



**VIA EMAIL TO: SECRETARY@CFTC.GOV**

26 November 2012

Ms. Sauntia Warfield  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Three Lafayette Centre  
Washington DC 20581

Dear Ms. Warfield,

LCH.Clearnet Limited ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting for self-certification, pursuant to CFTC regulation §40.6(a), amendments to LCH.Clearnet's Rulebook. The amended Rulebook will be implemented and become effective on December 11, 2012.

The submission cover sheet and amended rules (with deletions and additions) are attached as Appendix I.

### **Explanation and Analysis**

LCH.Clearnet is amending its Default Fund Rules to correct a number of errors and omissions, and to provide additional clarity in definitions. LCH.Clearnet is not introducing any novel elements to the Default Fund Rules in this filing.

The changes being made fall into three categories: (i) reinstatement of a paragraph accidentally omitted in a previous filing; (ii) correction of cross-references within the Default Fund Rules; and (iii) including additional wording to eliminate possible ambiguities in the Rules. In addition a number of miscellaneous typographical corrections have been made.

#### *Reinstatement of a missing paragraph*

Paragraph F11(c) of the ForexClear Default Fund Supplement was submitted to the CFTC on April 20, 2012 and subsequently certified. However, the Default Fund Rules submitted in a subsequent filing on September 26 accidentally omitted paragraph F11(c) without showing it as a deletion. The paragraph was also omitted from LCH.Clearnet's published rules. Paragraph F11(c) is therefore being reinstated and the subsequent paragraphs renumbered accordingly.

#### *Correction of cross-references*

A number of internal references contained incorrect paragraph numbers and these have been updated. This applies to references within the Definitions (page 474) and to rules 16, 20, 23, 33, F2, F9, F10, S8-12, and R3.

**LCH.Clearnet Limited**  
Aldgate House, 33 Aldgate High Street, London EC3N 1EA  
Tel: +44 (0)20 7426 7000 Fax: +44 (0)20 7426 7001 [www.lchclearnet.com](http://www.lchclearnet.com)  
LCH.Clearnet Group Limited | LCH.Clearnet Limited | LCH.Clearnet LLC | LCH.Clearnet SA

*Inclusion of additional wording to remove ambiguity*

Additional definitions and wording have been inserted to remove ambiguity and improve the readability of the rules throughout. LCH.Clearnet would draw attention to the following:

- In Rule 19, references to LCH EnClear OTC Contracts have been expanded to clarify that all EnClear contracts are included, whether cleared under the FCM Regulations or the General Regulations.
- where a section only affects a member of a specific service, additional wording has been included to make this more transparent (for example, to change “Clearing Member” to “EquityClear Clearing Member” where the section applies only to EquityClear)
- Rule F5 has been updated to clarify that the determination referred to is that covered by Rule F2.

**Core Principle Compliance**

These rule amendments relate to *Core Principle G* (Default Rules and Procedures - § 39.16). By correcting errors and eliminating potential ambiguities the Default Fund Rules, LCH.Clearnet is reinforcing its compliance with Core Principle G.

**Public Information**

LCH.Clearnet has posted a notice of pending certification with the CFTC and a copy of the submission on LCH.Clearnet’s website at: [http://www.lchclearnet.com/rules\\_and\\_regulations/td/proposed\\_rules.asp](http://www.lchclearnet.com/rules_and_regulations/td/proposed_rules.asp)

**Opposing Views**

There were no opposing views expressed to LCH.Clearnet by governing board or committee members, members of LCH.Clearnet or market participants that were not incorporated into the rule.

**Certification**

LCH.Clearnet Limited hereby certifies to the Commodity Futures Trading Commission, pursuant to the procedures set forth in the Commission regulation § 40.6, that attached rule submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated there under.

Should you have any questions regarding this submission please contact me at [jay.iyer@lchclearnet.com](mailto:jay.iyer@lchclearnet.com).

Yours sincerely,



**Jay Iyer, CCO**  
LCH.Clearnet Limited

**Appendix I**

## LCH.CLEARNET LIMITED

## (The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, Part IV)

## DEFAULT FUND RULES

14. These Default Fund Rules (including the ForexClear Default Fund Supplement, the SwapClear Default Fund Supplement and the RepoClear Default Fund Supplement) form part of the Default Rules and the Clearing House Rulebook but do not apply in relation to a Participating Exchange.

## Interpretation

15. For the purposes of Rules 15 to 37 (inclusive), the ForexClear Default Fund Supplement, the SwapClear Default Fund Supplement and the RepoClear Default Fund Supplement, the following terms have the following meanings:-

"**Aggregate Excess Loss**" means the total value of a General Excess Loss, a ForexClear Excess Loss, a SwapClear Excess Loss and/or a RepoClear Excess Loss (singularly or in combination), as the context requires;

"**Capped Amount**" has the meaning assigned to it in Rule 16(c);

"**Cleared Exchange Contract**" means, for the purposes of ~~the~~these Default Fund Rules, a Contract on the terms of a contract entered into under or in accordance with the rules of a Specified Exchange;

"**Contribution**" has the meaning assigned to it in Rule 17;

"**Deductible**" means, at the time of preparation of a Rule 26 Certificate, the Capped Amount ~~as defined in Rule 16(e)~~;

"**Default**" means the issue, in respect of a Clearing Member, of a Default Notice as provided for by Rule 3 or the occurrence, in respect of a Clearing Member, of an Automatic Early Termination Event;

"**Default Loss**" has the meaning assigned to it in Rule 23(b);

"**Defaulting FXCCM**" means an FXCCM who is a defaulter under Rule 4;

"**Defaulting RCM**" means an RCM who is a defaulter under Rule 4;

"**Defaulting SCM**" means an SCM who is a defaulter under Rule 4;

"**EONIA**", means in relation to a RepoClear Contribution, the overnight rate as calculated by the European Central Bank and appearing on the Reuters Screen EONIA Page;

"**EquityClear Business**" means any transaction, obligation or liability arising out of any EquityClear Contract;

"**EquityClear Clearing Member**" includes, for the purposes of ~~the~~these Default Fund Rules, ~~any~~a Clearing Member participating which engages in ~~any part of the~~ EquityClear ~~service~~Business;

"**EquityClear Contracts**" includes, for the purposes of ~~the~~these Default Fund Rules, all cash equity contracts and CFDs cleared by the Clearing House;

"**EquityClear Contribution**" means the part of a Clearing Member's Contribution attributable to EquityClear ~~business~~Business as calculated in accordance with Rules 18A, 19A, 19B and 32A;

"**EquityClear Fund Amount**" means, subject to Rule 32, £100,000,000;

"**EquityClear Transition Date**" means the first Quarter Day as at which the aggregate of EquityClear Contributions calculated under the formula stated in Rule 19A is equal to or greater than the EquityClear Fund Amount;

"**Excess Loss**" means a General Excess Loss;

"**Exchange Clearing Member**" includes, for the purposes of ~~the~~these Default Fund Rules, any Clearing Member participating in business conducted on Specified Exchanges and under the LCH Enclear OTC Regulations or part IV of the FCM Regulations (Regulations Applicable to FCM Enclear Contracts);

"**Exchange Contribution**" has the meaning assigned to it in Rule 19;

"**Exchange Fund Amount**" means, subject to Rule 32, £310,000,000;

"**Excluded Transaction**" means, subject to Rule 37, any Contract designated by the Procedures as excluded for the purposes of the Default Fund Rules;

"**Fed Funds Rate**" means the Federal Funds Rate as published by the Federal Reserve Bank of New York;

"ForexClear Amendment" has meaning assigned to it in Rule F12 of the ForexClear Default Fund Supplement;

"**ForexClear Business**" means any transaction, obligation or liability arising out of any ForexClear Contract;

"**ForexClear Clearing Member**" or "FXCCM" means, for the purposes of ~~the~~these Default Fund Rules and the ForexClear Default Fund Supplement, a Clearing Member which engages in ForexClear Business;

"**ForexClear Contribution**" has the meaning assigned to it in Rule 17;

"**ForexClear Default Management Process**" has the meaning assigned to it in the ForexClear DMP Annex;

"**ForexClear Default Management Process Completion Date**" has the meaning assigned to it in the ForexClear DMP Annex;

"**ForexClear Default Period**" has the meaning ascribed to it in Rule F2 of the ForexClear Default Fund Supplement;

"**ForexClear Determination Date**" has the meaning assigned to it in Rule F2 of the ForexClear Default Fund Supplement;

"**ForexClear DMG**" has the meaning assigned to it in the ForexClear DMP Annex;

"**ForexClear Excess Loss**" means the net sum or aggregate of net sums certified to be payable by a defaulter in respect of ForexClear Business by a Rule 26 Certificate less (a) the proportion of the Deductible applicable to ForexClear Business under Rule 16(3c) and (b) any sums then immediately payable in respect of ForexClear Business Default Losses owed by such defaulter by any insurer or provider of analogous services under any policy of insurance or analogous instrument written in favour of the Clearing House ~~in relation to Default Losses arising out of ForexClear Business~~;

"**ForexClear Fund Amount**" means the amount as determined in accordance with Rule F2(c) of the ForexClear Default Fund Supplement;

"**ForexClear Loss Distribution Process**" has the meaning assigned to it in Rule F9 of the ForexClear Default Fund Supplement;

"**ForexClear Unfunded Contribution**" has the meaning assigned to it in Rule F8 of the ForexClear Default Fund Supplement;

"**ForexClear Unfunded Contribution Notice**" has the meaning assigned to it in Rule F8 of the ForexClear Default Fund Supplement;

"**ForexClear Voluntary Payment**" has the meaning assigned to it in Rule F10 of the ForexClear Default Fund Supplement;

"**ForexClear Voluntary Payment Notice**" has the meaning assigned to it in Rule F10 of the ForexClear Default Fund Supplement; ~~and~~

"**General Business**" means any transaction, obligation or liability arising out of any Contract constituting EquityClear Business or Exchange business;

"**General Clearing Member**" means a Clearing Member ~~which~~who engages in General Business;

"**General Contribution**" has the meaning assigned to it in Rule 17;

"**General Excess Loss**" means the net sum or aggregate of net sums certified to be payable by a defaulter by a Rule 26 Certificate in respect of General Business less (a) the proportion of the Deductible applicable to General Business under Rule 16(c) and (b) any sums then immediately payable in respect of General Business Default Losses owed by such defaulter by any insurer or provider of analogous services under any policy of insurance or analogous instrument written in favour of the Clearing House ~~in relation to Default Losses arising out of General Business~~;

"**General Fund Amount**" means the sum of the EquityClear Fund Amount and the Exchange Fund Amount;

"**Insufficient Resources Determination**" has the meaning assigned to it in Rule S11 of the SwapClear Default Fund Supplement or Rule F11 of the ForexClear Default Fund Supplement, as applicable;

"**LIBOR**" means, in relation to a Contribution, the rate per annum (rounded upwards, if not already such a multiple, to the next whole multiple of one-sixteenth of one per cent) known as the British Bankers' Association Interest Settlement Rate for three-month deposits in sterling being offered to prime banking names in London at or about the time specified by the Procedures for fixing the rate of interest for the period for which interest is payable or, where no such rate is available, such rate as in the opinion of the Clearing House approximates thereto;

"**Margin Weight**" has the meaning assigned to it in Rule 19;

~~"**Minimum Contribution**" means, subject to Rule 32, the sum of the Minimum EquityClear Contribution and the Minimum;~~

"**Minimum EquityClear Contribution**" means, subject to Rule 32, £1,000,000;

"**Minimum EquityClear Contribution Member**" means a Clearing Member in respect of which the Preliminary EquityClear Contribution calculated under Rule 19B is equal to or less than the Minimum EquityClear Contribution for the time being;

"**Minimum Exchange Contribution**" means, subject to Rule 32, £100,000;

"**Minimum Exchange Contribution Member**" means a Clearing Member in respect of which the Preliminary Exchange Contribution calculated under Rule 19 is equal to or less than the Minimum Exchange Contribution for the time being;

"**Minimum ForexClear Contribution**" means, subject to Rule [F2.2 of the ForexClear Default Fund Supplement](#), USD 5,000,000;

"**Minimum RepoClear Contribution**" means, subject to Rule [R2.2 of the RepoClear Default Fund Supplement](#), EUR 2,500,000;

"**Minimum RepoClear Contribution Member**" means an RCM in respect of which the Preliminary RepoClear Contribution calculated under Rule [R2.2 of the RepoClear Default Fund Supplement](#) is equal to or less than the Minimum RepoClear Contribution for the time being;

"**Minimum SwapClear Contribution**" means, subject to Rule [S2.2 of the SwapClear Default Fund Supplement](#), £10,000,000;

"**Minimum SwapClear Contribution Member**" means an SCM in respect of which the Preliminary SwapClear Contribution calculated under Rule [S2 of the SwapClear Default Fund Supplement](#) is equal to or less than the Minimum SwapClear Contribution for the time being;

"**Net Recovery**" means any sum received by the Clearing House from or for the account of a defaulter after the issue by the Clearing House of a Rule 26 Certificate in respect of losses arising upon the defaulter's Default less any amount payable to any insurer or provider of analogous services in respect of any amount due from but not previously paid by the defaulter;

"**New Member**" means:

- (a) at the time of assessment of the amount of any General Contribution, any Clearing Member whose [status as a General](#) Clearing Member ~~status~~ commenced or will commence after the Quarter Day immediately before such time and includes any [General](#) Clearing Member whose Clearing Membership Agreement commenced before the Quarter Day immediately before such time but who commenced or will commence clearing Cleared Exchange Contracts or EquityClear Contracts after the Quarter Day immediately before such time;
- (b) at the time of assessment of the amount of any ForexClear Contribution, any FXCCM whose Clearing Member status commenced or will commence after the ForexClear Determination Date immediately before such time and includes any FXCCM whose Clearing Membership Agreement commenced before the ForexClear Determination Date immediately before such time but who

commenced or will commence clearing ForexClear Contracts after the ForexClear Determination Date immediately before such time;

- (c) at the time of assessment of the amount of any SwapClear Contribution, any SCM whose Clearing Member status commenced or will commence after the SwapClear Determination Date immediately before such time and includes any SCM whose Clearing Membership Agreement commenced before the SwapClear Determination Date immediately before such time but who commenced or will commence clearing SwapClear Contracts after the SwapClear Determination Date immediately before such time; or
- (d) at the time of assessment of the amount of any RepoClear Contribution, any RCM whose Clearing Member status commenced or will commence after the RepoClear Determination Date immediately before such time and includes any RCM whose Clearing Membership Agreement commenced before the RepoClear Determination Date immediately before such time but who commenced or will commence clearing RepoClear Contracts after the RepoClear Determination Date immediately before such time;

"**Non-Defaulting FXCCM**" means an FXCCM which is not a defaulter under Rule 4;

"**Non-Defaulting RCM**" means an RCM which is not a defaulter under Rule 4;

"**Non-Defaulting SCM**" means an SCM which is not a defaulter under Rule 4;

"**Quarter Day**" means each of 31 January, 30 April, 31 July and 31 October in any year or, if any such day is not a business day, the next succeeding business day, or, in exceptional circumstances, any such other business day as may be determined by the Clearing House;

"**Relevant Business**" means General Business, ForexClear Business SwapClear Business or RepoClear Business;

"**Relevant Default**" has the meaning ascribed to it in Rule S2 of the SwapClear Default Fund Supplement, Rule F2 of the ForexClear Default Fund Supplement or Rule R~~2~~2 of the RepoClear Default Fund Supplement, as applicable;

"**RepoClear Amendment**" has the meaning assigned to it in Rule R.11 of the RepoClear Default Fund Supplement~~;~~;

"**RepoClear Available Resources**" means, in respect of any RepoClear Default, the amounts available to the Clearing House for application in meeting any loss suffered by or incurred by the Clearing House in accordance with Rule 16(a) to (h) as at the Last Call ~~prior~~Prior to Default in respect of that RepoClear Default.

"**RepoClear Business**" means any transaction, obligation or liability arising out of any RepoClear Contract;

"**RepoClear Clearing Member**" or "**RCM**" means, for the purposes of ~~the~~these Default Fund Rules and the RepoClear Default Fund Supplement, a Clearing Member participating in any part of the RepoClear ~~service~~Service;

"**RepoClear Contribution**" has the meaning assigned to it in Rule 17;

"**RepoClear Default**" means, any Default in respect of an RCM~~;~~;



**"RepoClear Default Management Process"** means the process for allocating RepoClear [Business](#) Default Losses pursuant to the RepoClear Default Fund Supplement;

**"RepoClear Default Management Process Completion Date"** means, in respect of a RepoClear Default, the earlier to occur of the date on which the Clearing House notifies the RCMs that all RepoClear [Business](#) Default Losses associated with that Default have been satisfied out of the RepoClear Available Resources and the last day of the Loss Distribution Period in respect of that RepoClear Default;

**"RepoClear Default Period"** has the meaning ascribed to it in Rule R.2 of the RepoClear Default Fund Supplement;

**"RepoClear Determination Date"** has the meaning assigned to it in Rule R.2 of the RepoClear Default Fund Supplement;

**"RepoClear DMG"** means the advisory default management group established by the Clearing House for the purpose of the RepoClear Default Fund Supplement;

**"RepoClear Excess Loss"** means the net sum or aggregate of net sums certified to be payable by a defaulter by a Rule 26 Certificate [in respect of RepoClear Business](#) less (a) the proportion of the Deductible applicable to RepoClear Business under Rule 16(c) and (b) any sums then immediately payable in respect of [RepoClear Business](#) Default Losses owed by such defaulter by any insurer or provider of analogous services under any policy of insurance or analogous instrument written in favour of the Clearing House ~~in relation to Default Losses arising out of RepoClear Business~~;

**"RepoClear Loss Distribution Process"** has the meaning assigned to it in Rule R.9 of the RepoClear Default Fund Supplement;

**"RepoClear Segregated Fund Amount"** means the amount as determined in accordance with Rule R.3 of the RepoClear Default Fund Supplement;

**"RepoClear Unfunded Contribution"** has the meaning assigned to it in Rule R.8 of the RepoClear Default Fund Supplement;

**"RepoClear Unfunded Contribution Notice"** has the meaning assigned to it in Rule R.8 of the RepoClear Default Fund Supplement;

~~**"RepoClear Voluntary Payment"** has the meaning assigned to it in Rule R.10 of the RepoClear Default Fund Supplement;~~

~~**"RepoClear Voluntary Payment Notice"** has the meaning assigned to it in Rule R.10 of the RepoClear Default Fund Supplement;~~

**"Retiring Member"** means, at any time, any Clearing Member or, as the context may require, any former Clearing Member, who has given notice to terminate its Clearing Member status to the Clearing House or in respect of whom the Clearing House has terminated or given notice to terminate its Clearing Member status;

**"Rule 26 Certificate"** has the meaning assigned to it in Rule 26;

**"SONIA"**, means in relation to a SwapClear Contribution or a RepoClear Contribution, the overnight rate as calculated by the Wholesale Market Broker's Association and appearing on the Reuters Screen SONIA Page;

"**Specified Exchange**" means Turquoise Global Holdings Limited, LIFFE Administration and Management Limited, The London Metal Exchange Limited, Nodal Exchange LLC, Hong Kong Mercantile Exchange Limited or any Exchange succeeding to any such person;

"**SwapClear Amendment**" has meaning assigned to it in Rule S12 of the SwapClear Default Fund Supplement;

"**SwapClear Business**" means any transaction, obligation or liability arising out of any SwapClear Contract;

"**SwapClear Clearing Member**" or "**SCM**" means, for the purposes of ~~the~~these Default Fund Rules and the SwapClear Default Fund Supplement, a Clearing Member participating in any part of the SwapClear ~~service~~Service.

"**SwapClear Contribution**" has the meaning assigned to it in Rule 17;

"**SwapClear Default Management Process**" has the meaning assigned to it in the SwapClear DMP Annex;

"**SwapClear Default Management Process Completion Date**" has the meaning assigned to it in the SwapClear DMP Annex;

"**SwapClear Default Period**" has the meaning ascribed to it in Rule S2 of the SwapClear Default Fund Supplement;

"**SwapClear Determination Date**" has the meaning assigned to it in Rule S2 of the SwapClear Default Fund Supplement;

"**SwapClear DMG**" has the meaning assigned to it in the SwapClear DMP Annex;

"**SwapClear Excess Loss**" means the net sum or aggregate of net sums certified to be payable by a defaulter by a Rule 26 Certificate in respect of SwapClear Business less (a) the proportion of the Deductible applicable to SwapClear Business under Rule 16(~~3c~~) and (b) any sums then immediately payable in respect of SwapClear Business Default Losses owed by such defaulter by any insurer or provider of analogous services under any policy of insurance or analogous instrument written in favour of the Clearing House ~~in relation to Default Losses arising out of SwapClear Business~~;

"**SwapClear Loss Distribution Process**" has the meaning assigned to it in Rule S9 of the SwapClear Default Fund Supplement;

"**SwapClear Segregated Fund Amount**" means the amount as determined in accordance with Rule S2(b) of the SwapClear Default Fund Supplement;

"**SwapClear Unfunded Contribution**" has the meaning assigned to it in Rule ~~S78~~ of the SwapClear Default Fund Supplement;

"**SwapClear Unfunded Contribution Notice**" has the meaning assigned to it in Rule ~~S78~~ of the SwapClear Default Fund Supplement;

"**SwapClear Voluntary Payment**" has the meaning assigned to it in Rule ~~S910~~ of the SwapClear Default Fund Supplement;

"**SwapClear Voluntary Payment Notice**" has the meaning assigned to it in Rule ~~S910~~ of the SwapClear Default Fund Supplement; and

"**Volume Weight**" has the meaning assigned to it in Rule 19.

Words and expressions assigned meanings in the Clearing House Rulebook shall have the same meanings in these [Default Fund](#) Rules.

#### Reduction of Losses on Default

16. Subject to any contrary provision of the Rulebook, where a defaulter fails to pay any sum payable to the Clearing House, the Clearing House shall reduce or bear its loss in the manner provided by this Rule:-
- (a) first, to the extent the Clearing House determines appropriate, in applying any cover for margin and any other sum owed to the defaulter other than any Contribution (together, "**Margin Cover**"), provided that Margin Cover related to the General Business is to be applied first to any loss attributable to the General Business until such loss is absorbed, Margin Cover related to the ForexClear Business is to be applied first to any loss attributable to the ForexClear Business until such loss is absorbed, Margin Cover related to the SwapClear Business is to be applied first to any loss attributable to the SwapClear Business until such loss is absorbed and Margin Cover related to the RepoClear Business is to be applied first to any loss attributable to the RepoClear Business until such loss is absorbed;
  - (b) second, by [\(i\)](#) recourse to ~~(i)~~ the defaulter's relevant Contribution (i.e. ForexClear Contribution in respect of ForexClear Business, SwapClear Contribution in respect of SwapClear Business, RepoClear Contribution in respect of RepoClear Business and General Contribution in respect of General Business), followed by [\(ii\) recourse to](#) any other Contribution made by the defaulter to the extent not utilised under [\(i\)](#) above. The Clearing House will exercise its rights of recourse under this Rule 16(b) by set-off against the Clearing House's obligation to repay the relevant Contributions to the defaulter;
  - (c) third, by payment from the Clearing House's own account of an amount up to a maximum of £20,000,000 (or such greater amount (if any) as may be determined from time to time by the Board of the Clearing House) (the "**Capped Amount**"). For the avoidance of doubt, amounts will only be paid under this stage (c) if and to the extent that to do so would not result in the Clearing House being unable to meet all its other liabilities (taking into account for these purposes the obligation of the Clearing House to return initial margin provided in the form of cash and to repay the Contributions of all Clearing Members).

Where there are amounts due from the defaulter at this stage in respect of more than one of General Business, ForexClear Business, SwapClear Business and RepoClear Business, the Capped Amount shall be applied to those amounts pro rata;

- (d) fourth, to the extent that any insurance or analogous arrangement is not available to the Clearing House, by recourse to the indemnities given under Rule 28 by Clearing Members other than the defaulter (which shall be satisfied by set-off against the Clearing House's obligation to repay the relevant Contributions of such Clearing Members);
- (e) fifth, by recourse to any insurance cover or analogous arrangement;
- (f) sixth, by recourse to the indemnities given under Rule 28 by Clearing Members other than the defaulter (which shall be satisfied by set-off against the Clearing

House's obligation to repay the relevant Contributions of such Clearing Members);

- (g) seventh, by recourse to any other indemnities, guarantees, undertakings or monies provided by Clearing Members; and
- (h) eighth, and in respect of General Excess Loss and RepoClear Excess Loss only, as a loss borne by the Clearing House for its own account. For the avoidance of doubt, amounts will only be paid under this stage (h) if and to the extent that to do so would not result in the Clearing House being unable to meet all its other liabilities (taking into account for these purposes the obligation of the Clearing House to return initial margin provided in the form of cash and to repay the Contributions of all Clearing Members).

This Rule has effect without prejudice to any rights of the Clearing House or any other person against the defaulter. For the avoidance of doubt, (i) the effect of Rule F11 is that only stages (a) to (g) under this Rule 16 will apply in respect of any ForexClear Excess Loss, and any outstanding contracts retained by the Clearing House will be closed out in accordance with the procedure set out in Rule F11 without any recourse to the capital of the Clearing House under Rule 16(h); and (ii) the effect of Rule ~~S40~~11 is that only stages (a) to (g) under this Rule 16 will apply in respect of any SwapClear Excess Loss, and any outstanding contracts retained by the Clearing House will be closed out in accordance with the procedure set out in Rule ~~S40~~11 without any recourse to the capital of the Clearing House under Rule 16(h).

Where a defaulter is engaged in more than one of General Business, ForexClear Business, SwapClear Business and RepoClear Business (each a "**Relevant Business**" in respect of the defaulter), the completion of the default management processes in respect of ~~each~~ such Relevant ~~Business~~Businesses may occur at different times. The Clearing House may be required to make a determination in respect of one Relevant Business (including certification of a Default Loss under Rule 23(b), certification of a net sum payable under Rule 26(a) or the value of a General Excess Loss, ForexClear Excess Loss, SwapClear Excess Loss and/or RepoClear Excess Loss) in order to manage the default at a time when (a) the determination is contingent on an outcome of the default management process in respect of some other Relevant Business, and (b) that outcome has not yet been reached. In the interests of efficient resolution, the Clearing House may at such point make assumptions about that outcome, and proceed with the relevant process on that basis. Where any such assumptions have been made, the Clearing House shall, on the completion of the default management processes in respect of all Relevant Businesses, make such credits to the default funds relating to the Relevant Businesses and such distributions to former Clearing Members as may be necessary to put the default funds and those firms which had contributed to such default funds at the time of the relevant default in the position that they would have been in if the correct outcomes had been used and the relevant assumptions had not been made.

### Contributions to Fund

17. Each Clearing Member shall deposit and maintain with the Clearing House one or more sums of cash (each a "**Contribution**") in an amount calculated by the Clearing House in accordance with these Rules. A Clearing Member's "**General Contribution**" shall be equal to the sum of its EquityClear-~~Clearing Member~~ Contribution (if any), ~~as defined in Rule 19A,~~ and its Exchange Contribution (if any), ~~as defined in Rule 19,~~ denominated in sterling as cover, ~~in accordance with Rules 15 to 37 (inclusive).~~ An FXCCM's "**ForexClear Contribution**" shall be the amount ~~specified in~~ determined in accordance with the ForexClear Default Fund Supplement, ~~in accordance with Rules 15 to 37 (inclusive)~~ and shall include any ForexClear Unfunded Contributions deposited and made by the FXCCM with the Clearing House. An SCM's "**SwapClear Contribution**"

- shall be the amount ~~specified~~determined in accordance with the SwapClear Default Fund Supplement, ~~in accordance with Rules 15 to 37 (inclusive)~~ and shall include any SwapClear Unfunded Contributions deposited and made by the SCM with the Clearing House. An RCM's "**RepoClear Contribution**" shall be the amount ~~specified~~determined in accordance with the RepoClear Default Fund Supplement, ~~in accordance with Rules 15 to 37 (inclusive)~~ and shall include any RepoClear Unfunded Contributions deposited and made by the RCM with the Clearing House.
18. Subject to Rule 18A, the amount of each General Clearing Member's General Contribution shall be determined by the Clearing House as soon as practicable after each Quarter Day on the basis of information available as at close of business on such Quarter Day and notified to such General Clearing Member as soon as practicable after such determination in accordance with the Procedures.
- 18A Until the EquityClear Transition Date, and subject to Rule 32A, the Clearing House may require an EquityClear Clearing Member to deposit and maintain with the Clearing House an additional sum of cash (a "**Supplementary EquityClear Contribution**") denominated in sterling as cover, to form part of that Clearing Member's General Contribution. The Clearing House may exercise its rights under this Rule in respect of any date before the EquityClear Transition Date on which, in the reasonable opinion of the Clearing House, 10% of the Clearing Member's requirement for initial margin (as calculated under the Procedures ~~section of the Rulebook~~ or other arrangements applicable) in respect of all EquityClear Contracts significantly exceeds the Clearing Member's EquityClear Contribution actually held by the Clearing House on that date. A Supplementary EquityClear Contribution required to be deposited under this Rule shall be payable in such amount and at such time as the Clearing House shall appoint.
19. Subject to Rules 20, 21, 32, 33 and 34, an Exchange Clearing Member's Contribution (its "**Exchange Contribution**") to the Exchange Fund Amount shall be determined with reference to business conducted by it on the Specified Exchanges and under the LCH Enclear OTC Regulations or part IV of the FCM Regulations (Regulations Applicable to FCM Enclear Contracts), as at close of business on each Quarter Day, as follows:-
- (a) the Exchange Clearing Member's "**Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the Exchange Clearing Member during the Reference Period in respect: (1) of all Contracts (other than EquityClear, SwapClear, ForexClear and RepoClear Contracts) and (2) all LCH Enclear OTC Contracts and FCM Enclear Contracts by the total of such average daily requirements applied to all Exchange Clearing Members other than defaulters;
- (b) the Exchange Clearing Member's "**Volume Weight**" shall be calculated by dividing the average daily number of Cleared Exchange Contracts ~~and~~ LCH Enclear OTC Contracts and FCM Enclear Contracts registered for the first time with the Clearing House in the name of the Exchange Clearing Member during the Reference Period by the total of such average numbers for all Exchange Clearing Members other than defaulters;
- (c) the Exchange Clearing Member's "**Weight Factor**" shall be calculated by adding one-half of its Margin Weight as defined in (a) above to one-half of its Volume Weight as defined in (b) above;
- (d) the Exchange Clearing Member's "**Preliminary Exchange Contribution**" shall be calculated by multiplying the Exchange Fund Amount by its Weight Factor;

- (e) if the Exchange Clearing Member's Preliminary Exchange Contribution is below the Minimum Exchange Contribution for the time being, the Exchange Clearing Member's Exchange Contribution shall be the Minimum Exchange Contribution;
  - (f) for each Minimum Exchange Contribution Member, the arithmetical difference shall be calculated between (i) the Minimum Exchange Contribution and (ii) the Exchange Clearing Member's Preliminary Exchange Contribution, and the "**Exchange Surplus**" shall be calculated by adding together all such differences;
  - (g) for each Exchange Clearing Member other than a Minimum Exchange Contribution Member, the Exchange Clearing Member's "**Exchange Discount**" shall be such Exchange Clearing Member's *pro rata* share of the Exchange Surplus calculated as the proportion of such Exchange Clearing Member's Preliminary Exchange Contribution relative to the aggregate Preliminary Exchange Contributions of all Exchange Clearing Members other than Minimum Exchange Contribution Members;
  - (h) for each Exchange Clearing Member other than a Minimum Exchange Contribution Member, the Exchange Clearing Member's Exchange Contribution shall be the Preliminary Exchange Contribution less the Exchange Clearing Member's Exchange Discount; provided that if the outcome of such calculation would result in an Exchange Contribution less than the Minimum Exchange Contribution, such Exchange Clearing Member shall pay the Minimum Exchange Contribution notwithstanding that the arithmetical sum of Exchange Contributions paid by all Exchange Clearing Members may thereby exceed the Exchange Fund Amount.
- 19A Subject to Rules 18A, 20, 21, 32A, 33 and 34, each EquityClear Clearing Member's Contribution attributable to EquityClear ~~business~~Business conducted by it shall be determined as at close of business on each Quarter Day before the EquityClear Transition Date and shall be the higher of the Minimum EquityClear Contribution and 10% of the Clearing Member's average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the Clearing Member during the Reference Period in respect of all EquityClear Contracts.
- 19B Subject to Rules 20, 21, 33 and 34, each EquityClear Clearing Member's Contribution attributable to EquityClear ~~business~~Business conducted by it shall be determined as at close of business on the EquityClear Transition Date and each Quarter Day thereafter as follows:-
- (a) the EquityClear Clearing Member's "**EquityClear Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the EquityClear Clearing Member during the Reference Period in respect of all EquityClear Contracts by the total of such average daily requirements applied to all EquityClear Clearing Members other than defaulters;
  - (b) the EquityClear Clearing Member's "**Preliminary EquityClear Contribution**" shall be calculated by multiplying the EquityClear Fund Amount by the EquityClear Clearing Member's EquityClear Margin Weight;

- (c) if the EquityClear Clearing Member's Preliminary EquityClear Contribution is below the Minimum EquityClear Contribution for the time being, the EquityClear Clearing Member's EquityClear Contribution shall be the Minimum EquityClear Contribution;
  - (d) for each Minimum EquityClear Contribution Member, the arithmetical difference shall be calculated between (i) the Minimum EquityClear Contribution and (ii) the EquityClear Clearing Member's Preliminary EquityClear Contribution, and the "**EquityClear Surplus**" shall be calculated by adding together all such differences;
  - (e) for each EquityClear Clearing Member other than a Minimum EquityClear Contribution Member, the EquityClear Clearing Member's "**EquityClear Discount**" shall be such EquityClear Clearing Member's pro rata share of the EquityClear Surplus calculated as the proportion of such EquityClear Clearing Member's Preliminary EquityClear Contribution relative to the aggregate Preliminary EquityClear Contributions of all EquityClear Clearing Members other than Minimum EquityClear Contribution Members;
  - (f) for each EquityClear Clearing Member other than a Minimum EquityClear Contribution Member, the EquityClear Clearing Member's EquityClear Contribution shall be the Preliminary EquityClear Contribution less the EquityClear Clearing Member's EquityClear Discount; provided that if the outcome of such calculation would result in a EquityClear Contribution less than the Minimum EquityClear Contribution, such EquityClear Clearing Member shall pay the Minimum EquityClear Contribution notwithstanding that the arithmetical sum of EquityClear Contributions paid by all EquityClear Clearing Members may thereby exceed the EquityClear Fund Amount.
20. For the purposes of the calculations under Rules 18A, 19, 19A, ~~19B~~ and 19CB:-
- (a) "**Reference Period**" means the period starting on the day immediately after the Quarter Day immediately before the Quarter Day as at which the determination is made and ending on the Quarter Day as at which the determination is made (including both the day at the start of the period and the day at the end of the period);
  - (b) no account shall be taken, in calculating Margin Weight or EquityClear Margin Weight, of any margin required in relation to an Excluded Transaction, nor in calculating Volume Weight, of any Contract which is registered in the course of an Excluded Transaction;
  - (c) references to "**Clearing Members**" do not include references to defaulters (apart from any defaulter in respect of which the Clearing House permits the application of Rules 19, 19A, 19B ~~and this and this~~ Rule) or persons which were formerly Clearing Members but are not Clearing Members on the date at which the determination is made;
  - (d) Contributions shall be rounded upwards, if not already such a multiple, to the next integral multiple of one thousand pounds; and
  - (e) no account shall be taken, in calculating initial margin under Rules 18A, ~~or~~ 19A, ~~and or~~ 19B ~~or~~ Margin Weight under Rule 19 or EquityClear Margin Weight under Rule 19B, of any offsets in the initial margin required for Cleared

Exchange Contracts from a Clearing Member, which may otherwise be permissible under the Procedures or other arrangements applicable.

Provided that the Clearing Member is not a defaulter, the amount of its Contribution shall be paid in accordance with and subject to Rule 22. The provisions of Rule 19, 19A, 19B and this Rule do not apply to a Clearing Member which is a defaulter, unless the Clearing House so permits in any particular case.

21. Without prejudice to any other requirements which the Clearing House may impose, the amount of the General Contribution of a New Member shall be the sum of (a) where the New Member has applied to become an EquityClear Clearing Member, the Minimum EquityClear Contribution, (b) where the New Member has applied to become an Exchange Clearing Member, the Minimum Exchange Contribution, and ~~(d)~~ any supplementary sum determined by the Clearing House in its discretion and notified to the New Member. The Clearing House shall determine the amount of such supplementary sum by reference to the actual or expected level of clearing activity of the New Member.

### Payment of Contributions

22. Upon determination of the amount of a General Contribution as at any Quarter Day:
- (a) if the amount of the General Contribution of a General Clearing Member immediately before close of business on that Quarter Day exceeds the amount of the General Clearing Member's General Contribution as determined under these Rules as at close of business on that Quarter Day, the excess shall be paid by the Clearing House to such General Clearing Member in accordance with the Procedures;
  - (b) if the amount of the General Contribution of a Clearing Member immediately before close of business on that Quarter Day is the same as the amount of the General Clearing Member's General Contribution as so determined, no sum shall then be payable by or to such General Clearing Member in respect of its General Contribution; and
  - (c) if the amount of the General Contribution of a General Clearing Member immediately before close of business on that Quarter Day is less than the amount of the General Clearing Member's General Contribution as so determined, the shortfall shall be paid by such General Clearing Member to the Clearing House in accordance with the Procedures.

The provisions of this Rule do not apply to a General Clearing Member which is a defaulter, unless the Clearing House so permits in any particular case.

### Terms on which Contribution is held

23. (a) Subject to Rules 23(b) and 23(c), the outstanding balance of a Clearing Member's Contribution (or, as appropriate, part thereof) shall be repayable to the Clearing Member on the earliest to occur of the following events:
- (i) if the Clearing Member is not a defaulter, the effective date of termination of Clearing Member's status as a Clearing Member (including a Termination Date under General Regulation 39A or under FCM Regulation ~~26~~24A);



- (ii) if the Clearing Member has become a defaulter, the date or event appointed by the Clearing House for repayment of sums due to the Clearing Member under Rule 9;
  - (iii) the amount of the Contribution being reduced by virtue of the recalculation of its amount in accordance with Rule ~~19~~ 19A, Rule 19A, Rule 19B, Rule F2 of the ForexClear Default Fund Supplement in respect of a ForexClear Contribution, Rule S2 of the SwapClear Default Fund Supplement in respect of a SwapClear Contribution or Rule R.2 of the RepoClear Default Fund Supplement in respect of a RepoClear Contribution (in which case the Contribution shall be repayable only to the extent of such reduction);
  - (iv) the Clearing House making an Insufficient Resources Determination pursuant to Rule F11 of the ForexClear Default Fund Supplement or Rule S~~10~~11 of the SwapClear Default Fund Supplement; and
  - (v) the expiry of a period of 50 years from the date on which the Contribution was paid to the Clearing House.
- (b) If a Clearing Member becomes a defaulter, the Clearing House shall as soon as practicable after any Margin Cover has been applied pursuant to Rule 16, certify one or more net sums then payable by the defaulter to the Clearing House in respect of General Business ("**General Business Default Loss**"), ForexClear Business ("**ForexClear Business Default Loss**") SwapClear Business ("**SwapClear Business Default Loss**") and/or RepoClear Business ("**RepoClear Business Default Loss**") (as applicable) (each a "**Default Loss**"), disregarding for this purpose any of the defaulting Clearing Member's Contributions. If the Clearing House certifies any Default Loss, all of the defaulting Clearing Member's Contributions shall immediately become due and repayable, but only in an amount not exceeding the total Default Loss. In this regard:
- (i) where there is a General Business Default Loss only and the defaulter's General Contribution exceeds the General Business Default Loss, the defaulter's ForexClear Contribution, SwapClear Contribution and RepoClear Contribution shall not become due and repayable;
  - (ii) where there is a ForexClear Business Default Loss only and the defaulter's ForexClear Contribution exceeds the ForexClear Business Default Loss, the defaulter's General Contribution, SwapClear Contribution and RepoClear Contribution shall not become due and repayable; and
  - (iii) where there is a SwapClear Business Default Loss only and the defaulter's SwapClear Contribution exceeds the SwapClear Business Default Loss, the defaulter's General Contribution, ForexClear Contribution and RepoClear Contribution shall not become due and repayable; ~~and ForexClear Contribution shall not become due and repayable.~~
  - (iv) where there is a RepoClear Business Default Loss only and the defaulter's RepoClear Contribution exceeds the RepoClear Business Default Loss, the defaulter's General Contribution, ForexClear

Contribution and SwapClear Contribution shall not become due and repayable.

- (c) If an amount becomes payable by the Clearing Member under Rule 28, the Clearing Member's relevant Contribution shall immediately become due and repayable, but only to the extent of such amount.
24. On any day, interest shall accrue on the amount of each General Contribution then held by the Clearing House, to the extent that it has not been applied under Rule 26 or Rule 28, at such rate and in such manner as provided by the Procedures, provided that the rate of interest shall not be less than LIBOR plus one per cent. Interest shall be payable in arrear and shall be paid on the date or dates specified by the Procedures. In these Default Fund Rules any interest which has accrued under this Rule shall not be regarded as part of the Contribution.
25. A Clearing Member's entitlement to repayment of any of its Contributions or any part of them shall not be capable of assignment by the Clearing Member, nor shall Contributions be capable of being charged or subject to any other form of security whether purporting to rank in priority over, *pari passu* with or subsequent to the rights of the Clearing House. Any purported charge or assignment by a Clearing Member (whether by way of security or otherwise) of its Contributions shall be void. A Clearing Member shall not otherwise encumber (or seek to encumber) its Contributions.

#### **Application of defaulter's Contribution, and Certification of Aggregate Excess Losses**

26. Without prejudice to any other right of set-off or application of funds to which the Clearing House may be entitled, in the event of a Default and the certification by the Clearing House of a Default Loss under Rule 23(b) in respect thereof the Clearing House shall without notice set off in or towards satisfaction of any sums payable to the Clearing House from the defaulter any amount of any Contribution of the defaulter which has become due and repayable in accordance with Rule 23(b). If the Clearing House is to have recourse, in accordance with Rule 16, to the indemnities, guarantees, undertakings or monies provided by Clearing Members other than the defaulter, as soon as practicable the Clearing House shall certify (by a "**Rule 26 Certificate**"):-
- (a) the amount of the defaulter's Contribution applied under this Rule and the net sum (if any), or each net sum (if more than one), then immediately payable by the defaulter to the Clearing House in respect of (i) General Business, (ii) ForexClear Business (iii) SwapClear Business and (iv) RepoClear Business, taking into account for this purpose the defaulter's Contribution but excluding for this purpose any sum due to the Clearing House in respect of any Excluded Transaction; and
- (b) the extent to which any sums so payable by the defaulter to the Clearing House but unpaid may be claimed by the Clearing House under a policy of insurance or analogous instrument relating to [losses arising upon a Default](#) ~~Losses~~.

The Clearing House may issue more than one Rule 26 Certificate in relation to losses arising upon any Default.

Where a Rule 26 Certificate is to be issued in respect of the Default of an FXCCM, the Clearing House may assume that no further recoveries will be made in respect of obligations of the Defaulting FXCCM beyond the value of its ForexClear Contribution.

Where a Rule 26 Certificate is to be issued in respect of the Default of an SCM, the Clearing House may assume that no further recoveries will be made in respect of obligations of the Defaulting SCM beyond the value of its SwapClear Contribution.

Where a Rule 26 Certificate is to be issued in respect of the Default of an RCM, the Clearing House may assume that no further recoveries will be made in respect of obligations of the Defaulting RCM beyond the value of its RepoClear Contribution.

27. The Clearing House may in the exercise of the right conferred by Rule 26 set off the amount due (in accordance with Rule 23(b)) to a defaulter in respect of the defaulter's Contribution or any part thereof against sums owing on any account whether or not it is a client account, and the Clearing House shall have unfettered discretion in this regard. A defaulter's Contribution shall not be treated as standing to the credit of any client account of the defaulter except to the extent that any Default Loss certified under Rule 23(b) arises in relation to a client account and the Clearing House so requires.

### Application of Fund and Indemnity

28. By virtue of the Clearing Membership Agreement and this Rule, and subject to Rule 29:
- (a) each Clearing Member engaged in General Business indemnifies the Clearing House in respect of General Excess Loss upon the Default of another Clearing Member in an aggregate amount not exceeding the amount due from it as its General Contribution at the date of the issue of the Rule 26 Certificate which relates to such ~~Aggregate~~General Excess Loss;
  - (b) each ~~Clearing Member engaged in ForexClear Business~~FXCCM indemnifies the Clearing House in respect of the aggregate of the ForexClear Excess Losses calculated in respect of the Defaults of FXCCMs occurring in a ForexClear Default Period in an aggregate amount not exceeding the amount due from it as its ForexClear Contribution as calculated under the ForexClear Default Fund Supplement on the ForexClear Determination Date immediately prior to the commencement of the relevant ForexClear Default Period together with any ForexClear Unfunded Contribution that the Clearing House has called or would be entitled to call from such FXCCM during such ForexClear Default Period;
  - (c) each SCM indemnifies the Clearing House in respect of the aggregate of the SwapClear Excess Losses calculated in respect of the Defaults of SCMs occurring in a SwapClear Default Period in an aggregate amount not exceeding the amount due from it as its SwapClear Contribution as calculated under the SwapClear Default Fund Supplement on the SwapClear Determination Date immediately prior to the commencement of the relevant SwapClear Default Period together with any SwapClear Unfunded Contribution that the Clearing House has called or would be entitled to call from such SCM during such SwapClear Default Period; and
  - (d) each RCM indemnifies the Clearing House in respect of the aggregate of the RepoClear Excess Losses calculated in respect of the Defaults of RCMs occurring in a RepoClear Default Period in an aggregate amount not exceeding the amount due from it as its RepoClear Contribution as calculated under the RepoClear Default Fund Supplement on the RepoClear Determination Date immediately prior to the commencement of the relevant RepoClear Default Period together with any RepoClear Unfunded Contribution that the Clearing

House has called or would be entitled to call from such RCM during such RepoClear Default Period.

The amount due by a Clearing Member in respect of each General Excess Loss shall be the Clearing Member's *pro rata* share of such loss arising upon the relevant Default calculated as the proportion of such Member's relevant Contribution relative to the aggregate relevant Contributions of all Clearing Members other than the relevant defaulter at the time of the relevant Default. The amount due by a Clearing Member in respect of each ForexClear Excess Loss shall be determined in accordance with the provisions of the ForexClear DMP Annex. The amount due by a Clearing Member in respect of each SwapClear Excess Loss shall be determined in accordance with the provisions of the SwapClear DMP Annex. The amount due by a Clearing Member in respect of each RepoClear Excess Loss shall be determined in accordance with the provisions of the RepoClear Default Fund Supplement. The amount so due shall become immediately payable automatically (without any obligation on the part of the Clearing House to make demand on the Clearing Member) upon the issue by the Clearing House of the applicable Rule 26 Certificate. Without prejudice to any other right of set-off or application of funds to which the Clearing House may be entitled, the Clearing House shall forthwith without notice set off any amount due in accordance with Rule 23(c) to a Clearing Member in respect of the relevant Contribution of such Clearing Member in or towards satisfaction of the amount payable by such Clearing Member under this Rule 28.

29. This Rule applies to a defaulter (the "**First defaulter**") where the Contribution of the First defaulter has not been repaid to the First defaulter or applied by the Clearing House under Rule 26, and Aggregate Excess Losses arise upon the Defaults of other Clearing Members. Where this Rule applies, Rule 28 shall have effect with the following modifications:-
- (a) the balances (if any) of the First defaulter's relevant Contributions may be applied under Rule 28 in respect of such relevant Aggregate Excess Losses up to and including the date three months after the date of issue of the Default Notice in respect of the First defaulter's Default; and
  - (b) after the date three months after the date of issue of such Default Notice, the balances (if any) of the First defaulter's relevant Contributions may not be applied under Rule 28 in respect of such relevant Aggregate Excess Losses, but they may be retained on account of losses arising upon the First defaulter's own Default, and, for the purposes of Rule 28, they shall be disregarded.
30. The Clearing House shall give notice to each Clearing Member as soon as practicable after an amount has become due in accordance with Rule 28 and of the manner in which it has been satisfied.
31. If, in relation to a Default, the Clearing House has been unable to certify in any Rule 26 Certificates issued on or before the Quarter Day immediately after the Default all sums which may be or become due to the Clearing House from the Defaulter (because such sums will not or may not become liquidated or for any other reason payable until a later date), the Clearing House shall maintain a Contribution from each Clearing Member (other than the Defaulter) as cover for the performance by such Clearing Member of its obligation to indemnify the Clearing House in relation to any ~~General~~Aggregate Excess Loss not yet certified. In fulfilment of this requirement the Clearing House may take any step which appears to the Clearing House to be appropriate, and the steps so taken may include any (including a combination) of the following:-
- (a) postponement of the date for adjustment of Clearing Members' Contributions under Rule 22;

- (b) reduction of the amounts payable to some or all Clearing Members under Rule 22(a); and
- (c) estimation of the amount of Aggregate Excess Losses which may become certified after the relevant Quarter Day as appropriate, and application of Rule 28 as if such estimated amount were already realised as a ~~General~~ Aggregate Excess Loss.

The Clearing House shall notify Clearing Members of any steps taken under this Rule.

### Reinstatement of the Fund

32. Where, after a Default, the Clearing House has applied part or all of a General Contribution under Rule 26 or Rule 28, the General Fund Amount shall be reduced forthwith by the aggregate amount of the Contributions or parts of Contributions so applied, and the EquityClear Fund Amount and the Exchange Fund Amount shall be reduced *pro rata*. Unless and until the Clearing House has repaid a defaulter's Contribution, the General Fund Amount shall be treated as having been reduced by the amount of the defaulter's Contribution (if any) regardless of whether the Clearing House has applied part or all of that Contribution under Rule 26. Following a reduction of the General Fund Amount in accordance with this Rule, the Clearing House may by a single increase or by a series of increases raise the General Fund Amount to such level not exceeding £410,000,000 and after such interval or intervals as it considers appropriate, provided that:
- (a) upon each such increase the EquityClear Fund Amount and the Exchange Fund Amount shall increase *pro rata*; and
  - (b) no such increase shall bind any Clearing Member which does not agree to it.

Where by virtue of this Rule the General Fund Amount is less than £410,000,000, the size of the Minimum EquityClear Contribution and the Minimum Exchange Contribution shall also be adjusted in proportion to the size of the General Fund Amount as adjusted for the time being.

- 32A If on any Quarter Day before the EquityClear Transition Date the General Fund Amount is by virtue of Rule 32 less than it was before the Default, the formula in Rule 19A shall be modified so that the alternative basis of calculation is reduced from 10% of the Clearing Member's average daily requirement for initial margin (as provided by Rule 19A) to 10% of such average daily requirement multiplied by the Relevant Proportion. On any date in respect of which the Clearing House exercises its rights under Rule 18A and as at which the General Fund Amount is by virtue of Rule 32 less than it was before the Default, the sum with which the Clearing Member's EquityClear Contribution is to be compared shall be reduced from 10% of the Clearing Member's requirement for initial margin (as provided by Rule 18A) to 10% of such requirement multiplied by the Relevant Proportion. For the purposes of this Rule, the "**Relevant Proportion**" means, in relation to a date, the proportion which the General Fund Amount at such date bears to the amount before the Default.

### Effect of cessation of Clearing Member status

33. Subject to Rule 34, if a Quarter Day, a ForexClear Determination Date a SwapClear Determination Date or a RepoClear Determination Date, as appropriate, occurs after the giving of notice: (i) by or in respect of any Retiring Member; (ii) by a Clearing Member to the Clearing House for the purposes of resigning from a particular Service; or (iii) by the Clearing House to a Clearing Member for the purposes of requiring such

Clearing Member to resign from a particular Service (the "**Relevant Service**") (a Clearing Member for the purposes of (ii) and (iii) of this paragraph, a "**Resigning Member**"), and before the termination of such Retiring Member's Clearing Member status or the Resigning Member's resignation from the Relevant Service (as the case may be):-

- (a) if the Retiring Member or Resigning Member is not a defaulter, the amount of such Retiring Member's Contribution or such Resigning Member's Contribution in respect of the Relevant Service shall be determined by the Clearing House on the basis set out in Rules 19, 19A and 19B, the ForexClear Default Fund Supplement the SwapClear Default Fund Supplement and the RepoClear Default Fund Supplement (as applicable) without regard to the impending termination of such Retiring Member's Clearing Member status or Resigning Member's resignation (as the case may be), and the provisions of Rule 22, Rule F5 of the ForexClear Default Fund Supplement, Rule S45 of the SwapClear Default Fund Supplement and Rule R.5 of the RepoClear Default Fund Supplement (as applicable) shall apply in respect of such Contribution accordingly;
- (b) if the Retiring Member or Resigning Member is a defaulter, the balance of ~~that~~such Retiring Member's Contribution or ~~the~~such Resigning Member's Contribution in respect of the Relevant Service (as the case may be) after any part of it has been applied under Rule 26 or Rule 28 shall not be subject to adjustment under Rules 19, 19A and 19B, the ForexClear Default Fund Supplement, the SwapClear Default Fund Supplement and the RepoClear Default Fund Supplement (as applicable), and the provisions of Rule 22, Rule F5 of the ForexClear Default Fund Supplement, Rule S45 of the SwapClear Default Fund Supplement and Rule R.5 of the RepoClear Default Fund Supplement (as applicable) shall not apply to such Retiring Member or Resigning Member in respect of the Relevant Service.

Notwithstanding the foregoing, in such circumstances the amounts of the respective Contributions of all Clearing Members other than any Retiring Member or any Resigning Member in respect of the Relevant Service shall be determined by the Clearing House on the basis set out in Rules 18A, 19, 19A and 19B, the ForexClear Default Fund Supplement the SwapClear Default Fund Supplement and the RepoClear Default Fund Supplement (as applicable), but disregarding for all purposes any Clearing Member which is a Retiring Member or, in relation to a Relevant Service, any Resigning Member in respect of that Relevant Service, in particular disregarding such Clearing Member's daily requirement for margin and such Clearing Member's daily number of Contracts and treating any such Retiring Member as no longer being a Clearing Member, but without prejudice to any reduction of the General Fund Amount under Rule 32.

34. This Rule applies at any Quarter Day, ForexClear Determination Date, SwapClear Determination Date or RepoClear Determination Date, as appropriate, after a Retiring Member has given notice of the termination of its Clearing Member status, where another Clearing Member (the "**Continuing Member**") has arranged to undertake clearing on behalf of the Retiring Member. If, in the opinion of the Clearing House, the Contribution of the Continuing Member determined under Rules 18A, 19, 19A and 19B, the ForexClear Default Fund Supplement, the SwapClear Default Fund Supplement and/or the RepoClear Default Fund Supplement does not fairly reflect the Continuing Member's share of clearing activity, the Clearing House may determine the Contribution of the Continuing Member as if the EquityClear Margin Weight, Margin Weight, Volume Weight, RepoClear Margin Weight, SwapClear Margin Weight and or ForexClear Margin Weight (as applicable) of the Retiring Member were part of the

EquityClear Margin Weight, Margin Weight, Volume Weight, RepoClear Margin Weight, SwapClear Margin Weight and or ForexClear Margin Weight, respectively and as applicable, of the Continuing Member. If the Clearing House determines the amount of a Continuing Member's Contribution under this Rule, the Clearing House shall give notice to the Continuing Member, and the provisions of Rule 33 shall not apply.

35. A Retiring Member and a Resigning Member in respect of a Relevant Service shall, until the completion of the process set out in Rule 8 in relation to any Default, continue to be liable under its Rule 28 indemnity in respect of Aggregate Excess Losses arising upon such Default, notwithstanding that the Clearing Member status of the Retiring Member has terminated or that the Resigning Member has resigned in respect of the Relevant Service before that time. While a Retiring Member or Resigning Member continues to be so liable, it shall provide such cover as the Clearing House shall require in respect of its liability in relation to any Aggregate Excess Losses not yet certified, subject to such cover not exceeding the Retiring Member's Contribution at the time of the termination of its clearing membership. or the Resigning Member's Contribution to the Relevant Service at the time of its resignation. In fulfilment of this requirement, the Clearing House may take any step which appears to the Clearing House to be appropriate, including postponement of the date for repayment of part or all of the Retiring Member's Contribution or Resigning Member's Contribution in respect of the Relevant Service (as the case may be). The Clearing House shall notify the Retiring Member or Resigning Member of any steps taken under this Rule.

#### Recoveries from defaulters

36. If all or part of the Contributions of any Clearing Member shall have been applied in accordance with Rule 28, the Clearing House shall account to each such Clearing Member (whether or not ~~he~~it remains at the relevant time a Clearing Member of the Clearing House) in respect of any Net Recovery, *pro rata* to the respective amounts applied in accordance with Rule 28 in relation to the relevant Default and in an amount not exceeding, in relation to each such Clearing Member, the amount of its Contributions so applied.

#### Contracts on terms prescribed by new Exchanges

37. Notwithstanding anything in the Procedures, and subject as follows, any Contract on terms prescribed by any Exchange other than a Specified Exchange shall be an Excluded Transaction. The Clearing House may direct that any such Contract as is referred to in this Rule shall not be an Excluded Transaction, provided that no such direction shall bind any Clearing Member which does not agree to it.

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**ForexClear Default Fund Supplement**

- F1. In accordance with and subject to Rule F2, the amount of each ForexClear Clearing Member's ForexClear Contributions shall be determined by the Clearing House as soon as practicable after each ForexClear Determination Date as appropriate on the basis of information available as at close of business on such ForexClear Determination Date and notified to such FXCCM as soon as practicable after such determination in accordance with the Procedures.
- F2. Each FXCCM's ForexClear Contribution (other than a ForexClear Unfunded Contribution) shall be determined by the Clearing House in accordance with the following provisions:
- (a) determinations will be made by the Clearing House on the date that an FXCCM joins the ForexClear Service, and at the close of business on the first business day of each subsequent month, and otherwise in accordance with paragraph (g) below, (each a "**ForexClear Determination Date**") provided, however, that, following a Default, any such determinations and any such ForexClear Determination Date which might otherwise have occurred under this Rule F2 shall be suspended for the duration of the period (the "**ForexClear Default Period**") commencing on the date of such Default and terminating on the last to occur of the following dates:
    - (i) the date which is the close of business on the day falling 30 calendar days after the ForexClear Default Management Process Completion Date in relation to such Default (or, if such day is not a business day, the next succeeding business day); and
    - (ii) where, prior to the to the end of the period referred to in (i) above (or such period as has already been extended pursuant to this sub-paragraph (ii)) one or more subsequent Defaults (each a "**Relevant Default**") occur, the date which is the close of business on the day falling 30 calendar days after the ForexClear Default Management Process Completion Date in relation to a Relevant Default which falls latest in time (or, if such day is not a business day, the next succeeding business day);
  - (b) On each business day, the Clearing House will determine a "**Combined Loss Value**" in respect of each of the 30 preceding business days. The Combined Loss Value in respect of a particular day will be the sum of the largest and the second largest stress-testing loss incurred on that day in relation to ForexClear Business (for a given scenario).
  - (c) the "**ForexClear Fund Amount**" shall be calculated in United States Dollars ("**USD**"), and, for a given ForexClear Determination Date, shall be the largest of the 30 Combined Loss Values determined under Rule (b) plus 10%. The ForexClear Fund Amount shall not be less than USD 70 million (the "**ForexClear Fund Floor**");
  - (d) the FXCCM's "**ForexClear Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the FXCCM during the reference period in Rule F2(~~eb~~), above, in respect of all ForexClear Contracts to which the FXCCM is a party by the total of such average daily requirements applied to all Non Defaulting FXCCMs;



- (e) the FXCCM's "**Preliminary ForexClear Contribution**" shall be calculated by multiplying the ForexClear Fund Amount by the FXCCM's ForexClear Margin Weight;
- (f) if the FXCCM's Preliminary ForexClear Contribution is below the Minimum ForexClear Contribution for the time being, the FXCCM's ForexClear Contribution shall be the Minimum ForexClear Contribution; and
- (g) subject to a suspension pursuant to Rule F2(a), the Clearing House may recalculate the ForexClear Fund Amount on any business day if the Combined Loss Value differs by more than 25% from the figure on which the previous ForexClear Contribution determination was based.

F3. For the purposes of the calculations under Rule F2

- (a) references to "ForexClear Clearing Members" or "FXCCMs" do not include references to Defaulting FXCCMs (apart from any Defaulting FXCCM in respect of which the Clearing House permits the application of Rule F2) or persons which were formerly FXCCMs but are not FXCCMs at the ForexClear Determination Date at which the relevant determination is made;
- (b) Contributions shall be rounded upwards, if not already such a multiple, to the next integral multiple of one thousand US dollars; and
- (c) no account shall be taken, in calculating initial margin or ForexClear Margin Weight under Rule F2 of any offsets in the initial margin required for ForexClear Contracts from an FXCCM, which may otherwise be permissible under the Procedures or other arrangements applicable.

Provided that the FXCCM is not a defaulter, the amount of its ForexClear Contribution shall be calculated in accordance with and subject to Rule ~~F5 and Rule F2~~. The provisions of Rule F1, Rule F2, this Rule F3 and Rule F5 do not apply to a Defaulting FXCCM, unless the Clearing House so permits in any particular case.

F4. Without prejudice to any other requirements which the Clearing House may impose, the amount of the ForexClear Contribution of a New Member shall be the sum of (a) the Minimum ForexClear Contribution and (b) any supplementary sum determined by the Clearing House in its discretion and notified to the New Member. The Clearing House shall determine the amount of such supplementary sum by reference to the actual or expected level of clearing activity of the New Member.

F5. Upon determination of the amount of a ForexClear Contribution in accordance with Rule F2:

- (a) if the amount of the ForexClear Contribution of an FXCCM immediately before close of business on the relevant ForexClear Determination Date exceeds the amount of the FXCCM's ForexClear Contribution as determined under Rule F2 as at close of business on that day, the excess shall be paid by the Clearing House to such FXCCM in USD in accordance with the Procedures;
- (b) if the amount of the ForexClear Contribution of an FXCCM immediately before close of business on the relevant ForexClear Determination Date is the same as the amount of the FXCCM's ForexClear Contribution as so determined under Rule F2 as at close of business on that day, no sum shall then be payable by or to such FXCCM in respect of its Contribution; and

- (c) if the amount of the ForexClear Contribution of an FXCCM immediately before close of business on the relevant ForexClear Determination Date is less than the amount of the FXCCM's ForexClear Contribution as so determined under Rule F2 as at close of business on that day, the shortfall shall be paid by such FXCCM to the Clearing House in USD in accordance with the Procedures.

The provisions of this Rule do not apply to a Defaulting FXCCM, unless the Clearing House so permits in any particular case.

- F6. On any day, interest shall accrue on the amount of each ForexClear Contribution then held by the Clearing House, to the extent that it has not been applied under Rule 26 or Rule 28, at such rate and in such manner as provided by the Procedures, provided that the rate of interest for any particular day shall not be less than the Fed Funds Rate published on that day (or, in relation to any day for which the Fed Funds Rate is not available, the Fed Funds Rate most recently published before such day). Interest shall be payable in arrear and shall be paid on the date or dates specified by the Procedures. In these Default Fund Rules, any interest which has accrued under this Rule shall not be regarded as part of the ForexClear Contribution.
- F7. Where, after a Default, the Clearing House has applied part or all of a ForexClear Contribution under Rule 26 or Rule 28, the ForexClear Fund Amount shall be reduced forthwith by the aggregate amount of the ForexClear Contributions or parts of ForexClear Contributions so applied and the amount of the ForexClear Contribution that each FXCCM must maintain with the Clearing House shall be reduced by the amount of its ForexClear Contribution which has been applied pursuant to Rule 28, in each case until the next ForexClear Determination Date. Unless and until the Clearing House has repaid a defaulter's ForexClear Contribution (or remaining part thereof, as applicable), the ForexClear Fund Amount shall be treated as having been reduced by the amount of the defaulter's ForexClear Contribution (if any), regardless of whether the Clearing House has applied part or all of that ForexClear Contribution under Rule 26.
- F8. Where, after a Default, the Clearing House determines that (i) by reason of a reduction in accordance with Rule F7, the value of the ForexClear Fund Amount has been reduced by at least 25%; or (ii) by the time of the ForexClear Default Management Process Completion Date in relation to the relevant Default, the value of the ForexClear Fund Amount will be reduced by at least 25%, the Clearing House may, by notice in writing (the "*ForexClear Unfunded Contribution Notice*"), require each Non-Defaulting FXCCM to deposit and maintain an amount (each a "*ForexClear Unfunded Contribution*") in accordance with the following provisions:
- (a) ForexClear Unfunded Contributions will only be payable in circumstances where the relevant ForexClear Unfunded Contribution Notice is delivered by the Clearing House to FXCCMs prior to the ForexClear Default Management Process Completion Date in relation to the relevant Default;
- (b) the value of the ForexClear Unfunded Contribution payable by each individual FXCCM shall be the product of (i) the percentage by which the value of the ForexClear Fund Amount has been reduced and (ii) the value of the ForexClear Contribution of such FXCCM as determined by the Clearing House at the last ForexClear Determination Date prior to the date when the relevant Default occurred;
- (c) the Clearing House may, by the delivery of one or more further ForexClear Unfunded Contribution Notices, require each Non-Defaulting FXCCM to pay

one or more further ForexClear Unfunded Contributions in respect of the same Default, provided that the total value of the ForexClear Unfunded Contributions payable by an individual FXCCM in respect of a particular Default (determined in accordance with paragraph (b) above) may not exceed the value of the ForexClear Contribution of such FXCCM as at the last ForexClear Determination Date prior to the date when the relevant Default occurred; and

- (d) following a Default in respect of which ForexClear Unfunded Contributions were paid (the "**First Default**"), the Clearing House may require the payment of further ForexClear Unfunded Contributions in respect of subsequent Defaults (which, for the avoidance of doubt, can never be a First Default), provided that ForexClear Unfunded Contributions will not be payable in respect of any more than three Defaults in any six month period (commencing on the date of delivery of the first ForexClear Unfunded Contribution Notice in respect of the First Default).

FXCCMs will be required to deposit the full amount of their ForexClear Unfunded Contributions (without exercising any rights of set-off or counterclaim) with the Clearing House on the business day following receipt of a ForexClear Unfunded Contribution Notice.

For the avoidance of doubt, references to "FXCCMs" for the purposes of this Rule F8 include any FXCCM (other than a Defaulting FXCCM) who is: (i) a Retiring Member but whose status as a Clearing Member has not yet been terminated; and (ii) a Resigning Member whose resignation from the ForexClear Service is not yet effective.

#### F9. ForexClear Loss Distribution Process

Where, after a Default, the Clearing House determines that the ForexClear Excess Loss resulting from the Default will exceed the amounts to be applied to it under Rule 16(4a) to (7g), the Clearing House may implement the process (the "**ForexClear Loss Distribution Process**") described in this Rule F9.

- (a) For the purposes of this Rule F9 and for Rule F11, the following definitions will apply:

**"Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment"** means, in respect of each Cash Payment and any business day, the sum of the Pre Haircut Base Currency Gains, Losses and Realised Cash Flows by Cash Payment and any Cash Gainer Base Currency Adjustment to Cash Payment or Cash Loser Base Currency Adjustment to Cash Payment.

**"Auction Portfolio"** has the meaning assigned to it in the ForexClear DMP Annex.

**"Available Resources"** means, in respect of any Loss Distribution Period, the amounts available to the Clearing House for application in meeting any loss suffered or incurred by the Clearing House in accordance with Rule 16(4a) to (7g) as at the relevant Last Call ~~prior~~ Prior to Default.

**"Cash Gain"** means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of positive Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day.

**"Cash Gainer"** means, in respect of any Loss Distribution Day, each Margin Account in respect of which the value of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows on such Loss Distribution Day is greater than zero.

**"Cash Gainer Payment Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(i) of this Rule F9.

**"Cash Loser"** means, in respect of any Loss Distribution Day, each Margin Account in respect of which the value of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows on such Loss Distribution Day is equal to or less than zero.

**"Cash Loser Base Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(ii) of this Rule F9.

**"Cash Loser Payment Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(ii) of this Rule F9.

**"Cash Payment"** means, in respect of any business day, the aggregated amount which would be paid by the Clearing House to a Non-Defaulting FXCCM (expressed as a positive number) or by such FXCCM to the Clearing House (expressed as a negative number) in respect of a Cash Payment Type in a Cash Payment Currency on such business day.

**"Cash Payment Currency"** means each of the currencies in which payments made between the Clearing House and an FXCCM may be denominated.

**"Cash Payment Type"** means each of the Price Alignment Interest (as defined in the ForexClear Procedures), consideration (fee) payments and variation margin payable in respect of a Margin Account of a Non-Defaulting FXCCM.

**"Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows"** means in respect of each Margin Account of each Non-Defaulting FXCCM and any business day, the sum of the Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payments payable on such Margin Account.

**"Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment"** means, in respect of each Cash Payment and any business day, the aggregate amount, if any, paid by the Clearing House to a Non-Defaulting FXCCM (expressed as a positive number) or by such FXCCM to the Clearing House (expressed as a negative number) in respect of Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment from but excluding the relevant Last Call Prior to Default to and including such business day.

**"Cumulative LCH Transfer Cost"** means, on any business day during any Loss Distribution Period, the sum of any LCH Transfer Cost for each day from but excluding the relevant Last Call ~~prior~~Prior to Default to and including such business day.

**"Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows"** means, in respect of each Margin Account of each Non-Defaulting FXCCM and any business day, the sum of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payments payable on such Margin Account.

**"Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment"** means, in respect of each Cash Payment and any business day, the sum of the Pre Haircut Base Currency Gains, Losses and Realised Cash Flows by Cash Payment for such Cash Payment for each day from but excluding the relevant Last Call ~~prior~~Prior to Default to and including such business day.

**"Distribution Haircut" or "DH"** means, on each Loss Distribution Day, the fraction determined by the Clearing House in accordance with the following formula:

$$DH(t) = LUL(t) / TCG(t)$$

where:

"**LUL**" means the LCH Uncovered Loss; and

"**TCG**" means the Total Cash Gains.

"**FXCCM Adjustment Amount**" means in respect of the Margin Account(s) of any Non-Defaulting FXCCM and any Loss Distribution Day, an amount equal to the sum of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows in respect of such Margin Account(s) of such FXCCM less the sum of the Cumulative Actual Base Currency 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.

"**Last Call ~~prior~~Prior to Default**" means the most recent business day on which payments of cover required to be made by FXCCMs were made in full.

"**LCH Transfer Cost**" means the cost (converted, where applicable, into USD at a rate of exchange determined by the Clearing House in its sole discretion) to the Clearing House of transferring the rights and obligations arising out of the Auction Portfolios of a Defaulting FXCCM to those FXCCMs who have successfully bid for such Auction Portfolios in Auctions.

"**LCH Uncovered Loss**" means, in respect of the Clearing House on any business day in any Loss Distribution Period, the amount calculated in accordance with the following formula:

$$LCH \text{ Uncovered Loss}(t) = \text{Max} (0, (TCPH (t) + CLC(t) - TAR))$$

where:

"**TCPH**" means the Total Cumulative Pre Haircut Base Currency Gains losses and Realised Cash Flows;

"**CLC**" means the Cumulative LCH Transfer Cost;

"**TAR**" means the Total Available Resources; and

the LCH Uncovered Loss as at the Last Call ~~prior~~Prior to Default shall be zero.

"**Loss Distribution Cap Amount**" means, in respect of each Non-Defaulting FXCCM and any Loss Distribution Period, an amount equal to the higher of (i) USD 100,000,000; (ii) the product of (a) 100 per cent. and (b) the ForexClear Contribution of such Non-Defaulting FXCCM as at the last ForexClear Determination Date prior to the date when the Default occurred at the beginning of that Loss Distribution Period; and (iii) any adjusted cap as may be agreed pursuant to paragraph (d) of this Rule F9.

"**Loss Distribution Day**" means any business day in a Loss Distribution Period on which the Clearing House, in consultation with the ForexClear DMG, prior to calling for: (i) cover in respect of margin in accordance with the provisions of the Procedures; and (ii) Required Collateral, on such business day, determines that the LCH Uncovered Loss for that business day is greater than zero.

"**Loss Distribution Period**" means the period from, but excluding, the day on which a Default occurs with respect to an FXCCM to but excluding the earlier of: (i) the business day on which

(a) the rights and obligations arising out of the Auction Portfolios of the Defaulting FXCCM are transferred to those FXCCMs which have successfully bid for such Auction Portfolios in Auctions, or, if any Default occurs with respect to any other FXCCM prior to the end of a Loss Distribution Period, the rights and obligations arising out of the Auction Portfolios of any subsequent Defaulting FXCCM are transferred to those FXCCMs who have successfully bid for such Auction Portfolios in Auctions and (b) all payments required to be made by such FXCCMs and/or the Clearing House in respect of such Auction(s) have been made in full; or (ii) any Loss Distribution Day in respect of which the Clearing House determines that the FXCCM Adjustment Amount for any FXCCM would be equal to or greater than the Loss Distribution Cap Amount for such Loss Distribution Day.

**"Margin Account"** means each Proprietary Account and each FCM Client Segregated Sub-Account related to the ForexClear Service of an FXCCM.

**"Payment Currency Adjustment to Cash Payment"** means one or more Cash Gainer Payment Currency Adjustment to Cash Payment(s) and/or one or more Cash Loser Payment Currency Adjustment to Cash Payment(s).

**"Pre Haircut Base Currency Gains, Losses and Realised Cash Flows by Cash Payment"** means, in respect of each Cash Payment and any business day, the amount (converted, where applicable, into USD at the Rate of Exchange which would be paid by the Clearing House to a Non-Defaulting FXCCM (expressed as a positive number) or by such FXCCM to the Clearing House (expressed as a negative number) on such business day in the absence of the application of the Distribution Haircut.

**"Rate of Exchange"** means, for any day, the applicable rate of exchange for converting one currency into another as determined by the Clearing House by reference to Reuters;

**"t"** means, in respect of any determination made in relation to a business day, such business day.

**"t-1"** means, in respect of any determination made in relation to a business day, the business day immediately prior to such business day.

**"Total Available Resources"** means, on any business day during a Loss Distribution Period the sum of (i) the Available Resources and (ii) any Unfunded Contributions deposited with the Clearing House since the relevant Last Call Prior to Default.

**"Total Cash Gains"** means, in respect of any business day, the sum of the Cash Gain in respect of all Cash Gainers on such business day.

**"Total Cumulative Pre Haircut Base Currency Gains losses and Realised Cash Flows"** means, in respect of any business day the sum of all Total Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payments.

**"Total Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment"** means, in respect of any business day, the sum of the Total Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment for each business day from but excluding the relevant Last Call ~~prior~~Prior to Default to and including such business day.

**"Total Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment"** means, in respect of any business day, the sum of the Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment in respect of all Margin Accounts of all Non-Defaulting SCMs on such business day.

"**Underlying Cash Payment**" means, in respect of a Cash Gainer Base Currency Adjustment to Cash Payment or a Cash Loser Base Currency Adjustment to Cash Payment, the Cash Payment in respect of which such Cash Gainer Base Currency Adjustment to Cash Payment or Cash Loser Base Currency Adjustment to Cash Payment is calculated.

(b) **Adjustment of Underlying Cash Payments**

(i) Cash Gainer

On each Loss Distribution Day for each Margin Account of each Non-Defaulting FXCCM which is deemed to be a Cash Gainer, the relevant FXCCM shall be required to pay the Clearing House an amount equal to each positive amount determined as follows or, as applicable, the Clearing House shall be required to pay the relevant FXCCM the absolute value of each negative amount determined as follows (in each case, such amount the "**Cash Gainer Payment Currency Adjustment to Cash Payment**"): The Cash Gainer Payment Currency Adjustment to Cash Payment is the value of the amount determined in accordance with the formula below (the "**Cash Gainer Base Currency Adjustment to Cash Payment**") converted at the Rate of Exchange into the Cash Payment Currency in which the relevant Underlying Cash Payment is denominated:

where:

Cash Gainer Base Currency Adjustment to Cash Payment (t) = PHG(t) – (CHG(t) \* Max (0, 1 - DH(t)) – CAG(t-1))

"**PHG**" means the Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment;

"**CHG**" means the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment;

"**DH**" means the Distribution Haircut; and

"**CAG**" means the Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment and where "CAG" as at the Last Call ~~prior~~Prior to Default shall be zero.

(ii) Cash Loser

On each Loss Distribution Day for each Margin Account of each Non-Defaulting FXCCM which is deemed to be a Cash Loser, the Clearing House shall be required to pay the absolute value of each amount (the "**Cash Loser Payment Currency Adjustment to Cash Payment**") determined as follows: The Cash Loser Payment Currency Adjustment to Cash Payment is the value of the amount determined in accordance with the formula below (the "**Cash Loser Base Currency Adjustment to Cash Payment**") converted at the Rate of Exchange into the Cash Payment Currency in which the relevant Underlying Cash Payment is denominated:

where

Cash Loser Base Currency Adjustment to Cash Payment(t) = PHG(t) – (CHG(t) – CAG(t-1))

"**PHG**" Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment;

"**CHG**" means the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment; and

"**CAG**" means the Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment and where "CAG" as at the Last Call ~~prior~~Prior to Default shall be zero.

(iii) **Application of Payment Currency Adjustment to Cash Payment**

On each Loss Distribution Day, the Clearing House shall apply the payment or receipt of any Payment Currency Adjustment to Cash Payment as an offset against any payments denominated in the same Cash Payment Currency as the relevant Payment Currency Adjustment to Cash Payment due from or receivable by the relevant FXCCM.

(c) **Application of Cash Gainer Payment Currency Adjustment to Cash Payment**

The Clearing House shall apply all payments it receives in respect of Cash Gainer Payment Currency Adjustment to Cash Payments solely for the purposes of meeting any loss incurred by the Clearing House following, and in relation to, each Default, as contemplated in accordance with Rule 16(~~4a~~) to (~~7g~~).

(d) **Adjustment to Loss Distribution Cap Amount**

If, during a Loss Distribution Period, the Clearing House considers that the Cash Gainer Payment Currency Adjustment to Cash Payments applied to a particular Margin Account of an FXCCM are, or are about to be equal to or greater than the Loss Distribution Cap Amount, the Clearing House may propose an adjustment to such Loss Distribution Cap Amount. If agreed by all Non-Defaulting FXCCMs, the Loss Distribution Cap Amount as adjusted pursuant to this paragraph (d) shall be applicable for the remainder of the relevant Loss Distribution Period.

(e) **No Rebate**

The payment to the Clearing House by any FXCCM of any Cash Gainer Payment Currency Adjustment to Cash Payment shall be final and shall not give rise to any obligation of the Clearing House to repay any such amount or to pay any interest thereon.

(f) **Application of any Recoveries**

If the ForexClear Loss Distribution Process has been invoked by the Clearing House in accordance with this Rule F9, the Clearing House shall reimburse the FXCCMs (irrespective of whether they remain FXCCMs at the time of the recovery) and the Clearing House on a *pro rata* basis by reference to the resources which have been applied pursuant to Rule 16(~~4a~~) to (~~7g~~) and including the net amount of any one or more FXCCM Adjustment Amounts paid by the relevant FXCCMs:

- (i) any amounts received from the Defaulting FXCCM as a result of the Clearing House being a creditor of the Defaulting FXCCM in respect of the ForexClear Business of such Defaulting FXCCM in the context of the occurrence of any of the events under Rule 5(i) to (p) in respect of the Defaulting FXCCM or otherwise, other than in respect of sums due to the Clearing House for its own account; or ~~(ii)~~
- (ii) any other amounts howsoever obtained or recovered in the course of the Clearing House's operation of the ForexClear Default Management Process or which are otherwise referable to the Defaulting FXCCM,

in each case net of any related expenses incurred by the Clearing House or other sums owing to the Clearing House by the Defaulting FXCCM in connection with the ForexClear Service. For



the avoidance of doubt, nothing in this paragraph (f) shall oblige the Clearing House to pursue any litigation or other action in order to recover the amounts contemplated above and if another default fund of the Clearing House has also been applied as a result of the FXCCM's Default, any amounts recovered shall be applied *pari passu* as between the relevant default funds

F10. Where, after the Default of one or more FXCCMs, the Clearing House determines that, notwithstanding the availability of any resources remaining under Rule 16(1a) to (7g) and the availability of the ForexClear Loss Distribution Process in accordance with the terms of Rule F9, it is clear that the Clearing House does not have sufficient resources to meet its obligations and liabilities arising in respect of those ForexClear Contracts to which it is party with Non-Defaulting FXCCMs, the Clearing House will by notice in writing (a "*ForexClear Voluntary Payment Notice*"): (i) inform all Non-Defaulting FXCCMs that it has insufficient resources and that it is likely to invoke Rule F11; and (ii) invite each Non-Defaulting FXCCM to make a payment of funds (a "**ForexClear Voluntary Payment**"), in accordance with Rule 16(7g), to make up for the relevant shortfall.

ForexClear Voluntary Payments will be made on the following terms:

- (a) no FXCCM shall be obliged to make a ForexClear Voluntary Payment;
- (b) any ForexClear Voluntary Payment will be made by an FXCCM by the close of business on the business day after receipt of the relevant ForexClear Voluntary Payment Notice;
- (c) no ForexClear Voluntary Payment may be withdrawn once made; and
- (d) the Clearing House shall have full discretion whether or not to accept a particular ForexClear Voluntary Payment.

Any failure by the Clearing House to deliver a ForexClear Voluntary Payment Notice pursuant to this Rule F10 will not invalidate any action taken by the Clearing House pursuant to Rule F11 nor give rise to any liability whatsoever on the part of the Clearing House.

Any ForexClear Voluntary Payments remaining unused at the time of the expiry of the relevant ForexClear Default Period will be accounted for ratably by the Clearing House as if they were amounts paid in respect of the ForexClear Contributions ~~of~~by those FXCCMs from whom ForexClear Voluntary Payments were accepted.

F11. Where, following the process for inviting ForexClear Voluntary Payments in accordance with Rule F10, the Clearing House makes a determination (an "*Insufficient Resources Determination*") that it is clear that the Clearing House does not have sufficient resources to meet its obligations and liabilities arising in respect of those ForexClear Contracts to which it is party with Non-Defaulting FXCCMs, the following provisions shall have effect:

- (a) All outstanding ForexClear Contracts shall be closed out as of the clearing day following the date the Insufficient Resources Determination was made and any further obligations to make any payments under or in respect of such ForexClear Contracts shall cease. The closing prices used shall be mid prices calculated by the Clearing House in accordance with the methodology used by it to carry out end of day margin runs in respect of the outstanding ForexClear Contracts. Where such data is not available to the Clearing House, the closing price shall be the last price used by the Clearing House to calculate the variation margin requirement for the position to be closed out.

- (b) On the basis of the close out values established for each outstanding ForexClear Contract, an account shall be taken (as at the time of close out) of what is due in respect of each FXCCM, from that FXCCM to the Clearing House and from the Clearing House to that FXCCM, as well as all other amounts owing under or in respect of ForexClear Contracts and any other amounts that may be due in respect of the ForexClear Service (including for these purposes, a proportionate share of any amounts owed generally to or from the Clearing House), and the sums due from the FXCCM shall be set off against the sums due from the Clearing House and only the balance of the account shall be payable. For the avoidance of doubt, amounts in respect of ForexClear Contracts shall include, but not be limited to, returns of variation margin associated therewith and the repayment of any Net Cash Gainer Payment Currency Adjustment to Cash Payments made in the ForexClear Default Period to which the Insufficient Resources Determination relates (and in respect of which F9(e) shall be specifically disapplied), but shall exclude the repayment of any cash initial margin or any outstanding ForexClear Contributions.

To the extent that the aggregate of all of the amounts owed to the Clearing House by FXCCMs plus all of those other resources applicable to the ForexClear Clearing Service under Rule 16(4a) to (7g) that have not been applied towards a ForexClear Excess Loss is less than the aggregate of the amounts owed to FXCCMs by the Clearing House, each amount owed to FXCCMs by the Clearing House shall be reduced pro rata the shortfall.

(c) The Clearing House shall determine any amounts due to each FXCCM in respect of the repayment of any cash initial margin and outstanding ForexClear Contributions to be repaid. The claim of each such FXCCM in respect to the foregoing shall be reduced in proportion to an amount by which (i) the value of the assets available to the Clearing House to meet the return obligations referred to in (ii) bears to (ii) the value of what would be due from the Clearing House to each Clearing Member in aggregate in respect of the return of initial margin received from each such Clearing Member in the form of cash and outstanding Contributions.

~~(e)~~ (d) For each FXCCM, the amount due to it or due from it as determined pursuant to (b) shall be aggregated with its claim determined pursuant to (c) above and only the net sum shall be payable. Where the result of such calculations is that an FXCCM owes an amount to the Clearing House, that FXCCM shall pay that amount to the Clearing House immediately. Where the result of such calculations is that an FXCCM is owed an amount by the Clearing House, the Clearing House shall pay that amount to the FXCCM immediately, subject to (f) below.

~~(d)~~ (e) The payment of such amount to an FXCCM, pursuant to (d) above subject to any re-calculations performed pursuant to (f) below, shall constitute the full and final payment in respect of the ForexClear Service and such FXCCM shall not be permitted to make any further claims ~~to~~ on the Clearing House in respect of amounts relating to the ForexClear Service, nor shall it be permitted to notify the Clearing House of a Termination Date pursuant to Regulation 39A for a failure to pay any amounts in relation to the ForexClear Service.

~~(e)~~ (f) The Clearing House may make the payments due under (d) above in one or more instalments to the FXCCMs in proportion to the value of their claims on the Clearing House under (b) above if some but not all of the amounts due

under (d) or Rule 16(4a) to 16(7g) above have not yet been received. The Clearing House shall take reasonable steps to recover such amounts and may deduct therefrom reasonable administration costs for such recovery. To the extent that the Clearing House determines that any such amounts will not in fact be recoverable, it shall re-determine the amounts due to FXCCMs in accordance with this Rule F11.

~~(f)~~ (g) This Rule F11 shall not be applied in the event that a Termination Date has been specified in relation to the Clearing House in accordance with Regulation 39A.

~~(g)~~ (h) Nothing in the foregoing shall override the obligation of the Clearing House to return initial margin provided by way of security to a FXCCM pursuant to its Regulations and Procedures.

## F12. Ballot Arrangements

- (a) Notwithstanding anything to the contrary in clauses 9.4 and 9.5 of the Clearing Membership Agreement, no proposal for any of the amendments set out in paragraphs (i), (ii) and (iii) below (each a “**ForexClear Amendment**”) shall be capable of coming into effect unless first approved in a ballot of FXCCMs:
- (i) any amendment to the value of the ForexClear Fund Floor as provided for in paragraph (c) of Rule F2 or as subsequently approved in a ballot under this Rule F12;
  - (ii) any amendment providing for a change in the nature of the liabilities for which an FXCCM’s indemnity is given by virtue of paragraph (b) of Rule 28; and
  - (iii) any amendment which, in the opinion of the Board of Directors of the Clearing House would represent a significant change in the commitments of the FXCCMs but not in the commitments of any other Clearing Members,
- (b) For the purposes of a ballot conducted pursuant to this Rule F12, the provisions of clauses 9.4, 9.6 and 9.7 of the Clearing Membership Agreement shall apply with the following amendments:
- (i) the words “major amendment to the Default Fund Rules” in the first line of clause 9.4 of the Clearing Membership Agreement shall be replaced with the words “ForexClear Amendment”;
  - (ii) all references to “Clearing Members” shall be replaced with references to “FXCCMs”;
  - (iii) in paragraph (c) of clause 9.4 of the Clearing Membership Agreement, the reference to “Contributions” shall be replaced with a reference to “ForexClear Contributions” and the reference to “Quarter Day” shall be replaced with a reference to “ForexClear Determination Date”;
  - (iv) references to “Fund Amount” in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to “ForexClear Fund Amount”;

- (v) the reference to “clause 9.4” in clause 9.6 of the Clearing Membership Agreement shall be replaced with a reference to “Rule F12 of the ForexClear Default Fund Supplement to the Default Fund Rules”; and
  - (vi) the references to “Contribution” in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to “ForexClear Contribution”.
- (c) For the purposes of a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement other than a ballot in relation to an amendment which, in the opinion of the Board of Directors of the Clearing House falls within paragraph (c) of clause 9.5 of the Clearing Membership Agreement but not within paragraph (a)(iii) of this Rule F12, references to “Clearing Members” shall not include FXCCMs who are not engaged in any business with the Clearing House other than ForexClear Business and ForexClear Contributions shall not count as “Contributions”.

Procedures. In these Default Fund Rules any interest which has accrued under this Rule shall not be regarded as part of the SwapClear Contribution. For the avoidance of doubt, if the rate of interest payable on SwapClear Contributions is negative, interest shall be payable by SwapClear Clearing Members to the Clearing House.

- S7. Where, after a Default, the Clearing House has applied part or all of a SwapClear Contribution under Rule 26 or Rule 28, the SwapClear Segregated Fund Amount shall be reduced forthwith by the aggregate amount of the SwapClear Contributions or parts of SwapClear Contributions so applied and the amount of the SwapClear Contribution that each SCM must maintain with the Clearing House shall be reduced by the amount of its SwapClear Contribution which has been applied pursuant to Rule 28, in each case until the next SwapClear Determination Date. Unless and until the Clearing House has repaid a defaulter's SwapClear Contribution (or remaining part thereof, as applicable), the SwapClear Segregated Fund Amount shall be treated as having been reduced by the amount of the defaulter's SwapClear Contribution (if any), regardless of whether the Clearing House has applied part or all of that SwapClear Contribution under Rule 26.
- S8. Where, after a Default, the Clearing House determines that (i) by reason of a reduction in accordance with Rule ~~S6~~7, the value of the SwapClear Segregated Fund Amount has been reduced by at least 25%; or (ii) by the time of the SwapClear Default Management Process Completion Date in relation to the relevant Default the value of the SwapClear Segregated Fund Amount will be reduced by at least 25%, the Clearing House may, by notice in writing (the "**SwapClear Unfunded Contribution Notice**"), require each Non-Defaulting SCM to deposit and maintain an amount (each a "**SwapClear Unfunded Contribution**") in accordance with the following provisions:
- (a) SwapClear Unfunded Contributions will only be payable in circumstances where the relevant SwapClear Unfunded Contribution Notice is delivered by the Clearing House to SCMs prior to the SwapClear Default Management Process Completion Date in relation to the relevant Default;
  - (b) the value of the SwapClear Unfunded Contribution payable by each individual SCM shall be the product of (i) the percentage by which the value of the SwapClear Segregated Fund Amount has been reduced and (ii) the value of the SwapClear Contribution of such SCM as at the last SwapClear Determination Date prior to the date when the relevant Default occurred;
  - (c) the Clearing House may, by the delivery of one or more further SwapClear Unfunded Contribution Notices, require each Non-Defaulting SCM to pay one or more further SwapClear Unfunded Contributions in respect of the same Default, provided that the total value of the SwapClear Unfunded Contributions payable by an individual SCM in respect of a particular Default (determined in accordance with paragraph (b) above) may not exceed the value of the SwapClear Contribution of such SCM as at the last SwapClear Determination Date prior to the date when the relevant Default occurred; and
  - (d) following a Default in respect of which SwapClear Unfunded Contributions were paid (the "**First Default**"), the Clearing House may require the payment of further SwapClear Unfunded Contributions in respect of subsequent Defaults, (which, for the avoidance of doubt, can never be a First Default), provided that SwapClear Unfunded Contributions will not be payable in respect of any more than three Defaults in any six month period (commencing on the date of delivery of the first SwapClear Unfunded Contribution Notice in respect of the First Default).

SCMs will be required to deposit the full amount of their SwapClear Unfunded Contributions (without exercising any rights of set-off or counterclaim) with the Clearing House on the business day following receipt of a SwapClear Unfunded Contribution Notice.

For the avoidance of doubt, references to "SCMs" for the purposes of this Rule S78 include any SCM (other than a Defaulting SCM) who is: (i) a Retiring Member but whose status as a Clearing Member has not yet been terminated; and (ii) a Resigning Member whose resignation from the SwapClear Service is not yet effective.

## S9. SwapClear Loss Distribution Process

Where, after a Default, the Clearing House determines that the SwapClear Excess Loss resulting from the Default will exceed the amounts to be applied to it under Rule 16(4a) to (7g), the Clearing House may implement the process (the "**SwapClear Loss Distribution Process**") described in this Rule S8.9.

- (a) For the purposes of this Rule S8.9 and for Rule S10,11, the following definitions will apply:

**"Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment"** means, in respect of each Cash Payment and any business day, the sum of the Pre Haircut Base Currency Gains, Losses and Realised Cash Flows by Cash Payment and any Cash Gainer Base Currency Adjustment to Cash Payment or Cash Loser Base Currency Adjustment to Cash Payment.

**"Auction Portfolio"** has the meaning assigned to it in the SwapClear DMP Annex.

**"Available Resources"** means, in respect of any Loss Distribution Period, the amounts available to the Clearing House for application in meeting any loss suffered or incurred by the Clearing House in accordance with Rule 16(4a) to (7g) as at the relevant Last Call ~~prior~~ Prior to Default.

**"Cash Gain"** means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of positive Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day.

**"Cash Gainer"** means, in respect of any Loss Distribution Day, each Margin Account in respect of which the value of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows on such Loss Distribution Day is greater than zero.

**"Cash Gainer Base Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(i) of this Rule S8.9.

**"Cash Gainer Payment Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(i) of this Rule S8.9.

**"Cash Loser"** means, in respect of any Loss Distribution Day, each Margin Account in respect of which the value of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows on such Loss Distribution Day is equal to or less than zero.

**"Cash Loser Base Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(ii) of this Rule S8.9.

**"Cash Loser Payment Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(ii) of this Rule S8.9.

"**Cash Payment**" means, in respect of any business day, the aggregated amount which would be paid by the Clearing House to a Non-Defaulting SCM (expressed as a positive number) or by such SCM to the Clearing House (expressed as a negative number) in respect of a Cash Payment Type in a Cash Payment Currency on such business day.

"**Cash Payment Currency**" means each of the 17 currencies in which payments made between the Clearing House and an SCM may be denominated.

"**Cash Payment Type**" means each of the Price Alignment Interest, coupon payments, consideration (fee) payments and variation margin payable in respect of a Margin Account of a Non-Defaulting SCM.

"**Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows**" means in respect of each Margin Account of each Non-Defaulting SCM and any business day, the sum of the Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payments payable on such Margin Account.

"**Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment**" means, in respect of each Cash Payment and any business day, the aggregate amount, if any, paid by the Clearing House to a Non-Defaulting SCM (expressed as a positive number) or by such SCM to the Clearing House (expressed as a negative number) in respect of Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment from but excluding the relevant Last Call Prior to Default to and including such business day.

"**Cumulative LCH Transfer Cost**" means, on any business day during any Loss Distribution Period, the sum of any LCH Transfer Cost for each day from but excluding the relevant Last Call ~~prior~~Prior to Default to and including such business day.

"**Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Non-Defaulting SCM and any business day, the sum of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payments payable on such Margin Account.

"**Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment**" means, in respect of each Cash Payment and any business day, the sum of the Pre Haircut Base Currency Gains, Losses and Realised Cash Flows by Cash Payment for such Cash Payment for each day from but excluding the relevant Last Call ~~prior~~Prior to Default to and including such business day.

"**Distribution Haircut**" or "**DH**" means, on each Loss Distribution Day, the fraction determined by the Clearing House in accordance with the following formula:

$$DH(t) = LUL(t) / TCG(t)$$

where:

"**LUL**" means the LCH Uncovered Loss; and

"**TCG**" means the Total Cash Gains.

"**Last Call ~~prior~~Prior to Default**" means the most recent business day on which payments of cover required to be made by SCMs were made in full.

"**LCH Transfer Cost**" means the cost (converted, where applicable, into pounds sterling at a rate of exchange determined by the Clearing House in its sole discretion) to the Clearing House

of transferring the rights and obligations arising out of the Auction Portfolios of a Defaulting SCM to those SCMs who have successfully bid for such Auction Portfolios in Auctions.

"**LCH Uncovered Loss**" means, in respect of the Clearing House on any business day in any Loss Distribution Period, the amount calculated in accordance with the following formula:

$$\text{LCH Uncovered Loss}(t) = \text{Max} (0, (\text{TCPH} (t) + \text{CLC}(t) - \text{TAR}))$$

where:

"**TCPH**" means the Total Cumulative Pre Haircut Base Currency Gains losses and Realised Cash Flows;

"**CLC**" means the Cumulative LCH Transfer Cost;

"**TAR**" means the Total Available Resources; and

the LCH Uncovered Loss as at the Last Call ~~prior~~Prior to Default shall be zero.

"**Loss Distribution Cap Amount**" means, in respect of each Non-Defaulting SCM and any Loss Distribution Period, an amount equal to the higher of (i) £100,000,000; (ii) the product of (a) 100 per cent. and (b) the SwapClear Contribution of such Non-Defaulting SCM as at the last SwapClear Determination Date prior to the date when the Default occurred at the beginning of that Loss Distribution Period; and (iii) any adjusted cap as may be agreed pursuant to paragraph (d) of this Rule ~~S8.9~~S8.9.

"**Loss Distribution Day**" means any business day in a Loss Distribution Period on which the Clearing House, in consultation with the SwapClear DMG, prior to calling for: (i) cover in respect of margin in accordance with the provisions of the Procedures; and (ii) Required Collateral, on such business day, determines that the LCH Uncovered Loss for that business day is greater than zero.

"**Loss Distribution Period**" means the period from, but excluding, the day on which a Default occurs with respect to an SCM to but excluding the earlier of: (i) the business day on which (a) the rights and obligations arising out of the Auction Portfolios of the Defaulting SCM are transferred to those SCMs which have successfully bid for such Auction Portfolios in Auctions, or, if any Default occurs with respect to any other SCM prior to the end of a Loss Distribution Period, the rights and obligations arising out of the Auction Portfolios of any subsequent Defaulting SCM are transferred to those SCMs who have successfully bid for such Auction Portfolios in Auctions and (b) all payments required to be made by such SCMs and/or the Clearing House in respect of such Auction(s) have been made in full; or (ii) any Loss Distribution Day in respect of which the Clearing House determines that the SCM Adjustment Amount for any SCM would be equal to or greater than the Loss Distribution Cap Amount for such Loss Distribution Day.

"**Margin Account**" means each Proprietary Account, Individual Segregated Account, Omnibus Net Segregated Account and each FCM ~~Omnibus OTC~~-Client Segregated Sub-Account related to the SwapClear Service of an SCM.

"**Payment Currency Adjustment to Cash Payment**" means one or more Cash Gainer Payment Currency Adjustment to Cash Payment(s) and/or one or more Cash Loser Payment Currency Adjustment to Cash Payment(s).

"**Pre Haircut Base Currency Gains, Losses and Realised Cash Flows by Cash Payment**" means, in respect of each Cash Payment and any business day, the amount (converted, where



applicable, into pounds sterling at the Rate of Exchange which would be paid by the Clearing House to a Non-Defaulting SCM (expressed as a positive number) or by such SCM to the Clearing House (expressed as a negative number) on such business day in the absence of the application of the Distribution Haircut.

**"Rate of Exchange"** means, for any day, the applicable rate of exchange for converting one currency into another as determined by the Clearing House by reference to Reuters;

**"SCM Adjustment Amount"** means in respect of the Margin Account(s) of any Non-Defaulting SCM and any Loss Distribution Day, an amount equal to the sum of the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows in respect of such Margin Account(s) of such SCM less the sum of the Cumulative Actual Base Currency 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.

**"t"** means, in respect of any determination made in relation to a business day, such business day.

**"t-1"** means, in respect of any determination made in relation to a business day, the business day immediately prior to such business day.

**"Total Available Resources"** means, on any business day during a Loss Distribution Period the sum of (i) the Available Resources and (ii) any Unfunded Contributions deposited with the Clearing House since the relevant Last Call Prior to Default.

**"Total Cash Gains"** means, in respect of any business day, the sum of the Cash Gain in respect of all Cash Gainers on such business day.

**"Total Cumulative Pre Haircut Base Currency Gains losses and Realised Cash Flows"** means, in respect of any business day the sum of all Total Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payments.

**"Total Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment"** means, in respect of any business day, the sum of the Total Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment for each business day from but excluding the relevant Last Call ~~prior~~Prior to Default to and including such business day.

**"Total Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment"** means, in respect of any business day, the sum of the Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment in respect of all Margin Accounts of all Non-Defaulting SCMs on such business day.

**"Underlying Cash Payment"** means, in respect of a Cash Gainer Base Currency Adjustment to Cash Payment or a Cash Loser Base Currency Adjustment to Cash Payment, the Cash Payment in respect of which such Cash Gainer Base Currency Adjustment to Cash Payment or Cash Loser Base Currency Adjustment to Cash Payment is calculated.

(b) Adjustment of Underlying Cash Payments

i Cash Gainer

On each Loss Distribution Day for each Margin Account of each Non-Defaulting SCM which is deemed to be a Cash Gainer, the relevant SCM shall be required to pay the Clearing House an amount equal to each positive amount determined as follows or, as applicable, the

Clearing House shall be required to pay the relevant SCM the absolute value of each negative amount determined as follows (in each case, such amount the "**Cash Gainer Payment Currency Adjustment to Cash Payment**"):

The Cash Gainer Payment Currency Adjustment to Cash Payment is the value of the amount determined in accordance with the formula below (the "**Cash Gainer Base Currency Adjustment to Cash Payment**") converted at the Rate of Exchange into the Cash Payment Currency in which the relevant Underlying Cash Payment is denominated

where:

Cash Gainer Base Currency Adjustment to Cash Payment (t) = PHG(t) – (CHG(t) \* Max (0, 1 - DH(t)) – CAG(t-1))

"**PHG**" means the Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment;

"**CHG**" means the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment;

"**DH**" means the Distribution Haircut; and

"**CAG**" means the Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment and where "CAG" as at the Last Call ~~prior~~Prior to Default shall be zero.

## ii Cash Loser

On each Loss Distribution Day for each Margin Account of each Non-Defaulting SCM which is deemed to be a Cash Loser, the Clearing House shall be required to pay the absolute value of each amount (the "**Cash Loser Payment Currency Adjustment to Cash Payment**") determined as follows:

The Cash Loser Payment Currency Adjustment to Cash Payment is the value of the amount determined in accordance with the formula below (the "**Cash Loser Base Currency Adjustment to Cash Payment**") converted at the Rate of Exchange into the Cash Payment Currency in which the relevant Underlying Cash Payment is denominated

Where

Cash Loser Base Currency Adjustment to Cash Payment(t) = PHG(t) – (CHG(t) – CAG(t-1))

"**PHG**" Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment;

"**CHG**" means the Cumulative Pre Haircut Base Currency Gains Losses and Realised Cash Flows by Cash Payment; and

"**CAG**" means the Cumulative Actual Base Currency Gains, Losses and Realised Cash Flows by Cash Payment and where "CAG" as at the Last Call ~~prior~~Prior to Default shall be zero.

## iii Application of Payment Currency Adjustment to Cash Payment

On each Loss Distribution Day, the Clearing House shall apply the payment or receipt of any Payment Currency Adjustment to Cash Payment as an offset against any payments

denominated in the same Cash Payment Currency as the relevant Payment Currency Adjustment to Cash Payment due from or receivable by the relevant SCM.

iv **Adjustment for exchange of Notional Amounts on maturity**

an exchange of Notional Amounts is applicable to any SwapClear Contract on any business day during a Loss Distribution Period, the Clearing House may, following consultation with its risk committee or the SwapClear DMG, as appropriate, make such adjustments as are necessary to the calculation of a Payment Currency Adjustment to Cash Payment to reflect the payment flows arising from such exchange of Notional Amounts, keeping in mind the principle that the calculation of a Payment Currency Adjustment to Cash Payment is designed to capture all profits and/or losses on positions during the relevant Loss Distribution Period.

(c) **Application of Cash Gainer Payment Currency Adjustment to Cash Payment**

The Clearing House shall apply all payments it receives in respect of Cash Gainer Payment Currency Adjustment to Cash Payments solely for the purposes of meeting any loss incurred by the Clearing House following, and in relation to, each Default, as contemplated in accordance with Rule 16(4a) to (7g).

(d) **Adjustment to Loss Distribution Cap Amount**

If, during a Loss Distribution Period, the Clearing House considers that the Cash Gainer Payment Currency Adjustment to Cash Payments applied to a particular Margin Account of an SCM are, or are about to be equal to or greater than the Loss Distribution Cap Amount, the Clearing House may propose an adjustment to such Loss Distribution Cap Amount. If agreed by all Non-Defaulting SCMs, the Loss Distribution Cap Amount as adjusted pursuant to this paragraph (d) shall be applicable for the remainder of the relevant Loss Distribution Period.

(e) **No Rebate**

The payment to the Clearing House by any SCM of any Cash Gainer Payment Currency Adjustment to Cash Payment shall be final and shall not give rise to any obligation of the Clearing House to repay any such amount or to pay any interest thereon.

(f) **Application of any Recoveries**

If the SwapClear Loss Distribution Process has been invoked by the Clearing House in accordance with this Rule 8.9, the Clearing House shall reimburse the SCMs (irrespective of whether they remain SCMs at the time of the recovery) and the Clearing House on a *pro rata* basis by reference to the resources which have been applied pursuant to Rule 16(4a) to (7g) and including the net amount of any one or more paid by the relevant SCMs:

- i any amounts received from the Defaulting SCM as a result of the Clearing House being a creditor of the Defaulting SCM in respect of the SwapClear Business of such Defaulting SCM in the context of the occurrence of any of the events under Rule 5(i) to (p) in respect of the Defaulting SCM or otherwise, other than in respect of sums due to the Clearing House for its own account; or
- ii any other amounts howsoever obtained or recovered in the course of the Clearing House's operation of the SwapClear Default Management Process or which are otherwise referable to the Defaulting SCM,

in each case net of any related expenses incurred by the Clearing House or other sums owing to the Clearing House by the Defaulting SCM in connection with the SwapClear clearing service. For the avoidance of doubt, nothing in this paragraph (f) shall oblige the Clearing House to pursue any litigation or other action in order to recover the amounts contemplated above and if another default fund of the Clearing House has also been applied as a result of the SCM's Default, any amounts recovered shall be applied *pari passu* as between the relevant default funds.

S10. Where, after the Default of one or more SCMs, the Clearing House determines that, notwithstanding the availability of any resources remaining under Rule 16(4a) to (7g) and the availability of the SwapClear Loss Distribution Process in accordance with the terms of Rule S8.9, it is clear that the Clearing House does not have sufficient resources to meet its obligations and liabilities arising in respect of those SwapClear Contracts to which it is party with Non-Defaulting SCMs, the Clearing House will by notice in writing (a "**SwapClear Voluntary Payment Notice**"): (i) inform all Non-Defaulting SCMs that it has insufficient resources and that it is likely to invoke Rule S4011; and (ii) invite each Non-Defaulting SCM to make a payment of funds (a "**SwapClear Voluntary Payment**"), in accordance with Rule 16(7g), to make up for the relevant shortfall.

- (a) SwapClear Voluntary Payments will be made on the following terms:
- (b) no SCM shall be obliged to make a SwapClear Voluntary Payment;
- (c) any SwapClear Voluntary Payment will be made by an SCM by the close of business on the business day after receipt of the relevant SwapClear Voluntary Payment Notice;
- (d) no SwapClear Voluntary Payment may be withdrawn once made; and
- (e) the Clearing House shall full discretion whether or not to accept a particular SwapClear Voluntary Payment.

Any failure by the Clearing House to deliver a SwapClear Voluntary Payment Notice pursuant to this Rule S910 will not invalidate any action taken by the Clearing House pursuant to Rule S4011 nor give rise to any liability whatsoever on the part of the Clearing House.

Any SwapClear Voluntary Payments remaining unused at the time of the expiry of the relevant SwapClear Default Period will be accounted for ratably by the Clearing House as if they were amounts paid in respect of the SwapClear Contributions of those SCMs from whom SwapClear Voluntary Payments were accepted.

S11. Where, following the process for inviting SwapClear Voluntary Payments in accordance with Rule S10, the Clearing House makes a determination (an "**Insufficient Resources Determination**") that it is clear that the Clearing House does not have sufficient resources to meet its obligations and liabilities arising in respect of those SwapClear Contracts to which it is party with Non-Defaulting SCMs, the following provisions shall have effect:

- (a) All outstanding SwapClear Contracts shall be closed out as of the clearing day following the date the Insufficient Resources Determination was made and any further obligations to make any payments under or in respect of such SwapClear Contracts shall cease. The closing prices used shall be mid prices calculated by the Clearing House in accordance with the methodology used by it to carry out end of day margin runs in respect of the outstanding SwapClear Contracts.

Where such data is not available to the Clearing House, the closing price shall be the last price used by the Clearing House to calculate the variation margin requirement for the position to be closed out.

- (b) On the basis of the close out values established for each outstanding SwapClear Contract, an account shall be taken (as at the time of close out) of what is due in respect of each SCM, from that SCM to the Clearing House and from the Clearing House to that SCM, as well as all other amounts owing under or in respect of SwapClear Contracts and any other amounts that may be due in respect of the SwapClear Service (including for these purposes, a proportionate share of any amounts owed generally to or from the Clearing House), and the sums due from the SCM shall be set off against the sums due from the Clearing House and only the balance of the account shall be payable. For the avoidance of doubt, amounts in respect of SwapClear Contracts shall include, but not be limited to, returns of variation margin associated therewith and the repayment of any Net Cash Gainer Payment Currency Adjustment to Cash Payments made in the SwapClear Default Period to which the Insufficient Resources Determination relates (and in respect of which S9(e) shall be specifically disappplied), but shall exclude the repayment of any cash initial margin or any outstanding SwapClear Contributions.
- (c) The Clearing House shall determine any amounts due to each SCM in respect of the repayment of any cash initial margin and outstanding SwapClear Contributions to be repaid. The claim of each such SCM in respect to the foregoing shall be reduced in proportion to an amount by which (i) the value of the assets available to the Clearing House to meet the return obligations referred to in (ii) bears to (ii) the value of what would be due from the Clearing House to each Clearing Member in aggregate in respect of the return of initial margin received from each such Clearing Member in the form of cash and outstanding Contributions.
- (d) For each SCM, the amount due to it or due from it as determined pursuant to (b) shall be aggregated with its claim determined pursuant to (c) above and only the net sum shall be payable. Where the result of such calculations is that an SCM owes an amount to the Clearing House, that SCM shall pay that amount to the Clearing House immediately. Where the result of such calculations is that an SCM is owed an amount by the Clearing House, the Clearing House shall pay that amount to the SCM immediately, subject to (f) below.
- (e) The payment of such amount to an SCM, pursuant to (d) above subject to any re-calculations performed pursuant to (f) below, shall constitute the full and final payment in respect of the SwapClear Service and such SCM shall not be permitted to make any further claims ~~to~~on the Clearing House in respect of amounts relating to the SwapClear Service nor shall it be permitted to notify the Clearing House of a Termination Date pursuant to Regulation 39A for a failure to pay any amounts in relation to the SwapClear Service.
- (f) The Clearing House may make the payments due under (d) above in one or more instalments to the SCMs in proportion to the value of their claims on the Clearing House under (b) above if some but not all of the amounts due under (d) or Rule 16(4a) to 16(7g) above have not yet been received. The Clearing House shall take reasonable steps to recover such amounts and may deduct therefrom reasonable administration costs for such recovery. To the extent that the Clearing House determines that any such amounts will not in fact be

recoverable, it shall re-determine the amounts due to SCMs in accordance with this Rule ~~S10.11~~.

- (g) This Rule ~~S10.11~~ shall not be applied in the event that a Termination Date has been specified in relation to the Clearing House in accordance with Regulation 39A.
- (h) Nothing in the foregoing shall override the obligation of the Clearing House to return initial margin provided by way of security to a SCM pursuant to its Regulations and Procedures.

## S12. Ballot Arrangements

- (a) Notwithstanding anything to the contrary in clauses 9.4 and 9.5 of the Clearing Membership Agreement, no proposal for any of the amendments set out in paragraphs (i), (ii) and (iii) below (each a "**SwapClear Amendment**") shall be capable of coming into effect unless first approved in a ballot of SCMs:
  - i any amendment to the value of the SwapClear Fund Floor and/or the value of the SwapClear Fund Cap, in each case as provided for in paragraph (b) of Rule S2 or as subsequently approved in a ballot under this Rule ~~S11.12~~;
  - ii any amendment providing for a change in the nature of the liabilities for which an SCM's indemnity is given by virtue of paragraph (c) of Rule 28; and
  - iii any amendment which, in the opinion of the Board of Directors of the Clearing House would represent a significant change in the commitments of the SCMs but not in the commitments of any other Clearing Members,
- (b) For the purposes of a ballot conducted pursuant to this Rule ~~S11.12~~, the provisions of clauses 9.4, 9.6 and 9.7 of the Clearing Membership Agreement shall apply with the following amendments:
  - i the words "major amendment to the Default Fund Rules" in the first line of clause 9.4 of the Clearing Membership Agreement shall be replaced with the words "SwapClear Amendment";
  - ii all references to "Clearing Members" shall be replaced with references to "SCMs";
  - iii in paragraph (c) of clause 9.4 of the Clearing Membership Agreement, the reference to "Contributions" shall be replaced with a reference to "SwapClear Contributions" and the reference to "Quarter Day" shall be replaced with a reference to "SwapClear Determination Date";
  - iv references to "Fund Amount" in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to "SwapClear Fund Amount";
  - v the reference to "clause 9.4" in clause 9.6 of the Clearing Membership Agreement shall be replaced with a reference to "Rule ~~S11.12~~ of the SwapClear Default Fund Supplement to the Default Fund Rules"; and

- vi the references to "Contribution" in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to "SwapClear Contribution".
  
- (a) For the purposes of a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement other than a ballot in relation to an amendment which, in the opinion of the Board of Directors of the Clearing House falls within paragraph (c) of clause 9.5 of the Clearing Membership Agreement but not within paragraph (a)(iii) of this Rule ~~S11~~S12, references to "Clearing Members" shall not include SCMs who are not engaged in any business with the Clearing House other than SwapClear Business and SwapClear Contributions shall not count as "Contributions".

### RepoClear Default Fund Supplement

- R.1 On each business day, the Clearing House will determine the "**Combined Loss Value**" in respect of each of the 20 preceding business days. The Combined Loss Value in respect of a particular day will be the sum of the STLIEOMs for the RCMs which have the largest and the second largest STLIEOM on that day. For this purpose, the "**STLIEOM**" means, in respect of each RCM and any day, the stress-tested loss in excess of initial margin (determined for a given scenario determined by the Clearing House) which could be incurred by the Clearing House in respect of that RCM's RepoClear Business if that RCM became a Defaulting RCM on that day.
- R.2 Each RCM's RepoClear Contribution (other than a RepoClear Unfunded Contribution) shall be determined by the Clearing House in accordance with the following provisions:
- (a) determinations will be made by the Clearing House initially on a date determined by the Clearing House and thereafter on the date that an RCM joins the RepoClear Service, and at close of business on the first business day of each subsequent month (each a "**RepoClear Determination Date**") provided, however, that, following a Default, any such determinations and any such RepoClear Determination Date which might otherwise have occurred under this Rule R.2 shall be suspended for the duration of the period (the "**RepoClear Default Period**") commencing on the date of such Default and terminating on the last to occur of the following dates:
    - i the date which is the close of business on the day falling 30 calendar days after the RepoClear Default Management Process Completion Date in relation to such Default (or, if such day is not a business day, the next succeeding business day); and
    - ii where, prior to the to the end of the period referred to in (i) above (or such period as has already been extended pursuant to this sub-paragraph (ii)) one or more subsequent Defaults (each a "**Relevant Default**") occur, the date which is the close of business on the day falling 30 calendar days after the RepoClear Default Management Process Completion Date in relation to a Relevant Default which falls latest in time (or, if such day is not a business day, the next succeeding business day);
  - (b) the "**RepoClear Segregated Fund Amount**" shall be denominated in euro, and, for a given RepoClear Determination Date, shall be the largest of the 20 Combined Loss Values determined under Rule R.1 plus 10%. The RepoClear Segregated Fund Amount shall not be less than EUR 500 million or such greater amount as shall be determined by the LCH risk committee (the "**RepoClear Fund Floor**") and shall not be more than EUR 620 million or such greater amount as shall be determined by the LCH risk committee from time to time on the basis of the stress tests applied to current positions of RCMs (the "**RepoClear Fund Current Maximum Amount**");
  - (c) the RCM's "**RepoClear Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the RCM during the 20 business day period preceding the relevant RepoClear Determination Date in respect of all RepoClear Contracts to which such RCM is a party by the total of such average daily requirements applied to all Non-Defaulting RCMs;



- (d) the RCM's "**Preliminary RepoClear Contribution**" shall be calculated by multiplying the RepoClear Segregated Fund Amount by the RCM's RepoClear Margin Weight;
- (e) if the Clearing Member's Preliminary RepoClear Contribution is below the Minimum RepoClear Contribution for the time being, the Clearing Member's RepoClear Contribution shall be the Minimum RepoClear Contribution;
- (f) the "**RepoClear Actual Total**" shall be calculated by adding together (i) the amount which is the product of the Minimum RepoClear Contribution and the number of Minimum RepoClear Contribution Members; and (ii) the aggregate Preliminary RepoClear Contributions of those RCMs which are not Minimum RepoClear Contribution Members;
- (g) where the RepoClear Actual Total is greater than the RepoClear Fund Current Maximum Amount, the "**RepoClear Excess**" shall be the arithmetical difference between the RepoClear Actual Total and the RepoClear Fund Current Maximum Amount;
- (h) where the RepoClear Actual Total is less than the RepoClear Fund Floor, the "**RepoClear Shortfall**" shall be the arithmetical difference between the RepoClear Fund Floor and the RepoClear Actual Total;
- (i) for each RCM other than a Minimum RepoClear Contribution Member: (i) the RCM's "**RepoClear Discount**" (if any) shall be such RCM's *pro rata* share of the RepoClear Excess calculated as the proportion of such RCM's Preliminary RepoClear Contribution relative to the aggregate Preliminary RepoClear Contributions of all RCMs other than Minimum RepoClear Contribution Members; and (ii) the RCM's "**RepoClear Increase**" (if any) shall be such RCM's *pro rata* share of the RepoClear Shortfall calculated as the proportion of such RCM's Preliminary RepoClear Contribution relative to the aggregate Preliminary RepoClear Contributions of all RCMs other than Minimum RepoClear Contribution Members;
- (j) for each RCM other than a Minimum RepoClear Contribution Member, the RCM's RepoClear Contribution shall be the Preliminary RepoClear Contribution (i) less any RepoClear Discount applicable to the RCM or (ii) plus any RepoClear Increase applicable to the RCM; provided that if the application of any RepoClear Discount would result in a RepoClear Contribution less than the Minimum RepoClear Contribution, such RCM shall pay the Minimum RepoClear Contribution notwithstanding that the arithmetical sum of RepoClear Contributions paid by all RCMs may thereby exceed the RepoClear Fund Current Maximum Amount; and
- (k) notwithstanding paragraphs (a) to (j), if any RCM has a STLIEOM which is equal to or greater than 45% of the RepoClear Segregated Fund Amount, the Clearing House may require such RCM to pay an additional amount as margin.

R.3 For the purposes of the calculations under Rules R.1 and R2:

- (a) references to "RepoClear Clearing Members" or "RCMs" do not include references to Defaulting RCMs (apart from any Defaulting RCM in respect of which the Clearing House permits the application of Rule R.2) or persons which were formerly RCMs but are not RCMs at the RepoClear Determination Date at which the relevant determination is made;

- (b) no account shall be taken, in calculating initial margin or RepoClear Margin Weight under Rule R.2 of any offsets in the initial margin required for RepoClear Contracts from an RCM, which may otherwise be permissible under the Procedures or other arrangements applicable;
  - (c) provided that the RCM is not a Defaulting RCM, the amount of its RepoClear Contribution shall be calculated in accordance with and subject to Rule R.2. The provisions of Rule R.2 and this Rule do not apply to a Defaulting RCM, unless the Clearing House so permits in any particular case; and
  - (d) notwithstanding Rule ~~23(a)(i)~~, 33, if a RCM notifies the Clearing House on the RepoClear Default Management Process Completion Date that it wishes to resign from the RepoClear Service, such RCM, assuming all other requirements for termination of membership have been satisfied by the next following RepoClear Determination Date, shall cease to be a RCM for the purpose of Rule R.2 on and from the date upon which its RepoClear Contribution is repaid to it by the Clearing House and such payment will be made by the Clearing House following the subsequent RepoClear Determination Date in accordance with the Procedures.
- R.4 Without prejudice to any other requirements which the Clearing House may impose, the amount of the RepoClear Contribution of a New Member shall be the sum of (a) the Minimum RepoClear Contribution and (b) any supplementary sum determined by the Clearing House in its discretion and notified to the New Member. The Clearing House shall determine the amount of such supplementary sum by reference to the actual or expected level of clearing activity of the New Member.
- R.5 Upon determination of the amount of a RepoClear Contribution in accordance with Rule R.2:
- (a) if the amount of the RepoClear Contribution of an RCM immediately before close of business on the relevant RepoClear Determination Date exceeds the amount of the RCM's RepoClear Contribution as determined under Rule R.2 as at close of business on that day, the excess shall be paid by the Clearing House to such RCM in accordance with the Procedures;
  - (b) if the amount of the RepoClear Contribution of an RCM immediately before close of business on the relevant RepoClear Determination Date is the same as the amount of the RCM's RepoClear Contribution as so determined, no sum shall then be payable by or to such RCM in respect of its Contribution; and
  - (c) if the amount of the RepoClear Contribution of an RCM immediately before close of business on the relevant RepoClear Determination Date is less than the amount of the RCM's RepoClear Contribution as so determined, the shortfall shall be paid by such RCM to the Clearing House in accordance with the Procedures.

RepoClear Contributions shall at all times be denominated in EUR. However, a RCM may pay its RepoClear Contribution in either EUR or GBP in accordance with the Procedures.

The provisions of this Rule do not apply to a Defaulting RCM, unless the Clearing House so permits in any particular case.

- R.6 On any day interest shall accrue on the amount of each RepoClear Contribution then held by the Clearing House, to the extent that it has not been applied under Rule 26 or

further RepoClear Unfunded Contributions in respect of subsequent Defaults, (which, for the avoidance of doubt, can never be a First Default), provided that RepoClear Unfunded Contributions will not be payable in respect of any more than three Defaults in any six month period (commencing on the date of delivery of the first RepoClear Unfunded Contribution Notice in respect of the First Default).

RCMs will be required to deposit the full amount of their RepoClear Unfunded Contributions (without exercising any rights of set-off or counterclaim) with the Clearing House on the business day following receipt of a RepoClear Unfunded Contribution Notice.

For the avoidance of doubt, references to "RCMs" for the purposes of this Rule R.8 include any RCM (other than a Defaulting RCM) who is: (i) a Retiring Member but whose status as a Clearing Member has not yet been terminated; and (ii) a Resigning Member whose resignation from the RepoClear Service is not yet effective.

#### R.9 RepoClear Loss Distribution Process

Where, after a Default, the Clearing House determines that the RepoClear Excess Loss resulting from the Default will exceed the amounts to be applied to it under Rule 16(a) to (g), the Clearing House may implement the process (the "**RepoClear Loss Distribution Process**") described in this Rule R.9.

(a) For the purposes of this Rule R.9, the following definitions will apply:

**"Available Resources"** means, in respect of any Loss Distribution Period, the aggregated amount which would be paid by the Clearing House for application in meeting any loss suffered or incurred by the Clearing House in accordance with Rule 16(a) to (g) as at the relevant Last Call Prior to Default.

**"Cash Payment"** means, in respect of any business day, the aggregated amount which would be paid by the Clearing House to a Non-Defaulting RCM (expressed as a positive number) or by such RCM to the Clearing House (expressed as a negative number) in a Cash Payment Currency on such business day.

**"Cash Payment Currency"** means, in respect of each RCM, the Currency in which it paid its RepoClear Contribution.

**"Cumulative LCH Transfer Cost"** means, as determined on any business day during any Loss Distribution Period, the sum of any LCH Transfer Cost for each day from but excluding the relevant Last Call Prior to Default to and including such business day.

**"Last Call Prior to Default"** means the most recent business day on which payments of cover required to be made by RCMs were made in full.

**"LCH Transfer Cost"** means any cost (converted, where applicable, into EUR at a rate of exchange determined by the Clearing House in its sole discretion) to the Clearing House of transferring the rights and obligations arising out of the RepoClear Contracts of a Defaulting RCM to any other RCM.

**"LCH Uncovered Loss"** means, in respect of the Clearing House, as determined on any business day in any Loss Distribution Period, the amount greater than zero calculated in accordance with the following formula:

$$(TRCMCP + CLC) - (TAR + TLD)$$

where:

**"TRCMCP"** means the TRCM Cash Payment;

**"CLC"** means the Cumulative LCH Transfer Cost;

**"TAR"** means the Total Available Resources; and

**"TLD"** means Total Loss Distribution; and

the LCH Uncovered Loss as at the Last Call ~~prior~~Prior to Default shall be zero.

**"Loss Distribution Cap Amount"** means, in respect of each Non-Defaulting RCM and any Loss Distribution Period, an amount equal to the product of (i) 100 per cent. and (ii) the RepoClear Contribution of such Non-Defaulting RCM as at the last RepoClear Determination Date prior to the date when the Default occurred at the beginning of that Loss Distribution Period;

**"Loss Distribution Day"** means any business day in a Loss Distribution Period on which the Clearing House, prior to calling for: (i) cover in respect of margin in accordance with the provisions of the Procedures; and (ii) Required Collateral, on such business day, determines that the LCH Uncovered Loss for that business day is greater than zero.

**"Loss Distribution Period"** means the period from, but excluding, the day on which a Default occurs with respect to an RCM to the business day on which all Loss Distribution Charges in respect of such Default have been paid in full.

**"Rate of Exchange"** means, for any day, the applicable rate of exchange for converting one currency into another as determined by the Clearing House by reference to Reuters;

**"RCM Cash Payment"** means, in respect of any Cash Payment (converted, where applicable into EUR at a rate of exchange determined by the Clearing House in its sole discretion) and any business day (a) the amount of any such Cash Payment which would be paid by the Clearing House to a Non-Defaulting RCM in respect of the RepoClear Contracts of a Defaulting RCM on such business day (expressed as a positive number) excluding any cash payments made by the Clearing House to such Non-Defaulting RCM in respect (i) of delivery versus payment transfers and (ii) all margin payments other than Variation Margin; and (b) the amount of any Cash Payments made by the relevant Non-Defaulting RCM to the Clearing House in respect of the RepoClear Contracts of a Defaulting RCM on such business day (expressed as a negative number) excluding any cash payments made by the relevant Non-Defaulting RCM to the Clearing House in respect (i) of delivery versus payment transfers and (ii) all margin payments other than Variation Margin.

**"Total Available Resources"** means, during a Loss Distribution Period the sum of (i) the Available Resources and (ii) any Unfunded Contributions.

**"Total Loss Distribution"** means, as determined on the day an LCH Uncovered Loss is being determined, the sum of any Loss Distribution Charges paid by Non-Defaulting RCMs from but excluding relevant Last Call Prior to Default to and excluding such day.

**"TRCM Cash Payment"** means the total of all cumulative RCM Cash Payments for each business day from but excluding the relevant Last Call Prior to Default up to and including the business day upon which LCH Uncovered Losses are being determined.

- (b) Loss Distribution Charges