



March 6, 2013

Ms. Melissa Jurgens
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

By Email: submissions@cftc.gov

Re: ICE Clear Europe Self-Certification Pursuant to Commission Rule 40.6

Dear Ms. Jurgens:

ICE Clear Europe Limited (“ICE Clear Europe”), a registered derivatives clearing organization under the Commodity Exchange Act, as amended (the “Act”), hereby submits to the Commodity Futures Trading Commission (the “Commission”), pursuant to Commission Rule 40.6, for self-certification the attached amendments to its clearing rules. The rule amendments are to become effective ten business days after submission, or such later date as ICE Clear Europe may determine.

The rule amendments concern the adoption of new provisions relating to ICE Clear Europe’s recovery and resolution following the exhaustion of resources available to it after a Clearing Member default or series of Clearing Member defaults. In particular, the amendments would, among other matters:

- (i) establish a “cooling-off period” in cases of certain Clearing Member defaults that result in guaranty fund depletion, in which case the liability of Clearing Members for additional guaranty fund assessments would be capped for all defaults during that period;
- (ii) establish new procedures under which a Clearing Member may terminate its Clearing Membership, both in the ordinary course of business and during a cooling-off period, and related procedures for unwinding all positions of such a Clearing Member and capping its continuing liability to the Clearing House,

- (iii) provide for “haircutting” of variation margin gains and other outgoing payments by the Clearing House in situations where the Clearing House determines, following a Clearing Member default, that it is unlikely to have sufficient resources to make all such payments;
- (iv) permit the Clearing House to temporarily suspend payments on cleared contracts where the Clearing House determines that variation margin haircutting of gains will not be sufficient to address a shortfall in resources, or where there has been a failed auction of positions of a defaulting Clearing Member;
- (v) revise procedures for the termination of clearing and wind-up of outstanding contracts of a particular category in the event of exhaustion of Clearing House resources available to support those contracts;
- (vi) eliminate rules permitting the forced allocation of CDS positions to non-defaulting Clearing Members in the case of a failed default auction, and provide for the use of guaranty funds of Clearing Members that fail to participate in default auctions prior to funds of other Clearing Members; and
- (vii) in general limit the effect of losses in one product category (Energy, CDS or FX) on ongoing clearing for other product categories.

These changes are principally set forth in Part 9 of the ICE Clear Europe clearing rules, although certain conforming amendments have also been made in Parts 1, 2 and 11 of the clearing rules. Also, several existing provisions of the clearing rules have been consolidated in Part 9 of the clearing rules.

The rule amendments are potentially relevant to the following core principles: (B) Financial Resources, (D) Risk Management, (E) Settlement Procedures, (G) Default Rules and Procedures, and (L) Public Information, and the applicable regulations of the Commission thereunder. ICE Clear Europe developed the proposed recovery and resolution rule amendments in response to issues raised by the Bank of England and the Financial Services Authority (the “FSA”) as overseer of its payment arrangements, and following extensive consultation with the Bank of England, the FSA and Clearing Members. ICE Clear Europe believes that the proposed rule changes will enhance its ability to withstand the consequences of a default of one or more Clearing Members and will reduce the risk of a failure or insolvency of ICE Clear Europe. The revisions will in particular facilitate the orderly wind-down or termination of contracts affected by a default and minimize the effect on other categories of contracts. Accordingly, ICE Clear Europe believes that the rule amendments will reduce the risk of a systemic problem in one cleared market causing contagion or creating risks for other cleared markets. The amendments also provide clearer limitations on the liability of Clearing Members for assessments following defaults, and a clearer procedure for termination of Clearing Membership. The changes are thus in furtherance of, and are consistent with, the requirements of Commission Rules 39.11, 39.13(f), 39.14 and 39.16, and will facilitate the continued operation and stability of the clearing house.

ICE Clear Europe hereby certifies that the proposed rule amendments comply with the Act and the Commission's regulations thereunder.

ICE Clear Europe has received no substantive opposing views in relation to the proposed rule amendments.

ICE Clear Europe has posted a notice of pending certification and a copy of this submission on its website concurrent with the filing of this submission.

If you or your staff should have any questions or comments or require further information regarding this submission, please do not hesitate to contact the undersigned at patrick.davis@theice.com or +44 20 7065 7738, Dee Blake, Director of Regulation, at dee.blake@theice.com or +44 20 7065 7752 or Paul Swann, President & Chief Operating Officer, at paul.swann@theice.com or +44 20 7065 7700.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P. Davis', written in a cursive style.

Patrick Davis
Head of Legal and Company Secretary



(23 JANUARY 2012)

ICE Clear Europesm

Clearing Rules

~~31 December 2012~~

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formation of a Contract, party to the corresponding Transaction (or specified in the CDS Trade Particulars) as buyer (or, in relation to CDS Contracts, as protection buyer or, in relation to a Financially-Settled FX Contract, Reference Currency Buyer); (b) except in circumstances in which sub-paragraph (c) below applies, where a Non-FCM/BD Clearing Member's Customer is a party to the corresponding Transaction (or specified in the CDS Trade Particulars) as buyer, protection buyer or Reference Currency Buyer (as applicable), the Clearing Member that provides clearing services to that Customer in relation to the Transaction (or CDS Trade Particulars) in question (or, for Energy Contracts, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); (c) where an FCM/BD Customer is a party to the corresponding Transaction (or specified in the CDS Trade Particulars) as buyer or protection buyer (as applicable), the FCM/BD Clearing Member clearing on behalf of such FCM/BD Customer; or (d) in relation to Energy Contracts only and overriding any designation that would occur pursuant to (a), (b) or (c) above, where one Clearing Member that would be the Buying Clearing Member in accordance with (a), (b) or (c) above has allocated an Energy Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Energy Transaction is allocated.

The term "**CAD**" means Canadian dollars, or any other lawful currency that is a successor to it.

The term "**Call**", in respect of an Energy Contract, means an Option pursuant to which a Person with a Long position has the right to buy a Future or Futures from a Person with a Short position at the Strike Price and at a specified time.

The term "**Capital**":

- (a) with respect to a Non-FCM/BD Clearing Member, has the same meaning as the term "own funds", as such term is defined in the Banking Consolidation Directive and determined on a stand-alone (non-consolidated) basis and subject to the limits and deductions set out therein and, in relation to matters reserved for member states, as implemented in the United Kingdom, whether or not the relevant Clearing Member is subject to the Banking Consolidation Directive or the supervision of the FSA; or
- (b) with respect to an FCM/BD Clearing Member, means its "adjusted net capital" as defined in CFTC Rule 1.17,

and, in either case, such other classes of capital as are permitted at the Clearing House's discretion pursuant to the Finance Procedures.

The term "**CDS**" means credit default swap.

The term "**CDS Assessment Amount**" means the total amount of all CDS Assessment Contributions payable by CDS Clearing Members pursuant to Rule ~~H06~~[910\(a\)](#) in respect of an Event of Default.

The term "**CDS Assessment Contribution**" has the meaning set out in Rule ~~H06~~[910\(b\)](#).

The term "**CDS Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to CDS Contracts.

The term "**CDS Contract**" means a Contract that is a CDS to which the Clearing House is party in accordance with these Rules and the CDS Procedures, which may be in the form of a CDS relating to an index or a single reference entity or in the form of a Component Transaction (as defined in Part 15).

The term "**CDS Customer Account**" means, in relation to a Non-FCM/BD Clearing Member, a kind of Customer Account with the Clearing House used for the recording of CDS Contracts entered into by that CDS Clearing Member on a back-to-back basis with one or more Customer-CM CDS Transactions, and related Margin.

The term "**CDS Default Amount**" has the meaning set out in Rule ~~403~~[908](#)(e).

The term "**CDS Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating to the Clearing of CDS Contracts.

The term "**CDS Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the CDS Guaranty Fund.

The term "**CDS Sub-Account**" means, in relation to a CDS Clearing Member, each account at the Clearing House with a unique identification number used by that CDS Clearing Member in accordance with an election under Rule 406(d) for the recording of details of CDS Contracts with the Clearing House, which account is linked to an identification code at Deriv/SERV for the recording of details of trades relating to such CDS Contracts and which account is further linked to the CDS Clearing Member's Proprietary Account or its Designated CDS Customer Account, as a sub-account of the relevant Proprietary Position Account or the Customer Position Account (as applicable).

The term "**CDS Trade Particulars**" means trade particulars submitted to the Clearing House by a Clearing Member or Clearing Members (including by any Representative, including via a Trade Processing Platform), which particulars, if accepted by the Clearing House, will give rise to a CDS Contract or CDS Contracts (and, in the case of particulars submitted by a Non-FCM/BD Clearing Member for its Designated CDS Customer Account, a Customer-CM CDS Transaction). For the avoidance of doubt, CDS Trade Particulars may or may not reflect a binding Bilateral CDS Transaction between two CDS Clearing Members or any binding transaction between a CDS Clearing Member and its Customer.

The term "**CEA**" means the U.S. Commodity Exchange Act.

The term "**CFTC**" means the Commodity Futures Trading Commission of the United States of America, or any successor thereto.

The term "**Chairman**" means the chairman of the Board from time to time.

The term "**CHF**" means the Swiss frank, or any other lawful currency that is a successor to it.

The term "**Circular**" means a publication issued by the Clearing House for the attention of all Clearing Members and posted on the Clearing House's website in accordance with Rule 109(g).

The term "**Clearing**" means the central counterparty and, where relevant, related risk, Open Contract Position, Margin, settlement, delivery, administrative, acceptance, transaction data, settlement price establishment and other functions of the Clearing House pursuant to these Rules.

The term "**Clearing House**" means ICE Clear Europe Limited, a company registered in England & Wales with registered number 06219884.

The term "**Clearing House Account**" means an account of the Clearing House at an Approved Financial Institution.

The term "**Clearing House CDS Contributions** " means the Clearing House CDS GF Contribution and the Clearing House CDS Initial Contribution.

The term "**Clearing House CDS GF Contribution** " means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with ~~Rule 1103~~[Rules 908\(c\)\(v\)\(B\)](#) or ~~1103~~[908\(g\)\(v\)\(C\)](#) and as maintained pursuant to Rule ~~1104~~[1103\(e\)](#) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House CDS Initial Contribution** " means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with ~~Rule 1103~~[Rules 908\(c\)\(iv\)](#) or ~~1103~~[908\(g\)\(iv\)\(B\)](#) and as maintained pursuant to Rule ~~1104~~[1103\(e\)](#) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Contributions**" means the Clearing House Energy Contributions, the Clearing House CDS Contributions and the Clearing House FX Contributions.

The term "**Clearing House Energy Contributions** " means the Clearing House Energy GF Contribution and the Clearing House Energy Initial Contribution.

The term "**Clearing House Energy GF Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with ~~Rule 1103~~[Rules 908\(b\)\(v\)\(B\)](#) or ~~1103~~[908\(g\)\(v\)\(B\)](#) and as maintained pursuant to Rule ~~1104~~[1103\(e\)](#) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Energy Initial Contribution** " means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with ~~Rule 1103~~[Rules 908\(b\)\(iv\)](#) or ~~1103~~[908\(g\)\(iv\)\(A\)](#) and as maintained pursuant to Rule ~~1104~~[1103\(e\)](#) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House FX Contributions**" means the Clearing House FX GF Contribution and the Clearing House FX Initial Contribution.

The term "**Clearing House FX GF Contribution** " means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with ~~Rule~~

~~1103~~[Rules 908](#)(d)(v)(B) or ~~Rule 1103~~[908](#)(g)(v)(D) and as maintained pursuant to Rule ~~1104~~[1103](#)(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House FX Initial Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with ~~Rule 1103~~[Rules 908](#)(d)(iv) or ~~Rule 1103~~[908](#)(g)(iv)(C) and as maintained pursuant to Rule ~~1104~~[1103](#)(e) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing Member**" means a Person which has entered into a Clearing Membership Agreement with the Clearing House and which has been admitted as a clearing member pursuant to Part 2 of these Rules.

The term "**Clearing Member-Required Additional Margin**" has the meaning set out in the Standard Terms.

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

The term "**Clearing Organisation**" means any clearing house duly authorised, regulated, recognised or licensed under Applicable Laws in any jurisdiction, including any recognised clearing house, recognised overseas clearing house, derivatives clearing organisation or similar entity.

The term "**Clearing Processing System**" means the clearing processing system for Energy Contracts used by the Clearing House and any Market from time to time.

The term "**CLS Bank**" means CLS Bank International.

The term "**Commodity**" means any kind of property which is capable of being delivered pursuant to an Energy Contract.

The term "**Concentration Bank**" means an Approved Financial Institution at which the Clearing House has an account or accounts for the purpose of making transfers between Clearing House Accounts.

The term "**Contract**" means a contract between the Clearing House and a Clearing Member arising in accordance with these Rules, and as amended, subject to netting or aggregation in accordance with these Rules, the terms and conditions of which are the relevant Contract Terms.

The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House, namely Energy Contracts, CDS Contracts and FX Contracts.

The term "**EFs**" means 'exchange for swaps' under the ICE Futures Europe Rules or 'exchange for related position' under ICE Futures US Rules, as applicable.

The term "**Eligible Complaint**" means a complaint which is eligible pursuant to the Complaints Procedures.

The term "**Eligible Currencies**" means USD, EUR, GBP, CAD, CHF, SEK and such other currencies as are specified as such by the Clearing House from time to time.

The term "**Encumbrance**" means any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing.

The term "**Energy Assessment Amount**" means the total amount of all Energy Assessment Contributions payable by Energy Clearing Members pursuant to Rule ~~1105909~~(a) in respect of an Event of Default.

The term "**Energy Assessment Contribution**" has the meaning set out in Rule ~~1105909~~(b).

The term "**Energy Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to Energy Contracts.

The term "**Energy Contracts**" means Contracts resulting from the clearing of Energy Transactions.

The term "**Energy Default Amount**" has the meaning set out in Rule ~~1103908~~(e).

The term "**Energy Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating only to Energy Contracts.

The term "**Energy Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the Energy Guaranty Fund.

The term "**Energy Transaction**" means an ICE Futures Europe Transaction, ICE Futures US Transaction or an ICE OTC Transaction.

The term "**EUR**" means the euro, or any other lawful currency that is a successor to it.

The term "**Event of Default**" has the meaning set out in Rule 901 and the term "**Default**" shall be construed accordingly.

The term "**Exchange**" means any exchange or similar body duly authorised, regulated, recognised or licensed (to the extent necessary) under Applicable Laws in any jurisdiction, including, but not limited to, any recognised investment exchange, recognised overseas investment exchange, designated investment exchange, designated contract market, exempt commercial market, regulated market, alternative trading system, multilateral trading facility or similar entity.

The term "**Exchange Act**" means the U.S. Securities Exchange Act of 1934.

The term "**Failure To Pay**" means, in respect of a particular Contract Category, the failure of the Clearing House to make any payment when due (including the return of assets equivalent to any Pledged Collateral) pursuant to Part 3 of the Rules ~~in relation to CDS Contracts~~ if such failure is not remedied on or before:

- (i) if no extension has been granted to the Clearing House pursuant to Rule 110(b) or Rule 110(c) prior to this date: the date falling 3 Business Days after notice of such failure is given to it by the ~~CDS~~ Clearing Member to which such payment or return is due; or
- (ii) if an extension has been granted to the Clearing House as referred to in paragraph (i) of this definition, 10 a.m. on the next Business Day after service of a notice of that failure to the Clearing House by the ~~CDS~~ Clearing Member to which such payment or return is due, provided that such notice is given no earlier than the final day of a period for which an extension has been granted to the Clearing House pursuant to Rule 110(b) or Rule 110(c),

save to the extent that any such failure to pay or return constitutes a Force Majeure Event affecting the Clearing House.

The term "**FCM/BD**" means a Person registered as a futures commission merchant with the CFTC and/or as a broker-dealer with the SEC, as applicable.

The term "**FCM/BD Clearing Member**" means a Clearing Member that is an FCM/BD.

The term "**FCM/BD Customer**" means any Customer that is (i) a customer (as defined in CFTC Rule 39.2) of an FCM/BD Clearing Member with respect to any Contract in one or more account classes (as defined in CFTC Rule 190.01) (other than a non-public customer as defined in CFTC Rule 190.01) or that is (ii) a customer (as defined in SEC Rule 15c3-3) of an FCM/BD Clearing Member with respect to any Contract recorded in the SBS Customer Account; provided that for the avoidance of doubt the term "FCM/BD Customer" will include a Customer of an FCM/BD Clearing Member (which Customer may, but need not, be an Affiliate of that FCM/BD Clearing Member or another Clearing Member) that is itself acting on behalf of one or more customers (other than non-public customers, as so defined) with respect to a Contract.

The term "**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (which implement Directive 2002/47/EC on financial collateral arrangements).

The term "**Financial Emergency**" means, with respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member or any of its Designated Controllers is not or is likely not to be, in either case determined at the discretion of the Clearing House, adequate for such Clearing Member to meet its obligations (including, without limitation, its obligations to comply with these Rules) or to engage in business, or is such that it would not be in the best interests of the Clearing House or the marketplace for such Clearing Member to continue to be a Clearing Member.

The term "**FSA Rules**" means all rules, requirements, directions, guidance, examples, waivers and other similar materials published or otherwise made by the FSA from time to time.

The term "**FSMA**" means the UK's Financial Services and Markets Act 2000.

The term "**Future**" means an Energy Contract or FX Contract subject to Clearing by the Clearing House that is a 'future' or 'contract for differences etc.' under articles 84 or 85 of the FSMA (Regulated Activities) Order 2001 or any economically similar Contract that is not an investment.

The term "**FX**" means foreign exchange.

The term "**FX Assessment Amount**" means the total amount of all FX Assessment Contributions payable by FX Clearing Members pursuant to Rule ~~1107~~[911\(a\)](#) in respect of an Event of Default.

The term "**FX Assessment Contribution**" has the meaning set out in Rule ~~1107~~[911\(b\)](#).

The term "**FX Clearing Member**" means a Clearing Member that is authorised by the Clearing House to become party to FX Contracts.

The term "**FX Contract**" means a Contract that is a foreign exchange contract that is subject to Clearing pursuant to these Rules and of a nature as specified in Circulars issued by the Clearing House from time to time.

The term "**FX Default Amount**" has the meaning set out in Rule ~~1103~~[908\(e\)\(iii\)](#). ~~The term "**FX Failure To Pay**" means the failure of the Clearing House to make, when due, any payment (including the transfer of Pledged Collateral) pursuant to Part 3 of the Rules in relation to FX Contracts required to be made by it if such failure is not remedied on or before the third Business Day after notice of such failure is given to it by the FX Clearing Member to which such payment is due, unless such failure to pay constitutes a Force Majeure Event affecting the Clearing House.~~

The term "**FX Guaranty Fund**" means the guaranty fund established and maintained pursuant to Part 11 relating to the Clearing of FX Contracts.

The term "**FX Guaranty Fund Contribution**" means a Guaranty Fund Contribution relating to the FX Guaranty Fund.

The term "**FX Mark-to-Market Interest**" means interest calculated by reference to the FX Mark-to-Market Margin Balance, determined and payable as set out in the Procedures.

The term "**FX Mark-to-Market Margin**" means the Permitted Cover required to be provided to the Clearing House by a Clearing Member or by the Clearing House to a Clearing Member in respect of FX Contracts pursuant to Rule 503(i) and the Procedures.

The term "**FX Mark-to-Market Margin Balance**", in respect of an FX Contract on any day, means the sum of all FX Mark-to-Market Margin delivered by the relevant FX Clearing Member

the inclusion of the proceeds of any Proprietary Account assets, CDS Guaranty Fund Contributions of non-Defaulters, Clearing House CDS Contributions or CDS Assessment Contributions in amount *OA*) would fall below the value of *A-B* where:

A = total of Surplus Collateral and Customer Account Gross-Net Amount for that CDS Customer Account, including where applicable any such amounts received by the Clearing House pursuant to a letter of credit in favour of the Clearing House falling under amount *SC* and provided in respect of that CDS Customer Account; and

B = such amounts that would fall under *A* but are attributable to a particular CDS Sub-Account and are applied to meet a loss on that CDS Sub-Account.

provided that the Gross Margin Shortfall shall in no circumstances be less than zero (and, in this definition, the terms *N*, *SC* and *OA* have the meanings given in Rule 906).

The term "**Group Company**" means, with respect to any entity, an undertaking which is a parent undertaking or subsidiary undertaking of that entity or a subsidiary undertaking of any parent undertaking of that entity. For the purposes of this definition, the expressions "parent undertaking" and "subsidiary undertaking" shall have the meanings given to them in section 1162 of the Companies Act 2006, the expression "undertaking" shall have the meaning given to it in section 1161 of the Companies Act 2006 and the expression "entity" shall have the same meaning as the expression "undertaking".

The term "**Guaranty Funds**" means the Energy Guaranty Fund, the CDS Guaranty Fund and the FX Guaranty Fund.

The term "**Guaranty Fund Contribution**" means Permitted Cover transferred by a Clearing Member to the Clearing House as a contribution to the Guaranty Fund pursuant to Part 11 that has not been applied pursuant to Part ~~119~~ and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Guaranty Fund Period**" (i) for the Energy Guaranty Fund, means a three-month period for which the total amount of Energy Guaranty Fund Contributions for the Energy Guaranty Fund is fixed (subject to any termination or suspension of any Energy Clearing Member's membership or status as an Energy Clearing Member, new Energy Clearing Members making Energy Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11); (ii) for the CDS Guaranty Fund, means a period for which the total amount of CDS Guaranty Fund Contributions for the CDS Guaranty Fund is fixed pursuant to the Finance Procedures (subject to any termination or suspension of any CDS Clearing Member's membership or status as a CDS Clearing Member, new CDS Clearing Members making CDS Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11; or (iii) for the FX Guaranty Fund, means a period for which the total amount of FX Guaranty Fund Contributions for the FX Guaranty Fund is fixed pursuant to the Procedures (subject to any termination or suspension of any FX Clearing Member's membership or status as an FX Clearing Member, new FX Clearing Members making FX Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part ~~119~~).

its capacity as a clearing member in relation to transactions connected with the provision of services to Swap Customers where segregation of related collateral is required in accordance with Section 4d(f) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and any interpretations thereof by the CFTC, and entering into market contracts in the capacity of a clearing member in relation to transactions connected with the provision of services to Swap Customers) relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Swap Customers (whose transactions the FCM/BD Clearing Member requests be recorded in the Swap Customer Account where the same is required in accordance with the segregation provisions of Section 4d(f) of the CEA insofar as applicable, and any applicable rules of the CFTC as promulgated thereunder and any interpretations thereof by the CFTC) and in which the Clearing House records such Contracts and to which monies in respect of such Contracts are debited and credited, which may be divided for administrative convenience only into sub-accounts relating to different Swap Customers or groups of Swap Customers.

The term "**Termination Close-Out Deadline Date**" means: (i) in respect of ~~a~~ termination of ~~FX~~ clearing membership either generally or in respect of a particular Membership Category under Rule 209(a)(ii)-(v) ~~or Rule 209(c)(i)(A) or Rule 209(f)(i)(A)~~, the date falling 30 Business Days after the Termination Notice Time; (ii) in respect of termination of clearing membership in respect of a particular Membership Category under Rule 917(c) and 918, the date falling 20+x Business Days after the Termination Notice Time; ~~(ii) in respect of a termination of FX clearing membership under Rule 209(e)(i)(E) or Rule 209(f)(i)(E), in respect of FX Contracts only, the day falling 10 Business Days after~~ where x= the total number of unexpired Business Days in the relevant Cooling-Off Termination Notice Time; or Period; (iii) notwithstanding (i) and (ii), in any case, such later ~~day~~ date as the Clearing House may at its discretion permit and notify in writing to the affected ~~FX~~ Clearing Member; ~~or (iv) in respect of termination of clearing membership following an Event of Default under Rule 209(a)(i), is inapplicable.~~

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

The term "**Termination Date**" means: (A) ~~(x) in respect of an FX Clearing Member that is not a CDS Clearing Member or an Energy Clearing Member and (y) for any other Clearing Member, in respect of its FX clearing membership only~~ in respect of termination of clearing membership either generally or in respect of a particular Membership Category (other than following an Event of Default under Rule 209(a)(i)), the later of: (i) where applicable, the Termination Close-Out Deadline Date; and (ii) the date of the Termination Close-Out Time; ~~or (iii) the time of expiry of the termination notice period; or~~ (B) in respect of ~~the membership of a CDS Clearing Member or Energy Clearing Member except as set out in (A)~~, the date on which a Clearing Member's membership of termination of clearing membership generally following an

Event of Default under Rule 209(a)(i), the date on which default proceedings are completed or such other date as is specified by the Clearing House terminates in writing.

The term "Termination Notice" means a notice served by a Clearing Member of termination of its membership or of its membership of a particular Membership Category under Rule 209(c)(i)(A) or Rule 917(c).

The term "**Termination Notice Time**", ~~in respect of FX clearing membership,~~ means the time of service by ~~an FX~~ Clearing Member of a ~~notice of termination under Rule 209(c)(i)(A) or (E) or Rule 209(f)(i)(A) or (E).~~ The term "**Termination Date**" ~~means the date on which a Clearing Member's membership of the Clearing House terminates.~~ Notice.

The term "**Trade Processing Platform**" means a person that has satisfied the Clearing House's requirements to act as an agent of one or more CDS Clearing Members in the submission of CDS Trade Particulars for Clearing, including having entered into an agreement with the Clearing House to act as an "**Approved CDS Trade Processing Platform**" in relation to such submissions and, in relation to any CDS Clearing Member for which (and, as the case may be, for whose Affiliate) it acts as agent, has obtained that CDS Clearing Member's authorisation in writing to submit CDS Trade Particulars for Clearing as agent for that CDS Clearing Member and accordingly, such a Trade Processing Platform will be a Representative of such CDS Clearing Member for that purpose until the expiry of not less than one Business Day's written notice to the Clearing House given by such CDS Clearing Member that such Trade Processing Platform is no longer, or is not, authorised to act as its agent and/or Representative.

The term "**Transaction**" means: (i) in respect of the Clearing of CDS Contracts, CDS Trade Particulars; (ii) in respect of the Clearing of Energy Contracts: any transaction where the related trade particulars or data submitted or provided to the Clearing House or a Market by or on behalf of a Clearing Member or Clearing Members (including by any Representative) will give rise to a Contract or Contracts if the relevant circumstances specified in Rule 401(a) occur; or (iii) an FX Transaction. For the avoidance of doubt: (A) a Transaction may or may not reflect a binding contract or transaction between two Clearing Members or between a Clearing Member and its Customer and includes any trade particulars or any data resulting from the matching of any trade or block orders; and (B) in the case of an Energy Transaction made on or reported to a Market, the Transaction need not yet have been reported to the Clearing House.

The term "**Transaction Rights or Obligations**" means the rights, liabilities or obligations (if any) of a Clearing Member relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than a Customer of the Clearing Member in relation to the Transaction in question.

The term "**Transfer**" has the meaning given to that term in Rule 904(a).

The term "**Transferee**" means a Person nominated by a Buyer to whom a transfer or delivery is to be made under an Energy Contract and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

such specified time or date, it performs the relevant obligation promptly after such specified time or date.

Rule 104 *Invoicing Back and Specification of Terms*

- (a) The Clearing House shall have the right in consultation with the relevant Market (if any), to Invoice Back a Contract with a Clearing Member, including a Contract that is subject to delivery or tender, upon the occurrence of a Force Majeure Event or a Financial Emergency, provided that the Invoicing Back is, subject to Rule 109(c), approved in advance by an affirmative vote of the Board at a quorate meeting, at which meeting the facts giving rise to the Force Majeure Event or the Financial Emergency, as the case may be, will be considered and the meeting shall decide whether it would be appropriate to use this Invoicing Back power, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (b) The Clearing House shall have the right in consultation with the relevant Market, to specify or over-ride the price or other terms of any Energy Contract or Energy Transaction, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees. Other than in circumstances in which Rule ~~209(e)(iii)~~912 applies, the Clearing House shall have the right to specify or over-ride the price or other terms of any FX Contract, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees and provided that the Clearing House's rights under this Rule 104(b) may not be applied for the purpose of changing the amount of any liability of the Clearing House to a Defaulter (or deemed defaulter) or to an FX Clearing Member which would be a Defaulter on the making of the relevant declaration by the Clearing House under Rule 901(a) or of any liability of any Defaulter (or deemed defaulter) or any such FX Clearing Member to the Clearing House.
- (c) Provided that any power exercised under this Rule 104 is exercised in accordance with its terms, any Invoicing Back, specification or over-riding by the Clearing House shall be final and binding for the purposes of these Rules and not be subject to challenge by any Person under these Rules or otherwise, except in the case of manifest error, negligence or fraud.
- (d) Where the Clearing House deems it necessary to exercise its powers under paragraph (a) or (b) above, it will do so in good faith and in accordance with Rule 102(r).
- (e) The Clearing House will not exercise its powers under paragraph (a) or (b) to avoid or amend the terms of any Contract to which a Clearing Member is party unless there is an objective justification for it doing so and such an approach is applied objectively. The price at which any Invoicing Back is executed shall be determined in a commercially reasonable manner.

Rule 105 *Termination*

- (a) If at any time the Clearing House decides to cease acting as a clearing house, either generally, in relation to a particular Exchange or in relation to a class of Contracts, it shall give all Clearing Members advance notice of the proposed Withdrawal Date by Circular. In the event of a complete cessation of services or of services in relation to a particular Exchange or any class of Contracts, at least four months' notice shall be necessary. In any other event for which there is a Withdrawal Date, at least one month's notice shall be necessary. The Clearing House shall be entitled to postpone any such Withdrawal Date, generally or in respect of any individual Clearing Member, Exchange or class of Contract.
- (b) If, at any Withdrawal Date, any affected Contracts have not been finally settled, the Clearing House shall be entitled to terminate any or all such Contracts and require any such Contracts to be cash settled on terms specified by the Clearing House in accordance with Rule 104.
- (c) Rule ~~209(d) and Rule 209(e)~~918(a)(i), (ii), (iii), (v), (vi) and (vii) and 918(b) shall apply, ~~either~~mutatis mutandis, in relation to a termination of the Clearing House's services, whether generally or ~~the Contracts in question in respect of a particular Contract Category~~, as applicable, in the event of any termination under this Rule 105. For such purposes, the term Termination Notice Time as used in Rule 918 shall be read as referring to the time at which the Clearing House issues a notice relating to the withdrawal, the terms Termination Close-out Deadline Date and Termination Date as used in Rule 918 shall be read as referring to the Withdrawal Date, the term Relevant Contract Category as used in Rule 918 refers to the Sets of Contracts being withdrawn and the terms Relevant Membership Category, Relevant Guaranty Fund Contributions and Relevant Assessment Contributions as used in Rule 918 shall be interpreted accordingly.

Rule 106 *Confidentiality and Information*

- (a) All information received or held by the Clearing House concerning past or current positions carried by the Clearing House or any other Clearing Organisation for a Clearing Member, or concerning Margin payments between the Clearing House or any other Clearing Organisation and a Clearing Member or concerning deliveries made by or to a Clearing Member and any financial statements filed with the Clearing House by any Clearing Member shall be held in confidence by the Clearing House and shall not be made known to any other Person except where disclosed, subject to such terms and conditions as the Clearing House may from time to time deem appropriate:
 - (i) with the written consent of the Clearing Member involved;
 - (ii) to a Regulatory Authority or Governmental Authority where a request is formally made to the Clearing House by or on behalf of the same or pursuant to Applicable Laws;

would be appropriate to use this power, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.

- (d) Any waiver of any right or consent given by the Clearing House under these Rules is only effective if it is in writing, applies only in the circumstances for which it is given and shall not prevent the Clearing House from subsequently relying on the relevant provision. No delay or failure to exercise by the Clearing House of any of its rights or pursuing any of its remedies hereunder shall constitute a waiver. No single or partial exercise of any right or remedy by the Clearing House shall prevent any further exercise of the same or any other right or remedy.
- (e) If any extension of any length of time is approved in respect of any payment, deposit, transfer or performance under this Rule 110, any notice given to the Clearing House prior to the end of such extension period shall be deemed not to have been given.
- (f) The Clearing House shall be entitled without breach of these Rules to delay the making of a payment to any Clearing Member in respect of a Variation Margin or Mark-to-Market Margin call in respect of all or any of a Clearing Member's accounts on an intra-day basis without following the procedure set out in Rule 110(a) to (e) in circumstances in which:
 - (i) another Clearing Member or Clearing Members has or have been or will be asked to make payment in respect of a Variation Margin or Mark-to-Market Margin call occurring at or around the same time;
 - (ii) that other Clearing Member has, or those other Clearing Members have failed to pay the Clearing House (which term for purposes of this Rule 503(k) and Rule 503(l) includes a request for payment or planned request for payment not yet being made, confirmed or due including for technical or operational reasons); and
 - (iii) the total amount of such failure or failures to pay exceeds the Original Margin, Initial Margin or FX Original Margin for each Proprietary Account or Customer Account to which the unpaid call relates provided by the Clearing Member or Clearing Members that has or have failed to pay the Clearing House.

Rule 111 *Liability*

- (a) Each Clearing Member shall indemnify and hold harmless the Clearing House against any and all losses, liabilities, damages, injuries, costs and expenses (excluding any consequential losses, liabilities, damages, injuries, costs or expenses) incurred or suffered by the Clearing House or any of its officers or employees arising out of or in connection with any of the following:
 - (i) a breach (or an allegation made by the Clearing House or any Governmental Authority of a breach) by such Clearing Member of any of its obligations under these Rules, the Procedures, its Clearing Membership Agreement or any Contract;

- (e) Subject to Market requirements (if any), a Clearing Member may appoint another Clearing Member to perform specific functions, including deliveries, on the first Clearing Member's behalf. In order to do so, the relevant Clearing Members, the Market (if any) and the Clearing House must be party to an agreement pursuant to which the second Clearing Member agrees to perform specific functions detailed in the agreement on behalf of the first Clearing Member. A Clearing Member intending to perform functions for another Clearing Member will represent and warrant to the Clearing House that it has sufficient authorisation under the FSMA and other Applicable Laws to carry on such function.

Rule 208 *Suspension of Clearing Member*

- (a) A Clearing Member may be suspended:
- (i) if one or more of the conditions set out in Rule 209(a)([\(i\) to \(iv\)](#)) is satisfied;
 - (ii) upon any breach by the Clearing Member of these Rules;
 - (iii) if a Market suspends the Clearing Member or any of its trading privileges;
 - (iv) if the Clearing House at its discretion considers that suspension is necessary to protect the interests of the Clearing House or its Clearing Members (excluding the Clearing Member concerned); or
 - (v) in the event of any Financial Emergency or Force Majeure Event affecting the Clearing Member.
- (b) Any suspension may occur in relation to the Clearing Member's status as a Clearing Member or in respect of certain classes of Contracts or rights of a Clearing Member only. A Clearing Member that has been suspended shall, during the term of such suspension and thereafter, remain and continue to be:
- (i) subject to and bound by these Rules and any agreements between it and the Clearing House;
 - (ii) obliged to pay all fees, fines, assessments or other charges imposed by the Clearing House;
 - (iii) liable pursuant to these Rules for all other obligations arising under Contracts and all obligations incurred before, during or after such suspension including, but not limited to, obligations to transfer, deposit, maintain and pay Margin and make Guaranty Fund Contributions; and
 - (iv) able to undertake such activities of a Clearing Member as are expressly permitted by the Clearing House and required to undertake such activities of a Clearing Member as are required by the Clearing House, in each case subject to compliance with all reasonable instructions of the Clearing House in relation to those activities.

- (c) The Clearing House shall be entitled at its discretion to revoke the suspension of any suspended Clearing Member.
- (d) The Clearing House may publish details of any suspension or a copy of any suspension notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 208(e).
- (e) The Clearing House will issue a Circular promptly following any suspension of a Clearing Member or the suspension of any Clearing Member's ability to clear Energy Contracts, CDS Contracts or FX Contracts specifying the name of the Clearing Member affected.

Rule 209 *Termination of Clearing Membership*

- (a) The Clearing House shall be entitled to terminate the membership of any Clearing Member ~~immediately upon, either generally or in respect of any Relevant Contract Category, upon written~~ notice to the Clearing Member:
 - (i) following the occurrence of any Event of Default affecting that Clearing Member;
 - (ii) as a result of disciplinary proceedings brought against that Clearing Member pursuant to Part 10;
 - ~~(iii) upon receipt of notice of termination of the Clearing Member's Clearing Membership Agreement from that Clearing Member;~~
 - (iii) ~~(iv)~~ following any material and unremedied breach by the Clearing Member of these Rules;
 - (iv) ~~(v)~~ upon such Clearing Member ceasing to meet, or being unable to satisfy the Clearing House that it is able to meet, any of the membership criteria set out in or required pursuant to Rule 201(a) or, if it is a CDS Clearing Member, Rule 201(i), or, if it is an FX Clearing Member, Rule 201(j); or
 - ~~(vi) upon an Insolvency in relation to that Clearing Member or any of its Group Companies.~~
- ~~(b) The Clearing House shall be entitled to terminate the membership of any Clearing Member upon no less than three months' prior written notice.~~
- ~~(e)~~
 - ~~(i) The Clearing Member shall be entitled to terminate its membership of the Clearing House:

 - ~~(A) upon no less than three months' prior written notice to the Clearing House;~~
 - ~~(B) upon the Insolvency of the Clearing House;~~~~

- ~~(C) pursuant to Rule 1105(h);~~
 - ~~(D) pursuant to Rule 1106(h); or~~
 - ~~(E) pursuant to Rule 1107(h).~~
- (ii) ~~The membership of a Clearing Member which is a CDS Clearing Member but neither an Energy Clearing Member nor an FX Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House or Failure To Pay in respect of the Clearing House. The membership of a Clearing Member which is an FX Clearing Member but neither an Energy Clearing Member nor a CDS Clearing Member shall terminate automatically upon the occurrence of an FX Failure To Pay in respect of the Clearing House.~~
- (iii) ~~In the event of an Insolvency in respect of the Clearing House (in the case of any Clearing Member) or (in the case of a CDS Clearing Member that is neither an Energy Clearing Member nor an FX Clearing Member) a Failure To Pay (in the case of a CDS Clearing Member that is neither an Energy Clearing Member nor an FX Clearing Member) a Failure To Pay in respect of the Clearing House or (in the case of an FX Clearing Member that is neither an Energy Clearing Member nor a CDS Clearing Member) an FX Failure To Pay in respect of the Clearing House or (in the case of a Clearing Member that is an FX Clearing Member and a CDS Clearing Member but not an Energy Clearing Member) circumstances which constitute both a Failure To Pay and an FX Failure To Pay in respect of the Clearing House, Rule 912 applies and the rights and liabilities of each Clearing Member under all Contracts will be deemed to be terminated without need for any further step on the part of any party and discharged for the purposes of Rule 906 and a net sum or net sums payable by or to the Clearing Member to or from the Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member. In circumstances in which this Rule 209(c)(iii) applies:~~
- ~~(A) Rules 1105, 1106 and 1107 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901(a) (rather than any Event of Default effectively deemed to occur pursuant to this provision or Rule 912);~~
 - ~~(B) Rules 901, 902, 903, 904 and 905 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this provision or Rule 912);~~
 - ~~(C) without prejudice to the generality of paragraph (B), Rule 905(c) shall apply only in relation to Contracts the counterparties to which are Clearing Members that are actually declared subject to an Event of~~

~~Default (and not in relation to Contracts the counterparties to which are Clearing Members that are effectively deemed to be subject to an Event of Default pursuant to this provision);~~

- ~~(D) the net sum or net sums required to be determined in these circumstances pursuant to Rule 906 in respect of a Clearing Member that has multiple Membership Categories will be made separately in relation to the rights and liabilities of that Clearing Member for each applicable Membership Category and Rule 906 shall be interpreted accordingly; and~~
- ~~(E) otherwise, Part 9 shall apply *mutatis mutandis* in relation to terminated CDS Contracts and rights, obligations and liabilities relating thereto.~~

~~(iv) If the Clearing House becomes aware of there being or occurring an Insolvency in respect of the Clearing House, the Clearing House will promptly notify the FX Clearing Members that the same has occurred.~~

~~(v) Any Clearing Member terminating its membership of the Clearing House under this Rule 209(c) shall provide notice of termination to the Clearing House, taking effect no less than 30 Business Days after the date of service of the notice.~~

~~(d) This Rule 209(d) applies to a Person that has served a notice of termination, except:~~

~~(A) if the Person is or was an FX Clearing Member but neither a CDS Clearing Member nor an Energy Clearing Member, in which case Rule 209(g) and Rule 209(h) shall apply and this Rule 209(d) shall not apply; or~~

~~(B) if the Person is or was an FX Clearing Member and is or was also either an Energy Clearing Member or a CDS Clearing Member (or both), in which case Rule 209(g) and Rule 209(h) shall apply but only in respect of those of the rights, obligations or liabilities of the Person relating to FX Contracts, FX Guaranty Fund, FX Assessment Contributions, FX Mark to Market Margin, FX Original Margin and otherwise in respect of the Person's status (or former status) as an FX Clearing Member, and this Rule 209(d) shall apply otherwise in relation to the termination of membership of that Person.~~

~~In circumstances in which this Rule 209(d) applies, upon any termination of a Clearing Member's membership, the relevant Clearing Member shall remain liable to transfer, deposit, maintain and pay all Margin, make Guaranty Fund Contributions when due and make all other payments due pursuant to Contracts from time to time and shall be obliged to:~~

~~(i) transfer, terminate, make settlement in respect of and/or make delivery (as applicable) pursuant to all Contracts to which it is party in accordance with applicable Contract Terms; and~~

- ~~(ii) take such other actions as the Clearing House at its discretion deems appropriate or necessary.~~
- ~~(e) This Rule 209(e) applies to a Person that has served a notice of termination, except:
 - ~~(A) if the Person is or was an FX Clearing Member but neither a CDS Clearing Member nor an Energy Clearing Member, in which case Rule 209(g) and Rule 209(h) shall apply and this Rule 209(e) shall not apply; or~~
 - ~~(B) if the Person is or was an FX Clearing Member and is or was also either an Energy Clearing Member or a CDS Clearing Member (or both), in which case Rule 209(g) and Rule 209(h) shall apply but only in respect of those of the rights, obligations or liabilities of the Person relating to FX Contracts, FX Guaranty Fund, FX Assessment Contributions, FX Mark-to-Market Margin, FX Original Margin and otherwise in respect of the Person's status (or former status) as an FX Clearing Member, and this Rule 209(e) shall apply otherwise in relation to the termination of membership of that Person.~~~~

~~In circumstances in which this Rule 209(e) applies, any Person who for any reason ceases to be a Clearing Member shall remain and continue to be:~~

- ~~(i) subject to any arbitration, investigations, panels or proceedings, and provisions of these Rules relating thereto, which relate in whole or in part to any acts or omissions of that Person while it was a Clearing Member;~~
- ~~(ii) obliged in respect of all fees, fines, charges, payments pursuant to Contract Terms, Margin payments and other amounts due to the Clearing House as a result of Contracts and other obligations entered into or incurred prior to the termination of its status as Clearing Member;~~
- ~~(iii) subject to claims against its Guaranty Fund Contributions until the Clearing House returns such Guaranty Fund Contributions in accordance with Part 11; and~~
- ~~(iv) obliged to pay any Assessment Contribution for which it is liable pursuant to Part 11.~~
- ~~(f)~~
- (b) Rule 918(a)(i), (ii), (iii), (v), (vi), (vii), (viii) and (b) shall apply, *mutatis mutandis*, following service of a notice of termination by the Clearing House, whether generally or in respect of a particular Contract Category, under Rule 209(a)(ii)-(v). For such purposes, the terms Relevant Contract Category and Relevant Membership Category as used in Rule 918 refer to the Contract Category and Membership Category respectively to which the notice of termination relates and the terms Relevant Guaranty Fund Contributions and Relevant Assessment Contributions as used in Rule 918 shall be interpreted accordingly.

(c)

- (i) A Clearing Member ~~which has multiple Membership Categories~~ shall be entitled to terminate its ~~status as an Energy Clearing Member, CDS Clearing Member and/or an FX Clearing Member~~ membership of the Clearing House, either generally or in respect of any Relevant Contract Category, upon service of a Termination Notice to the Clearing House:
- (A) ~~upon no less than three months' prior written notice to the Clearing House;~~
 - (B) ~~upon the Insolvency of the Clearing House;~~
 - (C) ~~in the case of Energy Clearing membership, pursuant to Rule 1105(i);~~
 - (D) ~~in the case of CDS Clearing membership, pursuant to Rule 1106(i); or~~
 - (E) ~~in the case of FX Clearing membership, pursuant to Rule 1107(i).~~
- (ii) ~~If a CDS Clearing Member has multiple Membership Categories, its status as a CDS Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House or Failure To Pay in respect of the Clearing House.~~
- (iii) ~~If an FX Clearing Member has multiple Membership Categories, its status as an FX Clearing Member shall terminate automatically upon the occurrence and continuance of an FX Failure To Pay in respect of the Clearing House.~~
- (iv) ~~Rule 209(c)(iii), Rule 209(c)(iv), Rule 209(d), Rule 209(e), Rule 209(g) and Rule 209(h) shall apply *mutatis mutandis* in relation to any termination described in this Rule 209(f), as regards Energy Contracts, CDS Contracts or FX Contracts (whichever the Clearing Member proposes to cease to clear or ceases to clear, as applicable) and Clearing related thereto only.~~
- (g) ~~If an FX Clearing Member serves notice of termination of its membership under Rule 209(c)(i)(A) or termination of FX Clearing membership under Rule 209(f)(i)(A) (other than if there is a termination pursuant to Rule 209(c)(i)(B) or the second sentence of Rule 209(c)(ii), Rule 209(f)(i)(B) or Rule 209(f)(iii)) it must use all reasonable endeavours, until such time as there is a subsequent Insolvency or FX Failure To Pay in respect of the Clearing House, to close out all of its open FX Contracts prior to the Termination Close Out Deadline Date. Such an FX Clearing Member, after the Termination Notice Time, shall only be entitled to submit FX Transactions for clearing or become party to FX Contracts which it can demonstrate have the overall effect of reducing risks to the Clearing House associated with the FX Contracts to which that FX Clearing Member is party, whether by hedging, novating, transferring, terminating, liquidating or otherwise closing out such FX Contracts. If any such FX Clearing Member has any open FX Contracts with the Clearing House after the Termination Close Out Deadline Date (and notwithstanding any provision of Rule 1107 or Rule 1710 to the contrary) the FX Clearing Member shall as from the Termination Close Out Deadline Date: (x) become~~

~~liable to replenish any FX Guaranty Fund Contribution that would have fallen due for replenishment but has not been paid, to have applied any FX Guaranty Fund Contribution that would have been applied but was not so applied and to pay any FX Assessment Contribution that would have fallen due but has not been paid, in each case to the extent that the same would have been payable or applied but for its service of a notice of termination and in each case in respect of any Event of Default affecting an FX Clearing Member and relating to FX Clearing that has occurred subsequent to the Termination Notice Time; (y) become liable for further obligations to replenish any FX Guaranty Fund Contribution, have any FX Guaranty Fund Contribution applied or pay FX Assessment Contributions in the same way as any other FX Clearing Member in respect of any Event of Default affecting an FX Clearing Member and relating to FX Clearing occurring prior to the Termination Date; and (z) (unless the termination was under Rule 209(e)(i)(A) or Rule 209(f)(i)(A)) be reinstated as an FX Clearing Member without any need to follow the membership application process described in Part 2. For the avoidance of doubt, the Clearing House may call for additional FX Original Margin from an FX Clearing Member subject to this Rule 209(g), until such time as all of its open FX Contracts have been terminated, and such FX Clearing Member shall pay such additional FX Original Margin to the Clearing House. Following termination of all open FX Contracts to which a terminating FX Clearing Member (the "**Terminated Clearing Member**") was party in relation to a particular Customer Account or Proprietary Account, the Clearing House shall then declare a net sum (which may be declared in parts, as envisaged below) as due to or from the Terminated Clearing Member in accordance with **Rule 905(f) and Rule 906**, in the same way as if the Terminated Clearing Member were a Defaulter but with the following modifications:~~

- ~~(i) references in Part 9 to "Default", an "Event of Default" shall be read as references to a Terminated Clearing Member terminating its FX clearing membership and, in the case of a failure to close out relevant Contracts only in respect of a particular Customer Account or Proprietary Account, shall be construed as applying only in respect of such account;~~
- ~~(ii) any net sum calculated in relation to the Terminated Clearing Member under Rule 906 will be calculated only with regard to rights, obligations and liabilities relating to FX and any such net sum which is payable to the Terminated Clearing Member shall not be paid by the Clearing House to such Terminated Clearing Member until the later of:
 - ~~(A) ten Business Days after the date on which the termination of the Terminated Clearing Member's open FX Contracts and the realisation or return of any Margin provided in respect of FX Contracts, FX Guaranty Fund Contributions or other assets remaining credited to the Terminated Clearing Member's relevant Proprietary Account or Customer Account in respect of FX clearing or otherwise in the Clearing House's possession in respect of FX clearing is completed (subject always to Rule 102(q)); or~~
 - ~~(B) if the Terminated Clearing Member has any unapplied FX Guaranty Fund Contributions, the expiry of the Guaranty Fund Period for the FX~~~~

~~Guaranty Fund immediately following the Guaranty Fund Period current on the Termination Date;~~

- ~~(iii) notwithstanding anything in Part 9 or elsewhere in these Rules:
 - ~~(A) the Clearing House may at its discretion return amounts due to the Terminated Clearing Member in different currencies or by way of transfer or return of non-cash Permitted Cover to the Terminated Clearing Member, taking effect no less than 30 Business Days after the date of the Termination Notice Time;~~
 - ~~(B) the Clearing House may further pay any net sum calculated under Rule 906 and payable to the Terminated Clearing Member in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and pursuant to Rule 917(c).~~
 - ~~(C) the Clearing House may make part payment of any amounts due excluding the FX Guaranty Fund Contribution prior to the time specified in Rule 209(g)(ii)(B);~~~~
- ~~(iv) it is acknowledged that any 'net sum' declared in accordance with this provision is not formally a 'net sum' for purposes of the Companies Act 1989;~~
- ~~(v) an FX Clearing Member subject to these provisions is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such FX Clearing Member in order for the Clearing House to exercise its rights under this provision or for the FX Clearing Member in question to receive any payment or return of assets; and~~
- ~~(vi) references to Part 9 in any other Rules or in the Procedures, Circulars and Guidance shall be construed in accordance with this Rule 209(g) when they fall to be applied in relation to the termination of a Clearing Member's membership under Rule 209 and any action taken by the Clearing House following such termination taking effect.~~
- ~~(h) Notwithstanding Rule 209(e), after the Termination Date, a Person that was an FX Clearing Member shall remain and continue, in respect of all obligations, rights and liabilities relating to the Clearing Member's status as an FX Clearing Member:
 - ~~(i) subject to any arbitration, investigations, panels or proceedings, and provisions of these Rules relating thereto, which relate in whole or in part to any acts or omissions of that Person while it was a Clearing Member;~~
 - ~~(ii) bound to the Clearing House to perform all and any obligations and liabilities (which either have not been performed or have fallen due but are unpaid) resulting from its status as an FX Clearing Member, including obligations and liabilities relating to: fees, fines, charges, payments pursuant to Contract Terms for FX Contracts, obligations to pay FX Guaranty Fund Contributions (subject~~~~

~~always to Rule 209(g), Rule 1107(h) and Rule 1107(i)), obligations to pay FX Assessment Contributions (subject always to Rule 209(g), Rule 1107(h) and Rule 1107(i)), FX Original Margin payments and FX Mark-to-Market Margin payments; and~~ The membership of a Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House. In any such circumstances, Rule 912 applies.

- (iii) ~~subject always to Rule 1107(h) and Rule 1107(i), in a position such that its FX Guaranty Fund Contributions may be applied in accordance with Part 11, until such time as the Clearing House returns such FX Guaranty Fund Contributions in accordance with Part 11 and Rule 209(g)(ii)(B).~~ The membership of a Clearing Member in respect of a particular Membership Category shall terminate automatically upon the occurrence of a Failure to Pay in respect of the Clearing House relating to such Membership Category. In any such circumstances, Rule 912 applies.
- (i) ~~The Clearing House may publish details of any termination or a copy of any termination notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 209(j).~~
- (d) Rules 918(a)(ii), (iv), (v), (vi), (vii), (viii) and (b) shall apply, mutatis mutandis, following service of a Termination Notice, whether generally or in respect of a particular Contract Category, under Rule 209(c)(i)(A). For such purposes, the terms Relevant Contract Category and Relevant Membership Category as used in Rule 918 refer to the Contract Category and Membership Category respectively to which the Termination Notice relates and the terms Relevant Guaranty Fund Contributions and Relevant Assessment Contributions as used in Rule 918 shall be interpreted accordingly. Unless it served such notice during a Cooling-off Termination Period, a Clearing Member that serves a Termination Notice shall be liable immediately upon service of the Termination Notice to pay the Clearing House Assessment Contributions of an amount equal to three times its required Relevant Guaranty Fund Contribution (as calculated prior to the time of the Cooling-off Trigger Event) in respect of each Relevant Contract Category, such amounts to be held as permitted Cover until the Termination Date and applied only as permitted in accordance with the Part 9 of the Rules. A Clearing Member that has served a Termination Notice and made such payments shall not be liable for any further replenishments of its Guaranty Fund Contribution or Assessment Contribution, regardless of how many Events of Default take place. Any reference in these Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, in respect of a Clearing Member which has provided such Permitted Cover to the Clearing House under this Rule 209(d), shall be interpreted as a reference to the Permitted Cover in question being similarly applied.
- (e) ~~(f)~~ The Clearing House will issue a Circular promptly following any termination of membership of a Clearing Member or the termination of any Clearing Member's ability to clear Energy Contracts, CDS Contracts or FX Contracts, specifying the name of the Clearing Member affected. The Clearing House may at its discretion (but shall not be required to) publish a copy of any Termination Notice or other termination notice.

Part 4 Clearing Mechanism

Rule 401 *Formation of Contracts*

- (a) Subject to Rule 403 and Rule 404, two Contracts shall arise automatically, one between the Selling Clearing Member and the Clearing House and the other between the Clearing House and the Buying Clearing Member (or a single Contract shall arise between the Clearing House and a Clearing Member where applicable in the case of Rule 401(a)(vi)-~~or (x)~~), at the moment that:
- (i) in the case of any ICE Futures Europe Matched Transaction or ICE Futures US Matched Transaction, the relevant orders are matched on ICE Futures Europe or ICE Futures US, respectively;
 - (ii) in the case of any ICE OTC Matched Transaction, the relevant orders are matched on ICE OTC in an instance in which, in accordance with relevant ICE OTC Participant Agreements, any relevant ICE OTC Broker Agreement and the Clearing Procedures, the Transaction is to proceed to clearing;
 - (iii) in the case of any ICE Futures Europe Block Transaction or ICE Futures US Block Transaction, ICE Futures Europe or ICE Futures US, respectively, receives and has recorded on its system complete data in respect of the Transaction;
 - (iv) in the case of any ICE OTC Block Transaction, the ICE OTC Operator receives complete data in respect of the Transaction in an instance in which, in accordance with relevant ICE OTC Participant Agreements, any relevant ICE OTC Broker Agreement and the Clearing Procedures, the Transaction is to proceed to clearing;
 - (v) in the case of Transactions generated by ICE Futures Europe, ICE Futures US or the ICE OTC Operator as a result of the operation of their contra trade, error trade, invalid trade, cancelled trade, error correction or similar policies and rules and procedures relating thereto or otherwise, upon notice of the final terms of the Transaction being received by the Clearing House;
 - (vi) in the case of a Contract that is formed as a result of another Contract being Invoiced Back by the Clearing House, immediately upon notice of the existence and final terms of the new Contract being given by the Clearing House to the Clearing Member affected;
 - (vii) in the case of a Contract that forms as a result of an Option being exercised in accordance with Part 8, immediately upon such exercise taking effect pursuant to Part 8;
 - (viii) in the case of an Energy Contract that is allocated by one Clearing Member to another Clearing Member by agreement of both Clearing Members subsequent to that Energy Contract arising but on the same day as that on which such Contract arose, upon both such Clearing Members having recorded their agreement to such allocation on the Clearing House's systems;

- (ix) in the case of a CDS Contract ~~(other than a CDS Contract arising pursuant to Rule 401(a)(x))~~, the time specified pursuant to the CDS Procedures occurs for the acceptance of CDS Contracts on any day, provided that no such CDS Contract shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the Procedures in relation to the CDS Contract;
 - (x) ~~in the case of a CDS Contract arising under Rule 905(e), the time specified by the Clearing House for the entry into of the relevant CDS Contract occurs, provided that the Clearing House has given notice to the relevant CDS Clearing Member of the particulars of the CDS Contract involved and the price or Initial Payment at which such CDS Contract will be recorded on the Clearing House's books and records;~~ [\[Not used.\]](#);
 - (xi) in the case of a CDS Contract arising following the submission of end-of-day prices by a Clearing Member pursuant to Rule 503(g), at the time specified by the Clearing House for the entry into of the relevant CDS Contract, provided that (A) the Clearing House has given notice to the relevant CDS Clearing Member of the particulars of the CDS Contract involved and the price or Initial Payment at which such CDS Contract will be recorded on the Clearing House's books and records in accordance with the CDS Procedures; and (B) no such CDS Contract shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the CDS Procedures in relation to the CDS Contract;
 - (xii) in the case of an FX Contract (other than an FX Contract arising pursuant to Rule 401(a)(vi)), the time specified pursuant to the Procedures occurs for the acceptance of the FX Contract, provided that no such FX Contract shall arise unless the Clearing House has provided an acceptance notice to the Buying Clearing Member and Selling Clearing Member in accordance with the Procedures in relation to the FX Contract; and
 - (xiii) in the case of a Contract arising under Rule 404(c)(i), at the time of execution of relevant documentation or otherwise when a replacement Contract arises in accordance with that provision.
- (b) For Energy Contracts only, a contract or contracts shall arise between the Clearing House and the Buyer and/or the Clearing House and the Seller at the moment that an alternative delivery is agreed in respect of a Contract where, pursuant to the Clearing Procedures and Market Rules, a new collateral contract arises as a result of the alternative delivery being agreed, at the time and subject to the conditions and effects on existing Contracts specified in the Clearing Procedures.
 - (c) Other than as specifically set out in the CDS Procedures, the Clearing House shall be entitled to rely conclusively on the accuracy and authenticity of any and all information and data regarding any Transaction or CDS Trade Particulars submitted to the Clearing House by or on behalf of a Market, Exchange, Deriv/SERV, Trade Processing Platform,

- (h) Where a Clearing Member has appointed a Disclosed Principal Member, the Disclosed Principal Member shall be the Buying Clearing Member or the Selling Clearing Member (as applicable) instead of the relevant Clearing Member in respect of all Contracts arising under this Rule 401 to which that Clearing Member would, but for the requirements of this Rule 401(h), otherwise be party. All provisions of these Rules relating to Contracts shall be construed accordingly.
- (i) In order for a Contract to arise pursuant to:
- (i) Rule 401(a)(i), (ii), (iii), (iv), (v), (vii) or (viii); or
 - (ii) Rule 401(a)(vi) in relation to an Energy Contract,
- the Clearing Member in question must be an Energy Clearing Member.
- (j) In order for a Contract to arise pursuant to:
- (i) Rule 401(a)(ix), ~~(x)~~ or (xi); or
 - (ii) Rule 401(a)(vi) or 401(a)(xiii) in relation to a CDS Contract,
- the Clearing Member in question must be a CDS Clearing Member.
- (k) In order for a Contract to arise pursuant to:
- (i) Rule 401(a)(xii); or
 - (ii) Rule 401(a)(vi) or Rule 401(a)(xiii) in relation to an FX Contract,
- the Clearing Member in question must be an FX Clearing Member.
- (l) On each occasion that the Clearing House gives notice in relation to a CDS Contract pursuant to Rule 401(a)(ix), ~~(x)~~ or (xi), each affected Clearing Member, Customer and the Clearing House, as applicable, must submit (and the Clearing House shall be authorised to submit), in accordance with the CDS Procedures, the terms of the CDS Trade Particulars or CDS Contract (and Customer-CM CDS Transaction, where applicable) to Deriv/SERV or another service specified by the Clearing House. Such submissions shall include identical terms as the original submission for clearing of the CDS Trade Particulars or the CDS Contract arising under Rule 401(a)(~~x~~) ~~or~~ (xi), as applicable, adjusted to take into account netting and aggregation of CDS Contracts pursuant to Rule 406.
- (m) Where an Energy Contract arises pursuant to Rule 401 as a result of trading, submission of trade data or other action by or relating to a Customer of a Non-FCM/BD Clearing Member, an opposite corresponding contract shall arise between the Customer and that Clearing Member (and may be void or voided) and further corresponding contracts may arise between Customers in the manner specified by and in accordance with:

- (i) the Clearing Member is in full compliance with the Rules;
- (ii) the Clearing Member's obligations under the Clearing Membership Agreement, any Contract and Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));
- (iii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Clearing Membership Agreement, any Contract or any Credit Support Document to which it is a party;
- (iv) there is not pending or, to its knowledge, threatened against it or any of its Credit Support Providers any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of the Clearing Membership Agreement, any Contract or any Credit Support Document to which it is a party or its ability to perform its obligations under the Clearing Membership Agreement, any Contract or such Credit Support Document;
- (v) except as expressly provided in Part 16 of the Rules in respect of FCM/BD Clearing Members, it is acting for its own account and as principal and not as agent;
- (vi) it has made its own independent decisions to enter cleared Contracts and as to whether the entry into of cleared Contracts is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary;
- (vii) it is not relying on any communication (written or oral) of the Clearing House as investment advice or as a recommendation to enter into the Contract, it being understood that information and explanations related to the terms and conditions of a Contract will not be considered investment advice or a recommendation to enter into a Contract;
- (viii) no communication (written or oral) received from the Clearing House will be deemed to be an assurance or guarantee as to the expected results of that Contract;
- (ix) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Contract and it is also capable of assuming, and assumes, the risks of the Contract;
- (x) the Clearing House is not acting as a fiduciary for or an adviser to it in respect of the Contract; [and](#)

- (xi) where the Contract is to be recorded in its Customer Account or is otherwise related to a Customer-CM CDS Transaction or Corresponding Contract, the Clearing Member acknowledges its obligation in Rule 202(a)(ii) and that compliance with Applicable Laws in the context of entering into Customer transactions includes compliance with Applicable Laws relating to customer due diligence in respect of its Customer and Applicable Laws relating to sanctions administered or imposed by the European Union, H.M. Treasury, the Office of Foreign Assets Control of the U.S. Department of the Treasury, the United Nations Security Council or any other relevant Governmental Authority affecting the Customer or any of its Customer's assets.

- (b) In relation to each Contract (other than a Contract arising pursuant to Rule 401(a)(v), Rule 401(a)(vi), ~~Rule 401(a)(x)~~, Rule 401(a)(xi) or Rule 401(a)(xiii)), the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
 - (i) the data submitted by the Clearing Member or its Customer to the Exchange (if applicable) or the Clearing House:
 - (A) is complete and correct in all respects; and
 - (B) has been authorised by the Clearing Member (including that any Trade Processing Platform used by the Clearing Member for the submission of CDS Trade Particulars has been duly authorised by the Clearing Member for the submission of data relating to CDS Trade Particulars in accordance with the CDS Procedures); and
 - (ii) Market Rules (if applicable), the Trade Processing Platform's procedures (if applicable) and all Applicable Laws have been complied with by the Clearing Member and any relevant Customer in respect of the Transaction or CDS Trade Particulars.

- (c) In relation to each Contract that arises pursuant to Rule 401(a)(iii), Rule 401(a)(iv), Rule 401(a)(viii), Rule 401(a)(ix) and Rule 401(a)(xii), the Clearing House will, and will be entitled to, rely on representations and warranties deemed automatically to arise pursuant to these Rules from each Clearing Member proposing to become party to any Contract, that:
 - (i) all and any previously subsisting contracts, rights, obligations or liabilities in connection with the subject matter of the Transaction or proposed Contract are on equal terms to that of the relevant Contract Terms (save as to the parties) and, in the case of rights, are free from all Encumbrances (excluding liabilities and obligations arising pursuant to the Contract Terms); and
 - (ii) any Person other than the Clearing Member to whom any contracts, rights, obligations or liabilities referred to in Rule 405(c)(i) pertain has agreed with the Clearing Member, or such other Person as is relevant, to be released from all of

conditions as the Clearing House at its discretion stipulates and, in relation to CDS Contracts, subject to the requirements set out in the CDS Procedures;

- (ii) as a result of an allocation resulting in a Clearing Member being the 'Buying Clearing Member' or 'Selling Clearing Member' as such terms are defined in Rule 101;
 - (iii) as a result of an allocation pursuant to Rule 401(a)(viii);
 - ~~(iv) as a result of a CDS Contract arising pursuant to Rule 905(c) and Rule 401(a)(x);~~
or
 - (iv) ~~(v)~~ as a result of a Transfer of Contracts pursuant to Rule 904.
- (b) Any purported transfer of any rights, liabilities or obligations under a Contract other than in accordance with Rule 408(a) shall be null and void.

Rule 409 *Amendment of Contract Terms*

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

- (iii) terminate such Contracts as the Clearing House at its discretion selects on behalf of the Clearing Member;
 - (iv) instigate an investigation or disciplinary proceedings under Part 10 of the Rules; and/or
 - (v) impose such other requirements on the Clearing Member as it sees fit.
- (c)
- (i) A Clearing Member shall be deemed not to have exceeded a Position Limit (for purposes of Rules 602(a)(ii) and (iv) and Rule 204(a)(ii) only) to the extent that such Position Limit is exceeded as a result of it being party to any Contract arising pursuant to any of Rule 401(a)(v), (vi), ~~(x)~~, (xi) or (xiii) which was entered into: (A) 5 or fewer Business Days prior to the date of determination by the Clearing House that a Position Limit has been exceeded; or (B) 5 or fewer Business Days prior to the relevant Set becoming ineligible for Clearing (provided that if the relevant Set later becomes eligible for Clearing again, this paragraph (B) shall cease to apply 5 Business Days after the Set has so become eligible for Clearing) (or, in either case (A) or (B), as a result of any Open Contract Position or Contract reflecting any such Contract). Consequently, where a Clearing Member is party to any such Contract, the existence of the Contract will be disregarded in calculating the position of the Clearing Member that is used for purposes of determining the availability of the Clearing House's powers under Rule 602(a)(ii) or (iv) or the applicability of a notification requirement under Rule 204(a)(ii) and instead the position of the Clearing Member excluding each disregarded Contract will be used for the purposes of such determinations.
 - (ii) A Clearing Member shall be deemed not to have breached a requirement imposed on it pursuant to Rule 602(a)(ii) to the extent that such a requirement is breached as a result of it being party to any Contract arising pursuant to any of Rule 401(a)(v), (vi), ~~(x)~~, (xi) or (xiii) which was entered into: (A) at any time after the requirement was imposed; (B) 5 or fewer Business Days prior to the requirement being imposed; or (C) 5 or fewer Business Days prior to the Set becoming ineligible for Clearing (provided that if the relevant Set later becomes eligible for Clearing again, this paragraph (C) shall cease to apply 5 Business Days after the Set has so become eligible for Clearing) (or, in any such case (A), (B), or (C), as a result of any Open Contract Position or Contract reflecting any such Contract). Consequently, where a Clearing Member is party to any such Contract, the existence of the Contract will be disregarded for purposes of determining any breach of a requirement under Rule 602(a)(ii) and instead the position of the Clearing Member excluding each disregarded Contract will be used for the purposes of any such determination.
 - (iii) Nothing in Rule 602(c) shall restrict the taking by the Clearing House of any action under Rule 602(a)(i) or (iii), which it may do without regard to the nature of Contracts making up any Open Contract Position.

respect of the same currency, and those two FX Contracts have the same FX Settlement Date.

- (b) All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be closed out in the manner set out in Rule 905 except to the extent that Rule 903(a) applies to such Contracts.
- (c) To the extent that any Contracts to which a Defaulter is party remain open from time to time (whether pursuant to Rule 903(a)(ii), pending Transfers, terminations or otherwise) or if the Clearing House is otherwise unable for any reason to liquidate Contracts in a prompt and orderly fashion, the Clearing House may authorise the execution from time to time for the account of the Clearing House, for the purpose of an orderly unwind of any Contracts to which a Defaulter is party or reducing the risk to the Clearing House and the risk to Clearing Members (in the case of Clearing Members, except to the extent that reducing any risk to Clearing Members creates or increases any risk for the Clearing House) resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts. Any such hedging transactions that are executed shall be submitted by Clearing Members with whom they are executed to the Clearing House for Clearing on a daily basis. Any costs, expenses or losses sustained by the Clearing House in connection with transactions effected pursuant to this Rule 903(b) shall be charged to the Defaulter and any gains shall be credited to the Defaulter in the relevant net sum calculation under Rule 906 for the Account in respect of which exposures were hedged.
- (d)
 - (i) If a CDS Contract or Energy Contract is automatically terminated pursuant to an automatic early termination provision or under Applicable Law as a result of an Event of Default, Insolvency or related event affecting the Defaulter, this Part 9 shall apply *mutatis mutandis* in relation to such terminated Contract to which such Defaulter was party and the rights, obligations and liabilities relating thereto.
 - (ii) If an FX Contract is terminated pursuant to an automatic early termination provision or under Applicable Law as a result of any Event of Default or related event, or if Rule ~~209(e)(iii)~~912 applies, this Part 9 shall apply *mutatis mutandis* in relation to such terminated FX Contract and rights, obligations and liabilities relating thereto. For the avoidance of doubt, in any case where this Rule 903(d)(ii) applies as a result of Rule ~~209(e)(iii)~~912 applying, Rule 905(f) shall not apply to the extent that the same is disapplied by Rule ~~209(e)~~912.
- (e) Upon an Event of Default being declared with respect to a Clearing Member, any accrued or invoiced amounts shall be immediately due and payable by the Defaulter to the Clearing House.

House pursuant to any transactions, Invoicing Back or the creation of new Contracts at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), but subject always to, and accounting for the close-out amounts under, Rule 906, for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise. For the avoidance of doubt ~~but without prejudice to Rule 905(e)~~, this Rule 905(b)(ii) does not empower the Clearing House to oblige non-defaulting Clearing Members to become party to any Contracts.

- (iii) FX Contracts of a Defaulter having different FX Settlement Dates may be combined, terminated and replaced by any transactions, Invoicing Back or the creation of new FX Contracts at the Clearing House's discretion, for purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise, if the Defaulter is Reference Currency Buyer under one of the FX Contracts in respect of a particular currency and Reference Currency Seller under the other FX Contract in respect of the same currency.
- (iv) Any Contracts (including those recorded in one of the Defaulter's Customer Position Accounts) which are sale and purchase Contracts in the same Set may be closed out and terminated (in whole or in part), together with any termination payments settled by way of off-set.
- (v) An Option may be terminated, exercised or abandoned, at the discretion of the Clearing House, and in any case where an Option is exercised, the Clearing House may terminate or close out the Future, if any, arising as a result of such exercise in accordance with the provisions of this Rule 905.
- (vi) Notwithstanding any other provision of this Rule 905, the Clearing House may pair and cancel offsetting Long and Short positions in the same Future or Option Set or 'Selling Clearing Member' and 'Buying Clearing Member' positions in any Set of CDS Contracts or FX Contracts; and where it is necessary or desirable for there to be a price (for example, in the case of a liquidation of offsetting Customer Account and Proprietary Account Contracts or the liquidation of offsetting Contracts recorded in different Customer Accounts, where in each case, the close-out values of the offsetting Contracts are required be taken into account for the calculation of different net sums pursuant to Rule 102(q) and Rule 906), the price for a Future or Option Contract will be equal to the Settlement Price, the price for a CDS Contract will be the Mark-to-Market Price or for FX Contracts at the FX Market Price, in either case on the day such cancellation is ordered (or alternatively, such other price shall apply as the Clearing House may establish in accordance with the Procedures and its risk policies).
- (vii) The Clearing House shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any court order) to sell, transfer, value or create any interest in any Permitted Cover, Margin, Guaranty Fund Contributions or other assets that are credited to the Defaulter's Proprietary Margin Account, any of its Customer Margin Accounts (subject to Rule 502(i)) or any of its accounts used

rule, as opposed to pursuant to the process and legal entitlements described further in Rule 904.

- (xvi) The Clearing House may take action so as to terminate or replace Customer-CM CDS Transactions, Corresponding Contracts or other transactions between a Customer and a Defaulter which are consequential on it taking actions in relation to Contracts in accordance with Rule 904.
 - (xvii) The Clearing House shall be entitled to take any other action with respect to the Defaulter, the Contracts to which the Defaulter is party or any Margin, Guaranty Fund Contribution or Surplus Collateral provided by the Defaulter as the Clearing House at its discretion considers to be necessary or prudent in the circumstances.
 - (xviii) The Clearing House may make appropriate entries on the records of the Clearing House and submit appropriate data to Deriv/SERV, Delivery Facilities and other applicable repositories or registers to give effect to any action taken in accordance with this Part 9.
- (c) ~~To the extent that the Clearing House does not terminate, transfer or close out all of the CDS Contracts of a Defaulter, the Clearing House may at its discretion require the entry into of new CDS Contracts between the Clearing House and CDS Clearing Members that are not Defaulters (which CDS Contracts replace any remaining CDS Contracts of the Defaulter) at a price determined by the Clearing House, taking into account the minimum target price determined in accordance with the CDS Procedures, on a pro rata basis (or as near as practicable, with odd lots determined by the Clearing House and assigned randomly) in proportion to the size of each CDS Clearing Member's required CDS Guaranty Fund Contribution relative to the aggregate of all required CDS Guaranty Fund Contributions. In any such circumstances, the provisions of Part 4 of the Rules (including without limitation Rule 401(a)(x)) shall apply to the formation of any new CDS Contracts resulting from such action, as part of the Clearing House's default rules. To the extent that any new CDS Contracts arise pursuant to the procedure set out in this Rule 905(e), an equal notional amount of CDS Contracts of each relevant Set to which the Defaulter was party shall be treated as having been closed out and terminated at the same price.~~ [\[Not used.\]](#)
- (d) If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to close out or terminate all Contracts to which the Defaulter is party pursuant to Rule 905(b) ~~or Rule 905(e)~~, the Clearing House may close out or terminate such Contracts by taking opposite positions for Energy Contracts in Contracts in the current expiration month, for CDS Contracts in Contracts of a different series or version number or scheduled termination date or, for FX Contracts in Contracts of a different FX Settlement Date, and terminating the resultant terminated positions.
- (e) All terminations and closing out of Contracts pursuant to this Rule 905 shall be for the account and cost of the Defaulter.

House CDS Contributions and CDS Assessment Contributions as may be required to be applied pursuant to Rule ~~1103~~[908](#) to meet a Gross Margin Shortfall,

but excluding in any case: (A) any Pledged Collateral returned to a Clearing Member or any of its Customers pursuant to Rule 502(i) (B) any Customer Account Gross-Net Amount; (C) any Surplus Collateral; and (D) separate amounts payable pursuant to the final sentence of Rule 906(i).

and

OL = the aggregate of any other amounts not falling under *L* payable by the Defaulter to the Clearing House or any right or claim of the Clearing House against the Defaulter, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any fines payable pursuant to Part 10 and any other amounts payable in respect of any breach by the Defaulter of these Rules in either case not falling under *L*), in any case at the discretion of the Clearing House, provided that any amounts falling within the scope of the indemnity in Rule 905(f) but not falling under *L* shall be allocated to the Proprietary Account regardless of the Contracts or Account to which they relate.

All such amounts specified above must be aggregated, set off and applied in the order set out in the calculation above and in such order as is further required, restricted or limited by Rules 102(q), 906(b) and ~~1103~~[908](#) and provided further that any amount is only included in respect of the relevant net sum to the extent allowed pursuant to Rule 906(b).

- (b) Where the Defaulter has one or more Customer Accounts, the process set out in Rule 906(a) shall be completed separately, and separate net sums shall be determined, in respect of:
- (i) the Defaulter's Non-DCM/Swap Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's Non-DCM/Swap Customers;
 - (ii) the Defaulter's Swap Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's Swap Customers;
 - (iii) the Defaulter's DCM Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's DCM Customers;
 - (iv) the Defaulter's SBS Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's SBS Customers;
 - (v) the Defaulter's Non-CDS Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's General Customers in respect of Non-CDS Contracts;
 - (vi) the Defaulter's CDS Customer Account and Contracts, rights, obligations and liabilities relating to the Defaulter's General Customers in respect of CDS Contracts; and

- (vii) the Defaulter's Proprietary Account and other Contracts, rights, obligations and liabilities not falling under Rule 906(b)(i) to (vi).

The Defaulter's Guaranty Fund Contributions and amounts received by the Clearing House under a Controller Guarantee or letter of credit may be used for the purpose of calculating any net sum relating to that Defaulter (provided that any such amounts are not double counted), in accordance with Rule 906(a) and subject to the restrictions in Rule ~~103,908~~, Rule 102(q) and this Rule 906(b) as determined by the Clearing House. The aggregate sums finally payable shall be separately certified under Rule 906(e).

- (c) The Clearing House may aggregate, set off or apply any Margin, Surplus Collateral or other surplus assets available to it in relation to a Defaulter's Proprietary Account to meet a shortfall on any one or more of that Defaulter's Customer Accounts (and, if it does so, shall include any such amounts within the net sum to be calculated in relation to such Customer Account), provided that if any amounts are so aggregated, set off or applied, the amount *A*, *D*, *C*, *M*, *SC* or *OA* (as applicable) and consequently the net sum payable by the Clearing House in relation to the Defaulter's Proprietary Account shall be reduced by the same amount as is so included within the net sum for the relevant Customer Account. A 'shortfall' for such purposes shall include, in respect of a Designated CDS Customer Account, any Gross Margin Shortfall. The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on another of that Defaulter's Customer Accounts. The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on the Defaulter's Proprietary Account.
- (d) Where *N* is a positive number, the net sum equal to *N* shall be payable by the Defaulter to the Clearing House. Where *N* is a negative number, the net sum equal to the absolute value of *N* shall be payable by the Clearing House to the Defaulter, provided that if the Clearing House is required under any Applicable Law or pursuant to the order of any Governmental Authority to make payment in respect of any net sum to or to the account of a Person other than the Defaulter, the Defaulter's claim against the Clearing House shall be reduced by the amount paid to such Person and the amount payable by the Clearing House to the Defaulter shall be reduced accordingly. Where *N* is equal to zero, no amount shall be payable as between the Clearing House and the Defaulter pursuant to this Rule 906. Where there is more than one separately certified amount *N* certified under Rule 906(e) as a result of Rule 906(b), each amount so certified shall be treated as a separate obligation which cannot be netted off against another certified amount *N* in respect of a different account of the Defaulter.
- (e) Each amount *N* shall be certified by the Clearing House promptly upon its determination. Such determination may be delayed or withheld until such time as all relevant sums and components have been evaluated, all Transfers have been completed and the value or sale proceeds of any non-cash Margin, Surplus Collateral, Guaranty Fund Contributions or other assets are determined, received or available. A certificate of the Clearing House made pursuant to this Rule 906(e) shall be conclusive as to the amount required to be paid by any Defaulter in discharge of its rights and liabilities in respect of the Contracts

accordance with this Part 9 may be paid to or from an account other than a Nominated Bank Account and/or to or from an account other than with an Approved Financial Institution that has previously been designated as such by the Clearing House, provided that:

- (i) the account is an account of the Defaulter or an account operated by an Insolvency Practitioner on behalf of the Defaulter;
 - (ii) in the case of payments to the Defaulter, details of the account to be used and such other information relating to the account as is reasonably requested by the Clearing House are provided in writing to the Clearing House by the Defaulter or its Insolvency Practitioner; and
 - (iii) the bank of the account to which such payment is made shall be treated as if it were an Approved Financial Institution for purposes of any payments referred to in this Rule 907(h) and Part 12 without the need for any further action on the part of the Clearing House.
- (i) If an Event of Default occurs affecting a CDS Clearing Member, the Clearing House shall convene the CDS Default Committee. The CDS Default Committee shall have the competences specified in the CDS Procedures.
- (j) Without prejudice to the status of any other provision of the Rules that is potentially applicable following an Event of Default as a default rule for purposes of the Companies Act 1989:
- (i) the provisions of the CDS Procedures relevant to a default shall apply if the Defaulter is or was a CDS Clearing Member and shall amount to default rules for the purposes of these Rules and Applicable Laws;
 - (ii) Part 12 and Rule 1604 contain additional default rules; and
 - (iii) where any defined term is used in a default rule or any general interpretative provision of these Rules is relevant to the interpretation of a default rule, the definition of that term or that interpretative provision is itself also a default rule.

Rule 908 ~~Not used~~ *Application of Assets upon an Event of Default*

(a) Notwithstanding any other provision of these Rules:

- (i) if a Defaulter was only liable to make a Guaranty Fund Contribution relating to a single Membership Category, no Guaranty Fund Contributions, Assessment Contributions, or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising from the Event of Default;

- (ii) if a Defaulter was only liable to make Guaranty Fund Contributions relating to two Membership Categories, no Guaranty Fund Contributions, Assessment Contributions or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising from the Event of Default;
- (iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Members that are not Defaulters or accrued in each case after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default shall not be applied to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising in connection with that prior Event of Default;
- (iv) without limitation to the generality of Rule 102(q), this Rule 908 is subject to Rule 102(q); and
- (v) for the avoidance of doubt, in connection with an Event of Default of a Non-FCM/BD CDS Clearing Member which has a Designated CDS Customer Account, references to the application of Guaranty Fund Contributions, Assessment Contributions and Clearing House Contributions in these Rules include the use by the Clearing House of amounts representing the proceeds of such contributions for payment of amounts it is obliged to pay the Defaulter under Rule 906(i) (and included in item SC of the net sum calculation in Rule 906(a)).
- (b) In the case of a Defaulter that was an Energy Clearing Member but neither a CDS Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:

 - (i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);
 - (ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a);
 - (iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(b)(iv) to (vii) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);

(iv) fourth, the Clearing House Energy Initial Contribution;

(v) fifth:

(A) Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Energy Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and

(B) the Clearing House Energy GF Contribution,

on a basis *pro rata* (subject to Rule 1103(i)) to the sum of the total of all Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter and Energy Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House Energy GF Contribution at the time of the Event of Default;

(vi) sixth, subject to Rule 1103(d), any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Event of Default; and

(vii) seventh, Energy Assessment Contributions received by the Clearing House pursuant to Rule 909.

(c) In the case of a Defaulter which was a CDS Clearing Member but neither an Energy Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any **shortfall, loss or liability** (including, in respect of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:

(i) first, any amounts falling under *A, D, C* or *M* in Rule 906(a), in the order specified in Rule 906(a);

(ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount *GFC* in Rule 906(a);

(iii) third, any amounts falling under *SC* or *OA* in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(c)(iv) to (vi) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of

realising any such claim or action or obtaining such amount or asset) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below):

(iv) fourth, the Clearing House CDS Initial Contribution;

(v) fifth:

(A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and

(B) the Clearing House CDS GF Contribution,

on a basis *pro rata* (subject to Rule 1103(j)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and

(vi) sixth, CDS Assessment Contributions received by the Clearing House pursuant to Rule 910.

(d) In the case of a Defaulter which was an FX Clearing Member but neither an Energy Clearing Member nor a CDS Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any **shortfall, loss or liability** to the Clearing House upon or following any Event of Default (including in connection with any net sum calculated under Rule 906), in the following order of recourse:

(i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);

(ii) second, FX Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such FX Guaranty Fund Contributions falling under amount GFC in Rule 906(a);

(iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs Rule 908(d)(iv) to (vi) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);

(iv) fourth, the Clearing House FX Initial Contribution;

(v) fifth:

(A) FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus FX Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and

(B) the Clearing House FX GF Contribution,

on a basis *pro rata* to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default; and

(vi) sixth, FX Assessment Contributions received by the Clearing House pursuant to Rule 911.

(e) In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rules 906(a) to (c) as if they were "net sums", *mutatis mutandis* in respect of assets and liabilities relating to the Clearing of Energy Contracts ("**Energy Default Amount**"), the Clearing of CDS Contracts ("**CDS Default Amount**") and the Clearing of FX Contracts ("**FX Default Amount**"), as follows:

(i) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of Energy Contracts, then the net sum declared in respect of such account shall be the sole element of the Energy Default Amount in respect of such Account;

(ii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of CDS Contracts, then the net sum declared in respect of such account (or, for a Designated CDS Customer Account of a Non-FCM/BC CDS Clearing Member, the Gross Margin Shortfall where such Gross Margin Shortfall is not zero) shall be the sole element of the CDS Default Amount in respect of such Account;

(iii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of FX Contracts, then the net sum declared in respect of such account shall be the sole element of the FX Default Amount in respect of such Account;

(iv) if an Account in respect of which a positive net sum was produced was used for the Clearing of Contracts consisting of more than one Contract Category then:

(A) if the Defaulter was a CDS Clearing Member, the CDS Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included

within the calculation of the amount N in Rule 906(a) in respect of CDS Contracts, Margin or Surplus Collateral in respect of positions in CDS Contracts and any other amounts, assets or liabilities relating in any case exclusively to CDS Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below (including, in the case of a Designated CDS Customer Account and a Non-FCM/BD CDS Clearing Member, any obligation of the Clearing House to the Defaulter pursuant to Rule 906(i));

(B) if the Defaulter was an Energy Clearing Member, the Energy Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount N in Rule 906(a) in respect of Energy Contracts, Margin or Surplus Collateral in respect of Energy Contracts and any other amounts, assets or liabilities relating in any case exclusively to Energy Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below;

(C) if the Defaulter was an FX Clearing Member, the FX Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount N in Rule 906(a) in respect of FX Contracts, Margin or Surplus Collateral in respect of positions in FX Contracts and any other amounts, assets or liabilities relating in any case exclusively to FX Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below; and

(v) notwithstanding Rule 908(e)(i), (ii), (iii) or (iv), Guaranty Fund Contributions of any kind shall be applied as follows as between Default Amounts:

(A) in the case of Energy Guaranty Fund Contributions, first to meeting any loss, shortfall or liability that would otherwise be represented in the Energy Default Amount;

(B) in the case of CDS Guaranty Fund Contributions, first to meeting any loss, shortfall or liability that would otherwise be represented in the CDS Default Amount;

(C) in the case of FX Guaranty Fund Contributions, first to meeting any loss, shortfall or liability that would otherwise be represented in the FX Default Amount;

(D) in the case of any remaining Guaranty Fund Contributions, next towards eliminating any loss, shortfall or liability that would otherwise be represented in any Default Amount;

(E) to the extent that there is no further loss, shortfall or liability reflected in any Default Amount following application of Guaranty Fund Contributions under (1) to (4), Energy Guaranty Fund Contributions shall be included in the Energy Default Amount, CDS Guaranty Fund Contributions shall be included in the CDS Default Amount and FX Guaranty Fund Contributions shall be included in the FX Default Amount.

(vi) "Non-Exclusive Assets" constitute any amounts or assets included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one Contract Category, but excluding Guaranty Fund Contributions. Non-Exclusive Assets may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:

(A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a shortfall, loss or liability ("**Shortfall Default Amounts**"), the Non-Exclusive Assets must be included in the calculation of the Shortfall Default Amounts in proportion to the Margin requirements of the Defaulter for each Contract Category corresponding to each Shortfall Default Amount immediately prior to the Event of Default until one of the Shortfall Default Amounts would represent zero; and

(B) subject to the process in Rule 908(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a shortfall, loss or liability to the Clearing House, the Non-Exclusive Assets must be included in the relevant calculation so as to eliminate or reduce the shortfall, loss or liability *pro rata* as to the losses.

(vii) "Non-Exclusive Liabilities" constitute any liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one Contract Category. Non-Exclusive Liabilities may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:

(A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a surplus ("**Surplus Default Amounts**"), the Non-Exclusive Liabilities must be included in the calculation of the Surplus Default Amounts in proportion to the Margin requirements of the Defaulter for each Contract Category corresponding to each Surplus

Default Amount immediately prior to the Event of Default until one of the Surplus Default Amounts would represent zero; and

(B) subject to the process in Rule 908(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a shortfall, loss or liability to the Clearing House, Non-Exclusive Liabilities must first be included in the relevant calculation against the surplus *pro rata* as to the surpluses.

(f) In any instance in which assets are to be applied pursuant to Rule 908(g)(ii), (iii), (iv) or (v), the Clearing House shall publish the amount of any Energy Default Amount, CDS Default Amount and/or FX Default Amount that is required to be calculated under Rule 908(d) in a Circular. For the avoidance of doubt, any Energy Default Amount, CDS Default Amount and/or FX Default Amount so published shall not constitute a "net sum" for purposes of Rule 906, the Companies Act 1989 or the Settlement Finality Regulations.

(g) In the case of a Defaulter which held multiple Membership Categories, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability (including, in the case of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:

(i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);

(ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a), provided that:

(A) if a Defaulter was an Energy Clearing Member, Energy Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall, loss or liability relevant to the Energy Default Amount;

(B) if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall, loss or liability relevant to the CDS Default Amount;

(C) if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any liabilities relevant to the FX Default Amount;

- (D) if a Defaulter was an Energy Clearing Member, subject to paragraphs (A), (B) and (C), any Energy Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall, loss or liability but only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an Energy Clearing Member;
- (E) if a Defaulter was a CDS Clearing Member, subject to paragraphs (A), (B) and (C), any CDS Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall, loss or liability but only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting a CDS Clearing Member; and
- (F) if a Defaulter was an FX Clearing Member, subject to paragraphs (A), (B) and (C), any FX Guaranty Fund Contributions of the Defaulter may be applied against any other liabilities of the Defaulter but only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an FX Clearing Member;
- (iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(g)(iv) to (vii) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);
- (iv) fourth:
- (A) if a Defaulter was an Energy Clearing Member, the Clearing House Energy Initial Contribution, provided that it shall only be applied up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the Energy Default Amount represents a shortfall, loss or liability;
- (B) if a Defaulter was a CDS Clearing Member, the Clearing House CDS Initial Contribution, provided that it shall only be applied up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount represents a shortfall, loss or liability; and
- (C) if a Defaulter was an FX Clearing Member, the Clearing House FX Initial Contribution, provided that it shall only be applied up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the FX Default Amount represents a shortfall, loss or liability;

(v) fifth:

- (A) Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters and proceeds of the realisation thereof, if two or more Default proceedings take place concurrently and any such surplus is available);
- (B) if a Defaulter was an Energy Clearing Member, the Clearing House Energy GF Contribution;
- (C) if a Defaulter was a CDS Clearing Member, the Clearing House CDS GF Contribution; and
- (D) if a Defaulter was an FX Clearing Member, the Clearing House FX GF Contribution;

provided that:

- (1) if a Defaulter was an Energy Clearing Member, Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House Energy GF Contribution shall only be applied towards and up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the Energy Default Amount less any Clearing House Energy Initial Contribution applied in accordance with Rule 908(g)(iv)(A) represents a shortfall, loss or liability;
- (2) if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House CDS GF Contribution shall only be applied towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount less any Clearing House CDS Initial Contribution applied in accordance with Rule 908(g)(iv)(B) represents a shortfall, loss or liability; and
- (3) if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House FX GF Contribution shall only be applied towards and up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the FX Default Amount less any Clearing House FX Initial Contribution applied in accordance with Rule 908(g)(iv)(C) represents a shortfall, loss or liability;

and provided further that:

- (X) in the case of a Defaulter who was an Energy Clearing Member, Energy Guaranty Fund Contributions and the Clearing House Energy GF Contribution are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter in question and Energy Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House Energy GF Contribution at the time of the Event of Default;
- (Y) in the case of a Defaulter who was a CDS Clearing Member, CDS Guaranty Fund Contributions and the Clearing House CDS GF Contribution are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter in question and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and
- (Z) in the case of a Defaulter who was an FX Clearing Member, FX Guaranty Fund Contributions and the Clearing House FX GF Contribution are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter in question and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default;
- (vi) sixth, if a Defaulter was an Energy Clearing Member, subject to Rule 1103(d), any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Event of Default, provided that the Clearing House, acting reasonably, must specify in a Circular the extent to which any such claims are applied in respect of any shortfall, loss or liability relating to the Energy Default Amount and any shortfall, loss or liability relating to any other Default Amount(s); and
- (vii) seventh, if a Defaulter was an Energy Clearing Member, Energy Assessment Contributions received by the Clearing House pursuant to Rule 909, if a Defaulter was a CDS Clearing Member, CDS Assessment Contributions received by the Clearing Member pursuant to Rule 910, and, if a Defaulter was an FX Clearing Member, FX Assessment Contributions received by the Clearing House pursuant to Rule 911, provided that:
- (1) if a Defaulter was an Energy Clearing Member, Energy Assessment Contributions of Clearing Members other than the Defaulter shall only be

applied towards and up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the Energy Default Amount less any Clearing House Energy Initial Contribution applied in accordance with Rule 908(g)(iv)(A), Energy Guaranty Fund Contributions applied in accordance with Rule 908(g)(v)(A) and Clearing House Energy GF Contribution applied in accordance with Rule 908(g)(v)(B) represents a shortfall, loss or liability;

- (2) if a Defaulter was a CDS Clearing Member, CDS Assessment Contributions of Clearing Members other than the Defaulter in question shall only be applied towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the CDS Default Amount less any Clearing House CDS Initial Contribution applied in accordance with Rule 908(g)(iv)(B), CDS Guaranty Fund Contributions applied in accordance with Rule 908(g)(v)(A) and Clearing House CDS GF Contribution applied in accordance with Rule 908(g)(v)(C) represents a shortfall, loss or liability; and
- (3) if a Defaulter was an FX Clearing Member, FX Assessment Contributions of Clearing Members other than the Defaulter in question shall only be applied towards and up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 908(f) and in circumstances in which the FX Default Amount less any Clearing House FX Initial Contribution applied in accordance with Rule 908(g)(iv)(C), FX Guaranty Fund Contributions applied in accordance with Rule 908(g)(v)(A) and Clearing House FX GF Contribution applied in accordance with Rule 908(g)(v)(D) represents a shortfall, loss or liability;

and provided further that:

- (X) in the case of a Defaulter who was an Energy Clearing Member, Energy Assessment Contributions are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all Energy Assessment Contributions received by the Clearing House;
- (Y) in the case of a Defaulter who was a CDS Clearing Member, CDS Assessment Contributions are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all CDS Assessment Contributions received by the Clearing House; and
- (Z) in the case of a Defaulter who was an FX Clearing Member, FX Assessment Contributions are applied on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all FX Assessment Contributions received by the Clearing House.

- (h) The requirements of this Rule 908 shall apply and be binding upon the Clearing House and all Clearing Members including upon the event of any Insolvency affecting the Clearing House or any Clearing Member. The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members (including any Insolvency Practitioner with powers over any Clearing Member or other Representative) shall, to the extent permitted by Applicable Laws:
- (i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Part 9; and
 - (ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Clearing House are applied only pursuant to this Part 9.
- (i) Notwithstanding Rule 908(b) to (g), if any Clearing Member that is not a Defaulter does not comply with any of its obligations in the Default Auction Procedures as applicable to a Default Auction in respect of Contracts equivalent to those to which a Defaulter was party of a particular Contract Category or chooses not to participate in any such Default Auction, then the Guaranty Fund Contributions and Assessment Contributions of that Clearing Member relating to such Contract Category shall be applied to meet any shortfall, loss or liability in full, prior to the *pro rata* Guaranty Fund Contributions or Assessment Contributions (as applicable) of any other Clearing Member or Clearing House Contributions ranking equally with such Guaranty Fund Contributions being so applied.

Rule 909 ~~[Not used]~~ Powers of Assessment: Energy

- (a) Powers of assessment under this Rule 909 may be exercised by the Clearing House following an Event of Default occurring in respect of an Energy Clearing Member if a shortfall, loss or liability to the Clearing House has arisen, or is considered by the Clearing House to be likely to arise, as a result of a shortfall, loss or liability relating to any Proprietary Account or Customer Account of a Defaulter that is or was an Energy Clearing Member where such shortfall, loss or liability is not met pursuant to:
- (i) Rule 908(b)(i) to (vi); or
 - (ii) Rule 908(g)(i) to (vii), only to the extent that the Energy Default Amount, less any assets applied in accordance with Rules 908(g)(iv)(A), 908(g)(v)(B) and 908(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the Energy Default Amount), represents, or is considered by the Clearing House at its discretion likely to represent, a shortfall, loss or a liability.

Immediately upon the Clearing House certifying the Energy Assessment Amount in a Circular, all Energy Clearing Members (other than Defaulters) shall indemnify the

Clearing House and become liable to pay Energy Assessment Contributions to the Clearing House in accordance with Rule 909(b). The exercise of any right to call Assessment Contributions under this Rule 909 is subject to any contrary requirement arising pursuant to Rule 917 or Rule 918(a)(ii).

- (b) The Energy Assessment Contribution payable by each Energy Clearing Member shall be the amount:

$$\frac{EAA_x \quad EGF(CM)}{EGF(all)}$$

where:

EAA is the Energy Assessment Amount certified by the Clearing House in a Circular, provided that the total Energy Assessment Amount shall be no greater than the amount equal to twice the total required Energy Guaranty Fund Contributions of all Energy Clearing Members immediately prior to the relevant Event of Default (less Energy Guaranty Fund Contributions of Defaulters);

EGF(CM) is the required Energy Guaranty Fund Contribution of the relevant Energy Clearing Member immediately preceding the relevant Event of Default; and

EGF(all) is the total required Energy Guaranty Fund Contributions of all Energy Clearing Members immediately preceding the relevant Event of Default (less Energy Guaranty Fund Contributions of Defaulters and excluding the Clearing House Energy Contributions).

- (c) No Energy Clearing Member shall be liable for more than an amount equal to twice their required Guaranty Fund Contributions immediately preceding the relevant Event of Default in total Energy Assessment Contributions in respect of a single Event of Default. A Person that is or was an Energy Clearing Member and that has served a Termination Notice shall be subject to obligations to pay Energy Assessment Contributions only in respect of Events of Default declared in relation to Clearing Members that are Energy Clearing Members occurring prior to the Termination Date.

- (d) If the Energy Assessment Amount is not met by Energy Assessment Contribution receipts from Energy Clearing Members due to non-payment by an Energy Clearing Member or Energy Clearing Members, Default of an Energy Clearing Member or Energy Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in Energy Assessment Contribution receipts shall be re-assessed against all Energy Clearing Members (other than Defaulters and Persons that have defaulted in making an Energy Assessment Contribution) in accordance with Rule 909(a), as if such shortfall were the Energy Assessment Amount, provided that no Energy Clearing Member shall be liable to pay Energy Assessment Contributions in respect of a single Default for an amount greater than twice its Energy Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule

909(c), further Energy Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire Energy Assessment Amount has been met in full by Energy Assessment Contributions.

- (e) All Energy Assessment Contributions shall become due and payable at such time as the Clearing House notifies to Energy Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any Energy Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid Energy Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid Energy Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other Energy Clearing Members (excluding any Defaulter) *pro rata* in respect of paid Energy Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any shortfall, loss or liability following exhaustion of the assets specified in Rule 908 or in substitution of any such assets.
- (g) Amounts transferred to the Clearing House by Energy Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute Energy Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of Energy Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). Energy Assessment Contributions do not constitute Guaranty Fund Contributions.
- (h) Where the Clearing House calls Energy Assessment Contributions in excess of that required or actually applied against a loss, shortfall or liability, it shall treat any such excess provided by a particular Clearing Member as special Surplus Collateral on such Clearing Member's Proprietary Account. Such special Surplus Collateral shall be available to be applied at any time as an Energy Assessment Contribution but unavailable for withdrawal under Part 3 or the Finance Procedures, until such time as any such amount of Energy Assessment Contributions are determined by the Clearing House not to be required, at which point the Surplus Collateral shall become available for withdrawal in the same way as other Surplus Collateral.

Rule 910 ~~[Not used]~~ Powers of Assessment: CDS

- (a) Powers of assessment under this Rule 910 may be exercised by the Clearing House following an Event of Default occurring in respect of a CDS Clearing Member if a shortfall, loss or liability to the Clearing House has arisen, or is considered by the Clearing House to be likely to arise, as a result of a shortfall, loss or liability relating to

any Proprietary Account or Customer Account of a Defaulter that is or was a CDS Clearing Member where such shortfall, loss or liability is not met pursuant to:

- (i) Rule 908(c)(i) to (v); or
- (ii) Rule 908(g)(i) to (v), only to the extent that the CDS Default Amount, less any assets applied in accordance with Rules 908(g)(iv)(B) and 908(g)(v)(C) represents, or is considered by the Clearing House at its discretion likely to represent, a shortfall, loss or a liability.

Immediately upon the Clearing House certifying the CDS Assessment Amount in a Circular, all CDS Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay CDS Assessment Contributions to the Clearing House in accordance with Rule 910(b). The exercise of any right to call Assessment Contributions under this Rule 910 is subject to any contrary requirement arising pursuant to Rule 917 or Rule 918(a)(ii).

- (b) The CDS Assessment Contribution payable by each CDS Clearing Member shall be the amount:

$$\frac{CAA_x \quad CGF(CM)}{CGF(all)}$$

where:

CAA is the CDS Assessment Amount certified by the Clearing House in a Circular, provided that the total CDS Assessment Amount shall be no greater than the amount equal to the total required CDS Guaranty Fund Contributions of all CDS Clearing Members immediately prior to the relevant Event of Default (less CDS Guaranty Fund Contributions of Defaulters);

CGF(CM) is the required CDS Guaranty Fund Contribution of the relevant CDS Clearing Member immediately preceding the relevant Event of Default; and

CGF(all) is the total required CDS Guaranty Fund Contributions of all CDS Clearing Members immediately preceding the relevant Event of Default (less CDS Guaranty Fund Contributions of Defaulters and excluding the Clearing House CDS Contributions).

- (c) No CDS Clearing Member shall be liable for more than an amount equal to their required Guaranty Fund Contributions immediately preceding the relevant Event of Default in total CDS Assessment Contributions in respect of a single Event of Default. A Person that is or was a CDS Clearing Member and that has served a Termination Notice shall be subject to obligations to pay CDS Assessment Contributions only in respect of Events of Default declared in relation to Clearing Members that are CDS Clearing Members occurring prior to the Termination Date.
- (d) If the CDS Assessment Amount is not met by CDS Assessment Contribution receipts from CDS Clearing Members due to non-payment by a CDS Clearing Member or CDS

Clearing Members, Default of a CDS Clearing Member or CDS Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in CDS Assessment Contribution receipts shall be re-assessed against all CDS Clearing Members (other than Defaulters and Persons that have defaulted in making a CDS Assessment Contribution) in accordance with Rule 910(a), as if such shortfall were the CDS Assessment Amount, provided that no CDS Clearing Member shall be liable to pay CDS Assessment Contributions in respect of a single Default for an amount greater than its CDS Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 910(c), further CDS Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire CDS Assessment Amount has been met in full by CDS Assessment Contributions.

- (e) All CDS Assessment Contributions shall become due and payable at such time as the Clearing House notifies to CDS Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any CDS Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid CDS Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid CDS Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other CDS Clearing Members (excluding any Defaulter) *pro rata* in respect of paid CDS Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 908 or in substitution of any such assets.
- (g) Amounts transferred to the Clearing House by CDS Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute CDS Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of CDS Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). CDS Assessment Contributions do not constitute Guaranty Fund Contributions.
- (h) Where the Clearing House calls CDS Assessment Contributions in excess of that required or actually applied against a loss, shortfall or liability, it shall treat any such excess provided by a particular Clearing Member as special Surplus Collateral on such Clearing Member's Proprietary Account. Such special Surplus Collateral shall be available to be applied at any time as a CDS Assessment Contribution but unavailable for withdrawal under Part 3 or the Finance Procedures, until such time as any such amount of CDS Assessment Contributions are determined by the Clearing House not to be required, at which point the Surplus Collateral shall become available for withdrawal in the same way as other Surplus Collateral.

Rule 911 ~~[Not used]~~ Powers of Assessment: FX

(a) Powers of assessment under this Rule 911 may be exercised by the Clearing House following an Event of Default occurring in respect of an FX Clearing Member if a shortfall, loss or liability to the Clearing House has arisen, or is considered by the Clearing House to be likely to arise, as a result of a shortfall, loss or liability relating to any Proprietary Account or Customer Account of a Defaulter that is or was an FX Clearing Member where such shortfall, loss or liability is not met pursuant to:

(i) Rule 908(d)(i) to (v); or

(ii) Rule 908(g)(i) to (v), only to the extent that the FX Default Amount, less any assets applied in accordance with Rules 908(g)(iv)(C) and 908(g)(v)(D) represents, or is considered by the Clearing House at its discretion likely to represent, a shortfall, loss or a liability.

Immediately upon the Clearing House certifying the FX Assessment Amount in a Circular, all FX Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay FX Assessment Contributions to the Clearing House in accordance with Rule 911(b). The exercise of any right to call Assessment Contributions under this Rule 911 is subject to any contrary requirement arising pursuant to Rule 917 or Rule 918(a)(ii).

(b) The FX Assessment Contribution payable by each FX Clearing Member shall be the amount:

$$\frac{FAA_x \quad FGF(CM)}{FGF(all)}$$

where:

FAA is the FX Assessment Amount certified by the Clearing House in a Circular, provided that the total FX Assessment Amount shall be no greater than the amount equal to twice the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately prior to the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters);

FGF(CM) is the required FX Guaranty Fund Contribution of the relevant FX Clearing Member immediately preceding the relevant Event of Default; and

FGF(all) is the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately preceding the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters).

(c) No FX Clearing Member shall be liable for more than an amount equal to twice their required Guaranty Fund Contributions immediately preceding the relevant Event of Default in total FX Assessment Contributions in respect of a single Event of Default. A Person that is or was an FX Clearing Member and that has served a Termination Notice

shall be subject to obligations to pay FX Assessment Contributions only in respect of Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring prior to the Termination Date.

- (d) If the FX Assessment Amount is not met by FX Assessment Contribution receipts from FX Clearing Members due to non-payment by an FX Clearing Member or FX Clearing Members, Default of an FX Clearing Member or FX Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in FX Assessment Contribution receipts shall be re-assessed against all FX Clearing Members (other than Defaulters and Persons that have defaulted in making an FX Assessment Contribution) in accordance with Rule 911(a), as if the shortfall were the FX Assessment Amount, provided that no FX Clearing Member shall be liable to pay FX Assessment Contributions in respect of a single Default for an amount greater than twice its FX Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 911(c), further FX Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire FX Assessment Amount has been met in full by FX Assessment Contributions.
- (e) All FX Assessment Contributions shall become due and payable at such time as the Clearing House notifies to FX Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (f) If, after any FX Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid FX Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid FX Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other FX Clearing Members (excluding any Defaulter) *pro rata* in respect of paid FX Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any shortfall, loss or liability following exhaustion of the assets specified in Rule 908 or in substitution of any such assets.
- (g) Amounts transferred to the Clearing House by FX Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute FX Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of FX Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). FX Assessment Contributions do not constitute Guaranty Fund Contributions.
- (h) Where the Clearing House calls FX Assessment Contributions in excess of that required or actually applied against a shortfall, loss or liability, it shall treat any such excess provided by a particular Clearing Member as special Surplus Collateral on such Clearing

Member's Proprietary Account. Such special Surplus Collateral shall be available to be applied at any time as an FX Assessment Contribution but unavailable for withdrawal under Part 3 or the Finance Procedures, until such time as any such amount of FX Assessment Contributions are determined by the Clearing House not to be required, at which point the Surplus Collateral shall become available for withdrawal in the same way as other Surplus Collateral.

Rule 912 *Default procedure for certain termination events*

- (a) In the event of any termination pursuant to Rule 209(c)(ii)-(iii), the rights and liabilities of each Clearing Member under all Contracts will be deemed to be terminated without need for any further step on the part of any party and discharged for the purposes of Rule 906 and a net sum or net sums payable by or to the Clearing Member to or from the Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member.
- (b) In circumstances in which this Rule 912 applies:
- (i) Rules 909, 910 and 911 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901 (rather than any Event of Default effectively deemed to occur pursuant to this Rule 912);
 - (ii) Rules 901, 902, 903, 904 and 905 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this Rule 912);
 - (iii) in the case of this Rule 912 applying solely due to a Failure to Pay which does not affect all Contract Categories, the net sum or net sums required to be determined in these circumstances pursuant to Rule 906 in respect of a Clearing Member that has multiple Membership Categories will be made separately in relation to the rights and liabilities of that Clearing Member for each applicable Membership Category to which the Failure to Pay relates, and Rule 906 shall be interpreted accordingly; and
 - (iv) otherwise, this Part 9 shall apply *mutatis mutandis* in relation to terminated CDS Contracts and rights, obligations and liabilities relating thereto.
- (c) ~~(a)~~ If the Clearing House becomes aware of there being or occurring an Insolvency, ~~Failure To Pay~~ or ~~FX~~ Failure To Pay in respect of the Clearing House, the Clearing House will promptly issue a Circular specifying that the same has occurred.

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

- (a) The following additional definitions apply to the following sections of this Part 9:

- (i) The term "**Aggregate Cash Gains**" or "**ACG**" means, in respect of any Business Day, the sum of the Cash Gain in respect of all Cash Gainers on such Business Day.
- (ii) The term "**Available Defaulter Resources**" means, following a particular Event of Default, all the quantifiable and certain resources on any particular date to the extent that the same: (A) are available to the Clearing House to meet losses and liabilities resulting from the Event of Default; (B) were posted as collateral in respect of an Account referred to in Rule 914(a)(ii)(B) or are otherwise available to be applied by the Clearing House in accordance with the Rules against losses or liabilities resulting from the Event of Default on such an Account; and (C) represent the cash proceeds or equivalent cash value (as calculated by the Clearing House) of Permitted Cover provided to the Clearing House by the Defaulter or other amounts, credits or assets that would otherwise be due to the Defaulter in the calculation of a net sum under Rule 906 and which have been evaluated as cash obligations (as calculated by the Clearing House). Available Defaulter Resources exclude for the avoidance of doubt all Available Non-Defaulter Resources, the Clearing House's own assets and capital, Clearing House Contributions and any assets or rights representing the proceeds of Permitted Cover, Margin, cover for Margin or Guaranty Fund Contributions provided by Clearing Members that are not Defaulters. The principles in Rule 908 used for the calculation of relevant Default Amounts shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Defaulter Resources.
- (iii) The term "**Available Non-Defaulter Resources**" means, following a particular Event of Default, the cash proceeds or equivalent cash value (as calculated by the Clearing House) of those Guaranty Fund Contributions, Clearing House Contributions and Assessment Contributions which are available to be applied pursuant to Rule 908, provided that Assessment Contributions shall only count as Available Non-Defaulter Resources if they have been received by the Clearing House in cleared funds at the time the Clearing House performs a calculation of Available Non-Defaulter Resources. The principles in Rule 908 shall be applied in considering whether any particular amount relates to any particular Contract Category for purposes of determining the Available Non-Defaulter Resources.
- (iv) The term "**Available Product Funds**" means the amount of resources available to the Clearing House in respect of a Relevant Contract Category, as calculated in accordance with Rule 916(f).
- (v) The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vi) The term "**Cash Gain**" means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.

- (vii) The term "**Cash Gainer**" means, in respect of each Contributing Clearing Member and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is greater than zero.
- (viii) The term "**Cash Gainer Adjustment**" has the meaning set out in Rule 914(c).
- (ix) The term "**Cash Loser**" means, in respect of each Contributing Clearing Member and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is equal to or less than zero.
- (x) The term "**Cash Loser Adjustment**" has the meaning set out in Rule 914(d).
- (xi) The term "**Clearing House Event**" means a Failure To Pay or Insolvency occurring in respect of the Clearing House.
- (xii) The term "**Clearing Member Adjustment Amount**" means, in respect of all the Margin Account(s) of any Contributing Clearing Member and any Loss Distribution Day, an amount equal to the sum of the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Clearing Member less the sum of the Cumulative Actual Gains, Losses and Realised Cash Flows in respect of such Margin Account(s) of such Clearing Member, in each case in respect of the Loss Distribution Period in which such Loss Distribution Day falls.
- (xiii) The term "**Contract Category**" means any of the three categories of Contract cleared by the Clearing House, namely Energy Contracts, CDS Contracts and FX Contracts.
- (xiv) The term "**Contractual Payments**" means, in respect of each Margin Account and any Business Day, any of the following connected to such Margin Account on such Business Day: for CDS Contracts: any Fixed Amounts, Initial Payment, Physical Settlement Amount, Auction Settlement Amount or any Cash Settlement Amount; and for Energy Contracts any Market Delivery Settlement Price, Option premium or other settlement amount, strike price, exercise price, settlement price or delivery price, exercise price or any other payment pursuant to the terms of a Contract. Where physical delivery or physical settlement of any Investment or Commodity is due to be made by way of final settlement under a Contract of a Relevant Contract Category from the Clearing House to any Clearing Member, and the Clearing House (including any non-defaulting Clearing Member or its Transferee acting as agent for the Clearing House) has not received delivery of an equivalent Investment or Commodity from the Defaulter, the Clearing House may attribute a reasonable value to its delivery obligations and treat such amount as a Contractual Payment for purposes of this definition.

- (xv) The term "**Contributing Clearing Member**" means a Clearing Member that is not a Defaulter in respect of whom the Estimated Payable Net Sum or total net sum would or does exceed the Available Defaulter Resources.
- (xvi) The term "**Cooling-off Period**" means the period commencing on the date of the Cooling-off Period Trigger Event and terminating 30 Business Days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 30 or fewer Business Days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling 30 Business Days after the second such Cooling-off Period Trigger Event.
- (xvii) The term "**Cooling-off Period Trigger Event**" in respect of a particular Contract Category, means: (i) any call for Assessment Contributions being made; (ii) the occurrence of a Sequential Guaranty Fund Depletion.
- (xviii) The term "**Cooling-off Termination Period**" means the period commencing on the date of each Cooling-off Period Trigger Event and terminating 10 Business Days thereafter. A Cooling-off Termination Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs 10 or fewer Business Days since the previous Cooling-off Period Trigger Event, until the date falling 10 Business Days after the second such Cooling-off Period Trigger Event. If a Suspension Period is announced during a Cooling-Off Termination Period, then the Cooling-off Termination Period in respect of the Relevant Contract Category to which the Suspension relates shall be extended by the total time of the Suspension Period.
- (xix) The term "**Cumulative Actual Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the aggregate amount, if any, actually paid by the Clearing House to such Clearing Member (expressed as a positive number) or by such Clearing Member to the Clearing House (expressed as a negative number) in respect of such Margin Account by way of Contractual Payments and MTM/VM, taking into account each Margin Account Adjustment from but excluding the relevant Last Call Prior To Default to and including such Business Day such that, to the extent that any payment of MTM/VM or Contractual Payment is netted or offset against any Margin Account Adjustment on any Loss Distribution Day, the amount actually paid for the purposes of this definition shall be used in calculating such aggregated amount.
- (xx) The term "**Cumulative Transfer Cost**" means, on any Business Day during any Loss Distribution Period, the sum of any Transfer Cost for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (xxi) The term "**Cumulative Unadjusted Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributing Clearing Member

and any Business Day, the sum of the Pre-Haircut Gains, Losses and Realised Cash Flows for such Margin Account for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.

- (xxii) The term "**Default Auction**" means an auction which takes place in accordance with the Default Auction Procedures.
- (xxiii) The term "**Default Auction Procedures**" means the Energy Default Auction Procedures, CDS Default Auction Procedures or FX Default Auction Procedures, as applicable to the Relevant Contract Category in question.
- (xxiv) The term "**Distribution Haircut**" or "**DH**" means, on each Loss Distribution Day, the fraction determined by the Clearing House in accordance with the following formula:
- $$DH_{(t)} = UL_{(t)} / ACG_{(t)}$$
- where:
- UL means the Uncovered Loss; and
- ACG means the Aggregate Cash Gains.
- (xxv) The term "**Estimated Payable Net Sum**" means, following a particular Event of Default, an estimate by the Clearing House of the total of those net sums calculated using the methodology set out in Rule 906 which represent an amount payable by a Defaulter in respect of a particular Account, based on the cash or estimated value of items considered by the Clearing House to be sufficiently certain to be estimated as at the date of the estimation (including, in respect of Contracts, latest available MTM/VM Prices), without any netting or offsetting in respect of any other Estimated Payable Net Sum or actual net sum payable to a Defaulter in respect of a different Account of a Defaulter.
- (xxvi) The term "**Haircutting Determination**" has the meaning set out in Rule 914(a).
- (xxvii) The term "**Last Call Prior To Default**" means the most recent Business Day on which payments of MTM/VM required to be made by Clearing Members were paid in full.
- (xxviii) The term "**Loss Distribution Day**" means a Business Day in the Loss Distribution Period.
- (xxix) The term "**Loss Distribution Period**" means, in relation to a Relevant Contract Category, the period commencing from and including the date specified by the Clearing House in a Circular following a Haircutting Determination and ending on a date specified by the Clearing House in the same or any subsequent Circular, as the same may be extended under Rule 914. A Loss Distribution Period shall

end with immediate effect and without the need for any action on the part of any Clearing Member or the Clearing House upon any Clearing House Event.

(xxx) The term "**Margin Account**" means each Proprietary Margin Account and Customer Margin Account of a Contributing Clearing Member, related to the Proprietary Position Account or Customer Position Account in which Contracts of a Relevant Contract Category are recorded.

(xxxii) The term "**Margin Account Adjustment**" means, in respect of each Margin Account and any Business Day, any Cash Gainer Adjustment or Cash Loser Adjustment as the case may be payable in connection with such Margin Account on such Business Day.

(xxxiii) The term "**MTM/VM**" stands for mark-to-market/variation margin and means: (i) in relation to Energy Contracts, Variation Margin; (ii) in relation to CDS Contracts, Mark-to-Market Margin; and (iii) in relation to FX Contracts, FX Mark-to-Market Margin. References to the payment of MTM/VM shall be construed as including obligations to transfer cash or other Permitted Cover as a result of changes to MTM/VM Prices (as the difference between MTM/VM Prices on different Business Days) following a recalculation of MTM/VM Price and not to the total amount of MTM/VM held by any Clearing Member or the Clearing House at any time.

(xxxiv) The term "**MTM/VM Price**" means: (i) in relation to Energy Contracts, Market Delivery Settlement Price; (ii) in relation to CDS Contracts, Mark-to-Market Price; and (iii) in relation to FX Contracts, FX Mark-to-Market Price.

(xxxv) The term "**Negative Product Repayment Amounts**" means the negative single net sum determined in respect of a Clearing Member's Margin Account in respect of a Relevant Contract Category that is subject to a termination in accordance with Rule 916(e).

(xxxvi) The term "**Original/Initial Margin**" means: (i) in relation to Energy Contracts, Original Margin (including buyer's security and seller's security); (ii) in relation to CDS Contracts, Initial Margin; and (iii) in relation to FX Contracts, FX Original Margin and, in any case (i), (ii) or (iii) includes Margin under Rule 502(g).

(xxxvii) The term "**Outward MTM/VM Payments**", on any Business Day, means amounts in respect of MTM/VM that the Clearing House has calculated which would, but for Rule 914, be paid in full by the Clearing House to Contributing Clearing Members (whether relating to their Proprietary Account or any Customer Account) in respect of a particular Relevant Contract Category following the determination of MTM/VM Prices for Contracts of that Contract Category.

- (xxxvii) The term "Positive Product Repayment Amounts" means the positive single net sum determined in respect of a Clearing Member's Margin Account in respect of a Relevant Contract Category that is subject to a termination accordance with Rule 916(e).
- (xxxviii) The term "Pre-Haircut Gains, Losses and Realised Cash Flows" means, in respect of each Margin Account of each Contributing Clearing Member and any Business Day, the amount which would be paid by the Clearing House to such Clearing Member (expressed as a positive number) or by such Clearing Member to the Clearing House (expressed as a negative number) by way of Contractual Payments or MTM/VM in respect of such Margin Account on such Business Day in the absence of the application of the Distribution Haircut. In connection with CDS Contracts and any other Contract which is not re-priced daily in connection with the establishment of a Mark-to-Market Price (or any other similar price, however described or defined), for the avoidance of doubt, the Pre-Haircut Gains, Losses and Realised Cash Flows are calculated taking into account MTM/VM that is paid by the Clearing House to the Clearing Member (or would have been payable to the Clearing Member but for Rule 914) and Mark-to-Market Margin payable and paid by the Clearing Member to the Clearing House (without taking into account any reductions to such payments made pursuant to this Rule 914).
- (xxxix) The term "Product Termination Amount" means the Negative CDS Repayment Amounts and the Positive CDS Repayment Amounts in respect of Contracts of a Set subject to termination under Rule 916.
- (xl) The term "Received MTM/VM", on a particular Business Day following an Event of Default, means the amount that the Clearing House has actually received in cleared funds from Clearing Members (other than Defaulters) who were party to Contracts in a Relevant Contract Category in respect of MTM/VM.
- (xli) The term "Relevant Assessment Contributions" means those Assessment Contributions (being Energy Assessment Contributions, CDS Assessment Contributions or FX Assessment Contributions) which may be applied to losses relating to a Relevant Contract Category.
- (xlii) The term "Relevant Contract Category" subject to Rule 914(h), means one of the three categories of Contract (Energy, CDS or FX) to which a Haircutting Determination, Suspension Determination or Termination Circular relates (as applicable in Rules 913, 914 and 915 respectively), as designated by the Clearing House in the relevant Circular.
- (xlili) The term "Relevant Guaranty Fund" means a Guaranty Fund (being the Energy Guaranty Fund, the CDS Guaranty Fund or the FX Guaranty Fund) in respect of which Guaranty Fund Contributions may be applied to losses relating to a Relevant Contract Category.

- (xliv) The term "**Relevant Guaranty Fund Contributions**" means those Guaranty Fund Contributions (being Energy Guaranty Fund Contributions, CDS Guaranty Fund Contributions or FX Guaranty Fund Contributions) which may be applied to losses relating to a Relevant Contract Category.
- (xlv) The term "**Relevant Membership Category**" means one of the three categories of membership (Energy, CDS or FX) to which a Haircutting Determination, Suspension Determination or Termination Circular relates (as applicable in Rules 913, 914 and 915 respectively), as designated by the Clearing House in the relevant Circular.
- (xlvi) The term "**Relevant Post Default Period**" means the period starting at the time of declaration of an Event of Default of a Clearing Member which clears a particular Contract Category and ending at the time of declaration of net sums in respect of any Proprietary Account and each Certain Account of the Defaulter.
- (xlvii) The term "**Sequential CDS Guaranty Fund Depletion**" in respect of a particular CDS Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different CDS Clearing Members within a period of 30 or fewer Business Days; (ii) CDS Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the CDS Clearing Member has as a result paid to the Clearing House to replenish its CDS Guaranty Fund Contributions exceeds the total amount of CDS Guaranty Fund Contributions standing to the credit of that CDS Clearing Member in the Clearing House's accounts prior to the first Event of Default.
- (xlviii) The term "**Sequential Energy Guaranty Fund Depletion**" in respect of a particular Energy Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different Energy Clearing Members within a period of 30 or fewer Business Days; (ii) Energy Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the Energy Clearing Member has as a result paid to the Clearing House to replenish its Energy Guaranty Fund Contributions exceeds the total amount of Energy Guaranty Fund Contributions standing to the credit of that Energy Clearing Member in the Clearing House's accounts prior to the first Event of Default.
- (xlix) The term "**Sequential FX Guaranty Fund Depletion**" in respect of a particular FX Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different FX Clearing Members within a period of 30 or fewer Business Days; (ii) FX Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the FX Clearing Member has as a result paid to the Clearing House to replenish its FX Guaranty Fund Contributions exceeds the total amount of FX Guaranty Fund Contributions standing to the credit of that FX

Clearing Member in the Clearing House's accounts prior to the first Event of Default.

- (l) The term "**Sequential Guaranty Fund Depletion**" means a Sequential CDS Guaranty Fund Depletion, a Sequential Energy Guaranty Fund Depletion, or a Sequential FX Guaranty Fund Depletion.
- (li) The term "**Suspended Contracts**" has the meaning set out in Rule 915(c)(i).
- (lii) The term "**Suspension Circular**" has the meaning set out in Rule 915(c).
- (liii) The term "**Suspension Determination**" has the meaning set out in Rule 915(a).
- (liv) The term "**Suspension Period**" has the meaning set out in Rule 915(c).
- (lv) The term "**t**" means, in respect of any determination made in relation to a Business Day, such Business Day.
- (lvi) The term "**t-1**" means, in respect of any determination made in relation to a Business Day, the Business Day immediately prior to such Business Day.
- (lvii) The term "**Termination**" in respect of a Contract means termination, close-out, exercise, abandonment, or expiry pursuant to its terms and under the Rules.
- (lviii) The term "**Termination Circular**" has the meaning set out in Rule 916(a).
- (lix) The term "**Termination Price**" in respect of a Contract means the price determined by the Clearing House, which shall be applicable upon the termination, close-out, exercise, abandonment, or expiry of the Contract upon any termination pursuant to Rule 916.
- (lx) The term "**Total Cumulative Pre-Haircut Amount**" means, in respect of any Business Day, the sum of the Total Pre-Haircut Amount for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (lxi) The term "**Total Pre-Haircut Amount**" or "**TPHA**" means, in respect of any Business Day, the sum of the Pre-Haircut Gains, Losses and Realised Cash Flows in respect of all Margin Accounts of all Contributing Clearing Members on such Business Day.
- (lxii) The term "**Transfer Cost**", on any Business Day, means the total amount payable by the Clearing House to Clearing Members that are not Defaulters as consideration for the entry into of replacement Contracts in a Relevant Contract Category to those to which a Defaulter was party (or otherwise Transferred Contracts), whether as a result of an auction, sale or otherwise pursuant to Part 9 plus any associated costs or expenses of the Clearing House.

(lxiii) The term "Uncovered Loss" or "UL" means in respect of the Clearing House on any Loss Distribution Day:

(A) where Rule 914(a)(ii)(A) applies, an amount calculated in accordance with the following formula:

$$\text{Uncovered Loss}_{(t)} = \text{TPHA}_{(t)} + \text{CTC}_{(t)} - \text{AR}$$

where:

TPHA means the Total Pre-Haircut Amount;

CTC means the Cumulative Transfer Cost;

AR means the Available Resources; and

the Uncovered Loss as at the Last Call prior to Default shall be zero,

provided that if the Uncovered Loss would be greater than zero, it shall be deemed to be equal to be zero.

(B) where Rule 914(a)(ii)(B)(1) applies, the Estimated Payable Net Sum minus Available Non-Defaulter Resources; or

(C) where Rule 914(a)(ii)(B)(2) applies, the total of relevant net sums payable by but not received from the Defaulter minus Available Non-Defaulter Resources;

provided that, where there is more than one Event of Default with overlapping Relevant Post Default Periods, the Uncovered Loss may be calculated with regard to Cumulative Transfer Cost and Available Resources for all relevant Defaulters and Events of Default at that time.

(lxiv) The term "Under-priced Auction" means a situation in which such number of Default Auctions as are provided for in the Default Auction Procedures have taken place but a full allocation of the auctioned Contracts has not occurred or the auction price determined in such Default Auctions falls below any minimum or reserve price or above any maximum or reserve price set by the Clearing House.

Rule 914 **Margin haircutting**

(a) This Rule 914 shall only apply if the Clearing House has published its determination (any such determination, a "Haircutting Determination") that the following five conditions are all satisfied:

(i) an Event of Default has been declared but the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the

Defaulter in respect of its Proprietary Account and all of its different Customer Accounts;

(ii) the Clearing House determines that one or more of the following circumstances has arisen:

(A) the sum of Outward MTM/VM Payments and Transfer Cost (if any) in respect of a particular Contract Category would, in its view, exceed Available Resources plus Received MTM/VM for the same Contract Category;

(B) Available Resources are insufficient to meet the shortfalls, losses or liabilities of the Clearing House on relevant Accounts of the Defaulter, which may be determined if, in its view:

(1) any Estimated Payable Net Sum would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, would be available to meet the losses of the Clearing House represented by any net sum payable by the Defaulter were such net sum to be of an amount equal to the Estimated Payable Net Sum; or

(2) any net sums payable by the Defaulter that are calculated and declared by the Clearing House under Rule 906 (to the extent that the same have not been received by the Clearing House in cleared funds from the Defaulter) in total would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, are to be applied to meet the losses of the Clearing House represented by such net sums;

provided that, where there is more than one Event of Default with overlapping Relevant Post Default Periods, such determinations may be made with regard to the Available Resources, Transfer Cost, Estimated Payable Net Sums and net sums relating to all relevant Defaulters and Events of Default at that time;

(iii) no Suspension Determination has been made which remains in effect;

(iv) no Termination Circular has been issued in respect of the Relevant Contract Category; and

(v) there has been no Clearing House Event.

The Clearing House may make such currency conversions at its discretion and as it seems fit for purposes of making any of such determinations listed in paragraphs (A) or (B), based on the rates of exchange that would be applicable in respect of amounts due to or from a Defaulter.

(b) If there is a Haircutting Determination, the Clearing House shall issue a Circular to that effect specifying:

- (i) the Relevant Contract Category or Relevant Contract Categories that is or are affected (or, if Rule 914(h) applies, the affected Contract Set or Sets);
- (ii) the date of commencement of any Loss Distribution Period; and
- (iii) such other matters as the Clearing House considers are relevant, which may (but are not required to) include a date on which the Loss Distribution Period is expected to end.

If any expected end date for the Loss Distribution Period is specified in the Circular, the Loss Distribution Period may nonetheless be extended by the publication of a further Circular and any expiry of a Loss Distribution Period arising as a result of a particular Event of Default shall not preclude there being any additional Loss Distribution Period at a later stage arising as a result of the same Event of Default.

- (c) Adjustment of MTM/VM payments for Cash Gainers. On each Loss Distribution Day for each Margin Account of each Contributing Clearing Member that is deemed to be a Cash Gainer, the relevant Contributing Clearing Member shall be required to pay the Clearing House an amount equal to any positive amount determined in accordance with the following formula separately for each of its Accounts or, as applicable, the Clearing House shall be required to pay the relevant Contributing Clearing Member the absolute value of any negative amount determined in accordance with the following formula (in each case, such amount the "Cash Gainer Adjustment"):

$$\text{Cash Gainer Adjustment}_{(t)} = \text{PHG}_{(t)} - ((\text{CUG}_{(t)} \times (1 - \text{DH}_{(t)})) - \text{CAG}_{(t-1)})$$

where:

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

CUG means the Cumulative Unadjusted Gains, Losses and Realised Cash Flows;

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

CAG means the Cumulative Actual Gains, Losses and Realised Cash Flows and where CAG as at the Last Call prior to Default shall be zero.

Any Transfer Cost due to any Clearing Member that has won a Default Auction shall be paid in full and not be subject to any Cash Gainer Adjustment nor included in amounts PHG, CUG or CAG.

- (d) Adjustment of MTM/VM Payments for Cash Losers. On each Loss Distribution Day for each Margin Account of each Contributing Clearing Member that is deemed to be a Cash Loser, the Clearing House shall be required to pay the absolute value of an amount (the "Cash Loser Adjustment") determined in accordance with the following formula separately for each of its Accounts:

$Cash\ Loser\ Adjustment_{(t)} = PHG_{(t)} - (CHG_{(t)} - CAG_{(t-1)})$

where:

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

CHG means the Cumulative Unadjusted Gains, Losses and Realised Cash Flows; and

CAG means the Cumulative Actual Gains, Losses and Realised Cash Flows and where CAG as at the Last Call prior to Default shall be zero.

- (e) On each Loss Distribution Day, the Clearing House shall apply the payment or receipt of any Margin Account Adjustment as an offset against any payments from or receivable by the relevant Clearing Member or aggregate it with any required payment to the Clearing House, in accordance with Rule 302 or the Finance Procedures. MTM/VM obligations and related adjustments pursuant to this Rule 914 of Contributing Clearing Members that are not Defaulters shall then be paid and collected following such netting with other payment obligations as are provided for in Part 3 and the Finance Procedures.
- (f) Where Physical Settlement is applicable to any CDS Contract or obligations relating to physical delivery in respect of any Energy Contract are to be performed following expiry or the end of trading in the relevant Set, on any Business Day during a Loss Distribution Period, the Clearing House may make such adjustments as are necessary to the calculation of Cash Gainer Adjustment or Cash Loser Adjustment to reflect the payment flows arising from such Physical Settlement or delivery, based on the principle that the calculation of Cash Gainer Adjustment and Cash Loser Adjustment is designed to capture all profits and/or losses on Open Contract Positions during the relevant Loss Distribution Period.
- (g) Notwithstanding the effects of this Rule 914 during a Loss Distribution Period:
- (i) Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, the Clearing House in accordance with the Rules and Procedures, including obligations to pay Original/Initial Margin, Guaranty Fund Contributions and Assessment Contributions (in the latter case, subject always to the relevant caps set out in Rules 909, 910 and 911); and
- (ii) the Clearing House will remain liable to pay or release Margin and Permitted Cover to Clearing Members in the usual way, subject to netting to take account of any Cash Loser Adjustment.
- (h) All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the Haircutting Determination) has been made and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.

- (i) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Clearing House (whether for itself or on behalf of any Market) in respect of Contracts affected by the arrangements during the Loss Distribution Period shall not be applicable during any Loss Distribution Period. Action by the Clearing House under this Rule 914 shall not constitute any kind of Clearing House Event.
- (j) Where the Clearing House determines that none of the situations under which a Haircutting Determination could be made persists or is likely to persist or otherwise wishes to end any Loss Distribution Period, it shall issue a Circular specifying the final date of the Loss Distribution Period. After the end of the Loss Distribution Period, the adjustments, modifications and limited recourse provisions specified in this Rule 914 shall no longer apply and the Clearing House shall resume calculating, collecting and paying MTM/VM payments in the ordinary course. The end of the Loss Distribution Period shall not preclude the Clearing House from making a further Haircutting Determination in respect of the same Event of Default to the extent that any open Contracts of the Defaulter have not been closed out, sold or liquidated and the other conditions of the Haircutting Determination are satisfied.
- (k) Notwithstanding Rule 1102(k), this Rule 914(k) shall apply where the Clearing House (1) receives amounts from a Defaulter or another Clearing Member that would, had it been paid on time, have increased the Clearing House's Available Resources or Received MTM/VM on a Business Day on which any Margin Account Adjustment was made pursuant to this Rule 914 during a Loss Distribution Period; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher; or (3) declares an actual net sum under Rule 906 in circumstances in which an Estimated Payable Net Sum had previously been used as a basis for invoking its rights under this Rule 914 where the actual net sum is greater than the last Estimated Payable Net Sum. Where this Rule 914(k) applies, the Clearing House shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Clearing House, including, without limitation, the costs of recovering or recalculating any such amounts):
 - (i) first to Contributing Clearing Members who are not then Defaulters (irrespective of whether they remain Clearing Members at the time of the recovery) who became liable to pay Cash Gainer Adjustments during the Loss Distribution Period for the Contract Category to which the receipts relate, with the payments determined on a *pro rata* basis based on each Clearing Member's Clearing Member Adjustment Amount in respect of the relevant Contract Category;
 - (ii) secondly, in accordance with Rule 1102(k).
- (l) Payments of Cash Gainer Adjustments and Cash Loser Adjustments may be made pursuant to Part 3 of the Rules and the Finance Procedures. This Rule 914 is without prejudice to the Clearing House's rights to set off or net any sum owed by a Clearing Member to the Clearing House against any sum payable by the Clearing House to a Clearing Member or to any other powers of the Clearing House under Parts 3, 9 or 11 or

the Procedures, but the Clearing House may not take any action under those provisions to the extent inconsistent with the provisions of this Rule 914.

- (m) Nothing in this Rule 914 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member or Defaulter in respect of any amount, obligation or asset (not being Available Resources or Available Defaulter Resources) which is owed or due but unpaid or unsatisfied by such Clearing Member or Defaulter.
- (n) In carrying out any calculations or making any determinations pursuant to this Rule 914, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (o) The Clearing House shall apply all Received MTM/VM and Available Resources solely to meet Outward MTM/VM Payments and Transfer Costs, as envisaged under Parts 9 and 11 of the Rules and the Default Auction Procedures, to make reimbursement to Clearing Members under Rule 914(k) and to fund its obligations to meet any shortfall, loss or liability incurred by it under Contracts or these Rules as permitted under the Rules.

Rule 915 **Clearing suspension**

- (a) This Rule 915 shall only apply if the Clearing House has published a determination (any such determination, a "**Suspension Determination**") that the following four conditions are all satisfied:

 - (i) an Event of Default has been declared but the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of its Proprietary Account and all of its different Customer Accounts;
 - (ii) the Clearing House determines that one or more of the following circumstances has arisen:

 - (A) its obligations to meet Outward MTM/VM Payments or the Transfer Cost, in its view, may not to be satisfied by applying Available Resources and the provisions set out in Rule 914;
 - (B) following either the declaration of all net sums in respect of a particular Event of Default or, where any net sum has not been declared, based on the calculation of an Estimated Payable Net Sum, the Clearing House, in its view, may either:

 - (1) become unable to pay its debts as they fall due; or
 - (2) have total liabilities which exceed its total assets.

in either case if it does not invoke the provisions set out in this Rule 915;
or

(C) there has been a Under-priced Auction in respect of the Relevant Contract Category;

(iii) no Termination Circular has been issued in respect of the Relevant Contract Category; and

(iv) there has been no Clearing House Event.

The Clearing House may make such currency conversions at its discretion and as it seems fit for purposes of making any of such determinations listed in paragraphs (A) or (B), based on the rates of exchange that would be applicable in respect of amounts due to or from a Defaulter.

(b) If there is a Suspension Determination, the Clearing House shall issue a Circular to that effect (a "**Suspension Circular**") specifying:

(i) that the issuance of such Circular constitutes a Suspension Determination;

(ii) the Relevant Contract Category or Relevant Contract Categories that is or are affected;

(iii) the start and initial end date of the Suspension Period; and

(iv) such other matters as the Clearing House considers are relevant.

(c) From the moment of issue of a Suspension Circular, for an initial period of up to 2 Business Days as may be specified by the Clearing House in the Circular (the "**Suspension Period**):

(i) payment in respect of Contracts in each Relevant Contract Category ("**Suspended Contracts**") or other obligations relating to Suspended Contracts which are owed by or to the Clearing House that have been instructed by the Clearing House or Clearing Members prior to the commencement of the Suspension Period but which have not been completed at the commencement of the Suspension Period, shall be completed (subject to Rule 914, if applicable) in accordance with the Rules and the Procedures, notwithstanding the Suspension Determination or Suspension Period;

(ii) subject to Rule 915(c)(i) and (iv), neither party to a Suspended Contract shall be required to pay, deliver or perform any other obligation under such Contract (nor to pay Margin in respect of such a Contract); and neither the Clearing House nor any Clearing Member shall be deemed to have committed or been subject to a Clearing House Event or Event of Default respectively nor taken any action giving rise to termination rights under Rule 908 as a result of any such

non-performance nor shall any Clearing Member be capable of being declared a Defaulter solely as a result of any such non-performance;

- (iii) the Clearing House shall suspend the calculation of MTM/VM Prices for Suspended Contracts, but Clearing Members shall remain obliged to provide pricing data in the same way as if there were no suspension and the Clearing House may, if it so decides, publish or distribute indicative MTM/VM Prices and indicative information concerning what would otherwise be Original/Initial Margin requirements to Clearing Members solely for information, risk and monitoring purposes;
- (iv) the exercise of rights under Suspended Contracts and related operational processes that are already in the course of performance or operation at the time of the issue of the Suspension Circular or contractual lifecycle events that are due to occur after that time, such as option exercise or abandonment, services of notices (including Credit Event Notices and other notices under CDS Contracts) and Futures expiries, shall be completed in accordance with the terms of those Contracts and the Rules and Procedures (subject to the Clearing House directing otherwise in accordance with the Rules and Procedures) but any obligation on either party to a Suspended Contract to pay any amount, enter into any new Contract or deliver any property shall remain suspended until the end of the Suspension Period;
- (v) no further Transactions may be submitted for Clearing, no Contracts may be transferred to another Clearing Member or closed out and no Contracts shall arise under Part 4, if those Transactions would give rise to Contracts falling within any Relevant Contract Category;
- (vi) subject to Rule 918, Clearing Members shall remain liable to have their Guaranty Fund Contributions applied and obliged to make timely payments in respect of Assessment Contributions relating to each Event of Default that occurs or is declared prior to or during the Suspension Period and the Suspension Period shall have no effect on the time of performance of such obligations or the time or conditions of exercise of the Clearing House's right to apply Guaranty Fund Contributions or call for Assessment Contributions;
- (vii) any obligations of Clearing Members to replenish any Guaranty Fund Contribution in respect of a Relevant Guaranty Fund or of the Clearing House to replenish any Clearing House Contribution (relating to the same Contract Category as that of the Relevant Guaranty Fund) which fall due for performance during the Suspension Period shall be suspended;
- (viii) if, absent the Suspension Determination, the Clearing House would be entitled to or would in the ordinary course net or offset any obligation of a Clearing Member relating to a Suspended Contract against any other obligation owed by such Clearing Member to the Clearing House, or vice versa, the Clearing House and each Clearing Member shall perform their other obligations without any such

netting or offset and shall further not apply any lien, recouping, combination of accounts or other deduction or withholding;

- (ix) except as expressly provided otherwise in this Rule 915(c), Clearing Members, including each Defaulter, and the Clearing House shall remain liable to pay, and shall continue to make timely payment of, all other amounts falling due, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery in accordance with the Rules and Procedures, including: (A) pursuant to Contracts which are not Suspended Contracts; (B) Original/Initial Margin in relation to all Contracts that are not Suspended Contracts; (C) replenishments of or reductions in Guaranty Fund Contributions in respect of any Guaranty Fund that is not a Relevant Guaranty Fund; and (D) Assessment Contributions subject always to the relevant caps set out in Rules 909, 910 and 911; and
- (x) any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Clearing House (whether for itself or on behalf of any Market) in respect of Contracts affected by the arrangements during the Suspension Period shall not be applicable during any Suspension Period.
- (d) Prior to the expiry of a Suspension Period, the Clearing House may at any time terminate the Suspension Period early by issuing a Circular specifying the time at which the Suspension Period will cease to take effect.
- (e) Subject to Rule 917, upon the expiry or termination of the Suspension Period, unless the Clearing House has issued a Termination Circular, the suspensions referred to in Rule 915(c)(ii) shall cease to have effect and payments shall be made from or to the Clearing House in order to restore the position between the Clearing House and each Clearing Member affected by the Suspension Period to what it would have been had there been no Suspension Period.
- (f) Any suspension of obligations of the Clearing House and Clearing Members during a Suspension Period pursuant to this Rule 915 shall not give rise to any claim for breach of contract or duty or otherwise against the Clearing House or a Clearing Member. Action by the Clearing House under this Rule 915 shall not constitute any kind of Clearing House Event.
- (g) In carrying out any calculations or making any determinations pursuant to this Rule 915, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.

Rule 916 **Contract Termination following Suspension Period or Under-priced Auction**

- (a) If:

- (i) at the end of the Suspension Period, any of the conditions set out in Rule 915(a)(ii)(A) or (B) are still satisfied;
- (ii) the conditions for issuance of a Suspension Circular (except 915(a)(iii)) are satisfied but the Clearing House determines not to commence a suspension; or
- (iii) following the service of notices by Clearing Members under Rule 917, the Clearing House determines that there are insufficient Clearing Members interested in continuing to clear Contracts of a Relevant Contract Category for clearing of such Relevant Contract Category to remain viable,

and there has been no Clearing House Event, then the Clearing House may issue a Termination Circular.

(b) If the Clearing House is to terminate Contracts under this Rule 915, it must issue a Circular (a "**Termination Circular**") stating:

- (i) the Relevant Contract Category or Relevant Contract Categories in respect of which Contracts are to be terminated;
- (ii) the Clearing House's intention to rely upon and apply Rule 915;
- (iii) the applicable Termination Price for each Contract Set of the Relevant Contract Category or Relevant Contract Categories that are to be terminated;
- (iv) the date and time on which termination will take place "**Termination Time**";
and
- (v) such other matters as the Clearing House considers are relevant.

(c) Upon and with effect immediately as from the Termination Time, every open Contract in the Relevant Contract Category shall be automatically terminated at the Termination Price, without the need for any further step by any party to such Contract. Neither the Clearing House nor any Clearing Member that is not a Defaulter shall be obliged to make any further payments, physical settlement or deliveries under any Contract which would, but for this Rule 916(c), have fallen due for performance on or after the Termination Time, and any obligations to make further payments or deliveries which would otherwise have fallen due shall be satisfied by settlement (whether by payment, set off or otherwise) of the Termination Amount and other payment and delivery obligations in relation to any Contracts and any other obligations pursuant to the Rules (including the repayment or redelivery of any Original/Initial Margin or Guaranty Fund Contribution) that is relevant solely to the Relevant Contract Category that is subject to a termination shall be payable or deliverable on the Business Day after the Termination Time and in accordance with the provisions of this Rule 916 in full discharge of the Clearing House's obligations in respect of Contracts of the Relevant Contract Category.

(d) The Termination Price for Contracts in the same Set shall be the equal for all such Contracts and shall be the same for all Clearing Members that are party to Contracts of

the same Set. Termination Prices shall be based upon the value of Contracts as at the Termination Time in accordance with the principles set out in this Rule 916(d) but without reference to the Loss Distribution Process in Rule 914. Such Termination Prices shall be calculated as the relevant loss or gain that would be calculated for purposes of items L and A in Rule 905(a) were a net sum to be required to be calculated, but based on:

(i) for a Set:

(A) of Energy Contracts, the Market Delivery Settlement Price (excluding any such price determined or over-ridden by the Clearing House) or any other exchange delivery settlement price or other settlement price or market quotation established or published by a Market for which the Clearing House provided Clearing services for the relevant Contract Set prior to the Termination Date (or, if the Termination Date is not a business day for the relevant Market, the business day for the relevant Market immediately preceding the Termination Date);

(B) of CDS Contracts, the latest established Mark-to-Market Price for each relevant Set as at the Termination Time, determined using the methodology standardly applicable for determining Mark-to-Market Prices; or

(C) of FX Contracts, the latest established FX Market Price for each relevant Set as at the Termination Time, determined using the methodology standardly applicable for determining FX Market Prices;

provided that, prior to or around the time of giving effect to the termination, the Clearing House may, following consultation with the Risk Committee, determine that it should conduct a final price submission and price determination process to determine a Mark-to-Market Price or FX Market Price for purposes of termination in which it shall use its standard processes and procedures to determine the price and which Clearing Members shall participate in fully, in good faith, using their standard processes and procedures and in accordance with Applicable Laws.

(ii) if no price described in Rule 916(d)(i) exists or is determined, the last market quotation or settlement price established or published by another Exchange or Clearing Organisation (that is not subject to an Insolvency) selected by the Clearing House for an economically similar contract to the Set immediately prior to the Termination Time; or

(iii) if no price described in Rule 916(d) (i) or (ii) exists or is determined, at a commercially reasonable price as reasonably determined by the Clearing House by reference to objective and observable market prices at the relevant Termination Time, the mean settlement price for the Termination Time based on a survey of market participants active in Contracts similar to the Set or otherwise

on such basis as the Clearing House determines with a view to obtaining a fair valuation.

- (e) The maximum amount that may be paid or repaid in respect of the Relevant Contract Category and related liabilities and rights shall be calculated separately in respect of each Margin Account for each Clearing Member with a Relevant Membership Category that is not a Defaulter, by way of a net sum calculation using the calculation under Rule 906 *mutatis mutandis*, as if the Clearing Member were a Defaulter, bringing into account the Termination Price for purposes of calculating amounts *L* and *A* and all net Cash Gainer Adjustments relating to the Relevant Contract Category but otherwise solely bringing into account any amount for purposes of such calculation inasmuch as it relates to the Relevant Contract Category ("Product Termination Amount"). To the extent that any Original/Initial Margin, Surplus Collateral or other assets are held by the Clearing House for the account of a Clearing Member in respect of any Contract of a Relevant Contract Category (or any such asset becomes Surplus Collateral as a result of Termination), the amount of such Original/Initial Margin, assets or Surplus Collateral shall be included in the Product Termination Amount.
- (f) Following its determination of the Product Termination Amount in relation to each Margin Account for each Clearing Member that is not a Defaulter, the Clearing House shall calculate the Available Product Funds as the sum equal to the aggregate of the Negative Product Repayment Amounts in respect of each affected Clearing Member. Where the Available Product Funds are less than the aggregate amount of Positive Product Repayment Amounts, the Clearing House shall calculate the Discounted Product Repayment Amount for each Positive Product Repayment Amount payable to the Clearing Member by multiplying each such Positive Product Repayment Amount by the fraction determined by dividing *A* by *B*, where *A* is the Available Product Funds and *B* is the aggregate amount of Positive Product Repayment Amounts.
- (g) Prior to any amount being paid or collected pursuant to Rule 916(h), the Clearing House shall notify each Clearing Member that is due to receive a Positive Product Repayment Amount of such amount and any Discounted Product Repayment Amount and the extent to which this differs from the Product Termination Amount. This notification shall show in reasonable detail how any Discounted Product Repayment Amount has been calculated by the Clearing House. Where a Discounted Product Repayment Amount is notified to a Clearing Member, such amount shall be payable by the Clearing House and the Clearing House shall have no obligation (other than pursuant to Rule 916(i)) to pay either the Product Termination Amount or the Termination Price or any difference between any such amount or price and the Discounted Product Repayment Amount.
- (h) The Clearing House will issue payment instructions to collect (and each Clearing Member shall, immediately upon receipt of any such instructions, pay) each Negative Product Repayment Amount in respect of the Relevant Contract Category, prior to the Clearing House making payment to Clearing Members of Positive Product Repayment Amounts or Discounted Product Repayment Amount. All payments in respect of Negative Product Repayment Amounts shall be made by Clearing Members without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien,

recouping, property, combination of accounts or other basis. If any Clearing Member fails to pay any Negative Product Repayment Amount due to the Clearing House, the Discounted Product Repayment Amount may be recalculated for each Margin Account and Contributing Clearing Member and, if so recalculated, will be notified to affected Contributing Clearing Members. Payment of any Discounted Product Repayment Amount shall constitute full satisfaction of the Clearing House's obligations and liabilities relating to the Relevant Contract Category.

- (i) Notwithstanding the termination process under this Rule 916, Clearing Members, including each Defaulter and the Clearing House, shall each remain liable to pay, and shall continue to make timely payment of, all amounts falling due, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery, in accordance with the Rules and Procedures, including: (A) pursuant to Contracts which are not terminated; (B) Original/Initial Margin in relation to Contracts that are not terminated; (C) replenishments of and returns in respect of Guaranty Fund Contributions in respect of any Guaranty Fund that is not a Relevant Guaranty Fund; and (D) Assessment Contributions subject always to the relevant caps set out in Rules 909, 910 and 911.
- (j) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Clearing House (whether for itself or on behalf of any Market) in respect of Contracts to be terminated under this Rule 916 shall not be applicable in respect of such Contracts.
- (k) No action or omission by the Clearing House pursuant to this Rule 916 shall constitute any kind of Clearing House Event.
- (l) If the Clearing House terminates Contracts of a particular Set, this shall not preclude it from terminating Contracts of a different Set of the same Relevant Contract Category in respect of the same Event of Default.
- (m) In carrying out any calculations or making any determinations pursuant to this Rule 916, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (n) Notwithstanding Rule 1102(k) and Rule 914(k), this Rule 916(n) shall apply where the Clearing House (1) receives amounts from a Defaulter or another Clearing Member that would, had it been paid on time, have meant that a Negative Product Termination Amount being lower or eliminated or a Positive Product Termination Amount being higher; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher in circumstances in which any resulting Negative Product Termination Amount would have been lower or eliminated or a Positive Product Termination Amount would have been higher based on the later Estimated Payable Net Sum; or (3) an actual net sum is declared by the Clearing House

under Rule 906 in circumstances in which any resulting Negative Product Termination Amount would have been lower or eliminated or a Positive Product Termination Amount would have been higher based on the actual net sum. Where this Rule 916(n) applies, the Clearing House shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Clearing House, including, without limitation, the costs of recovering or recalculating any such amounts):

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

Rule 917 **Cooling-off period and Clearing Member termination rights**

- (a) Upon the occurrence of any Cooling-off Period Trigger Event, the Clearing House shall issue a Circular notifying Clearing Members of the commencement of the Cooling-off Period, setting out the date on which such period is scheduled to end (and on the date on which the Cooling-off Termination Period is scheduled to end), and specifying the Relevant Contract Category.
- (b) ~~In the event of any termination pursuant to:~~ From the commencement of, and solely for the duration of, the Cooling-off Period:
 - (i) None of the second sentences of any of Rule 909(c), Rule 910(c) or Rule 911(c) shall apply to a Clearing Member with the Membership Category of the Relevant Contract Category, until the end of the Cooling-off Period;
 - (ii) Relevant Assessment Contributions under Rules 909, 910 and 911 for all Events of Default occurring or declared during the Cooling-off Period in relation to the Relevant Contract Category shall not exceed three times the amount of the Clearing Member's required Relevant Guaranty Fund Contribution immediately

prior to the commencement of the Cooling-off Period (with any Assessment Contributions payable in respect of the Event of Default which occurred prior to the start of the Cooling-Off Period being counted towards reducing such maximum amount); and a Clearing Member in a Cooling-off Period that has made a total of three Relevant Assessment Contributions shall not be liable for any further replenishments of its Relevant Guaranty Fund Contribution or Relevant Assessment Contributions, regardless of how many additional Events of Default take place;

- (iii) for the avoidance of doubt, the required Guaranty Fund Contribution-based caps on the amount of Assessment Contributions for a Clearing Member in respect of each particular Relevant Contract Category shall apply on a per Event of Default basis, in the same way as set out in the first sentences of each of Rule 909(c), Rule 910(c) and Rule 911(c), in respect of each Event of Default occurring or declared during the Cooling-off Period;
- (iv) no replenishment of Relevant Guaranty Fund Contributions under Rule 1102(i) or Rule 1102(j) shall take place; and
- (v) there shall be no rebalancing, re-setting or recalculation of Relevant Guaranty Fund Contribution requirements or the total required amount in any Relevant Guaranty Fund for purposes of determining liability for replenishment of Relevant Guaranty Fund Contributions or Relevant Assessment Contributions;

provided that the limits set out in this Rule 917(b) shall only apply if the Clearing Member continues during the Cooling-off Period to pay the Clearing House all amounts when due (subject to the caps and limits set out in this Rule 917(b)).

- (c) At any time during the Cooling-off Termination Period, a Clearing Member with the Relevant Membership Category may give written notice of termination of that Membership Category or of its membership of the Clearing House to the Clearing House.
- (d) At the end of the Cooling-off Period, the restrictions and requirements of Rule 917(b) shall cease to apply, subject to Rule 918(a)(ii), going forwards, to each Clearing Member that has not served a Termination Notice during the Cooling-off Termination Period.

Rule 918 **Termination of membership**

- (a) A Clearing Member that has served a Termination Notice, under Rule 917(c) is subject to the following requirements, obligations and provisions (and certain of these provisions are also applicable pursuant to other sorts of termination or withdrawal, pursuant to Rule 105(c), Rule 209(b) and Rule 209(d)):
 - (i) ~~Rule 209(e)(i)(B);~~ it must use all reasonable endeavours, until such time (if any) as there is a subsequent Clearing House Event, to close out all of its open Contracts of the Relevant Contract Category prior to the Termination Close-Out Deadline Date;

- (ii) ~~Rule 209(e)(ii)-(iii);~~ if it closes out all of its open Contracts in respect of the Relevant Contract Category prior to the Termination Close-Out Deadline Date and complies with the other requirements of this Rule 918, it shall maintain the benefit of the protections set out in Rule 917(b) and such provision shall not apply solely during the Cooling-off Period;
- (iii) ~~Rule 209(f)(i)(B); or~~ after the Termination Notice Time, it shall only be entitled to submit Transactions relating to the Relevant Contract Category for clearing or become party to Contracts of the Relevant Contract Category which it can demonstrate have the overall effect of reducing Open Contract Positions in any Set of Contracts of a Relevant Contract Category or risks to the Clearing House associated with Contracts of a Relevant Contract Category, whether by hedging, novating, Transferring, terminating, liquidating or otherwise closing out such Contracts;
- (iv) ~~Rule 209(f)(ii)-(iii);~~ if it has any open Contracts of the Relevant Contract Category with the Clearing House (whether recorded in a Proprietary Account or Customer Account) after the Termination Close-Out Deadline Date (and notwithstanding any provision of Rules 909 to 911 to the contrary) the Clearing Member shall as from the Termination Close-Out Deadline Date;

~~the provisions of Rule 209(e)(iii) shall apply. Rule 209(e) and Rule 209(f) are default rules for such purposes and Rule 907(g) applies equally to such provisions.~~

- (A) become liable to replenish any Relevant Guaranty Fund Contribution that would have fallen due for replenishment but has not been paid, become liable to have applied any Relevant Guaranty Fund Contribution that would have been applied but was not so applied and become liable to pay any Relevant Assessment Contribution that would have fallen due but has not been paid, in each case to the extent that the same would have been payable or applied but for its service of a Termination Notice and in each case in respect of any Event of Default affecting a Clearing Member with a Relevant Membership Category that has occurred subsequent to the Termination Notice Time;
- (B) become liable for further obligations to replenish any Relevant Guaranty Fund Contribution, have any Relevant Guaranty Fund Contribution applied or pay Relevant Assessment Contributions in the same way as any other Clearing Member with its Membership Categories in respect of any Event of Default occurring prior to the Termination Date; and
- (C) be subject to the Clearing House exercising rights in Part 9 to liquidate or Transfer the Open Contract Positions of the Clearing Member of the Relevant Contract Category (insofar as they relate to clearing of Contracts relating to a Relevant Contract Category) and otherwise deal with the Clearing Member's Contracts and property in the same way as if the Clearing Member were a Defaulter.

- (v) the Clearing House may call for additional Original/Initial Margin until such time as all of its open Contracts of the Relevant Contract Category have been terminated, and such Clearing Member shall pay such additional Original/Initial Margin to the Clearing House as is requested on time;
- (vi) it shall be obliged to participate in Default Auctions pursuant to the Default Auction Procedures in the same way as any other non-defaulting Clearing Member and subject to the provisions of Rule 908(h) in respect of all Events of Default occurring prior to the Cooling-off Period Trigger Event which gave rise to or extended the Cooling-off Termination Period during which the Clearing Member served its Termination Notice (or, if Rule 917(c) does not apply, the Termination Notice Time);
- (vii) there shall be no rebalancing, re-setting or recalculation of Relevant Guaranty Fund Contribution requirements or the total required amount in any Relevant Guaranty Fund for purposes of determining liability for replenishment of Relevant Guaranty Fund Contributions or Relevant Assessment Contributions of the Clearing Member that has served a Termination Notice;
- (viii) following termination of all open Contracts of the Relevant Contract Category to which a terminating Clearing Member (the "**Terminated Clearing Member**") was party in relation to a particular Customer Account or Proprietary Account, the Clearing House shall then declare a net sum (which may be declared in parts, as envisaged below) as due to or from the Terminated Clearing Member in accordance with Rules 904 and 906, in the same way as if the Terminated Clearing Member were a Defaulter but with the following modifications:
 - (A) references in Part 9 to "Default" or an "Event of Default" shall be read as references to a Terminated Clearing Member terminating its membership of the Relevant Membership Category and, in the case of a failure to close out Contracts of the Relevant Contract Category only in respect of a particular Customer Account or Proprietary Account, shall be construed as applying only in respect of such account;
 - (B) any net sum calculated in relation to the Terminated Clearing Member under Rule 906 will be calculated only with regard to rights, obligations and liabilities relating to the Relevant Contract Category and any such net sum which is payable to the Terminated Clearing Member shall not be paid by the Clearing House to such Terminated Clearing Member until the later of:
 - (1) ten Business Days after the date on which the termination of the Terminated Clearing Member's open Contracts of the Relevant Contract Category and the realisation or return of any Original/Initial Margin provided in respect of such Contracts, Relevant Guaranty Fund Contributions or other assets remaining credited to the Terminated Clearing

Member's relevant Proprietary Account or Customer Account in respect of clearing of the Relevant Contract Category or otherwise in the Clearing House's possession in respect of clearing of the Relevant Contract Category is completed (subject always to Rule 102(q); or

(2) if the Terminated Clearing Member has any unapplied Relevant Guaranty Fund Contributions, the date of expiry of the Guaranty Fund Period for the Relevant Guaranty Fund immediately following the Guaranty Fund Period current on the Termination Date;

(C) notwithstanding anything in Part 9 or elsewhere in these Rules:

(1) the Clearing House may at its discretion return amounts due to the Terminated Clearing Member in different currencies or by way of transfer or return of non-cash Permitted Cover to the Terminated Clearing Member;

(2) the Clearing House may further pay any net sum calculated under Rule 906 and payable to the Terminated Clearing Member in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and

(3) the Clearing House may make part payment of any amounts due excluding the Relevant Guaranty Fund Contribution prior to the time specified in Rule 918(a)(viii)(B).

(D) it is acknowledged that any 'net sum' declared in accordance with this Rule 918(a)(viii) is not formally a 'net sum' for purposes of the Companies Act 1989;

(E) a Clearing Member subject to these provisions is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such Clearing Member in order for the Clearing House to exercise its rights under this provision or for the Clearing Member in question to receive any payment or return of assets; and

(F) references to Part 9 in any other Rules or in the Procedures, Circulars or Guidance shall be construed in accordance with this Rule 918 when they fall to be applied in relation to the termination of a Clearing Member's membership under this Rule 918 and any action taken by the Clearing House following such termination taking effect.

(b) If:

- (i) a Clearing Member has served a Termination Notice under Rule 917(c);
- (ii) there is an Event of Default or are Events of Default before the relevant Termination Date.

then the Clearing Member in question shall remain liable for the application of any then unapplied Relevant Guaranty Fund Contributions and unapplied Relevant Assessment Contributions (including those paid or which the Clearing Member is liable to pay under Rule 209(d)) for all such Events of Default (as if all such Events of Default had been declared by the Clearing House prior to the Termination Notice Time), subject to the general limits relating to particular Events of Default and all Events of Default referred to in this Rule 918.

- (c) Any Termination Notice issued by a Clearing Member shall be irrevocable by the Clearing Member and membership may only be reinstated pursuant to a new application for membership following the close-out of all its open Contracts of the Relevant Contract Category.
- (d) A Clearing Member whose membership in respect of the Relevant Membership Category has terminated shall, following the Termination Date, cease to be liable for Guaranty Fund Contribution replenishments under Rule 1102 in respect of Events of Default relating to the Relevant Contract Category or affected Membership Category has that occur after the Termination Date.

- (b) CDS Guaranty Fund Contributions for each CDS Clearing Member will be calculated each Guaranty Fund Period based on criteria set out in the Finance Procedures and Circulars. Energy Guaranty Fund Contributions for each Energy Clearing Member will be proportional to its relative share of the total of the average of the highest valid daily intra-day calculations of each Clearing Member as calculated by the Clearing House, in accordance with Rule 503(b), over the preceding Guaranty Fund Period, subject to the minimum contribution of any one Clearing Member being USD 1 million. FX Guaranty Fund Contributions for each FX Clearing Member will be calculated each Guaranty Fund Period based on criteria set out in the Procedures and Circulars.
- (c) Required Guaranty Fund Contributions will be calculated or re-calculated, as the case may be, by the Clearing House for each Clearing Member and notified in advance of each Guaranty Fund Period.
- (d) Guaranty Fund Contributions must be in the form of cash or other Permitted Cover, subject to such limits as are specified in the Finance Procedures and Circulars.
- (e) In the event of any change in the value of non-cash Guaranty Fund Contributions, the Clearing Member may be required by the Clearing House to make an additional Guaranty Fund Contribution. Clearing Members will be permitted (and may be required) at any time to make additional Guaranty Fund Contributions (beyond the required Guaranty Fund Contributions) in order to reduce the risk that revaluations of non-cash Permitted Cover result in such additional Guaranty Fund Contributions falling due.
- (f) New Clearing Members admitted to membership of the Clearing House shall make the required minimum Guaranty Fund Contributions plus such other amount as the Clearing House at its discretion determines is necessary based on projected clearing activity. Any such Guaranty Fund Contributions by a new Clearing Member or Clearing Members shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the relevant Guaranty Funds shall be increased accordingly until the end of the relevant Guaranty Fund Period.
- (g) Energy Guaranty Fund Contributions and CDS Guaranty Fund Contributions of a Clearing Member following termination of its membership of the Clearing House will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period beginning after the Transfer, close out or termination of all of its positions at the Clearing House and the payment of all other amounts due to the Clearing House (subject to Energy Guaranty Fund Contributions and CDS Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Energy Guaranty Fund Period or CDS Guaranty Fund Period pursuant to Rule 1102(1)). ~~Energy Guaranty Fund Contributions of a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member or FX Clearing Member following termination of its membership of the Clearing House in relation to Energy Contracts under Rule 209(f) will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period for the Energy Guaranty Fund beginning after the Transfer, close out or termination of all of its Energy Contract positions at the Clearing House and the payment of all other amounts due to the Clearing House in respect of Energy Contracts (subject to Energy Guaranty~~

~~Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period for the Energy Guaranty Fund pursuant to Rule 1102(l)). CDS Guaranty Fund Contributions of a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member following termination of its membership of the Clearing House in relation to CDS under Rule 209(f) will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period for the CDS Guaranty Fund beginning after the Transfer, close out or termination of all of its CDS Contract positions at the Clearing House and the payment of all other amounts due to the Clearing House in respect of CDS Contracts (subject to CDS Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period for the CDS Guaranty Fund pursuant to Rule 1102(l)).~~ The obligation of the Clearing House to return to an **FXEnergy** Clearing Member any remaining portion of its **FXEnergy** Guaranty Fund Contributions in the event of termination of its **FXEnergy** clearing membership of the Clearing House will be satisfied by accounting for the amount of that obligation in the determination of a net sum under Rule ~~906,906 or~~ a net sum as referred to in Rule ~~209(c) or a net sum in respect of FX under Rule 209(g)~~918(a)(viii) (whichever is applicable or the earlier), in either case payable by the Clearing House or the Clearing Member to the other, provided that in the case of a termination under Rule 209(c)(i)(A), the determination of the portion of such Energy Guaranty Fund Contributions to be so taken into account may be made up to and including the first date of the first new Energy Guaranty Fund Period beginning after the transfer or liquidation of all of the relevant Energy Clearing Member's Energy Contracts at the Clearing House. The obligation of the Clearing House to return to a CDS Clearing Member any remaining portion of its CDS Guaranty Fund Contributions in the event of termination of its CDS clearing membership of the Clearing House will be satisfied by accounting for the amount of that obligation in the determination of a net sum under Rule 906 or a net sum as referred to in Rule 918(a)(viii) (whichever is applicable or the earlier), in either case payable by the Clearing House or the Clearing Member to the other, provided that in the case of a termination under Rule 209(c)(i)(A), the determination of the portion of such CDS Guaranty Fund Contributions to be so taken into account may be made up to and including the first date of the first new CDS Guaranty Fund Period beginning after the transfer or liquidation of all of the relevant CDS Clearing Member's CDS Contracts at the Clearing House. The obligation of the Clearing House to return to an FX Clearing Member any remaining portion of its FX Guaranty Fund Contributions in the event of termination of its FX clearing membership of the Clearing House will be satisfied by accounting for the amount of that obligation in the determination of a net sum under Rule 906 or a net sum as referred to in Rule 918(a)(viii) (whichever is applicable or the earlier), in either case payable by the Clearing House or the Clearing Member to the other, provided that in the case of a termination under Rule 209(c)(i)(A), the determination of the portion of such FX Guaranty Fund Contributions to be so taken into account may be made up to and including the first date of the first new FX Guaranty Fund Period beginning after the transfer or liquidation of all of the relevant FX Clearing Member's FX Contracts at the Clearing House.

- (h) Each Clearing Member will be entitled to receive interest payments on its cash Guaranty Fund Contributions each quarter through the banking arrangements detailed in Part 3 and no accommodation charges will apply to any non-cash Guaranty Fund Contributions.

- (i) In the event of application of any Guaranty Fund Contributions taking place pursuant to ~~Rule 1103~~[Rules 908](#) or ~~Rule 1104, 1103~~, the Clearing House shall:
- (i) give notice by Circular of the amount by which each relevant Guaranty Fund has been reduced;
 - (ii) notify each Clearing Member and any relevant former Clearing Member of the amount for which it is liable to make additional Guaranty Fund Contributions in order to replenish the relevant Guaranty Funds;
 - (iii) in the case of any Energy Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House Energy Contributions by Circular;
 - (iv) in the case of any CDS Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House CDS Contributions by Circular; and
 - (v) in the case of any FX Guaranty Fund Contributions being applied, specify the new amount of each of the Clearing House FX Contributions by Circular.

Energy Clearing Members must make required Energy Guaranty Fund Contributions within ten Business Days of the notice under Rule 1102(i)(ii), or on or before such other later date as is specified by the Clearing House at its discretion [\(subject to Rule 917 and Rule 918\(a\)\(ii\)\)](#). CDS Clearing Members must make required CDS Guaranty Fund Contributions and FX Clearing Members must make required FX Guaranty Fund Contributions prior to the opening of business on the first Business Day following the notice under Rule 1102(i)(ii) or such other later date as is specified by the Clearing House at its discretion [\(subject to Rule 917 and Rule 918\(a\)\(ii\)\)](#). The Clearing House shall ensure that any specified new Clearing House Contributions are held by it in accordance with Rule ~~1104~~[1103](#)(e) at the same date as Guaranty Fund Contributions for the relevant Guaranty Fund are so due. Any obligation on a Clearing Member to make payments pursuant to this Rule 1102(i) is separate from, and shall apply in addition to, any obligation to make payment in respect of Energy Assessment Contributions pursuant to Rule ~~1105 (subject only to the provisions of Rules 1105(h) and 1105(i)) or 909~~, CDS Assessment Contributions pursuant to Rule ~~1106 (subject only to the provisions of Rules 1106(h) and 1106(i))~~[910](#) or FX Assessment Contributions pursuant to Rule ~~1107 (subject only to the provisions of Rules 1107(h) and 1107(i))~~[911](#).

- (j) If:
- (i) an Event of Default is declared in relation to more than one Defaulter contemporaneously (excluding an Event of Default declared in respect of a Disclosed Principal Member, only when an Event of Default is declared contemporaneously in respect of the Clearing Member that identified that Disclosed Principal Member in accordance with Rule 201(h)) (the defaulter in respect of whom default proceedings are first completed being the "**First Defaulter**" and any other defaulter being an "**Additional Defaulter**" or, if default proceedings are completed at the same time, the Defaulter whose name would

appear first alphabetically being the "**First Defaulter**" and any other Defaulter or Defaulters being an "**Additional Defaulter**"; or

- (ii) a separate Event of Default is declared in relation to a Defaulter or Defaulters that has or have made a Guaranty Fund Contribution or Guaranty Fund Contributions to the same Guaranty Fund (any, an "**Additional Defaulter**") prior to the termination of default proceedings in relation to an existing Defaulter ("**First Defaulter**");

and recourse is made to Guaranty Fund Contributions in respect of the First Defaulter (or any Additional Defaulter), then (subject ~~in the case of FX Guaranty Fund Contributions only~~ to Rule ~~1107(h)917~~ and Rule ~~1107918(ia)(ii)~~). Clearing Members shall be required to replenish the relevant Guaranty Fund pursuant to Rule 1102(i) separately in respect of each Defaulter causing a reduction in the Guaranty Fund. The Clearing House may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to the First Defaulter to meet the liabilities of an Additional Defaulter and may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to an Additional Defaulter to meet the liabilities of another Additional Defaulter. Other than as set out in this Rule 1102(j), amounts transferred by Clearing Members or former Clearing Members in order to replenish Guaranty Fund Contributions under Rule 1102(i) or amounts designated as Clearing House Contributions may not be applied to meet liabilities arising in connection with any Event of Default occurring prior to the time at which the relevant replenishment or designation is required under these Rules.

- (k) In the event of the Clearing House applying any Guaranty Fund Contributions of non-defaulting Clearing Members, the Clearing House will make payment to the Persons whose Guaranty Fund Contributions have been applied (and retain assets in respect of Clearing House Energy GF Contributions, Clearing House CDS GF Contributions and Clearing House FX GF Contributions) *pro rata* in respect of any amounts received from the Defaulter as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise (net of the Clearing House's costs of recovery), up to the amount by which the relevant Guaranty Fund was reduced (excluding the Guaranty Fund Contribution of the Defaulter) but without counting for interest, subject to the Clearing House first: (i) retaining or repaying amounts up to the amount of any other assets of the Clearing House (including following claims under insurance policies) or other third parties applied to meet any shortfall or loss following exhaustion of the assets specified in Rule ~~1104908~~ or in substitution of any such assets; and (ii) making reimbursement payments to Persons that have made Assessment Contributions (in that order of priority).
- (l) If an Event of Default occurs prior to the end of a Guaranty Fund Period where the total amount of Guaranty Fund Contributions or the Guaranty Fund Contribution of any particular Clearing Member would otherwise subsequently be reduced in the next Guaranty Fund Period, the Clearing House shall at its discretion be entitled to defer the end of the current Guaranty Fund Period and start of the next Guaranty Fund Period until the completion of default proceedings or retain all then held Guaranty Fund

Contributions made to any potentially affected Guaranty Fund. In either such circumstance, the Clearing House shall not be obliged to make any repayment to Clearing Members in respect of Guaranty Fund Contributions to any such Guaranty Fund until and subject to completion of the relevant Default proceedings pursuant to Part 9 and this Part 11. For the avoidance of doubt: in such circumstances, the Clearing House shall nonetheless be entitled to make periodic adjustments to Guaranty Fund Contributions as otherwise set out in these Rules at its discretion; and this Rule 1102(l) is without prejudice to Rule 1102(m) and Rule 1102(n).

- (m) If a CDS Clearing Member's business changes in a material way, a CDS Clearing Member's anticipated clearing volume of Contracts indicates a potential increase in risk to the Clearing House at any time during a Guaranty Fund Period or as otherwise required by the Finance Procedures, which determinations shall be made and conducted at the Clearing House's discretion, then the Clearing House may require the CDS Clearing Member to increase the amount of its Guaranty Fund Contribution at the time specified by the Clearing House. Any such Guaranty Fund Contributions shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the relevant Guaranty Funds shall be increased accordingly until the end of the relevant Guaranty Fund Period.
- (n) If an FX Clearing Member's business changes in a material way, an FX Clearing Member's anticipated clearing volume of Contracts indicates a potential increase in risk to the Clearing House at any time during a Guaranty Fund Period or as otherwise required by the Procedures, which determinations shall be made and conducted at the Clearing House's discretion, then the Clearing House may require the FX Clearing Member to increase the amount of its Guaranty Fund Contribution at the time specified by the Clearing House. Any such Guaranty Fund Contributions shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the relevant Guaranty Funds shall be increased accordingly until the end of the relevant Guaranty Fund Period.

Rule 1103 *Application of Assets upon an Event of Default*

~~(a) Notwithstanding any other provision of these Rules:~~

- ~~(i) if a Defaulter was only liable to make a Guaranty Fund Contribution relating to a single Membership Category, no Guaranty Fund Contributions, Assessment Contributions, or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising from the Event of Default;~~
- ~~(ii) if a Defaulter was only liable to make Guaranty Fund Contributions relating to two Membership Categories, no Guaranty Fund Contributions, Assessment Contributions or Clearing House Contributions relating to a different Membership Category shall be applied by the Clearing House to meet any obligations or~~

~~liabilities of the Defaulter or any loss or shortfall to the Clearing House arising from the Event of Default;~~

- ~~(iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Members that are not Defaulters or accrued in each case after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default shall not be applied to meet any obligations or liabilities of the Defaulter or any loss or shortfall to the Clearing House arising in connection with that prior Event of Default;~~
- ~~(iv) if a Defaulter was an Energy Clearing Member and had one or more other Membership Categories, and any Energy Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(g)(ii)(A), no non-defaulting Energy Clearing Member shall be required to make any payment to replenish the Energy Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the Energy Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the Energy Guaranty Fund (other than pursuant to Rule 903(e), if the non-defaulting Energy Clearing Member becomes a Defaulter);~~
- ~~(v) if a Defaulter was a CDS Clearing Member and had one or more other Membership Categories and any CDS Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(g)(ii)(B), no non-defaulting CDS Clearing Member shall be required to make any payment to replenish the CDS Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the CDS Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the CDS Guaranty Fund (other than pursuant to Rule 903(e), if the non-defaulting CDS Clearing Member becomes a Defaulter);~~
- ~~(vi) if a Defaulter was an FX Clearing Member and had one or more other Membership Categories, and any FX Guaranty Fund Contribution of the Defaulter is applied other than as described in Rule 1103(g)(ii)(C), no non-defaulting FX Clearing Member shall be required to make any payment to replenish the FX Guaranty Fund under Rule 1102(i) or (j) in respect of the resulting incremental shortfall to the FX Guaranty Fund caused by such application of assets prior to the date which is the first day of the next following Guaranty Fund Period for the FX Guaranty Fund (other than pursuant to Rule 903(e), if the non-defaulting FX Clearing Member becomes a Defaulter);~~
- ~~(vii) without limitation to the generality of Rule 102(q), this Rule 1103 is subject to Rule 102(q); and~~
- ~~(viii) for the avoidance of doubt, in connection with an Event of Default of a Non FCM/BD CDS Clearing Member which has a Designated CDS Customer Account, references to the application of Guaranty Fund Contributions,~~

~~Assessment Contributions and Clearing House Contributions in these Rules include the use by the Clearing House of amounts representing the proceeds of such contributions for payment of amounts it is obliged to pay the Defaulter under Rule 906(i) (and included in item SC of the net sum calculation in Rule 906(a)).~~

~~(b) In the case of a Defaulter that was an Energy Clearing Member but neither a CDS Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any **loss or shortfall** to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:~~

~~(i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);~~

~~(ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a);~~

~~(iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 1103(b)(iv) to (vii) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);~~

~~(iv) fourth, the Clearing House Energy Initial Contribution;~~

~~(v) fifth:~~

~~(A) Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Energy Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and~~

~~(B) the Clearing House Energy GF Contribution,~~

~~on a basis *pro rata* to the sum of the total of all Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter and Energy Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House Energy GF Contribution at the time of the Event of Default;~~

~~(vi) sixth, subject to Rule 1104(d), any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Event of Default; and~~

- ~~(vii) seventh, Energy Assessment Contributions received by the Clearing House pursuant to Rule 1105.~~
- ~~(e) In the case of a Defaulter which was a CDS Clearing Member but neither an Energy Clearing Member nor an FX Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any loss or shortfall (including, in respect of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:~~
- ~~(i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);~~
- ~~(ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount GFC in Rule 906(a);~~
- ~~(iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 1103(e)(iv) to (vi) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);~~
- ~~(iv) fourth, the Clearing House CDS Initial Contribution;~~
- ~~(v) fifth:~~
- ~~(A) CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus CDS Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and~~
- ~~(B) the Clearing House CDS GF Contribution,~~
- ~~on a basis pro rata to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and~~
- ~~(vi) sixth, CDS Assessment Contributions received by the Clearing House pursuant to Rule 1106.~~

- ~~(d) In the case of a Defaulter which was an FX Clearing Member but neither an Energy Clearing Member nor a CDS Clearing Member, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any **loss or shortfall** to the Clearing House upon or following any Event of Default (including in connection with any net sum calculated under Rule 906), in the following order of recourse:~~
- ~~(i) first, any amounts payable to the Defaulter in respect of Contracts, any Margin and any other amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);~~
 - ~~(ii) second, FX Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such FX Guaranty Fund Contributions falling under amount GFC in Rule 906(a);~~
 - ~~(iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in paragraphs (iv) to (vi) below but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);~~
 - ~~(iv) fourth, the Clearing House FX Initial Contribution;~~
 - ~~(v) fifth:
 - ~~(A) FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus FX Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available); and~~
 - ~~(B) the Clearing House FX GF Contribution,

on a basis *pro rata* to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default; and~~~~
 - ~~(vi) sixth, FX Assessment Contributions received by the Clearing House pursuant to Rule 1107.~~
- ~~(e) In the case of a Defaulter which held multiple Membership Categories, separate amounts shall be calculated in accordance with Rules 906(a) to (c) as if they were "net sums", *mutatis mutandis* in respect of assets and liabilities relating to the Clearing of Energy Contracts ("**Energy Default Amount**"), the Clearing of CDS Contracts ("**CDS Default Amount**") and the Clearing of FX Contracts ("**FX Default Amount**"), as follows:~~

- ~~(i) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of Energy Contracts, then the net sum declared in respect of such account shall be the sole element of the Energy Default Amount in respect of such Account;~~
- ~~(ii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of CDS Contracts, then the net sum declared in respect of such account (or, for a Designated CDS Customer Account of a Non FCM/BC CDS Clearing Member, the Gross Margin Shortfall where such Gross Margin Shortfall is not zero) shall be the sole element of the CDS Default Amount in respect of such Account;~~
- ~~(iii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of FX Contracts, then the net sum declared in respect of such account shall be the sole element of the FX Default Amount in respect of such Account;~~
- ~~(iv) if an Account in respect of which a positive net sum was produced was used for the Clearing of Contracts consisting of more than one Contract Category then:
 - ~~(A) the CDS Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of CDS Contracts, Margin or Surplus Collateral in respect of positions in CDS Contracts, ~~Guaranty Fund Contributions to the CDS Guaranty Fund~~ and any other amounts, assets or liabilities relating in any case exclusively to CDS Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below (including, in the case of a Designated CDS Customer Account and a Non FCM/BD CDS Clearing Member, any obligation of the Clearing House to the Defaulter pursuant to Rule 906(i));~~
 - ~~(B) the Energy Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of Energy Contracts, Margin or Surplus Collateral in respect of Energy Contracts, ~~Guaranty Fund Contributions to the Energy Guaranty Fund~~ and any other amounts, assets or liabilities relating in any case exclusively to Energy Contracts of the Defaulter, together with such ~~Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below; and~~~~
 - ~~(C) if the Defaulter was an FX Clearing Member, the FX Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of FX~~~~

~~Contracts, Margin or Surplus Collateral in respect of positions in FX Contracts, Guaranty Fund Contributions to the FX Guaranty Fund and any other amounts, assets or liabilities relating in any case exclusively to FX Contracts of the Defaulter, together with such Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below.~~

~~"Non-Exclusive Assets" constitute any amounts or assets included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one Contract Category. Non-Exclusive Assets may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:~~

- ~~(A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a loss or shortfall ("**Shortfall Default Amounts**"), the Non-Exclusive Assets must be included in the calculation of the Shortfall Default Amounts in proportion to the Margin requirements of the Defaulter each Contract Category corresponding to each Shortfall Default Amount immediately prior to the Event of Default until one of the Shortfall Default Amounts would represent zero; and~~
- ~~(B) subject to the process in Rule 1103(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a loss or shortfall to the Clearing House, the Non-Exclusive Assets must be included in the relevant calculation so as to eliminate or reduce the loss or shortfall *pro rata* as to the losses.~~

~~"Non-Exclusive Liabilities" constitute any liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one Contract Category. Non-Exclusive Liabilities may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:~~

- ~~(A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a surplus ("**Surplus Default Amounts**"), the Non-Exclusive Liabilities must be included in the calculation of the Surplus Default Amounts in proportion to the Margin requirements of the Defaulter for each Contract Category corresponding to each Surplus Default Amount immediately prior to the Event of Default until one of the Surplus Default Amounts would represent zero; and~~
- ~~(B) subject to the process in Rule 1103(e)(iv)(A) first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a loss or shortfall to the Clearing House,~~

~~Non-Exclusive Liabilities must first be included in the relevant calculation against the surplus *pro rata* as to the surpluses.~~

- ~~(f) In any instance in which assets are to be applied pursuant to Rule 1103(g)(ii), (iii) (iv) or (v), the Clearing House shall publish the amount of any Energy Default Amount, CDS Default Amount and/or FX Default Amount that is required to be calculated under Rule 1103(e) in a Circular. For the avoidance of doubt, any Energy Default Amount, CDS Default Amount and/or FX Default Amount so published shall not constitute a "net sum" for purposes of Rule 906, the Companies Act 1989 or the Settlement Finality Regulations.~~
- ~~(g) In the case of a Defaulter which held multiple Membership Categories, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any **loss or shortfall** (including, in the case of a CDS Customer Account of a Defaulter which was a Non-FCM/BD CDS Clearing Member, any Gross Margin Shortfall) to the Clearing House upon or following any Event of Default of that Clearing Member (including in connection with any net sum calculated under Rule 906), in the following order of recourse:~~
 - ~~(i) first, any amounts falling under A, D, C or M in Rule 906(a), in the order specified in Rule 906(a);~~
 - ~~(ii) second, Guaranty Fund Contributions of the Defaulter and any accrued interest or rights arising pursuant to such Guaranty Fund Contributions falling under amount *GFC* in Rule 906(a), provided that:~~
 - ~~(A) if a Defaulter was an Energy Clearing Member, Energy Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall **or loss** relevant to the Energy Default Amount;~~
 - ~~(B) if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any shortfall **or loss** relevant to the CDS Default Amount;~~
 - ~~(C) if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of the Defaulter must first be applied by the Clearing House against any liabilities relevant to the FX Default Amount;~~
 - ~~(D) if a Defaulter was an Energy Clearing Member, subject to **Rule 1103(g)(ii)(A), (B) and (C)**, any Energy Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall **or loss but only after the earliest date on which non-defaulting Energy Clearing Members are required to replenish the Energy Guaranty Fund pursuant to Rule 1103(a)(iv) and** only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an Energy Clearing Member;~~

- ~~(E) if a Defaulter was a CDS Clearing Member, subject to ~~Rule Rule 1103(g)(ii)(A), (B) and (C), any CDS Guaranty Fund Contributions of the Defaulter may be applied against any other shortfall or loss but only after the earliest date on which non-defaulting CDS Clearing Members are required to replenish the CDS Guaranty Fund pursuant to Rule 1103(g)(v) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting a CDS Clearing Member; and~~~~
- ~~(F) if a Defaulter was an FX Clearing Member, subject to paragraphs (A), (B) and (C), any FX Guaranty Fund Contributions of the Defaulter may be applied against any other liabilities of the Defaulter but only after the earliest date on which non-defaulting FX Clearing Members are required to replenish the FX Guaranty Fund pursuant to Rule 1103(a)(vi) and only to the extent that such assets have not been applied in respect of any subsequent Event of Default before that date affecting an FX Clearing Member;~~
- ~~(iii) third, any amounts falling under SC or OA in Rule 906(a) in the order specified in Rule 906(a) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 1103(g)(iv) to (vii) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset) (excluding, in respect of a Designated CDS Customer Account, assets applied pursuant to sub-paragraphs (iv) to (vi) below);~~
- ~~(iv) fourth:~~

 - ~~(A) if a Defaulter was an Energy Clearing Member, the Clearing House Energy Initial Contribution, provided that it shall only be applied up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the Energy Default Amount represents a shortfall or loss;~~
 - ~~(B) if a Defaulter was a CDS Clearing Member, the Clearing House CDS Initial Contribution, provided that it shall only be applied up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the CDS Default Amount represents a shortfall or loss; and~~
 - ~~(C) if a Defaulter was an FX Clearing Member, the Clearing House FX Initial Contribution, provided that it shall only be applied up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the FX Default Amount represents a shortfall or loss;~~

~~(v) fifth:~~

- ~~(A) Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters and proceeds of the realisation thereof, if two or more Default proceedings take place concurrently and any such surplus is available);~~
- ~~(B) if a Defaulter was an Energy Clearing Member, the Clearing House Energy GF Contribution;~~
- ~~(C) if a Defaulter was a CDS Clearing Member, the Clearing House CDS GF Contribution; and~~
- ~~(D) if a Defaulter was an FX Clearing Member, the Clearing House FX GF Contribution;~~

~~provided that:~~

- ~~(1) if a Defaulter was an Energy Clearing Member, Energy Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House Energy GF Contribution shall only be applied towards and up to the extent of any Energy Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the Energy Default Amount less any assets applied in accordance with Rule 1103(g)(iv)(A) represents a shortfall or loss;~~
- ~~(2) if a Defaulter was a CDS Clearing Member, CDS Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House CDS GF Contribution shall only be applied towards and up to the extent of any CDS Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the CDS Default Amount less any assets applied in accordance with Rule 1103(g)(iv)(B) represents a shortfall or loss; and~~
- ~~(3) if a Defaulter was an FX Clearing Member, FX Guaranty Fund Contributions of Clearing Members other than the Defaulter in question and the Clearing House FX GF Contribution shall only be applied towards and up to the extent of any FX Default Amount notified to Clearing Members in accordance with Rule 1103(f) and in circumstances in which the FX Default Amount less any assets applied in accordance with Rule 1103(g)(iv)(C) represents a shortfall or liability;~~

~~and provided further that:~~

- ~~(X) in the case of a Defaulter who was an Energy Clearing Member, Energy Guaranty Fund Contributions and the Clearing House Energy GF Contribution are applied on a basis *pro rata* to the sum of the total of all~~

~~Energy Guaranty Fund Contributions (excluding Energy Guaranty Fund Contributions of the Defaulter in question and Energy Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House Energy GF Contribution at the time of the Event of Default;~~

~~(Y) in the case of a Defaulter who was a CDS Clearing Member, CDS Guaranty Fund Contributions and the Clearing House CDS GF Contribution are applied on a basis *pro rata* to the sum of the total of all CDS Guaranty Fund Contributions (excluding CDS Guaranty Fund Contributions of the Defaulter in question and CDS Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House CDS GF Contribution at the time of the Event of Default; and~~

~~(Z) in the case of a Defaulter who was an FX Clearing Member, FX Guaranty Fund Contributions and the Clearing House FX GF Contribution are applied on a basis *pro rata* to the sum of the total of all FX Guaranty Fund Contributions (excluding FX Guaranty Fund Contributions of the Defaulter in question and FX Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) and the Clearing House FX GF Contribution at the time of the Event of Default;~~

~~(vi) sixth, if a Defaulter was an Energy Clearing Member, subject to Rule 1104(d), any claims under default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that are available to the Clearing House as a result of the Event of Default, provided that the Clearing House, acting reasonably, must specify in a Circular the extent to which any such claims are applied in respect of any shortfall relating to the Energy Default Amount and any shortfall relating to any other Default Amount(s); and~~

~~(vii) seventh, if a Defaulter was an Energy Clearing Member, Energy Assessment Contributions received by the Clearing House pursuant to Rule 1105, if a Defaulter was a CDS Clearing Member, CDS Assessment Contributions received by the Clearing Member pursuant to Rule 1106, and, if a Defaulter was an FX Clearing Member, FX Assessment Contributions received by the Clearing House pursuant to Rule 1107.~~

~~(h) For the avoidance of doubt, this Part 11, including this Rule 1103, is part of the Clearing House's "default rules" for the purposes of the Companies Act 1989. The requirements of this Rule 1103 shall apply and be binding upon the Clearing House and all Clearing Members including upon the event of any Insolvency affecting the Clearing House or any Clearing Member. The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members (including any Insolvency Practitioner with powers over any Clearing Member or other Representative) shall, to the extent permitted by Applicable Laws:~~

- ~~(i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Part 11; and~~
- ~~(ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Clearing House are applied only pursuant to this Part 11.~~

Rule 1103 ~~Rule 1104~~ *Use of Guaranty Fund Contributions*

- (a) Following an Event of Default, the Clearing House shall apply the Guaranty Fund Contribution of a Defaulter only pursuant to Rules 906 and ~~1103.908~~. Otherwise, Guaranty Fund Contributions of a Clearing Member may be applied or used by the Clearing House at its discretion in any of the following manners to the extent of the relevant Clearing Member's Guaranty Fund Contribution:
 - (i) against any amount that becomes due to the Clearing House by that Clearing Member for any reason (including but not limited to Margin, amounts due pursuant to Contract Terms, fees, dues, assessments and fines);
 - (ii) where applicable, to meet the Clearing House's costs involved in facilitating the transfer of Contracts recorded in a Clearing Member's Customer Position Account, if that Clearing Member is experiencing financial difficulty or during a termination of membership to another Clearing Member; or
 - (iii) provisionally, in respect of any actual or potential shortfall, loss, obligation or liability if the Clearing House at its discretion determines that Guaranty Fund Contributions are likely to be applied pursuant to ~~Rule~~Rules 908, 1103 ~~or Rule 1104~~(a)(i) or (ii), provided that to the extent that any Guaranty Fund Contributions are not applied pursuant to ~~Rule~~Rules 908, 1103 ~~or Rule 1104~~(a)(i) or (ii) within a reasonable period of time, the Clearing House shall account to the relevant Clearing Member for the difference between the amount by which any Guaranty Fund Contributions were actually applied and the amount by which the same were provisionally applied under this Rule ~~1104~~1103(a)(iii).

In any such case, to the extent that Guaranty Fund Contributions are called upon, Guaranty Fund Contributions may be sold, substituted, set off, transferred, assigned, pledged, repledged or have any lien, interest or charge created over them at the Clearing House's discretion, in order to realise proceeds therefrom.

- (b) Any expense (including, without limitation, legal fees and expenses) incurred by the Clearing House in connection with the use, application or transfer of Guaranty Fund Contributions, or the return of equivalent assets to a Clearing Member, may, at the option and discretion of the Clearing House, be charged to the account of such Clearing Member.

- (c) A Clearing Member's entitlement to repayment of any Guaranty Fund Contribution or any part of it or interest thereon shall not be capable of assignment or transfer by the Clearing Member or being made subject to any Encumbrance whatsoever purporting to rank in priority over, *pari passu* with, or subsequent to, the rights of the Clearing House or in conflict with Rule ~~1103~~[908](#). Any purported Encumbrance of a Clearing Member in respect of any Guaranty Fund Contribution shall be null and void.
- (d) Default insurance policies of which the Clearing House is the beneficiary (if any) may be subject to limits on claims applicable in respect of particular time periods (each such period, a "**Relevant Period**"). Furthermore, pursuant to the terms of any such insurance obtained by the Clearing House, it is possible that (i) insurance claims may be payable in excess of losses resulting from a Default or Defaults above a certain amount ("**Loss Threshold**") occurring within a Relevant Period as opposed to following the application of particular assets in respect of particular Defaults in the order set out in Rule ~~1103~~[908](#); or (ii) default insurance policies may apply only in relation to losses occurring in relation to certain Sets of Contracts cleared by the Clearing House or particular Guaranty Funds. As a result, it is possible that: (A) insurance receipts may be available to (and applied by) the Clearing House at an earlier order to that specified in Rule ~~1103~~[908](#) if the total available Guaranty Fund Contributions exceed the Loss Threshold or in respect of a second or subsequent Default where the limit on claims for the Relevant Period has not been exhausted; (B) no or reduced insurance may be available in the case of a second or subsequent Default occurring in a Relevant Period; (C) the insurance policies (if any) may not provide cover in respect of certain Events of Default; or (D) there may be no default insurance either generally or in respect of any particular products cleared by the Clearing House. The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contract or Guaranty Fund applicable to any default insurance obtained by the Clearing House. Neither this Rule ~~1104~~[1103](#)(d) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.
- (e) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Finance Procedures, of each of the Clearing House Contributions. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain amounts equal to the total of the Clearing House Contributions in a separate account from its other assets and to use such amounts only for the purposes of meeting shortfalls arising directly or indirectly from Defaults in accordance with this Part 11. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain Clearing House Energy Contributions, Clearing House CDS Contributions and Clearing House FX Contributions in a separate account or accounts for each such contribution. This Rule ~~1104~~[1103](#)(e) shall not restrict the Clearing House from investing such amounts in any way that it is able to invest Guaranty Fund Contributions made by Clearing Members.
- (f) The total amount of Guaranty Fund Contributions for each Guaranty Fund and any Clearing House Contributions applied in connection with any Event of Default shall be notified to Clearing Members in a Circular prior to the same being applied.

Rule 1105 ~~*Powers of Assessment: Energy*~~

~~(a) Powers of assessment under this Rule 1105 may be exercised by the Clearing House following an Event of Default occurring in respect of an Energy Clearing Member and a loss or shortfall to the Clearing House arising as a result of the liabilities of a Defaulter that is or was an Energy Clearing Member not having been met pursuant to:~~

~~(i) Rule 1103(b)(i) to (vi); or~~

~~(ii) Rule 1103(g)(i) to (vi), only to the extent that the Energy Default Amount, less any assets applied in accordance with Rule 1103(g)(iv)(A), Rule 1103(g)(v)(B) and Rule 1103(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the Energy Default Amount), represents a shortfall or loss.~~

~~Immediately upon the Clearing House certifying the Energy Assessment Amount in a Circular, all Energy Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay Energy Assessment Contributions to the Clearing House in accordance with Rule 1105(b).~~

~~(b) The Energy Assessment Contribution payable by each Energy Clearing Member shall be the amount:~~

$$\del{EAA} \times \frac{\del{EGF(CM)}}{\del{EGF(all)}}$$

~~where:~~

~~*EAA* is the Energy Assessment Amount certified by the Clearing House in a Circular as the total shortfall or loss following an Event of Default occurring after funds referred to in Rule 1105(a) have been applied, provided that the total Energy Assessment Amount shall be no greater than the amount equal to twice the total required Energy Guaranty Fund Contributions of all Energy Clearing Members immediately prior to the relevant Event of Default (less Energy Guaranty Fund Contributions of Defaulters and excluding the Clearing House Energy Contributions);~~

~~*EGF(CM)* is the required Energy Guaranty Fund Contribution of the relevant Energy Clearing Member immediately preceding the relevant Event of Default; and~~

~~*EGF(all)* is the total required Energy Guaranty Fund Contributions of all Energy Clearing Members immediately preceding the relevant Event of Default (less Energy Guaranty Fund Contributions of Defaulters and excluding the Clearing House Energy Contributions).~~

~~(e) A Person that ceases to be an Energy Clearing Member shall be subject to obligations to pay Energy Assessment Contributions only in respect of:~~

~~(i) Events of Default declared in relation to Clearing Members that are Energy Clearing Members occurring prior to the Termination Date (whether or not declared prior to the Termination Date); and~~

~~(ii) any Events of Default declared in relation to Clearing Members that are Energy Clearing Members occurring after the Termination Date but whilst it still has an Energy Guaranty Fund Contribution with the Clearing House;~~

~~provided that:~~

~~(A) the aggregate amount of all Energy Assessment Contributions in respect of all Events of Default for any such Person shall be capped at: (I) in the case of a Person terminating its membership of the Clearing House following an Event of Default or Events of Default where Energy Guaranty Fund Contributions have been applied, an amount equal to twice that Person's Energy Guaranty Fund Contribution immediately prior to the first Event of Default being declared which led to the relevant application of Energy Guaranty Fund Contributions; or (II) in the case of a Person otherwise terminating its membership of the Clearing House, an amount equal to twice that Person's Energy Guaranty Fund Contribution on the date of service of the relevant notice of termination; and~~

~~(B) Energy Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1105(h) shall be included for the purpose of calculating such a cap.~~

~~(d) If the Energy Assessment Amount is not met by Energy Assessment Contribution receipts from Energy Clearing Members due to non payment by an Energy Clearing Member or Energy Clearing Members, Default of an Energy Clearing Member or Energy Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in Energy Assessment Contribution receipts shall be re-assessed against all Energy Clearing Members (other than Defaulters and Persons that have defaulted in making an Energy Assessment Contribution) in accordance with Rule 1105(a), as if such shortfall were the Energy Assessment Amount, provided that no Energy Clearing Member shall be liable to pay Energy Assessment Contributions in respect of a single Default for an amount greater than twice its Energy Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1105(c), further Energy Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire Energy Assessment Amount has been met in full by Energy Assessment Contributions.~~

- ~~(e) All Energy Assessment Contributions shall become due and payable at such time as the Clearing House notifies to Energy Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.~~
- ~~(f) If, after any Energy Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid Energy Assessment Contribution in whole or in part from the Defaulter or a Person liable to pay an unpaid Energy Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other Energy Clearing Members (excluding any Defaulter) *pro rata* in respect of paid Energy Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any shortfall ~~or loss following exhaustion of the assets specified in Rule 1103~~ or in substitution of any such assets.~~
- ~~(g) Amounts transferred to the Clearing House by Energy Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute Energy Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of Energy Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). Energy Assessment Contributions do not constitute Guaranty Fund Contributions.~~
- ~~(h) Upon an Event of Default or Events of Default occurring and Energy Assessment Contributions becoming due, a Clearing Member liable to pay an Energy Assessment Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which Energy Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), an Energy Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the Energy Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further Energy Assessment Contribution payments pursuant to Rules 1105(e) and 1105(d). Rule 209(e)(iii), Rule 209(e)(iv), Rule 209(d) (subject as aforesaid), Rule 209(e)(i) and Rule 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1105(h) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for Energy Assessment Contributions was made.~~
- ~~(i) Upon an Event of Default or Events of Default occurring and Energy Assessment Contributions becoming due, a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member and which is liable to pay an Energy Assessment Contribution shall be entitled to terminate its status with the Clearing House as an Energy Clearing Member (maintaining its status as a CDS Clearing Member) with effect from~~

~~the moment immediately prior to the time at which Energy Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f), a Clearing Member that terminates its status as an Energy Clearing Member in such circumstances shall have no further obligation to replenish the Energy Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further Energy Assessment Contribution payments pursuant to Rules 1105(e) and 1105(d). Any Clearing Member terminating its status as an Energy Clearing Member pursuant to this Rule 1105(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for Energy Assessment Contributions was made.~~

Rule 1106 *Powers of Assessment: CDS*

(a) ~~Powers of assessment under this Rule 1106 may be exercised by the Clearing House following an Event of Default occurring in respect of a CDS Clearing Member and a shortfall or loss to the Clearing House arising as a result of the liabilities of a Defaulter that is or was a CDS Clearing Member not having been met pursuant to:~~

(i) ~~Rule 1103(c)(i) to (v); or~~

(ii) ~~Rule 1103(g)(i) to (vi), only to the extent that the CDS Default Amount, less any assets applied in accordance with Rule 1103(g)(iv)(B) or Rule 1103(g)(v)(C) and Rule 1103(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the CDS Default Amount), represents a shortfall or loss.~~

~~Immediately upon the Clearing House certifying the CDS Assessment Amount in a Circular, all CDS Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay CDS Assessment Contributions to the Clearing House in accordance with Rule 1106(b).~~

(b) ~~The CDS Assessment Contribution payable by each CDS Clearing Member shall be the amount:~~

$$\text{CAA} \times \frac{\text{CGF}(CM)}{\text{CGF}(all)}$$

~~where:~~

~~CAA is the CDS Assessment Amount certified by the Clearing House in a Circular as the total shortfall or loss following an Event of Default occurring after funds referred to in Rule 1106(a) have been applied, provided that the total CDS Assessment Amount shall be no greater than the amount equal to the total required CDS Guaranty Fund Contributions of all CDS Clearing Members immediately prior to the relevant Event of Default (less CDS Guaranty Fund Contributions of Defaulters and excluding the Clearing House CDS Contributions);~~

~~CGF(CM) is the required CDS Guaranty Fund Contribution of the relevant CDS Clearing Member immediately preceding the relevant Event of Default; and~~

~~CGF(all) is the total required CDS Guaranty Fund Contributions of all CDS Clearing Members immediately preceding the relevant Event of Default (less CDS Guaranty Fund Contributions of Defaulters and excluding the Clearing House CDS Contributions).~~

- ~~(e) A Person that ceases to be a CDS Clearing Member shall be subject to obligations to pay CDS Assessment Contributions only in respect of:~~
- ~~(i) Events of Default declared in relation to Clearing Members that are CDS Clearing Members occurring prior to the Termination Date (whether or not declared prior to the Termination Date); and~~
 - ~~(ii) any Events of Default declared in relation to Clearing Members that are CDS Clearing Members occurring after the Termination Date but whilst it still has a CDS Guaranty Fund Contribution with the Clearing House,~~

~~provided that:~~

- ~~(A) the aggregate amount of all CDS Assessment Contributions in respect of all Events of Default for any such Person shall be capped at: (I) in the case of a Person terminating its membership of the Clearing House following an Event of Default or Events of Default where CDS Guaranty Fund Contributions have been applied, an amount equal to that Person's CDS Guaranty Fund Contribution immediately prior to the first Event of Default being declared which led to the relevant application of CDS Guaranty Fund Contributions; or (II) in the case of a Person otherwise terminating its membership of the Clearing House, an amount equal to that Person's CDS Guaranty Fund Contribution on the date of service of the relevant notice of termination; and~~
 - ~~(B) CDS Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1106(h) shall be included for the purpose of calculating such a cap.~~
- ~~(d) If the CDS Assessment Amount is not met by CDS Assessment Contribution receipts from CDS Clearing Members due to non-payment by a CDS Clearing Member or CDS Clearing Members, Default of a CDS Clearing Member or CDS Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in CDS Assessment Contribution receipts shall be re-assessed against all CDS Clearing Members (other than Defaulters and Persons that have defaulted in making a CDS Assessment Contribution) in accordance with Rule 1106(a), as if such shortfall were the CDS Assessment Amount, provided that no CDS Clearing Member shall be liable to pay CDS Assessment Contributions in respect of a single Default for an amount greater than its CDS Guaranty Fund Contribution immediately prior to the~~

relevant Default. Subject to Rule 1106(c), further CDS Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire CDS Assessment Amount has been met in full by CDS Assessment Contributions.

- ~~(e) All CDS Assessment Contributions shall become due and payable at such time as the Clearing House notifies to CDS Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.~~
- ~~(f) If, after any CDS Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid CDS Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid CDS Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other CDS Clearing Members (excluding any Defaulter) *pro rata* in respect of paid CDS Assessment Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 1103 or in substitution of any such assets.~~
- ~~(g) Amounts transferred to the Clearing House by CDS Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute CDS Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of CDS Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). CDS Assessment Contributions do not constitute Guaranty Fund Contributions.~~
- ~~(h) Upon an Event of Default or Events of Default occurring and CDS Assessment Contributions becoming due, a Clearing Member liable to pay a CDS Assessment Contribution shall be entitled to terminate its membership of the Clearing House with effect from the moment immediately prior to the time at which CDS Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(d), a CDS Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to Rules 1106(c) and 1106(d). Rule 209(e)(iii), Rule 209(e)(iv), Rule 209(d) (subject as aforesaid), Rule 209(e)(i) and Rule 209(e)(ii) shall apply in relation to any such termination. Any Clearing Member terminating its membership pursuant to this Rule 1106(h) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.~~
- ~~(i) Upon an Event of Default or Events of Default occurring and CDS Assessment Contributions becoming due, a Clearing Member that is both an Energy Clearing Member and a CDS Clearing Member and which is liable to pay a CDS Assessment~~

~~Contribution shall be entitled to terminate its status with the Clearing House as a CDS Clearing Member (maintaining its status as an Energy Clearing Member) with effect from the moment immediately prior to the time at which CDS Guaranty Fund Contributions are required to be made pursuant to Rule 1102(i). Notwithstanding Rule 209(f), a Clearing Member that terminates its status as a CDS Clearing Member in such circumstances shall have no further obligation to replenish the CDS Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member shall nonetheless remain liable for further CDS Assessment Contribution payments pursuant to Rules 1106(e) and 1106(d). Rule 209(f) shall apply in relation to any such termination. Any Clearing Member terminating its status as a CDS Clearing Member pursuant to this Rule 1106(i) shall give notice of the same to the Clearing House as soon as practicable and in any event on or prior to the date falling 10 days after the date on which a first call for CDS Assessment Contributions was made.~~

Rule 1107 *Powers of Assessment: FX*

~~(a) Powers of assessment under this Rule 1107 may be exercised by the Clearing House following an Event of Default occurring in respect of an FX Clearing Member and the liabilities of a Defaulter that is or was an FX Clearing Member not having been met pursuant to:~~

~~(i) Rule 1103(d)(i) to Rule 1103(d)(v); or~~

~~(ii) Rule 1103(g)(i) to Rule 1103(g)(vi), only to the extent that the FX Default Amount, less any assets applied in accordance with Rule 1103(g)(iv)(C) or Rule 1103(g)(v)(D) and Rule 1103(g)(vi) (in the latter case, only to the extent certified by the Clearing House as applying in relation to the FX Default Amount) represents a shortfall or a liability.~~

~~Immediately upon the Clearing House certifying the FX Assessment Amount in a Circular, all FX Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay FX Assessment Contributions to the Clearing House in accordance with Rule 1107(b).~~

~~(b) The FX Assessment Contribution payable by each FX Clearing Member shall be the amount:~~

$$\begin{array}{l} \text{FAA} \times \quad \text{FGF(CM)} \\ \quad \quad \quad \text{FGF(all)} \end{array}$$

~~where:~~

~~FAA is the FX Assessment Amount certified by the Clearing House in a Circular as the total shortfall following an Event of Default occurring after funds referred to in Rule 1107(a) have been applied, provided that the total FX Assessment Amount shall be no greater than the amount equal to twice the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately prior to the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters);~~

~~FGF(CM) is the required FX Guaranty Fund Contribution of the relevant FX Clearing Member immediately preceding the relevant Event of Default; and~~

~~FGF(all) is the total required FX Guaranty Fund Contributions of all FX Clearing Members immediately preceding the relevant Event of Default (less FX Guaranty Fund Contributions of Defaulters).~~

~~(e) A Person that is or was an FX Clearing Member and that has served a termination notice shall be subject to obligations to pay FX Assessment Contributions only in respect of:~~

~~(i) Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring prior to the Termination Notice Time; and~~

~~(ii) any Events of Default declared in relation to Clearing Members that are FX Clearing Members occurring after the Termination Notice Time but prior to the Termination Close Out Time,~~

~~provided that FX Assessment Contributions made by a Person terminating its membership of the Clearing House pursuant to Rule 1107(h) or Rule 1107(i) shall be included for the purpose of calculating such a cap.~~

~~(d) If the FX Assessment Amount is not met by FX Assessment Contribution receipts from FX Clearing Members due to non payment by an FX Clearing Member or FX Clearing Members, Default of an FX Clearing Member or FX Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall shall be re-assessed against all FX Clearing Members (other than Defaulters and Persons that have defaulted in making an FX Assessment Contribution) in accordance with Rule 1107(a), as if the shortfall were the FX Assessment Amount, provided that no FX Clearing Member shall be liable to pay FX Assessment Contributions in respect of a single Default for an amount greater than twice its FX Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 1107(e), further FX Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire FX Assessment Amount has been met in full by FX Assessment Contributions.~~

~~(e) All FX Assessment Contributions shall become due and payable at such time as the Clearing House notifies to FX Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.~~

~~(f) If, after any FX Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation or unpaid FX Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid FX Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other FX Clearing Members (excluding any Defaulter) *pro rata* in respect of paid FX Assessment~~

~~Contributions relating to the Event of Default in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any liability following exhaustion of the assets specified in Rule 1103 or in substitution of any such assets.~~

- ~~(g) Amounts transferred to the Clearing House by FX Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute FX Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of FX Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). FX Assessment Contributions do not constitute Guaranty Fund Contributions.~~
- ~~(h) Upon an Event of Default or Events of Default being declared and either FX Assessment Contributions becoming due or there being a Sequential FX Guaranty Fund Depletion, a Clearing Member liable either to pay an FX Assessment Contribution or to have its FX Guaranty Fund Contribution applied (as applicable) shall be entitled to terminate its membership of the Clearing House in accordance with and subject to the provisions of this Rule 1107(h). Subject as set out in Rule 209(g), an FX Clearing Member that terminates its membership in such circumstances shall have no further obligation to replenish the FX Guaranty Fund pursuant to Rule 1102(i) as from the Termination Notice Time. Such a Clearing Member shall nonetheless remain liable for further application of its FX Guaranty Fund and further FX Assessment Contribution payments pursuant to Rule 1107(c)(i) and (d), in either case in connection with any Event of Default declared by the Clearing House prior to the Termination Notice Time. For the avoidance of doubt, Rule 209(c)(iii), Rule 209(d), Rule 209(e)(i) (ii), Rule 209(g) and Rule 209(h) shall apply in relation to any such termination. To be valid, a termination notice under this Rule 1107(h) must be delivered to the Clearing House: (i) between the first date on which a call for FX Assessment Contributions was made in respect of the relevant Event of Default and the date falling 10 days after such date; or, as applicable (ii) between the first date on which the Clearing House gave notice that FX Guaranty Fund Contributions have been applied in circumstances which constitute a Sequential FX Guaranty Fund Depletion and the date falling 10 days after such date.~~
- ~~(i) Upon an Event of Default or Events of Default being declared and either FX Assessment Contributions becoming due or there being a Sequential FX Guaranty Fund Depletion, an FX Clearing Member with multiple Membership Categories which is liable either to pay an FX Assessment Contribution or to have its FX Guaranty Fund Contribution applied (as applicable) shall be entitled to terminate its status with the Clearing House as an FX Clearing Member (maintaining any other Membership Category or Categories) in accordance with and subject to the provisions of this Rule 1107(i). Subject as set out in Rule 209(g), a Clearing Member that has duly served notice of termination of its status as an FX Clearing Member in such circumstances shall have no further obligation to replenish the FX Guaranty Fund pursuant to Rule 1102(i). Such a Clearing Member, after the Termination Notice Time, shall nonetheless remain liable for further application of its FX Guaranty Fund and further FX Assessment Contribution payments pursuant to~~

~~Rule 1107(c)(i) and (d), in either case in connection with any Event of Default declared by the Clearing House prior to the Termination Notice Time. For the avoidance of doubt, Rule 209(g) and Rule 209(h) shall apply in relation to any such termination. To be valid, a termination notice under this Rule 1107(i) must be delivered to the Clearing House: (i) between the first date on which a call for FX Assessment Contributions was made in respect of the relevant Event of Default and the date falling 10 days after such date; or, as applicable (ii) between the first date on which the Clearing House gave notice that FX Guaranty Fund Contributions have been applied in circumstances which constitute a Sequential FX Guaranty Fund Depletion and the date falling 10 days after such date.~~

Rule 1202 *Transfer Orders Arising*

- (a) Subject to regulation 20 of the Settlement Finality Regulations, a Payment Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) in relation to a Contract that forms in accordance with Rule 401(a) (excluding any Energy Contract arising under Rule 401(a)(vii) ~~and further excluding any CDS Contract arising under Rule 401(a)(x) pursuant to the Clearing of CDS Trade Particulars relating to a Bilateral CDS Transaction already recorded in Deriv/SERV~~), at the time that a Contract arises under Rule 401 (such Payment Transfer Order, a "**New Contract Payment Transfer Order**");
 - (ii) the Clearing House sending an instruction pursuant to Rule 302 (such Payment Transfer Order, a "**Credit/Debit Payment Transfer Order**");
 - (iii) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to an Approved Financial Institution to transfer a sum of money from a Clearing House Account to an account of the Clearing House at the Concentration Bank (such Payment Transfer Order, a "**AFI-CB Payment Transfer Order**"); or
 - (iv) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to a Concentration Bank to transfer a sum of money from an account of the Clearing House at the Concentration Bank to a Clearing House Account (such Payment Transfer Order, a "**CB-AFI Payment Transfer Order**").
- (b) Subject to regulation 20 of the Settlement Finality Regulations, a Securities Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) if either:
 - (A) the Clearing House, the relevant Market (if any) and the two Clearing Members involved (both being Participants) have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another Clearing Member pursuant to Rule 408(a)(i); or
 - (B) the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member (being a Participant) pursuant to the Clearing House's powers under Rule 903, Rule 904, Rule 905 or otherwise,

in either case, instructions for settlement of the transfer, assignment or novation in question being effected through the ICE Systems at the relevant settlement

- (g) An Energy Block Clearing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii) or (iv).
- (h) A CDS Clearing Order shall become irrevocable when the time specified pursuant to the CDS Procedures occurs for the acceptance of the resulting CDS Contracts in question, pursuant to Rule 401(a)(~~x~~).
- (i) A CDS Physical Settlement Order shall become irrevocable at the earliest of: (i) the time when the Matched CDS Buyer in the Matched Pair has submitted irrevocable instructions to a securities system, depository, nominee or custodian for the transfer of securities to or to the account of the Matched CDS Seller; (ii) the time at which the instrument subject to physical settlement is delivered or assigned or at which physical settlement obligations are otherwise discharged; or (iii) if the Matched CDS Buyer or Matched CDS Seller has (in the absence of any Matching Reversal Notice or not later than one Business Day after any Matching Reversal Notice) given notice to the Clearing House in accordance with Rule 1511 or the CDS Procedures (as applicable) that the relevant Matched Pair have settled the relevant Matched CDS Contracts.
- (j) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.

Rule 1204 *Variations to or Cancellation of Transfer Orders*

- (a) This Rule 1204 applies only to a Transfer Order that is not irrevocable and:
 - (i) in the case of any Transfer Order, it is affected by manifest or proven error or an error that is agreed so to be by all affected Participants;
 - (ii) in the case of a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order or Position Transfer Order, it relates to a Contract which is (or a Transaction or CDS Trade Particulars which, if accepted, would be):
 - (A) void *ab initio* pursuant to Rule 403;
 - (B) avoided pursuant to Rule 404; or
 - (C) amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules; or
 - (iii) without prejudice to the generality of Rule 1204(a)(i), in the case of a Subsisting CDS Clearing Order, if an error or omission is noted by or notified to the Clearing House prior to the Acceptance Time or the data in the CDS Trade Particulars to which the Subsisting CDS Clearing Order relates is otherwise capable of being amended in accordance with the CDS Procedures;

Matched CDS Buyer in a Matched Pair shall be deemed to constitute notice by the Clearing House for purposes of this Rule 1204(e) in respect of a Transfer Order Variation to a CDS Physical Settlement Order, if the NOPS Amendment Notice specifies an instrument to be delivered that is an SFD Security.

- (f) If any of the circumstances described in Rule 1204(a) has occurred, the Transfer Order in question may at the discretion of the Clearing House alternatively be cancelled. Any such cancellation may be effected by the Clearing House serving a notice of cancellation on all affected Participants. In respect of an Energy Block Clearing Order or CDS Clearing Order, such notice shall be deemed to have been given if the Clearing House (or, in the case of an Energy Block Clearing Order, any Market) rejects a Transaction or CDS Trade Particulars for Clearing.
- (g) A CDS Physical Settlement Order shall be cancelled immediately and automatically if and when a copy is provided to the Clearing House of a validly delivered NOPS Amendment Notice specifying an instrument for delivery which is not an SFD Security.
- (h) This Rule 1204 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof if any of the events described in Rule ~~401~~1204(a) occur. No Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by the Clearing House. The ability of the Clearing House to cancel or vary a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

Rule 1205 *Termination of Transfer Orders*

- (a) Each Payment Transfer Order shall be satisfied immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in cleared funds or full satisfaction of the relevant underlying obligations is otherwise made, in either case not subject to any Encumbrances (except as envisaged under a Pledged Collateral Addendum).
- (b) Each Position Transfer Order shall be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1203(e) (whereupon all Contracts to which the Transfer Order in question relates will have been transferred, assigned or novated pursuant to the Rules).
- (c) Each Collateral Transfer Order shall be satisfied immediately and automatically at the later of the time when: (i) the Clearing House receives the Non-Cash Collateral in its account; or (ii) the definitive record of the Permitted Cover transferred by the Clearing Member that is the transferor is updated in the ICE Systems to reflect the successful transfer of Non-Cash Collateral to or to the order of the Clearing House pursuant to the Collateral Transfer Order.
- (d) A CDS Clearing Order or Energy Block Clearing Order shall be satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 401(a).

Period" and **"Sovereign Contract"** each have the meaning given to those terms in the CDS Procedures.

- (oo) Any term used but not defined in this Part 15 or elsewhere in the Rules shall have the meaning given to that term in the CDS Procedures.

Rule 1502 *Terms of CDS Contracts and Initial Payments*

- (a) The terms of each CDS Contract shall be as follows:
 - (i) such quantity, notional and other economic terms (as determined pursuant to the CDS Procedures) as were submitted to the Clearing House in respect of the CDS Trade Particulars that gave rise to the CDS Contract, subject, in the case of a Restructuring CDS Contract, to such changes to such terms as result from the operation of these Rules and the CDS Procedures, subject to the provisions of Rule 401(a)(vi), (ix), ~~(x)~~ or (xi), as applicable;
 - (ii) the applicable terms set out in the Rules (including, without limitation, the CDS Procedures, the Settlement and Notices Terms and those provisions of the General Contract Terms Procedures as are specified in the CDS Procedures); and
 - (iii) the Credit Derivatives Definitions, as amended pursuant to these Rules (including, without limitation, pursuant to the CDS Procedures).
- (b) No CDS Contract arising pursuant to the Clearing of CDS Trade Particulars in respect of a Bilateral CDS Transaction already recorded in Deriv/SERV shall contain any rights or obligations in respect of any Initial Payment. If any CDS Trade Particulars submitted for Clearing relate to a Bilateral CDS Transaction which includes any binding obligation for payment or performance falling due before a CDS Contract arises pursuant to Rule 401(a)(ix), the obligation for such payment or performance shall remain a direct obligation of the relevant CDS Buyer or CDS Seller (as applicable) to the other party to the relevant Bilateral CDS Transaction. The Clearing House shall have no obligation to make or guarantee any Initial Payment in respect of a Bilateral CDS Transaction or any CDS Trade Particulars (but this shall not affect the Clearing House's obligations under CDS Contracts, including any obligation to make an Initial Payment under a CDS Contract in accordance with the Contract Terms) or to make or guarantee any payment or performance reflecting any payment or performance in respect of a Bilateral CDS Transaction or any CDS Trade Particulars falling due for payment or performance before a CDS Contract arises pursuant to Rule 401(a)(ix). For the avoidance of doubt: (i) each CDS Contract arising from the submission for Clearing of CDS Trade Particulars for which no Bilateral CDS Transaction is already recorded in Deriv/SERV will include an obligation to pay an Initial Payment constituting a payment obligation of the relevant party thereto reflecting the Initial Payment, if any, reflected in the CDS Trade Particulars submitted for Clearing; and (ii) CDS Contracts arising in other circumstances (other than pursuant to Clearing of CDS Trade Particulars in respect of a Bilateral CDS Transaction already recorded in Deriv/SERV, but including, without limitation, CDS Contracts

arising pursuant to Rule 401(a)(vi), (ix), ~~(x)~~ or (xi)) may include an obligation to pay an Initial Payment constituting a payment obligation of the relevant party thereto.

Rule 1503 *Prospectus Directive*

- (a) The Clearing House has not authorised, nor does it authorise, the making of any Offer to the Public by any Person of any PD Contract in circumstances in which: (i) an obligation arises for the Clearing House to publish or supplement a prospectus for any such offer; (ii) an obligation arises for the Clearing House to make any other public disclosure or filing required under the Prospectus Directive; or (iii) a "home member state" is determined in respect of the Clearing House for purposes of article 2(1)(m) of the Prospectus Directive. Accordingly, Clearing Members shall not make any such Offer to the Public in relation to PD Contracts.
- (b) Without prejudice to the generality of Rule 1503(a), no Clearing Member shall enter into a PD Contract:
 - (i) with the Clearing House;
 - (ii) with another Clearing Member pursuant to CADP; or
 - (iii) with any of its Customers on a back-to-back or agency basis with a contract falling under (i) or (ii),

unless one or more of the following conditions is satisfied:

- (A) in the case of any PD Contract to which the Clearing House is a party, the Clearing Member is a "qualified investor" (as defined in article 2(1)(e) of the Prospectus Directive);
- (B) in the case of any PD Contract relating to a Customer, the Clearing Member and its Customer are both "qualified investors" (as defined in article 2(1)(e) of the Prospectus Directive);
- (C) the minimum total consideration is at least:
 - (1) €50,000, in relation to any Offer to the Public made in a Relevant Member State that has not implemented the 2010 PD Amending Directive; or
 - (2) €100,000, in relation to any Offer to the Public made in a Relevant Member State that has implemented the 2010 PD Amending Directive; or
- (D) the requirement to publish or supplement a prospectus under the Prospectus Directive otherwise does not apply.

disclosed in the notice) but is otherwise without prejudice to the rights of any party to a Matched CDS Contract in respect of settlement.

Rule 1512 *Failure to pay Physical Settlement Amount; Cash Settlement*

If, in relation to any Matched Pair, a Matched CDS Seller fails to pay all or part of the Physical Settlement Amount either to the Matched CDS Buyer or (where Rule 1510 applies) to the Clearing House when, in accordance with the Contract Terms, it was obliged to pay such amount (the amount not paid being the "**Failed Amount**"):

- (a) the Matched CDS Buyer may and the Matched CDS Seller in the Matched Pair shall, as soon as practicable, give notice in writing to the Clearing House, giving all material details of the Matched CDS Contracts involved, of the failure to pay and the Failed Amount and any material details of the amount of any Physical Settlement Amount paid in part;
- (b) such failure to pay shall not constitute or be deemed to constitute a breach of contract, ~~Bankruptcy~~ by Insolvency of, or Failure To Pay by the Clearing House under these Rules, the applicable Contract Terms or any Matched CDS Buyer Contract or give rise to any termination rights under Rule 209(c), Rule ~~209(f)~~916 or Rule ~~912~~917;
- (c) if the Matched CDS Buyer elects to notify the Clearing House of such failure to pay in accordance with Rule 1512(a), the Matched CDS Buyer may give any such notice as soon as reasonably practicable after the occurrence of such failure to pay by the Matched CDS Seller;
- (d) the Matched CDS Seller will be deemed to have failed to pay an amount equal to the Failed Amount to the Clearing House under the relevant Matched CDS Seller Contract;
- (e) upon notice being given to the Clearing House by the Matched CDS Buyer in accordance with Rule 1512(c), "Cash Settlement" between the Matched CDS Buyer and the Clearing House pursuant to the Partial Cash Settlement Terms (set out in Section 9.8 of the Credit Derivatives Definitions, which is amended for these purposes in the CDS Procedures) shall be deemed to apply to the Matched CDS Buyer Contract with respect to the Deliverable Obligations corresponding to the Failed Amount as though:
 - (i) the Deliverable Obligations not Delivered were Undeliverable Obligations;
 - (ii) the Latest Permissible Physical Settlement Date were the date on which the Matched CDS Buyer gave the relevant notice to the Clearing House as referred to in Rule 1512(c);
 - (iii) Indicative Quotations were not applicable; and
 - (iv) the Matched CDS Buyer were the Calculation Agent,

and the Clearing House and the Matched CDS Buyer will settle the Matched Buyer CDS Contract accordingly and Rule 1509 will not apply.

agreement or arrangement or other credit enhancement' related to a 'commodity contract' or 'securities contract', as applicable; and

- (iii) for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, each Open Contract Position is a 'swap agreement' and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'swap agreement'.
- (e) Without limiting Rule 904(e), for purposes of calculating M in Rule 906(ea) and applying assets to meet the obligations and liabilities of a Defaulter that is an FCM/BD Clearing Member in respect of a Swap Customer Account, and determining any loss or shortfall to the Clearing House upon or following any Event of Default of that Clearing Member under Rule 1103, the Clearing House shall be entitled to rely conclusively on the allocation of Open Contract Positions to Customer Swap Portfolios and the allocation of Margin to such Customer Swap Portfolios, as set forth in the books and records of the Clearing House from time to time in accordance with CFTC Rule 22.15 (absent manifest error by the Clearing House in making such allocation based on accurate information provided to the Clearing House), without need for further enquiry by the Clearing House as to the origin, source or ownership of any such Margin. Without limiting the Clearing House's rights under the preceding sentence, if the Clearing House applies FCM Swap Customer IM or Permitted Cover in respect thereof allocated to a particular Customer Swap Portfolio as permitted hereunder and subsequently determines that such asset was not the property of the relevant Swap Customer of the Defaulter (a "**Reviewed Application**"), the Clearing House shall be entitled, to the extent permitted by Applicable Law, to apply any Guaranty Fund Contribution of the Defaulter remaining after satisfaction of the obligations and liabilities of the Defaulter to reimburse the Clearing House Swap Segregated Account up to the amount of the Reviewed Application. The Clearing House shall have no obligation to rescind or otherwise refund any Reviewed Application or to apply any other assets (including, without limitation, any other assets in the Guaranty Fund, Clearing House Contributions or Assessment Contributions) to any reimbursement pursuant to the immediately preceding sentence.

Rule 1605 *Margin and Segregation Rules*

- (a) An FCM/BD Clearing Member shall require each FCM/BD Customer to provide margin (or permitted cover in respect thereof) (such assets, "**FCM/BD Customer Collateral**") in an amount at least equal to (or, if and to the extent so specified by Circular, greater than) the amount of Margin of each relevant type required on a gross basis by the Clearing House with respect to the relevant Open Contract Position(s), separately for each relevant class of Customer Account (regardless of whether the FCM/BD Clearing Member is required to provide such Margin to the Clearing House on a gross basis pursuant to Rule 503). Any additional required amount may be specified by the Clearing House in a Circular with reference to a percentage of required Customer Account Margin. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving

effect to any offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set and same FCM/BD Customer in the same class of Customer Account, but without giving effect to any offset or permitted offset of such Open Contract Positions against Open Contract Positions relating to a different FCM/BD Customer.

- (b) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the DCM Customer Account arising from U.S. Futures (including for the avoidance of doubt Permitted Co-mingled Contracts recorded in the DCM Customer Account) ("**FCM/BD U.S. Futures Customer Collateral**"), the Clearing House shall receive and hold such collateral in the Clearing House DCM Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Section 4d(a) and (b) of the CEA and the regulations of the CFTC thereunder. By means of this Rule, the FCM/BD Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under CFTC regulations.
- (c) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in the SBS Customer Account arising from SBS ("**FCM/BD SBS Customer Collateral**"), the Clearing House shall receive and hold such collateral in the Clearing House SBS Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Sections 3E(b) and/or 15(c)(3) of the Exchange Act and the applicable rules and regulations of the SEC.
- (d) With respect to FCM/BD Customer Collateral in respect of Contracts registered in the Swap Customer Account arising from Swaps (including for the avoidance of doubt Permitted Co-mingled Contracts recorded in the Swap Customer Account) ("**FCM/BD Swap Customer Collateral**"):
 - (i) An FCM/BD Clearing Member shall receive, hold and use all FCM/BD Swap Customer Collateral only as permitted under CEA Section 4d(f) and the regulations of the CFTC thereunder, including but not limited to Part 22 of the CFTC regulations and any interpretations thereof by the CFTC or its staff (and, to the extent applicable, Securities Exchange Act Sections 3E(b) and/or 15(c)(3) and the regulations or any orders of the SEC thereunder) and as further set forth in these Rules and the Procedures (the "**Swap Customer Segregation Requirements**"). The Clearing House shall receive and hold such collateral transferred to the Clearing House in the Clearing House Swap Segregated Account and shall segregate, hold and use all such FCM/BD Swap Customer Collateral as cleared swaps customer property in accordance with the Swap Customer Segregation Requirements. By means of this Rule, FCM/BD Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under the Swap Customer Segregation Requirements.
 - (ii) Without prejudice to clause (i) of this subsection, Open Contract Positions in any Swap Customer Account and related FCM/BD Swap Customer Collateral (or,

- (j) The term "**Spot Price**" means, for a Currency Pair, the notional foreign exchange rate between the two currencies in the Currency Pair for "spot" delivery having a cash settlement value of zero, as determined by the Clearing House by reference to the terms of the relevant Financially-Settled FX Contract.
- (k) The term "**Standard Maturities**" means the specified standard maturities for the provision of pricing data relating to FX Contracts by Clearing Members, as specified by the Clearing House in a Circular, either in respect of particular Currency Pairs or generally.
- (l) Any term used but not defined in this Part 17 or elsewhere in the Rules shall have the meaning given to that term in the FX Procedures.
- (m) For the avoidance of doubt and without prejudice to any interpretation of the following terms as defined or used elsewhere in these Rules, in the context of the Clearing of FX Contracts (including, for the avoidance of doubt, Rule 1708(c)(ii)):
 - (i) The term "**Applicable Law**" also includes a regulatory requirement.
 - (ii) The term "**Exchange**" also includes any swap execution facility, organised trading facility, systematic internaliser, trade affirmation or confirmation platform.
 - (iii) The term "**Future**" also includes any investment which may be labelled as a 'spot', 'forward' or 'swap' contract or treated as such under any Applicable Law.
 - (iv) In Rule 102(f)(i), the first reference to Contract Terms excludes any reference to the Rules or Procedures.
 - (v) The references in Rule 201(g), Rule 202(a)(iv) and Rule 209(a)(~~v~~iv) to satisfaction of the criteria for membership criteria in or set out in Rule 201(a) include those criteria for membership which are required pursuant to (but not actually set out in) Rule 201(a).

Rule 1702 *Financially-Settled FX Contracts*

- (a) Each Business Day, the Clearing House will determine or amend the FX Market Price for all Financially-Settled FX Contracts, per Currency Pair, for each maturity in respect of which it is party to one or more Financially-Settled FX Contracts in accordance with the Procedures. The Clearing House will also determine Settlement Rates for Financially-Settled FX Contracts in accordance with the Contract Terms and the Procedures.
- (b) Each FX Clearing Member shall be obliged to provide, to the Clearing House on each Business Day, for all Currency Pairs, Spot Prices and forward points for all the Standard Maturities in respect of Financially-Settled FX Contracts. The Clearing House may consolidate price data from these and other sources to determine FX Market Prices for Financially-Settled FX Contracts and will determine such prices for Financially-Settled

- (C) when requested by the Clearing House, the Person that provided it with the FX Data (if different) or any of their Affiliates pursuant to its other Data Obligations, cease the provision of FX Data to a Data Recipient if and when the Clearing House, the Person that provided it with the FX Data (if different) or any of their Affiliates reasonably suspects (as determined by the Clearing House, such Person or such Affiliate, as applicable, in its sole discretion) that such Data Recipient is in violation of the Permitted Use Agreement (or would be in violation of a Permitted Use Agreement, should such agreement have been in place).
- (b) Nothing in this Rule 1708 shall impose any obligation on any Clearing Member, Customer or any of their Affiliates to monitor their Customers' or clients' use of FX Data or to independently investigate actual or suspected breaches of the Permitted Use Agreement, subject as set out in Rule 1708(a)(iv)(C).
- (c) Nothing in this Rule 1708 shall prevent or restrict any Person from:
 - (i) using its own data relating to its own trading developed by such Person independently of, and without reference to, any FX Data; or
 - (ii) providing any FX Data to any Governmental Authority as necessary to comply with any Applicable Law (including, for the avoidance of doubt, any request of a Governmental Authority).
- (d) It is intended that a Customer or any other Person may agree to the application of the restrictions and obligations set out in this Rule 1708 by agreeing with a Person that provides FX Data to such Customer or Person that the Rules are applicable to or contractually bind such Customer or Person (and, for the avoidance of doubt, it is intended that by so agreeing, the Customer or such Person thereby affirmatively agrees to comply with subsections (i) through (iv) of paragraph (a) hereof).

Rule 1709 *Controllers*

- (a) If a Controller Guarantee has been provided in favour of an FX Clearing Member, the FX Clearing Member to which the Controller Guarantee relates shall procure that the Controller:
 - (i) at all times complies with the requirements of ~~Rule~~Rules 201(a)(~~viii~~ix), ~~Rule~~ 202(a)(ii), ~~Rule~~-202(a)(iii), ~~Rule~~-202(a)(v), ~~Rule~~-202(a)(vi), ~~Rule~~-202(a)(x) and ~~Rule~~ 202(a)(xiii) as if the Controller were a Clearing Member, *mutatis mutandis*, and such provisions applied to the Controller's business;
 - (ii) would not breach any of the requirements of Rule 203, were the Controller to be a Clearing Member subject to the requirements of Rule 203, *mutatis mutandis*, and such provisions applied to the Controller's business; and

- (iii) makes all notifications that would be required under Rule 204 if the Controller were a Clearing Member, *mutatis mutandis*, and such provisions applied to the Controller's business.

Rule 1710 *Termination of FX Membership*

- (a) ~~With effect as from the Termination Notice Time in respect of a notice of termination served by an FX Clearing Member under Rule 209(e)(i)(A) the following provisions shall apply, *mutatis mutandis* and subject to Rule 1710(e):~~
 - (i) ~~the second, third and fourth sentences of Rule 1107(h); and~~
 - (ii) ~~provisions of Rule 209 referred to therein.~~
- (b) ~~With effect as from the Termination Notice Time in respect of a notice of termination served by an FX Clearing Member in relation to FX clearing membership under Rule 209(f)(i)(A), the following provisions shall apply, *mutatis mutandis* and subject to Rule 1710(e):~~
 - (i) ~~the second, third and fourth sentences of Rule 1107(i); and~~
 - (ii) ~~provisions of Rule 209 referred to therein.~~
- (c) ~~If:~~
 - (i) ~~an FX Clearing Member has served a notice of termination under Rule 209(e)(i)(A) or Rule 209(f)(i)(A);~~
 - (ii) ~~either (A) the Termination Close Out Deadline Date has not yet passed; or (B) if the Termination Close Out Deadline Date has passed, the FX Clearing Member closed out all of its open FX Contracts prior to the Termination Close Out Deadline Date; and~~
 - (iii) ~~there is an Event of Default or Events of Default after the Termination Notice Time but prior to the Termination Date,~~

~~then the FX Clearing Member in question shall remain liable for the application of any then unapplied FX Guaranty Fund Contributions and further FX Assessment Contributions for all such Events of Default as are referred to in Rule 1710(c)(iii) (as if all such Events of Default had been declared by the Clearing House prior to the Termination Notice Time), provided that:~~

- (A) ~~the total amounts of FX Guaranty Fund Contribution applied in respect of all Events of Default referred to in Rule 1710(c)(iii) shall not exceed the required FX Guaranty Fund Contribution as at the first day of the Guaranty Fund Period in which the Termination Notice Time fell; and~~

- (B) ~~the total amounts of FX Assessment Contributions for which the FX Clearing Member is liable in respect of all Events of Default referred to in Rule 1710(e)(iii) shall not exceed an amount equal to two times the amount of the required FX Guaranty Fund Contribution referred to in Rule 1710(e)(A).~~
- (d) ~~Any termination notice issued by an FX Clearing Member under Rule 209(e)(i)(A) or Rule 209(f)(i)(A) shall be irrevocable by the FX Clearing Member and FX membership may only be reinstated pursuant to a new application for membership.~~
- (e) ~~In addition to the remedies set out or referred to in this Rule 1710, if any FX Clearing Member has served a notice of termination under Rule 209(e)(i)(A) or Rule 209(f)(i)(A) and has any open FX Contracts with the Clearing House after the last day of the three-month notice period, the Clearing House may exercise its rights under Part 9 to liquidate the open FX Contracts of such FX Clearing Member, as if such FX Clearing Member were a Defaulter. An FX Clearing Member subject to this provision is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such FX Clearing Member in order for the Clearing House to exercise its rights under this provision.~~

proceedings against the Clearing House, directly or indirectly and will if any such action is taken fully indemnify the Clearing House against any costs, losses or other consequences of Segregated CDS Customer taking any such action. Segregated CDS Customer agrees that Clearing Member acts as principal at all times in all its Contracts with the Clearing House.

- (b) The Clearing House shall have no responsibility for the compliance by Clearing Member or Segregated CDS Customer with its obligations under a Customer-Clearing Member Agreement. The Clearing House shall be under no obligation to enquire into, and shall be fully protected in relying on, any instructions or directions with respect to a CDS Customer Account or the assets recorded therein or transferred thereto or therefrom under the Rules received from a Person that the Clearing House believes to be authorised to act on behalf of Clearing Member.
- (c) Segregated CDS Customer agrees and acknowledges that the performance and payment obligations of Clearing Member to Segregated CDS Customer are limited by and contingent on the actual performance or payment by the Clearing House under the related CDS Contract and that Clearing Member shall have no responsibility for the compliance by the Clearing House (or any person other than that Clearing Member) with its obligations, including without limitation, under any CDS Contract, the Rules or the Procedures. In the event that the Clearing House defaults in or defers or varies the payment or performance of any obligation otherwise owed by it in respect of a CDS Contract corresponding to a Customer-CM CDS Transaction (including, without limitation, any shortfall in repayment of Permitted Cover or any recovery of less than 100% of amounts owed by the Clearing House or property provided to the Clearing House in circumstances in which Rule [912908](#) applies), Clearing Member will be entitled to make a corresponding deduction, withholding or other reduction from, or tolling or deferring of, any payment or performance otherwise owed by it under such corresponding Customer-CM CDS Transactions and/or to make its performance under such Customer-CM CDS Transactions conditional on performance by the Clearing House under the related CDS Contract (and where any such deduction may be attributable to both Customer-CM CDS Transactions and to Customer Account Contracts of other Segregated CDS Customers, Clearing Member shall allocate such deduction among such contracts on a *pro rata* basis) provided that if such defaulted or delayed payment or performance is subsequently obtained by Clearing Member from the Clearing House (in whole or in part), Clearing Member shall thereupon make the corresponding payment or performance (or portion thereof) to Segregated CDS Customer.

9. ***Certain Tax Matters.***

Subject always, and without prejudice, to any provisions of a Customer-Clearing Member Agreement: (i) if Clearing Member is required to pay to Clearing House any additional amount under Rule 301(j) or the Contract Terms with respect to a CDS Contract corresponding to a Customer-CM CDS Transaction, Segregated CDS Customer shall be