Rules;
  - (e) recommend to the Clearing House to suspend or terminate the membership or membership of any or all Membership Categories of the Clearing Member with immediate effect; or
  - (f) issue an order requiring the Clearing Member to take such steps including making an order for compensation, as the Disciplinary Panel may direct, to remedy the situation caused by the breach of the Rules.
- 9.4.17 The Disciplinary Panel has discretion as to the appropriate sanction in each case and such differentiation may take into account factors including whether the breach was deliberate or negligent, the seriousness of the consequences and whether the Clearing Member has since taken action to remedy the breach or prevent a recurrence.
- 9.4.18 The contravention of any sanction imposed or direction made under or pursuant to Rule 9.4.16 may be treated for all purposes as a breach of the Rules.
- 9.4.19 A Disciplinary Panel may order any party to the Disciplinary Proceedings to pay costs related to such proceedings as it thinks appropriate, including, but not limited to the costs of

running the Disciplinary Panel and including the reasonable costs of the Clearing House's and Disciplinary Panel's external advisers.

- 9.4.20 If the Disciplinary Panel finds that the Clearing Member has breached any Rule, the Clearing House will, notwithstanding any provision of Rule 9.7 and subject to any objection from the Bank of England, publish details of such breach on the Website.

## 9.5 Appeals

- 9.5.1 Within ten (10) Business Days of receiving notice in writing of a decision of a Disciplinary Panel, or a notice of sanction (whichever is the later), or a calculation of a CCP Default Single Net Sum which the Clearing House disputes, a Clearing Member (whether current or former in the case of expulsion) or the Clearing House, or both, may appeal to the appeals body (the **Appeals Body**) by lodging with the Clearing House a notice of appeal in writing and by delivering a copy thereof to any other party to the Disciplinary Proceedings. The Clearing House shall refer the appeal to the Appeals Body within ten (10) Business Days of receipt of the appeal.

- 9.5.2 A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The grounds of the appeal may be any one or more of the following:

- (a) the Disciplinary Panel's decision was:
  - (i) arbitrary, capricious, or an abuse of its discretion; or
  - (ii) based on a clearly erroneous application or interpretation of the Rules; or
- (b) the sanction imposed by the Disciplinary Panel was excessive or, in the case of an appeal by the Clearing House, was insufficient or inappropriate.

- 9.5.3 In the case of appeal against a sanction, the Appeals Body may affirm, vary or revoke the sanction. The Appeals Body may make such order or give such direction as it considers fit including a direction for a rehearing of the case by another newly constituted Disciplinary Panel.

- 9.5.4 The Appeals Body shall consist of one (1) or more than one (1) persons who shall be nominated for the purposes of this Rule 9.5.4 by the Centre for Effective Dispute Resolution in London. Such person shall:

- (a) be independent of the Clearing House, meaning for the purposes of these Rules, that such person is not and has not ever been an officer, director or employee of the Clearing House or an Affiliate;



- (b) have appropriate experience of the clearing market and normal clearing operations;  
and
- (c) have appropriate knowledge of the Clearing House, the Rules and relevant Applicable Law.

9.5.5 An Appeals Body may adopt such procedure as it thinks fit and just, including, without limitation, the procedures described in Rule 9.4.12 and shall notify the Clearing Member accordingly. The Appeals Body shall be bound by Rule 9.4.13. The appellant and the respondent shall be entitled to appear, make representations and (subject to any restriction on adducing new evidence), call witnesses, who may be examined and cross-examined at any hearing, which will not be held in public.

9.5.6 The decision of an Appeals Body shall be final and binding and there shall be no further appeal. The decision shall be supported with reasons and shall be notified to the appellant and respondent in writing without undue delay. The decision of an Appeals Body shall not be made public unless otherwise agreed between the appellant and the respondent.

9.5.7 If the Appeals Body finds that any action taken by the Clearing House in accordance with Rule 9.4.20 should not have been taken, the Clearing House shall remove all relevant details from the Website.

## **9.6 Fines**

9.6.1 The proceeds of any fine imposed by the Clearing House shall be used for the following purposes only:

- (a) to meet expenses incurred by the Clearing House in the course of the Investigation, Disciplinary Proceeding or appeal from a Disciplinary Proceeding in respect of which it has been imposed;
- (b) for the benefit of the Clearing Members generally; or
- (c) for charitable purposes.

## **9.7 Rule Breaches**

9.7.1 If the Clearing House reasonably believes that a Clearing Member has breached any of the Rules and details of such breach are required to be published pursuant to the Clearing House's regulatory obligations, it shall notify the Clearing Member in writing.

9.7.2 If the Clearing Member does not dispute the notice given in accordance with Rule 9.7.1 within 48 (forty eight) hours of such notice the Clearing House shall, subject to any objection from the Bank of England, publish details of the breach on the Website.

- 9.7.3 Subject to Rule 9.7.4, if the Clearing Member disputes the breach notified to it in accordance with Rule 9.7.1, the alleged breach shall be investigated in accordance with the provisions of this Chapter 9.
- 9.7.4 The Clearing House will not investigate a disputed breach where it reasonably believes that the dispute is frivolous, vexatious or has been made with the primary purpose of delaying the publication of details of the breach of the Rules.

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## CHAPTER 10

### SETTLEMENT FINALITY

#### 10.1 Introduction and Definitions

- 10.1.1 The Clearing House is a designated system for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the **Settlement Finality Regulations**) in respect of Transfer Orders and default arrangements and certain other matters relating to the Clearing House. In addition, Part VII of the Companies Act 1989 (the **Companies Act 1989**) applies in respect of Contracts, the Default Rules and certain other matters relating to the Clearing House. The rules of the Designated System comprise this Chapter 10 (Settlement Finality) and the agreements the Clearing House has entered into with the Custodians and, in certain cases, other parties (the **Custody Agreements**), the settlement bank agreements the Clearing House has entered into with the Settlement Banks (the **Settlement Bank Agreements**) and the cash reinvestment agreements the Clearing House has entered into with the Cash Reinvestment Agents (the **Cash Reinvestment Agreements**) (together these shall be known as the **Settlement Finality Rules**).
- 10.1.2 The purpose of the Settlement Finality Regulations is to allow a system which effects securities and payments transfers to apply to be a designated system and thereby to have the benefit of certain modifications to the general law of insolvency. The modifications seek to minimise the disruption to a system caused by insolvency proceedings brought against a participant in such system. The aim is to ensure that in insolvency proceedings transactions that have been settled in the system are final and irrevocable and to strengthen the enforceability of collateral security. In order to receive these protections, a system must meet the criteria set out in the Settlement Finality Regulations and be designated by the Bank of England or its predecessor, the FSA.
- 10.1.3 Clearing Members, being participants of the Designated System, are also subject to various obligations and requirements as a result of the Settlement Finality Regulations and Companies Act 1989. Clearing Members must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Regulations and the Companies Act 1989.

#### 10.2 Definitions

**Cash Reinvestment Agent** means an agent through which the Clearing House invests Collateral and/ or Contributions;

**Designated System** means the standardised formal arrangements, common rules and procedures as set out in the Rules and the Settlement Finality Rules (to the extent applicable), and related functionality which:

- (a) enables the Clearing House to give instructions to transfer to Clearing Members amounts of money on the accounts of certain banks, credit institutions, investment firms or settlement agents;
- (b) enables (a) the Clearing House to give instructions on behalf of Clearing Members; and (b) Clearing Members to give instructions, in each case, to transfer to the Clearing House amounts of money on the accounts of certain banks, credit institutions, investment firms or settlement agents;
- (c) enables the Clearing House to give instructions to a Custodian to arrange for the transfer of title to, and interest in, Securities and cash;
- (d) enables Clearing Members to give instructions to any of their custodians or the Custodian to transfer title to, and interest in, Securities and cash;
- (e) enables the Clearing House to give instructions to any of its Cash Reinvestment Agents to arrange for the transfer of title to, and interest in, cash;
- (f) enables the Clearing House to become central counterparty to Clearing Members in respect of Transactions;
- (g) enables the Clearing House and Clearing Members to fulfill the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
- (h) enables transfers, assignments and novations, however effected, of Contracts between Clearing Members in accordance with the Rules including following a Declaration of Default; and
- (i) facilitates supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in accordance with the Rules.

**Participant** means the Clearing House, each Clearing Member, each Settlement Bank, each Agent Bank, each Custodian and each Cash Reinvestment Agent and each other person that is a participant (as defined in the Settlement Finality Regulations) in the Designated System (and this Chapter 10 shall apply equally to any insolvency practitioner appointed for, or with powers in respect of, a Participant).

**Payment Transfer Order** has the same meaning as in the Settlement Finality Regulations.

**Securities** has the same meaning as in the Settlement Finality Regulations.

**Securities Transfer Order** has the same meaning as in the Settlement Finality Regulations.

**Transfer Order** means a Payment Transfer Order or a Securities Transfer Order.

### 10.3 Transfer Orders Arising

10.3.1 The points at which a Transfer Order takes effect as having been entered into the Designated System are when:

#### **Securities Transfer Orders**

- (a) (i) the Clearing House sends an instruction to a Custodian by SWIFT message or such other form; or (ii) a Custodian acts on a standing instruction, in each case, as set out in the relevant Custody Agreement to transfer the title to, and interest in, Eligible Securities from an account of the Clearing Member or a Client to an account of the Clearing House, in each case pursuant to Rule 6.1.6 (a **Securities Substitution**);
- (b) (i) the Clearing House sends an instruction to a Custodian by SWIFT message or such other form, or (ii) a Custodian acts on a standing instruction, in each case, as set out in the relevant Custody Agreement to transfer the title to, and interest in, Eligible Securities from an account of the Clearing House to an account of the Clearing Member or a Client pursuant to Rule 6.1.6 (a **Securities Return**);
- (c) a Contract novated in the Clearing System in accordance with Rule 5.2 (a **Contract Order**);
- (d) the transfer, assignment or novation of any Contract from a Clearing Member to a Transferee Clearing Member occurs pursuant to Rule 3A.6 or Rule 5.3 (a **Contract Transfer**);
- (e) the transfer of an Affected Contract from the Defaulting Clearing Member to another Clearing Member including an Adopting Clearing Member occurs (an **Affected Contract Transfer**);
- (f) the transfer of Eligible Securities by the Clearing House from a Clearing Member or a Defaulting Clearing Member to another Clearing Member including an Adopting Clearing Member or its Client occurs in respect of a Contract Transfer or an Affected Contract Transfer (a **Securities Collateral Transfer**);
- (g) the Clearing House sends an instruction to a Custodian by SWIFT message or such other form as set out in the relevant Custody Agreement to transfer the title to, and interest in, Eligible Securities from an account of the Clearing House to an account of the Defaulting Clearing Member or its insolvency practitioner or any Client or Security Trustee of the Defaulting Clearing Member or the relevant FS Security Trustee

pursuant to any of the Default Rules, the Client Protection Agreement and the FS Documents (a **Securities Collateral Return**);

### **Payment Transfer Orders**

- (h) the Clearing House sends an instruction to a Settlement Bank, by SWIFT message or such other form as set out in the relevant Settlement Bank Agreement, to transfer to the Clearing House an amount of money to be debited from an account of the Clearing Member with the Settlement Bank pursuant to the Rules including in respect of Contracts, Collateral, Contribution, fees and charges, interest on Eligible Cash and Equivalent Distributions (a **Receipt**);
- (i) the Clearing House sends an instruction to a Settlement Bank, by SWIFT message or such other form as set out in the relevant Settlement Bank Agreement, to transfer to a Clearing Member an amount of money to be debited from an account of the Clearing House pursuant to the Rules including in respect of Contracts, Collateral, Contribution, interest on Eligible Cash and Equivalent Distributions from the Clearing House's account at the Settlement Bank to the Clearing Member's account at the Settlement Bank (a **Payment**);
- (j) the transfer of Eligible Cash by the Clearing House from a Clearing Member or a Defaulting Clearing Member to another Clearing Member, including an Adopting Clearing Member, occurs in respect of a Contract Transfer or an Affected Contract Transfer (a **Cash Collateral Transfer**);
- (k) the Clearing House sends an instruction to a Settlement Bank, by SWIFT message or such other form as set out in the relevant Settlement Bank Agreement, to transfer to a Defaulting Clearing Member or its insolvency practitioner or any Client or Security Trustee of the Defaulting Clearing Member or the relevant FS Security Trustee an amount of money to be debited from an account of the Clearing House pursuant to any of the Default Rules, the Client Protection Agreement and the FS Documents (a **Cash Collateral Return**);
- (l) (i) the Clearing House sends an instruction to the Custodian, by SWIFT message or such other form as set out in the relevant Custody Agreement, or (ii) a Custodian acts on a standing instruction in the relevant Custody Agreement, to transfer to the Clearing House or a Clearing Member including an Adopting Clearing Member, or any Client or Security Trustee of the Clearing Member or the relevant FS Security Trustee an amount of money to be debited from an account of the Clearing House with the relevant Custodian as permitted by the Custody Agreement (a **Custody Cash Transfer**);

- (m) the Clearing House sends an instruction to the Cash Reinvestment Agent, by SWIFT message or such other form as set out in the Cash Reinvestment Agreement, to transfer to the Clearing House an amount of money to be debited from an account of the Clearing House with the Cash Reinvestment Agent or an account of the Cash Reinvestment Agent as permitted by the Cash Reinvestment Agreement (a **Reinvestment Cash Transfer**);
- (n) the Clearing House sends an instruction to an Agent Bank to transfer to a Clearing Member an amount of money to be debited from an account of the Clearing House with the Agent Bank pursuant to the Rules in respect of Contracts (a **Settlement Out**);
- (o) a Clearing Member sends an instruction to a bank to transfer an amount of money to be debited from the account of the Clearing Member to an account of the Clearing House with an Agent Bank pursuant to the Rules including in respect of Contracts (a **Settlement In**);
- (p) the Clearing House sends an instruction to a Clearing Member to initiate a transfer from its CLS Account to the CLS Account of another Clearing Member pursuant to its delivery obligations under a Contract (a **CLS Transfer**).

#### **10.4 Transfer Orders Irrevocable**

10.4.1 The points at which a Transfer Order may not be revoked are:

##### **Securities Transfer Orders**

- (a) in respect of a Securities Substitution, the time at which the transfer of Securities becomes irrevocable in accordance with the rules of such Custodian;
- (b) in respect of a Securities Return, the time at which the transfer of Securities becomes irrevocable in accordance with the rules of such Custodian;
- (c) in respect of a Contract Order, from the time of its registration by the Clearing House in the Clearing System in accordance with Rule 5.2;
- (d) in respect of a Contract Transfer, the time at which the Clearing House's books and records are updated to reflect a successful Contract Transfer;
- (e) in respect of an Affected Contract Transfer, the time at which the Clearing House's books and records are updated to reflect a successful Affected Contract Transfer;
- (f) in respect of a Securities Collateral Transfer, the time at which the Clearing House's books and records are updated to reflect a successful Securities Collateral Transfer;

- (g) in respect of a Securities Collateral Return, the time at which the transfer of Securities becomes irrevocable in accordance with the rules of such Custodian;

#### **Payment Transfer Orders**

- (h) in respect of a Receipt, the time at which the Settlement Bank gives confirmation to the Clearing House by SWIFT message type MT910 (Confirmation of Credit) or, in the event of a failure of the SWIFT system or access to the SWIFT system failing, by fax or in another form agreed in the relevant Settlement Bank Agreement, that such payment will be made or that such payment has been made by book transfer, whichever is earlier;
- (i) in respect of a Payment, the time at which the Settlement Bank gives confirmation to the Clearing House by SWIFT or, in the event of a failure of the SWIFT system or access to the SWIFT system failing, by fax or in another form as agreed in the relevant Settlement Bank Agreement, that such payment has been made by book transfer;
- (j) in respect of a Cash Collateral Transfer, the time at which the Clearing House's books and records are updated as a result of a successful transfer to reflect the Cash Collateral Transfer;
- (k) in respect of a Cash Collateral Return, the time at which Settlement Bank gives confirmation to the Clearing House by SWIFT or, in the event of a failure of the SWIFT system or access to the SWIFT system failing, by fax or in another form as agreed in the relevant Settlement Bank Agreement, that such payment has been made by book transfer;
- (l) in respect of a Custody Cash Transfer, the time at which the transfer of Securities becomes irrevocable in accordance with the rules of such Custodian;
- (m) in respect of a Reinvestment Cash Transfer, the time at which the Cash Reinvestment Agent gives confirmation to the Clearing House by SWIFT or, in the event of a failure of the SWIFT system or access to the SWIFT system failing, by fax or in another form as agreed in the Cash Reinvestment Agreement of such credit of cash to the account of the Clearing House or such other account as instructed by the Clearing House;
- (n) in respect of a Settlement Out, the time at which the Agent Bank gives confirmation to the Clearing House by SWIFT or, in the event of the SWIFT system or access to the SWIFT system failing, by fax or in another agreed form between the Clearing House and the Agent Bank, that such payment has been made;



- (o) in respect of a Settlement In, the time at which the Agent Bank gives confirmation to the Clearing House by Swift or, in the event of a failure of the SWIFT system or access to the SWIFT system failing, by fax or in another form agreed between the Clearing House and the Agent Bank, of receipt of such money in the Clearing House's account at the Agent Bank;
- (p) in respect of a CLS Transfer, the time at which the transfer order in the CLS System which includes the CLS Transfer is specified as being irrevocable by the rules of the CLS System.

10.4.2 A Transfer Order shall not be revoked or purport to be revoked by any Participant (or any insolvency practitioner appointed in relation to the Participant), and shall be binding on all such persons, after the times specified in this Rule 10.4 as being the time at which such Transfer Order becomes irrevocable.

10.4.3 If two or more Transfer Orders exist in respect of the same obligation before becoming irrevocable, all such Transfer Orders shall be valid. No duplication of an obligation to pay should be considered valid and two or more Transfer Orders should not be considered as duplicate solely on the grounds that they relate to the same obligation.

#### **10.5 Further provisions on Transfer Orders**

10.5.1 No Transfer Order shall arise, enter the Designated System or become irrevocable except as set out in the Settlement Finality Rules.

10.5.2 A Transfer Order and the provisions relating to it under this Chapter 10 of the Rules are not dependent on the validity of the Contract to which it relates.

#### **10.6 Provision of Information**

10.6.1 The Clearing House and any Participant must provide, upon payment of a charge as may be required by the Clearing House or a Participant, the following information to any person who requests it, save where the request is frivolous or vexatious, within fourteen (14) days of a request being made:

- (a) details of the Designated System; and
- (b) information about the main rules governing the functioning of the Designated System.

10.6.2 The Clearing House will provide a copy of the information referred to in Rule 10.6.1 to any Clearing Member upon request.

10.6.3 Each Participant will provide to the Clearing House such information as the Clearing House may reasonably require from time to time in order to meet its obligations as operator of the Designated System.

**10.7 Notice to the Bank of England**

10.7.1 Each Participant shall notify the Chief Operating Officer of the Clearing House and the Manager of the Payment Systems Oversight, Market Infrastructure of the Bank of England forthwith in the event that:

- (a) a creditors' voluntary winding up resolution is passed in respect of the Participant;
- (b) a trust deed granted by the Participant becomes a protected trust deed; or
- (c) any analogous event occurs in respect of the Participant under the laws of a jurisdiction other than England.

10.7.2 Any such notice shall be given in writing and delivered in person or sent by recorded or special delivery post to the recipient. If delivered in person, it shall be deemed to be given when left at the relevant address. If sent by recorded or special delivery post, it shall be deemed to be given two Business Days after posting.

10.7.3 The addresses for notices are set out below:

CME Clearing Europe Limited  
One New Change  
London EC4M 9AF

Bank of England  
Threadneedle Street  
London EC2R 8AH

## CHAPTER 11

### CONTRACT PERFORMANCE

#### 11.1 Cash Settlement

- 11.1.1 A Contract shall be settled in cash on its expiration if pursuant to the applicable Contract Specification there is an obligation to make or receive a payment in cash.
- 11.1.2 Where a Clearing Member enters into a Contract subject to cash settlement and such Contract is not closed out prior to its expiration, the Clearing Member with an obligation to make a payment under the Contract shall pay all amounts due in accordance with the Contract Specification and the applicable Procedures.

#### 11.2 Physical Delivery

- 11.2.1 A Clearing Member shall have in place all necessary arrangements with delivery facilities and/or settlement agents as described in the Procedures and/or the Contract Specification to facilitate the delivery of the underlying commodity, asset or instrument before the Clearing Member is eligible to clear a Transaction subject to physical delivery with the Clearing House.
- 11.2.2 A Contract shall be subject to physical delivery on its expiration if pursuant to the applicable Contract Specification there is an obligation to make or to take delivery of a commodity, asset or other such instrument, as described in the relevant Contract Specification.
- 11.2.3 Where a Clearing Member enters into a Contract subject to physical delivery and such Contract is not closed out prior to its expiration, the Clearing Member shall be liable to make delivery or receive delivery, as appropriate, of the commodity, asset or other such instrument and/or to make any corresponding cash payment in accordance with the Contract Specification and the applicable Procedures.
- 11.2.4 Where a Clearing Member enters into a Contract subject to physical delivery, the Clearing Member shall provide to the Clearing House all information relating to delivery facilities, locations, accounts and other relevant information as requested by the Clearing House to be used to fulfil delivery, as set out in the applicable Procedures.
- 11.2.5 Where a Contract is subject to physical delivery, the Clearing House may require such Contract to be settled in cash instead at a price determined by the Clearing House acting reasonably, if the Clearing House believes such action is necessary to protect the integrity of the Clearing House.
- 11.2.6 Where a Contract is subject to physical settlement, the Clearing House may, notwithstanding Chapter 9 of this Rulebook, impose a fine on a Clearing Member in respect

of a delivery failure. Details of when such fines may be imposed and the level of such fines are set out in the relevant Procedure.

- 11.2.7 Where a Contract is subject to physical delivery, the Clearing House may, in its sole discretion, delay the performance of its delivery obligations until it has received the required amount of the relevant asset to be delivered from another Clearing Member.

### **11.3 Delivery Obligations**

- 11.3.1 Except in relation to FX Obligations, the Clearing House may in accordance with the relevant delivery Procedures:

- (a) direct a Clearing Member who is a seller under a Contract to deliver the subject matter of such Contract which it owes to the Clearing House to such other Clearing Member, being a buyer under a Contract, as the Clearing House shall direct; and
- (b) direct a Clearing Member who is a buyer under a Contract to deliver the subject matter of such Contract which it owes to the Clearing House to such other Clearing Member, being a seller under a Contract, as the Clearing House shall direct.

- 11.3.2 Delivery in accordance with directions given by the Clearing House pursuant to Rule 11.3.1 will satisfy the performance of the delivery obligations of:

- (a) the selling Clearing Member towards the Clearing House in respect of a Contract, provided that the delivery has been made in accordance with Rule 11.3.1(a);
- (b) the Clearing House towards the selling Clearing Member in respect of a Contract provided that delivery has been made in accordance with Rule 11.3.1(b);
- (c) the buying Clearing Member towards the Clearing House in respect of a Contract provided that the delivery has been made in accordance with Rule 11.3.1(b); and
- (d) the Clearing House towards the buying Clearing Member in respect of a Contract provided that the delivery has been made in accordance with Rule 11.3.1(a).

- 11.3.3 Any information that is provided to a Clearing Member in order to facilitate a delivery in accordance with Rule 11.3.1, including the subject matter of the Contract, the identity of the other Clearing Member and the value of the delivery, may only be used by the Clearing Member for the sole purpose of making the delivery as directed by the Clearing House. The Clearing Member consents to the publication of any such information on the Website.

### **11.4 Delivery Obligations – FX Obligations**

11.4.1 With respect to FX Contracts, each Clearing Member shall have delivery obligations directly to such other relevant Clearing Member as shall be determined by the Clearing House (each such obligation, whether settled through the CLS System, the Clearing House or otherwise, is an **FX Obligation**).

11.4.2 Each such FX Contract shall remain in force between the Clearing House and the Clearing Member after its expiration except that:

- (a) the Clearing House shall not have any obligations (including, without limitation, any obligation to deliver) in respect of an FX Contract or an FX Obligation except as expressly provided for in Rule 11.6 and 11.7; and
- (b) although no Clearing Member is obliged to deliver to the Clearing House in relation to such FX Contract, the Rules and Procedures (including, without limitation, Rules 2.3.1, 2.3.2, 11.5.3(b), 11.6 and 11.7 and Chapter 8) shall continue to apply to each Clearing Member in respect of such FX Contract and any related FX Obligation and Unsettled FX Obligation,

and **expiration** and **expiry** of an FX Contract shall be construed accordingly.

11.4.3 This Rule 11.4 is subject to Rules 11.6 and 11.7.

## **11.5 Option Premium**

11.5.1 A Clearing Member entering into a Transaction in respect of an option with an obligation to pay shall pay the option premium amount in accordance with the Contract Specification.

## **11.6 Delivery Failure**

11.6.1 A Clearing Member shall ensure that any settlement and/or delivery obligations in respect of a Contract shall occur in accordance with the timings as described in the Contract Specification.

11.6.2 In the event a Clearing Member fails to perform its delivery obligations to the Clearing House or another Clearing Member:

- (a) the Clearing Member shall indemnify the Clearing House in accordance with Rules 2.3.1, 2.3.2 and 1.1(b);
- (b) the Clearing House will not return any Collateral held in respect of the relevant Contract(s) until the Clearing Member's obligations to the Clearing House or (in the discretion of the Clearing House) to the other Clearing Member in respect of the Contract have been satisfied;

- (c) the Clearing House may declare an Event of Default in accordance with Rule 8.2.1;
- (d) the Clearing House may, at its absolute discretion, take any other action as it deems appropriate to remedy the delivery failure at any stage (including but not limited to the right to purchase or sell, as applicable, the commodity, asset or other instrument subject to delivery); and
- (e) the Clearing House may require the Clearing Members to take the actions set out in Rule 11.6.6.

11.6.3 Without prejudice to the generality of Rules 2.3.1 and 2.3.2, in the event that there is, in the reasonable opinion of the Clearing House, a delivery failure in respect of a physically settled Contract or part thereof:

- (a) the sole obligation of the Clearing House to the Clearing Member whose actions or omissions did not cause or contribute to the delivery failure is to pay an amount equal to the loss suffered by such Clearing Member, after such Clearing Member has used reasonable endeavours to minimise the loss, which shall not exceed the aggregate of:
  - (i) (A) the spot FX price of the delivery asset (for Exchange Contracts that are FX Contracts) or the reasonable mark-to-market value of the delivery asset (for other physically settled Contracts) at the earliest time the delivery obligations in respect of a Contract could be concluded by the Clearing Member following awareness that a settlement failure has occurred or is significantly likely to occur as reasonably determined by the Clearing House; less (B) the final settlement price of such Contract as determined on the expiry day of such Contract; and
  - (ii) in the discretion of the Clearing House, any expenses incurred by the Clearing Member in converting the original delivery asset of such Contract, as the Clearing House considers are reasonably incurred,  
  
the result being the **Replacement Cost**; and
- (b) the Clearing Member whose actions or omissions did cause or contribute to the delivery failure shall indemnify the Clearing House for the loss suffered by the Clearing House, which the Clearing House may determine to be an amount equal to the Replacement Cost which it owes a corresponding Clearing Member.

11.6.4 The Clearing House shall not:

- (a) make or accept delivery of the actual asset that is the subject matter of the contract;  
or
- (b) pay any damages relating to the accuracy, genuineness, completeness, or acceptability of certificates, instruments, warehouse receipts, shipping certificates, or other similar documents.

11.6.5 Notwithstanding any provisions in the Rules, including Rule 11.6.3, if:

- (a) the Clearing Member fails to notify the Clearing House of the delivery failure no later than the time specified in the relevant delivery Procedure for such notification; or
- (b) with respect to Contracts where delivery obligations are fulfilled directly between Clearing Members in accordance with Rule 11.3, 11.4 and the Procedures either:
  - (i) if the original settlement procedure had anticipated settlement through the CLS System, settlement failure was caused by the CLS System; or
  - (ii) if the Clearing Members had agreed an alternative settlement procedure prior to becoming aware that a settlement failure had occurred or was significantly likely to occur, they did not obtain the prior consent of the Clearing House to such alternative settlement procedure,

then:

- (A) a Clearing Member shall have no recourse against the Clearing House in relation to a Contract under which the Clearing House has not fulfilled its delivery obligations; and
- (B) the Clearing House shall have no liability for any losses suffered or costs incurred by a Clearing Member or any other person arising out of or connected to the Clearing House's failure to fulfil a delivery obligation including any Replacement Cost.

*Actions in the event of a delivery failure*

11.6.6 In the event of a delivery obligation failure, the Clearing House may, at its sole discretion:

- (a) instruct the Clearing Member which has failed to meet all or any part of a delivery obligation to, at the Clearing Member's cost, fulfil its outstanding delivery obligation as directed by the Clearing House; and/or
- (b) instruct the Clearing Member which has not received all or any part of an asset due to it under a Contract to procure the amount of the asset which has not been

delivered and the Clearing House may release any assets delivered to it for such purpose.

## **11.7 Delivery Failure – FX Obligations and Defaulting Clearing Members**

11.7.1 This Rule 11.7 applies only to the extent that all of the following are satisfied:

- (a) it applies to FX Obligations that are owed by or to a Defaulting Clearing Member;
- (b) any of those FX Obligations have not been satisfied; and
- (c) the Clearing House has been notified of this in accordance with 5.15 of the FX Delivery Procedures.

11.7.2 Notwithstanding any other provision of the Rules or otherwise, the only obligations and liability of the Clearing House under or in relation to a FX Obligation, an FX Contract to which a FX Obligation relates or a Temporary Contract is contained in this Rule 11.7. However, the Clearing House may exercise alternatively or additionally any rights (and shall have the protections) under this Chapter 11 and otherwise.

### **Evaluation by Clearing House between Declaration of Default and Step-In Time**

11.7.3 Promptly after issue of the relevant Declaration of Default, the Clearing House shall:

- (a) notify each Relevant FX Clearing Member of the delivery default and instruct them not to settle a FX Obligation except in accordance with this Rule 11.7 (and each Relevant FX Clearing Member shall comply immediately with such instructions);
- (b) in respect of FX Obligations that are being settled by Wire Transfer (as contemplated in the FX Delivery Procedure), if:
  - (i) the Relevant FX Clearing Member has delivered currency to satisfy all of its FX Obligations to the Defaulting Clearing Member; and
  - (ii) the Clearing House does not believe that an Event of Default has or is reasonably likely to occur in relation to such Relevant FX Clearing Member,return to the Relevant FX Clearing Member any of such currency which relates to its unsettled FX Obligations with the Defaulting Clearing Member;
- (c) identify such Paired FX Obligations and related pairs of Relevant FX Clearing Members as it determines necessary to manage the relevant default; and
- (d) identify Matching Collateral and Contributions of the Defaulting Clearing Member for the purposes of Rules 11.7.4 and 11.7.5(c),



and the time of completion of this process (determined by the Clearing House in its discretion) is the **Step-in Time**.

11.7.4 To obtain Matching Collateral of the Defaulting Clearing Member, the Clearing House may exchange at a market rate determined by it:

- (a) any Eligible Cash Collateral standing to the credit of the House Account of the Defaulting Clearing Member; for
- (b) any Contribution of the Defaulting Clearing Member which is in the same currency as a FX Obligation of the Defaulting Clearing Member,

so that the Collateral shall become (and be treated for all purposes) as Contribution and vice versa. Notwithstanding any other provision of the Rules or agreement with a Clearing Member, any obligation of the Clearing House to deliver Equivalent Assets to a Clearing Member under any Rule (including, without limitation, under Rule 3.10) shall be subject to this Rule 11.7.4.

#### **Actions at the Step-In Time**

11.7.5 At the Step-in Time, automatically and without any further action:

- (a) new FX Obligations shall come into existence between the Relevant FX Clearing Members and on the terms of the Paired FX Obligations identified pursuant to Rule 11.7.3, except that if the Paired FX Obligation of a Relevant FX Clearing Member:
  - (i) was owed to the Defaulting Clearing Member, the new FX Obligation shall be owed to the other Relevant FX Clearing Member; and
  - (ii) was owed by the Defaulting Clearing Member, the new FX Obligation shall be owed by the other Relevant FX Clearing Member;
- (b) the Defaulting Clearing Member and each Relevant FX Clearing Member shall be released from their existing FX Obligations to the extent of such new FX Obligations;
- (c) any remaining FX Obligations shall be fully or partially settled by setting-off any Matching Collateral of the Defaulting Clearing Member against an amount proportionate to the Relevant FX Clearing Member's FX Obligation as determined pursuant to Rule 11.7.3 provided that:
  - (i) the Clearing House determines, in relation to any FX Obligation of the Defaulting Clearing Member, that it is holding cash in full settlement of the Relevant FX Clearing Member's matching FX Obligation; and

- (ii) the Clearing House shall deliver any such settlement by Wire Transfer; and
- (iii) the Clearing House shall use best endeavours to complete actions in this Rule 11.7.5(c) on the same day as the Declaration of Default has been issued.
- (d) in relation to each Relevant FX Clearing Member, a Temporary Contract shall come into existence between the Clearing House and the Relevant FX Clearing Member; a Termination Swap shall come into existence; and the Temporary Contract and the Termination Swap shall net to zero; and
- (e) the Defaulting Clearing Member and each Relevant FX Clearing Member shall be released from any remaining Unsettled FX Obligations between each other but, although no Clearing Member is obliged to deliver to the Clearing House in relation to such FX Contract, the Rules and Procedures (including, without limitation, Rules 2.3.1, 2.3.2, 11.6.3(b), the remainder of this Rule 11.7 and Chapter 8) shall continue to apply to each Clearing Member in respect of such Unsettled FX Obligations

#### **Replacement Transactions between Step-In Time and Settlement Deadline**

11.7.6 A Relevant FX Clearing Member may enter into any spot or future to replace Unsettled FX Obligations (each a **Replacement Transaction**) and, if it does, it shall provide to the Clearing House evidence acceptable to the Clearing House (acting reasonably) of the existence and terms of such Replacement Transaction and when it was executed. The Clearing House shall, at the request of the Relevant FX Clearing Member, use reasonable endeavours to assist in arranging any Replacement Transaction before the Settlement Deadline, but the Clearing House:

- (a) has no obligation to facilitate such transaction; and
- (b) will not be a counterparty to such transaction.

11.7.7 If the acts or omissions of a Relevant FX Clearing Member did not cause or contribute to the delivery failure of the Defaulting Clearing Member, then (in consideration for the Termination Swap):

- (a) if a Replacement Transaction is executed on or before the Settlement Deadline, the sole obligation of the Clearing House to the Relevant FX Clearing Member is to pay an amount equal to the loss suffered by such Clearing Member, after such Clearing Member has used reasonable endeavours to minimise the loss, which shall not exceed the aggregate of:
  - (i) (A) the spot FX price of the delivery asset (for FX Obligations that relate to Exchange Contracts that are FX Contracts) at the earliest time the FX

Obligations could be concluded by the Relevant FX Clearing Member following awareness that a settlement failure has occurred or is significantly likely to occur as reasonably determined by the Clearing House; less (B) the final settlement price relating to such FX Obligation as determined on the expiry day; and

- (ii) in the discretion of the Clearing House, any expenses incurred by the Relevant FX Clearing Member in executing the Replacement Transaction, as the Clearing House considers are reasonably incurred; and
- (b) if a Replacement Transaction is not executed on or before the Settlement Deadline:
- (i) the Clearing House shall calculate the obligations that would have been owed between it and the Relevant FX Clearing Member if the relevant Unsettled FX Obligation had been settled in cash on the original due date for delivery; and
  - (ii) the Clearing House or (as the context requires) the Relevant FX Clearing Member shall pay to the other on the Settlement Date (or as otherwise instructed by the Clearing House) an amount equal to such obligation.

11.7.8 If the acts or omissions of a Relevant FX Clearing Member cause or contribute to the delivery failure of the Defaulting Clearing Member, then the Relevant FX Clearing Member shall indemnify the Clearing House on demand for any loss, liability, cost or expense incurred by the Clearing House.

## **11.8 Option reference price**

11.8.1 The Clearing House will specify the reference price for each Contract which is an option.

11.8.2 If the option Contract is an Exchange Contract, the reference price will, subject to Rule 11.8.3, be determined on the basis of data provided by the Exchange.

11.8.3 The Clearing House shall be entitled to determine the reference price itself, at its discretion, if:

- (a) the Exchange fails on any day to determine a reference price;
- (b) the Exchange fails to provide the Clearing House with necessary data for the determination of a reference price;
- (c) there is, in the reasonable opinion of the Clearing House, an error in the data provided by the Exchange for the purposes of determining a reference price; or
- (d) the Clearing House reasonably considers it appropriate to do so.

## **11.9 Delivery of options Contracts**

- 11.9.1 If an option Contract is exercised in accordance with the Procedures, upon receipt of the relevant underlying deliverable, by either the Clearing Member or the Clearing House (as applicable), the rights, obligations and liabilities of the Clearing House and the Clearing Member in respect of the option Contract shall be satisfied and the option Contract shall be terminated.

## **11.10 Expiry and Abandonment of options Contracts**

- 11.10.1 If an option Contract is not automatically exercised or exercised by the Clearing Member in accordance with the Procedures, all the rights, liabilities and obligations of each of the Clearing House and the Clearing Member shall lapse and the option Contract shall be terminated and deemed to be abandoned.
- 11.10.2 If, in accordance with the Procedures, a Clearing Member is deemed to have abandoned or instructs the Clearing House that it wishes to abandon an option Contract, all rights, liabilities and obligations of each of the Clearing House and the Clearing Member in respect of that option Contract shall lapse and the option Contract shall be terminated.

## **11.11 Establishment of final settlement price**

- 11.11.1 In the event that the final settlement price of a Contract is unable to be determined on its expiration or if the procedure for determining the final settlement price as specified in the relevant Procedures and/or Contract Specification results in a final settlement price that is, in the Clearing House's reasonable discretion, clearly inconsistent with the market value of the Contract on its expiration or otherwise clearly erroneous and alternative settlement procedures are not otherwise specified, the CEO, the Chief Operating Officer or their delegate may, acting in a commercially reasonable manner, establish a final settlement price that reflects the true market value of the Contract at the time of its expiration.
- 11.11.2 Where the final settlement of a Contract that is subject to either cash settlement or physical delivery has been paid, the Clearing House shall not be entitled to establish a final settlement price pursuant to Rule 11.11.1 above for any reason after ten (10) Business Days from the date of such payment.

## CHAPTER 12

### REPORTING

#### 12.1 Regulatory reporting of Contracts

- 12.1.1 The Clearing House will report its counterparty data and the common data relating to the conclusion, modification and termination of each Contract other than a spot Contract to the Trade Repository to satisfy its obligations under EMIR.
- 12.1.2 The Clearing House will report to the Trade Repository the Clearing Member's counterparty data (the **Clearing Member Counterparty Data**) and the common data (the **Clearing Member Common Data**) relating to the conclusion, modification and termination of each Contract other than a spot Contract to the Trade Repository on behalf of the Clearing Member provided that:
- (a) The Clearing Member has not given notice to the Clearing House pursuant to Rule 12.2.1;
  - (b) The Clearing Member has entered into and is party to the CME Repository Services User Agreement and has paid any fees owing to the Trade Repository;
  - (c) The Clearing Member has entered into any agreement which the Clearing House may reasonably require and has paid to the Clearing House any fees applicable to it in respect of the service set out in this Rule 12.1.2; and
  - (d) The Clearing Member has provided the information which the Clearing House reasonably requires to complete the Clearing Member Reports on behalf of the Clearing Member and the Clearing House has no reason to consider that the data in the Clearing Member Reports is not accurate and complete in all material respects.

#### 12.2 Opting out of the reporting service

- 12.2.1 The Clearing House will not make the Clearing Member Reports on behalf of the Clearing Member if the Clearing Member gives written notice to the Clearing House in the prescribed form available on the Website stating that it does not want the Clearing House to do so. The Clearing House will be entitled to interpret any such notice as relating to the conclusion, modification and termination of all Contracts recorded in Accounts relating to the Clearing Member, including those so recorded at and following the Reporting Switch-Off Date until a subsequent Reporting Switch-On Date and shall not make Clearing Member Reports in respect of such Contracts for such period. The Reporting Switch-Off Date is such date as the Clearing House shall specify by written notice to the Clearing Member, which date shall

not be later than 5 (five) Business Days from the date of receipt of the Clearing Member's notice by the Clearing House.

12.2.2 If, having initiated a Reporting Switch-Off Date, the Clearing Member wants the Clearing House to make the Clearing Member Counterparty Reports in relation to Contracts credited to the Accounts relating to the Clearing Member in accordance with Rule 12.1.2, the Clearing Member will give written notice to the Clearing House in the prescribed form available on the Website stating that it wants the Clearing House to do so. The Clearing House will be entitled to interpret such notice as relating to the conclusion, modification and termination of all Contracts other than a spot Contract recorded in Accounts relating to the Clearing Member, including those so recorded at and following the Reporting Switch-On Date until a subsequent Reporting Switch-Off Date and shall make Clearing Member Reports in respect of such Contracts in accordance with Rule 12.1.2. The Reporting Switch-On Date is such date as the Clearing House shall specify by written notice to the Clearing Member, which date shall not be later than 5 (five) Business Days from the date of receipt of the Clearing Member's notice by the Clearing House.

12.2.3 The Clearing House will not make the Clearing Member Reports on behalf of the Clearing Member if the Clearing Member does not satisfy the conditions in Rule 12.1.2 even if the Clearing Member has not given notice in accordance with Rule 12.2.1.

### **12.3 No reporting by the Clearing Member**

12.3.1 In order to avoid duplication, unless the Clearing Member has notified the Clearing House in accordance with Rule 12.2.1 or failed to satisfy any of the conditions in Rule 12.1.2, the Clearing Member shall not report the Clearing Member Counterparty Data or the Clearing Member Common Data relating to any Contract to a trade repository.

### **12.4 Contents of the reports**

12.4.1 The Clearing House shall make available on the Website details of the data that will be reported in each field of the Clearing Member Reports.

### **12.5 Clearing Member responsibilities**

12.5.1 As a registered user of the Trade Repository, the Clearing Member may access all data reported to the Trade Repository by the Clearing House. It is the Clearing Member's responsibility to check the Clearing Member Reports made to the Trade Repository by the Clearing House are accurate and complete in all material respects and, if they are not, to engage directly with, the Trade Repository to correct such data in accordance with the TR Rulebook.

12.5.2 If the Clearing Member corrects any Clearing Member Reports, it shall also notify the Clearing House. The Clearing House shall be entitled to use any such data for the purposes of future Clearing Member Reports but shall not be at fault if it fails to do so.

12.5.3 The Clearing Member remains responsible for the reporting of the Clearing Member Counterparty Data and the Clearing Member Common Data relating to each Contract in accordance with EMIR. The Clearing House shall be entitled to rely on the data in the Clearing System and any data received by the Clearing House from the Clearing Member for the purposes of making the Clearing Member reports.

## **12.6 Miscellaneous**

12.6.1 The Clearing Member acknowledges that the Clearing House is obliged to comply with the TR Rulebook in relation to its obligation pursuant to Rule 12.1.2.

12.6.2 The Clearing Member acknowledges that the Clearing House may report to the Trade Repository:

- (a) The Clearing Member Counterparty Data and the Clearing Member Common Data relating to a Transaction or Corresponding Transaction on behalf of the Clearing Member subject to the Clearing House's terms and conditions for such service; and/or
- (b) the Client's counterparty data and the common data relating to the conclusion, modification and termination of each Transaction and Corresponding Transaction to the Trade Repository on behalf of the Client subject to the Clearing House's terms and conditions for such service,

in which case, the Clearing Member consents to the disclosure of information about itself as counterparty to the Client and the common data relating to the Transaction or Corresponding Transaction to the Trade Repository.

## **12.7 Non-FCM Clearing Members**

12.7.1 The Clearing House will report the data referred to in Rule 12.1.1 relating to Contracts cleared by a FCM Clearing Member to CME Swap Data Repository on behalf of such FCM Clearing Member.

12.7.2 Save as otherwise agreed, the Clearing House will not report the data referred to in Rule 12.1.1 relating to Contracts entered into by a Non-FCM Clearing Member to CME Swap Data Repository on behalf of such Non-FCM Clearing Member.