



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

## **Clearing Rules**

### **March 2023**

#### **IMPORTANT NOTICE**

The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC; and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum.

Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only.

Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

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Exhibit 2: Customer-CM Transaction Standard Terms

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## Part 1 General Provisions

### Rule 101 Definitions

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

The term "**Accounting Standards**" means applicable accounting standards and principles.

The term "**Affected Customer**" means a Customer in respect of whom Applicable Laws in the Customer's jurisdiction of establishment or applicable in the context of activity on a relevant trading platform do not prevent or prohibit a Customer Account providing individual client segregation, a Customer Account providing omnibus client segregation (in each case, in the manner set out in Articles 39 and 48 of EMIR) a Customer Account that is a segregated account for the exclusive purpose of holding the assets and positions of the clearing member's indirect clients that are managed by the clearing member or a Customer Account that is a segregated account for the exclusive purpose of holding the assets and positions of the indirect clients of each client of the clearing member that are managed by the clearing member (in each case, in the manner set forth under EMIR and MiFID II) being provided to the Customer.

The term "**Affected FM Party**" means a Person prevented, hindered or delayed by a Force Majeure Event.

The term "**Affiliated Person**" or "**Affiliate**" means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person.

The term "**AFM**" means the Dutch Authority for the Financial Markets (*Autoriteit financiële markten*).

The term "**Appeal Panel**" means the panel at which an appeal of a decision of a Disciplinary Panel or a sanction imposed as part of any Summary Disciplinary Process is heard pursuant to Rule 1005 or Rule 1008, respectively.

The term "**Applicable Law**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, direction, published practice or concession, regulatory requirement, judgment or decision of a Governmental Authority and any memorandum of understanding (or equivalent) between the Clearing House and one or more Governmental Authorities or between Governmental Authorities or any consent entered into by the Clearing House for the benefit of one or more Governmental Authorities and, for the avoidance of doubt, includes all the provisions of EMIR, the FSMA, the FCA Rules, the PRA Rules, the Dutch Financial Supervision Act, rules, regulations, guidance and approach documents of the Bank of England, the AFM and DNB, the CEA, the rules and regulations of the CFTC, the Exchange Act, the rules and regulations of the SEC, any rules or regulations of any other Regulatory Authority and applicable Insolvency laws (including the U.S. Bankruptcy Code and the Dutch Insolvency Act (*faillissementswet*)).

The term "**Approved Financial Institution**" means a credit institution, bank, trust company or other institution which is an "institution" as defined in the Settlement Finality Directive and which has been designated as an approved financial institution by the Clearing House for purposes of making and receiving cash transfers to and from the Clearing House and Payment Transfer Orders.

The term "**Assessment Amount**" means the total amount of all Assessment Contributions payable by Clearing Members pursuant to Rule 909(b) in respect of an Event of Default.

The term "**Assessment Contribution**" has the meaning set out in Rule 909(b).

The term "**Bankruptcy**" means, in relation to a Person, where that Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent, is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due or is granted suspension of payments; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it, by a Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such Governmental Authority; (v) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in (iv) above and either (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (2) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (viii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (ix) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in (i) to (viii) above; or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

The term "**Basis Trades**" means 'basis trades' under Market Rules.

The term "**Board**" means the board of Directors of the Clearing House and, in the context of any power, discretion or authority of the board of the Clearing House, includes any other body established thereunder or given powers of discretion thereby, whether called a board, a committee or otherwise of the Clearing House.

The term "**Business Day**" means a day on which the Clearing House is open for business or, in relation to deliveries in respect of a particular Contract, has the meaning given in the Delivery Procedures or, in relation to certain Contract Terms, has the meaning given in or pursuant to the Contract Terms Procedures or Market Rules.

The term "**Buyer**" means, in relation to deliveries under Part 7 or a Contract of Sale, the Clearing Member or the Clearing House, whichever is obliged to receive delivery of a Deliverable (whether itself or through another Person).

The term "**Buying Counterparty**" means, in respect of a Contract: (a) except in circumstances in which sub-paragraph (c) below applies, the Clearing Member that was, before formation of a Contract, party to the corresponding Transaction as buyer; (b) except in circumstances in which sub-paragraph (c) below applies, where a Non-FCM/BD Clearing Member's Customer is a party to the corresponding Transaction as buyer, the Clearing Member that provides clearing services to that Customer in relation to the Transaction in question (or, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); (c) where an FCM/BD Customer is a party to the corresponding Transaction as buyer, the FCM/BD Clearing Member clearing on behalf of such FCM/BD Customer; or (d) overriding any designation that would occur pursuant to (a), (b) or (c) above, where one Clearing Member that would be the Buying Counterparty in accordance with (a), (b) or (c) above has allocated a Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Transaction is allocated.

The term "**Call**" means an Option pursuant to which a Person with a Long position has the actual or notional right to buy a Deliverable from a Person with a Short position at the Strike Price and at a specified time.

The term "**Capital**":

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

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

The term "**Capital Requirements Directive**" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, as amended, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and includes all

delegated or implementing regulations, national implementing measures in any member state of the European Economic Area, decisions and technical standards thereunder as interpreted in accordance with any applicable guidance publicly issued by ESMA or any Regulatory Authority.

The term "**Capital Requirements Regulation**" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, as amended, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 684/2012, and includes all delegated or implementing regulations, decisions and technical standards thereunder as interpreted in accordance with any applicable guidance publicly issued by ESMA or any Regulatory Authority.

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

The term "**CET**" means Central European Time or Central European Summer Time, when applicable.

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

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

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

The term "**Charged Collateral**" means Margin (or Permitted Cover in respect thereof) provided by a Clearing Member in respect of a Charged Collateral Account by way of charge pursuant to a Charged Collateral Addendum and transferred to a specified account of the Clearing House that has been designated for the transfer to it of charged collateral in accordance with the Finance Procedures, and any proceeds of realisation of the same.

The term "**Charged Collateral Account**" means a particular Proprietary Account or Customer Account in respect of which a Charged Collateral Addendum has been executed and in respect of which the Clearing House has agreed that some or all non-cash Margin (or Permitted Cover in respect thereof) may be provided by a Clearing Member by way of a charge in accordance with such Charged Collateral Addendum rather than by way of title transfer pursuant to the Clearing Membership Agreement or pledge pursuant to a Pledged Collateral Addendum.

The term "**Charged Collateral Addendum**" means a charged collateral addendum governed by the laws of the Netherlands, entered into in connection with a Clearing Membership Agreement between a Clearing Member and the Clearing House and relating to a particular Charged Collateral Account.

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

The term "**Clearing**" means the central counterparty and, where relevant, related risk, Open Contract Position, Margin, settlement, delivery, administrative, acceptance, transaction data,

settlement price establishment and other functions of the Clearing House pursuant to these Rules.

The term "**Clearing House**" means ICE Clear Netherlands B.V., a private limited liability company incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, the Netherlands and registered with the Trade Register of the Chamber of Commerce under number 51976196.

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

The terms "**Clearing House Target 2 Account**" means an account of the Clearing House at a Target 2 Central Bank.

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

The term "**Clearing House Initial (Energy) Contribution**" means that portion of the Clearing House Initial Contribution as is allocated by the Clearing House as applying primarily to Energy Contracts and residually to Financials & Softs Contracts

The term "**Clearing House Initial (Financials & Softs) Contribution**" means that portion of the Clearing House Initial Contribution as is allocated by the Clearing House as applying primarily to Financials & Softs Contracts and residually to Energy Contracts.

The term "**Clearing House Initial Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(b)(ii) and as maintained pursuant to Rule 1103(f) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Second Contribution**" means amounts allocated by the Clearing House as being available to be applied following an Event of Default in accordance with Rule 908(b)(v) and as maintained pursuant to Rule 1103(f) including, where the context so requires, any proceeds of realisation of the same.

The term "**Clearing House Second (Energy) Contribution**" means that portion of the Clearing House Second Contribution as is allocated by the Clearing House as applying primarily to Energy Contracts and residually to Financials & Softs Contracts.

The term "**Clearing House Second (Financials & Softs) Contribution**" means that portion of the Clearing House Second Contribution as is allocated by the Clearing House as applying primarily to Financials & Softs Contracts and residually to Energy Contracts.

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



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

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

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

The term "**Clearing Processing System**" means the clearing processing system for Energy Contracts, the universal clearing platform for Financials & Softs Contracts and other clearing processing systems and platforms used by the Clearing House. The term "**Collateral Offset Obligations**" means obligations of a Clearing Member arising pursuant to Rule 919 to pay the Clearing House, which offset obligations of the Clearing House to pay the Clearing Member or return assets in respect of Permitted Cover transferred, charged or pledged to the Clearing House by the Clearing Member.

The term "**Component Transaction**" has the meaning set out in Part 15.

The term "**Comprehensive Sanctions Jurisdiction**" means a country or territory which is targeted by country or territory-wide Sanctions (excluding Sanctions targeting arms or military sectors or equipment), including any country or territory specified in Circulars issued by the Clearing House from time to time.

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

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

For the definition of the term "**Contract Position**", see 'Open Contract Position' below.

The term "**Contract Terms**" means all the terms and conditions of a Contract, as applicable, in: (i) the general conditions set out in the Contract Terms Procedures; (ii) the relevant Market Rules; and (iii) (except in relation to Contracts which are settled only in cash) if such Contract

becomes deliverable or is a Contract of Sale, the relevant Delivery Procedures for such class of Contract, the specified terms set out in the Contract Terms Procedures and the relevant Market Rules, as applicable.

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

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

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

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

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

The term "**Custodial Losses**" means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House, to the extent that the same are not subjected to any power of assessment under Rule 909 or any mechanism under Rules 914 to 916, arising in connection with the default of any Custodian or incurred in connection with the applicable rules, terms and conditions or other contractual provisions of any Custodian in respect of any deposit, holding, custody, interest, investment(s) or reinvestment(s) by or of the Clearing House (or any person acting for it or holding assets of the Clearing House or an account of the Clearing House) of assets representing Original Margin, Guaranty Fund Contributions or Permitted Cover (including any such assets transferred by a Defaulter) or the proceeds of any of the foregoing, but excluding (i) any losses, liabilities, damages, costs, claims, shortfalls or expenses resulting directly from a failure by the Clearing House to comply with its own investment policies; and (ii) any Pledged Collateral Losses.

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

The term "**Custodian**" means any bank, custodian, sub-custodian, registry, nominee, agent, depository or settlement system.

The term "**Customer**" means a Person who is a client or customer of a Clearing Member (which Customer may, subject to Applicable Law, be acting for one or more other clients or customers for purposes of the clearing of Contracts) in respect of business on the Clearing House.

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

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

- (i) in relation to an FCM/BD Clearing Member, any of the following categories of Customer Account of such FCM/BD Clearing Member:
  - (A) each different DCM Customer Account;
  - (B) each different Non-DCM/Swap Customer Account; and
  - (C) [Not Used];
  - (D) each different General Customer Account;
  - (E) [Not Used];
- (ii) in relation to a Non-FCM/BD Clearing Member, any of the following categories of Customer Account of such Non-FCM/BD Clearing Member:
  - (A) each different Segregated Customer Omnibus Account;
  - (B) each different Segregated TTFCOA Customer Omnibus Account;
  - (C) [Not Used];
  - (D) [Not Used];
  - (E) each different Individually Segregated Margin-flow Co-mingled Account;
  - (F) each different Omnibus Margin-flow Co-mingled Account;
  - (G) [Not Used];
  - (H) each different Standard Omnibus Indirect Account;
  - (I) each different Standard TTFCOA Omnibus Indirect Account; and
  - (J) [Not Used];
  - (K) [Not Used];
  - (L) each different Segregated Gross Indirect Account.

The term "**Customer Account Contract**" means a Contract recorded in a Customer Position Account.

The term "**Customer Account Position**" means an Open Contract Position as recorded in a Customer Position Account, or any sub-account thereof.

The term "**Customer-Clearing Member Agreement**" has the meaning set out in the relevant Standard Terms.

The term "**Customer-CM Collateral**" means collateral provided by a Customer to a Clearing Member as collateral for the Customer's obligations (or, where applicable, other obligations) to the Clearing Member under Customer-CM Transactions.

The term "**Customer-CM Transaction**" means a transaction between a Non-FCM/BD Clearing Member and a Customer on economic terms similar to those of a corresponding Contract recorded in one of a Clearing Member's Segregated Customer Omnibus Accounts, Segregated TTFCA Customer Omnibus Accounts, Margin-flow Co-mingled Accounts, Standard Omnibus Indirect Accounts, Standard TTFCA Omnibus Indirect Accounts or Segregated Gross Indirect Accounts (except, where applicable, the position of the Clearing Member as Buying Counterparty or Selling Counterparty and otherwise due to being governed by the Standard Terms).

The "**Customer Margin Account**" forms part of a Customer Account and the term means an account with the Clearing House opened in the name of a Clearing Member for the recording of debits and credits of Margin in respect of Customer Account Contracts recorded in the related Customer Position Account, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers.

The "**Customer Position Account**" forms part of a Customer Account and the term means an account (if any) with the Clearing House opened in the name of a Clearing Member relating to Contracts to which the Clearing Member is a party as a result of it acting for one or more Segregated Customers and in which the Clearing House records such Contracts, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers.

The term "**Data Protection Regulation**" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

The term "**DCC**" means the Dutch Civil Code (*Burgerlijk Wetboek*).

The term "**DCC Financial Collateral Provisions**" means the provisions laid down in title 2 of book 7 of the DCC, entitled Financial Collateral Agreements (*Financiële zekerheidsovereenkomsten*).

The term "**DCM Customer**" means any FCM/BD Customer with respect to any Contract arising as a result of a Transaction in U.S. Futures. A Person may be a DCM Customer in relation to certain Contracts and another category of FCM/BD Customer in relation to other Contracts.

The term "**DCM Customer Account**", in respect of an FCM/BD Clearing Member, means a kind of Customer Account with the Clearing House (in its capacity as a registered U.S.

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

The term "**Default Amount**" has the meaning given to that term in Rule 908(e).

The term "**Default Auction**" means an auction which takes place in accordance with the Default Auction Procedures.

The term "**Default Auction Procedures**" means the Auction Terms for Default Auctions.

The term "**Default Notice**" means a notice issued by the Clearing House under Rule 902(b).

The term "**Default Portability Rules**" means Rule 904 and any terms setting out the meaning of the defined terms used therein.

The term "**Defaulter**" means a Clearing Member or former Clearing Member or Disclosed Principal Member or former Disclosed Principal Member in respect of whom an Event of Default has occurred.

The term "**Deliverable**" means any property, right, interest, register or book entry, commodity, certificate, property entitlement or Investment, which is capable of being delivered pursuant to a Contract or with respect to which settlement amounts are calculated.

The term "**Delivery Default**" means a Clearing Member failing to deliver or transfer to the Clearing House in full any Deliverable required to be delivered or transferred by that Clearing Member under or in connection with any Contract, including a failure to deliver or transfer a Deliverable in accordance with the applicable Delivery Procedures, unless such failure constitutes a Force Majeure Event affecting the relevant Clearing Member.

The term "**Delivery Facility**" means any Person or facility used for the delivery of Deliverables (excluding Transferors and Transferees), including but not limited to, warehouses, balancing systems, gas networks, central securities depositories, settlement systems, designated systems, custodians, vessels, ports, terminals and Emissions Registries and their operators, facilities, records, ledgers and systems (including gas or electricity transmission systems).

The term "**Designated Controller**" means a Controller that has: (i) been notified to the Clearing House by a Clearing Member as a controller which should be taken into account by the Clearing House for purposes of calculating the Capital or Margin requirements of the Clearing Member; and (ii) executed in favour of, and delivered to, the Clearing House an acceptable Controller Guarantee, which Controller Guarantee remains valid and in effect.

The term "**Director**" means a director of the Clearing House.

The term "**Disciplinary Panel**" means a disciplinary panel established pursuant to Rule 1003.

The term "**Disclosed Principal Member**" means, where a Clearing Member acts as agent for a disclosed principal in respect of its Energy Contract clearing business and such principal has been admitted by the Clearing House as a Disclosed Principal Member, that principal.

The term "**Dispute**" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with these Rules or any Contract, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of these Rules or any Contract.

The term "**DNB**" means the Dutch Central Bank (*De Nederlandsche Bank N.V.*)

The term "**Dutch Bankruptcy Act**" means the Dutch bankruptcy act (*faillissementswet*).

The term "**Dutch Data Protection Act**" means the Dutch data protection act (*Wet bescherming persoonsgegevens*).

The term "**Dutch Financial Supervision Act**" means the Dutch financial supervision act (*Wet op het financieel toezicht*) and the rules and regulations promulgated thereunder.

The term "**EFP**" means an 'exchange for physicals' transaction under applicable Market Rules or any similar transaction under any Market Rules.

The term "**EFRP**" means an 'exchange for related positions' transaction under applicable Market Rules, or any similar transaction under any Market Rules.

The term "**EFS**" means an 'exchange for swaps' transaction under applicable Market Rules or any similar transaction under any Market Rules.

The term "**Eligible Currencies**" means EUR and such other currencies as are specified as eligible in the Finance Procedures or otherwise by the Clearing House from time to time.

The term "**Emission Allowance**" has the same meaning as that given to the term in MiFID II.

The term "**Emissions Registry**" means a 'registry' (within the meaning of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending

Council Directive 96/61/EC or otherwise) that has been approved by the Clearing House for purposes of deliveries of Emission Allowances under Contracts.

The term "**EMIR**" (European Market Infrastructure Regulation) means Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories and includes all delegated or implementing regulations, decisions and technical standards thereunder as interpreted in accordance with any applicable guidance publicly issued by ESMA or any Regulatory Authority.

The term "**Eurosystem**" has the meaning as set out in the Statute of the European System of Central Banks and of the European Central Bank.

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

The term "**Energy**" is used to refer to the Clearing of Contracts arising on or reported through Markets, excluding the Clearing of Financial & Softs products.

The term "**Energy Block Trade Facility**" means a 'block trade' transaction under applicable Market Rules or any similar transaction under any Market Rules for Energy Transactions.

The term "**Energy Block Transaction**" means an EFS, EFP, EFRP, Basis Trade or Energy Block Trade Facility transaction in respect of Energy reported through a Market in accordance with the relevant Market Rules.

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

The term "**Energy Contract**" means a Contract resulting from the clearing of an Energy Transaction.

The term "**Energy Matched Transaction**" means a Transaction that occurs or occurred in respect of Energy on a Market in accordance with the applicable Market Rules.

The term "**Energy Transaction**" means an Energy Matched Transaction or an Energy Block Transaction where the related trade particulars or data submitted or provided to the Clearing House or the relevant Market by or on behalf of a Clearing Member or Clearing Members (including by any Representative) will give rise to a Contract or Contracts if the relevant circumstances specified in Rule 401(a) occur.

The term "**ESMA**" means the European Securities and Markets Authority or any successor thereto.

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

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

The term "**Exchange**" means any exchange or similar body duly authorised, regulated, recognised or licensed (to the extent necessary) under Applicable Laws in any jurisdiction, including, but not limited to, any recognised investment exchange, recognised overseas investment exchange, designated investment exchange, designated contract market, national securities exchange, swap execution facility, security-based swap execution facility, exempt commercial market, regulated market, alternative trading system, multilateral trading facility, swap execution facility, organised trading facility, systematic internaliser, trade affirmation or confirmation platform or similar entity.

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

The term "**Exchange Delivery Settlement Price**" or "**EDSP**" in respect of a Set of Contracts or a Contract, means the applicable daily closing, expiry, delivery, cash settlement price or other relevant price in each case determined pursuant to Rule 701 or Rule 802, as applicable, which for the avoidance of doubt may be a positive or negative number or zero.

The term "**Externalised Payment Mechanism**" has the meaning set out in Rule 302(a).

The term "**F&O**" means futures and options and refers to the Clearing of Energy or Financials & Softs products or both.

The term "**Failure To Pay**" means the failure of the Clearing House to make any payment or deliver any asset when due, pursuant to Part 3 of the Rules or any Pledged Collateral Addendum or Charged Collateral Addendum and the Finance Procedures, if such failure is not remedied on or before:

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

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

The term "**FCA**" means the UK's Financial Conduct Authority or any successor thereto.



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

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

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

The term "**FCM/BD Customer**" means any Customer that is a customer (as defined in CFTC Rule 39.2) of an FCM/BD Clearing Member with respect to any Contract in one or more account classes (as defined in CFTC Rule 190.01) (other than a non-public customer as defined in CFTC Rule 190.01).

The term "**Financial Collateral Directive**" means Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements and all delegated or implementing regulations, decisions and technical standards thereunder (and any national legislation implementing Directive 2002/47/EC in any EEA member state).

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

The term "**Financial Indebtedness**" means any indebtedness for or in respect of: (a) monies borrowed; (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with applicable accounting standards, be treated as a finance or capital lease; (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis); (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and (h) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in (a) to (g) above.

The term "**Financials & Softs**" is used to refer to the Clearing of Contracts arising on or reported through the Financials & Softs segment of a Market.

The term "**Financials & Softs Block Contract**" means a Contract resulting from a Financials & Softs Block Transaction.

The term "**Financials & Softs Block Trade Facility**" means the block trade facility operated by a Market in accordance with the relevant Market Rules for Financials & Softs Transactions.

The term "**Financials & Softs Block Transaction**" means an EFS, EFP, EFRP, Basis Trade or Financials & Softs Block Trade Facility transaction in respect of Financials & Softs reported through a Market in accordance with the relevant Market Rules.

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

The term "**Financials & Softs Contract**" means a Financials & Softs Block Contract or a Financials & Softs Matched Contract.

The term "**Financials & Softs Matched Contract**" means a Contract resulting from a Financials & Softs Matched Transaction.

The term "**Financials & Softs Matched Transaction**" means a Transaction that occurs or occurred in respect of Financials & Softs on a Market in accordance with the relevant Market Rules.

The term "**Financials & Softs Transaction**" means a Financials & Softs Matched Transaction or a Financials & Softs Block Transaction where the related trade particulars or data submitted or provided to the Clearing House or a Market by or on behalf of a Clearing Member or Clearing Members (including by any Representative) will give rise to a Contract or Contracts if the relevant circumstances specified in Rule 401(a) occur.

The term "**FINRA**" means the Financial Industry Regulatory Authority, Inc., or any successor thereto.

The term "**Force Majeure Event**" means any occurrence outside the control of the Clearing House or the relevant Clearing Member, which hinders or prevents the performance in whole or in part of any of its obligations hereunder (excluding an obligation to make a payment, except for a payment by the Clearing House to a Clearing Member that would be funded from a Clearing House AFI Account at a Concentration Bank which Concentration Bank has not released or made available funds to the Clearing House when expected or required) (and, in relation only to any obligation of the Clearing House or a Clearing Member under a Contract, which obligation has not yet fallen due, such an occurrence which would hinder or prevent performance in whole or in part of any of its obligations thereunder were the occurrence or effects of the occurrence to continue until the date of performance of the relevant obligation), including, but not limited to, fire, flood, storm, earthquake, explosion, war, hostilities, accidents howsoever caused, strike, labour dispute, lockout, work to rule or other industrial dispute, lack of energy supply, disruption or blackout of gas or electricity transmission systems, criminal action, terrorist action, civil unrest, embargoes, acts of God, acts of a public enemy, unavailability or impairment of computer or data processing facilities, the actions or omissions of third Persons (including, without limitation, Repositories, Delivery Facilities, Approved Financial Institutions, Target 2 Central Banks, Concentration Banks, bank or electronic transfer systems, including Target 2, Exchanges, Markets, Clearing Organisations, Governmental Authorities and Regulatory Authorities, but excluding the Clearing House in the case of a Force Majeure Event affecting the Clearing House and further excluding a Clearing Member, its Customers, Transferors and Transferees in the case of a Force Majeure Event affecting a

Clearing Member) and Illegality or Impossibility; or, in relation to delivery of a Deliverable pursuant to any Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that Contract under the Contract Terms or Market Rules.

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

The term "**Future**" means a Contract subject to Clearing by the Clearing House that is a 'future' within the meaning of that term as it is used in MiFID II or any similar investment which may be labelled as a 'spot', 'forward' or 'swap' contract or treated as such under any Applicable Law or any economically similar Contract that is not an investment, but excluding for the avoidance of doubt Options.

The term "**GBP**" means the lawful currency from time to time of the United Kingdom.

The term "**General Customer**" means, for an FCM/BD Clearing Member, a Customer that is not a DCM Customer, Non-DCM/Swap Customer. A Person may be a General Customer of an FCM/BD Clearing Member in relation to certain Transactions or Contracts and another category of FCM/BD Customer of an FCM/BD Clearing Member in relation to other Transactions or Contracts.

The term "**General Customer Account**" means a kind of Customer Account with the Clearing House opened in the name of an FCM/BD Clearing Member for the recording of Contracts (other than U.S. Futures, Swaps or Non-DCM/Swaps) to which that FCM/BD Clearing Member is a party as a result of it acting for one or more General Customers, and related Margin.

The term "**Governmental Authority**" means any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction, including any entity that is named in the definition of the term "Regulatory Authority".

The term "**Group Company**" means, with respect to any entity, an undertaking which is a parent undertaking or subsidiary undertaking of that entity or a subsidiary undertaking of any parent undertaking of that entity. For the purposes of this definition, the expressions "parent undertaking" and "subsidiary undertaking" shall have the meanings given to them in articles 2(9) and 2(10), respectively, of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

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

The term "**Guaranty Fund Contribution**" means Permitted Cover transferred by a Clearing Member to the Clearing House as a contribution to the Guaranty Fund pursuant to Part 11 that has not been applied pursuant to Part 9 and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Guaranty Fund Period**" means a period for which the total amount of Guaranty Fund Contributions for the Guaranty Fund is fixed pursuant to the Finance Procedures (subject to any termination or suspension of any Clearing Member's membership or status, new Clearing Members making Guaranty Fund Contributions and the Clearing House's discretions pursuant to Part 11).

The term "**Guidance**" means guidance issued by the Clearing House pursuant to Rule 109(f).

The term "**HM Treasury**" means Her Majesty's Treasury in the UK and any successor thereto.

The term "**ICE Endex**" means ICE Endex Markets B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under Dutch law, registered with the trade register of the chamber of commerce in Amsterdam, the Netherlands, under number 09100980, and the regulated market it operates pursuant to a licence under section 5:26(1) of the Dutch Act on the Financial Supervision (*Wet op het financieel toezicht*).

The term "**ICE Block Contract**" means a Contract resulting from an ICE Block Transaction.

The term "**ICE Block Trade Facility**" means the over-the-counter clearing services operated by an ICE Market in accordance with the relevant ICE Market Rules.

The term "**ICE Block Transaction**" means a Basis Trade, EFRP, EFS, EFP or ICE Block Trade Facility transaction reported through an ICE Market in accordance with the relevant ICE Market Rules.

The term "**ICE Contract**" means an ICE Block Contract or ICE Matched Contract.

The term "**ICE Group**" means the Clearing House and all its Group Companies.

The term "**ICE Matched Contract**" means a Contract resulting from an ICE Matched Transaction.

The term "**ICE Market**" means any Market to which the Clearing House provides or may provide Clearing services which is an affiliate of the Clearing House, and includes ICE Endex.

The term "**ICE Market Rules**" means the rules of an ICE Market.

The term "**ICE Matched Transaction**" means a transaction that occurs or occurred on an ICE Market regulated in accordance with the relevant ICE Market Rules.

The term "**ICE Transaction**" means an ICE Matched Transaction or an ICE Block Transaction where the related trade particulars or data submitted or provided to the Clearing House or ICE

by or on behalf of a Clearing Member (including by any Representative) will give rise to a Contract or Contracts if the relevant circumstances specified in Rule 401(a) occur.

The term "**ISDA**" means the International Swaps and Derivatives Association, Inc., and any successor thereto.

The term "**Illegality**" means where, after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, these Rules, the Procedures and the applicable Contract Terms, due to an event or circumstance (other than any action taken by a Clearing Member) occurring after a Contract arises, it becomes unlawful under any Applicable Law on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the Clearing Member of Rules 202 and 203), to perform any absolute or contingent obligation to make a payment or delivery in respect of such Contract, to receive a payment or delivery in respect of such Contract or to comply with any other material provision of the Rules and Procedures relating to such Contract.

The term "**Impossibility**" means where, after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, these Rules, the Procedures and the applicable Contract Terms, due to an event or circumstance (other than any action taken by a Clearing Member) occurring after a Contract arises, it becomes impossible on any day, or it would be impossible if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the Clearing Member of Rules 202 and 203), to perform any absolute or contingent obligation to make a payment or delivery in respect of such Contract, to receive a payment or delivery in respect of such Contract or to comply with any other material provision of the Rules and Procedures relating to such Contract.

The term "**Indirect Client**" has the same meaning as that given to the term "indirect client" in Article 1(a) of Commission (2) Delegated Regulation (EU) No 149/2013, subject to the derogations to that definition set out therein or under MiFID II in the context of long chains.

The term "**Individually Segregated Margin-flow Co-mingled Account**" has the meaning set out in the definition of Margin-flow Co-mingled Account.

The term "**Insolvency**" means, in relation to any Person: a bankruptcy or winding-up petition being presented; a bankruptcy order being made; a suspension of payments or moratorium being granted; a voluntary arrangement being approved; an Insolvency Practitioner being appointed or petition or order being made for such an appointment (other than in connection with a Resolution Step which is not an Unprotected Resolution Step); a composition or scheme of arrangement being approved by a court or other Governmental Authority; an assignment, compromise or composition being made or approved for the benefit of any creditors or significant creditor; an order being made or resolution being passed for winding up; dissolution (including an *ontbinding*); the striking off of that Person's name from a register of companies or other corporate bodies; a distress process being levied or enforced or served upon or against property of that Person; a Governmental Authority making an order, instrument or other measure, pursuant to which any of that Person's securities, property, rights or liabilities are transferred (other than a Resolution Step); a Person filing a notice under section 36(2) of the Dutch tax collection act (*Invorderingswet 1990*); a Person being subjected to emergency

regulations (*noodregeling*) of the Dutch Financial Supervision Act or to measures on the basis of the Act on Special Measure for Financial Institutions (*Wet bijzondere maatregelen financiële ondernemingen*); in respect of that Person; a trust deed granted by it becoming a protected trust deed (where the terms 'trust deed' and 'protected trust deed' are construed in accordance with section 73(1) of the UK's Bankruptcy (Scotland) Act 1985) and any event not otherwise falling within this definition but which constitutes a Bankruptcy in respect of a Clearing Member; or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, change of Control or merger notified to the Clearing House in accordance with Rule 204(a)(i)).

The term "**Insolvency Practitioner**" means a receiver, judicial manager, administrator, bank administrator, temporary administrator, manager or administrative receiver (including *bewindvoerder*), liquidator, conservator, examiner, trustee in bankruptcy (including a *curator*), relevant office-holder (under the UK's Companies Act 1989) or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

The term "**Intellectual Property**" means all intellectual property rights in any part of the world and for the entire duration of such rights, which shall include, without limitation, copyright, trade marks, design rights, patents, domain names, database rights and know-how, in each case whether registered or unregistered and including applications to register and rights to apply for registration, and all similar or equivalent rights which may subsist anywhere in the world.

The term "**Investment**" means a 'financial instrument' within the meaning of MiFID II.

The term "**Investment Losses**" means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House, to the extent that the same are not subjected to any power of assessment under Rule 909 or any mechanism under Rules 914 to 916, arising in connection with the default of the issuer of any instrument and/or the counterparty to any repurchase or reverse repurchase contract or similar transaction in respect of any investment(s) or re-investment(s) by the Clearing House of assets representing Original Margin, Guaranty Fund Contributions or Permitted Cover in respect thereof (including any such assets transferred by a Defaulter) or the proceeds of any of the foregoing, but excluding (i) any losses, liabilities, damages, costs, claims, shortfalls or expenses resulting directly from a failure by the Clearing House to comply with its own investment policies; (ii) all Custodial Losses; and (iii) all Pledged Collateral Losses.

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

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

The term "**Loss Assets**" means NDL/IL Loss Assets and Custodial Loss Assets.

The term "**Margin**" means Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or by way of pledge pursuant to a Pledged Collateral Addendum or charge pursuant to a Charged Collateral Addendum) to the Clearing House (or, in the case of Variation Margin, provided to or by the Clearing House by outright transfer of cash as a settlement payment) pursuant to a requirement for Original Margin or Variation Margin or any other requirement under the Rules or the Finance Procedures and includes, where the context so requires, any proceeds of realisation of the same.

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

The term "**Margin-flow Co-mingled Account**" means a kind of Customer Account of a Non-FCM/BD Clearing Member at the Clearing House for the recording of positions and related Margin, in which solely assets and positions and related Margin relating to a particular Customer (or a particular group of Customers) are recorded, enabling the Clearing House to distinguish the assets and positions recorded in such account from assets, positions and Margin relating to other Customers of the Clearing Member, but in respect of which transfers of Permitted Cover to and from the Clearing House are co-mingled or netted with transfers of Permitted Cover relating to other Margin-flow Co-mingled Accounts of the same Clearing Member that are recorded in the same position-keeping account in accordance with Rules 302(a)(v)-(viii), 302(a)(xii)-(xvi), 503(i) and the Clearing Procedures. A Margin-flow Co-mingled Account may be an Account: (i) in which solely assets and positions and related Margin relating to a particular Customer are recorded, in which case it will be an "**Individually Segregated Margin-flow Co-mingled Account**" and result in 'individual client segregation' for purposes of EMIR; or (ii) in which assets and positions and related Margin relating to a group of Customers (such as, without limitation, Customers that are Affiliates of one another or Customers which are all funds managed by the same fund manager or fund managers that are Affiliates of one another) are recorded, in which case it will be an "**Omnibus Margin-flow Co-mingled Account**" and result in 'omnibus client segregation' for purposes of EMIR.

The term "**Market**" means each ICE Market and any other Exchange for which the Clearing House provides or may provide Clearing services.

The term "**Market Rules**" means the rules, regulations, procedures of, and agreements governing, a Market.

The term "**Membership Category**" means the membership category, as applicable to the clearing permissions of a Clearing Member, that is linked to a specific Guaranty Fund, i.e. currently only F&O.

The term "**MiFID II**" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and includes all delegated or implementing regulations, national implementing measures in any member state of the European Economic Area, decisions and technical standards thereunder as interpreted in accordance with any applicable guidance publicly issued by ESMA or any Regulatory Authority.

The term "**Monetary Default**" means a Clearing Member failing to transfer or pay to the Clearing House in full any Margin, Guaranty Fund Contribution, amount due under or in connection with any Contract or other amount due to the Clearing House or required by or pursuant to Market Rules, unless such failure constitutes a Force Majeure Event affecting the relevant Clearing Member.

The term "**Money Laundering Directive**" means Directive (EU) 2015/849 and the relevant implementing measures in each member state of the European Economic Area which has implemented Directive 2015/849, and the relevant implementing measures in such member state, including the WWFT.

The term "**NAI**" means the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) or any successor thereto.

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

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

The term "**NOK**" means the Norwegian krone, or any other lawful currency that is a successor to it.

The term "**Nominated Bank Account**" means a Nominated Customer Bank Account or a Nominated Proprietary Bank Account.

The term "**Nominated Customer Bank Account**" means an account (if any) of a Clearing Member at an Approved Financial Institution, nominated by the Clearing Member in accordance with the Finance Procedures, used by the Clearing Member for transfers to or from the Clearing House of amounts due in respect of a particular Customer Account (or all its Margin-flow Co-mingled Accounts related to the same position-keeping account or all its Segregated Gross Indirect Accounts related to the same position-keeping account) which may be designated by a Clearing Member for payments in respect of a single Customer Account or Customer Accounts of a particular Customer Account Category (or all its Margin-flow Co-mingled Accounts related to the same position-keeping account or all its Segregated Gross Indirect Accounts related to the same position-keeping account). For the avoidance of doubt, a Nominated Customer Bank Account is not and does not form part of a Customer Account.



The term "**Nominated Proprietary Bank Account**" means an account of a Clearing Member at an Approved Financial Institution, nominated by the Clearing Member in accordance with the Finance Procedures, used by the Clearing Member for transfers to or from the Clearing House of amounts due in respect of a Proprietary Account. For the avoidance of doubt, a Nominated Proprietary Bank Account is not and does not form part of a Proprietary Account.

The term "**Nominated Target 2 Bank Account**" means an account of a Clearing Member at a Target 2 Central Bank, nominated by the Clearing Member in accordance with the Finance Procedures and, subject to Applicable Law, used by the Clearing Member for transfers to or from the Clearing House of amounts due in respect of: (i) a particular Customer Account (or all its Margin-flow Co-mingled Accounts related to the same position-keeping account or all its Segregated Gross Indirect Accounts related to the same position-keeping account) which may be designated by a Clearing Member for payments in respect of a single Customer Account or Customer Accounts of a particular Customer Account Category (or all its Margin-flow Co-mingled Accounts related to the same position-keeping account or all its Segregated Gross Indirect Accounts related to the same position-keeping account); and/or (ii) a Proprietary Account. A Clearing Member may nominate the same Nominated Target 2 Bank Account in respect of more than one Customer Account and or its Proprietary Accounts. A Nominated Target 2 Bank Account that is used in respect of the Accounts mentioned in (i) does not form part of a Customer Account; and a Nominated Target 2 Bank Account that is used in respect of the Accounts mentioned in (ii) does not form part of a Proprietary Account.

The term "**Non-T2 Clearing Member**" means a Clearing Member that is not a T2 Clearing Member.

The term "**Non-DCM/Swap**" means, in relation to an FCM/BD Clearing Member, a Transaction or Contract that is not a U.S. Future, SBS or a Swap (as described in paragraphs (i) or (ii) of the definition thereof) and that is a "foreign future" or "foreign option" made on or subject to the rules of a "foreign board of trade", each as defined in the CEA or regulations thereunder.

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

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

The term "**Non-Default Losses**" means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House that are neither Investment Losses,

Custodial Losses nor Pledged Collateral Losses arising in connection with any event other than an Event of Default and which threaten the Clearing House's solvency.

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

The term "**OFAC**" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

The term "**Omnibus Margin-flow Co-mingled Account**" has the meaning set out in the definition of Margin-flow Co-mingled Account.

The term "**Open Contract Position**", in respect of each Set of Contracts for a Clearing Member from time to time, comprises the Contract Position and the Net Amount Position, where:

(a) *Contract Position* means:

- (i) in relation to a Proprietary Position Account for Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the number that equals the netted sum of buy and sell obligations pursuant to those Contracts recorded in that account;
- (ii) in relation to a Proprietary Position Account for Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the number that equals the netted sum of Long and Short obligations pursuant to those Contracts recorded in that account;
- (iii) in relation to a Customer Position Account for Contracts that are Futures: where a Clearing Member is party to one or more Futures Contracts of a particular Set, the gross number of buy positions and the gross number of sell positions pursuant to those Contracts recorded in that account (subject to any netting pursuant to Rule 406); and
- (iv) in relation to a Customer Position Account for Contracts that are Options: where a Clearing Member is party to one or more Options Contracts of a particular Set, the gross number of Long positions and the gross number of Short positions pursuant to those Contracts recorded in that account (subject to any netting pursuant to Rule 406);
- (v) [Not Used]
- (vi) [Not Used]

in any case as calculated by the Clearing House from time to time based on data received by the Clearing House in respect of Contracts entered into by the Clearing Member up to the close of business on the immediately preceding Business Day (or such other period determined by the Clearing House at its discretion); and

- (b) *Net Amount Position* means the price at which the Contract Position for any Set is recorded on the Clearing House's books based on Exchange Delivery Settlement Prices for each Contract.

The term "**Opening Days**" means the days upon which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Opening Hours**" means the hours during which the Clearing House is operational, which may vary for different Contracts or between deliveries and other business, as notified by the Clearing House from time to time.

The term "**Option**" means a Contract subject to Clearing by the Clearing House that is an 'option' within the meaning of that term as it is used in MiFID II or any economically similar Contract that is not an investment.

The term "**Original Margin**" means the Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or by way of pledge pursuant to a Pledged Collateral Addendum or charge pursuant to a Charged Collateral Addendum) to the Clearing House as collateral for the obligations of a Clearing Member in respect of Contracts pursuant to Part 5 including buyer's security, seller's security, delivery Margin and any margin provided in relation to Contracts pursuant to Rule 502(g), in each case as calculated or permitted to be called in accordance with the risk policies of the Clearing House and including where the context so requires, any proceeds of realisation of the same, but excluding in any case Variation Margin.

The term "**Permitted Co-mingled Contract**" means, with respect to an FCM/BD Clearing Member, a Contract that is a Non-DCM/Swap which has been designated by the Clearing House by Circular and approved by the appropriate Regulatory Authority or Regulatory Authorities to be recorded in a DCM Customer Account, as applicable, rather than a Non-DCM/Swap Customer Account.

The term "**Permitted Cover**" means cash in Eligible Currencies and other assets (being assets within the meaning of the term "financial collateral" as used in Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements) determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions and includes, where the context so requires, any such cash or assets transferred to the Clearing House and any proceeds of realisation of the same. A particular kind of currency or asset may be determined by the Clearing House to be Permitted Cover only in respect of Proprietary Accounts, particular kinds of Customer Accounts, Contracts or certain Sets of Contracts.

The term "**Person**" means any individual, partnership, firm, body corporate, association, trust, unincorporated organisation or other entity, including:

- (a) an investment fund (*Sondervermögen*) within the meaning of the German Investment Act (*Investmentgesetz* – "**InvG**") or the German Investment Capital Act (*Kapitalanlagegesetzbuch* – "**KAGB**"), including a sub-fund (*Teilfonds*) within the

meaning of section 34 para. (2) InvG or a sub-fund (*Teilsondervermögen*) within the meaning of section 96 para (2) KAGB; or

(b) a fund segment of such investment fund,

(in each case under (a) and (b)) managed by a German investment company (*Kapitalanlagegesellschaft*) ("**KAG**") within the meaning of the InvG or by a German management company (*Kapitalverwaltungsgesellschaft*) ("**KVG**") within the meaning of the KAGB; or

(c) any similar structures in any other jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

The term "**President**" means the president of the Clearing House from time to time.

The term "**Procedures**" means the procedures of the Clearing House from time to time, as amended pursuant to Rule 109(e) and any reference to the "**Membership Procedures**", "**Contract Terms Procedures**", "**Finance Procedures**", "**Default Auction Procedures**", "**Business Continuity Procedures**", "**Complaint Resolution Procedures**", "**Delivery Procedures**" or "**Clearing Procedures**" or any other section of the Procedures shall be interpreted accordingly.

The term "**Proprietary Account**" refers to a proprietary account at the Clearing House and all related Margin and comprises a Proprietary Position Account and Proprietary Margin Account.

The term "**Proprietary Account Contract**" means a Contract recorded in a Proprietary Position Account (or any sub-account thereof).

The term "**Proprietary Account Position**" means an Open Contract Position as recorded in a Proprietary Position Account (or any sub-account thereof).

The "**Proprietary Margin Account**" forms part of a Proprietary Account and the term means an account with the Clearing House which is not a Customer Margin Account, opened in the name of a Clearing Member for the recording of debits and credits of Margin in respect of Proprietary Account Contracts recorded in the related Proprietary Position Account, which may be divided for administrative convenience only into sub-accounts.

The "**Proprietary Position Account**" forms part of a Proprietary Account and the term means an account with the Clearing House which is not a Customer Position Account, opened in the name of a Clearing Member in which Proprietary Account Contracts entered into by the Clearing Member (whether directly or indirectly) and/or related Open Contract Positions are recorded, which may be divided for administrative convenience only into sub-accounts.

The term "**Put**" means an Option pursuant to which the Person with a Long position has the actual or notional right to sell a Deliverable to the Person with a Short position at the Strike Price and at a specified time.

The term "**Regulatory Authority**" means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, Exchanges or Clearing Organisations (including, without limitation, the AFM, DNB, FCA, the PRA, any other Person given powers under the FSMA, the Bank of England, HM Treasury, the college (as defined in EMIR) or any member of such college, the European System of Central Banks, the European Central Bank, ESMA, FINRA, the National Futures Association, the CFTC and the SEC).

The term "**Repository**" means a trade repository (as defined in EMIR) used for the reporting of Contracts (which may also be used for the recording of Transactions submitted for Clearing).

The term "**Representative**" means any Person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person and any Persons that any such Person employs, authorises or appoints to act on its behalf, including without limitation any director, partner, officer, executive, employee, Affiliate, Customer, contractor or agent of that other Person (provided, in the case of a Clearing Member, that a Customer will only be treated as a Representative of a Clearing Member in respect of any act, omission, conduct or behaviour in its capacity as a Customer to the extent that the Clearing Member is bound by the conduct of such Customer pursuant to Rule 102(j)).

The term "**Resolution Step**", in respect of a Person other than the Clearing House, means a Governmental Authority exercising one or more of its stabilisation powers or powers to adopt early intervention measures, powers to exercise resolution tools or resolution powers under national legislation of any European Economic Area jurisdiction implementing the Bank Recovery and Resolution Directive (Directive 2014/59/EU) or any similar or analogous steps under similar or analogous Applicable Laws in the European Economic Area.

The term "**Rule Change**" means any amendment, alteration, restatement, addition, deletion or other change to the Rules (excluding, for purposes of this definition, the Procedures, any Guidance or any Circular) or Contract Terms. Rule 109, among others, governs the process for making Rule Changes.

The term "**Rules**" means these rules, together with the Procedures, as interpreted in accordance with Guidance and Circulars.

The term "**Sanction**" means any Applicable Law executing foreign policy, security, sanction, trade embargo, boycott, export control, foreign trade control, non-proliferation or anti-terrorism objectives or similar restrictions on any business with a Comprehensive Sanctions Jurisdiction, sanctions or measures under the Sanctions Act 1977 (*Sanctiewet 1977*), certain types of business or activity or specified Persons that is imposed, administered or enforced from time to time by: (i) the European Union; (ii) HM Treasury or the United Kingdom; (iii) OFAC or the United States of America and/or its President; (iv) the United Nations Security Council; or (v) the Dutch Ministry of Foreign Affairs, the Dutch Ministry of Finance or any other Governmental Authority in the Netherlands; or any of their successors.

The term "**SBS**" means a security-based swap (as defined in the Exchange Act), but does not include U.S. Futures, Non-DCM/Swaps and Swaps.

The term "**SEC**" means the Securities and Exchange Commission of the United States of America, or any successor thereto.

The term "**Sectoral Sanction**" means any Sanction restricting certain types of business which may, as applicable, refer to identified Persons in a particular country.

The term "**Segregated Customer**" means a Customer of a Non-FCM/BD Clearing Member in circumstances where, whether as a result of any requirement of Applicable Law, agreement or arrangement, a customer asset segregation, client money, client asset, trust or other client asset protection regime (being more than the mere requirement arising under EMIR to distinguish

from the Proprietary Account assets and positions of the Clearing Member), such as a requirement on the Clearing Member to segregate client money arising under CASS 7 of the FCA Rules, section 4:87 of the Dutch Financial Supervision Act, chapter 3b of the Dutch Security Depository Act (*Wet giraal effectenverkeer*) or another Applicable Law requiring asset segregation) applies as between the Customer and the Clearing Member to assets at the time immediately prior to transfer to the Clearing House as Margin for a relevant Customer Margin Account.

The term "**Segregated Customer Omnibus Account**" means a kind of Customer Account with the Clearing House opened in the name of a Non-FCM/BD Clearing Member for the recording of Contracts to which that Non-FCM/BD Clearing Member is a party as a result of it acting for one or more Segregated Customers, and related Margin (and in which no assets or positions relating to the Non-FCM/BD Clearing Member's own account are recorded, enabling the Non-FCM/BD Clearing Member to distinguish the assets and positions in Contracts held for the account of its Segregated Customers).

The term "**Segregated Gross Indirect Account**" means a kind of Customer Account of a Non-FCM/BD Clearing Member at the Clearing House for the recording of positions and related Margin, in which solely assets or positions relating to the Indirect Clients of a particular Customer are recorded, enabling the Clearing House to distinguish the assets and positions of one Indirect Client recorded in such account from the assets and positions of another Indirect Client recorded in the same account, and to distinguish the assets and positions recorded in such account from the assets or positions of other Indirect Clients and from assets or positions relating to the proprietary assets, positions and Margin of the same Customer and from any assets or positions of other Customers of the Clearing Member and from the assets or positions of the Clearing Member on its own account, but in respect of which transfers of Permitted Cover to and from the Clearing House are co-mingled or netted with transfers of Permitted Cover relating to other Segregated Gross Indirect Accounts of the same Clearing Member that are recorded in the same position-keeping account, in accordance with Rules 302(a)(vii)-(viii), 302(a)(xvii)-(xviii), 503(k) and the Clearing Procedures. A Segregated Gross Indirect Account is intended for usage as a "segregated account for the exclusive purpose of holding the assets and positions of the indirect clients of each client of the clearing member that are managed by the clearing member" for purposes of EMIR and MiFID II. A collection of Segregated Gross Indirect Accounts using the same position-keeping account as specified in the Clearing Procedures is referred to in some Clearing House documentation as a "Gross Omnibus Indirect Account".

The term "**Segregated TTFCA Customer**" means a Customer of a Non-FCM/BD Clearing Member which provides collateral to the Non-FCM/BD Clearing Member on a title transfer financial collateral arrangement basis or otherwise in circumstances in which no customer asset segregation, client money, client asset, trust or other client asset protection regime applies (other than the requirement arising under EMIR to distinguish from the Proprietary Account assets and positions of the Clearing Member) as between the Customer and the Non-FCM/BD Clearing Member to assets at the time immediately prior to transfer to the Clearing House as Margin for a relevant Customer Margin Account.

The term "**Segregated TTFCA Customer Omnibus Account**" means a kind of Customer Account with the Clearing House opened in the name of a Non-FCM/BD Clearing Member for the recording of Contracts to which that Non-FCM/BD Clearing Member is a party as a result of it acting for one or more Segregated TTFCA Customers, and related Margin (and in which no assets or positions relating to the Non-FCM/BD Clearing Member's own account are recorded, enabling the Non-FCM/BD Clearing Member to distinguish the assets and positions in Contracts held for the account of its Segregated TTFCA Customers).

The term "**SEK**" means the Swedish krona, or any other lawful currency that is a successor to it.

The term "**Seller**" means, in relation to deliveries under Part 7 or a Contract of Sale, the Clearing Member or the Clearing House, whichever is obliged to make delivery of a Deliverable (whether itself or through another Person).

The term "**Selling Counterparty**" means, in respect of a Contract: (a) except in circumstances in which sub-paragraph (c) below applies, the Clearing Member that was, before formation of a Contract for Clearing, party to the corresponding Transaction as seller; or (b) except in circumstances in which sub-paragraph (c) below applies, where a Non-FCM/BD Clearing Member's Customer is party to the corresponding Transaction as seller or the Clearing Member that provides clearing services to that Customer in relation to the Transaction in question (or, if more than one such Clearing Member exists, the Clearing Member that was selected by the Customer for the initial booking of that Transaction); (c) where an FCM/BD Customer is a party to the corresponding Transaction as seller, the FCM/BD Clearing Member clearing on behalf of such FCM/BD Customer; or (d) overriding any designation that would occur pursuant to (a), (b) or (c) above, where one Clearing Member that would be a Selling Counterparty in accordance with (a), (b) or (c) above has allocated a Transaction to another Clearing Member for clearing in accordance with Market Rules, the Clearing Member to whom such Transaction is allocated.

The term "**Set**" means:

- (a) for Futures Contracts: a set or class of Contracts that are identical as to their terms (including the Deliverable or currency pair to which such Contract relates and settlement date; but excluding any amount paid or to be paid for entry into the Contract and any amount paid or to be paid in respect of the entry into, settlement or delivery of a Contract); and
- (b) for Options Contracts: a set of Contracts that are identical as to their terms (including the Deliverable to which such Contracts relate, contract date and Strike Price; but excluding any amount paid or to be paid for entry into or writing of a Contract and any amount paid or to be paid in respect of settlement).
- (c) [Not Used]
- (d) [Not Used]



(e) [Not Used]

The term "**Settlement Finality Directive**" means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems and includes any national implementing measures in any member state of the European Economic Area.

The term "**Short**", in respect of an Option, refers to the positions of Persons against whom Options may be exercised.

The term "**Standard Omnibus Indirect Account**" means a kind of Customer Account with the Clearing House opened in the name of a Non-FCM/BD Clearing Member for the recording of Contracts to which that Clearing Member is a party as a result of it acting for one or more Segregated Customers which have Indirect Clients, and related Margin (and in which no assets or positions relating to the Clearing Member's own account nor any assets or positions relating to the proprietary business of any Customer are recorded), enabling the Clearing Member to distinguish the assets and positions in Contracts held for the account of Segregated Customers solely in respect of transactions entered into by such Segregated Customers with Indirect Clients. A Standard Omnibus Indirect Account is intended for usage as a "segregated account for the exclusive purpose of holding the assets and positions of the clearing member's indirect clients that are managed by the clearing member" for purposes of EMIR and MiFID II.

The term "**Standard Payments Mechanism**" has the meaning set out in Rule 302(a).

The term "**Standard Terms**" means the form of Customer-CM Transactions Standard Terms as published by the Clearing House from time to time as an Exhibit to these Rules, but which do not form part of these Rules, which are applicable as between each Non-FCM/BD Clearing Member and each of its Customers in relation to Clearing, as amended from time to time in accordance with the Standard Terms.

The term "**Standard TTFCA Omnibus Indirect Account**" means a kind of Customer Account with the Clearing House opened in the name of a Non-FCM/BD Clearing Member for the recording of Contracts to which that Clearing Member is a party as a result of it acting for one or more Segregated TTFCA Customers, and related Margin (and in which no assets or positions relating to the Clearing Member's own account are recorded), enabling the Clearing Member to distinguish the assets and positions in Contracts held for the account of Segregated TTFCA Customers solely in respect of transactions entered into by such Segregated TTFCA Customers with Indirect Clients. A Standard TTFCA Omnibus Indirect Account is intended for usage as a "segregated account for the exclusive purpose of holding the assets and positions of the clearing member's indirect clients that are managed by the clearing member" for purposes of EMIR and MiFID II.

The term "**Strike Price**" in respect of an Option, means the price of the relevant Deliverable at which the Option may be or is exercised.

The term "**Summary Disciplinary Committee**" means a summary disciplinary committee established pursuant to Rule 1004(c).

The term "**Summary Disciplinary Process**" has the meaning set out in Rule 1008(a).

The term "**Surplus Collateral**" in respect of a Clearing Member or particular Account or account for Guaranty Fund Contributions at any time, means any Permitted Cover transferred to the Clearing House that is not required to satisfy the current or most recently calculated applicable requirements in respect of Margin or Guaranty Fund Contributions at such time.

The term "**Swap**" means (i) a "swap" as defined in the CEA and the Exchange Act; and (ii) to the extent permitted to be held in an account with swaps (as defined in (i) above) under Applicable Law, a "security-based swap" as defined in the CEA and the Exchange Act.

The term "**T2 Clearing Member**" means a Clearing Member eligible to participate in Target 2.

The term "**Target 2**" means the Trans-European Automated Real-Time Gross Settlement Express Transfer System operated by the Eurosystem.

The term "**Target 2 Account**" means an account held by a Target 2 participant in the Target 2 payment module with a Target 2 Central Bank to submit payment orders or receive payments via Target 2 and settle such payments with such Target 2 Central Bank.

The term "**Target 2 Central Bank**" means a central bank of an EEA member state that is either a "connected CB" or a "Eurosystem CB" (the terms "connected CB" and "Eurosystem CB" in this definition having the same meaning given to those terms in the Annex to the Decision of the European Central Bank of 24 July 2007 concerning the terms and conditions of Target 2-ECB (2007/601/EC)) whose usage has not been restricted by the Clearing House pursuant to Rule 501.

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

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

The term "**Termination Date**" means: (A) in respect of termination of clearing membership (other than following an Event of Default under Rule 209(a)(i)), the later of: (i) where

applicable, the Termination Close-Out Deadline Date; and (ii) the date of the Termination Close-Out Time; or (B) in respect of termination of clearing membership generally following an Event of Default under Rule 209(a)(i)), the date on which default proceedings are completed or such other date as is specified by the Clearing House in writing.

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

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

The term "**Transaction**" means an Energy Transaction or a Financials & Softs Transaction. For the avoidance of doubt: (A) Transactions will be valid and constitute a Transaction for purposes of this definition regardless of whether they reflect a binding contract or transaction between two Clearing Members or between a Clearing Member and its Customer; (B) a Transaction shall include any trade particulars or any data resulting from the matching of any trade or block orders; and (C) in the case of a Transaction made on or reported to a Market, the Transaction need not yet have been reported to the Clearing House in order to give rise to a Contract.

The term "**Transaction Rights or Obligations**" means the rights, liabilities or obligations (if any) of a Clearing Member relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, whether joint or several, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than as between a Customer of a Clearing Member in relation to the Transaction in question and such Clearing Member (to which the relevant Standard Terms shall apply), but excluding any rights or liabilities arising pursuant to the relationship of agency between an FCM/BD Clearing Member and its Customer arising in accordance with Part 16.

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

The term "**Transferee**" means a Person nominated by a Buyer to whom a transfer or delivery is to be made of a Deliverable under a Contract, pursuant to Part 7 and the Delivery Procedures, and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

The term "**Transferee Clearing Member**" means a Clearing Member which becomes party to a Contract as a result of a Transfer pursuant to Part 9 of the Rules.

The term "**Transferor**" means a Person nominated by a Seller by whom a transfer or delivery is to be made of a Deliverable under a Contract, pursuant to Part 7 and the Delivery Procedures, and includes reference to the Seller where transfer or delivery is to be made by the Seller.

The term "**UK EMIR**" (UK European Market Infrastructure Regulation) means Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018 and includes all delegated or

implementing regulations, decisions and technical standards thereunder as interpreted in accordance with any applicable guidance publicly issued by ESMA or the FCA.

The term "**Under-priced Auction**" means a situation in which a Default Auction has taken place in accordance with the Default Auction Procedures and the Clearing House determines that such Default Auction is a failed Auction in accordance with the Default Auction Procedures.

The term "**Unprotected Resolution Step**" means a Resolution Step occurring in respect of a Person, other than the Clearing House, in which either (x) the substantive obligations of that Person to the Clearing House (including payment and delivery obligations and the provision of collateral) under the Clearing Membership Agreement, these Rules, the Procedures or any other agreement between that Person and the Clearing House are not being performed or (y) the Clearing House is not prohibited or otherwise prevented from declaring an Event of Default or exercising its termination and close-out rights under Part 9 with respect to that Person.

The term "**USD**" means the lawful currency from time to time of the United States of America.

The term "**U.S. Future**" means (i) a Future or an Option that is an option on a Future, in either case that is traded on or subject to the rules of a designated contract market under Section 5 of the CEA and (ii) Permitted Co-mingled Contracts recorded in a DCM Customer Account. For the avoidance of doubt, U.S. Futures will not include Swaps or SBS.

The term "**Variation Margin**" means the cash required to be provided or actually provided by a Clearing Member by way of outright transfer of cash as a settlement payment to the Clearing House or by the Clearing House to a Clearing Member related to the market value of a Clearing Member's Open Contract Positions, as determined pursuant to Rule 503(e) and the Finance Procedures and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Withdrawal Date**" means, if at any time the Clearing House decides to terminate its services, either generally or in relation to a significant part of its business or certain categories of Contract, the date on which that termination will take effect.

The term "**WWFT**" means the act on prevention of money laundering and financing of terrorism (*Wet ter voorkoming van witwassen en financieren van terrorisme*);

## **Rule 102**      *Interpretation*

- (a) Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time amended, modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.

- (b) References to any rules or any agreement are references to such rules or agreement as amended or restated from time to time, provided that such amendments or restatements are made in accordance with these Rules.
- (c) [Not Used].
- (d) When a reference is made in these Rules to a rule, part, paragraph or procedure, such reference is to a Rule, Part, paragraph, Procedure of, or made under these Rules, unless otherwise indicated.
- (e) The headings in these Rules are for reference purposes only and do not affect in any way the meaning or interpretation of these Rules.
- (f) To the extent there is any conflict between any of the provisions of these Rules, a Clearing Membership Agreement, the Procedures (including all exhibits, attachments and appendices thereto), any Guidance or Circular or Market Rules or between any of the foregoing, the provision of the first document specified in the paragraphs below shall prevail, control, govern and be binding upon the parties:
  - (i) these Rules (excluding the Procedures, Contract Terms (save to the extent that the Contract Terms are in the Rules but excluding Contract Terms that are in the Procedures) and any other document incorporated by reference);
  - (ii) the Clearing Membership Agreement;
  - (iii) [Not Used];
  - (iv) [Not Used];
  - (v) [Not Used];
  - (vi) in relation to those aspects of the Market Rules that include Contract Terms only, the relevant Market Rules;
  - (vii) the Contract Terms other than those set out in these Rules or Market Rules (except as set out in Rule 102(f)(i)) (excluding the Rules and any other document incorporated by reference);
  - (viii) the Procedures (excluding any Contract Terms set out in the Procedures) save to the extent included in (v);
  - (ix) Market Rules other than those referred to in Rule 102(f)(vi) to (vii) (excluding any document described in Rule 102(f)(vi) to (vii) incorporated by reference);
  - (x) any Guidance;
  - (xi) any Circular (except for a Circular communicating an amendment to any of the above documents in accordance with these Rules, in which case the amendments

communicated in such Circular shall be binding on the effective date specified in the Circular as if such amendments were one of those documents); and

- (xii) [Not Used];
  - (xiii) in the case of Contracts recorded in a Customer Account of a Non-FCM/BD Clearing Member, the Standard Terms (solely to the extent that the Standard Terms may be of interpretative relevance to the Rules or a Contract).
  - (xiv) [Not Used];
  - (xv) [Not Used].
- (g) All Clearing Members must comply with the relevant provisions of EMIR and other Applicable Law when providing services to Customers. In particular, all Clearing Members must offer, at least, a choice of one Customer Account providing individual client segregation and one Customer Account providing omnibus client segregation (in the manner set out in Articles 39 and 48 of EMIR) to all Affected Customers. Clearing Members must also offer a choice of using a Segregated Gross Indirect Account or Standard Omnibus Indirect Account to Affected Customers with Indirect Clients. For a Clearing Member that is prevented or prohibited under Applicable Laws itself from providing such Customer Accounts to an Affected Customer, this offer must include, to the extent possible and practicable under Applicable Laws, an offer to procure the provision to the Affected Customer of such a Customer Account by another Clearing Member (which may be an Affiliate). Clearing Members must provide details of the costs and level of protection under individual versus omnibus segregation. A Clearing Member must record the choice of omnibus or individual client segregation or of Segregated Gross Indirect Account or Standard Omnibus Indirect Account made by each of its Customers in writing.
- (h) All references to timings or times of day are to CET times, unless indicated otherwise. Business hours shall occur only on Business Days and shall be construed accordingly.
- (i) All references to "**tax**" shall include, without limitation, any tax, levy, impost, social security contributions, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying the same).
- (j) Each Clearing Member shall be bound by any act, omission, conduct or behaviour ("**conduct**") of its Representatives and of its Customers and clients of such Customers in any instance in which any such Customer or client of such Customer:
- (i) is permitted by the Clearing Member to have access to any system or interface of any Market or the Clearing House which access enables or results in the entry into of Contracts and relates to Clearing by that Clearing Member for such Customer or client (which access, without limitation shall be deemed to have been granted by the Clearing Member if the Customer or client in question has

been nominated to the Clearing House as an Eligible Person pursuant to the Clearing Membership Agreement to which such Clearing Member is a party);

- (ii) is permitted by the Clearing Member to have access to any system or interface of any Market or the Clearing House which relates to Clearing by that Clearing Member for such Customer or client and which is used for the enriching of data held by the Clearing House relating to Contracts, the post-trade management of Contracts, allocations from one Clearing Member to another Clearing Member under Rule 401(a)(viii) or Rule 401(e), the transfer of Contracts between any Proprietary Account or Customer Account or between different Proprietary Accounts or Customer Accounts (or any sub-account of any of the foregoing) of a Clearing Member, position transfers, novations or assignments under Rule 408(a), the service of any notice, the exercise or abandonment of any Option, the closing-out, expiry or termination of any Future or the netting, combining or offsetting of any Contract recorded in a particular account;
- (iii) is nominated by a Clearing Member as a Transferee or Transferor for purposes of delivery under a Contract; or
- (iv) is otherwise duly appointed to carry out such conduct as an agent of the Clearing Member.

If a Customer or client of a Customer or any of their Representatives would have breached the Rules in respect of any instance listed in (i), (ii), (iii) or (iv) above if it were a Clearing Member, then such Customer, client or Representative or their Clearing Member may be subject to disciplinary proceedings, in which Rule 1003(t) or Rule 1008 applies.

In addition, a Clearing Member shall be bound by and responsible for any conduct of or by any of the following Persons (including for purposes of disciplinary proceedings under Part 10):

- (A) the Clearing Member itself (including its employees, officers, directors or partners); and
  - (B) the Clearing Member's Representatives (excluding Customers and their Customers' clients), as if such conduct were the conduct of the Clearing Member itself (but this provision shall not, for the avoidance of doubt, apply to determine any liability of a Clearing Member or Defaulter for losses of the Clearing House or any of its Affiliates or any Market or any of their officers, directors, employees, committees (or any individual committee member), which liabilities are governed solely by Rule 111 and Rule 905(f)).
- (k) Pursuant to Rule 102(f), a Clearing Member's liability under clause 3.5 of the Clearing Membership Agreement shall be limited by Rules 102(j) and 1516(b), as applicable.

- (l) Any capitalised term used in these Rules that is not defined in Rule 101 or elsewhere herein shall have the meaning given to it (in order of priority) in the Procedures, the Clearing House's standard form Clearing Membership Agreement and any relevant Market Rules.
- (m) Each of the Rules shall, unless the context otherwise requires, be construed as an independent provision and shall be in addition and without prejudice to any other provision of the Rules.
- (n) The invalidity or unenforceability of any provision of these Rules (or part of any provision) will not affect the validity or enforceability of any other provision of these Rules. Any such invalid or unenforceable provision will be replaced or be deemed to be replaced with a provision that is valid and enforceable and most closely resembles the intent of the invalid or unenforceable provision.
- (o) The Rules, together with the applicable Clearing Membership Agreement, and other documents listed in Rule 102(f) that are given contractual force pursuant to these Rules (other than the Standard Terms), form a contract between the Clearing House and each Clearing Member. All obligations of the Clearing House hereunder are solely to Clearing Members. No Person other than the Clearing House has any obligation to Clearing Members pursuant to these Rules except as expressly provided in any provisions of these Rules, the Procedures, any of the Standard Terms purporting to create or define rights and obligations as between Clearing Members or between Clearing Members and their Customers (each a "**Bilateral Obligation**"). Subject to any Bilateral Obligation in respect of which the relevant Clearing Members or Customers (as applicable) shall have the right to enforce the relevant provisions of these Rules, Procedures or Standard Terms against one another, and except as provided in Rule 102(v), none the provisions of these Rules create any third party stipulations (*derdenbeding*).
- (p) Any matter or right stated to be in, of or at the Clearing House's discretion shall be subject to the Clearing House's sole, unfettered and absolute discretion and such discretion may be exercised at any time. Where there is a provision that the Clearing House (or its Directors, officers, employees, committees (or any individual committee member)) may make further directions upon or in relation to the operation of a Rule or may make or authorise any arrangement, direction or procedure thereunder, the Clearing House may make such direction or make or authorise such arrangement or procedure in relation to or under the whole or any part of the Rule and may make or authorise different directions, arrangements or procedures in relation to different Persons and may make or authorise such directions, arrangements or procedures generally or in relation to a particular Person or particular occasion and in all cases subject to such conditions as it may think fit. Any action taken at the discretion of the Clearing House may not be challenged by any Person (subject to the requirements of Rule 111(c) and the right of such Person to make a complaint pursuant to the Complaint Resolution Procedures or Part 10). This Rule 102(p) shall apply equally to any Disciplinary Panel, Summary Disciplinary Committee or Appeal Panel appointed pursuant to Part 10 of the Rules in the same way as it applies to the Clearing House.



- (q) Without prejudice to the requirements of any Applicable Laws including, but not limited to, those relating to clients' money made under sections 138 and 139 of the FSMA and notwithstanding any other provision of these Rules, nothing in these Rules shall have the effect of enabling, requiring or implying that any Margin or other amounts transferred to the Clearing House in relation to a Clearing Member's or Defaulter's:
- (i) Customer Account of any class be used to meet a loss or shortfall on any of that Clearing Member's or Defaulter's Proprietary Accounts;
  - (ii) particular Customer Account be used to meet a loss or shortfall on another of the same Clearing Member's or Defaulter's Customer Account;
  - (iii) particular Proprietary Account be used to meet a loss or shortfall on another of the same Clearing Members' or Defaulter's Proprietary Accounts;

(which restrictions, for the avoidance of doubt, shall not apply to any Guaranty Fund Contribution or Assessment Contribution).

Without prejudice to the requirements of any Applicable Laws including, but not limited to, those relating to clients' money made under sections 138 and 139 of the FSMA, nothing in these Rules shall have the effect of enabling, requiring or implying that any Contracts recorded in a Clearing Member's or Defaulter's:

- (iv) Customer Account of any class be netted, combined or offset with any Contract recorded in any of that Clearing Member's or Defaulter's Proprietary Accounts;
- (v) particular Customer Account be netted, combined or offset with any Contract recorded in another Customer Account of the same Clearing Member or Defaulter; or
- (vi) particular Proprietary Account be netted, combined or offset with any Contract recorded in another Proprietary Account of the same Clearing Member or Defaulter;

(except as expressly provided under the Rules and to the extent permissible under Applicable Laws).

For the avoidance of doubt and ease of reference, the following provisions or documents relevant to asset and account segregation also apply in respect of each Segregated Customer Omnibus Account and Standard Omnibus Indirect Account of each Clearing Member that is subject to CASS 7.18 of the FCA Rules, as well as each Margin-flow Co-mingled Account and Segregated Gross Indirect Account of such a Clearing Member in respect of which the Clearing House gives an acknowledgement in accordance with paragraph (viii) below:

- (vii) the third and fourth sentences of clause 5.3 of the Clearing Membership Agreement; and
- (viii) any letter delivered to the Clearing House pursuant to CASS 7.18, where the Clearing House has countersigned the same and returned it to the Clearing Member.

Any reference in these Rules or the Procedures to Rule 102(p) shall be deemed to include a reference to such provisions as are mentioned in paragraph (vii) and such letters as are mentioned in paragraph (viii), as are applicable to the Clearing Member concerned.

- (r) The Rules shall at all times be observed, interpreted and given effect to in the manner most conducive to the promotion and maintenance of recognition of:
  - (i) the Clearing House as an authorised central counterparty under EMIR, a recognised third country central counterparty under UK EMIR, as having any status or licence granted by a Market or Delivery Facility or any other legal or regulatory status it has from time to time under any other Applicable Law;
  - (ii) the good reputation of the Clearing House (and Clearing Members);
  - (iii) high standards of integrity and fair dealing in accordance with Applicable Law;
  - (iv) the Clearing House's obligation under EMIR and other Applicable Law to act fairly and professionally in accordance with the best interests of Clearing Members and Customers and sound risk management; and
  - (v) proper protection for all Persons interested in the performance of Contracts.

To the extent that the Clearing House or any Clearing Member has any right under these Rules which may on its face be performed in a manner that goes beyond that which is permitted by Applicable Law, that right may only be exercised to the extent permitted under Applicable Law.

- (s) These Rules, each Contract and all non-contractual obligations arising out of or in connection with these Rules or any Contract, shall be governed by and construed in accordance with the laws of the Netherlands, subject to Rule 1608.

For the avoidance of doubt, these Rules and all matters in these Rules relating to Transfer Orders or the Designated System (including without limitation Part 12 of these Rules) shall be construed and governed by the law of the Netherlands.

- (t) These Rules may be supplemented by processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (u) References in these Rules to Dutch legislation or European Directives shall be interpreted as references to such legislation as implemented in the Netherlands,

including by the relevant Governmental Authorities. References in these Rules to UK or English legislation shall be interpreted as references to such legislation as implemented in England and Wales, including by the relevant Governmental Authorities. References in these Rules to U.S. federal or state legislation or regulation shall be interpreted as references to such legislation or regulation as implemented in the U.S. including by the relevant U.S. Governmental Authorities.

- (v) Notwithstanding Rule 102(o), nothing in these Rules shall preclude a Customer or any other Person from agreeing to the application of these Rules or any provision of these Rules in their agreements with any Clearing Member or third party, in which case the provisions of these Rules (including, without limitation, Rule 111) constitute irrevocable third party stipulations for no consideration (*onherroepelijk derdenbeding om niet*) for the benefit of the Clearing House.
- (w) To the extent permitted by Applicable Laws and without prejudice to Rule 408, a Clearing Member may outsource performance of any of its obligations under the Rules to an Affiliate or other Person, but will remain fully liable to the Clearing House for such performance notwithstanding the outsourcing, provided that a Clearing Member may nominate another Person to perform its responsibilities with respect to the submission of end-of-day prices and participation in Default Auctions and consequences of the same under Part 9 of the Rules, Partial Tear-Up under Rule 915 and such other obligations as permitted by the Clearing House, if such Person is acceptable to the Clearing House and enters into an agreement with the Clearing Member and Clearing House on such terms and conditions as are specified by the Clearing House. In any circumstances in which a Person performs pursuant to an outsourcing arrangement or such a nomination, such Person will act as the Clearing Member's Representative.
- (x) If a Person with obligations under these Rules or a Contract is a partnership, the liability of each partner in the partnership under or in connection with these Rules or the Contract shall be joint and several. In the event of any circumstances which would be operation of Applicable Law give rise to the dissolution of the partnership, or entitle a partner to seek an order to dissolve the partnership, the obligations of the partners shall remain in full force and effect.
- (y) Where a Contract is not a derivative for the purposes of MiFID II, or any national implementing measure of a member state of the European Economic Area, any provisions in these Rules with respect to Repositories shall not apply, unless the Clearing House or other relevant persons determine to submit details to Repositories on a voluntary basis.

### **Rule 103      *Delay in performance by the Clearing House***

Subject to the provisions of the Contract Terms and further subject as set out in the Procedures, where an obligation of the Clearing House must be performed immediately, promptly or by or prior to a specified time or date but is not so performed, the Clearing House shall not be in breach of these Rules if, having used all reasonable endeavours to perform such obligation by

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

#### **Rule 104      *Invoicing Back and Specification of Terms***

- (a) Other than in circumstances in which Rule 912 applies and subject to Rules 104(c) to (f), if a Force Majeure Event, Illegality or Impossibility affects Contracts of a particular Set, the Clearing House shall have the right, in consultation with the relevant Market (if any) to:
  - (i) Invoice Back Contracts of such Set; or
  - (ii) specify or over-ride the price or other terms of Contracts of such Set.
- (b) The Clearing House shall in addition have the right, in consultation with the relevant Market, to Invoice Back a Contract that is subject to delivery or tender in the circumstances and in the manner set out in the Delivery Procedures.
- (c) Any instance of Invoicing Back or specification or over-riding of price or other terms under Rule 104(a) must, subject to Rule 109(c), be approved in advance by an affirmative vote of the Board at a quorate meeting, at which meeting the facts giving rise to the Force Majeure Event, Illegality or Impossibility, as the case may be, will be considered and at which the Board decides that it would be appropriate to exercise the right in question. Any exercise of such a right will further be undertaken subject to any additional processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (d) Neither Invoicing Back rights nor specification or over-riding of price or other terms rights under Rule 104(a) or 104(b) are to be exercised by the Clearing House to deal with the general management of an Event of Default (such as for the purpose of changing the amount of any liability of the Clearing House to a Defaulter (or deemed defaulter) or to a Clearing Member which would be a Defaulter on the making of the relevant declaration by the Clearing House under Rule 901(a) or of any liability of any Defaulter (or deemed defaulter) or any such Clearing Member to the Clearing House) or as an alternative to applying the process in Part 10 *et seq.* in circumstances in which such provisions apply. However, nothing in this Rule 104(d) shall prevent the Clearing House from exercising its rights under Rule 104(a) or Rule 104(b) in respect of a Contract to which a Defaulter is party where, in the case of Rule 104(a), a Force Majeure Event, Illegality or Impossibility affects a Contract of a particular Set to which a Defaulter is party in a similar way to that in which it affects Contracts of the same Set to which non-defaulting Clearing Members are party, where the Clearing House takes similar action in respect of Contracts of the same Set of non-defaulting Clearing Members in accordance with this Rule 104 or where, in respect of Rule 104(b) and a Contract that is subject to delivery or tender, the Delivery Procedures provide for Invoicing Back to take place in respect of a Defaulter's Contract.

- (e) Where the Clearing House exercises any of its rights under Rule 104(a) or (b), it will do so in good faith and in accordance with Rule 102(r).
- (f) The Clearing House will not exercise any rights under Rule 104(a) or (b) to Invoice Back or specify or over-ride the price or other terms of any Contract to which a Clearing Member is party unless there is an objective justification for it doing so and such an approach is applied objectively. The price at which any Invoicing Back or specification or over-riding of price or other terms under Rule 104(a) or (b) is executed shall be determined in a commercially reasonable manner and, in respect of a Contract that is subject to delivery or tender, in accordance with the Delivery Procedures. The process established in Rule 109(k) shall apply to any class of Contract whenever the Clearing House exercises its rights under Rule 104(a), *mutatis mutandis*.
- (g) Provided that any rights exercised under this Rule 104 are exercised in accordance with this Rule 104, any resulting Invoicing Back, specification or over-riding of price or other terms by the Clearing House shall be final and binding for the purposes of these Rules and not be subject to challenge by any Person under these Rules or otherwise, except in the case of manifest error, negligence or fraud.

#### **Rule 105      *Termination***

- (a) If at any time the Clearing House decides to or must cease acting as a clearing house, either generally, in relation to a particular Exchange or in relation to a class of Contracts (including if it determines, following loss of any authorisation, status, approval or recognition from a Regulatory Authority, a Delivery Facility or a Market, that it is unable to continue its business or a particular business), it shall give advance notice of the proposed Withdrawal Date by Circular. In the event of a complete cessation of services or of services in relation to a particular Exchange or any class of Contracts, at least four months' notice shall be necessary. In any other event for which there is a Withdrawal Date or if there are no Open Contract Positions of any Clearing Member in all relevant Sets, at least one month's notice shall be necessary. Notwithstanding the above, where (i) any action by the Regulatory Authority, Delivery Facility or Market giving rise to the cessation of services takes effect within a shorter period, such shorter notice period shall instead apply; or (ii) the cessation occurs as a result of a termination of services by an Exchange, the notice period required under Market Rules shall instead apply and the Exchange will be responsible for providing such notice. The Clearing House shall be entitled to postpone any such Withdrawal Date, generally or in respect of any individual Clearing Member, Exchange or class of Contract.
- (b) If, at any Withdrawal Date, any affected Contracts have not been finally settled, the Clearing House shall be entitled to terminate any or all such Contracts and require any such Contracts to be cash settled on terms specified by the Clearing House in accordance with Rule 104.
- (c) Rule 918(a)(i), (ii), (iii), (v) and (vi) and Rule 918(b) shall apply, *mutatis mutandis*, in relation to a termination of the Clearing House's services, whether generally or in respect of a particular Set or Sets of Contracts, as applicable, in the event of any

termination under this Rule 105. For such purposes, the term Termination Notice Time as used in Rule 918 shall be read as referring to the time at which the Clearing House issues a notice relating to the withdrawal, the terms Termination Close-out Deadline Date and Termination Date as used in Rule 918 shall be read as referring to the Withdrawal Date.

## **Rule 106      *Confidentiality and Information***

- (a) The Clearing House shall be entitled to keep records in an electronic or durable medium of all data or information available to it under these Rules or otherwise concerning Clearing Members (including financial statements filed with the Clearing House), Customers, Accounts, Margin, Transactions, Contracts, past or current Open Contract Positions, deliveries and settlement.
- (b) The following information received or held by the Clearing House shall be held in confidence by the Clearing House and shall not be made known to any other Person, subject to Rule 106(c):
  - (i) information concerning Transactions, Contracts or past or current Open Contract Positions held with the Clearing House;
  - (ii) information concerning positions with any other Clearing Organisation for a Clearing Member or relating to any Customer;
  - (iii) information concerning Margin payments between the Clearing House or any other Clearing Organisation and a Clearing Member, including in relation to a Customer;
  - (iv) information concerning deliveries made by or to a Clearing Member or any of its Transferors or Transferees;
  - (v) any financial statements filed with the Clearing House by any Clearing Member; or
  - (vi) any other information relating to a Clearing Member or Customer provided by a Clearing Member or Customer to the Clearing House at the Clearing House's request, or pursuant to the Rules or Applicable Laws.
- (c) Subject, at all times, to Applicable Laws, the Clearing House may, notwithstanding Rule 106(b), make the following disclosures of confidential information subject to such terms and conditions as the Clearing House may from time to time deem appropriate:
  - (i) to a Regulatory Authority or Governmental Authority where a lawful request is made to the Clearing House by or on behalf of the same or where disclosure is required under Applicable Laws or is necessary for the making of a disclosure, complaint or report permitted under Applicable Laws for an offence alleged or suspected to have been committed under Applicable Laws;

- (ii) in the case of a breach by a Clearing Member of: (A) any clearing membership criteria established by the Clearing House, whether as a breach of Rule 202(a)(iv); or (B) in the case of a Clearing Member, such Clearing Member's obligation to publicly disclose prices and fees associated with the clearing services it provides and/or its obligation to provide Customers with separate access to each specific service it provides; to the public, subject to any decision made by any Regulatory Authority pursuant to article 38(5) of EMIR;
- (iii) pursuant to any Applicable Law, including any order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Law;
- (iv) to any member of the ICE Group, any Exchange or Clearing Organisation and any of their or the Clearing House's Representatives, committees, experts, Delivery Facilities, auditors, advisers or lawyers including (without limitation) for audit, compliance, making or taking delivery, market surveillance or disciplinary purposes, for the purposes of an arbitration pursuant to Rule 117 or any proceedings in support of such an arbitration, or in relation to any possible or actual Event of Default or the termination or suspension of any clearing membership;
- (v) to any Person in the business of providing data processing or similar services for the purposes of performing computations or analysis, or of preparing reports or records, for the Clearing House;
- (vi) to any Person who has provided or is considering entering into a loan, insurance policy, guarantee or other financial arrangement with the Clearing House or any of its Affiliates, provided that information identifying the positions or name of a Clearing Member or any of its accounts or the name of any of a Clearing Member's Customers will not be so disclosed, except, in the case of a Clearing Member and its accounts only, as is necessary to respond to any enquiries of such a Person concerning the Clearing House's or any of its Affiliates' potential losses or exposures relating to an Event of Default (whether or not declared);
- (vii) to any Insolvency Practitioner and any other authority or Person having responsibility for any matter arising out of or connected with an Event of Default;
- (viii) in the case of information relating to any Transaction or Contract (including details of the parties thereto and related Margin), to a Repository or Governmental Authority for purposes of transaction reporting;
- (ix) to any Person or to the public as a result of its complaints procedure or disciplinary proceedings;
- (x) to any Person if the information comes into the public domain, other than as a result of a breach of this Rule by the Clearing House or its Representatives;

- (xi) [Not Used];
  - (xii) in the case of information concerning any Customer, to any Clearing Member with a relationship with such Customer in respect of one of its Customer Accounts;
  - (xiii) otherwise with the written consent of the Person or Persons to whom the confidential information relates; or
  - (xiv) pursuant to any obligation on the Clearing House or a Market under the rules or terms of a Delivery Facility or as is needed to comply with any obligation or to exercise any right under these Rules.
- (d) Clearing Members and Customers shall be deemed to consent to any use, disclosure or non-disclosure of information by the Clearing House that is required or permitted pursuant to Applicable Law.
  - (e) The Clearing House is a Controller in relation to Personal Data provided to it by Clearing Members, Customers and their Representatives. Each Clearing Member shall ensure that in respect of any Personal Data that it provides to the Clearing House it has a lawful basis for processing the relevant Personal Data in this manner.
  - (f) The Clearing House shall have the right to disclose Personal Data to such Persons and for such purposes as are set out in Rule 106(a) to (c). The Clearing House and other Persons referred to in Rule 106(a) to (c) may transfer Personal Data outside the European Economic Area and Process Personal Data outside the European Economic Area.
  - (g) Data Subjects have the right, on payment of a small fee to the Clearing House, with due observance of the maximum fee permitted under the Dutch Data Protection Act or the Data Protection Regulation (as applicable) to receive a copy of Personal Data held by the Clearing House and to have any errors or inaccuracies in such Personal Data rectified. Any request should be addressed to the Clearing House's registered office.
  - (h) In this Rule 106 only, the terms, "**Control**" (and derivations thereof), "**Process**" (and derivations thereof), "**Personal Data**" and "**Controller**" each have the meaning given to such terms in the Data Protection Regulation.
  - (i) Each Clearing Member and the Clearing House:
    - (i) acknowledges that the recording of telephone conversations between the trading, clearing and other relevant personnel of the Clearing Member and the Clearing House or their Group Companies in connection with the Rules and any Contract, potential Contract or Transaction will take place to the extent permitted or required under Applicable Law;



- (ii) acknowledges, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any Dispute; and
- (iii) acknowledges that the remainder of this Rule 106 shall apply to any such recordings made by the Clearing House.

**Rule 107**      *Conversion to other Eligible Currency*

The Clearing House shall be entitled to direct Approved Financial Institutions to convert any cash standing to the debit or credit of any Clearing Member into such other Eligible Currency as the Clearing House, in its discretion, determines is appropriate or expedient. Any such conversion shall be effected at a reasonable exchange rate determined by the Clearing House at its discretion or such Approved Financial Institution.

**Rule 108**      *Maintenance of Records; Return of Documents and other Materials*

- (a) Clearing Members and other Persons that provide or present any documentation or other materials to the Clearing House are required to make a copy (whether electronic or physical) prior to doing so and must maintain each such copy for at least ten years. Clearing Members that are subject to MiFID or MiFID II rules on record-keeping will be deemed to satisfy this requirement if they comply with such rules on record-keeping in relation to their activities connected with the Clearing House.
- (b) The Clearing House shall not be obliged to return or provide a copy of any document or other materials presented or provided by any Clearing Member or other Person to the Clearing House, except where an express right to such copy or return is set out in these Rules.

**Rule 109**      *Alteration of Rules, Procedures, Guidance and Circulars*

- (a) The Clearing House shall provide details (which, where appropriate, will include a reasoned account) of any Rule Change in a Circular. A Rule Change shall take effect and be binding on the Clearing House, Clearing Members and other Persons who have agreed to be bound by the Rules on the relevant date specified by the Clearing House in a Circular. Where the reason for any Rule Change is not manifest in the amended text of the Rules, the Clearing House will seek to provide an appropriate reasoned account of the Rule Change.
- (b) The Clearing House shall be entitled, at its discretion, to make any Rule Change at any time and without consulting Clearing Members or any other Persons where such Rule Change:
  - (i) is of a minor nature and relates to Rules of an administrative or commercial nature;
  - (ii) is of a limited, technical nature, if a consultation is reasonably considered by the Clearing House not to be appropriate;

- (iii) relates to the Clearing House's fees, if a consultation is reasonably considered by the Clearing House not to be appropriate;
- (iv) is considered by the Clearing House to be necessary as a result of an Event of Default, Force Majeure Event or Financial Emergency which has been recognised by an affirmative vote of the Board at a quorate meeting (subject always to Rule 109(c)) and subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees;
- (v) is required to ensure compliance by the Clearing House or any Clearing Member or Customer with Applicable Laws, Accounting Standards or the requirements of any Governmental Authority or Regulatory Authority or is necessary or desirable to maintain the Clearing House's statuses as referred to in Rule 102(r), any Clearing House's status or licence granted by any Delivery Facility or Market, or any other legal or regulatory status it has under any other Applicable Law;
- (vi) concerns the parameters for Margin or the Guaranty Fund or classes of or haircuts for Permitted Cover, if a consultation is reasonably considered by the Clearing House not to be appropriate;
- (vii) results from, and is or can be implemented solely by, a change in:
  - (A) Market Rules made by the relevant Market; or
  - (B) [Not Used]
  - (C) any other document that is not published by the Clearing House but which is incorporated into or forms part of the Contract Terms of any Contract in circumstances in which, pursuant to the Rules, upon such document being amended there results in a change to the Contract Terms without the need for any further step by the Clearing House,
 

which changes, for the avoidance of doubt shall take effect upon the relevant Market Rules or other document itself being amended without the need for any Circular or notice on the part of the Clearing House;
- (viii) involves a technical or operational specification of any Contract Term previously published in a Circular or found in a Clearing House policy or procedure but which is not set out in the Rules or otherwise in the Procedures;
- (ix) involves the removal of an existing Contract Set or the addition of a new Contract Set; or
- (x) is considered by the Clearing House to be of an urgent nature (provided that the Clearing House may consult Clearing Members in relation to the continued

applicability of the Rule Change after the urgent event or circumstance has concluded or ended), of a nature that would not affect significantly the rights of Clearing Members or of a nature where a consultation would otherwise not be appropriate or necessary;

provided that, in any such case, Applicable Laws would not prevent such Rule Change from being made.

- (c) In relation to the determination of an Event of Default, a Force Majeure Event or a Financial Emergency pursuant to Rule 109(b)(iv) or, in relation to a Force Majeure Event only, Rule 112(b), or in relation to an approval of Invoicing Back under Rule 104(a), in the event that the Clearing House is unable to convene a meeting of the Board sufficiently promptly in the circumstances, any Director, officer, employee, committee (or any individual committee member) of the Clearing House designated by the Board from time to time for purposes of the applicable determination or approval may make such determination or approval, as the case may be, provided that the Clearing House shall convene a meeting of the Board as soon as practicable thereafter to ratify such determination or approval, rescind such determination or approval (only where, if rescission is desired, this is possible and practicable) or, where rescission is desired but not possible and practicable, to amend such determination or approval as appropriate.
- (d) In cases other than those described in Rule 109(b), prior to any proposed Rule Change taking effect, the Clearing House will either: (i) issue a consultation paper by Circular or (ii) consult with a smaller number of Clearing Members selected by the Clearing House at its discretion. In cases where this Rule 109(d) applies, the Clearing House will seek to provide at least 14 days from the date of the relevant Circular for Persons to respond to the consultation. The contents of responses and the names of Persons who respond to any consultation may be made publicly available by the Clearing House, unless the Clearing House receives a request to the contrary by a Person making a response. If the Clearing House receives any such requests for confidentiality or anonymity, the Clearing House may state that an anonymous response was made and may make public a summary of the contents of any response but the response will otherwise be subject to Rule 106. Clearing Members are encouraged, where appropriate, to inform their Customers of proposed Rule Changes.
- (e) The Clearing House may at any time amend the Procedures, subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees. Any such amendment shall have immediate effect or shall take effect at such time as is specified by the Clearing House. The Clearing House will issue a Circular in respect of any amendment to the Procedures.
- (f) The Clearing House may issue, amend or revoke interpretative Guidance in relation to any aspect of the management of the Clearing House, its action under these Rules or the conduct of business of the Clearing House, Clearing Members or Customers at any time at its discretion and without prior consultation.

- (g) The Clearing House may issue Circulars or amend or revoke the contents of Circulars in connection with Clearing, the Rules or any action taken by it under the Rules at any time at its discretion and without prior consultation.
- (h) None of the following (whether proven, evidenced or alleged) shall invalidate any Rule Change, Procedures amendment or the contents of any Circular or Guidance in respect of any Person:
  - (i) omission by the Clearing House to give any notice or publish any Circular which may be required under these Rules;
  - (ii) non-receipt of any Circular by a Person or any of its Representatives;
  - (iii) lack of awareness on the part of the Person or any of its Representatives;
  - (iv) lack or inadequacy of any reasoned account; or
  - (v) failure by the Clearing House to comply with its obligations under Rule 109(d).
- (i) Without prejudice to the generality of Rule 109(h), in the event of any of the circumstances in Rule 109(h)(i), (iv) or (v) occurring, the Clearing House will consider what action should appropriately be taken in relation to the Rule Change which may (or may not) include the Clearing House:
  - (i) opening a second or subsequent consultation on the past Rule Change, subject to the procedures required by this Rule 109 *mutatis mutandis*; or
  - (ii) allowing Clearing Members to make representations or submissions in relation to a past Rule Change and considering whether to propose a new Rule Change in accordance with this Rule 109.
- (j) In accordance with Section 2 of the Standard Terms, a change may be made to the Standard Terms in the same way as a Rule Change is made pursuant to this Rule 109.
- (k) The Clearing House may specify a one-off irreversible payment under Contracts of a particular relevant Set by Buying Counterparties or Selling Counterparties (which in any case shall also include an irreversible payment by the Clearing House to the extent that it takes a similar position in the affected Set), if it has made or proposes to make any Rule Change or other change to Contract Terms which the Clearing House determines, pursuant to documents governing the internal governance of the Clearing House and its committees, materially affects Exchange Delivery Settlement Prices of such Set. In such circumstances, the amount payable, the party that is obliged to make such payments, and the date of payments (which may be by reference to the date of introduction of a particular future Rule Change or change to Contract Terms) shall be specified by the Clearing House in a Circular. In making such determinations, the Clearing House may have reference to a poll of, or to price submissions by, Clearing Members or Market prices, the need and process for which is to be determined in any

case pursuant to documents governing the internal governance of the Clearing House and its committees.

**Rule 110**      *Extension or Waiver of Rules*

- (a) The performance by any Clearing Member of any of its obligations under the Rules or any Contract may be waived by the Clearing House subject to such conditions as the Clearing House thinks fit, provided that the Clearing House is satisfied that compliance with the relevant requirement would be unduly burdensome to the Clearing Member or Person concerned or that compliance with the relevant requirement would not be in the interests of the Clearing House or if the Clearing House in its discretion considers that such waiver is necessary or in the best interests of the Clearing House. Waivers or variations of requirements may be publicised at the discretion of the Clearing House.
- (b) Subject to Rule 110(c) and (g), the time fixed by the Rules for filing any report or other document, for submitting any information or for making transfers or payments may be extended by the Clearing House whenever in its discretion it considers that such extension is necessary or in the best interests of the Clearing House. Any such extension may continue in effect after the event or events giving rise thereto.
- (c) Any extension of the time for making transfers, payments or performance for any length of time longer than 3 Business Days after such transfer, payment or performance is due must be approved by the Clearing House in advance by an affirmative vote of the Board at a quorate meeting, at which meeting the facts giving rise to the proposed use of this provision will be considered and the meeting shall decide whether it would be appropriate to use this power, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Clearing House and its committees.
- (d) Any waiver of any right or consent given by the Clearing House under these Rules is only effective if it is in writing, applies only in the circumstances for which it is given and shall not prevent the Clearing House from subsequently relying on the relevant provision. No delay or failure to exercise by the Clearing House of any of its rights or pursuing any of its remedies hereunder shall constitute a waiver. No single or partial exercise of any right or remedy by the Clearing House shall prevent any further exercise of the same or any other right or remedy.
- (e) If any extension of any length of time is approved in respect of any payment, transfer or performance under this Rule 110, any notice given to the Clearing House prior to the end of such extension period shall be deemed not to have been given.
- (f) The Clearing House shall be entitled without breach of these Rules to delay the making of a payment to any Clearing Member in respect of a Variation Margin call in respect of all or any of a Clearing Member's accounts on an intra-day basis without following the procedure set out in Rule 110(a) to (e) in circumstances in which:

- (i) another Clearing Member or Clearing Members has or have been or will be asked to make payment in respect of a Variation Margin call occurring at or around the same time;
  - (ii) that other Clearing Member has, or those other Clearing Members have, failed to pay the Clearing House (which term for purposes of this Rule 110(f) and Rule 503(i) includes a request for payment or planned request for payment not yet being made, confirmed or due including for technical or operational reasons); and
  - (iii) the total amount of such failure or failures to pay exceeds the Original Margin for each Proprietary Account or Customer Account to which the unpaid call relates provided by the Clearing Member or Clearing Members that has or have failed to pay the Clearing House.
- (g) No right of the Clearing House under this Rule 110 shall be exercised so as to extend the time at which a payment in any currency to any Clearing Member in respect of Variation Margin is otherwise due on any Business Day, in respect of all or any of a Clearing Member's accounts, beyond the time of commencement of the daily payment cycle for the relevant currency for the next Business Day (or, where the Externalised Payments Mechanism is applicable, the relevant time when the payment would be made on the next Business Day).

**Rule 111      *Liability***

- (a) Each Clearing Member shall indemnify and hold harmless the Clearing House against any and all losses, liabilities, damages, injuries, costs, claims, shortfalls and expenses (excluding any consequential losses, liabilities, damages, injuries, costs, claims, shortfalls or expenses) incurred or suffered by the Clearing House or any of its Directors, officers, employees or committees (including any individual committee member, but only in so far as that Person is acting in the capacity of a committee member) arising out of or in connection with any of the following:
- (i) a breach (or an allegation made by the Clearing House or any Governmental Authority of a breach) by such Clearing Member of any of its obligations under these Rules, the Procedures, its Clearing Membership Agreement or any Contract;
  - (ii) such Clearing Member's conduct (excluding conduct attributed to a Clearing Member solely as a result of the conduct of a Customer under Rule 102(i)), excluding conduct which the Clearing Member is obliged to perform and has performed in accordance with the Rules or Procedures or its Clearing Membership Agreement;
  - (iii) a breach by such Clearing Member of any Customer-CM Transaction, agency relationship or other contract with its Customer or a failure to perform by such Clearing Member in breach of any other obligation to such Customer (including

without limitation, any failure by such Clearing Member in whole or in part to pass on or credit to any Customer equivalent performance under a Customer-CM Transaction or other contract with its Customer to that which such Clearing Member has received under a Customer Account Contract from the Clearing House where such failure constitutes a breach or failure to perform as aforementioned);

- (iv) [Not Used];
- (v) (A) any claim made or alleged against the Clearing House by, or any liability of the Clearing House to, an Eligible Person (as defined in the relevant Clearing Membership Agreement), Transferor, Transferee or Customer of that Clearing Member; or (B) such Clearing Member's conduct to the extent that the same is not covered by Rule 111(a)(ii); or
- (vi) a breach (or an allegation made by the Clearing House or any Governmental Authority of a breach) by the Clearing Member of any Applicable Law,

provided that a Clearing Member shall not indemnify or hold harmless the Clearing House or any of its Directors, officers, employees or committees (or any individual committee member) to the extent that any such loss, liability, damage, injury, cost or expense arises out of or in connection with:

- (A) a breach by the Clearing House of any of its obligations under these Rules, the Procedures or any Contract;
- (B) fraud, bad faith, gross negligence (*bewuste roekeloosheid*) or wilful misconduct (*opzet*) by the Clearing House or any of its Directors, officers, employees or committees (or any individual committee member); or
- (C) personal injury or death resulting from negligence, recklessness or an intentional act or omission of the Clearing House or any of its Directors, officers, employees or committees (or any individual committee member).

- (b) The provisions of this Rule 111 shall apply:
  - (i) without prejudice to the liability of any other Person subject to the Rules or the rules of any Exchange for the same conduct;
  - (ii) in the case of inconsistency with any other provision of the Rules, in priority to that other provision;
  - (iii) whether or not the Clearing Member's Representative(s) are subject to the Rules;
  - (iv) whether or not the Clearing Member's Representative(s) can be conclusively identified (provided that it is established that the relevant conduct was in fact

carried out by a Clearing Member's Representative, albeit an unidentified Clearing Member's Representative); and

- (v) save as expressly set out in Rule 111(f), to Disclosed Principal Members (and their agreements with the Clearing House), in the same way as they apply to a Clearing Member that has no Customers (and Clearing Membership Agreements).
- (c) Neither the Clearing House nor any of its Representatives, its Affiliates or its Affiliates' Representatives shall be liable to any Clearing Member or any other Person in respect of any loss, liability, damage, injury, cost or expense incurred or suffered by such Clearing Member or Person, whether in contract, tort or restitution, as a fiduciary or under any other cause of action, arising out of or in connection with any of the following:
- (i) any suspension, restriction or closure of the Clearing House or its services;
  - (ii) any failure or malfunction of or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by the Clearing House, any Market or any Delivery Facility or the suspension, restriction or closure of any Market or Delivery Facility;
  - (iii) any act or omission of any Exchange, Market, any Delivery Facility, any Clearing Member or any other third party including any error in relation to price data;
  - (iv) any Force Majeure Event affecting the Clearing House (including, in relation to a delivery, a Force Majeure Event affecting a Person making or taking delivery on behalf of the Clearing House);
  - (v) any dispute relating to the validity, existence or terms of any Contract;
  - (vi) the exercise (or failure to exercise) by the Clearing House of any discretion or right conferred upon it pursuant to these Rules;
  - (vii) the exercise (or failure to exercise) by any Exchange of any discretion or right conferred upon it pursuant to its rules (including, without limitation, in relation to error trades);
  - (viii) any indirect or consequential loss, liability, damage, injury, cost or expense, any loss of profit (whether direct or indirect) or any loss of bargain;
  - (ix) any action in libel, defamation or slander in connection with the issue of any Default Notice, conduct of any proceedings relating to an Event of Default, the timing of termination of any Contracts or the manner in which or the price at which any Contracts are terminated following an Event of Default;
  - (x) rejection of any application to become a Clearing Member;



- (xi) any Contract being void pursuant to Rule 403 or avoided pursuant to Rule 404, including (without limitation) the causes and consequences of such Contract being void or voidable;
- (xii) any action or inaction on the part of a Transferor or Transferee;
- (xiii) in respect of a Contract subject to tender, delivery or physical settlement:
  - (A) a tender given by the Clearing House;
  - (B) any documents accompanying a tender as required by Market Rules or the Procedures;
  - (C) the performance by the Clearing House of its obligations to make delivery of a Deliverable under a Contract or to pay the price or Exchange Delivery Settlement Price; or
  - (D) any other loss, liability, damage, injury, cost or expense arising under the terms of a Contract in relation to tender, delivery or physical settlement,

unless, the relevant Clearing Member gives notice of its loss, liability, damage, injury, cost or expense within seven Business Days of either the day on which relevant documents must be taken up and paid for by the Clearing Member (whether or not the Clearing Member fulfils that obligation) or the Clearing Member must take delivery of the Deliverable, whichever is the earlier;

- (xiv) as a result of any action taken by it pursuant to Market Rules on the basis that Market Rules are to any extent invalid or *ultra vires* or that a determination or request made by the Market or any agreement made by the Market, is *ultra vires* or incompatible with Market Rules;
- (xv) any express or implied representations or warranties in relation to the Clearing House's systems, including, but not limited to, representations or warranties of good title, merchantability and fitness for purpose or for a particular use;
- (xvi) any statement, representation, assurance or warranty of the Clearing House or any other Person other than as expressly set out in the Rules, Procedures, Contract Terms, a Clearing Membership Agreement; or
- (xvii) any action, suit or proceeding brought against the Clearing House over one year after the time that a cause of action, suit or proceeding has accrued,

provided that neither this Rule 111(c) nor any other provision of these Rules shall affect the application of section 291 of the FSMA or shall exclude or restrict the liability of the Clearing House or any other Person for:

- (xviii) fraud, bad faith, gross negligence or wilful misconduct;

- (xix) personal injury or death resulting from negligence, recklessness, or an intentional act or omission;
  - (xx) obligations under Contracts (except that, other than as provided in Part 7 and the Delivery Procedures, the Clearing House shall have no obligation physically to make or accept delivery of any Deliverable and shall have no liability arising out of the failure or lateness of another Clearing Member (or its Transferor or Transferee) physically to make or accept any such delivery or make any such payment); or
  - (xxi) any liability which in accordance with Applicable Laws cannot be excluded, to the extent such liability cannot lawfully be excluded.
- (d) Any possible action, suit or proceeding against the Clearing House must be notified to the Clearing House as soon as reasonably practicable, including all relevant details then known and supporting documentation.
- (e) [Not Used.]
- (f) Save for any liability which it cannot exclude pursuant to Applicable Laws, the Clearing House shall not be liable pursuant to these Rules or any Clearing Membership Agreement to any Person who is not a Clearing Member. Without prejudice to the generality of the foregoing, the Clearing House shall not be liable (save for any liability which it cannot by law exclude) to any Transferor or Transferee (that is not the Seller or Buyer under a Contract, respectively) or to any Customer of a Clearing Member (except in the case of a Customer as expressly set out in Part 16 of the Rules and elsewhere in respect of Customers of FCM Clearing Members).
- (g) If the Clearing House is found liable to a Clearing Member in respect of a Contract and another Clearing Member is also found liable to the Clearing House in respect of a Contract which arose pursuant to the same Transaction as the first Contract, then the liability of the Clearing House under the first Contract shall be deemed to be a foreseeable consequence of the breach by the Clearing Member of the second Contract and the Clearing House shall be entitled to be indemnified by such Clearing Member in accordance with this Rule 111.
- (h) Damage or loss to the property of the Clearing House or any other property on the Clearing House's premises will be paid for by the Clearing Member causing such damage or loss.
- (i) [Not Used]

**Rule 112      *Force Majeure and similar events***

- (a) Neither the Clearing House nor a Clearing Member shall be liable for any failure, hindrance or delay in performance in whole or in part of its obligations under these

Rules or of any Contract if and to the extent that such failure, hindrance or delay arises as a result of a Force Majeure Event.

- (b) On the occurrence of any Force Majeure Event (and, where the Force Majeure Event affects the Clearing House, an affirmative vote of the Board at a quorate meeting recognising such Force Majeure Event (subject always to Rule 109(c)):
- (i) the Affected FM Party shall immediately notify the Clearing House of the same (or, if the Affected FM Party is the Clearing House, the Clearing House shall issue a Circular in relation to the Force Majeure Event);
  - (ii) the Clearing House shall be entitled to require any Contracts affected by the event or circumstance to be performed in accordance with directions issued by the Clearing House or to be Invoiced Back;
  - (iii) the Clearing House shall be entitled to require any Clearing Member to take such action as the Clearing House may direct in respect of Contracts affected by the event or circumstance;
  - (iv) the Clearing House shall be entitled to require Clearing Members to comply with any directions issued by the Clearing House regarding the performance of, or otherwise in respect of, such affected Contracts as are specified by the Clearing House; and, upon receipt of such an invoice, settlement of all affected accounts shall be due immediately and shall be made forthwith in discharge of such Contracts;
  - (v) a Clearing Member affected by a Force Majeure Event shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform its obligations to the Clearing House and if the Clearing House is affected by a Force Majeure Event, it shall use all reasonable endeavours to mitigate the effects of same upon its ability to perform such obligations to Clearing Members; and
  - (vi) the Affected FM Party shall notify the Clearing House immediately as soon as its ability to perform is no longer affected by the Force Majeure Event (or, if Affected FM Party is the Clearing House, the Clearing House shall issue a Circular in relation to the cessation of the Force Majeure Event).
- (c) If a Market determines in accordance with Market Rules that an excessive position or unwarranted speculation or any other undesirable situation or practice is developing or has developed which is affecting or capable of affecting the Market, the Clearing House may take such action as is requested of it by that Market in respect of one or more Contracts.

## **Rule 113**     *Notices*

- (a) The delivery by hand, electronic transmission or facsimile of any notice, order or other communication to:
- (i) a Clearing Member at the address, facsimile number or e-mail address last notified by such Clearing Member to the Clearing House as acceptable for the receipt of notices, orders or other communications (or through such other communication system as is specified by the Clearing House from time to time in accordance with the Procedures); or
  - (ii) a Person appointed by a Clearing Member under Rule 113(e), at the address, facsimile number or e-mail address last notified to the Clearing House as acceptable for service of process,

shall be good and sufficient delivery thereof to such Clearing Member (unless another method of delivery is specified in the Rules or in relation to any Contract). The publication of a Circular shall amount to good and sufficient delivery of the contents of the Circular to all Clearing Members.

- (b) Any notice, document, communication, filing or form to be served on, filed with, made to or provided to the Clearing House pursuant to these Rules or in relation to any Contract shall be served, filed, made or provided at the address, fax number or e-mail address (or through such other communication system) as is specified by the Clearing House from time to time in accordance with the Procedures and shall be marked for the attention of such person or department as is specified by the Clearing House from time to time in accordance with the Procedures. Unless another form or method is specified in the Rules or the Procedures for the notice, document, communication, filing or form in question, a notice, document, communication, filing or form must be served, filed, made or provided in writing.
- (c) Subject to Rule 113(d), any notice, document, communication, order, filing or form, unless otherwise specified in the Rules or the Procedures, will only be effectively served, filed, made or provided and delivered for the purposes of these Rules:
- (i) if sent by post, on the third Business Day (or tenth Business Day in the case of airmail) after the day on which it was deposited in the post, full postage prepaid, in a correctly addressed envelope;
  - (ii) if sent by fax or any other form of electronic communication (including e-mail or other electronic systems), at the time of transmission; or
  - (iii) if delivered in person or by courier, at the time of delivery.

For the purposes of paragraph (ii) above, the "time of transmission" shall mean the time at which an e-mail or other electronic communication is recorded in the Clearing House's systems as having been sent or received by the Clearing House. Effective

service and delivery shall be deemed to have been achieved by the Clearing House at this time.

- (d) Effective service and delivery of a notice, document, communication, order, filing or form determined in accordance with Rule 113(c) shall be deemed to have been immediately achieved regardless of whether the time of receipt is during Opening Hours on a Business Day.
- (e) Nothing in these Rules, the Procedures, the Clearing Membership Agreement or any Contract shall affect the right of the Clearing House to serve process in any other manner permitted by Applicable Law.

#### **Rule 114      *Action by the Clearing House***

- (a) Except as otherwise specifically set out herein, any action permitted or required to be taken by the Clearing House may be taken by the Board, the Chairman, the President or any other Director, employee, officer or committee (or any individual committee member) to whom or which authority has been delegated by the Clearing House, the Board, the Chairman, the President or any committee.
- (b) Where there is a provision to the effect that an action may be taken or power exercised by the Clearing House, any action taken or power exercised by the Clearing House shall be without prejudice to the right of the Clearing House to exercise such powers and take such other steps (or not as the case may be) as it may think fit upon that or any other occasion.
- (c) The Clearing House may outsource operational functions, services or activities. If it does so, this shall not affect the Clearing House's responsibilities and liabilities under these Rules, any Clearing Membership Agreement or Applicable Laws.
- (d) In the interests of the proper functioning of the Clearing House and its Clearing-related functions, the Clearing House may take any measure it deems reasonably necessary in relation to the organisation and the operation of the Clearing House taking all relevant circumstances into account, whether or not these measures are set out in these Rules, provided that the Clearing House may not take any measure under this Rule 114(d) that would constitute a breach of any provision of these Rules or the Procedures or that would modify any provision of these Rules or the Procedures, and provided further that any exercise of its rights under this Rule 114(d) must take place in accordance with the relevant documents governing the internal governance of the Clearing House and its committees.

#### **Rule 115      *Relations with Governmental Authorities and other Persons***

- (a) With a view to maintaining its statuses referred to in Rule 102(q), the Clearing House may:

- (i) make arrangements with any Person for monitoring compliance with and investigating alleged breaches of the Rules (and arrangements, Procedures and directions made, authorised or given thereunder); and
  - (ii) co-operate generally with any Governmental Authority.
- (b) Without prejudice to the generality of Rule 115(a) and subject to Rule 106:
- (i) this may include making arrangements for the sharing of information with Governmental Authorities; and
  - (ii) the Clearing House may, where appropriate, at any time refer a complaint or any other matter coming to its attention to one or more Exchanges, Clearing Organisations or Regulatory Authorities for its or their comment or investigation and may, pending the result of such reference, either suspend or continue with (in whole or in part) its own investigation, proceedings or other actions.

**Rule 116      *Opening Hours***

The Clearing House will give notice of any changes to its Opening Days, Opening Hours and Business Days from time to time by Circular.

**Rule 117      *Dispute Resolution***

- (a) Any Disputes arising between the Clearing House and the Clearing Member that is not subject to the procedures of Part 10 of these Rules or the Complaint Resolution Procedures shall be settled in accordance with the NAI Rules, and:
- (i) the arbitral tribunal shall be composed of three arbitrators, with a Dutch law degree or admitted to practice Dutch law, appointed in accordance with the NAI Rules. Members of the arbitral tribunal shall not be current or former employees or directors of any Clearing Member that is a party to the arbitration, current or former employees of the Clearing House or any person or persons with a material interest or conflict of interest in the outcome of the Dispute;
  - (ii) the place of arbitration and the location of any hearings will be Amsterdam, the Netherlands;
  - (iii) the proceedings shall be conducted in the English language;
  - (iv) the International Bar Association (IBA) Rules on the Taking of Evidence in International Commercial Arbitration are not applicable;
  - (v) the arbitral tribunal shall have the power on the application of any party to an existing arbitration, to require one or more Clearing Members to be joined to an existing arbitration. Each Clearing Member agrees that it may be joined as an

additional party to an arbitration involving the Clearing House and another Clearing Member.

- (vi) if more than one arbitration is begun under these Rules and the Clearing House or a Clearing Member that is a party to an arbitration so concerned serves notice upon the arbitral tribunals concerned that it believes two or more arbitrations are substantially related and that the issues should be heard in one set of proceedings, the arbitral tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the proceedings should be consolidated and heard together before that arbitral tribunal;
  - (vii) in the case of such joinder or consolidation, the arbitral tribunal shall make a single, final award determining all Disputes between the relevant parties in those proceedings. Each Clearing Member and the Clearing House irrevocably waives any right to challenge any award or order of any arbitral tribunal by reason of the fact that it arises from a joined or consolidated arbitration. In addition to the waiver of challenge on the basis of joinder set out in clause 8.6 of the Clearing Membership Agreement, each Clearing Member and the Clearing House hereby irrevocably waives any right to challenge any award or order of any tribunal appointed under the Clearing Membership Agreement by reason of the fact that it arises from a consolidated arbitration;
  - (viii) the arbitral award will be final and binding;
  - (ix) the Netherlands Arbitration Institute may not have the arbitral award published. Each Party shall give notice to the administrator of the NAI within one calendar month following the date of the arbitral award that the Parties object to the arbitral award's publication;
  - (x) other than provided under (vi), (vii) and (viii) above, consolidation of the arbitral proceedings with other arbitral proceedings, as provided for in Article 1046 of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) and Article 39 of the NAI Rules is excluded.
- (b) No arbitral proceedings under this Rule 117 may be instigated where arbitral proceedings could have been instigated in respect of the same Dispute under Market Rules.
  - (c) The provisions of this Rule 117 may not be varied by any Clearing Member or Clearing Members save where each Clearing Member that is a party to the Dispute or arbitration proceedings and the Clearing House agree in express written terms.
  - (d) The commencement of any arbitral proceedings shall be without prejudice to and shall not limit in any way the right of the Clearing House to instigate any procedure under Part 9 or Part 10 of these Rules, including without limitation in relation to any Event of Default, any investigation, disciplinary proceedings or the imposition of a sanction.

- (e) Each Clearing Member that now or hereafter has a right to claim sovereign immunity from suit or sovereign immunity from enforcement for itself or any of its assets shall be deemed to have irrevocably waived any such immunity to the fullest extent permitted by Applicable Laws. Such waiver shall apply in respect of any immunity from:
  - (i) any proceedings commenced pursuant to this Rule 117;
  - (ii) any judicial, administrative or other proceedings to aid an arbitration commenced pursuant to this Rule 117; and
  - (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from any judicial or administrative proceedings commenced pursuant to this Rule 117.
- (f) The rights and obligations of a Clearing Member under the Rules and in relation to any Contract are of a commercial and not a governmental nature.
- (g) No Clearing Member shall raise or in any way whatsoever assert a defence of sovereign immunity in relation to any claim or enforcement proceedings arising from a Dispute under these Rules.
- (h) All Permitted Cover standing to the credit of a Clearing Member who is party to one or more Contracts subject to a Dispute or difference to which this Rule 117 or Market Rules applies, whether or not such Permitted Cover is held with respect to a disputed Contract, may be retained by the Clearing House until the Dispute in question is finally disposed of.
- (i) This Rule 117 is subject to Rule 1608.



## Part 2 Clearing Membership

### Rule 201 *Clearing Membership Criteria*

- (a) In order to attain and maintain membership as a Clearing Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Clearing Member:
- (i) have paid the Clearing House's (non-refundable) application fee (if applicable) and provided completed membership application forms;
  - (ii) be a member of the relevant Market that it wishes to clear;
  - (iii) [Not Used];
  - (iv) [Not Used];
  - (v) be a user of or otherwise have access to at least one Repository (if any) for the Contracts it proposes to clear where such Contracts are required to be reported to a Repository under Applicable Law;
  - (vi) have nominated a Person, satisfactory to the Clearing House, who: (A) is a director, general partner, trustee or officer of the applicant (or Person occupying a similar status or performing similar functions); (B) is responsible for the clearing operations of the applicant; (C) is authorised to act on behalf of the applicant in all transactions with or involving the Clearing House; and (D) has all authorisations, registrations, licenses, permissions, non-objections, consents or approvals required under Applicable Law in any jurisdiction in order to act as a representative for the relevant Clearing Member's business in connection with the Clearing House, and have nominated a second Person who meets the requirements of (A) to (D) above and who is authorised to act on behalf of the applicant in the event of the death, incapacity or other inability of the first Person to so act;
  - (vii) maintain and, where applicable, procure that all of its Designated Controllers maintain, sufficient Capital in accordance with Rule 206;
  - (viii) where a Controller Guarantee is or is to be provided by a Designated Controller, procure that the Controller Guarantee is executed in such form and delivered in such manner as the Clearing House may prescribe from time to time;
  - (ix) be party to a Clearing Membership Agreement with the Clearing House and any related annexes or agreements as are required by the Clearing House under Rule 202(b);
  - (x) have in place all necessary regulatory authorisations, licences, permissions and approvals in its country of origin, the Netherlands and any other jurisdiction in which it conducts business;

- (xi) be fit and proper, have sufficient qualities of financial, compliance and managerial responsibility, operational capacity, business integrity, reputation and competence as the Clearing House, in its discretion, considers necessary or appropriate and satisfy the Clearing House that its directors, officers, employees and Controllers also satisfy such tests, including having adequate separation policies to mitigate concentration risk of critical business functions and compliant oversight in place to enable it to meet its obligations as a Clearing Member;
- (xii) satisfy the internal stringent credit criteria established by the Clearing House, such satisfaction to be confirmed by an examination of its books and records; provided further that this requirement may, at the discretion of the Clearing House, be met by a Controller of the Clearing Member if such Controller provides a guarantee in accordance with the Finance Procedures;
- (xiii) have such facilities, equipment, operational capability, personnel, hardware and software systems as are capable of supporting the proper performance of its business as a Clearing Member, including such IT links to the Clearing House and software as in the judgment of the Clearing House are necessary or desirable;
- (xiv) have in place business continuity procedures to enable it to meet its obligations as a Clearing Member;
- (xv) have a sufficient level of knowledge about the types of Contracts that it intends to clear and any risks involved in relation to the same;
- (xvi) have demonstrated its ability to make available to the Clearing House sufficient Margin and make Margin payments as required pursuant to these Rules;
- (xvii) have made the required Guaranty Fund Contributions;
- (xviii) not be subject to an Insolvency or Unprotected Resolution Step;
- (xix) demonstrate operational competence in respect of the classes of contracts that it proposes to clear;
- (xx) not be a natural person;
- (xxi) [Not Used];
- (xxii) [Not Used];
- (xxiii) if it is to clear transactions on behalf of Customers, have the necessary additional financial resources and operational capacity to perform this activity;
- (xxiv) not be subject to any circumstances pursuant to which an Event of Default could be declared were the applicant to be a Clearing Member;

- (xxv) have provided details of an office which is staffed during normal business hours and sufficient for its proposed activities as a Clearing Member under the direct supervision and responsibility of an executive director or other executive officer of the Clearing Member (who need not be physically located at such office) to which all notices, orders and other communications from the Clearing House may be transmitted or delivered;
- (xxvi) satisfy the Clearing House that it, its relevant employees, board members, officers and directors are fit and proper and would each meet the requirements of suitability and reliability that apply pursuant to the Dutch Financial Supervision Act;
- (xxvii) if the Person is a T2 Clearing Member hold or designate one or more Nominated Target 2 Bank Accounts in relation to which a direct debit mandate has been established in favour of the Clearing House for purposes of cash transfers in Euros and, in the case of all Clearing Members, hold or nominate one or more Nominated Bank Account or Accounts (as necessary) in relation to each of which a direct debit mandate has been established in favour of the Clearing House, and satisfy the Clearing House of the adequacy of its contingency banking arrangements in the event of an Insolvency or failure to pay or default of an Approved Financial Institution which may affect the operation of a Nominated Bank Account;
- (xxviii) if non-cash assets are to be used as Permitted Cover, have executed all necessary documentation relating to the transfer of such assets and not be in dispute with the Clearing House in relation to the ownership over or rights relating to such non-cash assets;
- (xxix) have been subject to customer due diligence measures to the satisfaction of the Clearing House in accordance with the Clearing House's internal policies and Applicable Law;
- (xxx) neither:
  - (A) be, nor to its knowledge have, any directors, officers, employees, agents or Representatives; or
  - (B) to its knowledge have any Affiliates which are, or whose directors, officers, employees or agents are,
 the target of any Sanction, unless or except:
  - (X) subject to an exemption or exception established in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law;

- (Y) to the extent that any obligation or undertaking contemplated by this Rule 201(a)(xxx) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts; or
  - (Z) solely in respect of Persons listed under Rule 201(a)(xxx)(B) who are subject to a Sectoral Sanction, the Clearing Member notifies the Clearing House in accordance with Rule 204(a)(xiv) and the Person subject to the Sectoral Sanction is not prohibited from carrying out any business activity related to derivatives or spot trading;
- (xxxi) be incorporated or registered in and access the Clearing House from only jurisdictions whose Applicable Laws relating to anti-money laundering, Insolvency, Resolution Steps, the regulation of clearing houses, Markets or central counterparties, the enforceability of Contracts and the Rules and such other matters as the Clearing House specifies are acceptable to the Clearing House (and an applicant may be required to supply a legal opinion of external counsel, addressed to the Clearing House, addressing such issues, at its cost); and comply with any additional restrictions or requirements imposed by the Clearing House as a result of activities in any such jurisdictions;
- (xxxii) not be subject to statutory disqualification under Applicable Law;
- (xxxiii) have policies, procedures, systems and controls which are adequate to ensure compliance with Applicable Laws relevant to its behaviour as a Clearing Member (including, but not limited to, Applicable Laws relating to anti-money laundering and financial crime) and appropriately mitigate the risks that the Clearing House's facilities could be used for any improper purpose, and, at the request of the Clearing House or the Exchange, promptly provide satisfactory evidence of such policies, procedures, systems and controls (including, without limitation, copies of all relevant documentation) and of the adequate implementation and maintenance of such policies, procedures, systems and controls; and
- (xxxiv) have appropriate and risk-sensitive policies and procedures relating to customer due diligence measures and ongoing monitoring, reporting, record-keeping, internal control, risk assessment and management in order to prevent breaches of Applicable Laws relevant to its behaviour as a Clearing Member (including, but not limited to, Applicable Laws relating to Sanctions) and, at the request of any Market and/or the Clearing House, promptly provide satisfactory evidence of such policies and procedures (including, without limitation, copies thereof) and of the adequate implementation and maintenance of such policies and procedures, except to the extent that any obligation, undertaking, representation or statement contemplated by this Rule 202(a)(xxxiv) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts.

- (b) The Clearing House may at its discretion attach further objective conditions to any application for Clearing Member status prior to such status being granted, provided that such additional conditions are proportional to the risk brought by the applicant. The Clearing House may grant approval to an applicant conditional upon satisfying certain requirements, provided that the applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.
- (c) Applicants for membership must provide information or documentation to the Clearing House evidencing compliance (or lack thereof) with each of the criteria set out in or required pursuant to Rule 201(a). Failure by an applicant to supply such information or documentation may result in an application being rejected or Clearing Member status or access to particular services being revoked.
- (d) All information supplied to the Clearing House in respect of an application for membership shall be deemed to have been provided by the Clearing Member to the Clearing House on the day on which that Clearing Member becomes a Clearing Member, save to the extent that such information has been amended or revoked at least two Business Days prior to membership being granted.
- (e) If the Clearing House determines that an application for membership should be denied, the applicant will be given notice of such denial, with the membership criterion or criteria that were not met being specified. In such an event, the applicant may request an opportunity to be heard by the Clearing House's Board (or an appropriately constituted sub-committee of the Board) in relation to the matter and to present evidence as to why its application should not be denied or may raise a complaint which the Clearing House will deal with in the same way as if Part 10 applied to such complaint (notwithstanding that the Rules do not apply to the complaint).
- (f) Membership of the Clearing House does not entitle any Clearing Member to any shareholding or other similar interest in the Clearing House or any of the Clearing House's Affiliates. Nothing in these Rules is intended to, or shall be deemed to, establish any partnership or joint venture between any Clearing Member, the Clearing House or any other Person. Except for any provision relating to the relationships between a Clearing Member and Disclosed Principal Member or between a Clearing Member and its Representative, nothing in these Rules constitutes any Clearing Member, Disclosed Principal Member, Customer or the Clearing House as the agent or principal of any other Person. Nothing in these Rules authorises any Person to make or enter into any commitments for or on behalf of any other Person (save in the case of a Clearing Member acting on behalf, or for the account, of and being liable for a Customer or as otherwise expressly provided herein).
- (g) Clearing Members shall be deemed to represent and warrant, upon their first date of membership and on each subsequent date that they are a Clearing Member, that they meet all of the membership criteria in Rule 201(a) and are in compliance with all of their obligations under these Rules.

- (h) In order to attain and maintain membership as a Disclosed Principal Member, a Person must, at a minimum, as from the date on which it is proposed that it becomes a Disclosed Principal Member, meet all the requirements for membership as a Clearing Member. A Disclosed Principal Member shall be subject to and bound by all these Rules in every way as if it were a Clearing Member, subject to such modifications as are set out herein and acting at all times as disclosed principal for the Clearing Member that it has selected.
- (i) [Not Used]
- (j) [Not Used]
- (k) The references in Rule 201(g), Rule 202(a)(iv) and Rule 209(a)(v) to satisfaction of the criteria for membership in or set out in Rule 201(a) include those criteria for membership which are required pursuant to (but not actually set out in) Rule 201(a).

## **Rule 202      *Obligations of Clearing Members***

- (a) In connection with these Rules, all and any Contracts, its membership of the Clearing House and its business and activities as a Clearing Member, each Clearing Member shall at all times:
  - (i) comply with: (A) these Rules and any agreement with the Clearing House; and (B) comply with Market Rules and any rules of or agreement with a Delivery Facility, as applicable;
  - (ii) comply with all Applicable Laws relating to its status and performance as a Clearing Member;
  - (iii) act in good faith in its dealings with the Clearing House;
  - (iv) continually satisfy the criteria for membership set out in or required pursuant to Rule 201(a);
  - (v) respond promptly to any direction by the Clearing House to provide information or documentation;
  - (vi) maintain at least the amount of Capital required pursuant to Rule 206 (and, where the Capital requirements would not be met without a Controller Guarantee being provided, procure that each of its Designated Controllers is party to a Controller Guarantee that remains in force and maintains such amount of Capital as is required pursuant to Rule 206);
  - (vii) pay all fees and other charges when due in accordance with Part 3;
  - (viii) provide Margin and make Margin payments to the Clearing House in accordance with Part 3 and Part 5;

- (ix) make all such payments to the Guaranty Fund as are required pursuant to Part 11;
- (x) respond promptly to all enquiries or requests for information made by the Clearing House;
- (xi) if it is a T2 Clearing Member maintain one or more Nominated Target 2 Bank Accounts for purposes of cash transfers to and from the Clearing House in Euros and, in the case of all Clearing Members, hold or nominate one or more Nominated Bank Account or Accounts at an Approved Financial Institution for purposes of cash transfers to and from the Clearing House pursuant to these Rules (whether by way of Margin, Guaranty Fund Contributions, fees, amounts due under Contracts or otherwise) and have arrangements with such Approved Financial Institutions or Target 2 Central Banks satisfactory to the Clearing House for electronic transfer of funds into and out of such accounts as is required under the Rules and Procedures, on the order of the Clearing House and without the need to seek the consent of such Clearing Member or any of its Customers;
- (xii) if it is to have a Customer Account:
  - (A) represent and warrant to the Clearing House that it is a credit institution or financial institution (as defined in the Money Laundering Directive) or otherwise is a person falling under article 5(1)(a) of the WWFT (or the equivalent provision implementing the Money Laundering Directive in an EEA member state other than the Netherlands);
  - (B) represent and warrant to the Clearing House that it has carried out, and consent to any Transferee Clearing Member, the Clearing House and any Market relying upon, its customer due diligence in relation to all of its Customers, Disclosed Principal Members and all other "beneficial owners" (for the purposes of this Rule 202(a)(xii) having the meaning given to it in article 3(6) of the Money Laundering Directive) to the extent required under the Money Laundering Directive or such other Applicable Laws as determined acceptable by the Clearing House at its discretion) in respect of any Contracts entered into in respect of Customer business, Margin and Contracts recorded in one of its Customer Accounts or any other collateral subject to the Default Portability Rules, such consent to be relied upon in the event of the Clearing Member becoming a Defaulter and the Default Portability Rules being applied;
  - (C) obtain the necessary authority from such Customers, Disclosed Principal Members and beneficial owners to disclose relevant information and consent to the immediate provision of relevant information to any Transferee Clearing Member or the Clearing House about its Customers, Disclosed Principal Members and beneficial owners needed to apply

customer due diligence measures under the Money Laundering Directive or other Applicable Laws relating to anti-money laundering as determined acceptable by the Clearing House at its discretion, and immediately on request forward to any Transferee Clearing Member or the Clearing House copies of identification and verification data and other relevant documents on the identity of Customers, Disclosed Principal Members and beneficial owners obtained when applying those measures, such authority to be relied upon in the event of the Clearing Member becoming a Defaulter and the Default Portability Rules being applied; and

- (D) retain copies of relevant documents and information required to be retained under any Applicable Law relating to anti-money laundering or customer due diligence (including without limitation the Money Laundering Directive, WWFT (or the equivalent provisions implementing the Money Laundering Directive in an EEA member state other than the Netherlands) or other Applicable Laws) for the applicable time periods specified under any Applicable Law relating to anti-money laundering (including the time periods specified in the Money Laundering Directive, WWFT (or the equivalent provisions implementing the Money Laundering Directive in an EEA member state other than the Netherlands) or other Applicable Laws).
- (xiii) if the Clearing House at its discretion so directs, allow formal audits or system tests of its operations related to its business with the Clearing House during reasonable business hours and on reasonable notice no more than twice annually, at the expense of the Clearing Member;
- (xiv) have adequate systems and controls in place in order to ensure that:
- (A) its internal affairs are organised and controlled in a responsible and effective manner, including having adequate separation policies to mitigate concentration risk of critical business functions and compliance oversight in place to enable it to meet its obligations as a Clearing Member, adequate segregation of front and back office functions and adequate back office and compliance support, as required under Applicable Laws;
  - (B) it has adequate risk management systems and internal audit processes that are applied appropriately;
  - (C) its internal record-keeping is adequate;
  - (D) all of its Representatives are fit and proper, suitable, adequately trained and properly supervised;



- (E) all clearing business conducted by it, including in relation to individual Contracts, complies with the Clearing Member's obligations under the Rules and Applicable Laws;
  - (F) it only enters into Contracts or accesses the Clearing House (through actions of its Representatives or otherwise) in or from jurisdictions on a list of acceptable jurisdictions published by the Clearing House from time to time and in accordance with all conditions and requirements as are specified by the Clearing House from time to time for entry into Contracts or access in or from that jurisdiction;
  - (G) it is able continuously to monitor communication facilities for receipt of communications from the Clearing House; and
  - (H) it is able promptly to review Circulars and other communications delivered or made available to the Clearing Member or its Representatives by the Clearing House;
- (xv) ensure that any power of attorney, appointment of any agent or Representative or other authorisation to transact business with the Clearing House given by a Clearing Member to any Person remains in effect on its original terms until not less than five Business Days after a written notice of change has been received by the Clearing House;
  - (xvi) keep accurate records showing the details of each Transaction submitted for Clearing by or on behalf of such Clearing Member and such other information, in such form, as shall be required by the Clearing House from time to time and in accordance with Applicable Laws and Accounting Standards;
  - (xvii) gather and make available to the Clearing House basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to Customers;
  - (xviii) upon request, inform the Clearing House about the criteria and arrangements adopted by it to allow clients access to Clearing with the Clearing House;
  - (xix) participate in default management simulations, new technology testing and other exercises, as notified by the Clearing House from time to time;
  - (xx) be responsible for ensuring that Customers comply with their obligations in the manner set forth in the Rules and Standard Terms;
  - (xxi) if it is subject to CASS 7.18 of the FCA Rules, deliver to the Clearing House, in the format required under CASS 7.18, a letter in respect of each of its Segregated Customer Omnibus Accounts, Standard Omnibus Indirect Accounts, Margin-flow Co-mingled Accounts and Segregated Gross Indirect Accounts which is treated by it as a client transaction account under CASS 7.18;

- (xxii) implement and maintain policies and procedures which are appropriate and risk-sensitive relating to customer due diligence measures and ongoing monitoring, reporting, record-keeping, internal control, risk assessment and management in order to prevent breaches of Applicable Laws relevant to its behaviour as a Clearing Member and, at the request of the relevant Market and/or the Clearing House, promptly provide satisfactory evidence of such policies and procedures (including, without limitation, copies thereof) and of the adequate implementation and maintenance of such policies and procedures, except to the extent that any obligation, undertaking, representation or statement contemplated by this Rule 203(a)(xxii) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts;
  - (xxiii) during and for two hours immediately prior to the start of, and immediately after the end of, Opening Hours on every Business Day, be (and have sufficient persons competent to act on behalf of the Clearing Member) accessible to the Clearing House; and
  - (xxiv) without prejudice to Rule 202(a)(xiii) give such other access to the Clearing House (or any Person appointed by it) to its premises, records and personnel (or those of its Affiliates or service providers) to conduct any inspection, investigation or audit and allow the Clearing House or such Person to take copies of the accounts, books, contracts and any other records or documents of the Clearing Member, in order to facilitate discharge of the Clearing House' regulatory obligations under Applicable Laws, in any case at the cost of the Clearing Member.
- (b) Prior to making available services relating to Clearing to any Customer, a Non-FCM/BD Clearing Member is obliged to procure the agreement of such Customer to the Standard Terms, in such a way that:
- (i) the Standard Terms and/or Rules are duly cross-referenced (as being applicable to Customer-CM Transactions between such Customer and such Non-FCM/BD Clearing Member) in an agreement between the Non-FCM/BD Clearing Member and its Customer that has been duly executed and duly authorised by both of them; and
  - (ii) subject to Rule 202(c), the obligations of the Customer to the Non-FCM/BD Clearing Member and the Clearing House under the relevant Standard Terms constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable Insolvency laws and similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application and to other matters which are standardly excluded, restricted or qualified in legal opinions (regardless of whether enforcement is sought in a proceeding in equity or at law)).

To the extent that it agrees to be bound by the Rules, a Customer of a Non-FCM/BD Clearing Member will be deemed to be bound by each set of relevant Standard Terms in such a manner. It is moreover intended that Customers and Non-FCM/BD Clearing Members each be bound to the Standard Terms (and any amendments to the Standard Terms) through acceptance by conduct as a result of their continued usage of the Clearing House. Neither a failure of documentary execution in accordance with this Rule 202 nor any breach of this Rule 202 is intended to preclude such acceptance by conduct.

- (c) Where:
- (i) the governing law of the agreement between a Non-FCM/BD Clearing Member and its Customer incorporating the relevant Standard Terms and/or Rules is the law of any jurisdiction of incorporation of any Clearing Member; and
  - (ii) each of the place of incorporation and relevant place of business of the Customer is the same as any jurisdiction of incorporation of any Clearing Member or any other jurisdiction specified for this purpose by the Clearing House,
- the obligation in Rule 202(b)(ii) to procure that the obligations of the Customer under the relevant Standard Terms are of a legal, valid and binding nature and enforceable will be deemed to be satisfied and there shall be no obligation on such Clearing Member to carry out any further enquiry as regards enforceability of the relevant Standard Terms under Applicable Laws.
- (d) If the Clearing House so requests in writing and there are reasonable grounds for it making such a request, a Non-FCM/BD Clearing Member will execute any documentation specified by the Clearing House which confirms its agreement to any Standard Terms relating to Contracts it clears for its Customer or any amendment to any such Standard Terms made in accordance with such Standard Terms (either generally or in respect of any particular Customer).
- (e) Where a Customer of a Non-FCM/BD Clearing Member has agreed or is deemed to have agreed to the application of any Standard Terms as set out in Rule 202(b)-(c), the requirements of clause 3.2 of the Clearing Membership Agreement shall be deemed to have been satisfied by the Non-FCM/BD Clearing Member in respect of such Customer.
- (f) If a Controller Guarantee has been provided in favour of a Clearing Member, the Clearing Member to which the Controller Guarantee relates shall procure that the Controller:
- (i) at all times complies with the requirements of Rule 201(a)(viii), Rule 202(a)(ii), Rule 202(a)(iii), Rule 202(a)(v), Rule 202(a)(vi), Rule 202(a)(x) and Rule 202(a)(xiii) as if the Controller were a Clearing Member, *mutatis mutandis*, and such provisions applied to the Controller's business;

- (ii) would not breach any of the requirements of Rule 203, were the Controller to be a Clearing Member subject to the requirements of Rule 203, *mutatis mutandis*, and such provisions applied to the Controller's business; and
- (iii) makes all notifications that would be required under Rule 204 if the Controller were a Clearing Member, *mutatis mutandis*, and such provisions applied to the Controller's business.

**Rule 203      *Prohibitions on Clearing Members***

- (a) In connection with these Rules, any Contracts, its membership of the Clearing House or its business and activities as a Clearing Member, no Clearing Member shall at any time:
  - (i) provide any information to the Clearing House (including information for the purpose of obtaining or reinstating membership) which is false, misleading or inaccurate in any material respect;
  - (ii) breach any Applicable Law relating to its status and performance as a Clearing Member;
  - (iii) commit any act of fraud;
  - (iv) engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering or which is in breach of any similar Applicable Laws;
  - (v) except with the prior written consent of the Clearing House and otherwise than to terminate existing positions, continue to trade, enter into Contracts or provide or accept payments or transfers in respect of Margin when not in compliance with the Capital requirement then applicable;
  - (vi) knowingly disseminate false, misleading or inaccurate reports concerning any Contract, product or market information or conditions that affect or tend to affect prices of Contracts;
  - (vii) make or report a false or fictitious Transaction or Contract;
  - (viii) knowingly, fraudulently, recklessly or negligently furnish any false, inaccurate or misleading information to the Clearing House;
  - (ix) enter into any Contract or fail to close out the same either intending to default in performance of the same or having no reasonable grounds for believing that it would be able to avoid such default (provided that it shall not be sufficient to have intended to comply with any contractual or other provision governing the consequences of default);

- (x) use or reveal any information confidential to the Clearing House or any of its Representatives when under a legal or contractual obligation to the Clearing House or any Applicable Law not to do so;
- (xi) use any information technology or any online services provided to it or made available to it pursuant to its membership of the Clearing House other than for the purposes of conducting its business and activities as a Clearing Member in accordance with these Rules;
- (xii) engage in any other event or practice which has developed or is developing on the Clearing House and is reasonably considered by the Clearing House to be capable of impairing the orderly conduct of business of the Clearing House or affecting the timely delivery or settlement of Contracts;
- (xiii) represent or hold out to any Person that membership of the Clearing House brings with it any stamp of approval, special status, hallmark, regulatory supervision or approval or confers any rights or protections to Customers or any other Person in relation to the Clearing Member's business, policies, financial standing or otherwise (although Clearing Members may inform their Customers, potential Customers and other Persons that they are a member of the Clearing House and details of their privileges);
- (xiv) participate in, facilitate, procure, counsel, incite, encourage, aid or abet any conduct by a third party which would be a violation or attempted violation of these Rules regardless of whether that third party is subject to these Rules;
- (xv) take any action or make any omission or knowingly or recklessly permit the use of its services, facilities or membership or clearing privileges by any Person in a manner which in the reasonable opinion of the Clearing House is liable to:
  - (A) bring the Clearing House or any of its Clearing Members into disrepute;
  - (B) impair the dignity or degrade the good name of the Clearing House;
  - (C) create or maintain or exacerbate actual or attempted breaches, infringements, manipulations or violations of the Rules (or arrangements, provisions or directions made or given thereunder) or market practice; or
  - (D) otherwise be substantially detrimental to the interests or welfare of the Clearing House;
  - (E) result in a breach by the Clearing House of any Applicable Law applicable to the Clearing House;

- (xvi) engage in conduct that would render it unable to satisfy the membership criteria in Rule 201(a) or obligations on Clearing Members under Rule 202(a) or otherwise;
- (xvii) knowingly, negligently, recklessly or carelessly allow any Representative to engage in any conduct that might itself breach these Rules or render it unable to satisfy the membership criteria in Rule 201(a);
- (xviii) assign any of its rights or transfer by novation any of its rights and obligations under these Rules to a third party (or purport to do so) unless the Clearing House provides its prior written consent (which consent shall not unreasonably be withheld or delayed);
- (xix) breach any Contract Terms;
- (xx) if it is subject to CASS 7.18 of the FCA Rules, deliver any letter to the Clearing House in the manner referred to in Rule 102(q)(viii) in respect of any Proprietary Account, Segregated TTFCA Customer Omnibus Account or Standard TTFCA Omnibus Indirect Account;
- (xxi) enter into any Transaction which would take place in circumstances where the Clearing Member would be in breach of Rule 201(a)(xxx) or Rule 405(a)(xi), or the Customer would be in breach of Section 3(o) of the Standard Terms but for the exceptions therein relating to Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts, unless prior notice of at least 30 days has been provided by the Clearing Member to the Clearing House in accordance with Rule 204(a)(xiv) and Rule 204(a)(xvi);
- (xxii) if the Clearing Member or any of its Affiliates acts as an Approved Financial Institution, Concentration Bank, banker, Custodian or counterparty of the Clearing House, then it agrees that any bank account, custodian account or transaction shall not be subject to any Encumbrance, right of set-off or counterclaim in respect of any obligation, sum, amount or asset owed by the Clearing House to the Clearing Member in its capacity as a Clearing Member or arising under these Rules, the Clearing Membership Agreement or any Contract and nor shall any Account at the Clearing House be subject to any right of set-off or counter-claim in respect of any obligation, sum, amount or asset owed by the Clearing House to the Clearing Member in its capacity as an Approved Financial Institution, Concentration Bank, banker, custodian or counterparty of the Clearing House.

**Rule 204      *Notifications by Clearing Members***

- (a) Each Clearing Member shall notify the Clearing House in writing without delay providing full particulars known to it:

- (i) in relation to any change of Control, as soon as it becomes aware of that change or proposed change of Control and it is not prevented from disclosing the change of Control by Applicable Laws;
- (ii) if it breaches any applicable Position Limit that has been notified to it;
- (iii) if it ceases to have sufficient Capital, as determined pursuant to Rule 206;
- (iv) if its Capital for any reason is reduced by more than 10% from that shown on the latest financial statement filed by it with the Clearing House;
- (v) prior to any payment, loan, distribution or redemption causing a reduction in Capital of the nature described in Rule 204(a)(iv), detailing the payment, loan, distribution or redemption involved and a description of the effect that the same will have on the Capital of the Clearing Member;
- (vi) in the event that it fails to meet any obligation to transfer or pay any Margin when and as required by any Clearing Organisation of which it is a member (other than the Clearing House), excluding any matter subject to a dispute (where the Clearing Member is not in default) or resulting from manifest error;
- (vii) in the event that it fails to comply with any applicable financial requirements of any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility;
- (viii) of an Insolvency or Resolution Step affecting it or any of its Group Companies;
- (ix) of any Event of Default affecting it;
- (x) of any financial or commercial difficulty such as would give rise to a risk of an Event of Default occurring;
- (xi) of any "early warning" or similar matter required to be notified to the CFTC or SEC under Applicable Law, within the time and in the manner specified in Applicable Law for such notification to such Regulatory Authority;
- (xii) of any breach by it (or any non-frivolous or non-vexatious investigation or allegation of a breach by it) of any Applicable Law relating to its status and performance as a Clearing Member or of the Rules, including full particulars of the breach;
- (xiii) of anything relating to the Clearing Member of which the Clearing House would reasonably expect notice (including of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded); or

- (xiv) (A) if it is or becomes the target of any Sanction; (B) if it has made any Transaction or has entered into any Contract which is prohibited by any Sanction; or (C) if it is or becomes incorporated, registered, located, organised, domiciled or resident in a Comprehensive Sanctions Jurisdiction, unless subject to an exemption or exception in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law;
  - (xv) if it becomes aware that any of its Affiliates, Customers, directors, officers, employees, agents or Representatives or its Affiliates' directors, officers, employees or agents (A) is or becomes the target of any Sanction; (B) has made any Transaction or entered into any Contract which is prohibited by any Sanction; or (C) is or becomes incorporated, registered, located, organised, domiciled or resident in a Comprehensive Sanctions Jurisdiction, unless subject to an exemption or exception in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law;
  - (xvi) at least 30 days in advance of making any Transaction or entering into any Contract which would take place in circumstances where the Clearing Member would be in breach of Rule 201(a)(xxvi), Rule 405(a)(xi) or Rule 405(a)(xiii) or the Customer would be in breach of Section 3(o) of the Standard Terms but for the exceptions therein relating to Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts.
- (b) Notifications under Rule 204(a)(i) shall only be required where a change of Control is notifiable to or subject to the approval of the relevant Regulatory Authority; and in such cases the Clearing Member should provide the Clearing House contemporaneously with a copy of all submissions sent to the relevant Regulatory Authority relating to the change of Control.
  - (c) Notifications under Rule 204(a)(xiii) (other than notifications of any matter, circumstance, change or occurrence which would cause a statement previously furnished pursuant to this Rule 204, any information supplied in connection with the Clearing Member's application for membership or otherwise to be inaccurate, incomplete or superseded) shall only be required if a notification is also required to the relevant Regulatory Authority.

## **Rule 205      *Financial Reporting***

- (a) Each Clearing Member must file with the Clearing House in relation to the Clearing Member and, if so notified by the Clearing House at its discretion, any Controller:
  - (i) an audited financial statement including profit and loss accounts and balance sheet, with the auditor's report, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the



Clearing House within 90 days of the end of the Clearing Member's or relevant Controller's fiscal year;

- (ii) (A) a quarterly financial statement including management profit and loss accounts and balance sheet, drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House, within 45 days of the end of each quarter, or (B) where the Clearing Member or Controller does not produce a quarterly financial statement, an alternative financial statement drawn up in accordance with Applicable Laws and Accounting Standards or otherwise following the requirements of the Clearing House, that the Clearing House at its discretion has determined and confirmed to the Clearing Member may be treated as a suitable alternative; and
  - (iii) in the case of Clearing Members or their Controllers that are licensed, authorised or regulated by a Regulatory Authority, a copy of all financial returns, reports, statements and notices provided to the relevant Regulatory Authority as soon as so provided and, if any such material is other than a routine periodic financial return, statement or report required under Applicable Laws, a written statement setting out (to the extent known) the reasons why such Clearing Member or relevant Controller is filing it.
- (b) In the case of Clearing Members authorised and regulated by the AFM, DNB, FCA or PRA, the Clearing House shall be authorised, at its discretion but subject to the consent of the relevant Regulatory Authority, to obtain copies of financial filings, returns and reports directly from the AFM, DNB, FCA or PRA rather than from the Clearing Member. The Clearing Member will not be relieved of any of its obligations to the extent that the Clearing House does not obtain, or is unable to verify the accuracy of, any financial return or report obtained by it from the AFM, DNB, FCA or PRA.
  - (c) Each Clearing Member shall file with the Clearing House such financial or other relevant information, in addition to what is explicitly required by this Rule 205, as may be requested by the Clearing House at its discretion from time to time.
  - (d) All qualifications and reports of Clearing Members' auditors in any financial report must be satisfactory to the Clearing House.

#### **Rule 206**      *Minimum Capital*

- (a) Each Clearing Member shall maintain at all times the requisite types and amounts of Capital and financial resources as required pursuant to the Finance Procedures and Membership Procedures, or otherwise as specified in writing by the Clearing House from time to time. Eligible Capital of each Designated Controller, if any, of a Clearing Member will be taken into account by the Clearing House in determining whether the Clearing Member satisfies applicable Capital requirements.
- (b) A Clearing Member must, upon request of the Clearing House, provide financial statements and other documentation supporting calculations of Capital or other

financial resources requirements and details of the terms and conditions of any documentation relating to any Capital or other financial resources requirements (including, without limitation, subordinated loan agreements, legal opinions, information provided to Governmental Authorities and accounts and including in relation to any Controller) to the Clearing House.

**Rule 207**      *Clearing Member Status*

- (a) Each Clearing Member shall be authorised to enter into Contracts and hold an Open Contract Position with the Clearing House. Clearing Members may, at the Clearing House's discretion, be subject to restrictions in their business with the Clearing House or differing applicability of the provisions of these Rules, for example by reference to certain Sets of Contracts, Markets or the clearing of Contracts for Customers or using Customer Accounts either generally or of a particular Customer Account Category. The Clearing House shall be entitled to publish lists of Clearing Members including details of their privileges and restrictions from time to time.
- (b) Each Clearing Member shall have the privileges, rights and obligations provided for in these Rules. Such privileges, rights and obligations may be terminated or altered in any respect at any time as provided in these Rules.
- (c) A Clearing Member may apply to clear additional categories of Contract by furnishing such information as is relevant to such request in accordance with Rule 201.
- (d) Each Clearing Member shall be liable to the Clearing House and responsible for all its obligations in respect of each of its Proprietary Accounts. Each Clearing Member shall be liable to the Clearing House and responsible for all its obligations in respect of each of its Customer Accounts as principal, except that an FCM/BD Clearing Member shall be liable to the Clearing House in respect of each of its Customer Accounts as set forth in Part 16. Any sub-accounts of an Account are reported on by the Clearing House for administrative convenience of the Clearing Member only. Recognition by the Clearing House, and transfers between, to and from, a Clearing Member's Nominated Target 2 Bank Accounts, Nominated Customer Bank Accounts and Nominated Proprietary Bank Accounts are for administrative convenience of the Clearing Member only. Subject only to the provisions of Part 16 (and, in the case of FCM/BD Clearing Members, any Pledged Collateral Addendum) neither any separate Customer Account or sub-accounts of a Customer Account recognised in the Clearing House's or any Clearing Member's books and records or those of any Approved Financial Institution or Target 2 Central Bank nor any other Procedures or Rules of the Clearing House shall result in any obligation of the Clearing House towards any Customer of the Clearing Member, any other Person that is not a Clearing Member, whether under rules made under FSMA or the Dutch Financial Supervision Act relating to client money, any other Applicable Laws or otherwise. It is the responsibility of the Clearing Member (and not the Clearing House) to ensure that its Nominated Target 2 Bank Accounts, Nominated Proprietary Bank Accounts and Nominated Customer Bank Accounts are linked appropriately to each Proprietary Account and Customer Account and to ensure its own compliance with Applicable Laws relating to conduct of business, client money, segregation and use of

client assets and segregation of Customer Transactions. Accordingly: (i) the Clearing House and each Clearing Member that has a Customer Account agree that there will be no setting off against each other of positions and assets recorded in any of the Clearing Member's Customer Accounts against any of the Clearing Member's Proprietary Accounts or any other Customer Account of that Clearing Member, in any circumstances which would contravene section 182A of the Companies Act 1989 (to the extent applicable) or EMIR; (ii) the Clearing House and each Clearing Member with more than one Customer Account agree that there will be no setting off against each other of positions and assets recorded in each of the Clearing Member's different Customer Accounts against any of the Clearing Member's Proprietary Accounts or any other Customer Account of that Clearing Member in any circumstances which would contravene 182A of the Companies Act 1989 (to the extent applicable) or EMIR; and (iii) the Clearing House and each Clearing Member with more than one Proprietary Account agree that there will be no setting off against each other of positions and assets recorded in each of the Clearing Member's different Proprietary Accounts, against any of the Clearing Member's Customer Accounts or any other Proprietary Account of the Clearing Member, in any circumstances which would contravene section 182A of the Companies Act 1989 (to the extent applicable) or EMIR. An FCM/BD Clearing Member shall be eligible to have any number of Proprietary Accounts, DCM Customer Accounts, Non-DCM/Swap Customer Accounts and General Customer Accounts. A Non-FCM/BD Clearing Member shall be eligible to have any number of Proprietary Accounts, and any number of Customer Accounts of any Customer Account Category that is available for Non-FCM/BD Clearing Members.

- (e) A Disclosed Principal Member shall be liable as principal to the Clearing House and responsible for all obligations arising in respect of the Proprietary Account referable to the Clearing Member that has appointed it as a Disclosed Principal Member, instead of the Clearing Member. Where the Clearing Member appoints a Disclosed Principal Member, there shall be no Customer Account for either the Clearing Member or the Disclosed Principal Member and the only Proprietary Account shall be that of the Disclosed Principal Member.
- (f) Subject to Market requirements (if any), a Clearing Member may appoint another Clearing Member to perform specific functions, including deliveries, on the first Clearing Member's behalf. In order to do so, the relevant Clearing Members, the Market (if any) and the Clearing House must be party to an agreement pursuant to which the second Clearing Member agrees to perform specific functions detailed in the agreement on behalf of the first Clearing Member. A Clearing Member intending to perform functions for another Clearing Member will represent and warrant to the Clearing House that it has sufficient authorisation under Applicable Laws to carry on such function.
- (g) The following categories of Clearing Members will not be permitted to clear Contracts that are futures or options on underlying U.S. securities (other than futures contracts on broad-based security indices or exempted securities): (i) FCM/BD Clearing Members; (ii) other Clearing Members that are organised in the United States of America; and (iii)

other Clearing Members having a U.S. residence, based upon the location of their executive office or principal place of business, including, without limitation, (a) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), and (b) a foreign branch of a U.S. bank or U.S. registered broker-dealer.

**Rule 208**      *Suspension of Clearing Member*

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

- (d) The Clearing House may publish details of any suspension or a copy of any suspension notice in or together with a Circular, at its discretion except to the extent that a notice is required by Rule 208(e).
- (e) The Clearing House will issue a Circular promptly following any suspension of a Clearing Member or the suspension of any Clearing Member's ability to clear Energy Contracts, Financials & Softs Contracts or other sets of Contracts specifying the name of the Clearing Member affected.

**Rule 209      *Termination of Clearing Membership***

- (a) The Clearing House shall be entitled to terminate the membership of any Clearing Member upon written notice to the Clearing Member:
  - (i) following the occurrence of any Event of Default affecting that Clearing Member;
  - (ii) as a result of disciplinary proceedings brought against that Clearing Member pursuant to Part 10;
  - (iii) following any material and unremedied breach by the Clearing Member of these Rules;
  - (iv) upon such Clearing Member ceasing to meet, or being unable to satisfy the Clearing House that it is able to meet, any of the membership criteria set out in or required pursuant to Rule 201(a); or
  - (v) taking effect no less than 30 Business Days after the date of service of the notice.
- (b) Rule 918(a)(i), (ii), (iii), (v), (vi), (viii) and (b) shall apply, *mutatis mutandis*, following service of a notice of termination by the Clearing House, whether generally or in respect of Energy Contracts, Financials & Softs Contracts or other sets of Contracts under Rule 209(a)(ii)-(v).
- (c)
  - (i) A Clearing Member shall be entitled to terminate its membership of the Clearing House, upon service of a Termination Notice to the Clearing House:
    - (A) taking effect no less than 30 Business Days after the date of the Termination Notice Time; or
    - (B) pursuant to Rule 917(c).
  - (ii) The membership of a Clearing Member shall terminate automatically upon the occurrence of an Insolvency in respect of the Clearing House. In any such circumstances, Rule 912 applies.

- (iii) The membership of a Clearing Member shall terminate automatically upon the occurrence of a Failure to Pay in respect of the Clearing House. In any such circumstances, Rule 912 applies.
  
- (d) Rules 918(a)(ii), (iv), (v), (vi), (viii) and (b) shall apply, *mutatis mutandis*, following service of a Termination Notice under Rule 209(c)(i)(A). Unless it served such notice during a Cooling-off Termination Period, or the termination relates to a corporate group reorganisation where a new Clearing Member that is an Affiliate will receive the terminating Clearing Member's Open Contract Positions, a Clearing Member that serves a Termination Notice shall be liable immediately upon service of the Termination Notice to pay the Clearing House Assessment Contributions of an amount equal to three times its required Guaranty Fund Contribution (at that time), such amounts to be held as Permitted Cover until the Termination Date and applied only as permitted in accordance with Part 9 of the Rules. A Clearing Member that has served a Termination Notice and made such payments shall not be liable for any further replenishments of its Guaranty Fund Contribution or Assessment Contribution, regardless of how many Events of Default take place. Any reference in these Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, in respect of a Clearing Member which has provided such Permitted Cover to the Clearing House (whether under this Rule 209(d) or prior to serving its termination notice or the Termination Date), shall be interpreted as a reference to the Permitted Cover in question being similarly applied. For the avoidance of doubt, a terminating Clearing Member shall therefore remain liable for application of its Guaranty Fund Contribution, application of Assessment Contributions (to the extent paid under this Rule 209(d) or otherwise prior to the Termination Date), position limits under Part 6, disciplinary actions under Part 10 and the declaration and consequences of an Event of Default under Part 9 of the Rules, in each case until such time as all of the following have taken place: (i) its Open Contract Positions have been closed; (ii) the Termination Date has passed; and (iii) all its Guaranty Fund Contribution has been returned under Rule 1102(g). The terminating Clearing Member shall be deemed to be a "Clearing Member" for all such purposes.
  
- (e) The Clearing House will issue a Circular promptly following any termination of membership of a Clearing Member, specifying the name of the Clearing Member affected. The Clearing House may at its discretion (but shall not be required to) publish a copy of any Termination Notice or other termination notice.

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

#### **Rule 301 Fees, Margin, Contract and other payment obligations**

- (a) Clearing Members shall be liable to pay such fees and charges as are levied by the Clearing House in accordance with published rates from time to time. Unless otherwise provided and without limitation, fees shall be payable on each Contract cleared by the Clearing House and the Clearing House shall be entitled to levy fees in respect of Permitted Cover. The Clearing House may amend its fees and charges and the bases for its fees at any time and will notify Clearing Members of any such amendments by means of a Circular prior to the same taking effect.
- (b) Fees charged to Clearing Members by the Clearing House may include the fees of any one or more Markets. The Clearing House shall be entitled to collect fees due from Clearing Members on behalf of all Markets of which a Clearing Member is a member or participant.
- (c) Clearing Members shall be liable to make any payment to the Clearing House that is required pursuant to these Rules at the time and in the amount specified by the Rules or required in accordance with the Rules. In particular, Clearing Members shall be liable to make payment in respect of Margin and Guaranty Fund Contributions from time to time in accordance with Part 5, Part 6 and Part 11 of these Rules at the times and in the amounts that are required pursuant to the instructions of the Clearing House made pursuant to Rule 302.
- (d) Clearing Members shall be liable to pay all amounts due under the Contract Terms, upon entering into a Contract, as Margin and upon delivery or settlement, as further described in these Rules and the Contract Terms at the time and in such amounts as are required pursuant to the Contract Terms. Without prejudice to the generality of the foregoing:
  - (i) in relation to each Contract that is a Future, the parties to such Contract shall be liable to make such payments upon settlement and delivery as are required pursuant to Part 7, the Contract Terms, the Delivery Procedures and the Finance Procedures; and
  - (ii) in relation to each Contract that is an Option, the parties to such Contract shall be liable to make such payments as are required pursuant to Part 8, the Contract Terms, the Delivery Procedures and the Finance Procedures.
  - (iii) [Not Used]
  - (iv) [Not Used]
- (e) Each Clearing Member will procure that the Clearing House has at all times the right to instruct for that Clearing Member's Nominated Target 2 Bank Accounts, Nominated Proprietary Bank Accounts (if any) and Nominated Customer Bank Accounts (if any)

and any other account designated by that Clearing Member for the purposes of this Rule 301, for payment and debits in respect of fees, charges, fines, penalties, Margin, Guaranty Fund Contributions, amounts due pursuant to Contracts (whether upon their formation, settlement or delivery) and any other amounts due to the Clearing House or due to any Market.

- (f) All amounts payable to the Clearing House (except, with the prior written consent of the Clearing House, application fees) shall be payable by electronic transfer from a Nominated Target 2 Bank Account or an account at an Approved Financial Institution only. Where a Nominated Bank Account is used, the Clearing Member shall continue to be liable for any amount due under these Rules and no payment obligation of a Clearing Member shall be treated as having been satisfied or discharged unless and until all of the following steps have taken place in respect of any payment of such amount from an account at an Approved Financial Institution only:
- (i) the relevant electronic transfer of funds is actually received by the Clearing House in unencumbered, fully cleared and fully available funds in a Clearing House AFI Account, being an account at an Approved Financial Institution which is not subject to an Insolvency, or a Clearing House Target 2 Account;
  - (ii) if the Approved Financial Institution used by the Clearing Member is not a Concentration Bank, such Approved Financial Institution has fully performed its concentration function in respect of the payment in question, by completing the transfer of funds from the Clearing House's account at such Approved Financial Institution to the Clearing House's concentration account at a Concentration Bank (which is not subject to an Insolvency) or a Clearing House Target 2 Account, in which account the Clearing House has received unencumbered, fully cleared and fully available funds, in respect of:
    - (A) in the case of a payment pursuant to the Standard Payments Mechanism under Rule 302(a), a net amount reflecting all payments processed through that Approved Financial Institution in respect of all calls on or payments to or from all Clearing Members using that Approved Financial Institution under the Standard Payments Mechanism in respect of the Business Day in question; or
    - (B) in the case of a payment other than a payment pursuant to the Standard Payments Mechanism under Rule 302(a) (such as a payment following an intra-day call for Margin, a payment under the Externalised Payment Mechanism or an *ad hoc* transfer of additional cash Permitted Cover to the Clearing House), the amount received from the Clearing Member that is seeking to make the payment in question; and
  - (iii) in the case of payments pursuant to the Standard Payments Mechanism under Rule 302(a) only, that Approved Financial Institution (including if it is a Concentration Bank) has made all relevant payments pursuant to the Standard Payments Mechanism due to the Clearing Member and other Clearing Members



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

- (iv) Nothing in this Rule 301(f) shall restrict or prevent the Clearing House or any Clearing Member from making any claim against an Approved Financial Institution which has failed to make a payment referred to under this Rule 301(f). In particular: (I) the Clearing House shall not be deemed to have had any loss, liability or shortfall made good or whole vis-à-vis an Approved Financial Institution by virtue of any further payment by a Clearing Member in addition to an attempted payment not credited to its account as a result of this Rule 301(f); and (II) an Approved Financial Institution which has failed to make any payment referred to in this Rule 301(f) shall remain fully liable to the Clearing House or relevant Clearing Member for any such failed payment or account balance notwithstanding a reimbursement or additional payment as between a Clearing Member and the Clearing House. In the event that:
- (x) a payment is received into a Clearing House AFI Account or a Clearing House Target 2 Account but the requirements of Rule 301(f)(ii) or Rule 301(f)(iii) are not satisfied;
  - (y) an affected Clearing Member has satisfied its payment obligations through an additional payment which complies with the requirements of this Rule 301(f); and
  - (z) the Clearing House makes a recovery or irrevocably receives any part or full payment from the Approved Financial Institution into one of its accounts at a Concentration Bank (which is not subject to an Insolvency) or a Clearing House Target 2 Account,

then the Clearing House will make payment to affected Clearing Members in respect of the recovery or receipt actually made by the Clearing House, net of the Clearing House's costs and expenses, *pro rata* in proportion to the amounts of the original missed payments of each affected Clearing Member.

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

other Clearing Members to use a different Approved Financial Institution or Target 2 Central Bank under this Rule 301(f).

- (g) Interest shall be paid by the Clearing Member to the Clearing House on any unpaid but due amount from the date on which the amount becomes due and payable until the date of payment at 1% above the rate per annum which is the cost (without proof or evidence of any actual cost) to the Clearing House if it were to fund the relevant amount, compounded daily.
- (h) In the event that the Clearing House determines that it will suffer or has suffered (directly or indirectly) any loss, liability or cost for or on account of any tax in connection with any Contract, any amount payable to the Clearing House or in respect of any future obligation, or these Rules, the Clearing Member counterparty to such Contract or the Clearing Member by which such amount is payable shall be liable to pay to the Clearing House, pursuant to Rule 302, an amount equal to such loss, liability, or cost.
- (i) All amounts set out in or expressed to be payable to the Clearing House in connection with any Contract or these Rules or otherwise and which constitute the consideration for a supply made by the Clearing House for the purposes of value added tax, and the value of any supply made by the Clearing House for value added tax purposes, shall be deemed to be exclusive of any value added tax which is chargeable on that supply and accordingly if value added tax is chargeable on any supply made by the Clearing House the relevant Clearing Member shall pay to the Clearing House (in addition to and at the same time as the consideration is paid or provided, or if no consideration is due, at the time the supply is made or an appropriate value added tax invoice is issued, whichever is earlier) an amount equal to the amount of the value added tax and the Clearing House shall issue an appropriate value added tax invoice.
- (j) All amounts payable to the Clearing House or by the Clearing House in connection with any Contract or these Rules or otherwise shall be paid without any deduction or withholding for or on account of tax unless such deduction or withholding is required by Applicable Law. If a deduction or withholding for or on account of tax is required to be made in relation to an amount payable to the Clearing House, the amount of the payment due shall be increased to an amount which (after making the deduction or withholding) leaves an amount equal to the payment which would have been due if no such deduction or withholding had been required.
- (k) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation of the Clearing Member to make payment to the Clearing House shall be construed as an obligation of the Disclosed Principal Member, any right to receive payment of the Clearing Member shall be construed as a right of the Disclosed Principal Member and all other provisions of these Rules relating to payment shall be construed accordingly.
- (l) In respect of any payments effected through Approved Financial Institutions only, any payment due to a Clearing Member from the Clearing House will be recognised as having been duly made, and the Clearing House's obligations in respect thereof shall be

treated as having been satisfied and discharged, at the time that the relevant Credit/Debit Payment Transfer Order arises relating to such payment (or, if the Clearing Member or Approved Financial Institution is not a Participant, would have arisen were the Clearing Member or Approved Financial Institution to have been a Participant), provided that the Clearing House has reason to believe that the Clearing House AFI Account from which payment is to be made has sufficient funds or credit on account.

- (m) The Clearing House will maintain a list of Concentration Banks, Approved Financial Institutions and Target 2 Central Bank used by the Clearing House and will issue a Circular upon any change to Concentration Banks, Approved Financial Institutions or Target 2 Central Bank used by the Clearing House.
- (n) The Clearing House will ensure that at all times there is at least one Concentration Bank and at least one Clearing House Target 2 Account.
- (o) Each Clearing Member acknowledges and agrees that the Clearing House may request information from time to time on the account balance of any Nominated Bank Account of the Clearing Member from the Approved Financial Institution at which that Nominated Bank Account is held, including for the purposes of the Clearing House: (i) calling on all available cash in any such Nominated Bank Account in the event of a failure by the Clearing Member to meet a payment obligation arising under any Contract or these Rules; or (ii) determining whether or not there are, or are likely to be, circumstances arising which constitute an Event of Default of the Clearing Member or in which the default rules in Part 9 or any Default Arrangements (as defined in Rule 1201(e)) of the Clearing House would or could be activated. Each Clearing Member agrees to: (i) the disclosure by an Approved Financial Institution of information on the account balance of any Nominated Bank Account held by the Clearing Member at that Approved Financial Institution to the Clearing House for the purposes of this Rule 301(o); and (ii) promptly provide the necessary consent(s) required by the Approved Financial Institution in order to permit the Approved Financial Institution to disclose such information, and hereby waives any right to confidentiality or secrecy, whether contractual or arising under Applicable Laws, which might otherwise prevent, restrict or condition such disclosure.

### **Rule 302**      *Mechanics for Payments*

- (a) Amounts payable to or by the Clearing House in a particular currency (as determined in accordance with the Finance Procedures) will be calculated and settled for each Account based on the designation of the relevant Account, the applicable margin model (net or gross) and payment mechanics set forth in this Part 3, the Clearing Procedures, the Finance Procedures and Part 16. The standard mechanism for settling amounts payable to or by the Clearing House shall be to calculate a net amount in respect of each Account by offsetting amounts due against amounts payable on that Account (except as provided in Rule 1605 for the Non-DCM/Swap Customer Account of FCM/BD Clearing Members) (the "**Standard Payments Mechanism**"). Unless the Clearing House has agreed that the Externalised Payments Mechanism described below in this Rule 302(a) shall apply to a particular kind of cash payment, Account and Clearing

Member, the Standard Payments Mechanism will apply. Under the Standard Payments Mechanism, the Clearing House shall advise each Clearing Member of the net amounts due to or from the Clearing Member in respect of each of its Proprietary Accounts and each of its Customer Accounts (if any) on each Business Day (or more frequently if the Clearing House determines to make an intra-day call in accordance with the Finance Procedures). In respect of net amounts due to or from each or any Clearing Member, the Clearing House will instruct the respective Target 2 Central Banks or Approved Financial Institutions accordingly:

- (i) if the net amount for a Proprietary Account is due to the Clearing House in an Eligible Currency other than Euros or from a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Proprietary Bank Account of the Clearing Member with such Approved Financial Institution to a Clearing House AFI Account in an amount equal to the amount so due;
- (ii) if the net amount for a Proprietary Account is due to the Clearing Member in an Eligible Currency other than Euros or to a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct an Approved Financial Institution to transfer funds from its Clearing House AFI Account to the relevant Nominated Proprietary Bank Account of the Clearing Member with such Approved Financial Institution in an amount equal to the amount so due;
- (iii) if the net amount for a Customer Account (other than a Margin-flow Co-mingled Account or Segregated Gross Indirect Account) is due to the Clearing House in an Eligible Currency other than Euros or from a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Customer Bank Account of the Clearing Member with such Approved Financial Institution to a Clearing House AFI Account in an amount equal to the amount so due;
- (iv) if the net amount for a Customer Account (other than a Margin-flow Co-mingled Account or Segregated Gross Indirect Account) is due to the Clearing Member in an Eligible Currency other than Euros or to a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct an Approved Financial Institution to transfer funds from its Clearing House AFI Account to the relevant Nominated Customer Bank Account of the Clearing Member with such Approved Financial Institution in an amount equal to the amount so due;
- (v) if the net amount for a Margin-flow Co-mingled Account is due to the Clearing House in an Eligible Currency other than Euros or from a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Customer Bank Account of the Clearing Member with such Approved Financial Institution to a Clearing House AFI Account either: (A) in

an amount equal to the total of all net amounts due to the Clearing House across all Margin-flow Co-mingled Accounts of the Clearing Member that are recorded in the same position-keeping account (or in respect of all Margin-flow Co-mingled Accounts of the Clearing Member), regardless of whether any amount is due to the Clearing Member in respect of the same Margin-flow Co-mingled Accounts; or (B) separately in respect of the net amount for each Margin-flow Co-mingled Account, in which case the Clearing Member or its Approved Financial Institution shall be entitled to settle the net amounts across all the Clearing Member's Margin-flow Co-mingled Accounts on a net basis;

- (vi) if the net amount for a Margin-flow Co-mingled Account is due to the Clearing Member in an Eligible Currency other than Euros or to a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct an Approved Financial Institution to transfer funds from a Clearing House AFI Account to the relevant Nominated Customer Bank Account of the Clearing Member with such Approved Financial Institution either: (A) in an amount equal to the total of all net amounts due to the Clearing Member across all Margin-flow Co-mingled Accounts of the Clearing Member that are recorded in the same position-keeping account (or in respect of all Margin-flow Co-mingled Accounts of the Clearing Member), regardless of whether any amount is due to the Clearing House in respect of the same Margin-flow Co-mingled Accounts; or (B) separately in respect of the net amount for each Margin-flow Co-mingled Account, in which case the Clearing Member or its Approved Financial Institution shall be entitled to settle the net amounts across all the Clearing Member's Margin-flow Co-mingled Accounts on a net basis;
- (vii) if the net amount for a Segregated Gross Indirect Account is due to the Clearing House in an Eligible Currency other than Euros or from a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct the Clearing Member's Approved Financial Institution to transfer funds from the relevant Nominated Customer Bank Account of the Clearing Member with such Approved Financial Institution to a Clearing House AFI Account either: (A) in an amount equal to the total of all net amounts due to the Clearing House across all Segregated Gross Indirect Accounts of the Clearing Member that are recorded in the same position-keeping account (or in respect of all Segregated Gross Indirect Accounts of the Clearing Member), regardless of whether any amount is due to the Clearing Member in respect of the same Segregated Gross Indirect Accounts; or (B) separately in respect of the net amount for each Segregated Gross Indirect Account, in which case the Clearing Member or its Approved Financial Institution shall be entitled to settle the net amounts across all the Clearing Member's Segregated Gross Indirect Accounts on a net basis;
- (viii) if the net amount for a Segregated Gross Indirect Account is due to the Clearing Member in an Eligible Currency other than Euros or to a Non-T2 Clearing Member in any Eligible Currency, the Clearing House shall instruct an Approved Financial Institution to transfer funds from a Clearing House AFI

Account to the relevant Nominated Customer Bank Account of the Clearing Member with such Approved Financial Institution either: (A) in an amount equal to the total of all net amounts due to the Clearing Member across all Segregated Gross Indirect Accounts of the Clearing Member that are recorded in the same position-keeping account (or in respect of all Segregated Gross Indirect Accounts of the Clearing Member), regardless of whether any amount is due to the Clearing House in respect of the same Segregated Gross Indirect Accounts; or (B) separately in respect of the net amount for each Segregated Gross Indirect Account, in which case the Clearing Member or its Approved Financial Institution shall be entitled to settle the net amounts across all the Clearing Member's Segregated Gross Indirect Accounts on a net basis;

- (ix) if the net amount for a Proprietary Account is due to the Clearing House in Euros from a T2 Clearing Member, the Clearing House shall instruct the Clearing Member's Target 2 Central Bank to transfer funds from the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank to a Clearing House Target 2 Account in an amount equal to the amount so due;
- (x) if the net amount for a Proprietary Account is due to a T2 Clearing Member in Euros, the Clearing House shall instruct its Target 2 Central Bank to transfer funds from a Clearing House Target 2 Account to the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank in an amount equal to the amount so due;
- (xi) if the net amount for a Customer Account (other than a Margin-flow Co-mingled Account or Segregated Gross Indirect Account) is due to the Clearing House in Euros from a T2 Clearing Member, the Clearing House shall instruct the Clearing Member's Target 2 Central Bank to transfer funds from the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank to a Clearing House Target 2 Account in an amount equal to the amount so due;
- (xii) if the net amount for a Customer Account (other than a Margin-flow Co-mingled Account or Segregated Gross Indirect Account) is due to a T2 Clearing Member in Euros, the Clearing House shall instruct its Target 2 Central Bank to transfer funds from a Clearing House Target 2 Account to the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank in an amount equal to the amount so due;
- (xiii) if the net amount for a Margin-flow Co-mingled Account is due to the Clearing House in Euros from a T2 Clearing Member, the Clearing House shall instruct the Clearing Member's Target 2 Central Bank to transfer funds from the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank to a Clearing House Target 2 Account either: (A) in an amount equal to the total of all net amounts due to the Clearing House across all Margin-flow Co-mingled Accounts of the Clearing Member that are recorded in the

same position-keeping account (or in respect of all Margin-flow Co-mingled Accounts of the Clearing Member), regardless of whether any amount is due to the Clearing Member in respect of the same Margin-flow Co-mingled Accounts; or (B) separately in respect of the net amount for each Margin-flow Co-mingled Account, in which case the Clearing Member or its Target 2 Central Bank shall be entitled to settle the net amounts across all the Clearing Member's Margin-flow Co-mingled Accounts on a net basis;

- (xiv) if the net amount for a Margin-flow Co-mingled Account is due to a T2 Clearing Member in Euros, the Clearing House shall instruct its Target 2 Central Bank to transfer funds from a Clearing House Target 2 Account to the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank either: (A) in an amount equal to the total of all net amounts due to the Clearing Member across all Margin-flow Co-mingled Accounts of the Clearing Member that are recorded in the same position-keeping account (or in respect of all Margin-flow Co-mingled Accounts of the Clearing Member), regardless of whether any amount is due to the Clearing House in respect of the same Margin-flow Co-mingled Accounts; or (B) separately in respect of the net amount for each Margin-flow Co-mingled Account, in which case the Clearing Member or its Target 2 Central Bank shall be entitled to settle the net amounts across all the Clearing Member's Margin-flow Co-mingled Accounts on a net basis;
- (xv) if the net amount for a Segregated Gross Indirect Account is due to the Clearing House in Euros from a T2 Clearing Member, the Clearing House shall instruct the Clearing Member's Target 2 Central Bank to transfer funds from the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank to a Clearing House Target 2 Account either: (A) in an amount equal to the total of all net amounts due to the Clearing House across all Segregated Gross Indirect Accounts of the Clearing Member that are recorded in the same position-keeping account (or in respect of all Segregated Gross Indirect Accounts of the Clearing Member), regardless of whether any amount is due to the Clearing Member in respect of the same Segregated Gross Indirect Accounts; or (B) separately in respect of the net amount for each Segregated Gross Indirect Account, in which case the Clearing Member or its Target 2 Central Bank shall be entitled to settle the net amounts across all the Clearing Member's Segregated Gross Indirect Accounts on a net basis;
- (xvi) if the net amount for a Segregated Gross Indirect Account is due to a T2 Clearing Member in Euros, the Clearing House shall instruct its Target 2 Central Bank to transfer funds from a Clearing House Target 2 Account to the relevant Nominated Target 2 Bank Account of the Clearing Member with such Target 2 Central Bank either: (A) in an amount equal to the total of all net amounts due to the Clearing Member across all Segregated Gross Indirect Accounts of the Clearing Member that are recorded in the same position-keeping account (or in respect of all Segregated Gross Indirect Accounts of the Clearing Member),

regardless of whether any amount is due to the Clearing House in respect of the same Segregated Gross Indirect Accounts; or (B) separately in respect of the net amount for each Segregated Gross Indirect Account, in which case the Clearing Member or its Target 2 Central Bank shall be entitled to settle the net amounts across all the Clearing Member's Segregated Gross Indirect Accounts on a net basis.;

- (xvii) Rule 1605(h) shall apply to determine the timing, nature and means of making payments in relation to any amount due to or from an FCM/BD Clearing Member in respect of its Non-DCM/Swap Customer Account.

The Clearing House offers an alternative payments mechanism (the "**Externalised Payments Mechanism**") which, if a Clearing Member has elected it and this has been accepted by the Clearing House in writing, will apply to certain kinds of cash payments for particular specified Accounts. The Externalised Payments Mechanism may only apply to Variation Margin and such other kinds of cash payments as are specified in the Finance Procedures. The Externalised Payments Mechanism will only apply in respect of specified Accounts as requested by the Clearing Member and confirmed by the Clearing House in writing. Where the Externalised Payments Mechanism has been selected by a Clearing Member and this has been approved by the Clearing House for a particular Account and kind of payment, then the Standard Payments Mechanism as described above for such Account shall be modified so as not to include any netting or aggregation of any payments of the kind specified, which payments shall instead be settled separately through the Externalised Payments Mechanism. Under the Externalised Payments Mechanism, relevant payments shall be settled pursuant to a separate cash flow process at a separate time from that which would have applied under the Standard Payments Mechanism. Payments under the Externalised Payments Mechanism shall remain segregated from one another, by Account, in the same way as payments under the Standard Payments Mechanism and in accordance with Rule 102(q). The Clearing House may revoke applicability of the Externalised Payments Mechanism, in whole or in part, in respect of particular kinds of payments or particular Accounts (and instead subject relevant payment obligations to the Standard Payments Mechanism) by notice at any time to the relevant Clearing Member.

- (b) Instructions made pursuant to this Rule 302 may be made by means of a SWIFT message (or, in the case of a contingency, such other electronic message, fax, telephone or other means as are allowed pursuant to the Finance Procedures) to the relevant Approved Financial Institution Payments between Target 2 Central Bank accounts shall take place under Target 2 procedures as further detailed in the Finance Procedures. Payments pursuant to this Rule 302 shall be made immediately at the time and on the date that the obligation to pay arises or at such other time as is specified by the Clearing House in writing.
- (c) Upon notice from the Clearing House that a transfer of funds from a Clearing Member's Nominated Bank Account or Nominated Target 2 Bank Account was not effected as instructed by the Clearing House for any reason, the Clearing Member shall deliver to



the Clearing House the amount required at such time and in such form as the Clearing House may prescribe.

- (d) Various authorities and powers are granted to the Clearing House pursuant to clause 5.2 of the Clearing Membership Agreement for purposes of supporting the payment arrangements set out in this Rule 302.
- (e) A single Nominated Bank Account or Nominated Target 2 Bank Account may be nominated by a Clearing Member for purposes of more than one Account, to the extent this is permissible under Applicable Laws. Each Customer Account of a Clearing Member shall however be treated separately for purposes of calling and transfers of any payments under Rule 302(a). Where a Clearing Member has more than one Customer Account, there shall be separate payments in respect of each such Customer Account (except for Margin-flow Co-mingled Accounts and Segregated Gross Indirect Accounts, where payments to the Clearing House and payments from the Clearing House may each be separately aggregated across all Margin-flow Co-mingled Accounts or Segregated Gross Indirect Accounts using the same position-keeping account or separately instructed and mutually offset prior to settlement in accordance with Rule 302(a)(v)-(viii) and 302(a)(xii)-(xvi)).

### **Rule 303**      *Set Off*

- (a) Subject to Rule 102(q), the Clearing House may set off any obligation due to it from a Clearing Member against any obligation owed by the Clearing House to, or for the account of, the Clearing Member, regardless of whether payment is due under the Standard Payments Mechanism or the Externalised Payments Mechanism, the place of payment, account, branch or currency of either obligation. If the obligations referred to in this Rule 303(a) are in different currencies, the Clearing House may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set off.
- (b) Subject to Rule 102(q), the Clearing House shall be entitled to make any necessary adjustments to the Clearing Member's Proprietary Accounts and Customer Accounts resulting from exercise of its rights of set off.
- (c) The rights of the Clearing House in this Rule 303 are without prejudice to any rights of lien, set-off, netting, liquidation, combination of accounts or appropriation, or to instruct the same or any other rights or remedies of the Clearing House or any Approved Financial Institution or Target 2 Central Bank, whether under these Rules or otherwise.
- (d) Without prejudice to Applicable Laws of mandatory application following an Insolvency, notwithstanding any existing or future agreement and except as expressly provided in these Rules, the Clearing Membership Agreement, the Procedures or a Contract, each Clearing Member irrevocably waives any and all rights it may have to set off, net, recoup, combine accounts or otherwise withhold or suspend or condition payment or performance of any obligation between the Clearing House and such Clearing Member under these Rules or any Contract against any obligations between

the Clearing House and such Clearing Member or any branch or Affiliate of the Clearing House or of such Clearing Member, under any other agreements.

**Rule 304**     *[Not Used]*

**Rule 305**     *[Not Used]*

## Part 4 Clearing Mechanism

### Rule 401 *Formation of Contracts*

- (a) Subject to Rule 403 and Rule 404, the Clearing House makes an offer to Selling Counterparties and Buying Counterparties on the conditions set out herein to enter into two Contracts, one between the Selling Counterparty and the Clearing House and the other between the Clearing House and the Buying Counterparty (or a single Contract shall arise between the Clearing House and a Buying Counterparty or Selling Counterparty where applicable in the case of Rule 401(a)(vi)), and the Selling Counterparty and the Buying Counterparty will be deemed to have accepted the offer at the moment that:
- (i) in the case of any Matched Transaction, the relevant orders are matched on the relevant Market;
  - (ii) [Not Used.];
  - (iii) in the case of any ICE Block Transaction: the relevant Market receives and has recorded on its system complete data in respect of the Transaction;
  - (iv) [Not Used.];
  - (v) in the case of Transactions generated by a Market as a result of the operation of its contra trade, error trade, invalid trade, cancelled trade, trade correction, error correction, manifest error or similar policies and rules or procedures relating thereto or otherwise, upon notice of the final terms of the Transaction being received by the Clearing House;
  - (vi) in the case of a Contract that is formed as a result of another Contract being Invoiced Back by the Clearing House, immediately upon notice of the existence and final terms of the new Contract being given by the Clearing House to the Clearing Member affected;
  - (vii) in the case of a Contract (including a Contract of Sale) that forms as a result of an Option being exercised in accordance with Part 8, immediately upon such exercise taking effect pursuant to Part 8;
  - (viii) in the case of a Contract that is allocated by one Clearing Member to a different Person (such Person receiving the allocation itself also being a Clearing Member) by agreement of both parties subsequent to that Contract arising but on the same day as that on which such Contract arose, upon both such parties having recorded their agreement to such allocation on the Clearing House's systems;
  - (ix) [Not Used];
  - (x) [Not Used];

- (xi) [Not Used];
- (xii) [Not Used];
- (xiii) [Not Used]
  
- (b) A Contract or Contracts reversing the existing Contract or Contracts shall arise between the Clearing House and the Buying Counterparty and/or the Clearing House and the Selling Counterparty at the moment that an alternative delivery is agreed in respect of a Contract where, pursuant to the Clearing Procedures and Market Rules, a new collateral contract arises as a result of the alternative delivery being agreed, at the time and subject to the conditions and effects on existing Contracts specified in the Clearing Procedures.
  
- (c) The Clearing House shall be entitled to rely conclusively on the accuracy and authenticity of any and all information and data regarding any Transaction submitted to the Clearing House by or on behalf of a Market, Exchange, Repository, Clearing Member or Representative of a Clearing Member, whether or not a Clearing Member or one of their Representatives in fact authorised the submission of such information or the details so submitted.
  
- (d) In the case of a new Contract that forms as a result of another Contract being Invoiced Back pursuant to Rule 401(a)(vi), the new Contract shall be on the same terms as the original Contract, except that the roles of Buying Counterparty and the Clearing House or, as the case may be, the Selling Counterparty and the Clearing House shall be reversed and the Clearing House shall be entitled, at its discretion, to determine the price at which the Contract was bought or sold and any delivery or settlement price.
  
- (e) In the case of a Contract that forms as a result of another Contract being subject to allocation pursuant to Rule 401(a)(viii), the new Contract shall be on the same terms as the original Contract, except that the identity of the Clearing Member being the Buying Counterparty or Selling Counterparty shall be different, in accordance with the allocation instructions received by the Clearing House. The Clearing Member that was party to the original Contract and the Clearing House shall each automatically and immediately be released and discharged from all their rights, liabilities and obligations in respect of the original Contract upon formation of the new Contract.
  
- (f) Upon request by the Clearing House, a Buying Counterparty or Selling Counterparty shall promptly confirm or otherwise notify the details of any Contract or Transaction to the Clearing House in such form and manner as the Clearing House requests. Any such confirmation or notification shall not of itself affect the status or terms of any Contract.
  
- (g) Each Clearing Member shall promptly and accurately designate each new Contract through the ICE Systems in accordance with Applicable Laws as: (i) related either to one of its Proprietary Position Accounts or one of its Customer Position Accounts (if any); and (ii) to any relevant sub-account in the ICE Systems. If a Clearing Member becomes aware of any event or circumstance which results in any designation

previously made by it under this Rule 401(g) having been incorrect or requiring amendment, it shall provide a further designation to the Clearing House, specifying any required transfers between accounts or sub-accounts which, if acted upon by the Clearing House, would result in any Contract affected by such event or circumstance being correctly designated as for the appropriate Position Account and sub-account in the ICE Systems. Each Clearing Member having a Customer Account shall submit to the Clearing House on a daily basis (or more frequent basis, on request) accurate data on the breakdown of its entire Open Contract Position for each such Customer Account on a per Customer basis. The Clearing House shall be entitled to act and shall (subject, in the case of any transfers, to the requirements of Rule 408(a)) act upon all designations and information submitted by Clearing Members in recording Contracts in Position Accounts or other sub-accounts designated by the Clearing Member or otherwise provided under this Rule 401(g) from time to time, without the need for any further enquiry on the part of the Clearing House.

(h) Where a Clearing Member has appointed a Disclosed Principal Member, the Disclosed Principal Member shall be the Buying Counterparty or the Selling Counterparty (as applicable) instead of the relevant Clearing Member in respect of all Contracts arising under this Rule 401 to which that Clearing Member would, but for the requirements of this Rule 401(h), otherwise be party. All provisions of these Rules relating to Contracts and Clearing Members shall be construed accordingly.

(i) In order for a Contract to arise in relation to an Energy Contract pursuant to:

(i) Rule 401(a)(i), (iii), (v), (vii) or (viii); or

(ii) Rule 401(a)(vi),

each Clearing Member that is a Buying Counterparty or Selling Counterparty must be an Energy Clearing Member.

(j) In order for a Contract to arise in relation to a Financials & Softs Contract pursuant to:

(i) Rule 401(a)(i), (iii), (v), (vii) or (viii); or

(ii) Rule 401(a)(vi),

each Clearing Member that is a Buying Counterparty or Selling Counterparty must be a Financials & Softs Clearing Member.

(k) [Not Used]

(l) [Not Used]

(m)

(i) On each occasion that a Contract arises under Rule 401(a), each affected Clearing Member, Customer and the Clearing House, as applicable, shall ensure

that the details of such Contract and/or any related Customer-CM Transaction they have concluded, as the case may be, and any modification or termination of such Contract and/or Customer-CM Transaction, as applicable, is reported to a Repository, in accordance with Applicable Laws, no later than the working day following the conclusion, modification or termination of the Contract, as applicable, and in accordance with any applicable Procedures.

- (ii) The relevant Market and the Clearing House shall be authorised to submit the terms of the Contract (and any related Customer-CM Transaction) to any Repository as a delegate for the Clearing Member and Customer, as applicable, save where the relevant Clearing Member notifies the Clearing House or Market in writing that it does not require the Clearing House or Market to act as such (whether generally or in respect of particular Customers or kinds of Contract).
- (iii) [Not Used]
- (iv) [Not Used]
- (n) Where a Contract arises pursuant to this Rule 401 as a result of trading, submission of trade data or other action by or relating to a Customer of a Non-FCM/BD Clearing Member, an opposite Customer-CM Transaction shall arise between such Customer and Clearing Member at the same time as the Contract (and may be void or voided in the same manner as a Contract may be void or voided pursuant to this Part 4 *mutatis mutandis*) and further corresponding transactions may arise between Customers, in the manner specified by and in accordance with Market Rules.
- (o) [Not Used]
- (p) When a Clearing Member enters into any Contract, becomes subject to a guarantee in respect of a Contract, takes any action which results in a Contract arising for its own account or has a Contract recorded in a Proprietary Account or Customer Account in its name, it may do so in only one of the following capacities:
  - (i) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Non-DCM/Swap Customers, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for a Non-DCM/Swap Customer Account and recorded by the Clearing House in accordance with such designation;
  - (ii) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more DCM Customers, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for a DCM Customer Account and recorded by the Clearing House in accordance with such designation;

- (iii) [Not Used];
- (iv) [Not Used];
- (v) if it is an FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more General Customers in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for a General Customer Account and recorded by the Clearing House in accordance with such designation;
- (vi) [Not Used]
- (vii) if it is a Non-FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Segregated Customers acting for their own account, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for:
  - (A) a Segregated Customer Omnibus Account if the client chooses omnibus account segregation and has not requested use of an Omnibus Margin-flow Co-mingled Account;
  - (B) [Not Used];
  - (C) an Individually Segregated Margin-flow Co-mingled Account if the client chooses individual client segregation; or
  - (D) an Omnibus Margin-flow Co-mingled Account if the client chooses omnibus client segregation but requests to do so only as part of a particular group of Customers,

and in either case the Contract shall be recorded by the Clearing House in accordance with such designation;
- (viii) if it is a Non-FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Segregated TTFCA Customers acting for their own account in respect of Contracts, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for:
  - (A) a Segregated TTFCA Customer Omnibus Account if the client chooses omnibus account segregation and has not requested use of an Omnibus Margin-flow Co-mingled Account;
  - (B) [Not Used];

- (C) an Individually Segregated Margin-flow Co-mingled Account if the client chooses individual client segregation; or
- (D) an Omnibus Margin-flow Co-mingled Account if the client chooses omnibus client segregation but requests to do so only as part of a particular group of Customers,

and in either case the Contract shall be recorded by the Clearing House in accordance with such designation;

- (ix) [Not Used];
- (x) [Not Used];
- (xi) [Not Used];
- (xii) [Not Used];
- (xiii) if it is a Non-FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Segregated Customers which is in turn providing services to one or more Indirect Clients in respect of Contracts, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for:
  - (A) a Segregated Gross Indirect Account, if the Customer has communicated to the Clearing Member that the Indirect Client has elected to use such an account; or
  - (B) otherwise, a Standard Omnibus Indirect Account,

and in either case the Contract shall be recorded by the Clearing House in accordance with such designation;

- (xiv) if it is a Non-FCM/BD Clearing Member, as a clearing member in relation to a transaction or transactions connected with the provision of services to one or more Segregated TTFCA Customers which is in turn providing services to one or more Indirect Clients in respect of Contracts, in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for:
  - (A) a Segregated Gross Indirect Account, if the Customer has communicated to the Clearing Member that the Indirect Client has elected to use such an account; or
  - (B) otherwise, a Standard TTFCA Omnibus Indirect Account,

and in either case the Contract shall be recorded by the Clearing House in accordance with such designation;



- (xv) [Not Used];
- (xvi) [Not Used];
- (xvii) [Not Used];
- (xviii) [Not Used];
- (xix) as a clearing member in any other capacity (including where the Clearing Member does not provide any services to any Customer) in which case the Contract shall be designated by the Clearing Member in accordance with Rule 401(g) as for a Proprietary Account of the Clearing Member and recorded by the Clearing House in accordance with such designation.
- (q) For the avoidance of doubt, for the purposes of section 187 of the UK's Companies Act 1989, to the extent applicable, a Clearing Member with more than one Account enters into Contracts recorded in its each such Account in a different capacity to that in which it enters into Contracts recorded in any other Account.
- (r) [Not Used]

**Rule 402**      *Relationship between Buying Counterparties, Selling Counterparties and Clearing House*

- (a) Save to the extent provided in Part 16 for FCM/BD Clearing Members and Rule 401(h), each Clearing Member that is party to a Contract shall act as principal and not as agent. In performing its obligations and exercising its rights under these Rules, the Clearing House shall treat the entitlement of Clearing Members to rights pursuant to Contracts to be a full legal and beneficial entitlement and not subject to any Encumbrance in favour of any Person other than the Clearing House (other than pursuant to the Contract Terms).
- (b) Upon the formation of a Contract in accordance with Rule 401, any Clearing Member that has any Transaction Rights or Obligations in relation to the original Transaction shall be automatically and immediately released and discharged from all and any such Transaction Rights or Obligations, other than any Transaction Rights or Obligations falling due for performance before the formation of such Contract.
- (c) The liabilities and obligations of the Clearing House pursuant to Contracts extend only to, and are enforceable only by, Clearing Members. Without limiting the generality of the foregoing, the Clearing House shall have no liability or obligation whatsoever to any Customer of a Clearing Member or any client of such a Customer.
- (d) The Clearing House shall have no liability or obligation in relation to any Transaction whatsoever, unless and until a Contract arises in accordance with Rule 401 and is not void; in which case its liabilities shall be pursuant to the Contract only. The Clearing House's obligations and liabilities under any Contract shall be limited to those pursuant

to the Contract Terms and these Rules, and are subject to the Contract not being void pursuant to Rule 403 and to the Clearing House's rights in relation to voidable Contracts pursuant to Rule 404.

- (e) As between the Clearing House and each Clearing Member, all Contracts, these Rules and the relevant Clearing Membership Agreement are entered into in reliance on the fact that all such documents constitute a single agreement between the Clearing House and such Clearing Member. Were it not for these Rules, the Clearing Membership Agreement and other Contracts, neither the Clearing House nor such Clearing Member would enter into any Contracts with the other.
- (f) In the case of a Contract between the Clearing House and an FCM/BD Clearing Member that is recorded in a Customer Account, the Contract will remain valid and binding on the FCM/BD Clearing Member, and the FCM/BD Clearing Member will be liable to perform under the Contract as set forth in Part 16, regardless of the validity of any obligations in respect of the Contract to which the Customer is or was intended to be bound.

**Rule 403**      *Contracts that are Void from Inception*

- (a) No Contract will arise (it being void *ab initio*) and the Clearing House shall have no obligation or liability to any Person in respect of a Transaction for which incomplete, erroneous or conflicting details are received by the relevant Market.
- (b) In the event of a Contract being void:
  - (i) the Clearing House shall immediately notify the affected Buying Counterparty and Selling Counterparty and any relevant Market;
  - (ii) all amounts paid pursuant to the purported Contract shall be returned by the affected Buying Counterparty and Selling Counterparty and the Clearing House to their respective contractual counterparties, in each case without interest; and
  - (iii) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b).
- (c) Nothing in this Rule 403 of itself is intended to result in any Transaction or Transaction Rights or Obligations being void or voided as between the original parties thereto.

**Rule 404**      *Contracts that are Voidable*

- (a) The Clearing House shall have the discretion to avoid any Contract (which is not void *ab initio* pursuant to Rule 403) if the relevant Contract or Transaction (or related information or data received by the Clearing House, as applicable) whether in whole or in part, as against any Clearing Member that is or would be bound thereto:
  - (i) conflicts or appears to conflict with information received by the Clearing House in relation to such Contract or Transaction from another source, including

(without limitation) information received from a Market, Exchange, any other Clearing Member, Governmental Authority or any Representative of any such Person;

- (ii) results or appears to result from a manifest error, or communications or information technology error or problem;
  - (iii) is or appears to be connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws;
  - (iv) is or appears to be a result of a Force Majeure Event;
  - (v) is one which any Governmental Authority or the relevant Market requires or requests in writing that the Clearing House treat as void or voided;
  - (vi) is one which any Applicable Law provides is void or voided or which any Applicable Law requires the Clearing House to treat as void or voided;
  - (vii) is one in respect of which, at the time of the Transaction, the Clearing House has requested additional Margin or Permitted Cover from the Clearing Member and no Margin or Permitted Cover is provided by the time required;
  - (viii) was entered into in breach of a representation by a Clearing Member arising under the Rules or the Procedures;
  - (ix) is otherwise made or received in such circumstances or in such a manner that acceptance of the Contract or Transaction would be inadvisable, in the opinion of the Clearing House, for the Clearing House's own protection, the protection of Clearing Members generally, Energy Clearing Members generally, Financials & Softs Clearing Members generally, Clearing Members generally or the protection of a Market or marketplace in any class of Contracts; or
  - (x) is one in relation to which any corresponding trade nomination has been rejected by the relevant Delivery Facility.
- (b) [Not Used]
- (c) [Not Used]
- (d) [Not Used]
- (e) If any of the circumstances in Rule 404(a) arises, the Clearing House shall immediately notify the affected Buying Counterparty and Selling Counterparty and any relevant Market. Upon such notification:
- (i) the Clearing House, Buying Counterparty and Selling Counterparty shall each immediately be released from all rights, liabilities and obligations under any affected Contract;

- (ii) the affected Contract shall become null and void;
- (iii) all amounts paid pursuant to the Contract shall immediately be returned by the Buying Counterparty, Selling Counterparty and Clearing House to their respective contractual counterparties, in each case without interest;
- (iv) the following shall apply:
  - (A) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b);
  - (B) each affected Buying Counterparty and Selling Counterparty shall submit, or, as the case may be, resubmit the terms of the Transaction to the relevant Repository (if any); and
  - (C) each affected Buying Counterparty and Selling Counterparty or the Clearing House, as the case may be, shall cancel any submission to any Repository relating to the voided Contracts made pursuant to Rule 401(m).
- (v) [Not Used]
- (vi) [Not Used]
- (f) Nothing in this Rule 404 of itself is intended to result in any Transaction or Transaction Rights or Obligations being void or voided as between the original parties thereto, except to the extent that any equivalent obligation under a Contract corresponding to a Transaction Right or Obligation has been performed or part-performed.
- (g) [Not Used]
- (h) The Clearing House will notify any relevant Market when it avoids a Contract under this Rule 404.

**Rule 405      *Representations and Warranties on Contract Formation***

- (a) In relation to each Contract, the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Buying Counterparty and Selling Counterparty proposing to become or becoming party to any Contract, that:
  - (i) it is in full compliance with the Rules;
  - (ii) its obligations under the Clearing Membership Agreement, any Contract and Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable Insolvency laws or similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to equitable

principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));

- (iii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Clearing Membership Agreement, any Contract or any Credit Support Document to which it is a party;
- (iv) there is not pending or, to its knowledge, threatened against it or any of its Credit Support Providers any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of the Clearing Membership Agreement, any Contract or any Credit Support Document to which it is a party or its ability to perform its obligations under the Clearing Membership Agreement, any Contract or such Credit Support Document;
- (v) except as expressly provided in Part 16 of the Rules in respect of FCM/BD Clearing Members and Rule 401(h) in respect of Disclosed Principal Members, it is acting for its own account and as principal and not as agent;
- (vi) it has made its own independent decisions to enter cleared Contracts and as to whether the entry into of cleared Contracts is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary;
- (vii) it is not relying on any communication (written or oral) of the Clearing House as investment advice or as a recommendation to enter into the Contract, it being understood that information and explanations related to the terms and conditions of a Contract will not be considered investment advice or a recommendation to enter into a Contract;
- (viii) no communication (written or oral) received from the Clearing House will be deemed to be an assurance or guarantee as to the expected results of that Contract;
- (ix) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Contract and it is also capable of assuming, and assumes, the risks of the Contract;
- (x) the Clearing House is not acting as a fiduciary for or an adviser to it in respect of the Contract;
- (xi) if it is a Clearing Member, where the Contract is to be recorded in one of its Customer Accounts or is otherwise related to a Customer-CM Transaction, it acknowledges its obligation in Rule 202(a)(ii) and that compliance with Applicable Laws in the context of entering into Customer transactions includes

compliance with Applicable Laws relating to customer due diligence in respect of its Customer;

(xii) neither:

- (A) it, nor to its knowledge any of its directors, officers, employees, agents or Representatives; nor
- (B) to its knowledge, any of its Affiliates, or any of their directors, officers, employees, or agents,

is the target of any Sanction, unless or except:

- (X) subject to an exemption or exception in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law;
- (Y) to the extent that any representation or statement contemplated by this Rule 405(a)(xii) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts; or
- (Z) solely in respect of Persons listed under Rule 405(a)(xii)(B) who are subject to a Sectoral Sanction, the Clearing Member notifies the Clearing House in accordance with Rule 204(a)(xiv) and the Person subject to the Sectoral Sanction is not prohibited from carrying out any business activity related to derivatives or spot trading; and

(xiii) if it is a Clearing Member, where the Contract is to be recorded in one of its Customer Accounts or is otherwise related to a Customer-CM Transaction, the Customer is not the target of any Sanction, unless or except:

- (A) subject to an exemption or exception in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law;
- (B) to the extent that any representation or statement contemplated by this Rule 405(a)(xiii) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts; or
- (C) if the Customer is subject to a Sectoral Sanction, the Clearing Member notifies the Clearing House in accordance with Rule 204(a)(xiv) and the Person subject to the Sectoral Sanction is not prohibited from carrying out any business activity related to derivatives or spot trading.

Pursuant to Rule 204(a)(xvi), a Clearing Member shall not rely on the exception in Rule 405(a)(xii)(Y) or Rule 405(a)(xiii)(B) unless prior notice of at least 30 days has been provided by the Clearing Member to the Clearing House.

- (b) In relation to each Contract (other than a Contract arising pursuant to Rule 401(a)(v) or Rule 401(a)(vi), the Clearing House will, and will be entitled to, rely on representations and warranties, deemed automatically to arise pursuant to these Rules from each Buying Counterparty and Selling Counterparty proposing to become or becoming party to any Contract, that:
  - (i) the data submitted to the relevant Market or the Clearing House:
    - (A) is complete and correct in all respects; and
    - (B) has been duly authorised by it;
  - (ii) Market Rules (if applicable) and all Applicable Laws have been complied with by it and any relevant Customer in respect of the Transaction.
- (c) In relation to each Contract that arises pursuant to Rule 401(a)(iii) and Rule 401(a)(viii), the Clearing House will, and will be entitled to, rely on representations and warranties deemed automatically to arise pursuant to these Rules from each Buying Counterparty and Selling Counterparty proposing to become or becoming party to any Contract, that:
  - (i) all and any previously subsisting contracts, rights, obligations or liabilities in connection with the subject matter of the Transaction or proposed Contract are on equal terms to that of the relevant Contract Terms (save as to the parties) and, in the case of rights, are free from all Encumbrances (excluding any liabilities and obligations arising or which are expressed to survive pursuant to the Contract Terms, any Pledged Collateral Addendum or Charged Collateral Addendum or the provisions of these Rules relating to Pledged Collateral or Charged Collateral); and
  - (ii) any Person other than the Buying Counterparty and Selling Counterparty to whom any contracts, rights, obligations or liabilities referred to in Rule 405(c)(i) pertain has agreed with it, or such other Person as is relevant, to be released from all of its rights, obligations and liabilities as a result of Contracts arising pursuant to Rule 401(a) (save for any contracts, rights, obligations or liabilities as between the Clearing Member and its Customer (under a Customer-CM Transaction or otherwise) or between any Customer and its customers and so on, in relation to the subject matter of the Contract on a back-to-back basis with a Contract, and further except as provided in Part 16).
- (d) Clearing Members will become party to, and liable under, Contracts each and every time a Contract arises from a Transaction as a result of the action or omission of its Representatives, regardless of any circumstance in relation to such Transaction,

including without limitation whether the person submitting the Transaction was authorised to do so by the Clearing Member or its Representative or whether the Transaction caused a Representative to exceed the Clearing House's credit or other parameters set for such Representative, a Market's or Exchange's position limits or the Clearing House's Position Limits or otherwise was in breach of the Rules, the Procedures, the Clearing Membership Agreement, any other agreement with the Clearing House or Contract Terms, or any of the Clearing Member's or Clearing House's policies, procedures or controls.

- (e) [Not Used]
- (f) The Clearing House shall be entitled to assume, without enquiry, that at each time at which a Customer-CM Transaction arises, the respective obligations of the Clearing Member and Customer under such Customer-CM Transaction constitute its legal, valid and binding obligations enforceable in accordance with its terms, subject to applicable Insolvency laws and similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles in general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

#### **Rule 406**      *Open Contract Positions*

- (a) At the end of each Business Day or at such other frequency as the Clearing House determines at its discretion either generally or in respect of any Clearing Member, the Clearing House will calculate Open Contract Positions in its books and records. Settlement or revaluation of Open Contract Positions and Contracts will take place pursuant to the applicable Contract Terms and through the ICE System. The Clearing House shall have no obligation to notify any Clearing Member or any other Person of Open Contract Positions or Contracts other than through the Clearing Processing System or otherwise than in accordance with the Rules and the Clearing Procedures.
- (b) If a Clearing Member so instructs the Clearing House in accordance with the Clearing Procedures, the Clearing House will aggregate and/or net particular buy and sell positions (for a Set of Contracts that are Futures), or Long and Short positions (for a Set of Contracts that are Options) within the Clearing Member's Open Contract Position in respect of one of a Clearing Member's Customer Position Accounts, provided that no buy or sell positions or Long or Short positions in respect of one Customer are to be netted against or aggregated with buy or sell positions or Long or Short positions in respect of another Customer. Any aggregation and netting of Contracts pursuant to this Rule 406(b) shall take place pursuant to a novation, through termination of the relevant existing Contract of the same Set or some or all of the relevant existing Contracts of the same Set in the same Customer Position Account in consideration for the entry into of a new replacement single Contract replacing those Contracts so being aggregated and/or netted. The Clearing House and relevant Clearing Member will reflect each aggregation and netting under this Rule 406(b) in the records of the relevant Repository (if any) used by each of them.



- (c) Subject to its obligations under Rule 406(b), the Clearing House may at its discretion treat any Contract pursuant to which a Clearing Member is the Buying Counterparty and another Contract of the same Set pursuant to which the same Clearing Member is the Selling Counterparty simultaneously as being netted, or two or more Contracts of the same Set pursuant to which the same Clearing Member is a Buying Counterparty or Selling Counterparty simultaneously as being aggregated, each pursuant to a novation, through termination of the relevant existing Contract of the same Set or some or all of the relevant existing Contracts of the same Set in consideration for the entry into of a new replacement single Contract replacing those Contracts so being aggregated and/or netted, upon calculation of the Open Contract Position in respect of such Set of Contracts, subject to the Clearing Member having made all then due payments pursuant to the Contract Terms in respect of such Contracts and to separate treatment of Open Contract Positions in each Proprietary Account and each Customer Account. Where the position as Buying Counterparty is not of the same size as a position a Selling Counterparty, the Contracts in question shall be closed out and terminated in part. For the avoidance of doubt, any contractual netting of Contracts is subject to Rule 102(q) and there shall be separate treatment (and no offsetting and close-out or resulting termination nor any aggregation or consolidation) as between any of: (A) any Contract recorded in a particular Proprietary Account; (B) any Contract recorded in a particular Customer Account; or (C) any two Contracts that are recorded in different Customer Accounts. The Clearing House and relevant Clearing Member will reflect each aggregation and netting under this Rule 406(c) in the records of the relevant Repository (if any) used by each of them.
- (d) [Not Used]
- (e) [Not Used]
- (f) [Not Used]
- (g) All Intellectual Property in data relating to Transactions, Contracts and Open Contract Positions provided to the Clearing House under these Rules or generated by the Clearing House shall be the property of the Clearing House (except as otherwise agreed with a Market). Such data may be provided by the Clearing House to and any Market, Exchange, Repository or any member of the ICE Group and used by the Clearing House or such other Persons for any commercial or other purpose, subject in each case to the restrictions in Rule 106. Each Clearing Member's and Customer's rights in such Intellectual Property shall be automatically assigned to the Clearing House by virtue of this provision as such rights arise.

#### **Rule 407      *Reporting of Open Contract Positions Carried by Other Clearing Members***

If a Clearing Member (for the purposes of this Rule 407 only, the "**Position Giver**") has Customer or proprietary positions in respect of any Contract carried for it in a Customer Account of another Clearing Member with privileges to clear the same Market (for the purposes of this Rule 407 only, the "**Position Holder**"), the Position Giver shall give written notice to the Clearing House of the name of the Position Holder and the extent of its position on the

Business Day following the Business Day on which a position was carried by the Position Holder.

**Rule 408**      *Transfer of Contracts*

- (a) No Person other than the Clearing House shall be entitled to assign, allocate or transfer, or create any Encumbrance whatsoever in relation to, any of its rights, liabilities or obligations under a Contract or the Rules except:
  - (i) that all rights and obligations of a Clearing Member pursuant to a Contract may be transferred, novated or terminated and replaced from one Clearing Member to another Clearing Member with the agreement of each of the two Clearing Members involved (and, if required under Applicable Law for Open Contract Positions in a Customer Account, the consent of the relevant Customers), and the consent of the Clearing House and relevant Market (if any), subject to such conditions as the Clearing House at its discretion stipulates;
  - (ii) as a result of an allocation resulting in a Clearing Member being the 'Buying Counterparty' or 'Selling Counterparty' as such terms are defined in Rule 101;
  - (iii) as a result of an allocation pursuant to Rule 401(a)(viii);
  - (iv) pursuant to a Pledged Collateral Addendum or Charged Collateral Addendum or the provisions of these Rules relating to Pledged Collateral or Charged Collateral; or
  - (v) as a result of a Transfer of Contracts pursuant to Rule 904.
- (b) Any purported transfer of any rights, liabilities or obligations under a Contract or the Rules other than in accordance with Rule 408(a) shall be null and void.

**Rule 409**      *Amendment of Contract Terms*

- (a) The terms of any Contract may only be amended, waived or varied with the prior written consent of the Clearing House. The Clearing House's consent may be evidenced by Circular, including those issued under Rule 109.

**Rule 410**      *[Not Used.]*

**Rule 411**      *Trade Repository ("Trade") Reporting*

- (a) For all derivatives, cleared by the Clearing House and resulting positions, the Clearing House will report creation and continuation data to a trade repository for purposes of complying with applicable CFTC rules or EMIR governing the regulatory reporting of trades. Upon the request of a counterparty to a trade cleared at the Clearing House, the Clearing House will provide the same creation and continuation data to a trade repository selected by the counterparty as the Clearing House provided to the relevant trade repository under the preceding sentence.

## **Part 5     Margin**

### **Rule 501     *Approved Financial Institutions and Target 2 Central Banks***

- (a) The Clearing House will maintain a list of Approved Financial Institutions. A list of Target 2 Central Banks is available on the Target 2 section of the European Central Bank's website. Only Approved Financial Institutions and Target 2 Central Banks shall be permitted by the Clearing House to open and operate, on behalf of Clearing Members, accounts from which the Clearing House can draw amounts pursuant to a direct debit mandate, for the collection of amounts due to the Clearing House from time to time, as the Clearing House may approve from time to time. Approved Financial Institutions and Target 2 Central Banks may also act in such other capacity, as the Clearing House may approve from time to time. Target 2 Central Banks are also permitted by the Clearing House to issue guarantees in favour of Clearing Members, as Permitted Cover.
- (b) All cash transfers made by Clearing Members to or to the order of the Clearing House must be made from a Nominated Target 2 Bank Account or a Nominated Bank Account, unless the Clearing House gives its prior written consent to another method being used.
- (c) Clearing Members are given notice that the Clearing House may suspend or terminate the status of an Approved Financial Institution or Target 2 Central Bank offering Nominated Target 2 Bank Accounts for purposes of these Rules or attach, amend or revoke conditions to the continued status of an Approved Financial Institution or Target 2 Central Bank offering Nominated Target 2 Bank Accounts. The Clearing House may take such steps if an institution no longer meets all of the requirements of the Clearing House or if the Clearing House determines that it would be advisable for the Clearing House's own protection, the protection of Clearing Members or the protection of a Market to do so.

### **Rule 502     *Margin***

- (a) Each Clearing Member shall transfer Permitted Cover to the Clearing House in respect of Margin in such amounts, in such forms and at such times as are required pursuant to this Part 5 and otherwise as may be prescribed by the Clearing House and notified to Clearing Members, in each case in accordance with these Rules and the Finance Procedures, from time to time.
- (b) At any time on which a requirement for Original Margin or Margin under Rule 502(g) falls due and insufficient Permitted Cover is held, the Clearing Member must initially transfer cash in an Eligible Currency. Thereafter a Clearing Member may in accordance with the Finance Procedures substitute such cash Margin with other Permitted Cover by delivery of the replacement Permitted Cover to the Clearing House. The amount of Original Margin or Margin under Rule 502(g) for any Business Day shall be calculated (and, if necessary, called) separately in respect of each Proprietary Account and each Customer Account for each Clearing Member in accordance with the Finance Procedures.

- (c) Variation Margin payments may be made by the Clearing House or a Clearing Member only in cash in the Eligible Currency in which the Contract in question is to be or can be settled pursuant to the Contract Terms (save where the Finance Procedures require otherwise).
- (d) Details of Eligible Currencies and other Permitted Cover that may be used to satisfy Margin obligations will be notified to Clearing Members from time to time by a Circular. The Clearing House may, at its discretion, vary or alter the standard Margin requirements, nature or types of acceptable Eligible Currencies and Permitted Cover, specify proportions or maximum proportions of cash or asset classes to be provided as Margin or modify any valuation procedures or haircuts set out in or established pursuant to the Finance Procedures, Circulars or any risk policies. Any general changes to requirements for Margin or Permitted Cover will be notified to Clearing Members by a Circular.
- (e) Certain classes of Permitted Cover may be subject to haircuts in accordance with the Finance Procedures (as specified from time to time by Circular) pursuant to which certain classes of Permitted Cover do not count for their full face or market value in the determination of Margin for the account of a Clearing Member. For the avoidance of doubt, this Rule 502(e) shall apply to any haircuts imposed pursuant to clause 2.9 of the Pledged Collateral Addendum.
- (f) The Clearing House may require a Clearing Member or Clearing Members to transfer cash in other Eligible Currencies or Permitted Cover with the Clearing House in substitution for any Permitted Cover already transferred to the Clearing House.
- (g) The Clearing House may impose, amend or withdraw additional Margin requirements in respect of any Clearing Member at any time and at its discretion.
- (h) The Clearing House may designate by Circular or Rule, or agree with any FCM/BD Clearing Member by executing a Pledged Collateral Addendum, that a Proprietary Margin Account or Customer Margin Account or any sub-account of such an account of a Clearing Member shall be a Pledged Collateral Account and consequently that all or any part of the Margin (or Permitted Cover in respect thereof) to be provided to the Clearing House with respect to such account may be provided by way of Pledged Collateral. The Clearing House may agree with any Clearing Member, by executing a Charged Collateral Addendum, that an Account of a Clearing Member shall be a Charged Collateral Account and consequently that all or any part of the non-cash Margin (or Permitted Cover in respect thereof) to be provided to the Clearing House with respect to such Account may be provided by way of Charged Collateral. In the absence of any such express designation or agreement, a Proprietary Margin Account or Customer Margin Account will be neither a Pledged Collateral Account nor a Charged Collateral Account. The Clearing House undertakes in favour of each Clearing Member that entered into a Pledged Collateral Addendum or Charged Collateral Addendum with the Clearing House (which remains valid and effective and which has not been terminated or rescinded) that the Clearing House will not redesignate any of such Clearing Member's Accounts or any sub-account thereof which is a Pledged

Collateral Account or Charged Collateral Account as not so being (without the consent of the Clearing Member) or otherwise in such a way as would cause the Clearing Member to breach any Applicable Law or would affect the characterisation of the Margin in such Account as being provided by the relevant Clearing Member by way of pledge (in the case of a Pledged Collateral Addendum) or security financial collateral arrangement (in the case of a Charged Collateral Addendum).

- (i) Any Pledged Collateral recorded in a Pledged Collateral Account or Charged Collateral recorded in a Charged Collateral Account is transferred to the Clearing House as contingent cover for Margin on the basis that it may only be applied by the Clearing House in accordance with the terms of the relevant addendum: (i)(A) following an Event of Default pursuant to Rule 906 or following a Termination Circular pursuant to Rule 916(e) as cover for Margin against a liability of the Clearing Member relating to the relevant Account (provided that the value of any Pledged Collateral or Charged Collateral returned directly to a Clearing Member or any Person on such Clearing Member's behalf will be excluded from the calculation of any net sum thereunder); and (B) only to the extent that such applied amount is included in the net sum calculation in accordance with Rule 906 or a Product Termination Amount pursuant to Rule 916(e), to ensure that the net sum for the relevant Account or Product Termination Amount would not represent an amount payable by the Defaulter or Clearing Member to the Clearing House; or (ii) pursuant to the Default Portability Rules. In any such circumstances, it will be applied by virtue of amounts representing the proceeds of Pledged Collateral or Charged Collateral being included in amount *M* of the relevant net sum pursuant to Rule 906(a). Any Pledged Collateral or Charged Collateral not applied in accordance with this provision or such provisions and which is not transferred to a Transferee Clearing Member in accordance with Rule 904, following discharge or performance of the secured liabilities and final calculation and determination of all applicable net sums and Product Termination Amounts, shall (or equivalent collateral shall) be returned to the relevant Clearing Member (or other payee or transferee as permitted under Part 9 of the Rules), as a result of such Clearing Member's (or other payee's or transferee's) entitlements to such Pledged Collateral or Charged Collateral and not as part of the net sum or Product Termination Amount processes arising pursuant to Part 9 of the Rules. Any such return by the Clearing House of Pledged Collateral or Charged Collateral (or any part thereof) outside of the net sum calculation or any Product Termination Amount shall discharge and satisfy in full the Clearing House's obligations to return such Pledged Collateral or Charged Collateral to the Clearing Member, the payee or transferee or any Customer or other Person; and no Person shall have any further claim against the Clearing House in respect of such Pledged Collateral or Charged Collateral. To the extent any Pledged Collateral or Charged Collateral is, or is required under Applicable Law to be, returned to a Defaulter, it shall be returned separately from any net sum certified by the Clearing House pursuant to Rule 906.
- (j) The Clearing House shall be under no obligation to inquire into, and shall be fully protected in relying on, any requests, instructions or directions with respect to Pledged Collateral or Charged Collateral or the assets in any Pledged Collateral Account or

Charged Collateral Account under these Rules received from a Person the Clearing House believes to be authorised to act on behalf of the appropriate Clearing Member.

- (k) Changes to the matters described in Rules 502(d) and (e) above, including assets eligible as Margin or Permitted Cover and the haircuts established with respect thereto, will be based on an analysis of appropriate factors as determined by the Clearing House, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spreads and correlations between relevant assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information.

**Rule 503**      ***Margin Calls and Return of Surplus Collateral***

- (a) Margin shall be and become due and payable at the times specified by the Clearing House pursuant to Rule 302.
- (b) Regular Margin calculations will be made by the Clearing House on each Business Day. Any such calculation may result in a call for additional Permitted Cover pursuant to Part 3.
- (c) The Clearing House shall be entitled, at its discretion, to make an intra-day call for Margin or any other amount payable to it. In the event of such a call being made, the Clearing House will:
  - (i) give notice to each Clearing Member which is required to make payment to the Clearing House of the amount payable by such Clearing Member and time by which payment must be made; and
  - (ii) immediately after giving or making reasonable efforts to give the notice described in Rule 503(c)(i), instruct the relevant Approved Financial Institution or Target 2 Central Bank to transfer funds equal to the amount due to the Clearing House from the account of such Clearing Member to an account of the Clearing House.
- (d) For regular calls, Margin shall be calculated with reference to a Clearing Member's Open Contract Position in accordance with the Finance Procedures. For any intra-day Margin calls, Margin shall be calculated with reference to a Clearing Member's Open Contract Position (which includes in relation to a Customer Account where positions are held gross in accordance with the Clearing Procedures, the net additional exposure relating to any Contracts held gross which have not been contractually netted or aggregated in accordance with Rule 406) in accordance with the Finance Procedures.
- (e) The amount of Variation Margin for any Business Day shall be calculated (and, if necessary, called) separately in respect of each Proprietary Account and each Customer Account for each Clearing Member in accordance with the Finance Procedures. Each such Variation Margin call shall be:

- (i) in the case of Contracts reflected in a net or aggregated Open Contract Position, based on the Exchange Delivery Settlement Prices at which Open Contract Positions in Contracts are recorded on the Clearing House's books; and
- (ii) in the case of Contracts not yet reflected in a net or aggregated Open Contract Position, represented by the difference between the Exchange Delivery Settlement Price and the price at which each such Contract was bought or sold; provided, however, that in the case of any Contract based on an index, the amount of the final Variation Margin payment shall be determined as specified in the rules of the Exchange on which the index is based.
- (f) [Not Used]
- (g) [Not Used]
- (h) [Not Used]
- (i) [Not Used]
- (j) The Clearing House shall return to a Clearing Member the amount of any Surplus Collateral, provided that the Clearing House receives a request for such a release from such Clearing Member prior to such time as may be specified by the Clearing House for the day on which such release is to be made or pursuant to standing instructions for the return of Surplus Collateral, as the same may be established or amended in accordance with the Finance Procedures, such returns to be made in accordance with Rule 302 and the Finance Procedures.
- (k) To the extent that the Clearing House permits the usage of more than one class of Permitted Cover in respect of Margin-flow Co-mingled Accounts or Segregated Gross Indirect Accounts, each Non-FCM/BD Clearing Member with more than one Margin-flow Co-mingled Account or Segregated Gross Indirect Account using the same position-keeping account will report to the Clearing House immediately on each occasion that there is a transfer of any Permitted Cover to or from the Clearing House in respect of such Margin-flow Co-mingled Accounts or Segregated Gross Indirect Accounts, other than in connection with a call or return of cash Margin under Rule 303, in the form and manner required by the Clearing House from time to time. Each such Permitted Cover report shall specify the exact total amount of cash of each Eligible Currency and notional amounts of Permitted Cover in the form of securities of each ISIN transferred to or withdrawn from each Margin-flow Co-mingled Account or Segregated Gross Indirect Account. The total nominal amounts of assets in such Permitted Cover reports, in order to be valid, must completely reconcile with Clearing House records of the total nominal amounts of Permitted Cover transferred to or withdrawn from the Clearing House in respect of all relevant Margin-flow Co-mingled Accounts or Segregated Gross Indirect Accounts of the Clearing Member, but the Clearing House shall be under no obligation to check or verify any such report. Valid Permitted Cover reports under this Rule 503(i) may be definitively relied upon by the Clearing House. If at any time the Clearing House is not in receipt of a valid Permitted

Cover report required under this Rule 503(i), each Margin-flow Co-mingled Account or Segregated Gross Indirect Account, in respect of which the Clearing Member has failed to provide a valid Permitted Cover report shall be deemed to have recorded in it a *pro rata* share of each class of Permitted Cover transferred to the Clearing House, or have withdrawn from it a *pro rata* share of each class of Permitted Cover withdrawn from the Clearing House, with *pro rata* shares based upon the Margin requirements for each Margin-flow Co-mingled Account or Segregated Gross Indirect Account as determined based on the Clearing House's Position Accounts. Each Customer that has chosen individual segregation through usage of a Margin-flow Co-mingled Account shall be deemed to have appointed and authorised the Clearing Member to determine how the different classes of Permitted Cover should be transferred to the Clearing House in respect of the Margin-flow Co-mingled Account in which positions relating to such Customer are registered.

**Rule 504**      ***Rights relating to Margin and Representations of Clearing Members***

- (a) The rights and liabilities of the Clearing House and each Clearing Member in relation to Permitted Cover are set out in the Clearing Membership Agreement and these Rules.
- (b) Each Clearing Member will act as principal and not as agent in providing Margin to the Clearing House. The Clearing House will take no account of any right or interest which any Person other than the Clearing Member may have in any Margin furnished by such Clearing Member to the Clearing House, except:
  - (i) as provided by Applicable Law and Rule 1605, with respect to a Customer Account of an FCM/BD Clearing Member; or
  - (ii) as is expressly permitted pursuant to a Pledged Collateral Addendum or Charged Collateral Addendum

Nothing in the Rules nor any Pledged Collateral Addendum (including without limitation section 2.7 of a Pledged Collateral Addendum as modified pursuant to Rule 1609) or Charged Collateral Addendum shall preclude a Clearing Member from providing Pledged Collateral or Charged Collateral to the Clearing House in respect of a Customer Account, where such collateral was provided to the Clearing Member by a Customer and in which the Customer has granted the Clearing Member a security interest to secure the Customer's obligations; provided that Clearing Member agrees that any such security interest in favour of the Clearing Member is in all respects subject to the rights of the Clearing House in respect of such Pledged Collateral or Charged Collateral hereunder and under the Pledged Collateral Addendum or Charged Collateral Addendum; and provided further that the Clearing Member shall not, and shall not attempt to: (A) exercise any rights or remedies or bring any proceeding or action with respect to such Pledged Collateral or Charged Collateral until all such Pledged Collateral or Charged Collateral is released from the pledge, lien, charge or security interest of the Clearing House hereunder and under the Pledged Collateral Addendum or Charged Collateral Addendum; or (B) otherwise interfere with, delay the exercise of or take any action to affect the Clearing House's rights hereunder or under the Pledged



Collateral Addendum or Charged Collateral Addendum with respect to such Pledged Collateral or Charged Collateral.

- (c) Each Clearing Member will be deemed to represent and warrant to the Clearing House on each date on which such Clearing Member transfers Permitted Cover to the Clearing House that:
- (i)
    - (A) immediately prior to any such Permitted Cover being transferred to the Clearing House, the Clearing Member is or was the sole legal and beneficial owner of all such assets or such assets are provided with all legal and beneficial owners' unconditional consent for their use and application pursuant to these Rules and the Clearing Member has the right and authority to deliver or transfer to the Clearing House the Permitted Cover with full title guarantee and free and clear of any Encumbrance of any third person except as provided for under a Pledged Collateral Addendum or Charged Collateral Addendum; or
    - (B) in the case of a Customer Account, that each Customer for which it acts in respect of such Customer Account is contractually bound by the Standard Terms in the manner required under the Rules and, in particular, the Clearing Member has all the rights specified under Section 4(b) of the Standard Terms;
  - (ii) the Clearing House is not subject to any obligation to perform directly to any of a Clearing Member's Customers, Affiliates or Representatives or any third party as a result of the Clearing Member granting any interest in any receivable from the Clearing House resulting from the Clearing House's receipt or use of such Permitted Cover, except as expressly provided pursuant to these Rules or any Pledged Collateral Addendum or Charged Collateral Addendum or as mandated pursuant to Applicable Law;
  - (iii) such Permitted Cover is provided on the basis that it may be used by the Clearing House and applied in accordance with these Rules;
  - (iv) the Clearing Member will not claim that any transfer of Permitted Cover to, or use of Permitted Cover by, the Clearing House in accordance with the Rules or the relevant Clearing Membership Agreement is contrary to or in breach of any requirement of Applicable Law, third party right or other contractual obligation (provided that the Clearing House does not cause such breach by amending these Rules);
  - (v) the Clearing Member is not in breach of any of its contractual or regulatory obligations as a result of the transfer of Permitted Cover to the Clearing House (provided that the Clearing House does not cause such breach by amending these Rules); and

- (vi) if it is subject to CASS 7.18 of the FCA Rules:
- (A) its Segregated Customer Omnibus Accounts and Standard Omnibus Indirect Accounts only contain cash where the corresponding cash claim or receivable in the hands of the Clearing Member is treated by the Clearing Member as a client money claim or receivable and only contain non-cash assets (resulting from a transfer into the account by the Clearing Member) which the Clearing Member was entitled to treat as client assets prior to their transfer to the Clearing House;
  - (B) each of its Margin-flow Co-mingled Accounts and Segregated Gross Indirect Accounts in respect of which a letter has been delivered to the Clearing House pursuant to Rule 102(q)(viii) only contain cash where the corresponding cash claim or receivable in the hands of the Clearing Member is treated by the Clearing Member as a client money claim or receivable and only contain non-cash assets (resulting from a transfer into the account by the Clearing Member) which the Clearing Member was entitled to treat as client assets prior to their transfer to the Clearing House; and
  - (C) none of its Customer Accounts or Proprietary Accounts other than such Accounts as are mentioned in paragraphs (A) or (B) contain any cash where the corresponding cash claim or receivable in the hands of the Clearing Member is required to be treated by the Clearing Member as a client money claim or receivable nor contain any non-cash assets (resulting from a transfer into the account by the Clearing Member) which the Clearing Member was required to treat as client assets prior to their transfer to the Clearing House.
- (d) The Clearing Member shall be liable to the Clearing House for any cost or liability incurred by the Clearing House as a result of the Clearing House possessing, holding, perfecting the title (including, in the case of Pledged Collateral or Charged Collateral, perfecting the legal title, pledge, charge or security interest) to or otherwise being associated with, any asset provided to it by that Clearing Member by way of Margin.
- (e) Where a Clearing Member has appointed a Disclosed Principal Member, any obligation to transfer Margin (or any other amount, payment or performance) of a Clearing Member to the Clearing House shall be construed as an obligation of the Disclosed Principal Member and any right to receive Margin (or any other amount, payment or performance) from the Clearing House shall be construed as a right of the Disclosed Principal Member and all other provisions of these Rules relating to Margin, payments and performance shall be construed accordingly.
- (f) Each Non-FCM/BD Clearing Member shall require and receive Customer-CM Collateral from its Customers or fund such Permitted Cover only in such a manner as is consistent with these Rules and the relevant Standard Terms and in a manner which allows the Clearing Member to transfer Permitted Cover to the Clearing House in

accordance with its obligations under the Clearing Membership Agreement (including for the avoidance of doubt, any Pledged Collateral Addendum or Charged Collateral Addendum) and these Rules.

- (g) Any amount or asset recorded in a particular Account may be applied by the Clearing House to the extent permitted under Part 9 of the Rules as against the net sum for such Account or transferred to the extent permitted under Rule 906 regardless of the origin or status of such amount or assets at the time of transfer or prior to the time of transfer as Customer-CM Collateral, title transfer collateral, security interest collateral, Pledged Collateral, Charged Collateral or otherwise.
- (h) The Clearing House has acknowledged in Rule 102(q), Rule 906(b), letters countersigned and returned by the Clearing House in accordance with Rule 102(q), Clearing Membership Agreements that:
  - (i) no Customer Account of a Clearing Member (or any money, asset or contract recorded in such a Customer Account) is to be combined or co-mingled with a Proprietary Account of the same (or any money, asset or contract recorded in such a Proprietary Account);
  - (ii) no Customer Account of a Clearing Member (or any money, asset or contract recorded in such a Customer Account) is to be combined or co-mingled with a different Customer Account (or any money, asset or contract recorded in such a Customer Account); and
  - (iii) no right of set-off shall be exercised by the Clearing House against money, asset or contract credited to a Customer Account in respect of any sum or obligation owed to the Clearing House on any other account.
- (i) A Clearing Member shall take any action reasonably requested by the Clearing House that may be necessary or desirable to create, preserve, perfect or validate the right, title or interests of the Clearing House in Margin or Guaranty Fund Contributions intended to be created under these Rules, the relevant Clearing Membership Agreement, any Pledged Collateral Addendum or any Charged Collateral Addendum or to enable the Clearing House to exercise or enforce any of its rights with respect thereto.

#### **Rule 505      *DCC Financial Collateral Provisions***

Clearing Members, Customers and the Clearing House acknowledge that, except where an outright settlement or delivery payment occurs, the DCC Financial Collateral Provisions and Financial Collateral Directive shall apply in relation to all Permitted Cover, Margin and Guaranty Fund Contributions transferred to the Clearing House in the form of "cash" (*geld*) or "financial instruments" (*effecten*) (in either case, as defined in the DCC Financial Collateral Provisions). Each Clearing Member and Customer agrees that it will not dispute the construction of the arrangements regarding the provision of such assets under these Rules as "financial collateral arrangements" within the meaning of the Financial Collateral Directive.

**Rule 506**     *[Not Used]*

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## **Part 6     Position Limits**

### **Rule 601     *Establishment of Position Limits***

- (a) The Clearing House will be entitled at its discretion to establish, amend or revoke Position Limits for Clearing Members or in respect of particular Accounts or Customers. The Clearing House may or may not inform Clearing Members of their Position Limits.
- (b) The Position Limit for each Clearing Member, Account or Customer will be determined at the Clearing House's discretion and may take into account the Clearing House's evaluation of the financial and operational capacity of the Clearing Member, its compliance with the Rules or Applicable Laws, and such other factors as the Clearing House at its discretion deems appropriate.
- (c) If a Clearing Member is not notified of a Position Limit for an Account, Customer, particular Set of Contracts or broader group of Contracts, it may assume that there is no such Position Limit in place (and shall not be treated as having breached any Position Limit) until such time as the Clearing House notifies it of the Position Limit. Any finding of breach of a Position Limit by the Clearing House may only be prospective and not retrospective with respect to the time of notification to the Clearing Member of the Position Limit.

### **Rule 602     *Breach of Position Limit***

- (a) If a Clearing Member exceeds any Position Limit, the Clearing House may, at its discretion:
  - (i) require a Clearing Member to provide information to the Clearing House in respect of any of its positions;
  - (ii) require a Clearing Member to allocate, transfer or terminate such Contracts or close out its Open Contract Position or to submit any new Transactions for clearing in any affected Account or in respect of any Customer or Set of Contracts to the extent necessary to reduce its Open Contract Position so as to meet the Position Limit within such time as the Clearing House may prescribe;
  - (iii) communicate with a Market to request that any orders on that Market may be withdrawn;
  - (iv) make an additional call for such Margin as the Clearing House in its discretion determines; and/or
  - (v) impose such additional Capital requirements on the Clearing Member as the Clearing House in its discretion determines.
- (b) If a Clearing Member fails to comply with any requirement imposed on it pursuant to Rule 602(a), the Clearing Member shall be in breach of these Rules and, without

limitation, the Clearing House may, at its discretion, in respect of the Clearing Member concerned:

- (i) declare an Event of Default;
  - (ii) terminate or suspend membership of the Clearing Member;
  - (iii) terminate such Contracts as the Clearing House at its discretion selects on behalf of the Clearing Member;
  - (iv) instigate an investigation or disciplinary proceedings under Part 10 of the Rules; and/or
  - (v) impose such other requirements on the Clearing Member as it sees fit.
- (c)
- (i) A Clearing Member shall be deemed not to have exceeded a Position Limit (for purposes of Rules 602(a)(ii) and (v) and Rule 204(a)(ii) only) to the extent that such Position Limit is exceeded as a result of it being party to any Contract arising pursuant to any of Rule 401(a)(v) or (vi) which was entered into: (A) 5 or fewer Business Days prior to the date of determination by the Clearing House that a Position Limit has been exceeded; or (B) 5 or fewer Business Days prior to the relevant Set becoming ineligible for Clearing (provided that if the relevant Set later becomes eligible for Clearing again, this paragraph (B) shall cease to apply 5 Business Days after the Set has so become eligible for Clearing) (or, in either case (A) or (B), as a result of any Open Contract Position or Contract reflecting any such Contract). Consequently, where a Clearing Member is party to any such Contract, the existence of the Contract will be disregarded in calculating the position of the Clearing Member that is used for purposes of determining the availability of the Clearing House's powers under Rule 602(a)(ii) or (v) or the applicability of a notification requirement under Rule 204(a)(ii) and instead the position of the Clearing Member excluding each disregarded Contract will be used for the purposes of such determinations.
  - (ii) A Clearing Member shall be deemed not to have breached a requirement imposed on it pursuant to Rule 602(a)(ii) to the extent that such a requirement is breached as a result of it being party to any Contract arising pursuant to any of Rule 401(a)(v) or (vi) which was entered into: (A) at any time after the requirement was imposed; (B) 5 or fewer Business Days prior to the requirement being imposed; or (C) 5 or fewer Business Days prior to the Set becoming ineligible for Clearing (provided that if the relevant Set later becomes eligible for Clearing again, this paragraph (C) shall cease to apply 5 Business Days after the Set has so become eligible for Clearing) (or, in any such case (A), (B), or (C), as a result of any Open Contract Position or Contract reflecting any such Contract). Consequently, where a Clearing Member is party to any such Contract, the existence of the Contract will be disregarded for purposes of

determining any breach of a requirement under Rule 602(a)(ii) and instead the position of the Clearing Member excluding each disregarded Contract will be used for the purposes of any such determination.

- (iii) Nothing in this Rule 602(c) shall restrict the taking by the Clearing House of any action under Rule 602(a)(i) or (iv), which it may do without regard to the nature of Contracts making up any Open Contract Position.

**Rule 603**     *[Not Used]*

## **Part 7 Settlement and Delivery of Futures**

### **Rule 701 Determination of Exchange Delivery Settlement Price for Futures**

- (a) The Clearing House will specify the Exchange Delivery Settlement Price for any Future Set.
- (b) The Exchange Delivery Settlement Price will generally be determined on the basis of data provided or published by the Market on which the Contract in question is traded and in accordance with applicable Market Rules, subject to Rule 701(c).
- (c) The Clearing House shall be entitled to determine the Exchange Delivery Settlement Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine an Exchange Delivery Settlement Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of an Exchange Delivery Settlement Price;
  - (iii) there has been a Force Majeure Event, Illegality or Impossibility;
  - (iv) there is an error in data provided by a Market; or
  - (v) the Clearing House otherwise considers it appropriate to do so.

Any Exchange Delivery Settlement Price determined by the Clearing House under this Rule 701(c) will be communicated to affected Clearing Members.

- (d) The Clearing House shall be entitled at its discretion to amend any previously communicated Exchange Delivery Settlement Price itself, including in respect of Contracts which have already been settled or delivered, if:
  - (i) a Market or other external pricing source has made an error in or amends the Exchange Delivery Settlement Price or the basis for, or any element or input data in respect of, the same; or
  - (ii) there has been an error by the Clearing House.

In any such circumstances, revised payments may be ordered by the Clearing House, including in respect of settled or delivered Contracts. Any amended Exchange Delivery Settlement Price determined by the Clearing House under this Rule 701(d) will be communicated to affected Clearing Members and any revised payments ordered by the Clearing House in connection therewith will be promptly processed by the Clearing House as part of its business as usual operational processes.

### **Rule 702 Cash Settlement**

- (a) A Futures Contract shall be settled in cash if:



- (i) pursuant to the applicable Contract Terms it can be settled only in cash; or
  - (ii) pursuant to the applicable Contract Terms it may be settled in cash and the Clearing Member opts to settle the Contract(s) in cash.
- (b) Without prejudice to any contractual netting under Rule 406 or the Clearing Procedures prior to settlement, cash settlement for a Set of Futures Contracts shall occur separately, and separate payment obligations shall accrue, in respect of a Clearing Member's:
- (i) net position in the relevant Set in respect of each of its Proprietary Accounts;
  - (ii) gross buy positions in the relevant Set in respect of each of its Customer Accounts (if applicable);
  - (iii) gross sell positions in the relevant Set in respect of each of its Customer Accounts (if applicable);
  - (iv) [Not Used]
- (c) Provided that all Margin payments in respect of the Set have been paid by the Clearing Member to the Clearing House or repaid by the Clearing House, the amount payable for cash settlement of any Future shall be the net gain or loss, as the case may be, based on the price at which Open Contract Positions were last recorded on the Clearing House's books and the Exchange Delivery Settlement Price or, in relation to Contracts entered into on the same day as the day of settlement, the difference between the Exchange Delivery Settlement Price and the price at which the relevant Contract was bought or sold. Each cash settlement shall occur in accordance with the Contract Terms.
- (d) Neither the Delivery Procedures nor the requirements of Rule 703 shall apply to any Contract which is settled in cash in accordance with this Rule 702.

**Rule 703      *Delivery***

- (a) In relation only to Futures which are not settled in cash pursuant to Rule 702, the Delivery Procedures and the requirements of this Rule 703 shall apply. The relevant Market may, on the Clearing House's behalf, administer any matter or exercise any right granted to the Clearing House under this Rule 703 or the Delivery Procedures.
- (b) The Buyer and Seller shall each make such payments and deliveries and deliver such tenders, notices and invoices as are required pursuant to the Delivery Procedures and Market Rules. In the event that the Exchange Delivery Settlement Price for a Contract subject to delivery is set at a negative price, the roles of the Buyer and the Seller as set forth in the Rules, Delivery Procedures, Contract Terms and Market Rules shall be reversed solely in respect of the payment obligation related to that Exchange Delivery Settlement Price.
- (c) The passing on by the Clearing House of such tenders or such other documents shall not constitute acceptance by the Clearing House of such tenders or such documents if

the Clearing Member to which the Clearing House passed on such tender or documents rejects the same where permitted to do so. In the event of such rejection, the Clearing House shall also be entitled to reject the tenders or other documents. Similarly, where a Clearing Member who is a Buyer under a Contract rejects a Deliverable delivered to it, the Clearing House as Buyer under the corresponding back to back Contract shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under that Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.

- (d) Subject to Rule 703(c), no tender received by the Buyer may be withdrawn or substituted by the Seller except with the consent of the Buyer or otherwise in accordance with the Contract Terms and Procedures.
- (e) Full compliance with the Delivery Procedures applicable to the Contract in question and, where applicable, Market Rules shall amount to a good discharge of the rights, liabilities and obligations of the parties under such Contract (but shall be without prejudice to any rights, liabilities or obligations of any party to a Contract in relation to breach of warranty, representation, damaged goods, under-delivery, over-delivery or otherwise).
- (f) The Clearing House may, at its discretion, direct a Clearing Member who is a Seller under a Contract subject to delivery to deliver the Deliverable that is the subject matter of such Contract to another Clearing Member that is a Buyer. The Seller and Buyer shall each be bound by any such direction. Delivery in accordance with any such direction shall be deemed to constitute delivery by the Seller to the Clearing House and from the Clearing House to the Buyer for the purposes of the Contract or Contracts in question (but title shall not pass unless and until the time specified in the Delivery Procedures). All payments in relation to such Contracts shall nonetheless be made only to and from the Clearing House by the Clearing Members concerned (except with the prior written consent of the Clearing House).
- (g) If an invoice has not been prepared or delivered when payment becomes due pursuant to a Contract, payment shall be made and received on account, pending the issue of that invoice.
- (h) Where a Clearing Member which is party to a Contract subject to delivery is declared a Defaulter or is subject to grounds for declaring an Event of Default or Force Majeure Event, the Clearing House may at its discretion direct that the delivery obligations under such Contract be substituted for cash settlement obligations at a price determined by the Clearing House at its discretion (and the rights, liabilities and obligations of any Clearing Member with an Account having an opposite delivery position in Contracts in the same Set may, at the discretion of the Clearing House, also be substituted for cash settlement obligations at the same price).
- (i) Where a Clearing Member has appointed a Disclosed Principal Member, any delivery, payment or related obligation of the Clearing Member to the Clearing House shall be

construed as an obligation of the Disclosed Principal Member and any right to take delivery or receive payment as a right of the Disclosed Principal Member, and terms 'Buyer,' 'Seller' and all other provisions of these Rules relating to deliveries shall be construed accordingly.

- (j) Each Seller shall be deemed to represent and warrant that deliveries to Buyers of Deliverables that are the subject matter of any Contract subject to this Rule are made free of any Encumbrance of or relating to the Seller (or any of its Transferors or Representatives). Sellers shall not be discharged of their delivery obligations in relation to any Contract subject to this Rule unless the Buyer has taken delivery of the Deliverable that is the subject matter of the Contract free of any such Encumbrances.
- (k) With regard to all open Contracts, which, pursuant to the Contract Terms, give rise to delivery obligations the Clearing House or relevant Market may: (i) reject a delivery (including, for the avoidance of doubt, delivery by any vessel or in any warehouse); (ii) direct that a substitute means of delivery be used or nominated (including a vessel, warehouse, barge, account, or booking reference); and/or (iii) suspend any or all membership or other permissions of the Buyer, Seller, Transferor or Transferee (as applicable), including its permission to enter into any particular Contract, or to deliver to receive deliveries (or any one or more of such permissions), in each case, for such term as the Clearing House or relevant Market may determine, if the Clearing House or relevant Market has reasonable grounds to believe that a delivery would be, or would be a significant risk of constituting a potential breach of Sanctions, except to the extent that any right of the Clearing House or relevant Market contemplated by this Rule 703(j) would conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts. Neither the exercise, nor lack of exercise, of these powers shall serve as evidence of a breach (or non-breach) of Sanctions in any failed delivery, default or arbitration proceedings nor prevent the Clearing House or relevant Market from taking disciplinary action (including a declaration of default) at any future time.

**Rule 704      *Credit and Debit of Accounts***

- (a) The Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Margin Account and Customer Margin Accounts, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3.
- (b) Subject to the Contract Terms and Procedures, any compensation, adjusting payment or other allowance payable by or to either the Buyer or the Seller under the terms of the Contract shall be paid by or to the Clearing House for onward payment to the Buyer or the Seller as the case may be.

**Rule 705      *Settlement and Delivery Obligations only in respect of Open Contract Position and Termination of other Contracts***

- (a) Without prejudice to any contractual netting under Rule 406 or the Clearing Procedures, prior to settlement, the Clearing House and each Clearing Member shall make cash

settlement and delivery only for such number of Contracts as are reflected in the Clearing Member's Open Contract Position separately for the Clearing Member's:

- (i) net position in the relevant Set in respect of each of its Proprietary Accounts;
- (ii) gross buy positions in the relevant Set in respect of each of its Customer Accounts (if applicable);
- (iii) gross sell positions in the relevant Set in respect of each of its Customer Accounts (if applicable);
- (iv) [Not Used]

No such Open Contract Position (or additional Contracts) may be netted against another Open Contract Position on cash settlement or delivery without the prior written consent of the Clearing House, and subject always to Rule 102(p).

- (b) Upon each of the parties to a Contract having made all necessary payments and deliveries in accordance with these Rules in respect of all Futures Contracts in a Set in relation to which a cash settlement or delivery obligation exists for any account or positions specified in Rule 705(a) then, subject to Rule 701(d), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Futures Contracts belonging to such Set in respect of such account or position.

## **Part 8 Options**

### **Rule 801 *Payment of Premium***

- (a) A Buying Counterparty that becomes party to an Option shall be obliged to pay to the Clearing House the premium for the Option at the time specified in the Contract Terms.
- (b) A Selling Counterparty that becomes party to an Option will be credited by the Clearing House with an amount equal to the premium for the Option at the time specified in the Contract Terms.

### **Rule 802 *Determination of Exchange Delivery Settlement Price for Options***

- (a) The Clearing House will specify the Exchange Delivery Settlement Price for any Option Set.
- (b) The Exchange Delivery Settlement Price will generally be determined on the basis of data provided or published by the Market on which the Contract in question is traded and in accordance with applicable Market Rules.
- (c) The Clearing House shall be entitled to determine the Exchange Delivery Settlement Price itself, at its discretion, if:
  - (i) a Market fails on any day to determine an Exchange Delivery Settlement Price;
  - (ii) a Market fails to provide the Clearing House with necessary data for determination of an Exchange Delivery Settlement Price;
  - (iii) there has been a Force Majeure Event, Illegality or Impossibility;
  - (iv) there is an error in data provided by a Market; or
  - (v) the Clearing House otherwise considers it appropriate to do so.

Any Exchange Delivery Settlement Price determined by the Clearing House under this Rule 802(c) will be communicated to affected Clearing Members.

- (d) The Clearing House shall be entitled at its discretion to amend any previously communicated Exchange Delivery Settlement Price itself, including in respect of Contracts which have already been settled or delivered, if:
  - (i) a Market or other external pricing source has made an error in or amends the Exchange Delivery Settlement Price or the basis for, or any element or input data in respect of, the same; or
  - (ii) there has been an error by the Clearing House.

In any such circumstances, revised payments may be ordered by the Clearing House, including in respect of settled or delivered Contracts. Any amended Exchange Delivery Settlement Price determined by the Clearing House under this Rule 802(d) will be communicated to affected Clearing Members and any revised payments ordered by the Clearing House in connection therewith will be promptly processed by the Clearing House as part of its business as usual operational processes.

**Rule 803**      *Exercise of Options*

- (a) An Option Contract may be exercised only if permitted by the applicable Contract Terms. An Option Contract may be exercised only by a Clearing Member with a Long Open Contract Position or by the Clearing House in respect of a Contract in which it is Long. Option Contracts may only be exercised by a Clearing Member for any Option Set for such number of Contracts as are reflected in the Clearing Member's Open Contract Position, plus any other Option Contracts entered into on the same day as the exercise date, separately for each of the positions on the Clearing Member's:
  - (i) net position in the relevant Set in respect of each of its Proprietary Accounts;
  - (ii) gross buy positions in the relevant Set in respect of each of its Customer Accounts (if applicable);
  - (iii) gross sell positions in the relevant Set in respect of each of its Customer Accounts (if applicable).
  - (iv) [Not Used]
- (b) Any exercise of an Option Contract shall be in accordance with the applicable Contract Terms. In particular, an Option Contract shall only be exercised:
  - (i) if it is an Option Contract which in accordance with the applicable Contract Terms is automatically exercised, in which case it will be automatically exercised at the time and in the manner specified in the Contract Terms; or
  - (ii) if it is an Option Contract not falling in Rule 803(b)(i), at such time as is permitted pursuant to the applicable Contract Terms (whether on the day and by the time prescribed by the applicable Contract Terms or in such period as is prescribed by the applicable Contract Terms) and in such form and manner as is permitted pursuant to the Contract Terms and the Clearing Procedures (including, where permitted, by manual exercise or the establishment of settings in the Clearing House's systems for the exercise of Options).
- (c) A Long Option Contract may be abandoned by notice to the Clearing House in writing or such other form as is permitted pursuant to the Clearing Procedures or Contract Terms.

- (d) The Clearing House shall be entitled to rely upon any form or electronic communication purporting to give notice of exercise or abandonment of an Option made in accordance with these Rules without any enquiry as to:
  - (i) whether such form or electronic communication complies with the Contract Terms or the requirements of the Clearing Procedures; or
  - (ii) as to the authority of any Representative purporting to exercise an Option on behalf of a Clearing Member or due execution of the relevant form.
- (e) The Clearing House may reject any notice of exercise or abandonment of an Option if such notice does not, or appears not to, comply with the Contract Terms or the Clearing Procedures, notwithstanding any equivalent notice or other prescribed form of exercise that has been provided by the Clearing House to any Clearing Member in respect of the exercise of an Option Contract.
- (f) No notice or other form of exercise or abandonment of an Option received by the Clearing House may be cancelled or withdrawn once the deadline for exercise has passed.
- (g) Part 7 of these Rules shall not apply in relation to Options.

**Rule 804**     *Exercise Notices*

The Clearing House will allocate exercise notices to Clearing Members which have or carry Short Open Contract Positions (and Short Contracts not in their Open Contract Position) in the Option Set being exercised, in accordance with the Clearing Procedures.

**Rule 805**     *Options with Deliverables which are Futures*

- (a) Upon exercise of any Option with a Future as the Deliverable under the Option, one or more Futures Contracts at the Strike Price (or such other price as is required pursuant to the Contract Terms) shall arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules.
- (b) Upon such Futures Contract or Contracts having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Clearing Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

**Rule 806**     *Options with Deliverables other than Futures*

- (a) Upon exercise of any Option with a Deliverable which is not a Future, a Contract for the sale and purchase of the relevant Deliverable (a "**Contract of Sale**") at the Strike Price (or such other price as is required pursuant to the Contract Terms) shall arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules.

- (b) Upon such Contract of Sale or Contracts of Sale having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Clearing Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

**Rule 807**      *Termination of other Contracts*

Upon each of the parties to a Contract having made all necessary payments and becoming party to all resulting Futures Contracts and Contracts of Sale in accordance with these Rules in respect of all Option Contracts in a Set in relation to an account or position specified in Rule 803(a) then, subject to Rule 802(d), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Option Contracts belonging to such Set in respect of such account or position.

**Rule 808**      *Expiry and Abandonment*

- (a) If an Option Contract is not automatically exercised in accordance with Rule 803(b)(i) or exercised by the Clearing Member by the day and time referred to in Rule 803(b)(ii), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of the Option shall lapse and the Option shall be terminated and be deemed to be abandoned.
- (b) If notice of abandonment of an Option Contract is given pursuant to Rule 803(c) then, subject to Rule 802(d), all the rights, liabilities and obligations of each of the Clearing House and the relevant Clearing Member in respect of any the Option shall lapse and the Option shall be terminated and be deemed to be abandoned upon the Clearing House updating its books and records in respect of such abandonment.

**Rule 809**      *Deliveries under Contracts of Sale*

- (a) The Delivery Procedures and the requirements of this Rule 809 shall apply to Contracts of Sale.
- (b) The Buyer and Seller under each Contract of Sale shall each make such payments and deliveries and deliver such tenders, notices and invoices as are required pursuant to the Delivery Procedures and Market Rules.
- (c) Full compliance with the Delivery Procedures applicable to the Contract of Sale in question and, where applicable, Market Rules shall amount to a good discharge of the rights, liabilities and obligations of the parties under such Contract (but shall be without prejudice to any rights, liabilities or obligations of any party to a Contract in relation to breach of warranty, representation, damaged goods, under-delivery, over-delivery or otherwise).
- (d) The Clearing House may, at its discretion, direct a Clearing Member who is a Seller under a Contract of Sale subject to delivery to deliver the Deliverable that is the subject



matter of such Contract to another Clearing Member that is a Buyer. The Seller and Buyer shall each be bound by any such direction. Delivery in accordance with any such direction shall be deemed to constitute delivery by the Seller to the Clearing House and from the Clearing House to the Buyer for the purposes of the Contract of Sale or Contracts of Sale in question (but title shall not pass unless and until the time specified in the Delivery Procedures). All payments in relation to such Contracts shall nonetheless be made only to and from the Clearing House by the Clearing Members concerned (except with the prior written consent of the Clearing House).

- (e) If a Buyer under a Contract of Sale rejects a Deliverable delivered to it, the Clearing House as Buyer under the similar (effectively, back to back) Contract shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under the equivalent Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.
- (f) Where payment is subject to an invoice under the Contract Terms, if an invoice has not been prepared or delivered when payment becomes due pursuant to a Contract, payment shall be made and received on account, pending the issue of that invoice.
- (g) Where a Clearing Member that is a Buyer or Seller under a Contract of Sale is subject to an Event of Default or Force Majeure Event, the rights, liabilities and obligations of any Clearing Member that is not a Defaulter in respect of such performance shall be discharged and there shall arise in place of the same an obligation to account as between the Clearing Member and the Clearing House for a settlement amount. The Clearing House shall be entitled to substitute an obligation to account for such settlement amount, or a proportion thereof, for the Clearing House's rights, liabilities and obligations in respect of performance of delivery obligations under other Contracts subject to tender with other Clearing Members (such Contracts and Clearing Members selected by the Clearing House at its discretion) of the same Set.
- (h) Upon each of the parties to a Contract having made all necessary payments and deliveries in accordance with these Rules in respect of all Contracts of Sale relating to Options in a Set in relation to which a delivery obligation exists for any account or positions specified in Rule 803(a), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to such Contracts of Sale in respect of such account or position.

#### **Rule 810**      *Cash Settlement*

- (a) Neither the Delivery Procedures nor Rules 803 to 809 apply to Option Contracts which are, according to their applicable Contract Terms, capable of cash-settlement only or which, being Contracts that may be cash-settled at the option of either party, have been designated for cash-settlement by either party.
- (b) An Option Contract shall be settled in cash if:

- (i) pursuant to the applicable Contract Terms it can be settled only in cash; or
  - (ii) pursuant to the applicable Contract Terms it may be settled in cash and the Clearing Member opts to settle the Contract(s) in cash.
- (c) Cash settlement for a Set of Option Contracts shall occur separately, and separate payment obligations shall accrue, in respect of a Clearing Member's:
- (i) net position in the relevant Set in respect of each of its Proprietary Accounts;
  - (ii) gross buy positions in the relevant Set in respect of each of its Customer Accounts (if applicable);
  - (iii) gross sell positions in the relevant Set in respect of each of its Customer Accounts (if applicable);
  - (iv) [Not Used]
- (d) Provided that all Margin payments (and any outstanding premium payments) in respect of the Set have been paid by the Clearing Member to the Clearing House or repaid by the Clearing House, the amount payable for cash settlement of any Option shall be the net gain or loss, as the case may be, based on the difference between the price at which Open Contract Positions are recorded on the Clearing House's books and the Exchange Delivery Settlement Price on the day of settlement or exercise (or, for Contracts entered into on the same day as the day of exercise, the difference between the Exchange Delivery Settlement Price and the price at which the relevant Contract was bought or sold). Each cash settlement shall occur in accordance with the Contract Terms.
- (e) Upon each of the parties to a Contract having made all necessary payments in accordance with these Rules in respect of all Option Contracts in a Set in relation to which a cash settlement obligation exists for any account or positions specified in Rule 810(c), the Clearing Member and the Clearing House shall each be discharged and released from all rights, liabilities and obligations to one another arising pursuant to Option Contracts belonging to such Set in respect of such account or position.

**Rule 811      *Credit and Debit of Accounts***

The Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Margin Account and Customer Margin Accounts, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3.

## Part 9 Default Rules

*Without prejudice to the status of any other provision of these Rules, all the provisions of this Part 9 are intended to include a "default waterfall" for purposes of article 45 of EMIR, constitute "default procedures" for purposes of article 48 of EMIR, constitute 'default rules' for purposes of the UK's Companies Act 1989, "default rules and procedures" for purposes of section 5b(c)(2)(G) of the CEA, "rules on the moment of entry and irrevocability" of a system as referred to in Article 22a of the Settlement Finality Directive and "default procedures" for purposes of SEC Rule 17Ad-22. In addition to these Rules, the Clearing House relies on its legal rights under Applicable Laws in handling Events of Default, including under EMIR, UK EMIR, the UK's Companies Act 1989, the Settlement Finality Directive, the Financial Collateral Directive and the U.S. Bankruptcy Code, as applicable.*

### Rule 901 Events of Default affecting Clearing Members

- (a) If any of the following events should occur with respect to any Clearing Member (regardless of whether it is cured by the Clearing Member, a guarantor or other third party on behalf of the Clearing Member or otherwise), such event shall, if so declared by the Clearing House, constitute an **"Event of Default"**:
- (i) any breach by that Clearing Member of these Rules, the Procedures, the Clearing Membership Agreement, any Pledged Collateral Addendum, any Charged Collateral Addendum or any other agreement with the Clearing House or Contract Terms;
  - (ii) that Clearing Member being unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract;
  - (iii) a Monetary Default or Delivery Default occurring with respect to that Clearing Member;
  - (iv) any Financial Indebtedness of that Clearing Member or any of its Group Companies: (A) not being paid when due or within any originally applicable grace period; or (B) being declared to be or otherwise becoming due and payable prior to its specified maturity as a result of an event of default (however described) (including any declaration by the Clearing House of an Event of Default in relation to any such Group Company);
  - (v) any commitment for any Financial Indebtedness of that Clearing Member or any of its Group Companies being cancelled or suspended by a creditor as a result of an event of default (however described);
  - (vi) any creditor of that Clearing Member or any of its Group Companies becoming entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described);

- (vii) an Insolvency or Unprotected Resolution Step in relation to that Clearing Member or any of its Group Companies;
- (viii) any material action being taken against that Clearing Member (including without limitation, any declaration of default, material adverse notice or finding, material fine, suspension or expulsion or withdrawal of, revocation of or failure to renew any permission, exemption, licence or authorisation or imposition of a Sanction by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility) unless or except solely in the case of a Sanction:
  - (A) subject to an exemption or exception in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law; or
  - (B) to the extent that the rights of the Clearing House contemplated by this Rule 901(a)(viii) or any consequences of a declaration of an Event of Default under these Rules or under Applicable Laws would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts;
- (ix) breach by that Clearing Member of any Applicable Law relevant to its business as a Clearing Member;
- (x) (A) failure by the Clearing Member or its Credit Support Provider to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed; (B) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such Clearing Member or its Credit Support Provider to the Clearing House pursuant to any such Credit Support Document, to be in full force and effect for the purpose of any Contract (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Contract to which such Credit Support Document relates in each case without the written consent of the Clearing House; or (C) such Clearing Member or its Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf); or
- (xi) the Clearing Member or its Credit Support Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution: (A) the resulting, surviving or transferee entity fails to assume all the obligations of such Clearing Member or

its Credit Support Provider under any Contract or any Credit Support Document to which it or its predecessor was a party; or (B) the benefits of any Credit Support Document fail to extend (without the consent of the Clearing House) to the performance by such resulting, surviving or transferee entity of its obligations under any Contract.

- (b) The Clearing House may assume that the occurrence of any Event of Default means that a Clearing Member is unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract.
- (c) The Clearing House may exercise rights under the power of attorney granted under clause 5.1 and 5.2 of the Clearing Membership Agreement (including with respect to a Pledged Collateral Addendum or Charged Collateral Addendum) if there has been an Event of Default. If, following an Event of Default, the Clearing House exercises rights under the power of attorney in clause 5.1 and 5.2 of the Clearing Membership Agreement for purposes of enforcement to exercise any of its rights under this Part 9 or under a Pledged Collateral Addendum or Charged Collateral Addendum and a Circular has not been issued in respect of the Event of Default, the Clearing House will notify the Clearing Member concerned as soon as is reasonably practicable of such exercise.
- (d) [Not Used].
- (e) The Clearing House may inform any relevant Regulatory Authority of an Event of Default prior to declaring an Event of Default and disclose such information to such Regulatory Authority as it sees fit.

**Rule 902      *Actions to be taken following declaration of a Clearing Member Event of Default***

- (a) If an Event of Default has been declared, the Clearing House may immediately suspend or terminate the Defaulter's membership as a Clearing Member and any other entitlements under these Rules, take any action to close out the Defaulter's positions under this Part 9 and take such action as is necessary to control or reduce losses or liquidity pressures resulting from the Event of Default. Any such suspension or termination may be temporarily postponed or may not be enforced if the Clearing House in its discretion determines that any such suspension or termination would either (i) not be in the best interests of the Clearing House; or (ii) be likely adversely to affect the operation of any market.
- (b) As soon as practicable after the Clearing House has declared that a Clearing Member is subject to an Event of Default, the Clearing House shall serve a Default Notice on the Defaulter. The Clearing House will issue a Circular in respect of any Default Notice specifying the name of the Defaulter. The Clearing House may at its discretion publish a copy of the relevant Default Notice in or together with a Circular. The Clearing House shall, as soon as reasonably practicable after issuing a Default Notice, appoint a day on which any net sums certified under Rule 906 are to be paid.

- (c) The Clearing House may take such steps pursuant to this Part 9 as appear in the circumstances to be necessary or expedient to discharge all the Defaulter's rights and liabilities under or in respect of Contracts to which it is party, to protect the Clearing House, its non-defaulting Clearing Members or Markets or to complete the process described in this Part 9.
- (d) Transfer Orders shall be legally enforceable, irrevocable and binding on third parties in accordance with Part 12 of these Rules, even on the occurrence of an Event of Default.

**Rule 903**      *Treatment of Contracts following a Clearing Member Event of Default and Hedging*

- (a) The Clearing House shall be entitled to take any of the following steps at its discretion following the occurrence of an Event of Default with respect to a Clearing Member:
  - (i) to arrange for Contracts to be subject to a Transfer to a Transferee Clearing Member in accordance with Rule 904 and effect the same;
  - (ii) if it determines at its discretion that the protection of the financial integrity of the Clearing House so requires, or because of the cessation or curtailment of trading on a Market where contracts may be traded, to delay a close out or termination of some or all Contracts of the Defaulter; and
  - (iii) subject always to Rule 102(q), if the Defaulter acts as Buying Counterparty and Selling Counterparty in respect of Contracts of the same Set, to net, offset, mutually close out or terminate such Contracts (or any part thereof) provided that, following such netting, offsetting, closing out or termination, Contracts representing in aggregate the Open Contract Position of the Defaulter in the relevant Set are recognised; and the Clearing House shall be entitled to and shall amend the records of Contracts recorded in any relevant Repository accordingly, provided that the Clearing House shall not be obliged to amend such Repository records if it no longer has the necessary authority or access to do so or is otherwise prevented or restricted from doing so by an Insolvency Practitioner.
  - (iv) [Not Used]
- (b) All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be closed out in the manner set out in Rule 905 except to the extent that Rule 903(a) applies to such Contracts.
- (c) To the extent that any Contracts to which a Defaulter is party remain open from time to time (whether pursuant to Rule 903(a)(ii), pending Transfers, terminations or otherwise) or if the Clearing House is otherwise unable for any reason to liquidate Contracts in a prompt and orderly fashion, the Clearing House may authorise the execution from time to time for the account of the Clearing House, for the purpose of an orderly unwind of any Contracts to which a Defaulter is party or reducing the risk to

the Clearing House and the risk to Clearing Members (in the case of Clearing Members, except to the extent that reducing any risk to Clearing Members creates or increases any risk for the Clearing House) resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts or other transactions on a Market, any other Exchange or over the counter. Unless requested or directed otherwise by the Clearing House or taking place on an Exchange which is not a Market, any such hedging transactions that are executed in the form of a Contract shall be submitted by Clearing Members with whom they are executed to the Clearing House for Clearing on a daily basis. Any costs, expenses or losses sustained by the Clearing House in connection with transactions effected pursuant to this Rule 903(c) shall be charged to the Defaulter and any gains shall be credited to the Defaulter in the relevant net sum calculation under Rule 906 for the Account in respect of which exposures were hedged.

- (d) If a Contract is terminated pursuant to an automatic early termination provision or under Applicable Law as a result of an Event of Default, Insolvency, Unprotected Resolution Step or related event affecting the Defaulter, or if Rule 912 applies, this Part 9 shall apply *mutatis mutandis* in relation to such terminated Contract and the rights, obligations and liabilities relating thereto. For the avoidance of doubt, in any case where this Rule 903(d) applies as a result of Rule 912 applying, Rule 905(f) shall not apply to the extent that the same is disappplied by Rule 912.
- (e) Upon an Event of Default being declared with respect to a Clearing Member, any accrued or invoiced amounts shall be immediately due and payable by the Defaulter to the Clearing House.

#### **Rule 904      *Transfer of Contracts and Margin on a Clearing Member Event of Default***

##### ***Provisions applicable to all Defaulters and all Contracts***

- (a) The Clearing House may arrange for any of the following steps (any such step, a "**Transfer**" and the term "**Transferred**" shall be interpreted accordingly) to take place in respect of the Contracts of a Defaulter as part of its default proceedings:
  - (i) a transfer, sale, assignment or novation of Contracts (and related Customer-CM Transactions) of a Defaulter to a Transferee Clearing Member; or
  - (ii) the termination of Contracts between the Clearing House and a Defaulter (and related Customer-CM Transactions, where applicable) and the entry into of new replacement Contracts (and related Customer-CM Transactions, where applicable) between the Clearing House and the Transferee Clearing Member or between such Customer and such Transferee Clearing Member, as applicable (by way of novation and amendment or otherwise).
  - (iii) Unless the Clearing House specifies otherwise in writing, all Transfers shall occur pursuant to the process described in Rule 904(a)(ii).

- (b) The Clearing House shall, at its discretion, determine the price that any Contract subject to a Transfer shall be Transferred, which may be determined on the basis of the applicable Exchange Delivery Settlement Price or as zero (for certain Options) as at the time specified by the Clearing House. Such price may be calculated with reference to any time determined at the Clearing House's discretion, which may be the time of the Transfer, the time an Event of Default, Insolvency or Unprotected Resolution Step occurs or is declared, or the time of calculation of any such price as at the end of the Business Day prior to the Transfer, Event of Default, Insolvency or Unprotected Resolution Step. Transferee Clearing Members will be notified of applicable prices determined pursuant to this provision prior to the Transfer.
- (c) For the avoidance of doubt, the Clearing House shall have no obligation to enter into or effect any Transfer if to do so (i) would result in or risk an Account being under-collateralised with respect to any remaining Contracts; (ii) would result in or risk an Event of Default or a Failure To Pay in respect of the Clearing House, the application of Guaranty Fund Contributions of non-Defaulters, a call for Assessment Contributions or invocation of any of the procedures in Rules 912 to 918; (iii) would result in or risk a breach of Applicable Laws; or (iv) lacks any Governmental Authority, Customer or other consent or approval that is required or desirable in the circumstances, in each case as determined by the Clearing House at its discretion. Any Transfers shall be fair to clients and indirect clients of the Defaulter.
- (d) If any Contracts recorded in a Defaulter's Customer Account are subject to any Transfer pursuant to Rule 904(a)(i):
- (i) any related Margin recorded in the relevant Customer Account may, at the discretion of the Clearing House also be transferred from that Customer Account to a Customer Account of the Transferee Clearing Member;
  - (ii) to the extent that any transfer of Margin takes place in accordance with Rule 904(d)(i), the Defaulter shall have no claim against the Clearing House or any Transferee Clearing Member for return of such Margin and the Clearing House shall be released from any liability or obligation to return such Margin (or any property in substitution thereof) to the Defaulter;
  - (iii) as between the Transferee Clearing Member and the Clearing House, the Clearing House shall have all rights in relation to any Margin transferred pursuant to Rule 904(d)(i) as if the same were Margin transferred to the Clearing House directly from the Transferee Clearing Member whether pursuant to a Clearing Membership Agreement or any relevant Pledged Collateral Addendum or Charged Collateral Addendum, as applicable to the Account in question;
  - (iv) where the Defaulter has or had a Pledged Collateral Account or a Charged Collateral Account, the Clearing House shall be entitled, in addition to the rights and remedies referred to in Rule 902, to exercise the rights of a secured party, collateral taker, market chargee and collateral security chargee under Applicable Law, including rights of appropriation, with respect to any Pledged Collateral



and the rights set forth in the relevant Pledged Collateral Addendum or Charged Collateral Addendum in order to facilitate any such transfer of Margin and the Customer Account of the Transferee Clearing Member into which a Transfer is made may (but need not) also be subject to a Pledged Collateral Addendum or Charged Collateral Addendum; and

- (v) where:
- (A) the Clearing House has elected to exercise its rights to transfer Margin of a Defaulter pursuant to Rule 904(j)(iii);
  - (B) such Defaulter has or had a Pledged Collateral Account or a Charged Collateral Account; and
  - (C) the Clearing House exercises or intends to exercise the right of appropriation pursuant to the relevant Pledged Collateral Addendum or Charged Collateral Addendum as contemplated by Rule 904(d)(iv), so as to give effect to a transfer of Margin,

then the Clearing Member that is the Defaulter will be obliged to pay to the Clearing House an amount equal to the value of Pledged Collateral or Charged Collateral so appropriated or to be appropriated, such amount being calculated in accordance with Rule 905(b)(ix).

- (e) The Clearing House may rely upon any information relating to the positions, assets or identities of individual Customers provided to it by an Exchange or Clearing Member, without need for further enquiry by the Clearing House with respect thereto. The books and records of the Clearing House may be treated as definitive evidence of the positions and Customers which correspond to Contracts recorded in one of the Defaulter's Customer Accounts.
- (f) The Clearing House shall be entitled to make partial or full transfers of available Margin at any time from the relevant account of a Defaulter in respect of Contracts subject to a Transfer, provided that in any case the total amount of Margin transferred in respect of any Contracts relating to a particular Customer remains commensurate to the Margin that was provided in respect of such transferred Contracts and held by the Clearing House immediately prior to the Event of Default.
- (g) Nothing in these Rules shall require a Clearing Member to accept any Transfer of Contracts as a Transferee Clearing Member, without the prior consent of that Clearing Member (and for these purposes no such consent shall have been provided as a result of a Clearing Member being named as a potential Transferee Clearing Member in a Porting Notice unless that Clearing Member has countersigned the Porting Notice or otherwise indicated its agreement in writing). Including as a result of the consents in Section 6(b) of the Standard Terms, the Clearing House shall be entitled (but not required) to Transfer any Contract to any consenting Transferee Clearing Member,

regardless of whether the relevant Customer has designated the Transferee Clearing Member in a Porting Notice or has otherwise consented to such Transfer.

- (h) If the Clearing House determines that any Contracts of the Defaulter are to be Transferred pursuant to this Rule 904, the Clearing House may estimate the loss or gain that it would incur in respect of the relevant Customer Account Positions (i.e. the amount *L-A* in Rule 906 as calculated in respect of those Customer Account Positions) and the extent, if any, to which any Margin would be applied to any such loss and may (but shall not be required) to prioritise and give effect first to any Transfers on the basis of the extent of any potential resulting loss or gain to a Customer Account notwithstanding the time at which any Transfer instructions are submitted or confirmed.
- (i) The Clearing House may take into consideration such factors as the Clearing House determines to be relevant in accepting or effecting any Transfer. Without limiting the foregoing, any Transfer or transfer of Margin shall be subject to any requirements or limitations under Applicable Law, and any approvals or consents that the Clearing House may determine to be required or desirable under the circumstances.
- (j) Subject to Rule 904(g), the Clearing House will have regard to any Porting Notice in determining whether or not to give effect to any Transfer. If, pursuant to a Transfer, the Clearing House becomes party to a Contract with a Transferee Clearing Member (that is a Non-FCM/BD Clearing Member) as replacement for any Customer Account Contract of a Defaulter (that is or was a Non-FCM/BD Clearing Member), the Clearing House and (to the extent necessary) the Defaulter shall contemporaneously cause the Transfer of the related Customer-CM Transactions between each affected Customer and the Defaulter, such that Customer-CM Transactions are established between each relevant Customer and the Transferee Clearing Member and such Transferred Customer-CM Transactions between the Defaulter and each relevant Customer are terminated (or otherwise subject to a Transfer) as follows:
  - (i) If a Contract recorded in the Defaulter's Customer Account is Transferred, the Transferee Clearing Member shall enter into a Customer-CM Transaction with each affected Customer (to replace the terminated Customer-CM Transaction with the Defaulter) on such terms as are specified in Rule 904(j)(ii). Upon such Transfer, the Transferee Clearing Member shall assume and undertake in favour of the Customer the obligations of (or obligations similar to those of) the Defaulter under the Transferred Contract(s) and the Transferred Customer-CM Transaction(s). Any termination payments due or payable in respect of the termination of the Contracts and related Customer-CM Transactions to which the Defaulter was party and any amounts due or payable in respect of the establishment of the replacement Contracts or Customer-CM Transactions to which the Transferee Clearing Member is party shall be equal (in each case based on the amount determined by the Clearing House for purposes of close out of the Contract in accordance with these Rules, and not taking into account any clearing fees or similar amounts agreed to by the relevant parties or affecting any other amount mentioned in Rule 906) and all obligations to make such

termination payments shall be deemed to have been paid, netted and satisfied among the relevant parties beneficially entitled to such payments.

- (ii) If the Transferee Clearing Member and a relevant Customer have previously entered into a Customer-Clearing Member Agreement, any Customer-CM Transactions between the Transferee Clearing Member and Customer Transferred to the Transferee Clearing Member in accordance with this Rule 904 shall be subject to such Customer-Clearing Member Agreement. If the Transferee Clearing Member and Customer have not entered into a Customer-Clearing Member Agreement, the Transferred Customer-CM Transactions shall be deemed subject to an agreement in such form as is specified by the Transferee Clearing Member.
- (iii) Following any Transfer of Contracts and, where applicable, Customer-CM Transactions, pursuant to this Rule 904, the Clearing House may transfer, and if such transfer occurs, will record the transfer, of any available Margin recorded in the corresponding Customer Margin Account of the Defaulter for each affected Customer the Customer-CM Transactions of which are to be Transferred (to the extent that the same has not been subject to netting under Rule 904(j)) to the applicable Customer Margin Account of the Transferee Clearing Member, to be treated in the same way as if such assets had been transferred by the Transferee Clearing Member direct to the Clearing House pursuant to the Clearing Membership Agreement and any applicable Pledged Collateral Addendum or Charged Collateral Addendum and these Rules. Where the Customer Account into which Margin is to be transferred is a Charged Collateral Account, the Transferee Clearing Member shall notify the Clearing House whether it wishes any or all of the non-cash Margin to be held by the Clearing House as Charged Collateral, subject to the Clearing House determining at its discretion not to effect the transfer in such a manner. In relation to any such transfer, the Defaulter shall be deemed to agree and consent to any such transfer and shall take any necessary action to facilitate such transfer (and the Clearing House may take any action on the Defaulter's behalf in connection therewith). Notwithstanding the foregoing, the Transferee Clearing Member shall remain obliged to satisfy any Margin requirements resulting from its entry into of, or becoming party to, Contracts for each of its affected Customer Accounts pursuant to this Rule 904 which may be calculated without taking into account any amount that may be transferred by or due from the Defaulter to the Clearing House pursuant to the foregoing requirement but which has not been transferred.
- (k) The Clearing House may recalculate the balance between Margin and Surplus Collateral for a Customer Account of a Defaulter to reflect any increase in the Margin requirement for such Customer Account as a result of the Transfer of fewer than all of the relevant Customer Account Contracts and related Customer Account Positions.
- (l) Following any Transfer of Contracts pursuant to this Rule 904, the Clearing House may submit appropriate data to a Repository to reflect such Transfer. The Clearing House

shall be authorised and entitled to take similar action on the Defaulter's and any of its Customers' behalves (including in respect of records in the Tripartite Representation referring to any Customer to which the Defaulter and Customer were party) which have been Transferred in accordance with this Rule 904.

- (m) Upon an Event of Default being declared in respect of a Clearing Member, the Clearing House commits to triggering the procedures for the Transfer process set out in this Rule 904 for both Margin and Open Contract Positions recorded in a Customer Account (that is not an Individually Segregated Margin-Flow Co-mingled Account or Segregated Gross Indirect Account) provided that the Clearing House shall not be obliged to effect any Transfer unless: (i) each Customer is not itself also a Defaulter or subject to an Insolvency or Unprotected Resolution Step; (ii) the conditions precedent set out in Rule 904(c) are satisfied in respect of each Customer; and (iii) a single Transferee Clearing Member accepts all the Transfers relating to all Customers in writing.
- (n) [Not Used]
- (o) [Not Used]
- (p) [Not Used]
- (q) [Not Used]
- (r) [Not Used]
- (s) [Not Used]

***Provisions applicable only to Margin-flow Co-mingled Accounts***

- (t) The following principles shall apply when the Clearing House is calculating the net sums on Margin-flow Co-mingled Accounts of a Defaulter or determining the amounts which are available to be transferred to a Transferee Clearing Member in respect of such an Account pursuant to the Default Portability Rules:
  - (i) sums payable by the Defaulter or to the Defaulter in respect of Contracts falling under any of amounts *L*, *A*, *D* or *C* in Rule 906(a) shall be allocated for each Margin-flow Co-mingled Account based on the extent to which such sums arise from the termination or close out of Contracts recorded in the Position Account linked to the Margin-flow Co-mingled Account;
  - (ii) costs and expenses of the Clearing House falling under amount *L* in Rule 906(a) and amounts falling under *OL* in Rule 906(a), to the extent not charged to or included in the net sum for a Proprietary Account of the Defaulter or another Customer Account, shall be allocated among Margin-flow Co-mingled Accounts on a *pro rata* basis with respect to the Margin requirement on each Margin-flow Co-mingled Account immediately prior to the Event of Default, provided that if the Clearing House incurs a particular cost or expense in respect

of a particular Margin-flow Co-mingled Account, then that amount shall be allocated solely to that Margin-flow Co-mingled Account and the amounts to be allocated among other Margin-flow Co-mingled Accounts shall be reduced accordingly;

- (iii) amounts falling under *M* in Rule 906(a) (which do not relate to Permitted Cover previously recorded in a Proprietary Account of the Defaulter) will be allocated among Margin-flow Co-mingled Accounts in the manner set out below and in the following order of precedence:
  - (A) based on the ICE Clear System's records of Permitted Cover provided in respect of each Margin-flow Co-mingled Account (if any); or
  - (B) based on the last valid Permitted Cover report provided by the Defaulter under Rule 503(k) immediately prior to the Event of Default (if any); or
  - (C) on a *pro rata* basis with respect to the Margin requirement on each Margin-flow Co-mingled Account of the Defaulter immediately prior to the Event of Default;
- (iv) if Surplus Collateral may be posted on a Margin-flow Co-mingled Account, amounts falling under *SC* in Rule 906(a) (which do not relate to Permitted Cover previously recorded in a Proprietary Account of the Defaulter) will be allocated among Margin-flow Co-mingled Accounts in the manner set out below and in the following order of precedence:
  - (A) based on the ICE Clear System's records of Permitted Cover provided in respect of each Margin-flow Co-mingled Account (if any); or
  - (B) based on the last valid Permitted Cover report provided by the Defaulter under Rule 503(i) immediately prior to the Event of Default (if any); or
  - (C) if not so allocated to any Margin-flow Co-mingled Account will be returned separately to the Defaulter, who will be responsible for handling any claims of Customers in respect of such amounts;
- (v) amounts falling under *GFC* or *OA* in Rule 906(a) or representing Margin or other assets relating to a Proprietary Account which are available to be applied to Margin-flow Co-mingled Accounts, to the extent that they are available to reduce a loss on Margin-flow Co-mingled Accounts, shall first be allocated *pro rata* as to losses among Margin-flow Co-mingled Accounts;
- (vi) the effect on the net sum of any Transfer of positions or Margin to a Transferee Clearing Member shall be the same as for any other Customer Account of a Defaulter; and

- (vii) any funding of any assets in, or credit line or loan to a Customer interested in, a Margin-flow Co-mingled Account by the Defaulter shall be disregarded.
- (u) Upon an Event of Default being declared in respect of a Clearing Member, the Clearing House commits to triggering the procedures for the Transfer process set out in this Rule 904 for both Margin and Open Contract Positions recorded in Individually Segregated Margin-flow Co-mingled Accounts, provided that the Clearing House shall not be obliged to effect any Transfer unless: (i) the relevant Customer is not itself also a Defaulter or subject to an Insolvency or Unprotected Resolution Step; (ii) the conditions precedent set out in Rule 904(c) are satisfied; and (iii) the Transferee Clearing Member accepts the Transfers in writing.

***Provisions applicable only to Segregated Gross Indirect Accounts***

- (v) The following principles shall apply when the Clearing House is calculating the net sums on Segregated Gross Indirect Accounts of a Defaulter or determining the amounts which are available to be transferred to a Transferee Clearing Member in respect of such an Account pursuant to the Default Portability Rules:
  - (i) sums payable by the Defaulter or to the Defaulter in respect of Contracts falling under any of amounts *L*, *A*, *D* or *C* in Rule 906(a) shall be allocated for each Segregated Gross Indirect Account based on the extent to which such sums arise from the termination or close out of Contracts recorded in the Position Account linked to the Segregated Gross Indirect Account;
  - (ii) costs and expenses of the Clearing House falling under amount *L* in Rule 906(a) and amounts falling under *OL* in Rule 906(a), to the extent not charged to or included in the net sum for a Proprietary Account of the Defaulter or another Customer Account, shall be allocated among Segregated Gross Indirect Accounts on a *pro rata* basis with respect to the Margin requirement on each Segregated Gross Indirect Account immediately prior to the Event of Default, provided that if the Clearing House incurs a particular cost or expense in respect of a particular Segregated Gross Indirect Account, then that amount shall be allocated solely to that Segregated Gross Indirect Account and the amounts to be allocated among other Segregated Gross Indirect Accounts shall be reduced accordingly;
  - (iii) amounts falling under *M* in Rule 906(a) (which do not relate to Permitted Cover previously recorded in a Proprietary Account of the Defaulter) will be allocated among Segregated Gross Indirect Accounts in the manner set out below and in the following order of precedence:
    - (A) based on the ICE Clear System's records of Permitted Cover provided in respect of each Segregated Gross Indirect Account (if any); or
    - (B) based on the last valid Permitted Cover report provided by the Defaulter under Rule 503(i) immediately prior to the Event of Default (if any); or

- (C) on a *pro rata* basis with respect to the Margin requirement on each Segregated Gross Indirect Account of the Defaulter immediately prior to the Event of Default;
- (iv) if Surplus Collateral may be posted on a Segregated Gross Indirect Account, amounts falling under SC in Rule 906(a) (which do not relate to Permitted Cover previously recorded in a Proprietary Account of the Defaulter) will be allocated among Segregated Gross Indirect Accounts in the manner set out below and in the following order of precedence:
  - (A) based on the ICE Clear System's records of Permitted Cover provided in respect of each Margin-flow Co-mingled Account (if any); or
  - (B) based on the last valid Permitted Cover report provided by the Defaulter under Rule 503(i) immediately prior to the Event of Default (if any); or
  - (C) if not so allocated to any Segregated Gross Indirect Account will be returned separately to the Defaulter, who will be responsible for handling any claims of Customers in respect of such amounts;
- (v) amounts falling under GFC or OA in Rule 906(a) or representing Margin or other assets relating to a Proprietary Account which are available to be applied to Segregated Gross Indirect Accounts, to the extent that they are available to reduce a loss on Segregated Gross Indirect Accounts, shall first be allocated *pro rata* as to losses among Segregated Gross Indirect Accounts;
- (vi) the effect on the net sum of any Transfer of positions or Margin to a Transferee Clearing Member shall be the same as for any other Customer Account of a Defaulter; and
- (vii) any funding of any assets in, or credit line or loan to a Customer interested in, a Segregated Gross Indirect Account by the Defaulter shall be disregarded.
- (w) Upon an Event of Default being declared in respect of a Clearing Member, the Clearing House commits to triggering the procedures for the Transfer process set out in this Rule 904 for both Margin and Open Contract Positions recorded in Segregated Gross Indirect Accounts, provided that the Clearing House shall not be obliged to effect any Transfer unless: (i) the relevant Customer is not itself also a Defaulter or subject to an Insolvency or Unprotected Resolution Step; (ii) the conditions precedent set out in Rule 904(c) are satisfied; and (iii) the Transferee Clearing Member accepts the Transfers in writing.

**Rule 905**      ***Termination and close out of Contracts on a Clearing Member Event of Default***

- (a) The following contracts shall be terminated or closed out in such manner as the Clearing House in its discretion may direct for the purposes of discharging all the rights, obligations and liabilities of the Defaulter:

- (i) Contracts to which a Defaulter is party, which are not voidable and voided by the Clearing House pursuant to Part 4, and which are required to be terminated or closed out pursuant to Rule 903(b);
- (ii) contracts arising from hedging transactions made pursuant to Rule 903(c), which shall be treated as if they were "Contracts" for purposes of this Rule 905 and Rule 906.

The Clearing House shall not be entitled to terminate or close out any rights or liabilities attributable to the Defaulter arising out of the relationship of principal and agent, where a Defaulter has entered into a contract as agent, but for the avoidance of doubt this requirement shall not restrict the Clearing House from closing out any Contract recorded in a Customer Account of an FCM/BD Clearing Member. To the extent necessary, the Clearing House may take such steps pursuant to such powers as are granted pursuant to the Clearing Membership Agreement or Pledged Collateral Addendum.

- (b) Without prejudice to the generality of Rule 905(a), at the Clearing House's discretion, any of the following steps may be taken in respect of contracts to which Rule 905(a) applies:
  - (i) The Clearing House may place, with one or more members of an Exchange, Clearing Organisation or over-the-counter marketplace upon which the relevant category of Contract is traded, orders for the purchase, grant, exercise or sale of Contracts. The Clearing House may designate and authorise an individual to be responsible for the placement of such orders or may enter into Contracts with non-defaulting Clearing Members or (providing that the relevant Clearing Member has consented to the order) Customers, by way of Default Auction.
  - (ii) For purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise, Contracts (or any part thereof) may be terminated or closed out by the Clearing House pursuant to the submission of any Transactions, Invoicing Back or the creation of new Contracts to which the Defaulter is party at the Clearing House's discretion (regardless of whether they are held for different accounts or different beneficial owners), but subject always to, and accounting for the close-out amounts under, Rule 906: (i) Contracts (or any part thereof) to which the Defaulter is party on opposite sides of the market of the same Set; and (ii) Contracts having different expiration dates or exercise dates. For the avoidance of doubt, this Rule 905(b)(ii) does not empower the Clearing House to oblige non-defaulting Clearing Members to become party to any Contracts.
  - (iii) [Not Used]
  - (iv) Any Contracts (including those recorded in one of the Defaulter's Customer Position Accounts) which are sale and purchase Contracts in the same Set may be closed out and terminated (in whole or in part), together with any termination payments settled by way of off-set.



- (v) An Option may be terminated, exercised or abandoned, at the discretion of the Clearing House, and in any case where an Option is exercised, the Clearing House may terminate or close out the Future or Contract of Sale, if any, arising as a result of such exercise in accordance with the provisions of this Rule 905.
- (vi) Notwithstanding any other provision of this Rule 905, the Clearing House may pair and cancel offsetting buy and sell or Long and Short positions in the same Future or Option Set; and where it is necessary or desirable for there to be a price (for example, in the case of a liquidation of offsetting Customer Account and Proprietary Account Contracts or the liquidation of offsetting Contracts recorded in different Customer Accounts, where in each case, the close-out values of the offsetting Contracts are required to be taken into account for the calculation of different net sums pursuant to Rule 102(p) and Rule 906), the price for a Future or Option Contract will be determined by the Clearing House pursuant to Rule 905(g).
- (vii) The Clearing House shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any court order) to sell, transfer, value (subject to Rule 905(b)(ix)) or create any interest in any Permitted Cover, Margin, Guaranty Fund Contributions or other assets that are credited to the Defaulter's Proprietary Margin Account, any of its Customer Margin Accounts (subject to Rule 502(i)) or any of its accounts used for Guaranty Fund Contributions or any other asset of the Defaulter that is otherwise in the Clearing House's possession (subject always to Rule 102(p) and Rule 906(c)), subject to an obligation to account for the net proceeds of such actions after having deducted the Clearing House's reasonable and properly incurred expenses and costs in doing so in accordance with Part 1.
- (viii) Without prejudice to Rule 905(b)(xvii) where a Pledged Collateral Account or Charged Collateral Account is held by a Clearing Member who is a Defaulter or is capable of being declared a Defaulter, the Clearing House shall be entitled, in addition to its other rights and remedies under Part 9 but subject to Rule 502(i), to exercise the rights of a secured party, collateral taker, market chargee and collateral security chargee under Applicable Law with respect to any Pledged Collateral or Charged Collateral and pursuant to the relevant Pledged Collateral Addendum or Charged Collateral Addendum to appropriate, exercise rights of use and appropriation over and liquidate (or refrain from appropriating, exercising rights of use or appropriation or liquidation, as it sees fit) such Pledged Collateral or Charged Collateral, and, once such exercise of rights of use, appropriation or liquidation results in a realised value for such Pledged Collateral or Charged Collateral that is to be taken account of in a relevant net sum calculated under Rule 906, shall thereupon apply the proceeds thereof to the applicable obligations of such Clearing Member in respect of the relevant Customer Account or Proprietary Account and in determining the net sum under Rule 906 if the Clearing Member has then been declared a Defaulter. Rights of use, appropriation or enforcement shall not be exercised by the

Clearing House in respect of Pledged Collateral or Charged Collateral that is recorded in a Pledged Collateral Account or a Charged Collateral Account of a Clearing Member that is neither a Defaulter nor capable of being declared a Defaulter.

(ix) When either:

(A) following the exercise of a right of use in respect of Pledged Collateral or Charged Collateral of a Defaulter, the Clearing House exercises its right to set-off the value of the relevant Pledged Collateral or Charged Collateral in discharge of the obligations of the Defaulter due to the Clearing House; or

(B) appropriating Pledged Collateral or Charged Collateral,

the Clearing House shall value such Pledged Collateral or Charged Collateral in the case of (A) at the time that the obligation to redeliver equivalent Pledged Collateral or Charged Collateral would arise but for such set-off or, in the case of (B), at the time of such appropriation. For this purpose, the value of such Pledged Collateral or Charged Collateral shall be the market price of the relevant Permitted Cover determined by the Clearing House by reference to a published pricing information source or by such other process as the Clearing House may at its discretion select. The Clearing House shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any court order) to sell, transfer, value or create any interest in any Permitted Cover, Margin, Guaranty Fund Contributions or other moneys, security, assets that are credited to a Defaulter's Proprietary Margin Account, any of its Customer Margin Accounts (subject to Rule 502(i)) or any of its accounts used for Guaranty Fund Contributions or any other moneys, rights or assets of the Defaulter that is otherwise in the Clearing House's possession or have been received by the Clearing House or any trustee or agent on the Clearing House's behalf (subject always to Rule 102(q)), subject to an obligation to account for the net proceeds of such actions after having deducted the Clearing House's reasonable and properly incurred expenses and costs in doing so in accordance with this Part 9.

(x) The Clearing House shall be entitled to take such actions, take or make delivery and give such notices on behalf of the Defaulter in respect of a Contract under delivery as it determines; or to make or receive a tender in the Defaulter's name.

(xi) The Clearing House shall be entitled to determine an amount due from the Defaulter in substitution for delivery obligations.

(xii) The Clearing House shall be entitled to take any other action with respect to the Event of Default or the Defaulter as it deems to be necessary or prudent.

(xiii) The Clearing House's powers to convert currency under Rule 107 may be applied.

- (xiv) The Clearing House shall be entitled to Transfer Contracts to which a Defaulter is party to one or more other Transferee Clearing Members at a price determined by the Clearing House pursuant to this Part 9.
- (xv) Subject to Rule 904(g), the Clearing House shall be entitled to effect the Transfer of the Defaulter's rights, title and interest to Contracts, any related Margin or other assets of the Defaulter and any related Customer-CM Transaction(s) or other transactions between a Customer and a Defaulter to a Transferee Clearing Member, without any further action being required on the part of any Person. This may be done through the Clearing House's exercise of rights pursuant to its power of attorney in the relevant Clearing Membership Agreement or a Pledged Collateral Addendum or Charged Collateral Addendum with the Defaulter or on the basis of this default rule, as opposed to pursuant to the process and legal entitlements described further in Rule 904.
- (xvi) The Clearing House may take action so as to terminate or replace Customer-CM Transactions or other transactions between a Customer and a Defaulter which are consequential on it taking actions in relation to Contracts in accordance with Rule 904.
- (xvii) The Clearing House shall be entitled to take any other action with respect to the Defaulter, the Contracts to which the Defaulter is party or any Margin, Guaranty Fund Contribution or Surplus Collateral provided by the Defaulter as the Clearing House at its discretion considers to be necessary or prudent in the circumstances.
- (xviii) The Clearing House may make appropriate entries on the records of the Clearing House and submit appropriate data to Repositories and Delivery Facilities to give effect to any action taken in accordance with this Part 9.
- (xix) Subject to Rules 102(q) and 906(a), the Clearing House may conduct one or more Default Auctions in accordance with the Default Auction Procedures. For the purposes of establishing lots for such Default Auctions, the Clearing House shall be entitled at its discretion to determine which particular Contracts or packages of Contracts are to be the subject of a particular auction lot. In doing so, it may establish auction lots that include: (i) a mixture of Contracts recorded in different Accounts of a Non-FCM/BD Clearing Member (provided that a single auction lot shall not include both Proprietary Account Positions and Customer Account Positions); and (ii) in respect of a particular Account, some, but not all, of the Contracts recorded in that Account (for example, a lot may contain only Energy Contracts but not Financials & Softs Contracts), which lot may then also be mixed to the extent permitted under (i). An auction lot relating to Contracts of an FCM/BD Clearing Member may only contain Contracts recorded in a single Account. Where positions relating to more than one Account of a Non-FCM/BD Clearing Member are included in a single auction lot, for the purpose of calculating the net sums under Rule 906, the Clearing House shall apportion the overall bid price received for an auction lot, and the

costs associated with auctioning the relevant lot, across the various Accounts in which the Contracts in the auction lot are recorded based on Margin requirements, Exchange Delivery Settlement Prices, Contract valuation information provided by the winning bidder or such other methodology as it may at its discretion determine.

- (c) If, as a result of the rules of an Exchange which limit fluctuations in price or other circumstances, it is not possible to close out or terminate all Contracts to which the Defaulter is party pursuant to Rule 905(b), the Clearing House may close out or terminate such Contracts by taking opposite positions, in the current expiration period.
- (d)
  - (i) [Not Used]
  - (ii) To the extent that the Clearing House does not terminate, transfer or close out all of the Contracts of a Defaulter, the Clearing House may at its discretion in respect of any open Contracts of the Defaulter:
    - (A) as and to the extent permitted under Rule 914, engage in Reduced Gains Distribution, under such Rule;
    - (B) eliminate or replace all remaining risk of the Open Contract Positions of a Defaulter and any Transactions entered into pursuant to Rule 905(b), terminate such Open Contract Positions and Transactions with other Clearing Members through Partial Tear-Up in accordance with Rule 915, upon which such remaining Open Contract Positions and Transactions shall terminate (to the extent not previously terminated); and
    - (C) take any other action not inconsistent with these Rules as the Clearing House may deem necessary or appropriate for its protection (it being understood that the Clearing House will not be entitled to conduct a forced allocation of Contracts to Clearing Members or require Assessment Contributions or similar contributions in excess of the maximum amounts permitted under Rules 909 and 917.
- (e) All terminations and closing out of Contracts pursuant to this Rule 905 shall be for the account and cost of the Defaulter.
- (f) Without prejudice to the generality of the indemnities in Rules 111 and 301, but without duplication of any other obligation under these Rules, the Defaulter, acting for its own account as principal, shall indemnify, hold harmless and be liable to the Clearing House in respect of all the losses, unpaid fees, liabilities, damages, injuries, taxes, costs, claims, shortfalls and expenses (including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts or Margin, amounts payable by the Clearing House

to Approved Financial Institutions or Target 2 Central Banks or custodians and any amount payable by the Clearing House to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default), in the case of any such item whether relating to a Proprietary Account or Customer Account of the Defaulter incurred or suffered by any of the Clearing House, any Market or any of their Directors or directors (as the case may be) officers, employees, committees (or any individual committee member) or those of their Affiliates arising out of the Defaulter's conduct (whether such conduct took place prior to or after declaration of the Event of Default) or in connection with the Event of Default. Rule 111(b) shall apply in respect of this Rule 905(f) in the same way as it applies to Rule 111(a).

- (g) For all liquidations, terminations and close outs of Contracts pursuant to this Rule 905, the Clearing House shall, at its discretion, determine the price of the Contract, which may be on the basis of the Exchange Delivery Settlement Price, current market value or any other price specified by it. Any such price may be calculated with reference to any time determined at the Clearing House's discretion, which may be at the time such cancellation is ordered, the time an Event of Default, Insolvency, Unprotected Resolution Step occurs or is declared, or the time of calculation of any price as at the end of the Business Day prior to the Transfer, Event of Default, Insolvency or Unprotected Resolution Step.

#### **Rule 906**      *Net Sums Payable*

- (a) Following discharge of a Defaulter's rights, obligations and liabilities under Contracts pursuant to this Part 9, the Clearing House shall carry out the following calculation separately in respect of each different Proprietary Account and each different Customer Account of the Defaulter. Upon termination of all Contracts following an Event of Default, the only obligation of the Clearing House or Defaulter, except for any obligation which had already fallen due for performance but at the time had not been performed (which obligations would be taken into account in the calculation of the net sum, save to the extent that any party has become subject to an irrevocable Transfer Order under Part 12 or the Settlement Finality Directive) shall be limited to calculation and payment of the net sum and such other obligations as are expressed to apply in Rule 209 or this Part 9. Following an Event of Default, there shall be no requirement for future payments or deliveries to be made in respect of any terminated Contracts (including in each case no requirement to pay or deliver any related Margin that has not at the time fallen due for payment, except as part of the net sum). The calculation set out below follows the requirements for a 'Default waterfall' in EMIR and UK EMIR, and other requirements of Applicable Law. The methodology involves aggregating or setting off various amounts (as applicable) so as to produce separate net sums for each different Proprietary Account and each different Customer Account of the Defaulter (each such net sum, *N*) in each case defined by the formula:

$$N = L - A - D - C - M - GFC - SC - OA + OL$$

where such letters have the meanings set out below in this Rule 906(a):

$L$  = the aggregate amount, expressed as a positive number, of all sums payable by the Defaulter in respect of Contracts recorded in the relevant Account (which are not voidable and voided by the Clearing House pursuant to Part 4) taking into account any of the following actions under Rule 903, 904 or 905:

- (i) termination or the effecting by the Clearing House of corresponding contracts in relation to Contracts to which the Defaulter is or was party;
- (ii) the Transfer of any of the Defaulter's Contracts to a Transferee Clearing Member (not being the Defaulter) or acceptance or entry into by a Clearing Member of any of the Defaulter's Contracts or contracts similar to any of the Defaulter's Contracts; and
- (iii) the exercise or abandonment of any Option,

plus all amounts that were payable but remain unpaid by the Defaulter under the terms of Contracts, plus any costs and expenses of the Clearing House in any way relating to any Contract to which the Defaulter was party, including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts and any amount payable by the Clearing House to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default; and the Clearing House may assess any one or more elements of such amount  $L$  in its discretion, provided that any costs, expenses, taxes or other amounts falling within the scope of the indemnity in Rule 905(f) (not being amounts payable in respect of Contracts falling under  $L$ (i) to (iii) above) shall be allocated to the Proprietary Account regardless of the Contracts or Account to which they relate.

$A$  = the aggregate amount, expressed as a positive number, of all sums payable to the Defaulter in respect of Contracts recorded in the relevant Account (which are not voidable and voided by the Clearing House pursuant to Part 4), taking into account any of the actions referred to under  $L$  (i), (ii) or (iii) above, plus all amounts that were payable but remain unpaid by the Clearing House under the terms of Contracts, excluding any amount included under  $D$ ,  $C$ ,  $M$ ,  $GFC$  or  $SC$ ; and the Clearing House may assess any one or more elements of such amount  $A$  in its discretion.

*Note on calculation of the amounts  $L$  and  $A$ :* For the purposes of calculating amounts  $L$  and  $A$ , the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:

- (x) the price of the Contract or Open Contract Position recorded in the Clearing House's books for the later of: (A) the last date on which a payment in respect of Variation Margin was successfully and fully made by the Clearing Member to or to the account of the Clearing House; or (B) the last date on which a return of amounts following a Variation Margin call was successfully and fully made by the Clearing House to the Clearing Member or to the account of the Clearing Member; and

(y) the price at which the Contract or Open Contract Position was Transferred, terminated or closed out pursuant to Rules 903 to 905.

For such purposes, payment or return of Variation Margin will be treated as having been successfully and fully made even if Cash Gainer Adjustments and Cash Loser Adjustments are made pursuant to Rule 914 and no additional credit or debit shall be applied in the net sum calculation for any Cash Gainer Adjustments or Cash Loser Adjustments applied to any Account of the Clearing Member prior to the time of declaration of the Event of Default.

*D* = if the Clearing House so determines at its discretion, the aggregate amount of any sums in respect of a Deliverable delivered, physically settled, to be delivered or to be physically settled under a Contract with the Defaulter or in respect of which cash settlement is to be made as calculated by the Clearing House at its discretion relating to the relevant Account (if payable to the Clearing Member being a positive number and hence set off in the calculation under this Rule 906(a) against any amount *L-A* if that amount is also a positive number or if payable to the Clearing House being a negative number and aggregated in the calculation under this Rule 906(a) with any amount *L-A* if that amount is a positive number), in any case excluding any amount included under *C*, *M*, *GFC* or *SC*.

*C* = if relevant, any sum owed by or to the Clearing House to or from a recognised investment exchange or another recognised clearing house of which the Defaulter is or was a member, under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the Defaulter chose to participate (if payable to the Clearing Member being a positive number and set off in the calculation under this Rule 906(a) against any amount *L-A-D* if that amount is also a positive number or if payable to the Clearing House being a negative number and aggregated in the calculation under this Rule 906(a) with any amount *L-A-D* if that amount is a positive number).

*M* = means the following, expressed as a positive number:

- (i) in relation to a net sum calculation for the Proprietary Account of the Defaulter, the value of any property provided by or on behalf of the Defaulter in respect of its Proprietary Account as Margin under Rule 502(g), Original Margin, buyer's security or seller's security (without any double counting) or in satisfaction of such Margin requirements and recorded in the Proprietary Margin Account of the Defaulter;
- (ii) in relation to a net sum calculation for any Customer Account of the Defaulter, the value of any property provided by or on behalf of the Defaulter as margin under Rule 502(g), Original Margin, buyer's security or seller's security (without any double counting) in respect of such Customer Account or in satisfaction of such Margin requirements and that is recorded in the related Customer Margin Account of the Defaulter, excluding any Margin that would

otherwise fall under amount  $M$  but that is transferred to a Transferee Clearing Member pursuant to this Part 9; or

(iii) [Not Used]

but excluding in any case any Pledged Collateral or Charged Collateral that is returned pursuant to Rule 502(i), provided that the value of any Pledged Collateral or Charged Collateral shall be included in amount  $M$ : (A) to the extent that such collateral is used, appropriated or realised and applied to meet any loss or shortfall pursuant to these Rules or the applicable Pledged Collateral Addendum or Charged Collateral Addendum; or (B) to the extent that a corresponding obligation arising under Rule 904(d)(v) is included in  $OL$ .

$GFC$  = the value, expressed as a positive number, of any property provided by or on behalf of the Defaulter as Guaranty Fund Contributions, which may be applied in connection with the net sum for any Customer Account or the Proprietary Account of the Defaulter in accordance with Rules 906(b) and (c) at the discretion of the Clearing House regardless of the basis under which any Guaranty Fund Contribution was calculated under Rule 1101(e), provided that the total applied to the Customer Accounts and Proprietary Account of a Defaulter under  $GFC$  shall not exceed the total Guaranty Fund Contributions of the Defaulter.

$SC$  = the value, expressed as a positive number, of any property provided by or on behalf of the Defaulter in respect of the relevant Account that constitutes Surplus Collateral, including, where applicable, any such amounts received by the Clearing House pursuant to a letter of credit or Controller Guarantee in favour of the Clearing House not falling under  $M$ , but excluding any Pledged Collateral or Charged Collateral returned pursuant to Rule 502(i) or amounts not needed that are returned to a letter of credit issuer.

$OA$  = the aggregate of any amounts, expressed as a positive number, not falling under  $A$ ,  $D$ ,  $C$ ,  $M$ ,  $GFC$  or  $SC$  standing to the credit of the Defaulter or payable to the Defaulter or any right or claim of the Defaulter against the Clearing House relating to the relevant Account, in any case whether pursuant to these Rules, any Contract or otherwise, including without limitation:

- (i) any available assets that would be recorded in the Proprietary Account but for Rule 906(c);
- (ii) [Not Used.];
- (iii) an amount in respect of any Guaranty Fund Contribution that has been applied to a loss, shortfall or otherwise but is due back to the Clearing Member under Rule 1102(k), 1103(a) or 1103(b);
- (iv) an amount in respect of any Assessment Contribution that has been called and paid but is due back to the Clearing Member under Rule 909(j); and



(v) any amounts due to the Clearing Member under Rule 914(j), 916(n) or 919(h), but excluding in any case: (A) any Pledged Collateral or Charged Collateral whether returned pursuant to Rule 502(i) or otherwise; and (B) any Surplus Collateral.

*OL* = the aggregate of any other amounts, expressed as a positive number, not falling under *L* payable by the Defaulter to the Clearing House or any right or claim of the Clearing House against the Defaulter relating to the relevant Account, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any fines payable pursuant to Part 10 and any other amounts payable in respect of any breach by the Defaulter of these Rules in either case not falling under *L*), in any case at the discretion of the Clearing House, including without limitation the Defaulter's obligation to pay any amount in respect of a transfer in relation to all or any of the Pledged Collateral or Charged Collateral pursuant to Rule 904(d)(v), provided that any amounts falling within the scope of the indemnity in Rule 905(f) but not falling under *L* shall be allocated to the Proprietary Account regardless of the Contracts or Account to which they relate.

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

- (b) Where the Defaulter has one or more Customer Accounts, the process set out in Rule 906(a) shall be completed separately, and separate net sums shall be determined, in respect of:
- (i) each of the Defaulter's Non-DCM/Swap Customer Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
  - (ii) [Not Used];
  - (iii) each of the Defaulter's DCM Customer Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
  - (iv) [Not Used];
  - (v) each of the Defaulter's General Customer Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
  - (vi) each of the Defaulter's Segregated Customer Omnibus Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;

- (vii) each of the Defaulter's Segregated TTFCOA Customer Omnibus Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (viii) [Not Used];
- (ix) [Not Used];
- (x) [Not Used.]
- (xi) [Not Used.]
- (xii) each of the Defaulter's Margin-flow Co-mingled Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xiii) each of the Defaulter's Standard Omnibus Indirect Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xiv) each of the Defaulter's Standard TTFCOA Omnibus Indirect Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account;
- (xv) [Not Used];
- (xvi) [Not Used];
- (xvii) [Not Used];
- (xviii) [Not Used];
- (xix) each of the Defaulter's Segregated Gross Indirect Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account; and
- (xx) [Not Used];
- (xxi) each of the Defaulter's Proprietary Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account not falling under Rule 906(b)(i) to (xx).

Each Clearing Member shall be deemed to represent, warrant and agree on an ongoing basis that, if it were to become a Defaulter, any net sums to be determined in accordance with paragraphs (i) to (xxi) above do not: (aa) (in relation to a Defaulter that has a Customer Account) involve any setting off against each other of positions and assets recorded in any of the Defaulter's Customer Accounts against any of the Defaulter's Proprietary Accounts or any other Customer Account of that Defaulter, in any

circumstances which would contravene EMIR, UK EMIR, section 182A of the Companies Act 1989 (to the extent applicable) or EMIR; (bb) (in relation to a Defaulter with more than one Customer Account) involve setting off against each other of positions and assets recorded in each of the Defaulter's different Customer Accounts against any of the Defaulter's Proprietary Accounts or any other Customer Account of that Defaulter, in any circumstances which would contravene EMIR, UK EMIR, section 182A of the Companies Act 1989 (to the extent applicable); and (cc) (in relation to a Defaulter with more than one Proprietary Account) involve any setting off against each other of positions and assets recorded in each of the Defaulter's different Proprietary Accounts, against any of the Defaulter's Customer Accounts or any other Proprietary Account of the Defaulter, in any circumstances which would contravene section 182A of the Companies Act 1989 (to the extent applicable).

The Defaulter's Guaranty Fund Contributions and amounts received by the Clearing House under a Controller Guarantee or standby letter of credit of a Defaulter may be used for the purpose of calculating any net sum on any Account relating to that Defaulter (provided that any such amounts are not double counted), in accordance with Rule 906(a) and subject to the restrictions in Rule 906(c), Rule 908, Rule 102(q) and this Rule 906(b) as determined by the Clearing House. The aggregate sums finally payable shall be separately certified under Rule 906(e). Where and to the extent that the Clearing House determines to apply Guaranty Fund Contributions or amounts received by the Clearing House under a Controller Guarantee or standby letter of credit to any Customer Account, such amounts must first be applied to reduce any losses on Customer Accounts, on a *pro rata* basis among Customer Accounts which would otherwise have a net sum representing a shortfall or loss.

- (c) The Clearing House shall aggregate, set off or apply any Margin, Surplus Collateral or other surplus assets available to it in relation to a Defaulter's Proprietary Account to meet a shortfall on any one or more of that Defaulter's Customer Accounts (and, if it does so, shall include any such amounts within the net sum to be calculated in relation to such Customer Account), provided that if any amounts are so aggregated, set off or applied, the amount *A, D, C, M, SC* or *OA* (as applicable) and consequently the net sum payable by the Clearing House in relation to the Defaulter's Proprietary Account shall be reduced by the same amount as is so included within the net sum for the relevant Customer Account. The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on another of that Defaulter's Customer Accounts. The Clearing House may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on the Defaulter's Proprietary Account. Where and to the extent that the Clearing House determines to apply Proprietary Account assets of a Defaulter to any Customer Account, such amounts must first be applied to reduce any losses on Customer Accounts, on a *pro rata* basis among Customer Accounts which would otherwise have a net sum representing a shortfall or loss. The Clearing House shall apply assets which are neither Pledged Collateral nor

Charged Collateral to any such loss or shortfall, prior to applying any Pledged Collateral or Charged Collateral recorded in respect of the same Account.

- (d) Where  $N$  is a positive number, the net sum equal to  $N$  shall be payable by the Defaulter to the Clearing House. Where  $N$  is a negative number, the net sum equal to the absolute value of  $N$  shall be payable by the Clearing House:
- (i) in the case of an FCM/BD Clearing Member, to the Defaulter; or
  - (ii) in the case of a Non-FCM/BD Clearing Member, to the Defaulter or as required pursuant to article 48(7) of EMIR, or otherwise at the Clearing House's election and discretion (as permitted by Applicable Law):
    - (A) in respect of a Customer Account, directly to a Customer;
    - (B) in respect of a Customer Account used for indirect clearing under EMIR, directly to an indirect client of a Customer; or
    - (C) [Not Used],
  - (iii) in the case of (A) or (B) above only if the Clearing House is aware of the identity of the Customer or indirect client in question, and in all cases where the Clearing House is aware of an appropriate account to receive transfer of such net sum.

If the Clearing House makes payment in respect of amounts which would have otherwise been included any net sum to or to the account of a Person other than the Defaulter in accordance with these Rules or any Pledged Collateral Addendum or Charged Collateral Addendum, the Defaulter's claim against the Clearing House shall be accordingly reduced by the amount paid to such Person and the amount of any net sum  $N$  payable to the Defaulter shall be accordingly reduced. Where  $N$  is equal to zero, no amount shall be payable as between the Clearing House and the Defaulter pursuant to this Rule 906. Where there is more than one separately certified amount  $N$  certified under Rule 906(e) as a result of Rule 906(b), each amount so certified shall be treated as a separate obligation which cannot be netted off against another certified amount  $N$  in respect of a different account of the Defaulter.

- (e) Each amount  $N$  shall be certified by the Clearing House promptly upon its determination. Such determination may be delayed or withheld until such time as all relevant sums and components have been evaluated, all Transfers have been completed and the value or sale proceeds of any non-cash Margin, Surplus Collateral, Guaranty Fund Contributions or other assets are determined, received or available. A certificate of the Clearing House made pursuant to this Rule 906(e) shall be conclusive as to the amount required to be paid by or to any Defaulter or other Person in discharge of rights and liabilities in respect of the Contracts, property and Account to which such certificate relates.

- (f) [If a Disclosed Principal Member and the Clearing Member that appointed the Disclosed Principal Member are both Defaulters, the Clearing House shall be entitled to set-off any amount or asset to the credit of either Defaulter against any liability or obligation of the other Defaulter for the purposes of calculating any net sum under this Rule 906 and may exercise any of its powers under this Part 9 accordingly.]
- (g) The Clearing House and each Clearing Member with a Pledged Collateral Account or Charged Collateral Addendum acknowledge and agree that all such Pledged Collateral or Charged Collateral: (i) is provided pursuant to a charge over property provided as margin in respect of market contracts entered into by the Clearing House; and (ii) is provided to secure the obligation to pay the Clearing House any sum due to the Clearing House in respect of unsettled market contracts to which the Clearing Member is party as set forth in these Rules, in respect of the account that is or relates to a Pledged Collateral Account or Charged Collateral Account. Accordingly, the Clearing House and each such Clearing Member intend and agree that all Pledged Collateral and Charged Collateral provided to the Clearing House is provided pursuant to a "market charge" for purposes of the UK's Companies Act 1989.
- (h) Any amounts received from a letter of credit issuer in respect of Margin, Surplus Collateral or Guaranty Fund Contributions may at the discretion of the Clearing House be returned to the letter of credit issuer and not included in any net sum calculation relating to an Account of a Defaulter, to the extent that such amounts are not needed to cover a loss or shortfall, to the extent that the same is permitted pursuant to the terms of the letter of credit in question.
- (i) Notwithstanding any other provision of this Part 9, the Clearing House is entitled to declare, make or receive any net sum payment determined under this Rule 906 in a currency other than EUR if so required by the local insolvency law applicable to the relevant Clearing Member. For the purposes of this Rule 906(i), the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion or as required by the local insolvency law applicable to the relevant Clearing Member.

**Rule 907**      *Administrative matters concerning an Event of Default*

- (a) The Clearing House may co-operate, by the sharing of information and otherwise, with any Governmental Authority, Clearing Organisation, Exchange or Insolvency Practitioner having responsibility for any matter arising out of, or connected with, an Event of Default or the default of a recognised investment exchange or another recognised clearing house.
- (b) The Clearing House will report to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part 9.
- (c) In accordance with Rule 905(f), any failure to meet any of its obligations under these Rules or in respect of any Contract remains a liability of the Defaulter to the Clearing House regardless of any steps taken by the Clearing House under these Rules. The

Clearing House may recover such sums due by exercising its right of set off (to the extent permitted to be used under these Rules) or by legal process.

- (d) To the extent that the Event of Default in question has resulted in application of any Guaranty Fund Contributions of Clearing Members that are not Defaulters:
- (i) to the extent necessary for this purpose, each Clearing Member authorises and appoints the Clearing House to pursue any such collections or recoveries on behalf of the Clearing House and Clearing Members; and
  - (ii) without prejudice to Rule 111 or 905(f), the Clearing House shall be obliged to such Clearing Members to exercise the same degree of care in the administration, enforcement and collection of any claims against a Defaulter or its insolvency estate with respect to any remaining liability of a Defaulter to the Clearing House as it exercises with respect to its own assets that are not subject to allocation pursuant to Rule 914(k), Rule 916(n) or Rule 1102(k). The Clearing House may determine, in its reasonable discretion, whether or not to commence, continue, maintain, sell, dispose of or settle or compromise any litigation, arbitration or other action with respect to any liability of a Defaulter, without the consent of any Clearing Member or other Person. The Clearing House may, in its discretion, assign to Clearing Members any claims relating to collections or recoveries from Defaulters, in whole or in part, and such assignment shall satisfy in full the Clearing House's obligations under Rule 914(j), Rule 916(n) and Rule 1102(k) with respect to any such claim (or portion thereof) or recoveries therefrom.
  - (iii) For the avoidance of doubt, nothing in these Rules shall otherwise oblige the Clearing House to take any step to recover any asset or amount in the possession of a Defaulter or one of its Customers in connection with an Event of Default.
- (e) Without prejudice to the Clearing House relying on any other information provided to it by a Clearing Member or any other Person, the Clearing House shall be entitled to rely on the most recent information provided to it (including in relation to Contracts, Customer-CM Transactions, Margin and the Accounts in which Contracts and Margin were recorded or which relate to particular Customers or particular groups of Customers) by a Defaulter prior to declaration of an Event of Default, notwithstanding any notice or purported notice to the contrary from a Defaulter, its Insolvency Practitioner or any other Person received by the Clearing House after declaration of an Event of Default. The Clearing House shall have no obligation to enquire of any Customer or other Person as to any Porting Notice. The rights of the Clearing House to deal with Margin and other Permitted Cover under the default rules shall not be restricted as a consequence of a Defaulter having either entered into any indebtedness with a Customer or having provided different forms of collateral to the Clearing House or entered into different legal relationships in respect of the transfer of such collateral to the Clearing House from that which it had received from or agreed with its Customer, in either case in order to facilitate the provision of Permitted Cover to the Clearing House.

- (f) A Defaulter shall immediately disclose the names, addresses and contact details of each of its Customers or any Customer upon receiving notice to do so from the Clearing House.
- (g) Rule 202(a)(xii) shall apply in respect of the Defaulter for the benefit of the Clearing House and any Transferee Clearing Member in respect of each Transfer of Contracts (and any related Customer-CM Transactions) and any related transfer of Margin or other assets taking place pursuant to this Part 9.
- (h) The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members and Customers and their Representatives (including any Insolvency Practitioner with powers over any Clearing Member, Customer or other Representative) shall, to the extent permitted by Applicable Laws:
  - (i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Part 9; and
  - (ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Clearing House are applied only pursuant to this Part 9.
- (i) Notwithstanding any other provision of these Rules or the Finance Procedures concerning the use of Nominated Bank Accounts, Nominated Target 2 Bank Accounts, Approved Financial Institutions or Target 2 Central Banks, any amount payable to or from the Clearing House following the declaration of a net sum in accordance with this Part 9 may be paid to or from an account other than a Nominated Bank Account or Nominated Target 2 Bank Account and/or to or from an account other than with an Approved Financial Institution or Target 2 Central Bank that has previously been designated as such by the Clearing House, provided that:
  - (i) the account is an account of the Defaulter or an account operated by an Insolvency Practitioner on behalf of the Defaulter;
  - (ii) in the case of payments to the Defaulter, details of the account to be used and such other information relating to the account as is reasonably requested by the Clearing House are provided in writing to the Clearing House by the Defaulter or its Insolvency Practitioner; and
  - (iii) the bank of the account to which such payment is made shall be treated as if it were an Approved Financial Institution or a Target 2 Central Bank for purposes of any payments referred to in this Rule 907(i) and Part 12 without the need for any further action on the part of the Clearing House.
- (j) [Not Used];

- (k) Without prejudice to the status of any other provision of the Rules that is potentially applicable following an Event of Default as a default rule or similar concept for purposes of any of the Applicable Laws referred to at the start of this Part 9:
- (i) [Not Used];
  - (ii) Part 12 and Rule 1604 contain additional default rules; and
  - (iii) where any defined term is used in a default rule or any general interpretative provision of these Rules is relevant to the interpretation of a default rule, the definition of that term or that interpretative provision is itself also a default rule.
- (l) [Not Used]
- (m)
- (i) If an event has occurred with respect to a Customer, with respect to a Customer-Clearing Member Agreement, Customer-CM Transaction or otherwise, which would constitute any Event of Default hereunder (if it had occurred with respect to a Clearing Member), then:
    - (A) the Clearing Member may, through the ICE Systems or otherwise, request that the Clearing House take such steps as are necessary to Transfer any Contracts, Margin or other Permitted Cover recorded in a Customer Account of that Clearing Member, to the extent relating to such Customer, to a Proprietary Account of the same Clearing Member (or a different Customer Account of the same Clearing Member in which the Customer is interested);
    - (B) the Clearing House may as a result of such request assume that such event means that the Customer is unable, or likely to be unable, to meet its obligations in respect of one or more 'market contracts' (as defined in the Companies Act 1989, to the extent applicable), or the Customer (were it to be a Clearing Member) would be capable of being declared a Defaulter, under this Part 9, and act upon any such request, through the ICE Systems or otherwise; and
    - (C) the Clearing House will: (1) to the extent permissible under Applicable Laws; (2) if so requested by a Clearing Member that is not a Defaulter; and (3) where such request contains a confirmation from the Clearing Member that such an event exists (upon which the Clearing House may rely, without enquiry, including for the purposes of Rule 111), act upon any such request, through the ICE Systems or otherwise.
  - (ii) If an event has occurred with respect to a Customer or an Indirect Client of a Customer or a Clearing Member, with respect to a Customer-Clearing Member Agreement, Customer-CM Transaction or otherwise, which would constitute



any Event of Default hereunder (if it had occurred with respect to a Clearing Member), then:

- (A) the Clearing Member may, through the ICE Systems or otherwise request that the Clearing House take such necessary steps to Transfer any Contracts, Margin or other Permitted Cover recorded in or related to a Standard Omnibus Indirect Account or Segregated Gross Indirect Account of that Clearing Member, or in the case of an FCM/BD Clearing Member, an indirect clearing position keeping subaccount linked to a Customer Account, to the extent relating to such Customer or Indirect Client, to a different Account or subaccount of the same Clearing Member or will update the records relating to such an Account or subaccount, in which the Customer is interested.
- (B) the Clearing House may as a result of such request assume that such event means that the Customer or Indirect Client of a Customer or a Clearing Member is unable, or likely to be unable, to meet its obligations in respect of one or more 'market contracts' (as defined in the Companies Act 1989, to the extent applicable) or the Customer or Indirect Client of a Customer or Clearing Member (were such Customer or Indirect Client to be a Clearing Member) would be capable of being declared a Defaulter, under this Part 9, and act upon any such request, through the ICE Systems or otherwise; and
- (C) the Clearing House will: (1) to the extent permissible under Applicable Laws; (2) if so requested by a Clearing Member that is not a Defaulter; and (3) where such request contains a confirmation from the Clearing Member that such an event exists (upon which the Clearing House may rely, without enquiry, including for the purposes of Rule 111), act upon any such request, through the ICE Systems or otherwise.

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

- (a) Notwithstanding any other provision of these Rules:
  - (i) [Not Used];
  - (ii) [Not Used];
  - (iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Members that are not Defaulters or accrued in each case after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default shall not be applied to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Clearing House arising in connection with that prior Event of Default;

- (iv) [Not Used];
  - (v) without limitation to the generality of Rule 102(q), this Rule 908 is subject to Rule 102(q);
  - (vi) where the loss or shortfall relates to Energy Contracts: (A) the Clearing House Initial (Energy) Contribution shall be applied and exhausted prior to applying the Clearing House Initial (Financials & Softs) Contribution; (B) the Guaranty Fund Contributions relating to Energy Contracts shall be applied and exhausted prior to applying the Guaranty Fund Contributions relating to Financials & Softs Contracts; (C) the Clearing House Second (Energy) Contribution shall be applied and exhausted prior to applying the Clearing House Second (Financials & Softs) Contribution; and (D) Assessment Contributions relating to Energy Contracts shall be applied and exhausted prior to applying Assessment Contributions relating to Financials & Softs Contracts;
  - (vii) where the loss or shortfall relates to Financials & Softs Contracts: (A) the Clearing House Initial (Financials & Softs) Contribution shall be applied and exhausted prior to applying the Clearing House Initial (Energy) Contribution; (B) the Guaranty Fund Contributions relating to Financials & Softs Contracts shall be applied and exhausted prior to applying the Guaranty Fund Contributions relating to Energy Contracts; (C) the Clearing House Second (Financials & Softs) Contribution shall be applied and exhausted prior to applying the Clearing House Second (Energy) Contribution; and (D) Assessment Contributions relating to Financials & Softs Contracts shall be applied and exhausted prior to applying Assessment Contributions relating to Energy Contracts;
  - (viii) in determining whether a loss or shortfall relates to Energy Contracts or to Financials & Softs Contracts for the purposes of Rule 908(a)(vi) or (vii), the principles set out in Rule 908(e) for the attribution of liabilities shall be applied; and
  - (ix) [Not Used].
  - (x) where the relevant assets that may be applied by the Clearing House to meet any loss or shortfall under this Rule 908 consist of both: (A) Pledged Collateral or Charged Collateral; and (B) assets which are neither Charged Collateral nor Pledged Collateral, then the Clearing House will apply assets which are neither Pledged Collateral nor Charged Collateral to such loss or shortfall, prior to applying any Pledged Collateral or Charged Collateral.
- (b) Following an Event of Default, the Clearing House shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Clearing House upon or following any Event of Default of that Defaulter (including in connection with any net sum calculated under Rule 906), by applying the following assets in the order of recourse set out below:

- (i) first, any amounts falling under *N* in Rule 906(a) in the order and in respect of the Accounts specified in Rule 906(a) subject to the restrictions set out in Rule 906(c) (provided that the Clearing House shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in Rule 908(b)(ii) to (vi) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realising any such claim or action or obtaining such amount or asset);
  - (ii) second, the Clearing House Initial Contribution;
  - (iii) third, subject to Rules 908(i) and 1103(e), any claims under any default insurance policies (including the proceeds of any claim) of which the Clearing House is the beneficiary that have been received by the Clearing House in cleared funds as a result of the Event of Default (it being understood that the Clearing House shall not be obliged to obtain or maintain any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in this Rule 908(b), subject to Rule 1102(k));
  - (iv) fourth (subject to Rule 908(i)), Guaranty Fund Contributions of Clearing Members other than the Defaulter in question (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available) on a basis *pro rata* (subject to Rule 908(i)) to the sum of the total of all Guaranty Fund Contributions (excluding Guaranty Fund Contributions of the Defaulter and Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings) at the time of the Event of Default;
  - (v) fifth, the Clearing House Second Contribution; and
  - (vi) sixth (subject to Rule 908(i)), Assessment Contributions received by the Clearing House pursuant to Rule 909.
- (c) [Not Used]
  - (d) [Not Used]
  - (e) In the case of a Defaulter which held Energy Contracts and Financials & Softs Contracts, separate amounts shall be calculated in accordance with Rule 906(a) to (c) as if they were "net sums", *mutatis mutandis* in respect of assets and liabilities relating to the Clearing of Energy Contracts ("**Energy Default Amount**") and the Clearing of Financials & Softs Contracts ("**Financials & Softs Default Amount**", and together with the Energy Default Amount, a "**Default Amount**"), as follows:
    - (i) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of Energy Contracts, then the net sum declared in respect

of such account shall be the sole element of the Energy Default Amount in respect of such Account;

- (ii) if an Account in respect of which a positive net sum was produced was used solely for the Clearing of Financials & Softs Contracts, then the net sum declared in respect of such account shall be the sole element of the Financials & Softs Default Amount in respect of such Account;
- (iii) [Not Used]
- (iv) if an Account in respect of which a positive net sum was produced was used for the Clearing of both Energy Contracts and Financials & Softs Contracts:
  - (A) the Financials & Softs Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of Financials & Softs Contracts, Margin or Surplus Collateral in respect of positions in Financials & Softs Contracts and any other amounts, assets or liabilities relating in any case exclusively to Financials & Softs Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below; and
  - (B) the Energy Default Amount shall include an amount in respect of such Account calculated by taking into account: any amounts, assets or liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) in respect of Energy Contracts, Margin or Surplus Collateral in respect of Energy Contracts and any other amounts, assets or liabilities relating in any case exclusively to Energy Contracts of the Defaulter, together with such Guaranty Fund Contributions, Non-Exclusive Assets and Non-Exclusive Liabilities as are included as set out below;
  - (C) [Not Used].
- (v) notwithstanding Rule 908(e)(i), (ii) or (iii), Guaranty Fund Contributions of any kind shall be applied as follows as between Default Amounts:
  - (A) first to meeting any loss, shortfall or liability that would otherwise be represented in any Default Amount;
  - (B) [Not Used];
  - (C) [Not Used];

- (D) in the case of any remaining Guaranty Fund Contributions, next towards eliminating any loss, shortfall or liability that would otherwise be represented in any Default Amount;
- (E) [Not Used].
- (vi) "**Non-Exclusive Assets**" constitute any amounts or assets included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one of Energy Contacts or Financials & Softs Contracts, but excluding Guaranty Fund Contributions. Non-Exclusive Assets may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:
  - (A) to the extent that two or more of the Default Amounts represent or would (but for this provision) represent a shortfall, loss or liability (in this Rule 908(e)(vi), "**Shortfall Default Amounts**"), the Non-Exclusive Assets must be included in the calculation of the Shortfall Default Amounts in proportion to the Margin requirements of the Defaulter for each of Energy Contacts and Financials & Softs Contracts corresponding to each Shortfall Default Amount immediately prior to the Event of Default until one of the Shortfall Default Amounts would represent zero; and
  - (B) subject to the process in paragraph (A) above first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a shortfall, loss or liability to the Clearing House, the Non-Exclusive Assets must be included in the relevant calculation so as to eliminate or reduce the shortfall, loss or liability *pro rata* as to the losses.
- (vii) "**Non-Exclusive Liabilities**" constitute any liabilities included or to be included within the calculation of the amount *N* in Rule 906(a) not relating exclusively to any one of Energy Contacts or Financials & Softs Contracts. Non-Exclusive Liabilities may be included in the calculation of any of the Default Amounts in question or split between such calculations at the Clearing House's discretion, provided that:
  - (A) to the extent that two or more of the Default Amounts (after the adjustment for Non-Exclusive Assets in Rule 908(e)(vi)) represent or would (but for this provision) represent a surplus (in this Rule 908(e)(vii), "**Surplus Default Amounts**"), the Non-Exclusive Liabilities must be included in the calculation of the Surplus Default Amounts in proportion to the Margin requirements of the Defaulter for each of Energy Contacts and Financials & Softs Contracts corresponding to each Surplus Default Amount immediately prior to the

Event of Default until one of the Surplus Default Amounts would represent zero; and

- (B) subject to the process in paragraph (A) above first being completed if applicable, to the extent that one or two of the Default Amounts in question represent(s) or would (but for this provision) represent a surplus to the Clearing House and the other or others represent or would (but for this provision) represent a shortfall, loss or liability to the Clearing House, Non-Exclusive Liabilities must first be included in the relevant calculation against the surplus *pro rata* as to the surpluses.
- (f) [Not Used]
- (g) [Not Used]
- (h) The requirements of this Rule 908 shall apply and be binding upon the Clearing House and all Clearing Members including upon the event of any Insolvency affecting the Clearing House or any Clearing Member. The Clearing House (including any Insolvency Practitioner with powers over the Clearing House or other Representative) and all Clearing Members (including any Insolvency Practitioner with powers over any Clearing Member or their Representatives) shall, to the extent permitted by Applicable Laws:
  - (i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Part 9; and
  - (ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Clearing House are applied only pursuant to this Part 9.
- (i) Notwithstanding Rule 908(b)(iv) and (vi), Rule 908(e) and Rule 909, if a Default Auction is held, the Guaranty Fund Contributions of particular non-defaulting Clearing Members (or other funds transferred to the Clearing House by other Default Auction participants) may be applied in different orders or sequences, and Assessment Contributions may be called in different orders or sequences, rather than being applied or called *pro rata* for all Clearing Members, with reference to the bids made or other behaviours in the Default Auction, in accordance with the applicable provisions of the Default Auction Procedures.
  - (i) [Not Used]
  - (ii) Where a Default Auction is held, the applicable modifications to Rule 908 shall be as set out in the Default Auction Procedures.

## Rule 909 Powers of Assessment

- (a) Powers of assessment under this Rule 909 may be exercised by the Clearing House following an Event of Default occurring in respect of a Clearing Member if a shortfall, loss or liability to the Clearing House has arisen, or is considered by the Clearing House to be likely to arise, as a result of a shortfall, loss or liability relating to any Proprietary Account or Customer Account of a Defaulter where such shortfall, loss or liability is not met pursuant to the application of the following rules:
- (i) Rule 908(b)(i) to (v);
  - (ii) [Not Used]
  - (iii) [Not Used.]
  - (iv) [Not Used]

Immediately upon the Clearing House certifying the Assessment Amount in a Circular, all Clearing Members (other than Defaulters) shall indemnify the Clearing House and become liable to pay Assessment Contributions to the Clearing House in accordance with Rule 909(b). The exercise of any right to call Assessment Contributions under this Rule 909 is subject to any contrary requirement arising pursuant to Rule 917 or Rule 918(a)(ii).

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

$$FOAA \times \frac{FOGF(CM)}{FOGF(all)}$$

where:

*FOAA* is the Assessment Amount certified by the Clearing House in a Circular as the total shortfall following an Event of Default occurring after, estimated or expected after the funds referred to in Rule 909(a) have been applied, provided that the total Assessment Amount shall be no greater than the amount equal to twice the total required Guaranty Fund Contributions of all Clearing Members immediately prior to the relevant Event of Default (less Guaranty Fund Contributions of Defaulters);

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

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

Assessment Contributions will be designated as relating primarily to Energy Contracts or Financials & Softs Contracts based on the designation of Guaranty Fund Contributions to Energy Contracts or Financials & Softs Contracts under Rule 1101(a).

- (c) [Not Used]
- (d) [Not Used]
- (e) [Not Used.]
- (f) No Clearing Member shall be liable for more than an amount equal to twice their required Guaranty Fund Contributions immediately preceding the relevant Event of Default in total Assessment Contributions in respect of a single Event of Default. A Person that is or was a Clearing Member and that has served a Termination Notice shall be subject to obligations to pay Assessment Contributions only in respect of Events of Default declared in relation to Clearing Members occurring prior to the Termination Date.
- (g) [Not Used.]
- (h) If the Assessment Amount is not met by Assessment Contribution receipts from Clearing Members due to non-payment by a Clearing Member or Clearing Members, Default of a Clearing Member or Clearing Members or otherwise, the Clearing House shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Clearing House directs otherwise in a Circular, any shortfall in Assessment Contribution receipts shall be re-assessed against all Clearing Members (other than Defaulters and Persons that have defaulted in making an Assessment Contribution) in accordance with Rule 909(a), as if such shortfall were the Assessment Amount, provided that: no Clearing Member shall be liable to pay Assessment Contributions in respect of a single Default for an amount greater than twice its Guaranty Fund Contribution immediately prior to the relevant Default. Subject to Rule 909(f), further Assessment Contributions may be levied and repeated in this manner at the discretion of the Clearing House until the entire Assessment Amount has been met in full by Assessment Contributions.
- (i) All Assessment Contributions shall become due and payable at such time as the Clearing House notifies to Clearing Members (which may be by Circular) and may be collected by the Clearing House pursuant to Part 3.
- (j) If, after any Assessment Contribution has been paid in relation to an Event of Default, the Clearing House collects amounts in respect of a defaulted obligation, loss, shortfall or unpaid Assessment Contribution in whole or in part from the Defaulter in question, an insurer or a Person liable to pay an unpaid Assessment Contribution, the Clearing House shall refund the amount so collected (less any expenses of the Clearing House, including without limitation any legal fees and expenses incurred in connection therewith) to other Clearing Members (excluding any Defaulter) *pro rata* (subject to Rule 908(i)) in respect of paid Assessment Contributions and the Event of Default in question, subject to the Clearing House: (i) first retaining or repaying amounts up to the amount of any assets of the Clearing House or other third parties applied to meet any shortfall, loss or liability following exhaustion of the assets specified in Rule 908 or in



substitution of any such assets; and (ii) if applicable, meeting any repayment obligations arising pursuant to 909(j), 914(j) or 916(n).

- (k) Amounts transferred to the Clearing House by Clearing Members in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute Assessment Contributions. Neither the exercise of powers of assessment by the Clearing House nor the payment of Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.* or to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i). Assessment Contributions do not constitute Guaranty Fund Contributions.
- (l) Where the Clearing House calls Assessment Contributions in excess of that required or actually applied against a loss, shortfall or liability, it shall treat any such excess provided by a particular Clearing Member as special Surplus Collateral on the relevant Proprietary Account of such Clearing Member. Such special Surplus Collateral shall be available to be applied at any time as an Assessment Contribution, but unavailable for withdrawal under Part 3 or the Finance Procedures, until such time as any such amount of Assessment Contributions are determined by the Clearing House not to be required, at which point the Surplus Collateral shall become available for withdrawal in the same way as other Surplus Collateral.

**Rule 910**     *[Not Used]*

**Rule 911**     *[Not Used]*

**Rule 912**     *Default procedure for certain termination events*

- (a) In the event of any termination pursuant to Rule 209(c)(ii)-(iii), the rights and liabilities of each Clearing Member under all Contracts will be deemed to be terminated without need for any further step on the part of any party and discharged for the purposes of Rule 906 and a net sum or net sums payable by or to the Clearing Member to or from the Clearing House shall be determined as if each Clearing Member were a Defaulter, in accordance with Rule 906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Member.
- (b) In circumstances in which this Rule 912 applies:
  - (i) Rule 909 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Clearing House pursuant to Rule 901 (rather than any Event of Default effectively deemed to occur pursuant to this Rule 912);
  - (ii) Rules 901, 902, 903, 904 and Rule 905 shall apply only to Clearing Members that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this Rule 912); and

- (iii) [Not Used];
  - (iv) [Not Used];
  - (v) otherwise, this Part 9 shall apply *mutatis mutandis* in relation to terminated Contracts and rights, obligations and liabilities relating thereto.
- (c) If the Clearing House becomes aware of there being or occurring an Insolvency or Failure To Pay in respect of the Clearing House, the Clearing House will promptly issue a Circular specifying that the same has occurred.

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

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

the Clearing House) of those Guaranty Fund Contributions, Clearing House Contributions, Assessment Contributions and any claims under any default insurance policies which are available to be applied pursuant to Rule 908, provided that Assessment Contributions and any claims under any default insurance policies shall only count as Available Non-Defaulter Resources if they have been received by the Clearing House in cleared funds at the time the Clearing House performs a calculation of Available Non-Defaulter Resources.

- (v) The term "**Available Product Funds**" means the amount of resources available to the Clearing House, as calculated in accordance with Rule 916(f).
- (vi) The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vii) The term "**Cash Gain**" means, in respect of any Cash Gainer and any Loss Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Cash Gainer in respect of such Loss Distribution Day, if positive.
- (viii) The term "**Cash Gainer**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is greater than zero.
- (ix) The term "**Cash Gainer Adjustment**" has the meaning set out in Rule 914(c).
- (x) The term "**Cash Loser**" means, in respect of each Contributor and any Loss Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realised Cash Flows in respect of such Loss Distribution Day is equal to or less than zero.
- (xi) The term "**Cash Loser Adjustment**" has the meaning set out in Rule 914(d).
- (xii) The term "**Clearing House Event**" means a Failure To Pay or Insolvency occurring in respect of the Clearing House.
- (xiii) [Not Used].
- (xiv) The term "**Contractual Payments**" means, in respect of each Margin Account and any Business Day, any of the following connected to such Margin Account on such Business Day: any Exchange Delivery Settlement Price, Option premium, other settlement amount, Strike Price, exercise price, settlement price or delivery price, exercise price or any other payment pursuant to the terms of a Contract. Where physical delivery or physical settlement of any Deliverable is due to be made by way of final settlement under a Contract from the Clearing House to any Clearing Member and the Clearing House (including any non-defaulting Clearing Member or its Transferee acting as agent for the Clearing

House) has not received delivery of an equivalent Deliverable from the Defaulter, the Clearing House may attribute a reasonable value to its delivery obligations and treat such amount as a Contractual Payment for purposes of this definition.

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

such Margin Account for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.

(xxii) [Not Used]

(xxiii) [Not Used]

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

$$DH_{(t)} = UL_{(t)} / ACG_{(t)}$$

where:

*UL* means the Uncovered Loss; and

*ACG* means the Aggregate Cash Gains,

(xxv) The term "**Estimated Payable Net Sum**" means, following a particular Event of Default, an estimate by the Clearing House of the total of those net sums calculated using the methodology set out in Rule 906 which represent an amount payable by a Defaulter in respect of a particular Account, based on the cash or estimated value of items considered by the Clearing House to be sufficiently certain to be estimated as at the date of the estimation (including, in respect of Contracts, latest available Exchange Delivery Settlement Price), without any netting or offsetting in respect of any other Estimated Payable Net Sum or actual net sum payable to a Defaulter in respect of a different Account of a Defaulter.

(xxvi) The term "**Last Call Prior To Default**" means the most recent Business Day on which payments of Variation Margin required to be made by Clearing Members were paid in full.

(xxvii) The term "**Loss Distribution Day**" means a Business Day in the Loss Distribution Period.

(xxviii) The term "**Loss Distribution Period**" means the period commencing from and including the date specified by the Clearing House in a Circular following an RGD Determination and ending on a date specified by the Clearing House in the same or any subsequent Circular, as the same may be extended under Rule 914. A Loss Distribution Period shall end with immediate effect and without the need for any action on the part of any Clearing Member or the Clearing House upon any Clearing House Event.

(xxix) The term "**Margin Account**" means each Proprietary Margin Account and Customer Margin Account of a Contributor.

- (xxx) The term "**Margin Account Adjustment**" means, in respect of each Margin Account and any Business Day, any Cash Gainer Adjustment or Cash Loser Adjustment as the case may be payable in connection with such Margin Account on such Business Day.
- (xxxi) For the avoidance of doubt, references in the remainder of this Part 9 to the payment of Variation Margin shall be construed as including obligations to transfer cash or other Permitted Cover as a result of changes to the Exchange Delivery Settlement Price (as the difference between Exchange Delivery Settlement Price on different Business Days) following a recalculation of Exchange Delivery Settlement Price and not to the total amount of Variation Margin that has been transferred to any Clearing Member or the Clearing House at any time.
- (xxxii) [Not Used].
- (xxxiii) The term "**Negative Product Repayment Amounts**" means the negative single net sum determined in respect of a Clearing Member's Margin Account that is subject to a termination in accordance with Rule 916(e).
- (xxxiv) [Not Used].
- (xxxv) The term "**Outward VM Payments**", on any Business Day, means amounts in respect of Variation Margin that the Clearing House has calculated which would, but for Rule 914, be paid in full by the Clearing House to Contributors (whether relating to any Proprietary Account or any Customer Account) following the determination of Exchange Delivery Settlement Price for Contracts.
- (xxxvi) The term "**Positive Product Repayment Amounts**" means the positive single net sum determined in respect of a Clearing Member's Margin Account when there is a termination in accordance with Rule 916(e).
- (xxxvii) The term "**Pre-Haircut Gains, Losses and Realised Cash Flows**" means, in respect of each Margin Account of each Contributor and any Business Day, the amount which would be paid by the Clearing House to such Contributor (expressed as a positive number) or by such Contributor to the Clearing House (expressed as a negative number) by way of Contractual Payments or Variation Margin in respect of such Margin Account on such Business Day in the absence of the application of the Distribution Haircut. For the avoidance of doubt, the Pre-Haircut Gains, Losses and Realised Cash Flows are calculated taking into account Variation Margin that is paid by the Clearing House to the Contributor (or would have been payable to the Contributor but for Rule 914) and Variation Margin payable and paid by the Contributor to the Clearing House (without taking into account any reductions to such payments made pursuant to this Rule 914).

- (xxxviii) [Not Used].
- (xxxix) The term "**Received VM**", on a particular Business Day following an Event of Default, means the amount (expressed as a positive number) that the Clearing House has actually received in cleared funds from Clearing Members who were party to Contracts in respect of Variation Margin for such day.
- (xl) [Not Used].
- (xli) [Not Used].
- (xlii) [Not Used].
- (xliii) [Not Used]
- (xliv) [Not Used]
- (xlv) The term "**Relevant Post Default Period**" means the period starting at the time of declaration of an Event of Default of a Clearing Member and ending at the time of declaration of net sums in respect of any Proprietary Account and each Customer Account of the Defaulter.
- (xlvi) The term "**RGD Determination**" has the meaning set out in Rule 914(a).
- (xlvii) [Not Used]
- (xlviii) The term "**Sequential Guaranty Fund Depletion**" in respect of a particular Clearing Member that is not a Defaulter, means circumstances in which: (i) there have been two or more Events of Default relating to different Clearing Members within a period of 30 or fewer calendar days; (ii) Guaranty Fund Contributions have been applied in respect of at least two such Events of Default; and (iii) the total amount that the Clearing Member has as a result paid to the Clearing House to replenish its Guaranty Fund Contributions exceeds the total amount of Guaranty Fund Contributions standing to the credit of that Clearing Member in the Clearing House's accounts prior to the first Event of Default.
- (xlix) [Not Used]
- (l) [Not Used]
- (li) The term "**t**" means, in respect of any determination made in relation to a Business Day, such Business Day.
- (lii) The term "**t-1**" means, in respect of any determination made in relation to a Business Day, the Business Day immediately prior to such Business Day.
- (liii) The term "**Termination**" in respect of a Contract means termination, close-out, exercise, abandonment, or expiry pursuant to its terms and under the Rules.

- (liv) The term "**Termination Circular**" has the meaning set out in Rule 916(a).
- (lv) The term "**Termination Price**" in respect of a Contract means the price determined by the Clearing House, which shall be applicable upon the termination, close-out, exercise, abandonment, or expiry of the Contract upon any termination pursuant to Rule 916.
- (lvi) The term "**Total Cumulative Pre-Haircut Amount**" means, in respect of any Business Day, the sum of the Total Pre-Haircut Amount for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (lvii) The term "**Total Pre-Haircut Amount**" or "**TPHA**" means, in respect of any Business Day, the sum of the Pre-Haircut Gains, Losses and Realised Cash Flows in respect of all Margin Accounts of all Contributors on such Business Day.
- (lviii) The term "**Transfer Cost**", on any Business Day, means the total amount payable by the Clearing House to Clearing Members that are not Defaulters as consideration for the entry into of replacement Contracts to those to which a Defaulter was party (or otherwise Transferred Contracts), whether as a result of an auction, sale, Transfer or otherwise pursuant to Part 9 plus any associated costs or expenses of the Clearing House.
- (lix) The term "**Uncovered Loss**" or "**UL**" means in respect of the Clearing House on any Loss Distribution Day:
  - (A) where Rule 914(a)(ii)(A) applies, an amount calculated in accordance with the following formula:

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

where:

*TPHA* means the Total Pre-Haircut Amount;

*CTC* means the Cumulative Transfer Cost;

*AR* means the Available Resources; and

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

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

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



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

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

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

- (a) This Rule 914 shall only apply if the Clearing House has published its determination (any such determination, an "**RGD Determination**") that the following four conditions are all satisfied:
- (i) an Event of Default has been declared and the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of all of its different Proprietary Accounts and all of its different Customer Accounts;
  - (ii) the Clearing House determines (whether in reliance on Rule 907(d) or otherwise) that one or more of the following circumstances has arisen:
    - (A) the sum of Outward VM Payments (and Transfer Cost, if any) would, in its view, exceed Available Resources plus Received VM;
    - (B) Available Resources are insufficient to meet the shortfalls, losses or liabilities of the Clearing House on relevant Accounts of the Defaulter, which may be determined if, in its view:
      - (1) any Estimated Payable Net Sum would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, would be available to meet the losses of the Clearing House represented by any net sum payable by the Defaulter were such net sum to be of an amount equal to the Estimated Payable Net Sum; or
      - (2) any net sums payable by the Defaulter that are calculated and declared by the Clearing House under Rule 906 (to the extent that the same have not been received by the Clearing House in cleared funds from the Defaulter) in total would exceed the Available Non-Defaulter Resources which, pursuant to Rule 908, are to be applied to meet the losses of the Clearing House represented by such net sums;

provided that, where there is more than one Event of Default with overlapping Relevant Post Default Periods, such determinations may be made with regard

to the Transfer Costs, Available Resources, Estimated Payable Net Sums and net sums relating to all relevant Defaulters and Events of Default at that time;

- (iii) no Termination Circular has been issued; and
- (iv) there has been no Clearing House Event.
- (v) [Not Used]

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

- (b) If there is an RGD Determination, the Clearing House shall issue a Circular to that effect specifying:
  - (i) the Relevant Contract Set or Sets that is or are affected;
  - (ii) the date of commencement of any Loss Distribution Period; and
  - (iii) such other matters as the Clearing House considers are relevant, which may (but are not required to) include a date on which the Loss Distribution Period is expected to end.

If any expected end date for the Loss Distribution Period is specified in the Circular, the Loss Distribution Period may nonetheless be extended by the publication of a further Circular and any expiry of a Loss Distribution Period arising as a result of a particular Event of Default shall not preclude there being any additional Loss Distribution Period at a later stage arising as a result of the same Event of Default. At the close of business on each Business Day following a Loss Distribution Day the Clearing House shall determine in accordance with Rule 914(a) whether any of the situations under which an RGD Determination could be made persists.

### ***Reduced Gains Distribution***

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

$$\text{Cash Gainer Adjustment}_{(t)} = PHG_{(t)} - ((CUG_{(t)} \times (1 - DH_{(t)})) - CAG_{(t-1)})$$

where:

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

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

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

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

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

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

$$\text{Cash Loser Adjustment}_{(t)} = \text{PHG}_{(t)} - (\text{CHG}_{(t)} - \text{CAG}_{(t-1)})$$

where:

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

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

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

Nothing in this Rule 914 shall reduce or offset the obligation of a Cash Loser to pay any Variation Margin or Contractual Payments owed by it in respect of a Loss Distribution Day.

- (e) On each Loss Distribution Day, the Clearing House shall apply the payment or receipt of any Margin Account Adjustment as an offset against any payments from or receivable by the relevant Contributor or aggregate it with any required payment to the Clearing House, in accordance with Part 3 or the Finance Procedures. Variation Margin obligations and related adjustments pursuant to this Rule 914 of Contributors that are not Defaulters shall then be paid and collected following such netting with other payment obligations as are provided for in Part 3 and the Finance Procedures.
- (f) Where obligations relating to physical delivery in respect of any Contract are to be performed following expiry or the end of trading in the relevant Set, on any Business Day during a Loss Distribution Period, the Clearing House may make such adjustments as are necessary to the calculation of Cash Gainer Adjustment or Cash Loser Adjustment to reflect the payment flows arising from such delivery, based on the

principle that the calculation of Cash Gainer Adjustment and Cash Loser Adjustment is designed to capture all profits and/or losses on Open Contract Positions during the relevant Loss Distribution Period.

- (g) Notwithstanding the effects of this Rule 914 during a Loss Distribution Period:
- (i) Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, the Clearing House in accordance with the Rules and Procedures, including obligations to pay Original Margin, Guaranty Fund Contributions and Assessment Contributions (in the latter case, subject always to the relevant caps set out in Rule 909);
  - (ii) the Clearing House will remain liable to pay or release Margin and Permitted Cover to Clearing Members in the usual way, subject to netting to take account of any Cash Loser /Gainer Adjustment; and
  - (iii) the Clearing House's obligation to pay or release Original Margin shall not be subject to reduction under this Rule 914 as a result of any Distribution Haircut.

All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the RGD Determination) has been made and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.

- (h) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Clearing House (whether for itself or on behalf of any Market) in respect of Contracts affected by the arrangements during the Loss Distribution Period shall not be applicable during any Loss Distribution Period. Action by the Clearing House under this Rule 914 shall not constitute any kind of Clearing House Event.
- (i) Where the Clearing House determines that none of the situations under which an RGD Determination could be made persists or is likely to persist that Business Day shall not be a Loss Distribution Day and the Loss Distribution Period shall have terminated as of the last Loss Distribution Day. In this circumstance or where the Clearing House otherwise wishes to end any Loss Distribution Period, it shall issue a Circular specifying the final date of the Loss Distribution Period. After the end of the Loss Distribution Period, the adjustments, modifications and limited recourse provisions specified in this Rule 914 shall no longer apply and the Clearing House shall resume calculating, collecting and paying Variation Margin payments in the ordinary course, without adjustment to take into account any Cash Gainer/Loser adjustments during the Loss Distribution Period except as provided in Rule 914(j). The end of the Loss Distribution Period shall not preclude the Clearing House from making a further RGD Determination in respect of the same Event of Default to the extent that any open

Contracts of the Defaulter have not been closed out, sold or liquidated and the other conditions of the RGD Determination are satisfied.

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

- (n) [Not Used]
- (o) [Not Used]
- (p) [Not Used]
- (q) [Not Used]
- (r) [Not Used]
- (s) [Not Used]
- (t) [Not Used]

**Rule 915 Partial Tear-Up**

- (a) This Rule 915 shall apply if:
  - (i) [Not Used]
  - (ii) [Not Used]
  - (iii) an auction has taken place pursuant to the Default Auction Procedures and this has failed to eliminate or replace all remaining risk of the Open Contract Positions of a Defaulter and any hedging transactions entered into by the Clearing House in accordance with Rule 903(c); and
  - (iv) the Clearing House has issued a Partial Tear-Up Circular.
- (b) Where this Rule 915 applies, the Clearing House may terminate Open Contract Positions held by non-defaulting Clearing Members which offset Open Contract Positions of the Defaulter and any Open Contract Positions of the Defaulter and any such hedging transactions shall terminate (to the extent not previously terminated) ("**Partial Tear-Up**").
- (c) If it determines that Partial Tear-Up should apply to any Contracts or Sets of Contracts, the Clearing House will issue a Circular (a "**Partial Tear-Up Circular**") stating:
  - (i) the remaining Open Contract Positions of the Defaulter that have not otherwise been replaced or terminated through the close out process under Rule 905 (the "**Remaining Defaulted Positions**");
  - (ii) the affected Contracts or Sets of Contracts and the termination prices (each, a the "**Partial Tear-Up Price**") for each Tear-Up Position; and
  - (iii) the date and time as of which Partial Tear-Up will occur (the "**Partial Tear-Up Time**").

The Clearing House will then give notice to each non-defaulting Clearing Member of the Open Contract Positions of such Clearing Member that will be subject to Partial Tear-Up (the "**Tear-Up Positions**").

- (d) The Clearing House will determine and designate the Tear-Up Positions of Clearing Members pursuant to the following methodology:
- (i) the Clearing House will only designate Tear-Up Positions in the identical Contracts (on the opposite side of the market) and in an aggregate amount equal to that of the Remaining Defaulted Positions;
  - (ii) the Clearing House will designate Tear-Up Positions in a particular Contract only for Clearing Members that have an Open Contract Position in such Contract, whether for their Proprietary Account and/or any Customer Account, as follows: the Clearing House shall designate Tear-Up Positions in the Proprietary and Customer Accounts of all Clearing Members with Open Contract Positions in the relevant Contracts in such Accounts, on a *pro rata* basis (provided that solely to the extent such *pro rata* determination would result in creation of a Tear-Up Position with a notional amount that includes a fraction of 0.01 in the relevant currency, the Clearing House will reallocate such fractional position among Clearing Members on a random basis to avoid such result);
  - (iii) with respect to a Tear-Up Position designated in a Customer Account of a Clearing Member, the Tear-Up Position shall be allocated on a *pro rata* basis across any Customers (excluding Affiliates of the relevant Clearing Member) that have Open Contract Positions in such Contract in such account; and
  - (iv) where the Clearing House has in effect one or more hedging transactions related to the Remaining Default Positions which hedging transactions will not themselves be subject to Partial Tear-Up, the Clearing House may offer to assign or transfer such hedging transactions to Clearing Members with related Tear-Up Positions, on such basis as the Clearing House may reasonably determine.
- (e) Upon and with effect from the Partial Tear-Up Time, every Tear-Up Position shall be automatically terminated at the Partial Tear-Up Price, without the need for any further step by any party to such Contract. Upon such termination, either the Clearing House or the relevant Clearing Member, as the case may be, shall be obliged to pay to the other the applicable Partial Tear-Up Price (which, in either case, shall be satisfied only through application of any applicable Variation Margin for such Tear-Up Position, determined for this purpose as though all Variation Margin payments had been made in any relevant Loss Distribution Period without regard to any Cash Gainer / Loser Adjustments). Upon the termination of a Tear-Up Position, the corresponding Open Contract Position of the Defaulter shall be deemed terminated at the Partial Tear-Up Price.

- (f) The Partial Tear-Up Price shall equal the Exchange Delivery Settlement Price, as established for such position as of the Partial Tear-Up Time, determined using the methodology customarily applicable for determining Exchange Delivery Settlement Prices. Such Partial Tear-Up Price shall be determined without reference to the Loss Distribution Process in Rule 914. If no Exchange Delivery Settlement Price exists or is determined, the Partial Tear-Up Price shall be as determined under Rule 916(d)(ii). If no price described in Rule 916(d)(ii) exists or is determined, the Partial Tear-Up Price shall be as described in Rule 916(d)(iii) or, alternatively, the Partial Tear-Up Price shall be such other price as the Clearing House may establish in accordance with the Procedures and its risk policies.
- (g) No action or omission by the Clearing House pursuant to and in accordance with this Rule 915 shall constitute a Clearing House Event.

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

- (a) If:
  - (i) [Not Used.]
  - (ii) the following conditions are satisfied:
    - (A) an Event of Default has been declared but the Clearing House has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of its Proprietary Account and all of its different Customer Accounts;
    - (B) the Clearing House determines that one or more of the following circumstances has arisen:
      - (1) its obligations to meet Outward VM Payments or the Transfer Cost, in its view, may not to be satisfied by applying Available Resources and the provisions set out in Rule 914;
      - (2) following either the declaration of all net sums in respect of a particular Event of Default or, where any net sum has not been declared, based on the calculation of an Estimated Payable Net Sum, the Clearing House, in its view, may either:
        - (a) become unable to pay its debts as they fall due; or
        - (b) have total liabilities which exceed its total assets,in either case if it does not invoke the provisions set out in this Rule 916; or
      - (3) there has been a Under-priced Auction;



The Clearing House may make such currency conversions at its discretion and as it seems fit for purposes of making any of such determinations listed in paragraphs (1) or (2), based on the rates of exchange that would be applicable in respect of amounts due to or from a Defaulter;

- (C) either (x) all of the Contracts of the Defaulter have been terminated; or (y) there has been a Default Auction or attempted Default Auction; and
  - (D) there has been no Clearing House Event; or
- (iii) following the service of notices by Clearing Members under Rule 917, the Clearing House determines that there are insufficient Clearing Members interested in continuing to clear Contracts of a Set for clearing of such Set to remain viable,
- (A) and there has been no Clearing House Event, then the Clearing House may issue a Termination Circular.
- (b) If the Clearing House is to terminate Contracts under this Rule 916, it must issue a Circular (a "**Termination Circular**") stating:
- (i) the Set of Contracts which are to be terminated;
  - (ii) the Clearing House's intention to rely upon and apply Rule 916;
  - (iii) the applicable Termination Price for each Contract Set that is to be terminated;
  - (iv) the date and time on which termination will take place "**Termination Time**"; and
  - (v) such other matters as the Clearing House considers are relevant.
- (c) Upon and with effect immediately as from the Termination Time, every open Contract in the affected Set shall be automatically terminated at the Termination Price, without the need for any further step by any party to such Contract. Neither the Clearing House nor any Clearing Member that is not a Defaulter shall be obliged to make any further payments, physical settlement or deliveries under any such Contract which would, but for this Rule 916(c), have fallen due for performance on or after the Termination Time, and any obligations to make further payments or deliveries which would otherwise have fallen due shall be satisfied by settlement (whether by payment, set off or otherwise) of the Termination Amount and other payment and delivery obligations in relation to any such Contracts and any other obligations pursuant to the Rules (including the repayment or redelivery of any Original/ Margin or Guaranty Fund Contribution) that is relevant solely to the Contracts that are subject to a termination shall be payable or deliverable on the Business Day after the Termination Time and in accordance with the provisions

of this Rule 916 in full discharge of the Clearing House's obligations in respect of such Contracts.

- (d) The Termination Price for Contracts in the same Set shall be the equal for all such Contracts and shall be the same for all Clearing Members that are party to Contracts of the same Set. Termination Prices shall be based upon the value of Contracts as at the Termination Time in accordance with the principles set out in this Rule 916(d) but without reference to the Loss Distribution Process in Rule 914. Such Termination Prices shall be calculated as the relevant loss or gain that would be calculated for purposes of items *L* and *A* in Rule 905(a) were a net sum to be required to be calculated, but based on:
- (i) the Exchange Delivery Settlement Price (excluding any such price determined or over-ridden by the Clearing House) or any other exchange delivery settlement price or other settlement price or market quotation established or published by a Market for which the Clearing House provided Clearing services for the relevant Contract Set prior to the Termination Date (or, if the Termination Date is not a business day for the relevant Market, the business day for the relevant Market immediately preceding the Termination Date); or
  - (ii) if no price described in Rule 916(d)(i) exists or is determined, the last market quotation or settlement price established or published by another Exchange or Clearing Organisation (that is not subject to an Insolvency) selected by the Clearing House for an economically similar contract to the Set immediately prior to the Termination Time; or
  - (iii) if no price described in Rule 916(d)(i) or (ii) exists or is determined, at a commercially reasonable price as reasonably determined by the Clearing House by reference to objective and observable market prices at the relevant Termination Time, the mean settlement price for the Termination Time based on a survey of market participants active in Contracts similar to the Set or otherwise on such basis as the Clearing House determines with a view to obtaining a fair valuation.
- (e) The maximum amount that may be paid or repaid in respect of affected Contracts and related liabilities and rights shall be calculated separately in respect of each Margin Account for each Clearing Member that is not a Defaulter, by way of a net sum calculation using the calculation under Rule 906 *mutatis mutandis*, as if the Clearing Member were a Defaulter, bringing into account the Termination Price for purposes of calculating amounts *L* and *A* and all net Cash Gainer Adjustments ("**Product Termination Amount**"). To the extent that any Original Margin, Surplus Collateral or other assets are held by the Clearing House for the account of a Clearing Member in respect of any Contract of an affected Set (or any such asset becomes Surplus Collateral as a result of Termination), the amount of such Original Margin, assets or Surplus Collateral shall be included in the Product Termination Amount, provided that Pledged Collateral and Charged Collateral shall only be included in a Product Termination Amount to the extent necessary for such amount not to be a Negative Product

Termination Amount, with the remainder of any Pledged Collateral or Charged Collateral to be returned pursuant to Rule 502(i).

- (f) Following its determination of the Product Termination Amount in relation to each Margin Account for each Clearing Member that is not a Defaulter, the Clearing House shall calculate the Available Product Funds as the sum equal to the aggregate of the Negative Product Repayment Amounts in respect of each affected Clearing Member. Where the Available Product Funds are less than the aggregate amount of Positive Product Repayment Amounts, the Clearing House shall calculate the Discounted Product Repayment Amount for each Positive Product Repayment Amount payable to the Clearing Member by multiplying each such Positive Product Repayment Amount by the fraction determined by dividing  $A$  by  $B$ , where  $A$  is the Available Product Funds and  $B$  is the aggregate amount of Positive Product Repayment Amounts.
- (g) Prior to any amount being paid or collected pursuant to Rule 916(h), the Clearing House shall notify each Clearing Member that is due to receive a Positive Product Repayment Amount of such amount and any Discounted Product Repayment Amount and the extent to which this differs from the Product Termination Amount. This notification shall show in reasonable detail how any Discounted Product Repayment Amount has been calculated by the Clearing House. Where a Discounted Product Repayment Amount is notified to a Clearing Member, such amount shall be payable by the Clearing House and the Clearing House shall have no obligation (other than pursuant to Rule 916(i)) to pay either the Product Termination Amount or the Termination Price or any difference between any such amount or price and the Discounted Product Repayment Amount.
- (h) The Clearing House will issue payment instructions to collect (and each Clearing Member shall, immediately upon receipt of any such instructions, pay) each Negative Product Repayment Amount, prior to the Clearing House making payment to Clearing Members of Positive Product Repayment Amounts or Discounted Product Repayment Amounts. All payments in respect of Negative Product Repayment Amounts shall be made by Clearing Members without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis. If any Clearing Member fails to pay any Negative Product Repayment Amount due to the Clearing House, the Discounted Product Repayment Amount may be recalculated for each Margin Account and Contributing Clearing Member and, if so recalculated, will be notified to affected Contributing Clearing Members. Payment of any Discounted Product Repayment Amount shall constitute full satisfaction of the Clearing House's obligations and liabilities.
- (i) Notwithstanding the termination process under this Rule 916, Clearing Members (including each Defaulter) and the Clearing House, shall each remain liable to pay, and shall continue to make timely payment of, all amounts falling due, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery, in accordance with the Rules and Procedures, including: (A) pursuant to Contracts which are not terminated; (B) Original Margin in relation to Contracts that are not terminated; (C) replenishments of and returns in respect of Guaranty Fund

Contributions subject to Rule 917; and (D) Assessment Contributions subject always to the relevant caps set out in Rules 909 and 917.

- (j) Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Clearing House (whether for itself or on behalf of any Market) in respect of Contracts to be terminated under this Rule 916 shall not be applicable in respect of such Contracts.
- (k) No action or omission by the Clearing House pursuant to this Rule 916 shall constitute any kind of Clearing House Event.
- (l) If the Clearing House terminates Contracts of a particular Set, this shall not preclude it from terminating Contracts of a different Set in respect of the same Event of Default.
- (m) In carrying out any calculations or making any determinations pursuant to this Rule 916, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (n) Notwithstanding Rule 1102(k) and Rule 914(j), this Rule 916(n) shall apply where the Clearing House (1) receives amounts from a Defaulter or another Clearing Member or any insurer that would, had it been paid on time, have meant that a Negative Product Termination Amount being lower or eliminated or a Positive Product Termination Amount being higher; (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher in circumstances in which any resulting Negative Product Termination Amount would have been lower or eliminated or a Positive Product Termination Amount would have been higher based on the later Estimated Payable Net Sum; or (3) an actual net sum is declared by the Clearing House under Rule 906 in circumstances in which any resulting Negative Product Termination Amount would have been lower or eliminated or a Positive Product Termination Amount would have been higher based on the actual net sum. Where this Rule 916(n) applies, the Clearing House shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Clearing House, including, without limitation, the costs of recovering or recalculating any such amounts):
  - (i) first to Clearing Members that are not Defaulters who would, but for this Rule 916, have received a Termination Price in full, with the payments determined on a *pro rata* basis based on the difference between the Discounted Product Repayment Amount and the Product Repayment Amount in respect of each Clearing Member;
  - (ii) secondly, in accordance with Rule 914(j); and

- (iii) for the avoidance of doubt, thirdly, under Rule 1102(k) (as modified by Rule 914(j)).
- (o) Nothing in this Rule 916 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member, Defaulter in respect of any amount, obligation or asset (not being Available Resources or Available Defaulter Resources) which is owed or due but unpaid or unsatisfied by such Clearing Member or Defaulter.
- (p) Payments of Negative Product Repayment Amounts, Positive Product Repayment Amounts and Discounted Product Repayment Amounts may be made following such netting with other payment obligations as are provided for in Part 3 and the Finance Procedures.

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

- (a) Upon the occurrence of any Cooling-off Period Trigger Event, the Clearing House shall issue a Circular notifying Clearing Members of the commencement of the Cooling-off Period, setting out the date on which such period is scheduled to end (and the date on which the Cooling-off Termination Period is scheduled to end).
- (b) From the commencement of, and solely for the duration of, the Cooling-off Period:
  - (i) the second sentence of any of Rule 909(f) shall not apply to a Clearing Member until the end of the Cooling-off Period;
  - (ii) the Assessment Contributions of Clearing Members under Rule 909 and all amounts payable to replenish Guaranty Fund Contributions due under Rule 1102(i) or 1102(j) in respect of all Events of Default occurring or declared during the Cooling-off Period shall not exceed three times the amount of the Clearing Member's required Guaranty Fund Contribution immediately prior to the commencement of the Cooling-off Period (with any Assessment Contributions payable in respect of the Event of Default which occurred prior to the start of the Cooling-Off Period being counted towards reducing such maximum amount); and a Clearing Member in a Cooling-off Period that has made a total of three Assessment Contributions shall not be liable for any further replenishments of its Guaranty Fund Contribution or Assessment Contributions, regardless of how many additional Events of Default take place;
  - (iii) for the avoidance of doubt, the required Guaranty Fund Contribution-based caps on the amount of Assessment Contributions for a Clearing Member shall apply on a per Event of Default basis, in the same way as set out in the first sentence of Rule 909(f), in respect of each Event of Default occurring or declared during the Cooling-off Period;
  - (iv) Clearing Members remain liable to make Guaranty Fund Contributions under Rule 1102(i) or Rule 1102(j), subject to Rule 917(b)(ii); and

- (v) the Clearing House may rebalance, re-set or recalculate the Guaranty Fund Contribution requirements or the total required amount in the Guaranty Fund for purposes of determining liability for replenishment of Guaranty Fund Contributions or Assessment Contributions, but such adjustments will not affect the limits provided in Rule 917(b)(ii);

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

- (c) At any time during the Cooling-off Termination Period, a Clearing Member may give written notice of termination of its membership of the Clearing House to the Clearing House.
- (d) At the end of the Cooling-off Period, the restrictions and requirements of Rule 917(b) shall cease to apply, subject to Rule 918(a)(ii), going forwards, to each Clearing Member that has not served a Termination Notice during the Cooling-off Termination Period.
- (e)
  - (i) Nothing in this Rule 917 shall limit the Clearing House's right to call for Margin from any Clearing Member pursuant to Rule 502.
  - (ii) In addition to any Margin otherwise required by the Clearing House under the Rules, if:
    - (A) during the Cooling-off Period a Clearing Member has provided Guaranty Fund Contributions and/or Assessment Contribution in the aggregate equal to the maximum amount specified under Rule 917(b)(ii); and
    - (B) if such Clearing Member would, but for the provisions of this Rule 917, at any time be required to provide a Guaranty Fund Contribution,

such Clearing Member shall transfer to the Clearing House, by the open of business on the Business Day following request by the Clearing House and maintain with the Clearing House during the Cooling-off Period, additional Original Margin needed for the Clearing House to maintain compliance with applicable minimum regulatory financial resources requirements during the remainder of the Cooling-off Period. Such additional Original Margin may be calculated separately with respect to each Proprietary Account and Customer Account, on a net basis in each case, but in both cases shall be charged to one of the Clearing Member's Proprietary Accounts.

## **Rule 918**      *Termination of membership*

- (a) A Clearing Member that has served a Termination Notice, under Rule 917(c) is subject to the following requirements, obligations and provisions (and certain of these provisions are also applicable pursuant to other sorts of termination or withdrawal, pursuant to Rule 105(c), Rule 209(b) and Rule 209(d)):
- (i) it must use all reasonable endeavours, until such time (if any) as there is a subsequent Clearing House Event, to close out all of its open Contracts prior to the Termination Close-Out Deadline Date;
  - (ii) if it closes out all of its open Contracts prior to the Termination Close-Out Deadline Date and complies with the other requirements of this Rule 918, it shall maintain the benefit of the protections set out in Rule 917(b) and such provision shall not apply solely during the Cooling-off Period;
  - (iii) after the Termination Notice Time, it shall only be entitled to submit Transactions for clearing or become party to Contracts which it can demonstrate have the overall effect of reducing Open Contract Positions in any Set of Contracts or risks to the Clearing House associated with Contracts, whether by hedging, novating, Transferring, terminating, liquidating or otherwise closing out such Contracts;
  - (iv) if it is a Clearing Member and has any open Contracts with the Clearing House (whether recorded in a Proprietary Account or Customer Account) after the Termination Close-Out Deadline Date (and notwithstanding any provision of Rule 909 to the contrary) the Clearing Member shall as from the Termination Close-Out Deadline Date:
    - (A) become liable to replenish any Guaranty Fund Contribution that would have fallen due for replenishment but has not been paid, become liable to have applied any Guaranty Fund Contribution that would have been applied but was not so applied and become liable to pay any Assessment Contribution that would have fallen due but has not been paid, in each case to the extent that the same would have been payable or applied but for its service of a Termination Notice and in each case in respect of any Event of Default that has occurred subsequent to the Termination Notice Time;
    - (B) become liable for further obligations to replenish any Guaranty Fund Contribution, have any Guaranty Fund Contribution applied or pay Assessment Contributions in the same way as any other Clearing Member in respect of any Event of Default occurring prior to the Termination Date; and
    - (C) be subject to the Clearing House exercising rights in Part 9 to liquidate or Transfer the Open Contract Positions of the Clearing Member and

otherwise deal with the Clearing Member's Contracts and property in the same way as if the Clearing Member were a Defaulter.

- (v) the Clearing House may call for additional Original Margin until such time as all of its open Contracts have been terminated, and such Clearing Member shall pay such additional Original Margin to the Clearing House as is requested on time;
- (vi) it shall be obliged to participate in Default Auctions pursuant to the Default Auction Procedures in the same way as any other non-defaulting Clearing Member and subject to the provisions of Rule 908(h) in respect of all Events of Default occurring prior to the Cooling-off Period Trigger Event which gave rise to or extended the Cooling-off Termination Period during which the Clearing Member served its Termination Notice (or, if Rule 917(c) does not apply, the Termination Notice Time);
- (vii) [Not Used];
- (viii) following termination of all open Contracts to which a terminating Clearing Member (the "**Terminating Participant**") was party in relation to a particular Customer Account or Proprietary Account, the Clearing House shall then declare a net sum (which may be declared in parts, as envisaged below) as due to or from the Terminating Participant in accordance with Rules 904 and 906, in the same way as if the Terminating Participant were a Defaulter but with the following modifications:
  - (A) references in Part 9 to "Default" or an "Event of Default" shall be read as references to a Terminating Participant terminating its membership and, in the case of a failure to close out Contracts only in respect of a particular Customer Account or Proprietary Account, shall be construed as applying only in respect of such account;
  - (B) any net sum which is payable to the Terminating Participant shall not be paid by the Clearing House to such Terminating Participant until the later of:
    - (1) ten Business Days after the date on which the termination of the Terminating Participant's open Contracts and the realisation or return of any Original Margin provided in respect of such Contracts, Guaranty Fund Contributions or other assets remaining credited to the Terminating Participant's relevant Proprietary Account or Customer Account or otherwise in the Clearing House's possession (subject always to Rule 102(q)); or
    - (2) if the Terminating Participant has any unapplied Guaranty Fund Contributions, the date of expiry of the Guaranty Fund Period



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

- (C) notwithstanding anything in Part 9 or elsewhere in these Rules:
  - (1) the Clearing House may at its discretion return amounts due to the Terminating Participant in different currencies or by way of transfer or return of non-cash Permitted Cover to the Terminating Participant;
  - (2) the Clearing House may further pay any net sum calculated under Rule 906 and payable to the Terminating Participant in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and
  - (3) the Clearing House may make part payment of any amounts due excluding the Guaranty Fund Contribution prior to the time specified in Rule 918(a)(viii)(B).
- (D) it is acknowledged that any 'net sum' declared in accordance with this Rule 918(a)(viii) is not formally a 'net sum' for purposes of the UK's Companies Act 1989 or the Settlement Finality Directive;
- (E) a Clearing Member subject to these provisions is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such Clearing Member in order for the Clearing House to exercise its rights under this provision or for the Clearing Member in question to receive any payment or return of assets; and
- (F) references to Part 9 in any other Rules or in the Procedures, Circulars or Guidance shall be construed in accordance with this Rule 918 when they fall to be applied in relation to the termination of a Clearing Member's membership under this Rule 918 and any action taken by the Clearing House following such termination taking effect.

(b) If:

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

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

relating to particular Events of Default and all Events of Default referred to in this Rule 918.

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

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

- (a) This Rule 919 shall only apply if:
  - (i) there has been a Non-Default Loss, Investment Loss, Custodial Loss or Pledged Collateral Loss; and
  - (ii) there has been no Clearing House Event.
- (b) Any Non-Default Loss will first be met by the Clearing House applying any NDL/IL Loss Assets that were available at the time of the event giving rise to the Non-Default Loss and after that, only by applying any other available capital or assets of the Clearing House. The first portion of any Investment Loss will also be met by the Clearing House first applying any NDL/IL Loss Assets that were available at the time of the event giving rise to the Investment Loss prior to taking any action under Rule 919(c). The first portion of any Custodial Loss will be met by the Clearing House first applying any Custodial Loss Assets that were available at the time of the event giving rise to the Custodial Loss prior to taking any action under Rule 919(c).
- (c) Upon the Clearing House certifying an Investment Loss Amount or Custodial Loss Amount in a Circular of an amount greater than the NDL/IL Loss Assets or Custodial Assets, as applicable that were available at the time of the event giving rise to the Investment Loss or Custodial Loss, all Clearing Members shall indemnify the Clearing House and become liable to pay Collateral Offset Obligations to the Clearing House in accordance with the formula set out in Rule 919(d). Any Circular under this Rule 919(c) shall specify:
  - (i) the nature and extent of the Investment Loss or Custodial Loss, as applicable;
  - (ii) the date on which Collateral Offset Obligations will become due; and
  - (iii) such other matters as the Clearing House considers are relevant.
- (d) The Collateral Offset Obligation payable by each Clearing Member shall be the amount:

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

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

where:

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

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

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

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

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

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

- (g) The Clearing House shall apply Collateral Offset Obligations resulting from an Investment Loss solely to meet Investment Losses referred to in a Circular under Rule 919(c) and shall supply Collateral Offset Obligations resulting from a Custodial Loss solely to meet Custodial Losses referred to in a Circular under Rule 919(c).
- (h) If, after any Collateral Offset Obligations have fallen due, the Clearing House collects amounts from a Custodian, issuer, counterparty or otherwise so as to reduce an Investment Loss or Custodial Loss, as applicable, in either case in cleared funds or unencumbered assets, the Clearing House shall be obliged to pay the amount or value of assets so collected (less any expenses of the Clearing House, including without limitation any expenses incurred in connection with recovery) to the Clearing Members that had met such Collateral Offset Obligations *pro rata* in respect of satisfied Collateral Offset Obligations relating to the event in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House (not being Loss Assets) or other Persons applied to meet the Investment Loss or Custodial Loss following exhaustion of the assets specified in this Rule 919 or in substitution of any such assets.
- (i) No Collateral Offset Obligation shall reduce or otherwise affect the liability of a Clearing Member to make Guaranty Fund Contributions pursuant to Rule 1101 *et seq.*, to replenish any Guaranty Fund Contribution pursuant to Rule 1102(i) or to pay Assessment Contributions. Notwithstanding any Collateral Offset Obligations, Clearing Members shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, the Clearing House in accordance with the Rules and Procedures, including obligations to pay Original Margin, Guaranty Fund Contributions and Assessment Contributions and the Clearing House will remain liable to pay or release Margin and Permitted Cover to Clearing Members in the usual way, subject to netting under Part 3 and the Finance Procedures to take into account the effect of any Collateral Offset Obligation. All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the Collateral Offset Obligations) and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.
- (j) If the Clearing House determines that it has provided for Collateral Offset Obligations in excess of that required or actually applied against an Investment Loss or Custodial Loss, as applicable (less Loss Assets applied) or makes a recovery that is due to Clearing Members under Rule 909(l), it shall credit any excess or recovered amounts due to the Clearing Member's Proprietary Account. Credit to a Proprietary Account is

not intended to prevent the Clearing Member from passing on the credit related to a Collateral Offset Obligation to any of its Customers under the relevant Customer-Clearing Member Agreement and Standard Terms, to the extent that the Collateral Offset Obligation relates to Margin or Permitted Cover on a Customer Account or is otherwise attributable to a Customer. If a Proprietary Account becomes over-collateralised as a result of any such credit, any resulting Surplus Collateral will be available for withdrawal under Part 3 and the Finance Procedures in the normal way. No amount credited to any Account shall be affected by any Non-Default Loss, Investment Loss or a Collateral Offset Obligation being satisfied, save as provided for in Rule 919(h).

- (k) Liabilities of Clearing Members in respect of Collateral Offset Obligations under this Rule 919 shall apply independently from any powers of assessment under Rule 909 and give rise to a separate and additional payment obligation for Clearing Members. For the avoidance of doubt, none of the caps on powers of assessment liabilities arising pursuant to Rule 917 or 918 shall restrict or limit any liability of a Clearing Member in respect of Collateral Offset Obligations under this Rule 919. The conditions in Rule 916(a)(ii)(B)(2) shall not be considered satisfied to the extent that they are only satisfied as a result of any Non-Default Loss, Investment Loss or Custodial Loss.
- (l) Any right being exercised or circumstances occurring that are governed by this Rule 919 shall not constitute any kind of Clearing House Event. Neither a Non-Default Loss nor an Investment Loss shall constitute a Clearing House Event.
- (m) Payments of Collateral Offset Obligations may be made pursuant to Part 3 of the Rules and the Finance Procedures. This Rule 919 is without prejudice to the Clearing House's rights to set off or net any sum owed by a Clearing Member to the Clearing House against any sum payable by the Clearing House to a Clearing Member or to any other powers of the Clearing House under Parts 3, 9 or 11 or the Procedures, but the Clearing House may not take any action under those provisions to the extent inconsistent with the provisions of this Rule 919.
- (n) Nothing in this Rule 919 shall require the Clearing House to pursue any litigation, claim or other action against a Clearing Member, Defaulter, Custodian or any other Person in respect of any amount, obligation or asset which is owed or due but unpaid or unsatisfied by such Clearing Member, Defaulter, Custodian or other Person.
- (o) In carrying out any calculations or making any determinations pursuant to this Rule 919, the Clearing House may convert any amounts denominated in one currency into another currency chosen by the Clearing House in its discretion and at a rate of exchange chosen by the Clearing House in its discretion, provided the Clearing House shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- (p) The Clearing House will notify Clearing Members from time to time, by Circular, of the total amount of Loss Assets. Such Loss Assets may in whole or in part be based upon the same assets as the Clearing House Second Contribution. The total amount of

Loss Assets may therefore be reduced as a result of application of the Clearing House Second Contribution pursuant to Rule 908.

- (q) The total amount of NDL/IL Loss Assets applied in connection with any Investment Loss or Non-Default Loss and Custodial Loss Assets applied in connection with any Custodial Loss shall be notified to Clearing Members in a Circular prior to or promptly after the same being applied or replenished. The Clearing House may also replenish any regulatory capital, using its or its Affiliates' resources or otherwise, as is required to bring it in compliance with Applicable Laws at any time including following an Investment Loss, Custodial Loss or Non-Default Loss. However, no such recapitalisation shall result in any obligation of any Clearing Member to pay Collateral Offset Obligations being reduced nor the size of any Investment Loss or Custodial Loss being reduced. The Clearing House may replenish Loss Assets through re-applying retained earnings, where these are available. To the extent that the Clearing House replenishes Loss Assets or its capital in such or other circumstances, its liability for any further Non-Default Losses, Custodial Losses or Investment Losses shall not exceed the amount specified in Rule 919(p) or such other amount as is notified by Circular.
- (r) Without limiting Rule 111, Rule 502 or 919(s), but subject to any contrary requirements under Applicable Laws, the Clearing House shall not be liable to any Clearing Member, Customer or other Person for any Pledged Collateral Loss or any losses, liabilities, damages, costs, claims, shortfalls or expenses incurred by such Clearing Member, Customer or other Person arising out of or relating to any failure, in whole or in part, of any payment or securities services provider, including without limitation any Custodian, Approved Financial Institution, Target 2 Central Bank, central securities depository, or other central bank.
- (s) Without limiting Rule 111 or Rule 502, but subject to any contrary requirements under Applicable Laws, the Clearing House shall not be liable to any Clearing Member, Customer or other Person for any Pledged Collateral Losses. The Clearing Member, as beneficial owner (or Customer, where applicable, as beneficial owner to the extent that an interest on the part of the Customer is expressly permitted to subsist pursuant to these Rules and any Pledged Collateral Addendum), shall bear the risks of such losses on such assets, except to the extent such Pledged Collateral Losses result from the gross negligence or wilful misconduct of the Clearing House or a failure by the Clearing House to follow its own investment policies. The Clearing House shall have no responsibility for any investment decisions (including choices as between the range of Permitted Cover) made or directed by a Clearing Member (or any Representative thereof) or Customer with respect to assets representing Pledged Collateral or for the results of any such investments.
- (t) If, after a Pledged Collateral Loss had been incurred by a Clearing Member, the Clearing House collects amounts from a Custodian, issuer, counterparty or otherwise in respect of such Pledged Collateral Loss in cleared funds or unencumbered assets, the Clearing House shall be obliged to pay the amount or value of assets so collected (less any expenses of the Clearing House, including without limitation any expenses incurred in connection with recovery) to the Clearing Members that had suffered such Pledged

Collateral Losses pro rata in respect of Pledged Collateral Losses relating to the event in question, subject to the Clearing House first retaining or repaying amounts up to the amount of any assets of the Clearing House or other Persons applied to meet the Pledged Collateral Loss. Rules 919(i), (j) (as regards recoveries only), (k) (except the words "and give rise to a separate and additional payment obligation for Clearing Members"), (l), (m) (second sentence only), (n), (o) and (r) shall apply equally to Pledged Collateral Losses and any recoveries thereon, mutatis mutandis, save that references to Collateral Offset Obligations shall be construed as references to Pledged Collateral Losses.

## **Part 10 Disciplinary Proceedings**

***Disciplinary and other processes under this Part of the Rules shall not preclude the operation, competence or activities of any other committee, panel, Court, expert or tribunal that is given powers or competencies pursuant to these Rules.***

### **Rule 1001 Complaints**

- (a) The Clearing House shall consider all complaints made to it in writing by a Clearing Member and may consider any complaints made to it by any other person. If the Clearing House, in its discretion, considers it appropriate or if it is otherwise compelled to do so under any Applicable Law, the Clearing House may refer the matter or make a report on the matter to a Market, Regulatory Authority or Governmental Authority.
- (b) In the case of a complaint which alleges a breach of these Rules, the Clearing House may authorise an investigation or commence disciplinary proceedings under this Part 10 or take no further action if it considers it disproportionate or otherwise, in its discretion.
- (c) The Clearing House shall inform the complainant in writing of any steps taken as a result of the complaint and of the result thereof.
- (d) In the event of a complaint against the Clearing House or any of its Directors, officers, employees or committees (or any individual committee member) (or agents in their capacity as such), such complaint shall be investigated in accordance with the Complaint Resolution Procedures and shall not otherwise be subject to this Part 10.

### **Rule 1002 Investigations**

- (a) Investigations into breaches or alleged breaches (whether arising out of complaints made or that have otherwise come to the attention of the Clearing House) of any provisions of any of the following may be authorised and conducted by the Clearing House: the Rules, the Procedures, the Clearing Membership Agreement or any Pledged Collateral Addendum, Charged Collateral Addendum or any other agreement with the Clearing House or Contract Terms.
- (b) Upon determining that a complaint, matter or concern requires investigation, the Clearing House shall issue a Notice of Investigation ("**NoI**") notifying the Clearing Member concerned that an investigation has been commenced. The NoI shall be sent to the Clearing Member or the person concerned and shall contain a brief description of the issue under investigation.
- (c) In the course of conducting an investigation, the Clearing House may obtain the assistance of such professional, legal or accounting advisers, Clearing Organisations, Exchanges, Regulatory Authorities and advisers or other Persons as it thinks fit. Any external adviser appointed by the Clearing House shall be required to treat all information obtained as well as any information he has been given access to in the



course of the investigation as confidential and to disclose it only to the Clearing House, save where compelled to disclose such documents to a third party under any Applicable Law.

- (d) Clearing Members shall co-operate fully with all investigations (whether or not such Clearing Member or person is the direct subject of such investigation). Without limitation, each Clearing Member shall:
- (i) promptly furnish to the Clearing House, or if the Clearing House so directs, provide the Clearing House with access to, such information and documentary and other material (including any information in electronic form) as may reasonably be requested (including without limitation in the case of Clearing Members, details of the Clearing Member's Customers' accounts);
  - (ii) permit those persons appointed to carry out or assist in carrying out the investigation on reasonable notice, such notice being commensurate with the seriousness of the potential or alleged breach in question and to enter any premises in any part of the world where the Clearing Member carries on its business or maintains its records during normal business hours for the purpose of carrying out such investigation. Each Clearing Member hereby irrevocably grants the Clearing House a licence for this purpose and shall procure a licence to the Clearing House from any Affiliated Person, agent or third party under its control that is necessary for this purpose;
  - (iii) use its best endeavours to make available for interview such of the Clearing Member's Representatives as may reasonably be requested and use its best endeavours to ensure that such persons answer truthfully and fully any question put to him or them by or on behalf of the Clearing House. A Clearing Member who fails to procure that any of its Representatives attend an interview or hearing with the Clearing House and who fails in the reasonable opinion of the Clearing House to demonstrate good cause for such failure may be fined EUR 1000 per day of non-attendance, such fine representing a genuine pre-estimate of the likely cost to the Clearing Houses attributable to such non-attendance, and in addition the Clearing Member may be suspended by the Clearing House until the Clearing Member takes reasonable steps to make its Representatives available on an alternative date;
  - (iv) make available for inspection, or, if the Clearing House so directs, provide the Clearing House with access to, such documents, records or other material in its possession, power or control as may reasonably be required and, upon request, provide copies of the same; and
  - (v) use its best endeavours to ensure that so far as possible its Representatives give similar co-operation.
- (e) Failure to co-operate with an investigation by the Clearing House, failure to provide information requested on a timely basis and concealment or destruction of evidence are

each, for the avoidance of doubt, a breach of these Rules and can give rise to further disciplinary action being taken against the Clearing Member.

- (f) Once the Clearing House has concluded its investigation into an alleged breach of the Rules, it shall send to the relevant Clearing Member a letter of mindedness ("**Letter of Mindedness**") setting out its preliminary factual conclusions and its intended course of action in relation to the alleged breach.
- (g) Following its service of the Letter of Mindedness, the Clearing House shall invite the Clearing Member to either attend an initial meeting ("**IM**") or alternatively send the Clearing House written comments. The purpose of the IM or the written comments shall be to afford the Clearing Member an opportunity to correct any factual error(s) or inaccuracy it considers to be contained in the Letter of Mindedness. The IM is not intended to be a hearing. The IM will take place in private on a confidential basis, subject, in the case of the Clearing House, to Rule 106. The Clearing House and Clearing Member shall each be entitled to nominate up to four attendees, who may include lawyers or legal advisers.
- (h) Following the IM or the receipt of written comments from the Clearing Member (if received within a reasonable time) the Clearing House shall finalise its initial findings and communicate these and any of the steps it proposes taking under Rule 1002(i) in writing to the Clearing Member. The Clearing House will notify the Clearing Member of: (i) any act or practice which the Clearing Member has been found to have carried out or omitted; (ii) a citation of the relevant provisions which are considered to have been breached; and (iii) the proposed sanction to be imposed and the reasons therefor.
- (i) Without prejudice to any other powers, following the completion of its investigation, the Clearing House may:
  - (i) decide that no further action should be taken and notify any Clearing Member or other Person concerned in writing accordingly;
  - (ii) issue a written warning (which shall be private save as provided for in Rule 1002(i)(vii) below) to the Clearing Member concerned (or, in the case of such a breach by some other Person, that Person with a copy to any Clearing Member with whom he was associated at the time of such breach);
  - (iii) impose sanctions pursuant to the Summary Disciplinary Process under Rule 1008;
  - (iv) commence disciplinary proceedings under Rule 1003 *et seq.*;
  - (v) refer the matter for further enquiry by the Clearing House, Market or a Governmental Authority where the Clearing House considers it necessary to investigate further;

- (vi) report the findings of the investigation and hand over any documents or communicate any information it has acquired whether during the course of its investigation or otherwise, to other Clearing Organisations, Exchanges, Regulatory Authorities or Governmental Authorities;
- (vii) publish such findings as it has made following the IM or after having received written comments and in such detail as the Clearing House deems appropriate where the matter under investigation is considered of relevance to the market in general or in the public interest, save that the Clearing Member shall be afforded an opportunity to comment on the text of such an announcement during a period of no less than 48 hours prior to publication, such period commencing on a Business Day; or
- (viii) any combination of the foregoing,

provided that the Clearing House may, in an appropriate case, take more than one of the above actions in relation to any one Clearing Member and/or different actions in relation to different Clearing Members concerned in the same investigation or on similar facts.

### **Rule 1003     *Disciplinary Proceedings***

- (a) Disciplinary proceedings may be commenced by the Clearing House only when the Clearing House is satisfied that there is *prima facie* evidence of a breach of any provision of any of the following by a Clearing Member: the Rules, the Procedures, the Clearing Membership Agreement or any Clearing Agreement, Pledged Collateral Addendum, Charged Collateral Addendum or any other agreement with the Clearing House or Contract Terms.
- (b) Upon determining that disciplinary proceedings should be commenced, the Clearing House must notify the Clearing Member in writing that disciplinary proceedings are to be commenced and establish a Disciplinary Panel. The Clearing House must also establish a Disciplinary Panel where so required by an Appeal Panel pursuant to Rule 1005(a)(iii) or Rule 1008(h). Each Disciplinary Panel shall consist of a chairman sitting with two other persons. Such persons, including the chairman, who are appointed to the Disciplinary Panel may be drawn from market practitioners, experts, lawyers or other suitable persons at the discretion of the Clearing House. The Clearing House shall appoint the chairman and members of the Disciplinary Panel. Neither employees nor directors of the Clearing House or Clearing Member subject to disciplinary proceedings nor any of their Affiliated Persons, Representatives or Customers shall be appointed to a Disciplinary Panel. Expert assessors may be appointed, at the discretion of the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but such persons shall not be entitled to vote. No person shall be appointed to a Disciplinary Panel or be eligible as an expert assessor if he has any personal or financial interest in the investigation which has led to the current disciplinary proceedings or has been involved in any investigation into or previous Disciplinary Panel dealing with or relating to the matter which is the subject of the current disciplinary proceedings.

- (c) The Clearing Member in respect of whom the disciplinary proceedings are to be brought shall be notified of the composition of the Disciplinary Panel within seven calendar days of it having been established. The said member will then have a further ten calendar days to object to any particular appointment to the Disciplinary Panel. Such objection, which must be in writing, will be sent to the Clearing House and its validity will be determined in the first instance by the chairman of the Disciplinary Panel and, in the event that the objection relates to the appointment of the chairman of the Disciplinary Panel, the chairman of the Clearing House.
- (d) In the event of any member of the Disciplinary Panel having or acquiring a personal or financial interest in the subject matter of the disciplinary proceedings or in any other way being or becoming incapacitated or permanently unavailable, the chairman of the Disciplinary Panel (or in the case of the chairman of the Disciplinary Panel, the Chairman of the Clearing House) may direct that the Disciplinary Panel shall either continue to act with a reduced number or appoint another person to take the place of the retiring member of the Disciplinary Panel (and the disciplinary proceedings shall then proceed as if such person had been originally appointed in lieu of the first person) or may direct that a new Disciplinary Panel should be appointed to hear the matter.
- (e) In the event of an equality of votes in relation to any matter before the Disciplinary Panel the chairman shall have a second or casting vote in reaching any determination.
- (f) The Clearing House may discontinue disciplinary proceedings or reach a settlement with the Clearing Member on such terms as it sees fit at any stage during the course of the disciplinary proceedings (including any Summary Procedure pursuant to Rule 1004 or any appeal). Relevant guidance, which the Clearing House will take account of in the context of reaching any settlement, shall be published by the Clearing House to Clearing Members from time to time.
- (g) After the appointment of a Disciplinary Panel, the Clearing House shall serve a formal written notice ("**Notice**") on the Clearing Member, setting out the alleged breach of the Rules, including a summary of the facts relied upon in sufficient detail to enable a party in the Clearing Member's position properly to understand and respond to the allegations made against it.
- (h) The Clearing Member shall have 20 calendar days (or such further time as either the Clearing House or Disciplinary Panel may in their discretion allow) from the date of service of the Notice in which to serve a statement of defence (the "**Defence**"). The Defence shall state whether the Clearing Member accepts the allegations in the Notice, and what admissions of fact, if any, it makes. If no Defence has been served within 20 calendar days of service of the Notice or such extended period as has been agreed, the Disciplinary Panel may in its discretion deem the Clearing Member to have agreed to and accepted the facts and matters specified in the Notice.

- (i) The Clearing House may at any time amend a Notice by a change to the breach alleged in the Notice, addition of another breach to that specified in the Notice, or any other deletion, alteration or addition, provided that:
- (i) the deletion, alteration, addition, change, amendment or variation arises out of or in connection with the conduct which is the subject of the Disciplinary Proceedings;
  - (ii) the essential character of the nature of the breach has not been changed even though further evidence may have become available;
  - (iii) the Clearing Member or other respondent would not be substantially prejudiced in any defence he might wish to put before the Disciplinary Panel; and
  - (iv) the Disciplinary Panel has not previously and does not subsequently make a procedural ruling adverse to the Clearing House in connection with such deletion, alteration, addition, change, amendment or variation.

Following any such deletion, alteration, addition, change, amendment or variation of a Notice, the Clearing House shall serve an amended Notice on the Clearing Member.

- (j) For the avoidance of doubt, the power of the Clearing House to amend a Notice exists where the Clearing House has in its discretion determined that a separate or unrelated *prima facie* breach has been revealed during the course of the disciplinary proceedings. The Disciplinary Panel may order an adjournment of the disciplinary proceedings at any stage upon an application by the Clearing House to enable such an alleged separate or unrelated *prima facie* breach to be investigated further. The Clearing House is not required to hold a further IM or otherwise consult with the Clearing Member in respect of additional or new alleged breaches which come to its attention during the disciplinary proceedings whether or not any further investigations are carried out by the Clearing House.
- (k) Following service of any amended Notice, the Clearing Member shall have 14 calendar days or such extended period as may be agreed with the Clearing House or as directed by the Disciplinary Panel to make any consequential amendment of its Defence. If no amended Defence is served within 14 calendar days of service of the amended Notice on the Clearing Member, the Disciplinary Panel may in its discretion deem the Clearing Member to have accepted the facts and matters alleged in the Notice as amended.
- (l) The Disciplinary Panel shall determine whether there has been a breach of the Rules, Procedures, relevant agreement or Contract Terms as alleged and, if so, the appropriate sanction (if any) to be imposed. In carrying out this function, the Disciplinary Panel acting as a whole or through the chairman may adopt such procedure as it thinks fit to deal with the disciplinary proceedings, including any hearing as well as the holding of a pre-hearing review to hear procedural applications by the Clearing House or Clearing Member at any stage following its composition or in order to set a procedural timetable. Without limitation, the Disciplinary Panel may:

- (i) order the disclosure by the Clearing House or Clearing Member of such further statements, information, documents or other evidence as may be necessary;
  - (ii) allow either party to the disciplinary proceedings to serve further evidence within time limits ordered by the Disciplinary Panel;
  - (iii) issue directions and take such other steps as it considers appropriate for the clarification of the facts and issues and for the just and expeditious determination of the case;
  - (iv) balancing the need for cases to be dealt with expeditiously and the need for affected Persons to have sufficient opportunity to prepare and present their case: specify deadlines for the production of documents or dates for hearings, which shall be binding on the parties;
  - (v) if it considers appropriate, but only with the express written agreement of the Clearing House and the Clearing Member concerned (or the Person concerned and any associated Clearing Member), decide to determine the case upon written submissions and evidence placed before it;
  - (vi) in all other cases, give the opportunity to, or require, the Clearing House and the Clearing Member to attend hearings before the Disciplinary Panel and the Clearing House and the Clearing Member may call witnesses to give evidence and be questioned;
  - (vii) allow the Clearing Member and the Clearing House to be assisted or represented by any person, who may or may not be legally qualified;
  - (viii) call for any person to attend its hearings;
  - (ix) require hearings to be held in private unless the Clearing Member or Clearing House requests otherwise and the other consents; and
  - (x) appoint its own legal advisers.
- (m) The Disciplinary Panel shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach.
- (n) The Disciplinary Panel shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact made by any legally constituted court, tribunal, arbitrator, expert or any other Governmental Authority.
- (o) If the Clearing House or Clearing Member should fail to meet a time limit imposed by the Disciplinary Panel or fail to attend a hearing, the Disciplinary Panel may in its discretion allow an extension of time, or adjourn its proceedings or proceed, if necessary in the absence of the Clearing Member.

- (p) Following a hearing and having reached a decision as to whether a breach has been proven in accordance with the standard of proof set out in Rule 1003(m), the Disciplinary Panel shall communicate in writing to the Clearing House and to the Clearing Member concerned its decision with reasons including where appropriate, details of the breach, and particulars of any sanction determined. For the avoidance of doubt, the Disciplinary Panel will notify the Clearing Member of: (i) any act or practice which the Clearing Member has been found to have carried out or omitted; (ii) a citation of the relevant provisions which are considered to have been breached; and (iii) the proposed sanction to be imposed and the reasons therefor. Such decisions shall be deemed conclusive and binding upon expiry of the time permitted for the service of a notice of appeal or receipt by the Clearing House of any earlier written notice from the Clearing Member that such right of appeal will not be exercised. If a notice of appeal is served by the Clearing Member then any sanction shall be suspended until determination of the Appeal unless the Clearing House considers that in its absolute discretion any order for suspension of the Clearing Member should be enforced during the period prior to the determination of the Appeal. The Disciplinary Panel, where there is a finding that there has been a disciplinary breach, may in its absolute discretion communicate that finding to the parties and give them the opportunity to make representations as to the appropriate sanction(s) before deciding on the sanction(s) as well as any costs issues.
- (q) Subject to Rule 1003(t), the sanctions which may be imposed on a person subject to the Rules by a Disciplinary Panel shall include one, or more, of the following:
- (i) the issue of a private warning or reprimand;
  - (ii) the issue of a public notice of censure;
  - (iii) in the case of a Representative, a finding that any Clearing Member for which such Representative is a director, controller, officer or employee would not meet the Clearing House's membership criteria for any period or indefinitely;
  - (iv) in the case of a Clearing Member, disqualification (either indefinitely or for a fixed term) of any of its Representatives from being a Director or member of a committee or any panel of the Clearing House;
  - (v) a fine of any amount, to be paid on such terms as may be prescribed;
  - (vi) the disgorgement of any gain made by the Clearing Member or its Representatives in connection with the breach;
  - (vii) a recommendation to the relevant Market and/or Clearing House to suspend membership for a period of time or terminate the membership of the Clearing Member;
  - (viii) an order requiring the Clearing Member or Representative found to have committed the breach to take such steps including making an order for

compensation, as the Disciplinary Panel may direct, to remedy the situation including, without limitation, making an order for restitution to any affected person when the Clearing Member (or person concerned) has profited (or avoided a loss) from a breach at that person's expense;

- (ix) in an appropriate case, more than one of the above actions in relation to any one Clearing Member and/or different actions in relation to different Clearing Members concerned in the same investigation or on similar facts; and
  - (x) any combination of the foregoing.
- (r) Following any order by a Disciplinary Panel for the suspension or expulsion of a Clearing Member, the Clearing House may make such directions as it thinks fit in respect of Contracts to which that Clearing Member is a party (including, without limitation, directions for the reduction, transfer or liquidation of any of them).
- (s)
- (i) The contravention by a Clearing Member of any sanction imposed or direction made under or pursuant to Rule 1003(p) may be treated for all purposes as a breach of the Rules.
  - (ii) A Disciplinary Panel may order any party to the proceedings to pay costs as it considers appropriate, including, but not limited to the costs of running the Disciplinary Panel, including the fees and expenses of the members of the Disciplinary Panel, any further administration costs directly attributable to the disciplinary proceedings, costs incurred in the investigation, preparation and presentation of the case, including the costs of the Clearing House's and Disciplinary Panel's external advisers. Any order in relation to payment of costs may also specify the manner of assessment to be used as well as a timetable for payment.
- (t) The following sanctions may be imposed by a Disciplinary Panel where the conduct in question is found by the Disciplinary Panel to result in whole or in part from the conduct of a Customer or client of a Customer of a Clearing Member:
- (i) the issue of a private warning or reprimand naming the Customer or client of a Customer or any of their Representatives;
  - (ii) the issue of a public notice of censure naming the Customer or client of a Customer or any of their Representatives;
  - (iii) a recommendation to the Clearing House to suspend the Customer or client of a Customer (either indefinitely or for a fixed term) or any of their Representatives from being a Director or member of a committee of the Board or any panel established under these Rules or from being a Customer or client of a Customer



of any Clearing Member of the Clearing House for purposes of Clearing or the Clearing of any particular product at the Clearing House;

- (iv) a fine of any amount, to be paid by such Person as is specified by the Disciplinary Panel to the Clearing House (which shall be binding on the Customer or client of a Customer or any of their Representatives if so specified by the Disciplinary Panel), on such terms as may be prescribed;
- (v) the disgorgement of any gain made by the Customer or client of a Customer or any of their Representatives in connection with the breach, payable by such Person as is specified by the Disciplinary Panel to the Clearing House (which shall be binding on the Customer or client of a Customer or any of their Representatives if so specified by the Disciplinary Panel), on such terms as may be prescribed;
- (vi) in an appropriate case, more than one of the above actions in relation to any one Customer or client of a Customer or any of their Representatives and/or different actions in relation to different Customers or clients of Customers or any of their Representatives concerned in the same investigation or on similar facts; and
- (vii) any combination of the foregoing.
- (viii) The Disciplinary Panel shall only impose any sanction on a Person that it determines is or was responsible (whether solely, jointly or by way of contribution) for the relevant conduct. If sanctions are to be imposed as a result of any conduct of a Customer or client of a Customer, the relevant Clearing Member may present information or evidence to the relevant Disciplinary Panel as to whether any sanctions should be limited to those set out in this Rule 1003(t). If any pecuniary sanction imposed by a Disciplinary Panel is expressed to be payable by a Customer or any of its clients or their Representatives but not to be payable by the Clearing Member, the Clearing Member shall not be liable for payment of, or to collect, any such amount.

#### **Rule 1004**    *Summary Procedure*

- (a) A Clearing Member may submit in writing a request that the Clearing House adopt a summary procedure under this Rule 1004 ("**Summary Procedure**") for disposing of the matter within 14 days of a Notice being served. Such notice may be served by the Clearing Member at any time prior to the formation of the Disciplinary Panel.
- (b) The Clearing House may in its discretion agree to refer the matter to the Summary Procedure and shall notify the Clearing Member of any such determination. The Clearing House may refuse its agreement to use of a Summary Procedure where a Disciplinary Panel would in its view be a better forum to deal with the matter, which may (without limitation) be the case if the allegations are particularly serious or if the subject matter is considered of particular significance or relevance to the market in general or in the public interest.

- (c) Upon agreement to refer the matter to the Summary Procedure the Clearing House in its absolute discretion shall appoint three Directors or employees of the Clearing House or of any Clearing Member other than the Clearing Member subject to the Summary Procedure to hear the submissions of the Clearing House and Clearing Member into the alleged breach, who shall form a Summary Disciplinary Committee. The Clearing House shall appoint one such member of the Summary Disciplinary Committee to act as chairman.
- (d) The Summary Disciplinary Committee shall make such directions as to the procedural conduct of the case as well as the hearing as it sees fit.
- (e) The Summary Disciplinary Committee shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach. The Summary Disciplinary Committee shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact by a legally appointed court, tribunal, expert, arbitrator or Governmental Authority.
- (f) All hearings before the Summary Disciplinary Committee shall be held in private unless the Clearing House and the Clearing Member agree otherwise.
- (g) All hearings before the Summary Disciplinary Committee shall be held in private unless the Clearing House and the Clearing Member agree otherwise. None of the Clearing House, the Clearing Member or the Summary Disciplinary Committee shall be represented by legal advisors at a hearing except with the prior express agreement of the Summary Disciplinary Committee.
- (h) Save as provided in Rule 1005, a Clearing Member that chooses to submit itself to the Summary Procedure expressly waives any right of appeal or review by any body including any court of law against any determination or ruling of the Summary Disciplinary Committee.
- (i) The Summary Disciplinary Committee shall, following the hearing, determine whether a Clearing Member has committed a breach and shall determine what sanction or sanctions are to be imposed on the Clearing Member or Representative. Upon having determined in its absolute discretion whether a breach has occurred, the Summary Disciplinary Committee shall communicate its findings and particulars of any sanction to the Clearing Member and the Clearing House. For the avoidance of doubt, the Summary Disciplinary Committee will notify the Clearing Member of: (i) any act or practice which the Clearing Member has been found to have carried out or omitted; (ii) a citation of the relevant provisions which are considered to have been breached; and (iii) the proposed sanction to be imposed and the reasons therefor. The Summary Disciplinary Committee has the same full range of powers of sanction which are open to a Disciplinary Panel and may impose a combination of any such sanctions as it sees fit, provided that the sanctions are limited to those set out in the Notice and any additional sanctions arising out of the conduct of the proceedings.

- (j) A determination or sanction imposed by the Summary Disciplinary Committee may be appealed under Rule 1005 to an Appeal Panel and shall not be referred to a Disciplinary Panel.

**Rule 1005**    *Appeals*

(a)

- (i) Within 14 days of receiving notice in writing of a decision of a Disciplinary Panel, a determination in writing of a Summary Disciplinary Committee or a notice of sanction following the procedure referred to in Rule 1003(q) (whichever is the later), or such longer period as the chairman of the Disciplinary Panel or the Summary Disciplinary Committee may in his discretion direct at the conclusion of the disciplinary proceedings, a Clearing Member (whether current or former in the case of expulsion) or the Clearing House, or both, may appeal to an Appeal Panel by lodging with the Clearing House a notice of appeal in writing and by delivering a copy thereof to any other party to the disciplinary proceedings.
- (ii) A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The only grounds of the appeal may be any one or more of the following:
- (A) the Disciplinary Panel or Summary Disciplinary Committee misdirected itself; or
  - (B) the Disciplinary Panel's or Summary Disciplinary Committee's decision was:
    - (1) one which no reasonable tribunal could have reached; or
    - (2) unsupported by the evidence or was against the weight of the evidence; or
    - (3) in the case of the Disciplinary Panel only, based on an error of law, or a misinterpretation of the Rules; or
  - (C) the sanction imposed by the Disciplinary Panel, Clearing House or Summary Disciplinary Committee was excessive or, in the case of an appeal by the Clearing House, was insufficient or inappropriate; or
  - (D) new evidence is available and that, had it been made available, the Disciplinary Panel, Clearing House or Summary Disciplinary Committee could reasonably have come to a different decision. This will not apply, in the case of the Disciplinary Panel only, if the evidence could have been adduced before the Disciplinary Panel by the exercise of reasonable diligence;

but no party may otherwise appeal on any other grounds.

- (iii) In the case of appeal against a sanction, the Appeal Panel may affirm, vary or revoke the sanction. The Appeal Panel may make such order or give such direction as it considers fit, including, in the case of an appeal from the Disciplinary Panel, a direction for a rehearing of the case by another newly constituted Disciplinary Panel.
- (b) Upon receipt of such a notice of appeal, the Clearing House shall appoint an Appeal Panel.
- (c) The Clearing House shall serve notice of any grounds on which it objects to the notice of appeal within 14 days after the appointment of the Appeal Panel, or such longer period as may be agreed between the parties or directed by the Appeal Panel.
- (d) The Appeal Panel shall consist of a lawyer sitting alone who shall be either a solicitor admitted in England and Wales or a member of the Bar of England and Wales in either case who has been in practice for over ten years and who shall be appointed at the discretion of the Clearing House. No members of any disciplinary panel, serving members of the Clearing House's committees dealing with any disciplinary or summary disciplinary proceedings, employees of the Clearing House or Clearing Member subject to disciplinary proceedings or any of their Affiliated Persons, Representatives or Customers shall be appointed to an Appeal Panel. Expert assessors may be appointed, at the discretion of the Appeal Panel, to sit with and advise the Appeal Panel but not to vote. No Person shall serve or sit on an Appeal Panel or be an expert assessor if he has a personal or financial interest in or has been involved in any investigation into or previous disciplinary panel or Summary Disciplinary Committee hearing (including that which is the subject of the appeal itself) on the matter under consideration.
- (e) The Appeal Panel may adopt such procedure as it thinks fit and just, including, without limitation, all or any of the procedures described in Rule 1003(l) and shall be bound by Rule 1003(m) and (n). The Appeal Panel shall have all the powers which are vested in Disciplinary Panels, whether procedural or otherwise. The appellant and the respondent may appear, make representations and (subject to any restriction on adducing new evidence), call witnesses, who may be examined and cross-examined.
- (f) The decision of an Appeal Panel shall be final and binding and there shall be no further appeal. The decision in writing with reasons shall be sent to the appellant and respondent without undue delay.
- (g) This Rule 1005 shall also apply to an appeal in respect of a sanction imposed pursuant to a Summary Disciplinary Process (to the extent and subject to modifications as set forth in Rule 1008).

**Rule 1006**     *Interaction with Market Rules and other processes under the Rules*

- (a) The existence of any disciplinary or other dispute resolution processes under relevant Market Rules shall not preclude any process under this Part 10 of the Rules.
- (b) Where there are disciplinary processes of any Market under relevant Market Rules and disciplinary processes under this Part 10 of the Rules, and both the panel appointed under this Part 10 of the Rules and the panel appointed under the relevant Market Rules (who are composed of the same panel members) consider that the disciplinary processes involve at least one common Clearing Member or member of the relevant Market and substantially the same subject matter, the disciplinary processes under this Part 10 of the Rules may be consolidated with the disciplinary processes under the relevant Market Rules. In such circumstances, the same procedures, documents, notices, evidence and panel members may be used in both sets of disciplinary processes, as directed by the panel.
- (c) [Not Used]

**Rule 1007**     *[Not Used]*

**Rule 1008**     *Summary Disciplinary Process*

- (a) Without prejudice to any other powers of investigation and discipline in this Part 10 and subject at all times to Rule 1008(e), the Clearing House shall be entitled to adopt a summary disciplinary process (governed by this Rule 1008, "**Summary Disciplinary Process**") against a Clearing Member.
- (b) The Summary Disciplinary Process may be adopted and related sanctions may be imposed by the Clearing House pursuant to such process in relation to:
  - (i) the late filing or submission of any document, notice or information, including as required under Parts 2, 7, 10 or 19 of the Rules, the Membership Procedures or the Delivery Procedures;
  - (ii) the late making of any payment, including as required under Parts 3, 5, 9 or 11 of the Rules or the Finance Procedures;
  - (iii) any failure to record a Contract in the correct Account, including as required under Part 4 of the Rules or the Clearing Procedures;
  - (iv) the late making or taking of any delivery, including as required under Parts 7, 8 or 15 of the Rules or the Delivery Procedures;
  - (v) any breach of Rule 202(a)(xix);
  - (vi) any breach of Rule 503(g);
  - (vii) any breach of a position limit under Part 6 of the Rules;

- (viii) any breach of any provision of the Rules or Procedures that is considered by the Clearing House to be of a factual nature where the Clearing House holds sufficient evidence of such facts;
  - (ix) any breach of any provision of the Rules or Procedures that is considered by the Clearing House to be minor in nature; or
  - (x) any breach of the Rules or Procedures which the Clearing House considers would appropriately be addressed via the Summary Disciplinary Process.
- (c) In any Summary Disciplinary Process, relevant sanctions shall be limited to the following, as regards the Clearing Member or any Representative or Customer of the Clearing Member:
- (i) the issue of a private warning or reprimand naming the Clearing Member;
  - (ii) the issue of a private warning or reprimand naming a Customer or client of the Clearing Member or any Representative of the Clearing Member;
  - (iii) a fine of up to €50,000, to be paid on such terms and by such Person or Persons as may be prescribed; or
  - (iv) any combination of the foregoing.
- (d) If it wishes to impose a sanction pursuant to a Summary Disciplinary Process, the Clearing House shall first give notice in writing to the affected Clearing Member, specifying the provision(s) of the Rules or Procedures to which the alleged breach relates, the evidence upon which the alleged breach is based and the proposed sanction. The sanction shall not take effect until 14 days after the date of such notice or such later date as is specified in the notice.
- (e) A Clearing Member against whom sanctions pursuant to a Summary Disciplinary Process have been notified under Rule 1108(d) may, prior to the 14 day (or such later) period as is referred to under Rule 1008(d), give notice in writing that it wishes the matter to be heard by an Appeal Panel, in which case the sanction shall not take effect unless and until such time the Appeal Panel makes a decision affirming it. Any such notice must set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the Clearing Member. The only grounds of the appeal may be any one or more of the following:
- (i) the facts relied on by the Clearing House as part of the Summary Disciplinary Process were incorrect;
  - (ii) the Clearing House's decision was unsupported by the evidence or was against the weight of the evidence; or
  - (iii) new evidence is available and that, had it been made available, the Clearing House reasonably have come to a different decision,

and a Clearing Member may not otherwise appeal on any other grounds.

- (f) Upon receipt of such a notice of appeal, the Clearing House shall constitute an Appeal Panel in accordance with Rules 1005(b) and (d). Rules 1005(e) and (f) shall apply in relation to the powers of and procedures adopted by any such Appeal Panel.
- (g) The Clearing House shall have 14 working days, or such other period as the Appeal Panel in its discretion (should it be constituted at such time) may allow from the service of the notice of appeal, to serve notice of any grounds on which it objects to such appeal.
- (h) The Appeal Panel may affirm, vary or revoke the sanction imposed as part of a Summary Disciplinary Process taken by the Clearing House. The sanctions available to the Appeal Panel in respect of a matter which was originally subject to a Summary Disciplinary Process shall not be limited to those under Rule 1008(c). The Appeal Panel may make such order or give such direction as it considers fit, including a direction for a rehearing of the case by a Disciplinary Panel pursuant to Rule 1003 (in which case the Clearing Member may request for the Summary Procedures to apply instead in accordance with Rule 1004).
- (i) The Clearing House may give further guidance or information by way of Circular in relation to the operation of or procedures for the Summary Disciplinary Process, fining ranges for particular breaches of the Rules or Procedures or further information on the kinds of Rules or Procedures breaches that are likely to fall under Rule 1008(b).

## Part 11 Guaranty Fund

### Rule 1101 *Establishment and parameters of the Guaranty Fund*

- (a) There shall be one Guaranty Fund operated by the Clearing House: the . Clearing Members shall be liable to make and maintain Guaranty Fund Contributions. The total amount required in the Guaranty Fund will be established by the Clearing House in accordance with the Finance Procedures. Guaranty Fund Contributions will be designated for each Guaranty Fund Period and Clearing Member as relating primarily to either Energy or Financials & Softs Clearing, based on the Margin requirements for such Contracts for the purposes of Rule 908(a)(v) to (vii). The total amounts of the Guaranty Fund will be expressed (and Guaranty Fund Contributions will be called) in the currency or currencies set out in the Finance Procedures and will be reviewed periodically by the Clearing House in advance of the end of each Guaranty Fund Period for the Guaranty Fund. If the Clearing House determines that the total amount in the Guaranty Fund is to change, Clearing Members will be given notice by Circular and will be informed of their new Guaranty Fund Contribution requirements prior to the start of the Guaranty Fund Period when the change becomes effective.
- (b) The Clearing House will communicate to Clearing Members by Circular the basis on which their Guaranty Fund Contributions are calculated.
- (c) The Clearing House may vary the parameters by reference to which Guaranty Fund Contributions are calculated from time to time and at any time upon issuing a Circular to Clearing Members. Any new parameters will come into effect on the date of the next applicable re-calculation of Guaranty Fund Contributions, unless Clearing Members are otherwise notified of a different effective date. Parameters for the Guaranty Fund will be established on the basis that the Guaranty Fund Contributions of each Clearing Member will be proportional to the exposures of each Clearing Member and that the Guaranty Fund shall enable the Clearing House to withstand, under extreme but plausible market conditions, (i) at least the largest default of the Clearing Member to which it has the largest exposures or the second and third largest Clearing Members, if the sum of their exposures is larger or (ii) such other higher default parameters required by other Applicable Laws with respect to financial resource requirements. The Clearing House may add further parameters to define the size of the Guaranty Fund.
- (d) Clearing Members shall be required and liable to make Guaranty Fund Contributions in the amounts and at the times specified in accordance with Rule 1102 and Rule 1101(a), such that the Guaranty Fund is always at least of the size required pursuant to this Rule 1101, except in circumstances in which amounts are drawn down from the Guaranty Fund in order to meet liabilities resulting from an Event of Default and such amounts have not been replenished in accordance with this Part 11. For the avoidance of doubt, a Clearing Member will not be in breach of the Rules nor capable of being declared a Defaulter solely as a result of any of its Guaranty Fund Contributions being applied and its Guaranty Fund Contributions with the Clearing House not being the total required amount (unless and until such time as the Clearing House issues a call for



further Guaranty Fund Contributions and the amount called is not paid when due, in which case such Clearing Member may be declared a Defaulter).

- (e) Separate amounts of Guaranty Fund Contribution may be calculated based on the Proprietary Account Positions and Customer Account Positions (if any) of a Clearing Member, but this shall not result in any restriction on the use of any Guaranty Fund Contribution as between losses on such Accounts or any Account of a Defaulter following an Event of Default.

#### **Rule 1102**     *Clearing Members' Contributions*

- (a) Clearing Members' required Guaranty Fund Contributions at the start of each Guaranty Fund Period (or otherwise when a payment to the Guaranty Fund is due) will be calculated with reference to the total amount of the Guaranty Fund established pursuant to Rule 1101.
- (b) Guaranty Fund Contributions for each Clearing Member will be calculated for each Guaranty Fund Period based on criteria set out in the Finance Procedures, risk policies and Circulars, in accordance with the requirements of EMIR and other Applicable Laws.
- (c) Required Guaranty Fund Contributions will be calculated or re-calculated, as the case may be, by the Clearing House for each Clearing Member and notified in advance of each Guaranty Fund Period.
- (d) Guaranty Fund Contributions must be in the form of cash or other Permitted Cover, subject to such limits as are specified in the Finance Procedures and Circulars.
- (e) In the event of any change in the value of non-cash Guaranty Fund Contributions, the Clearing Member may be required by the Clearing House to make an additional Guaranty Fund Contribution. Clearing Members will be permitted (and may be required) at any time to make additional Guaranty Fund Contributions (beyond the required Guaranty Fund Contributions) in order to reduce the risk that revaluations of non-cash Permitted Cover result in such additional Guaranty Fund Contributions falling due.
- (f) New Clearing Members admitted to membership of the Clearing House shall make the required minimum Guaranty Fund Contributions plus such other amount as the Clearing House at its discretion determines is necessary based on projected clearing activity. Any such Guaranty Fund Contributions by a new Clearing Member or Clearing Members shall not result in any obligation on the Clearing House to repay any Guaranty Fund Contributions to other Clearing Members and the size of the Guaranty Fund shall be increased accordingly until the end of the Guaranty Fund Period.
- (g) Guaranty Fund Contributions of a Clearing Member following termination of its membership of the Clearing House will be returned to the Clearing Member on the first date of the first new Guaranty Fund Period beginning after the Transfer, close out or

termination of all of its positions at the Clearing House and the payment of all other amounts due to the Clearing House (subject to Guaranty Fund Contributions being applied under Part 9 or this Part 11 and further subject to any extension to the Guaranty Fund Period pursuant to Rule 1102(l)). The obligation of the Clearing House to return to any Clearing Member any remaining portion of its Guaranty Fund Contributions following an Event of Default or Clearing House Event will be satisfied by accounting for the amount of that obligation in the determination of a net sum under Rule 906 or Rule 912(a) or Rule 916 or Rule 918 (whichever is applicable) and payment of such net sum.

- (h) Each Clearing Member will be entitled to receive interest payments on its cash Guaranty Fund Contributions at a frequency to be determined by the Clearing House and through the banking arrangements detailed in Part 3.
- (i) In the event of application of any Guaranty Fund Contributions taking place pursuant to Rule 908 or Rule 1103, the Clearing House shall:
  - (i) give notice by Circular of the amount by which the Guaranty Fund has been reduced;
  - (ii) notify each Clearing Member and any relevant former Clearing Member of the amount for which it is liable to make additional Guaranty Fund Contributions in order to replenish the Guaranty Fund;
  - (iii) specify the new amount of the Clearing House Contributions by Circular; and
  - (iv) [Not Used]

Clearing Members must make required replenishment Guaranty Fund Contributions upon demand (subject to Rule 917 and Rule 918). The Clearing House shall ensure that any specified new Clearing House Contributions are held by it in accordance with Rule 1103(f) at the same date as Guaranty Fund Contributions for the Guaranty Fund are so due. Any obligation on a Clearing Member to make payments pursuant to this Rule 1102(i) is separate from, and shall apply in addition to, any obligation to make payment in respect of Assessment Contributions pursuant to Rule 909.

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

- (ii) a separate Event of Default is declared in relation to a Defaulter or Defaulters (any, an "**Additional Defaulter**") prior to the termination of default proceedings in relation to an existing Defaulter ("**First Defaulter**"),

and recourse is made to Guaranty Fund Contributions in respect of the First Defaulter (or any Additional Defaulter), then (subject to Rule 917 and Rule 918(a)(ii)) Clearing Members shall be required to replenish the Guaranty Fund pursuant to Rule 1102(i) separately in respect of each Defaulter causing a reduction in the Guaranty Fund. The Clearing House may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to the First Defaulter to meet the liabilities of an Additional Defaulter and may apply Guaranty Fund Contributions and Clearing House Contributions resulting from replenishment following default proceedings in relation to an Additional Defaulter to meet the liabilities of another Additional Defaulter. Other than as set out in this Rule 1102(j), amounts transferred by Clearing Members or former Clearing Members in order to replenish Guaranty Fund Contributions under Rule 1102(i) or amounts designated as Clearing House Contributions may not be applied to meet liabilities arising in connection with any Event of Default occurring prior to the time at which the relevant replenishment or designation is required under these Rules.

- (k) In the event of the Clearing House applying any Guaranty Fund Contributions of non-defaulting Clearing Members, Clearing House Contributions or insurance proceeds and subsequently receiving any amounts from the Defaulter as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise, the Clearing House will make reimbursement payments to relevant Persons whose Guaranty Fund Contributions have been applied, retain assets in respect of Clearing House Contributions, repay the relevant insurer or make reimbursement payments to Persons that had made Assessment Contributions pursuant to Rule 909(j), as applicable, in all cases in the reverse order to that specified in Rule 908 (subject to Rule 1103(e) and in the case of payments in respect of Guaranty Fund Contributions or Assessment Contributions to Clearing Members on a pro rata basis subject to Rule 908(i) and excluding the Guaranty Fund Contributions of the Defaulter), subject in either case to the Clearing House first: (i) retaining or repaying amounts up to the amount of assets of the Clearing House not being Clearing House Contributions or any assets of third parties that are not specified in Rule 908 but which were actually applied to meet any shortfall or loss; and (ii) if applicable, meeting any repayment obligations arising pursuant to 909(j), 914(j) or 916(n).
- (l) If an Event of Default occurs prior to the end of a Guaranty Fund Period where the total amount of Guaranty Fund Contributions or the Guaranty Fund Contribution of any particular Clearing Member would otherwise subsequently be reduced in the next Guaranty Fund Period, the Clearing House shall at its discretion be entitled to defer the end of the current Guaranty Fund Period and start of the next Guaranty Fund Period until the completion of default proceedings or retain all then held Guaranty Fund Contributions made to any potentially affected Guaranty Fund. In either such circumstance, the Clearing House shall not be obliged to make any repayment to

Clearing Members in respect of Guaranty Fund Contributions until and subject to completion of the relevant Default proceedings pursuant to Part 9 and this Part 11. For the avoidance of doubt: in such circumstances, the Clearing House shall nonetheless be entitled to make periodic adjustments to Guaranty Fund Contributions as otherwise set out in these Rules at its discretion; and this Rule 1102(l) is without prejudice to Rule 1102(m).

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

### **Rule 1103     *Use of Guaranty Fund Contributions***

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

actually applied and the amount by which the same were provisionally applied under this Rule 1103(a)(ii)(B); or

- (iii) for making payments, including for liquidity or to raise liquidity for liabilities to make payments in respect of obligations incurred by the Clearing House in its capacity as a clearing house and central counterparty,

provided that: (1) [Not Used]; (2) nothing in this Rule 1103(a) shall affect the order of application of assets following a declared Event of Default pursuant to Rule 908; (3) any Guaranty Fund Contributions used or applied under this Rule 1103(a) (but not actually applied under Rule 908) shall be returned or reallocated by the Clearing House to the Guaranty Fund; and (4) following an Event of Default declared by the Clearing House, Guaranty Fund Contributions may only be used or applied under this Rule 1103(a) after available resources of the Defaulter have been exhausted.

- (b) The Clearing House may at any time and from time to time sell, substitute, set off, transfer, assign, mortgage, pledge, repledge or otherwise create or grant a lien, interest, charge or other security interest on or use as collateral by way of title transfer arrangement, any proceeds of Guaranty Fund Contributions for any of the purposes set out in Rule 1103(a). Any borrowings using proceeds of Guaranty Fund Contributions as collateral shall be on terms and conditions deemed necessary or advisable by the Clearing House in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Clearing Member to the Clearing House for which such cash, securities or other property was transferred to the Clearing House. Any amounts so borrowed shall be used and applied by the Clearing House solely for the purposes set out in Rule 1103(a); provided that the failure of the Clearing House to comply with Rule 1103(a) in respect of any borrowings, facility or agreement shall not impair any of the rights or remedies of any transferee, assignee, mortgagee, pledgee, collateral taker or holder of any lien or security interest.
- (c) Any expense (including, without limitation, legal fees and expenses) incurred by the Clearing House in connection with the use, application or transfer of Guaranty Fund Contributions, or the return of equivalent assets to a Clearing Member, may, at the option and discretion of the Clearing House, be charged to the account of such Clearing Member.
- (d) A Clearing Member's entitlement to repayment of any Guaranty Fund Contribution or any part of it or interest thereon shall not be capable of assignment or transfer by the Clearing Member or being made subject to any Encumbrance whatsoever purporting to rank in priority over, *pari passu* with, or subsequent to, the rights of the Clearing House or in conflict with Rule 908. Any purported Encumbrance of a Clearing Member in respect of any Guaranty Fund Contribution shall be null and void.
- (e) It being understood that the Clearing House shall not be obliged to obtain or keep in place or make any claim under any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in Rule 908, subject to the payment order specified in Rule 1102(k), any claims under

default insurance policies of which the Clearing House is the beneficiary may be subject to limits on claims applicable in respect of particular time periods (each such period, a "**Relevant Period**"). Furthermore, pursuant to the terms of any such insurance obtained by the Clearing House, it is possible that (i) insurance claims may be payable in excess of losses resulting from a Default or Defaults above a certain amount ("**Loss Threshold**") occurring within a Relevant Period as opposed to following the application of particular assets in respect of particular Defaults in the order set out in Rule 908; or (ii) default insurance policies may apply only in relation to losses occurring in relation to certain Sets of Contracts cleared by the Clearing House. Moreover, the Clearing House shall not be obliged to obtain or keep in place or make any claim under any default insurance policy or make, or receive the proceeds under, any claim prior to processing to the next levels of assets specified in Rule 908, subject to the payment order specified in Rule 1102(k). As a result, it is possible that:

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

If there is a First Defaulter and there are one or more Additional Defaulters during a Relevant Period, the proceeds of any claim under default insurance shall be applied as between the losses, shortfalls or liabilities relating to each Defaulter at the relevant point in the waterfall in Rule 908 on the following basis: (i) first, a Defaulter shall be excluded from any application of such assets if, prior to or after application of the Clearing House Initial Contribution, there is no further loss, liability or shortfall; (ii) secondly, such assets shall be applied to reduce the losses, shortfalls or liabilities relating to a Defaulter whose Event of Default was first in time to be declared by the Clearing House, provided that any Events of Default occurring on the same day shall be treated as occurring simultaneously for purposes of this Rule 1103(e); and (iii) where there are simultaneous

Events of Default, such assets shall be applied so as to reduce the losses, shortfalls or liabilities relating to each Defaulter on a pro-rata basis, based on the total of all unsatisfied Default Amounts relating to each such Defaulter (after applying the Clearing House Initial Contribution).

The Clearing House will issue a Circular to Clearing Members specifying the amount of insurance, Loss Threshold, Relevant Period and any restrictions by Set of Contracts applicable to any default insurance obtained by the Clearing House. Neither this Rule 1103(e) nor any Circular issued by the Clearing House shall affect the liability of Clearing Members in respect of Guaranty Fund Contributions under these Rules.

- (f) The Clearing House will notify Clearing Members from time to time, by Circular and in accordance with the Finance Procedures, of each of the Clearing House Contributions. The Clearing House Second Contribution may in whole or in part be based upon the same assets as the Loss Assets. The total amount of Clearing House Second Contributions may therefore be reduced as a result of application of Loss Assets pursuant to Rule 919. The Clearing House undertakes to all non-defaulting Clearing Members from time to time to maintain amounts equal to the total of the Clearing House Contributions in a separate account from its other assets (other than Loss Assets) and to use such amounts only for the purposes of meeting shortfalls arising directly or indirectly from Defaults in accordance with Part 9 and this Part 11 or, in the case of the Clearing House Second Contribution, as Loss Assets. This Rule 1103(f) shall not restrict the Clearing House from investing such amounts in any way that it is able to invest Guaranty Fund Contributions made by Clearing Members. Clearing House Contributions may be used by the Clearing House in the same way as Guaranty Fund Contributions may be used pursuant to Rule 1103(a). For the avoidance of doubt, there shall not be any breach by the Clearing House of its obligations under this Rule 1103(f) solely as a result of any temporary reduction to any Clearing House Contributions as a result of the application of any amount of Clearing House Contributions pursuant to Part 9 or this Rule 1103.
- (g) The total amount of Guaranty Fund Contributions and any Clearing House Contributions applied in connection with any Event of Default shall be notified to Clearing Members in a Circular prior to the same being applied.

## Part 12 Settlement Finality

*Without prejudice to the status of any other provision of these Rules, including Part 9, the provisions of this Part 12 are intended to also constitute 'default rules' for purposes of article 45 of EMIR, constitute "default proceedings" for purposes of both article 48 of EMIR and UK EMIR, constitute 'default rules' for purposes of the UK's Companies Act 1989, "default rules and procedures" for purposes of section 5b(c)(2)(G) of the CEA, "rules on the moment of entry and irrevocability" of a system as referred to in Article 22a of the Settlement Finality Directive and "default procedures" for purposes of SEC Rule 17Ad-22. In addition to these Rules, the Clearing House relies on its legal rights under Applicable Laws in handling Events of Default, including under EMIR, UK EMIR, the Settlement Finality Directive, the Financial Collateral Directive, the UK's Companies Act 1989 and the U.S. Bankruptcy Code, as applicable.*

### Rule 1201 Introduction and Interpretation

- (a) The Clearing House is the system operator of a Designated System for the purposes of the Settlement Finality Directive in respect of Transfer Orders.
- (b) Clearing Members and other Participants are subject to various obligations and requirements as a result of the Settlement Finality Directive. Clearing Members and other Participants must comply with, facilitate compliance by the Clearing House with, and comply with any action taken by the Clearing House pursuant to, the Settlement Finality Directive. Furthermore, various modifications to Applicable Laws relating to Insolvency affecting Clearing Members and other Participants apply pursuant to the Settlement Finality Directive.
- (c) Each Participant in the Designated System is on notice of the provisions of this Part 12. Each Participant shall, by participating in the Designated System, be deemed to have agreed that:
  - (i) (without prejudice to the generality of the provisions of any Clearing Membership Agreement), the provisions set out in this Part 12 apply to and shall bind such Participant (and to any Insolvency Practitioner appointed for, or with powers in respect of, it) in connection with such Participant's participation in the Designated System; and
  - (ii) (without prejudice to the generality of Rule 102(e)), to the extent that there is any conflict between any provision of this Part 12 and any provision of any agreement (including any AFI Agreement) or any contractual or non-contractual obligation which may arise or exist from time to time between any Participant and the Clearing House, the relevant provision of this Part 12 shall prevail, control, govern and be binding upon the parties (regardless of the date of entry into or amendment of any such agreement or obligation).
- (d) The term "**AFI Agreement**" means a payment services agreement between the Clearing House and an Approved Financial Institution.



- (e) The term "**Default Arrangements**" means the Rules and Procedures relating to, or that can be exercised upon, an Event of Default including, without limitation, all of Part 9 and Part 11 and this Part 12 of the Rules and Procedures relating thereto and any and all actions, omissions, powers and arrangements of the Clearing House pursuant to such Rules or Procedures.
- (f) The term "**Designated System**" means the system operated by the Clearing House consisting of the formal arrangements, between the Clearing House and Participants including the common rules (including the Rules and the Procedures) and the standardised arrangements (including the AFI Agreements, Investment Agency Agreements, Clearing Membership Agreements and other agreements involving the Clearing House, Clearing Members, Approved Financial Institutions, Concentration Banks, Investment Agent Banks and Emissions Registries, provided that in the event of any conflict between any provision of the Rules or Procedures and any provision of any such agreement or arrangements, the provision of the Rules or Procedures shall prevail, control, govern and be binding on the parties) and related functionality for the effecting of Transfer Orders between the Clearing House and Participants which, *inter alia*:
- (i) enable the Clearing House to give instructions and to place at the disposal of Clearing Members amounts of money on the account of Approved Financial Institutions;
  - (ii) enable Clearing Members to give instructions and to place at the disposal of the Clearing House amounts of money on the accounts of Approved Financial Institutions;
  - (iii) enables the Clearing House to give instructions and make transfers between its accounts at Approved Financial Institutions, Concentration Banks and Investment Agent Banks;
  - (iv) enables the Clearing House to give instructions and make transfers between Individually Segregated Margin-flow Co-mingled Accounts and between Segregated Gross Indirect Accounts by way of book entry through its own systems;
  - (v) enable the Clearing House and Clearing Members to fulfil the obligations they incur in respect of Contracts and otherwise to one another pursuant to the Rules;
  - (vi) enable transfers, assignments and novations of Contracts between Clearing Members or following a Default;
  - (vii) enable transfers of Non-Cash Collateral to or to the order of the Clearing House and Clearing Members;
  - (viii) [Not Used];
  - (ix) enable ICE Block Transactions to give rise to Contracts;

- (x) facilitate obligations for the delivery of Deliverables that are SFD Securities or Emission Allowances under Contracts; and
  - (xi) [Not Used.];
  - (xii) facilitate supplementary and incidental matters to the satisfaction of obligations pursuant to Contracts and the collection and payment of amounts due in respect of Contracts or Permitted Cover.
- (g) The term "**Indirect Participant**" means any Disclosed Principal Member or Customer, provided that: (i) it is an 'indirect participant', within the meaning of the Settlement Finality Directive, in the Designated System; (ii) the identity of that Disclosed Principal Member or Customer has been notified to the Clearing House in writing by the Clearing Member; (iii) the Clearing House has accepted such notification and treatment as an indirect participant in writing (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, an Indirect Participant); and (iv) such Disclosed Principal Member or Customer has executed such agreement as is prescribed by the Clearing House from time to time in order for it to become contractually bound by these Rules and this Part 12 in particular.
- (h) The term "**Intermediary Financial Institution**" means any bank or branch used by a System Bank, whether as banker, corresponding banker, intermediary or agent, for the fulfilment of a Payment Transfer Order, that is a 'participant' (as defined in the Settlement Finality Directive) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).
- (i) The term "**Investment Agent Bank**" means a bank used by the Clearing House for the deposit of cash prior to such cash being invested. An Investment Agent Bank may also be an Approved Financial Institution or Concentration Bank.
- (j) The term "**Investment Agency Agreement**" means an agreement between an Investment Agent Bank and the Clearing House, including in respect of the deposit of cash prior to such cash being invested.
- (k) The term "**Non-Cash Collateral**" means any Permitted Cover that is in the form of an SFD Security.
- (l) The term "**Participant**" means the Clearing House, each Clearing Member, each Approved Financial Institution, each Concentration Bank, each Investment Agent Bank, each Intermediary Financial Institution, each Custodian and each Emissions Registry, in the case of any such Person (other than the Clearing House) to the extent that it is a 'participant' (as defined in the Settlement Finality Directive) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, a Participant).

- (m) The term "**Payment Transfer Order**" means a transfer order (within the meaning of the first paragraph of the definition of 'transfer order' in the Settlement Finality Directive) that is a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order, ISOC Credit/Debit Payment Transfer Order, CH Account Payment Transfer Order or TARGET2 Payment Transfer Order subject to this Part 12.
- (n) The term "**Securities Transfer Order**" means a transfer order (within the meaning of the second paragraph of the definition of 'transfer order' in the Settlement Finality Directive) that is a Position Transfer Order, Collateral Transfer Order, Block Clearing Order, Security Derivative Delivery Order or Emission Allowance Delivery Order subject to this Part 12.
- (o) The term "**SFD Custodian**" means any Custodian used by a Clearing Member or the Clearing House for the holding or transfer of Non-Cash Collateral that is subject of a Collateral Transfer Order provided that such person is a 'participant' (as defined in the Settlement Finality Directive) in the Designated System (and this Part 12 shall apply equally to any Insolvency Practitioner appointed for, or with powers in respect of, such a person).
- (p) The term "**SFD Security**" means a 'security', as defined in the Settlement Finality Directive, but excluding any Emission Allowances.
- (q) The term "**System Bank**" means an Approved Financial Institution, Concentration Bank or Investment Agent Bank.
- (r) The term "**Transfer Order**" means a Payment Transfer Order or a Securities Transfer Order.
- (s) The term "**TARGET2**" means the real-time gross settlement system owned and operated by the Eurosystem.
- (t) The term "**TARGET2 Component System**" means the real-time gross settlement system of any Eurosystem central bank that forms part of TARGET2, or the real-time gross settlement system of a non-Eurosystem central bank connected to TARGET2 pursuant to a specific agreement, where the operator of any such system is a Concentration Bank.
- (u) The term "**TARGET2 Concentration Bank**" means a Concentration Bank which is the operator of a TARGET2 Component System.
- (v) The term "**TARGET2 PM Account**" refers to a cash account of the Clearing House in TARGET2 and has the same meaning as "PM account" set out in the applicable TARGET2 Terms and Conditions, where the Clearing House is the account holder and a TARGET2 Concentration Bank is the banker of that PM account.
- (w) The term "**TARGET2 Terms and Conditions**" means the terms and conditions that apply in respect of participation in the relevant TARGET2 Component System.

- (x) The term "**ICE Post Trade and Clearing Systems**" or the "**ICE Systems**" means the trade registration, clearing processing and finance hardware and software used by the Clearing House and Clearing Members from time to time, as further described in the Procedures.
- (y) No transfer orders (as defined in the Settlement Finality Directive) shall arise, enter the Designated System or become irrevocable under these Rules except as set out in this Part 12.
- (z) The Clearing House and each Clearing Member with a Pledged Collateral Account or Charged Collateral Account that is a Participant in the Designated System acknowledge and agree that: (i) all forms of Permitted Cover provided as Pledged Collateral or Charged Collateral constitute "realisable assets"; and (ii) all Pledged Collateral or Charged Collateral is "provided under a pledge (including money provided under a pledge), a repurchase or similar agreement, for the purpose of securing rights and obligations potentially arising in connection with a system" for the purposes of the Settlement Finality Directive. Accordingly, the Clearing House and each such Clearing Member that is a Participant in the Designated System intend and agree that: (a) Pledged Collateral and Charged Collateral shall each constitute both "collateral security" and "collateral security provided in connection with participation in a system" for the purposes of the Settlement Finality Directive; and (b) the Clearing Membership Agreement, any Pledged Collateral Addendum or Charged Collateral Addendum, Rules and Contracts insofar applicable to Pledged Collateral or Charged Collateral constitute "realisable assets... provided under a pledge (including money provided under a pledge), a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system", for the purposes of the Settlement Finality Directive.
- (aa) [Not Used]

**Rule 1202    *Transfer Orders Arising***

- (a) Subject to clause 212b of the Dutch Bankruptcy Act, a Payment Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
  - (i) in relation to a Contract that forms in accordance with Rule 401(a) (excluding any Contract arising under Rule 401(a)(vii)) at the time that a Contract arises under Rule 401 (such Payment Transfer Order, a "**New Contract Payment Transfer Order**");
  - (ii) the Clearing House sending an instruction for payment to or from the Clearing House pursuant to Rule 302, Rule 502 to Rule 503 and/or the Finance Procedures (such Payment Transfer Order, a "**Credit/Debit Payment Transfer Order**");
  - (iii) the Clearing House making an instruction for the transfer of an amount standing to the credit of one Individually Segregated Margin-flow Co-mingled Account

to another Individually Segregated Margin-flow Co-mingled Account using the same position-keeping account or for the transfer of an amount standing to the credit of one Segregated Gross Indirect Account to another Segregated Gross Indirect Account using the same position-keeping account, pursuant to Rule 503(i) and the Finance Procedures (such Payment Transfer Order, an "**ISOC Credit/Debit Payment Transfer Order**");

- (iv) the Clearing House sending an instruction by means of a SWIFT message, other electronic message, fax, telephone or other means to a System Bank (excluding a TARGET2 Concentration Bank) to transfer a sum of money from an account of the Clearing House at such System Bank (excluding a TARGET2 Concentration Bank) to an account of the Clearing House at the same or a different System Bank (excluding a TARGET2 Concentration Bank) (such Payment Transfer Order, a "**CH Account Payment Transfer Order**"); or
  - (v) the moment the Clearing House's TARGET2 PM Account is debited with funds, or the Clearing House's TARGET2 PM Account is credited with funds, pursuant in either case to the Clearing House sending an instruction by means of a SWIFT message to the applicable TARGET2 Concentration Bank in compliance with the TARGET2 Terms and Conditions ("**TARGET2 Payment Transfer Order**").
- (b) Subject to clause 212b of the Dutch Bankruptcy Act, a Securities Transfer Order shall arise and shall enter the Designated System immediately and automatically upon:
- (i) if either:
    - (A) the Clearing House, the relevant Market (if any) and the two Clearing Members involved (both being Participants) have already agreed to a transfer, assignment or novation of Contracts from one Clearing Member to another Clearing Member pursuant to Rule 408(a)(i);
    - (B) a request is accepted by the relevant Market (if any) or the Clearing House in respect of an allocation from one Clearing Member to another Clearing Member for purposes of Rules 401(a)(viii) and 401(e); or
    - (C) the Clearing House has declared an Event of Default under Rule 901 and any Contracts to which a Defaulter is party are proposed to be transferred from the Defaulter to another Clearing Member (being a Participant) pursuant to the Clearing House's powers under Rule 903, Rule 904, Rule 905 or otherwise,

in either case, instructions for settlement of the transfer, assignment, novation or allocation in question being effected through the ICE Systems at the relevant settlement transfer deadline for the relevant Contract (such Securities Transfer Order, a "**Position Transfer Order**");

- (ii) the Clearing House accepts, through the ICE Systems, that a Clearing Member has validly requested either:
    - (A) the transfer of Non-Cash Collateral to or to the order of the Clearing House; or
    - (B) a transfer to that Clearing Member or to its order of Non-Cash Collateral (such Securities Transfer Order, in either case, a "**Collateral Transfer Order**");
  - (iii) in respect of an ICE Block Transaction at the point at which the relevant details of the relevant Transaction have passed through the credit filter and risk controls of both relevant Clearing Members in the ICE Systems (such Securities Transfer Order, a "**Block Clearing Order**");
  - (iv) [Not Used];
  - (v) [Not Used];
  - (vi) [Not Used];
  - (vii) delivery of an SFD Security as a Deliverable is required following expiry of a relevant Future or following exercise of a relevant Option (such Securities Transfer Order, a "**Security Derivative Delivery Order**"); or
  - (viii) delivery of one or more Emission Allowances as a Deliverable is required following expiry or completion of the running of an auction in respect of a Contract (such Securities Transfer Order, an "**Emission Allowance Delivery Order**").
- (c) If two or more Transfer Orders exist in respect of the same obligation prior to becoming irrevocable, all such Transfer Orders shall be valid. No duplication of an obligation to pay shall arise as a result of two or more Transfer Orders existing in respect of the same obligation.
  - (d) The status of a Transfer Order shall not be affected by any calculation of Open Contract Position, netting, set off or closing out of a Contract to which it relates.
  - (e) Each Payment Transfer Order shall apply and have effect in respect of the following amounts:
    - (i) in the case of a New Contract Payment Transfer Order, the amount due to or from the Clearing House pursuant to the Contract Terms as a result of the Contract referred to in Rule 1202(a)(i) arising; or
    - (ii) in the case of a Credit/Debit Payment Transfer Order, ISOC Credit/Debit Payment Transfer Order, CH Account Payment Transfer Order or TARGET2

Payment Transfer Order, the amount specified in the relevant instruction referred to in Rule 1202(a);

- (f) Each Position Transfer Order shall apply and have effect in respect of the Contracts to be transferred, assigned, novated or allocated.
- (g) Each Collateral Transfer Order shall apply and have effect in respect of the Non-Cash Collateral to be transferred to or to the order of the Clearing House or Clearing Member.
- (h) Each Block Clearing Order shall apply and have effect in respect of the ICE Block Transaction in question and any resulting Contract.
- (i) [Not Used].
- (j) [Not Used]
- (k) Two separate Security Derivative Delivery Orders shall apply and shall have effect separately in respect of each of the Contracts that are subject to an obligation to make delivery of an SFD Security, and the SFD Security to be delivered pursuant thereto.
- (l) Two separate Emission Allowance Delivery Orders shall apply and shall have effect separately in respect of each Contract that is subject to an obligation to make delivery of an Emission Allowance, and the Emission Allowance to be delivered pursuant thereto.
- (m) Transfer Orders shall apply to, and have effect as against and between each of the following Persons, in respect of any particular Person only to the extent that such Person is a Participant or an Indirect Participant:
  - (i) in the case of a New Contract Payment Transfer Order, the affected Clearing Member (if it is a Participant) and the Clearing House and, as from and after the time of irrevocability only, the affected Approved Financial Institution;
  - (ii) in the case of a Credit/Debit Payment Transfer Order or ISOC Credit/Debit Payment Transfer Order, the affected Clearing Member (if it is a Participant), the affected Approved Financial Institutions and the Clearing House;
  - (iii) in the case of a CH Account Payment Transfer Order, the affected System Bank or System Banks and the Clearing House;
  - (iv) in the case of a TARGET2 Payment Transfer Order, the relevant TARGET2 Concentration Bank and the Clearing House;
  - (v) in the case of a Position Transfer Order:
    - (A) the Clearing Members (that are the transferor, assignor or person whose rights, liabilities and obligations are transferred, assigned, novated or allocated and the transferee, assignee or person that assumes rights,

- liabilities and obligations pursuant to a transfer, assignment, novation or allocation);
  - (B) each Customer and Disclosed Principal Member affected by the Position Transfer Order which is an Indirect Participant (if any); and
  - (C) the Clearing House.
- (vi) in the case of a Collateral Transfer Order:
- (A) the Clearing Member that is the transferor of the Non-Cash Collateral in question;
  - (B) any SFD Custodian of the Clearing Member or the Clearing House; and
  - (C) the Clearing House;
- (vii) in the case of a Block Clearing Order:
- (A) each Clearing Member that has submitted or confirmed details of the ICE Block Transaction;
  - (B) any Affiliate or Customer of the Clearing Member that was party to a ICE Block Transaction and which is an Indirect Participant (if any); and
  - (C) the Clearing House;
- (viii) [Not Used]
- (ix) [Not Used]
- (x) in the case of a Security Derivative Delivery Order:
- (A) each Clearing Member that is party to a relevant Contract under delivery;
  - (B) any SFD Custodian of the Clearing Member or the Clearing House; and
  - (C) the Clearing House;
- (xi) in the case of an Emission Allowance Delivery Order:
- (A) each Clearing Member that is party to a Contract under delivery;
  - (B) the Emissions Registry holding the account of the Clearing Member from or to which the delivery of the Emission Allowance will take place;
  - (C) the Emissions Registry holding the account of the Clearing House from or to which the delivery of the Emission Allowance will take place; and



- (D) the Clearing House.
- (n) Where a Transfer Order applies to a System Bank, it shall also apply to and be effective against any Intermediary Financial Institution used by that System Bank.
- (o) Where a Transfer Order applies additionally to an Indirect Participant, the liability of any Participant pursuant to the same Transfer Order shall not be affected.

**Rule 1203    *Transfer Orders Becoming Irrevocable***

- (a) A Credit/Debit Payment Transfer Order shall become irrevocable at the time when the Approved Financial Institution sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made. An ISOC Credit/Debit Payment Transfer Order shall become irrevocable at the time when the Clearing House updates its records to reflect the transfer.
- (b) A CH Account Payment Transfer Order shall become irrevocable at the time when the System Bank of the account from which payment is to be made sends a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that the relevant payment will be or has been made.
- (c) A TARGET2 Payment Transfer Order shall become irrevocable at the earlier of: (i) the moment the Clearing House's TARGET2 PM Account is debited or the moment the Clearing House's TARGET2 PM Account is credited; or (ii) when or during the period in which any algorithm referred to in Appendix I of the TARGET2 Terms and Conditions commences or is running (if applicable).
- (d) Without prejudice to Rule 1205(h) and Rule 1205(i), a New Contract Payment Transfer Order shall become irrevocable upon an Approved Financial Institution sending a SWIFT confirmation message, other electronic message, fax, telephone or other message confirming that amount to which the New Contract Payment Transfer Order relates (as specified in Rule 1202(e)(i)) will be or has been made.
- (e) A Position Transfer Order shall become irrevocable at the time when the definitive record of the Open Contract Position of the Clearing Member (that is the assignee, transferee or person that assumes rights, liabilities and obligations pursuant to a novation) is updated as a result of a successful position transfer clearing run in the ICE Systems to reflect the transfer, assignment or novation of Contracts which are given effect pursuant to the Position Transfer Order.
- (f) A Collateral Transfer Order shall become irrevocable at the earlier of the time when: (i) the Clearing House receives the Non-Cash Collateral; or (ii) any related securities transfer order (which relates to the same subject matter as the Collateral Transfer Order but which a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable.

- (g) A Block Clearing Order shall become irrevocable at the time that the Clearing House becomes party to resulting Contracts with the Clearing Members in question, pursuant to Rule 401(a)(iii).
- (h) [Not Used].
- (i) [Not Used]
- (j) A Security Derivative Delivery Order shall become irrevocable at the earlier of the time when: (i) the Clearing House (or a Clearing Member that is due to receive delivery directly from another Clearing Member under Part 7) receives the SFD Security into its account; or (ii) any related securities transfer order (which relates to the same subject matter as the Security Derivative Delivery Order but which is a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System) becomes irrevocable within that other designated system.
- (k) An Emission Allowance Delivery Order shall become irrevocable at the earlier of the time when: (i) the Clearing House or Clearing Member (whichever is due to receive delivery pursuant to the Contract in question) receives all the Emission Allowances that are subject to the Emission Allowance Delivery Order into its account at the Emissions Registry; or (ii) any related order (which relates to the same subject matter as the Emission Allowance Delivery Order but which is either (A) a securities transfer order in a designated system for purposes of Directive 98/26/EC which is not the Designated System or (B) an order or transaction arising pursuant to the rules or terms of a relevant Emissions Registry) becomes irrevocable within that other designated system or Emissions Registry.
- (l) As from the time when a Transfer Order becomes irrevocable, it shall not be revoked or purported to be revoked by any Participant or the Clearing House and shall be binding upon all Participants.
- (m) Transfer Orders shall be legally enforceable, irrevocable and binding on parties in accordance with this Part 12 including on the occurrence of an Event of Default.

**Rule 1204**     *Variations to or Cancellation of Transfer Orders*

- (a) This Rule 1204 applies only to a Transfer Order that is not irrevocable and:
  - (i) in the case of any Transfer Order, it is affected by manifest or proven error or an error that is agreed so to be by all affected Participants;
  - (ii) in the case of a New Contract Payment Transfer Order, Credit/Debit Payment Transfer Order, ISOC Credit/Debit Payment Transfer Order, Position Transfer Order, Security Derivative Delivery Order or Emission Allowance Delivery Order, it relates to a Contract which is (or a Transaction which, if accepted, would be):

- (A) void *ab initio* pursuant to Rule 403;
  - (B) avoided pursuant to Rule 404; or
  - (C) amended as a result of the Clearing House exercising its discretion pursuant to Rule 104 or otherwise pursuant to these Rules; or
- (iii) [Not Used];
  - (iv) [Not Used];
  - (v) without prejudice to the generality of Rule 1204(a)(i), (ii) or (iii), in the case of a Block Clearing Order, it relates to a Transaction which is not eligible for Clearing or which is or are not accepted for Clearing by the Clearing House.
- (b) Subject to Rule 1204(d), (e), (f) and (g), neither the validity nor the irrevocability of any Transfer Order shall of itself be affected by any event described in Rule 1204(a) occurring.
  - (c) The terms of all Transfer Orders that have not become irrevocable shall each be subject to a condition (which, if not satisfied, shall enable the Clearing House to exercise its rights under this Rule 1204) that the circumstances described in Rule 1204(a) have not occurred.
  - (d) If any of the circumstances described in Rule 1204(a) has occurred, the amount payable, Contracts to be transferred or to arise or SFD Securities, Emission Allowances or Non-Cash Collateral to be delivered pursuant to the affected Transfer Order may at the discretion of the Clearing House be increased, decreased or otherwise varied, as necessary, to reflect the payments, transfers, Contracts, assignments, novations, SFD Securities, Emission Allowances, Non-Cash Collateral or deliveries that would have been required:
    - (i) in the case of Rule 1204(a)(i) applying, had there been no error;
    - (ii) in the case of Rule 1204(a)(ii)(A), Rule 1204(a)(ii)(B) or Rule 1204(a)(v) applying, had no Contract, Transaction ever arisen, occurred or been submitted; or
    - (iii) in the case of Rule 1204(a)(ii)(C) applying, had the Contract always been subject to such amended terms as are agreed or determined;
    - (iv) [Not Used];
    - (v) [Not Used],
 (any such variation, a "**Transfer Order Variation**").

- (e) A Transfer Order Variation may be effected only by the Clearing House delivering a notice of amendment of an existing Transfer Order to all affected Participants.
- (f) If any of the circumstances described in Rule 1204(a) has occurred, the Transfer Order in question may at the discretion of the Clearing House alternatively be cancelled. Any such cancellation may be effected by the Clearing House serving a notice of cancellation on all affected Participants. In respect of a Block Clearing Order, such notice shall be deemed to have been given if the Clearing House or any Market rejects a Transaction for Clearing.
- (g) [Not Used].
- (h) A Security Derivative Delivery Order shall be cancelled immediately and automatically if, prior to it becoming irrevocable, the issuer of the SFD Security that is the Deliverable becomes subject to an Insolvency, redeems all its SFD Securities of a kind which would have been the Deliverables for the delivery or another event occurs under which delivery obligations are substituted for cash settlement obligations under the Contract Terms.
- (i) An Emission Allowance Delivery Order shall be cancelled immediately and automatically if, prior to it becoming irrevocable, an Emissions Registry that is used by the Clearing House or the Clearing Member becomes subject to an Insolvency or otherwise permanently ceases operations.
- (j) This Rule 1204 does not affect the ability of the Clearing House to take steps giving rise to a new Transfer Order of opposite effect to an existing Transfer Order or part thereof if any of the events described in Rule 1204(a) occur. No Transfer Order Variation shall preclude the cancellation of a Transfer Order in any circumstances in which a Transfer Order may alternatively be cancelled by the Clearing House. The ability of the Clearing House to cancel or vary a Transfer Order shall not preclude a Transfer Order Variation from taking effect.

**Rule 1205     *Termination of Transfer Orders***

- (a) Each Payment Transfer Order shall be satisfied immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in cleared funds or full satisfaction of the relevant underlying obligations is otherwise made and recorded in the Clearing House's systems, in either case not subject to any Encumbrances except as envisaged under a Pledged Collateral Addendum or Charged Collateral Addendum or Rules relating to Pledged Collateral or Charged Collateral or set out in Part 5.
- (b) Each Position Transfer Order shall be satisfied immediately and automatically at the same time that it becomes irrevocable under Rule 1203(d) (whereupon all Contracts to which the Transfer Order in question relates will have been transferred, assigned or novated pursuant to the Rules).

- (c) Each Collateral Transfer Order shall be satisfied immediately and automatically at the later of the time when: (i) the Clearing House receives the Non-Cash Collateral in its account; or (ii) the definitive record of the Permitted Cover transferred by the Clearing Member that is the transferor is updated in the ICE Systems to reflect the successful transfer of Non-Cash Collateral to or to the order of the Clearing House pursuant to the Collateral Transfer Order.
- (d) A Block Clearing Order shall be satisfied immediately and automatically at the same time that the relevant resulting Contracts arise under Rule 401(a).
- (e) [Not Used]
- (f) A Security Derivative Delivery Order shall be satisfied immediately and automatically at the time when the Clearing House (or a Clearing Member to whom delivery is to be made directly from another Clearing Member under Part 7) receives the SFD Security that is the Deliverable, unencumbered in its account.
- (g) An Emission Allowance Delivery Order shall be satisfied immediately and automatically at the time when the Clearing House or Clearing Member that is to receive delivery of the Emission Allowance receives the Emission Allowance that is the Deliverable, unencumbered in its account at the relevant Emissions Registry.
- (h) If a Credit/Debit Payment Transfer Order or ISOC Credit/Debit Payment Transfer Order becomes irrevocable in respect of the same obligation to which a New Contract Payment Transfer Order relates, the New Contract Payment Transfer Order shall automatically be satisfied and shall not become irrevocable. It is acknowledged that New Contract Payment Transfer Orders will generally terminate in accordance with this Rule 1205(h) when standard Clearing and payment processes apply.
- (i) A New Contract Payment Transfer Order relating to a Contract shall be satisfied immediately and automatically if and at the point that the relevant Transaction or Contract is transferred or allocated to another Clearing Member pursuant to Rule 401(a)(viii) or Rule 408(a)(ii) or has become subject to a Position Transfer Order that has itself become satisfied under Rule 1205(b).

**Rule 1206**     *Provision of Information by the Clearing House and Participants*

- (a) The Clearing House and any Participant must provide, upon payment of a reasonable charge, the following information to any person who requests it, save where the request is frivolous or vexatious, within 14 days of a request being made:
  - (i) details of the Designated System; and
  - (ii) information about the Rules relevant to the functioning of the Designated System.

- (b) The Clearing House will provide a copy of information referred to in Rule 1206(a) to any Clearing Member upon request.

**Part 13 [Not Used.]**

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## Part 14 [Not Used.]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.



## Part 15 [Not Used]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## Part 16 FCM/BD Clearing Member Provisions

*This Part 16 (and other provisions relating to FCM/BD Clearing Members) shall only become applicable as from the date on which the Clearing House admits an FCM/BD Clearing Member or obtains a licence as a derivatives clearing organisation or securities clearing agency in the United States.*

### Rule 1601 *Scope*

This Part 16 of the Rules shall apply solely to FCM/BD Clearing Members. Except as provided in this Part 16 or to the extent inconsistent with this Part 16, all other provisions of the Rules applicable to Clearing Members shall apply to FCM/BD Clearing Members, and FCM/BD Clearing Members shall constitute Clearing Members for all purposes of the Rules.

### Rule 1602 *Definitions*

- (a) The term "**Clearing House DCM Segregated Account**" means an omnibus account located in the United States maintained by the Clearing House with respect to DCM Customers of an FCM/BD Clearing Member, which is segregated in accordance with Applicable Law and contains Margin (or the Permitted Cover in respect thereof) or proceeds thereof transferred by such FCM/BD Clearing Member on behalf of its DCM Customers in connection with Contracts that are U.S. Futures. The Clearing House DCM Segregated Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (b) The term "**Clearing House Non-DCM/Swap Account**" means an omnibus account maintained by the Clearing House with respect to Non-DCM/Swap Customers of an FCM/BD Clearing Member, which is maintained in accordance with Applicable Law and contains Margin (or Permitted Cover in respect thereof) or the proceeds thereof transferred by such FCM/BD Clearing Member on behalf of its Non-DCM/Swap Customers in connection with Non-DCM/Swaps. The Clearing House Non-DCM/Swap Account will consist of one or more accounts at one or more depositories which may be co-mingled to the extent permitted by the applicable provisions of the CEA and CFTC regulations.
- (c) [Not Used]
- (d) [Not Used]
- (e) The term "**Clearing House FCM/BD Segregated Account**" means the Clearing House DCM Segregated Account, or the Clearing House Non-DCM/Swap Account, as the case may be.
- (f) [Not Used]

## **Rule 1603**     *FCM/BD Contracts*

- (a) A Contract that arises under Rule 401 between the Clearing House and an FCM/BD Clearing Member shall be subject to this Part 16, regardless of whether any offsetting Contract between the Clearing House and another Clearing Member is subject to this Part 16. In respect of any Contract between the Clearing House and an FCM/BD Clearing Member, and in respect of other matters relating to such FCM/BD Clearing Member and/or FCM/BD Customer under the Rules, this Part 16 shall govern in the event of any conflict with any other provision of the Rules, and, for the avoidance of doubt, the Procedures, Clearing Membership Agreement or Pledged Collateral Addendum. With respect to an FCM/BD Clearing Member, references in these Rules to such Clearing Member in respect of a Contract recorded in a Customer Account shall be deemed to refer to such FCM/BD Clearing Member acting for the account of and on behalf of one or more FCM/BD Customers in respect of such Contract under the terms of these Rules as set forth in Rule 1603(d).
- (b) Each FCM/BD Clearing Member shall have at least one Proprietary Account and one or more Customer Accounts in which its Contracts shall be registered. Except as provided herein, references in the Rules to a Customer Account of an FCM/BD Clearing Member or to a "class" of Customer Account shall refer to one or more DCM Customer Accounts, Non-DCM/Swap Customer Accounts, General Customer Accounts, as applicable, each such account being of a different "class". Notwithstanding anything to the contrary herein, to the extent that pursuant to a CFTC rule, order or exemption (or a Rule of the Clearing House approved thereunder) it is permissible under Applicable Law for Contracts in U.S. Futures, Swaps and/or Non-DCM/Swaps (and related Margin or Permitted Cover) to be co-mingled in a single class of Customer Account, the Clearing House may permit such co-mingling in such class of Customer Account, and references herein to the relevant Customer Account and FCM/BD Customer shall thereupon be construed accordingly. Without limiting the foregoing, Permitted Co-mingled Contracts shall be treated as Swaps or U.S. Futures, as the case may be, and not as Non-DCM/Swaps, and the appropriate classes of Customer Account shall be construed accordingly.
- (c) Each Customer Account of an FCM/BD Clearing Member that has executed a Pledged Collateral Addendum shall be a Pledged Collateral Account. Margin (or Permitted Cover in respect thereof, but excluding Variation Margin which is provided to or by the Clearing House by outright transfer of cash as a settlement payment) to be provided by an FCM/BD Clearing Member in respect of a Customer Account shall be provided in the form of Pledged Collateral, but in all other respects shall be provided in the forms, amounts, times and manners required under Rule 502 and Rule 503.
- (d) Where an FCM/BD Clearing Member clears a Contract for FCM/BD Customers, (i) such FCM/BD Clearing Member becomes liable to the Clearing House in respect of such Contract to no less an extent than if such Contract were for the FCM/BD Clearing Member's own account (and without prejudice to the obligations of the FCM/BD Customers to the FCM/BD Clearing Member in respect of such Contract, including without limitation pursuant to any agreement between an FCM/BD Customer and the

FCM/BD Clearing Member); (ii) the Clearing House becomes liable and is obligated to perform to the FCM/BD Clearing Member, which in turn it is acknowledged will be acting for the account of and on behalf of such FCM/BD Customers, in respect of such Contract; (iii) the Clearing House shall be deemed to have discharged such obligations by performing to such FCM/BD Clearing Member for credit to the relevant Customer Account in respect of all payments and other obligations owed by the Clearing House under and in respect of such Contract as otherwise set forth in and subject to these Rules, without having any obligation to perform directly to the FCM/BD Customers; and (iv) without prejudice to any agreement between an FCM/BD Customer and the FCM/BD Clearing Member, such FCM/BD Customers become liable to reimburse and indemnify such FCM/BD Clearing Member in respect of performance by the FCM/BD Clearing Member under such Contract, subject, in the case of each of paragraphs (i) through (iv) of this subsection, to the provisions of this Part 16. Nothing in this Rule 1603(d) (I) shall be deemed to affect the rights or obligations of an FCM/BD Customer as against such FCM/BD Clearing Member with respect to such a Contract under Applicable Law or the terms of any agreement between the FCM/BD Clearing Member and such FCM/BD Customer; (II) shall require the Clearing House to carry out any enquiry as to the identity or existence of any FCM/BD Customer or FCM/BD Customers, except as required by Applicable Law; or (III) shall be deemed to limit the right or ability of the Clearing House to net or offset Open Contract Positions or obligations within a particular class of Customer Account of an FCM/BD Clearing Member to the extent otherwise permitted by these Rules and Applicable Law.

- (e) Rule 402(a) and clause 3.2 of the Clearing Membership Agreement shall not apply to an FCM/BD Clearing Member in respect of a Contract with respect to which it is acting for an FCM/BD Customer. None of Rule 405(d), Rule 408, or clause 3.4 of a Clearing Membership Agreement shall be deemed to preclude an FCM/BD Clearing Member from acting for an FCM/BD Customer in connection with a Contract.
- (f) Where the FCM/BD Clearing Member acts for a Customer, Rule 405(c)(ii) shall not apply to any contracts, rights, obligations or liabilities as between that Customer and the FCM/BD Clearing Member.
- (g) For purposes of Rule 303 and Rule 406(c) and for the avoidance of doubt: (i) Rule 905, Contracts and other obligations in any class of Customer Account of an FCM/BD Clearing Member shall not be netted or offset against Open Contract Positions or other obligations in any Proprietary Account of that Clearing Member; and (ii) Open Contracts or other obligations in any class of Customer Account of any FCM/BD Clearing Member may not be netted or offset against Open Contract Positions or other obligations in any other class of Customer Account of that FCM/BD Clearing Member.
- (h) Notwithstanding anything to the contrary in Rule 502 and Rule 503, for each Customer Account if required by Applicable Law or otherwise if so specified in the relevant Procedures or by Circular, Margin shall be calculated and called for on a "gross" basis across all positions of the FCM/BD Customers of a particular FCM/BD Clearing Member.

- (i) The first sentence of Rule 504(b) is not applicable.
- (j) Without limiting Rule 111, save for any liability which it cannot exclude pursuant to Applicable Laws, the Clearing House shall have no obligation or liability in respect of an Open Contract Position in a Customer Account of an FCM/BD Clearing Member other than to the FCM/BD Clearing Member (acting as set forth in Rule 1603(d)) and no Person (including an FCM/BD Customer) other than an FCM/BD Clearing Member shall be entitled to enforce or exercise any rights or remedies with respect to such Open Contract Position as against the Clearing House. The Clearing House shall have no obligation or liability in respect of any transaction, agreement or arrangement between an FCM/BD Clearing Member and an FCM/BD Customer. This Rule 1603(j) shall not be deemed to limit the rights, if any, of an FCM/BD Customer as against such FCM/BD Clearing Member in respect of such Open Contract Positions, and payments or other performance thereunder, under Applicable Law or the terms of any agreement between the FCM/BD Clearing Member and such FCM/BD Customer.
- (k) With respect to any Open Contract Position carried by an FCM/BD Clearing Member for a Customer Account, all terms of the position, as carried in the customer account on the books of the FCM/BD Clearing Member, must conform to the terms of the Open Contract Position under the Rules as in effect from time to time (including any changes therein or actions by the Clearing House in relation thereto).
- (l) This Rule 1603 is without prejudice to and shall not restrict or exclude any of the other obligations of Clearing Members under the Rules.
- (m) The Standard Terms shall not apply to FCM/BD Clearing Members.

**Rule 1604** *Additional default rules for FCM/BD Clearing Members*

The following provisions constitute default rules for purposes of the Companies Act 1989.

- (a) Any right of the Clearing House pursuant to Rule 902 or Rule 903 to transfer Open Contracts and related Margin (or Permitted Cover in respect thereof) of an FCM/BD Clearing Member that is a Defaulter will be subject to Applicable Law, including without limitation Part 190 of the CFTC Regulations.
- (b) Where an FCM/BD Clearing Member wishes to terminate or close out an Open Contract Position in any class of Customer Account with respect to an FCM/BD Customer because of a default or similar event with respect to that FCM/BD Customer, the relevant FCM/BD Clearing Member must, in accordance with Rule 406 and the Clearing Procedures, either: (i) offset such Open Contract Position against a Contract or Contracts entered into by such FCM/BD Clearing Member for such Customer Account (which may be entered into contemporaneously with a separate Contract or Contracts entered into at the same time for one of its Proprietary Accounts) for the specific purpose of liquidating such Customer Account position; or (ii) to the extent permitted by Applicable Law, Transfer such Open Contract Position from such Customer Account to one of its Proprietary Accounts, whereupon it shall be treated as

an Open Contract Position in the relevant Proprietary Account for all purposes under these Rules. Nothing in this Rule 1604(b) is intended to create a condition precedent to any step being taken under any agreement between a Clearing Member and its Customer. However, a Clearing Member shall continue to be liable to the Clearing House in respect of any Contracts until such time as they are offset in accordance with this Rule 1604(b) or otherwise terminated in accordance with the Rules and the Clearing Procedures. For the avoidance of doubt, any Open Contract Position and any such offsetting Contract or Contracts entered into by an FCM/BD Clearing Member for a Customer Account for the specific purpose of liquidating such Open Contract Positions pursuant to this Rule 1604(b) may be aggregated and/or netted pursuant to Rule 406.

- (c) Each FCM/BD Customer whose transactions are cleared through an FCM/BD Clearing Member with the Clearing House will be deemed to have consented to the actions taken in accordance with the following provisions if an Event of Default has occurred with respect to its FCM/BD Clearing Member:
- (i) the FCM/BD Clearing Member (or its Insolvency Practitioner) and/or the Clearing House shall be entitled to transfer Open Contract Positions recorded in a Customer Account in accordance with Applicable Law and the Procedures;
  - (ii) such FCM/BD Customer appoints the Clearing House as its lawful agent and attorney-in-fact to take such actions on behalf of the FCM/BD Customer as the Clearing House determines necessary or appropriate in order to effectuate such transfer with respect to the Open Contract Positions carried by the FCM/BD Clearing Member for such FCM/BD Customer, including executing any document or instrument with respect to the transfer of the Open Contract Positions and/or exercising rights and remedies to transfer such positions;
  - (iii) the FCM/BD Customer shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the FCM/BD Clearing Member, any Insolvency Practitioner for such FCM/BD Clearing Member, or the Clearing House to take action contemplated by these Rules, including, without limitation, the transfer or close-out of positions and the transfer or application of related Margin or Permitted Cover in respect thereof;
  - (iv) any determination made by the Clearing House with respect to the termination value of a Contract under the Rules or the value of any other asset or liability under Rule 905 shall be conclusive and binding;
  - (v) any amount payable by such FCM/BD Customer in respect of the termination of a Contract of a Defaulter in respect of its Customer Account shall not be netted or offset against any amount owed by such FCM/BD Clearing Member to such FCM/BD Customer under any other agreement or instrument and shall be paid directly to or as directed by the Clearing House; and

- (vi) the Clearing House applying the Default Portability Rules with respect to Open Contract Positions relating to such FCM/BD Customer, including by taking any of the following steps:
  - (A) Transferring Contract Positions to a Transferee Clearing Member;
  - (B) terminating Open Contract Positions and arranging for the entry into of new replacement Open Contract Positions with a Transferee Clearing Member (by way of novation or otherwise); and/or
  - (C) transferring Margin (in such amount as the Clearing House may determine) credited to the Customer Margin Account of its FCM/BD Clearing Member to the Customer Margin Account of the Transferee Clearing Member (and, if such a transfer occurs, the Defaulter's obligations to the FCM/BD Customer in respect of such transferred Margin shall be fully discharged).

If possible under the Default Portability Rules and any requirements of Applicable Law, the Clearing House will seek to dispose of Open Contract Positions in a Customer Account of an FCM/BD Clearing Member that is a Defaulter (by termination, liquidation or Transfer in accordance with Part 9 of the Rules) in accordance with the instructions of the relevant FCM/BD Customers or the bankruptcy trustee, as applicable, within seven calendar days of the date that the FCM/BD Clearing Member is declared a Defaulter. In the event a Transfer of Open Contract Positions to a Transferee Clearing Member has not been effected within such period, or the Clearing House for any reason deems it necessary or appropriate for its protection or the protection of market participants, the Clearing House will, subject to Applicable Laws, terminate or liquidate the Contracts pursuant to Part 9.

- (d) In respect of any Contract to which a Defaulter that is or was an FCM/BD Clearing Member and the Clearing House is or was a party, any net sum certified by the Clearing House pursuant to Rule 905(b) as payable by the Clearing House to the Defaulter in respect of any class of Customer Account of the Defaulter is intended to be treated in accordance with Applicable Laws of the United States of America, including the U.S. Bankruptcy Code and the CEA. With respect to any FCM/BD Clearing Member, the Clearing House and such FCM/BD Clearing Member intend that:
  - (i) for purposes of the relevant provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991:
    - (A) the Clearing House is a 'clearing organization';
    - (B) the Clearing House and each Clearing Member is a 'member';

- (C) the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts together constitute a 'netting contract' between those parties and include 'security agreements or arrangements or other credit enhancements related to such netting contract';
  - (D) an obligation of a Clearing Member to make a payment to the Clearing House, or of the Clearing House to make a payment to a Clearing Member, subject to a netting agreement, is a 'covered clearing obligation' and a 'covered contractual payment obligation';
  - (E) an entitlement of a Clearing Member to receive a payment from the Clearing House, or of the Clearing House to receive a payment from a Clearing Member, subject to a netting contract, is a 'covered contractual payment entitlement';
  - (F) the amount by which the covered contractual payment entitlements of a Clearing Member or the Clearing House exceed the covered contractual payment obligations of such Clearing Member or the Clearing House after netting under a netting contract is its 'net entitlement'; and
  - (G) the amount by which the covered contractual payment obligations of a Clearing Member or the Clearing House exceed the covered contractual payment entitlements of such Clearing Member or the Clearing House after netting under a netting contract is its 'net obligation';
- (ii) for purposes of the Title 11 of the United States Code (the "U.S. Bankruptcy Code"), each Contract or Open Contract Position is a 'commodity contract' or 'securities contract', as applicable and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'commodity contract' or 'securities contract', as applicable; and
  - (iii) for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, each Open Contract Position is a 'swap agreement' and the Rules, Procedures, Clearing Membership Agreement, Contracts, Pledged Collateral Addendum and any other agreement between a Clearing Member and the Clearing House relating to Clearing of Contracts constitute a 'master agreement' and include a 'security agreement or arrangement or other credit enhancement' related to a 'swap agreement'.
- (e) [Not Used]



## **Rule 1605**     *Margin and Segregation Rules*

- (a) An FCM/BD Clearing Member shall require each FCM/BD Customer to provide margin (or permitted cover in respect thereof) (such assets, "**FCM/BD Customer Collateral**") in an amount commensurate with the risk presented by each Customer Account. Such amount shall be at least equal to (or, if and to the extent so specified by Circular, greater than) the amount of Margin of each relevant type required on a gross basis by the Clearing House with respect to the relevant Open Contract Position(s), separately for each relevant class of Customer Account (regardless of whether the FCM/BD Clearing Member is required to provide such Margin to the Clearing House on a gross basis pursuant to Rule 503). Any additional required amount may be specified by the Clearing House in a Circular with reference to a percentage of required Customer Account Margin. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set and same FCM/BD Customer in the same class of Customer Account, but without giving effect to any offset or permitted offset of such Open Contract Positions against Open Contract Positions relating to a different FCM/BD Customer.
- (b) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in a DCM Customer Account arising from U.S. Futures (including for the avoidance of doubt Permitted Co-mingled Contracts recorded in such DCM Customer Account) ("**FCM/BD U.S. Futures Customer Collateral**"), the Clearing House shall receive and hold such collateral in the Clearing House DCM Segregated Account and shall hold, use and segregate such collateral as customer property in accordance with Section 4d(a) and (b) of the CEA and the regulations of the CFTC thereunder. By means of this Rule, the FCM/BD Clearing Member shall have satisfied the requirement to obtain a segregation acknowledgement letter from the Clearing House under CFTC regulations.
- (c) [Not Used]
- (d) [Not Used]
- (e) With respect to FCM/BD Customer Collateral transferred to the Clearing House in respect of Contracts registered in a Non-DCM/Swap Customer Account arising from Non-DCM/Swap Transactions (other than Permitted Co-mingled Contracts) ("**FCM/BD Other Transaction Collateral**"), the Clearing House shall hold such FCM/BD Customer Collateral as constituting the foreign futures or foreign options secured amount subject to the requirements of CFTC Rule 30.7. By means of this Rule, the FCM/BD Clearing Member shall have satisfied the requirement to obtain an acknowledgement letter of such status from the Clearing House under CFTC regulations.
- (f) In connection with any Open Contract Position and related FCM/BD U.S. Futures Customer Collateral, or FCM/BD Other Transaction Collateral provided to the Clearing House, the FCM/BD Clearing Member shall keep and maintain written records with

respect thereto as required under Applicable Law. Each FCM/BD Clearing Member shall provide such records to the Clearing House upon request and upon such other basis, if any, as may be provided in the Procedures.

- (g) For the avoidance of doubt, the acknowledgement in the first sentence of Rule 505 and the first sentence of clause 2.11 of a Pledged Collateral Addendum are intended to apply in relation to Pledged Collateral to the extent that the characterisation of any Pledged Collateral or the terms of a Pledged Collateral Addendum fall to be considered under the laws of any member state of the European Economic Area that has implemented Directive 2002/47/EC. For the avoidance of doubt, neither Rule 505 nor clause 2.11 of a Pledged Collateral Addendum are intended to affect any of: (i) the choice of law of the parties to any Pledged Collateral Addendum in respect of such addendum; (ii) the choice of law under Rule 1608; (iii) the location or governing law of any account in which Pledged Collateral is held by the Clearing House; (iv) the location or governing law of any account from or to which assets intended to become or which were previously Pledged Collateral are transferred to or from the Clearing House; (v) the existence or nature of any place of business, establishment or office in any jurisdiction of any Person; or (vi) the principal place of business or centre of main interests of any FCM/BD Clearing Member or any of its Customers or Affiliates.
- (h) [Not Used]
- (i) [Not Used]
- (j) [Not Used]

#### **Rule 1606    *Additional FCM/BD Clearing Membership Requirements***

- (a) Each FCM/BD Clearing Member that has a Customer Account shall execute and deliver to the Clearing House a Pledged Collateral Addendum to its Clearing Membership Agreement, in the form specified by the Clearing House.
- (b) FCM/BD Customer Collateral in the form of USD cash that is transferred by an FCM/BD Clearing Member to the Clearing House pursuant to the Rules shall be invested by the Clearing House only in U.S. Treasury securities constituting permitted investments under Applicable Law in accordance with the Procedures (including through direct purchases or repurchase or reverse repurchase transactions). Each FCM/BD Clearing Member that has a Customer Account shall instruct the Clearing House, in a manner to be specified by the Clearing House, whether or not such FCM/BD Customer Collateral transferred by it to the Clearing House should be so invested, and if it so instructs (or is deemed to so instruct), then by its transfer to the Clearing House of any such FCM/BD Customer Collateral in the form of USD cash, the FCM/BD Clearing Member hereby acknowledges and consents to such investment. If the FCM/BD Clearing Member fails to provide any such instruction, it will be deemed to have instructed the Clearing House to so invest such FCM/BD Customer Collateral. If an FCM/BD Clearing Member instructs the Clearing House not to so invest, the FCM/BD Clearing Member acknowledges and agrees that any such FCM/BD Customer

Collateral in the form of USD cash will not be invested by the Clearing House, to the extent permitted by Applicable Law, and may therefore be held in a bank deposit selected by the Clearing House, and may be subject to a cash management fee determined by the Clearing House from time to time.

**Rule 1607** *Additional FCM/BD Requirements for Customer Transactions*

- (a) The relationship between an FCM/BD Customer and an FCM/BD Clearing Member in respect of Open Contract Positions for that FCM/BD Customer shall be documented pursuant to and governed by a futures account agreement or clearing agreement (or equivalent document) agreed between such parties, subject to the applicable provisions of these Rules and provided that no such agreement may be inconsistent with these Rules or the Clearing Membership Agreement.
- (b) The Clearing House shall have no duties or responsibilities with respect to any Clearing House FCM/BD Segregated Account except as expressly set forth in these Rules and Applicable Law. The Clearing House shall have no obligation to monitor any requirements set forth in any agreement between an FCM/BD Clearing Member and an FCM/BD Customer. The Clearing House shall have no responsibility for the compliance by any FCM/BD Clearing Member or FCM/BD Customer with its obligations under any such agreement.
- (c) Each FCM/BD Customer for which an FCM/BD Clearing Member clears a Swap must be an "eligible contract participant" as defined in the CEA.
- (d) Each FCM/BD Customer whose transactions are cleared by an FCM/BD Clearing Member with the Clearing House will be deemed to have consented to:
  - (i) the Clearing House having the right to obtain information in relation to transactions from any Market or a Repository so as to enable the Clearing House to identify which Contracts and Margin or Permitted Cover between the Clearing House and FCM/BD Clearing Member relate to such transactions;
  - (ii) the FCM/BD Clearing Member making any disclosures in connection with FCM/BD Customer and transactions as are required by the Rules or as required by Applicable Law;
  - (iii) disclosures to, use by and disclosures by the Clearing House of information relating to the FCM/BD Customer (including Personal Data) pursuant to Rule 106;
  - (iv) submissions of and other actions relating to data concerning such transactions by the Clearing House pursuant to the Rules and the Procedures; and
  - (v) [Not Used].
- (e) [Not Used]

- (f) Each FCM/BD Clearing Member shall be required to obtain the agreement of each FCM/BD Customer to the provisions of the Rules applicable to or otherwise referring to FCM/BD Customers (including Rule 111, Rule 1603(j), Rule 1604(c) and this Rule 1607) (which agreement may be obtained through a general obligation in a customer agreement to comply with applicable clearing organisation rules) and hereby represents and warrants to the Clearing House that it has obtained such agreement.
- (g) Each FCM/BD Customer shall obtain the necessary authority from its "beneficial owners" (having the meaning given to it in article 3(6) of the Money Laundering Directive) for the immediate disclosure of relevant information to the Clearing Member or the Clearing House and, in the circumstances described in Rule 202(a)(xii), shall immediately provide to the Clearing Member or the Clearing House on request relevant information about itself and its beneficial owners as are needed by the Clearing Member or the Clearing House to apply customer due diligence measures under the Money Laundering Directive or other Applicable Laws relating to anti-money laundering and immediately forward to the Clearing Member or the Clearing House on request copies of identification and verification data and other relevant documents on itself and its beneficial owners obtained when applying those measures.

**Rule 1608     *Governing Law and Dispute Resolution***

- (a) Solely as between an FCM/BD Clearing Member and the Clearing House, those provisions of Parts 3, 5 and 16 of the Rules inasmuch as they relate solely to an issue or matter concerning:
  - (i) the pledging, transfer, holding, use and segregation of Pledged Collateral provided by an FCM/BD Clearing Member (or other property, excluding for the avoidance of doubt the Contracts themselves recorded in such an Account, recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided by an FCM/BD Clearing Member); and/or
  - (ii) the application of any net sum owed in favour of the FCM/BD Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided,

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

- (b) For the avoidance of doubt, Rule 1608(a) is an exception to Rule 102(s) which provides that the Rules and Contracts shall be governed by and construed in accordance with the laws of the Netherlands. For the avoidance of doubt, without limitation and notwithstanding Rule 1608(a), the following are governed by and shall be construed in

accordance with the laws of the Netherlands in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:

- (i) all of the provisions of the Rules concerning the calculation and determination of any net sum (except to the extent expressly provided in Rule 1604(d)) and the other default rules of the Clearing House, including all the provisions of Parts 9 and 11 of the Rules;
  - (ii) all of the provisions of the Rules relating to the Designated System, including all the provisions of Part 12 of the Rules;
  - (iii) any Dispute or issue arising as between a Non-FCM/BD Clearing Member on the one hand and the Clearing House on the other hand;
  - (iv) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided;
  - (v) any matter relating to Pledged Collateral of a Non-FCM/BD Clearing Member;
  - (vi) any matter relating to Charged Collateral or a Charged Collateral Addendum; and
  - (vii) the Contract Terms of all Contracts.
- (c) Where a dispute between an FCM/BD Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "**New York Courts**"). Consistent with the preceding sentence, the Clearing House and each FCM/BD Clearing Member hereby:
- (i) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
  - (ii) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.
- (d) All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM/BD Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction

pursuant to Rule 1608(c) and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to Rule 1608(c), does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to Rule 1608(c) heard in the New York Courts.

- (e) Nothing in this Rule 1608 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.
- (f) EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE RULES OR ANY CONTRACT OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:
  - (i) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND
  - (ii) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Rule 1608(f).

**Rule 1609**     *Modifications to Pledged Collateral Addendum*

- (a) The following provisions of each Pledged Collateral Addendum governed by New York and U.S. law have been amended pursuant to clause 4.2 thereof by virtue of the adoption of these provisions of the Rules:
  - (i) In clause 2.8, the deletion of the words: "(and to procure that any third party takes any action reasonably requested by the Clearing House)".
  - (ii) Clause 2.11, to the extent that any amendment may be regarded as necessary to give effect to Rule 1605(g).

- (iii) In clause 3.5, the replacement of the words "the Clearing House" with the words "either party".
- (iv) In clause 2.7, the definition of the term "Encumbrances" does not include retention of title.
- (v) Any other provision of the Pledged Collateral Addendum to the extent that any amendment may be regarded as necessary to give effect to Rule 1603(i).

## Part 17 [Not Used.]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.



## Part 18 [Not Used.]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## Part 19 [Not Used]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## Part 20 [Not Used]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## Part 21 [Not Used]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## Part 22 [Not Used]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## Part 23 Rules for Market Transitions

### Rule 2301 *Introduction*

- (a) These Market Transition Rules deal with certain matters occurring at and around each and any Transition Time. These Market Transition Rules form part of the Rules and are intended to be interpreted together with the Rules. All terms used but not defined in these Market Transition Rules have the meaning given to them elsewhere in the Rules. In the event of any conflict between any other section of the Rules and these Market Transition Rules in relation to any matter to which these Market Transition Rules relate, these Market Transition Rules shall prevail.

### Rule 2302 *Additional Definitions*

- (a) The term "**Exiting Market**" means a Market which will cease to offer trading in the Transitioning Contracts at the Transition Time.
- (b) The term "**Market Transition Rules**" means the rules in this Part 23.
- (c) The term "**Receiving Market**" means a Market which will offer trading in the Transitioning Contracts as from the Transition Time.
- (d) The term "**Transitioning Contracts**" means, with respect to a Transition Time, such Contracts, as are identified by the Exiting Market and Receiving Market by notice in writing to the Clearing House the trading of which is proposed to be transitioned from the Exiting Market to the Receiving Market with the consent of the Clearing House, as may be specified by the Clearing House from time to time by Circular following receipt of such notice.
- (e) The term "**Transition Time**" means a transition time designated by the Clearing House in a Circular with respect to one or more Transitioning Contracts.

### Rule 2303 *Exchange Transition*

At each relevant Transition Time, the trading of the related Transitioning Contracts will transfer from the Exiting Market to the Receiving Market, as identified in the relevant Circular.

### Rule 2304 *Redesignation of Transitioning Contracts*

- (a) With effect from each Transition Time, open Transitioning Contracts shall be automatically redesignated, without need for any further step or notices, such that they become Contracts made under the Market Rules of the Receiving Market and are no longer Contracts made under the Market Rules of the Exiting Market, for the purposes of the Rules. Any such redesignated Contract shall remain in full force and effect as between the relevant Clearing Member and the Clearing House. The Contract Terms of affected Transitioning Contracts shall be amended and restated automatically at the Transition Time accordingly.

- (b) With effect from the Transition Time, and without limiting Rule 2304(a), if the Receiving Market is a U.S. designated contract market and the Exiting Market is a non-U.S. Market that is not a U.S. designated contract market: (i) open Transitioning Contracts registered in the Non-DCM/Swap Customer Account of an FCM/BD Clearing Member shall be transferred, without need for any further step or notices, to the DCM Customer Account of such FCM/BD Clearing Member; and (ii) FCM/BD Customer Collateral constituting FCM/BD Other Transaction Collateral in respect of such open Transitioning Contracts shall be transferred to and held by the Clearing House in the Clearing House DCM Segregated Account as FCM/BD U.S. Futures Customer Collateral under the Rules, without need for any further step or notices.

## Part 24 [Not Used]

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.



## **EXHIBIT 1**

**[Not Used]**

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.

## EXHIBIT 2

### ICE CLEAR NETHERLANDS

#### CUSTOMER-CM TRANSACTIONS STANDARD TERMS

##### BACKGROUND:

In respect of a Non-FCM/BD Clearing Member and Customer using a Customer Account:

- (1) Clearing Member is a Non-FCM/BD Clearing Member, as defined in the rules (together with the procedures, as interpreted in accordance with guidance and circulars thereunder, the "**Rules**") of ICE Clear Netherlands B.V. (the "**Clearing House**") and is thereby permitted to submit certain Transactions which result in a cleared Contract arising in accordance with the Rules and the Procedures of the Clearing House.
- (2) Clearing Member and Customer are or intend to become party to one or more Customer-CM Transactions, where related cleared Contracts are requested or are to be requested by the Clearing Member to be recorded in a Customer Position Account in which Contracts may be recorded. They further desire to agree to the operation of the Rules and the Procedures in relation to any Customer-CM Transactions that may arise following the submission of the related Transactions, as further provided for in these Customer-CM Transactions Standard Terms (these "**Standard Terms**").
- (3) Clearing Member and Customer have established a "master" futures account, clearing agreement or other master agreement (the "**Cleared Transactions Master Agreement**", as amended from time to time) and, if applicable, a related collateral arrangement, whether contained in the same or another agreement with respect to cleared transactions, including such Customer-CM Transactions (which Cleared Transactions Master Agreement may be supplemented by a cleared derivatives addendum, or similar document, as agreed by Clearing Member and Customer (together, the "**Customer-Clearing Member Agreement**") and as amended and supplemented by these Standard Terms).
- (4) [Not Used].
- (5) [Not Used]
- (6) [Not Used]
- (7) [Not Used]

##### STANDARD TERMS:

1. **Defined Terms.** Terms used but not otherwise defined in these Standard Terms shall have the meaning set forth in the Rules or the Procedures, as applicable.

2. ***Exhibit to Rules.*** These Standard Terms are published by the Clearing House as an Exhibit to the Rules but do not form part of the Rules. Clearing Member and Customer agree that any amendments, modifications, restatements or supplements in respect of such Exhibit to the Rules (including the withdrawal of any part of these Standard Terms) may be effective if made by the Clearing House pursuant to the provisions of Rule 109 as if the Exhibit were Rules and as if Rule 109 applied to Customers in addition to, and in the same way as it applies to, Clearing Members. At the request of Clearing Member or the Clearing House, Customer will enter into a written confirmation of the terms of any such amendment, modification, supplement or restatement. The Clearing House is a third party beneficiary of these Standard Terms and may enforce these Standard Terms. Accordingly, unless the Clearing House provides its prior written consent: (i) any attempted amendment to or disapplication of any provision of these Standard Terms (or any amendment made hereto by the Clearing House) as between any Customer and Clearing Member shall be void and of no effect; and (ii) any agreement that any provision of any other document shall prevail over these Standard Terms (or any amendment made hereto by the Clearing House) shall be void and of no effect.
3. ***Cleared Transactions.***
- (a) Clearing Member may designate, by specifying that certain Transactions submitted to the Clearing House are to be recorded in a Customer Position Account, that certain transactions between Clearing Member and Customer shall arise at the same time as related Contracts and shall constitute Customer-CM Transactions.
- (b) Clearing Member and Customer agree that a Customer-CM Transaction shall arise automatically and without further action on the part of Clearing Member or Customer as set out in Part 4 of the Rules in respect of the related Contract.
- (c) The terms of any Customer-CM Transaction shall, save as contemplated by these Standard Terms, be identical to those of the related Contract between Clearing Member and the Clearing House (as such Contract may be amended from time to time in accordance with the Rules and/or Procedures), except that:
- (i) if the Clearing Member is the seller under the Contract it shall be the buyer under the Customer-CM Transaction and vice versa;
  - (ii) Customer's recourse against Clearing Member shall be limited and Clearing Member's obligations to Customer shall be conditional as provided for in Section 8(c) below;
  - (iii) Customer-CM Transactions shall also be subject to these Standard Terms and the terms of the Customer-Clearing Member Agreement; and
  - (iv) except where the Customer-Clearing Member Agreement provide for specific timings in respect of the performance of obligations:

- (1) any obligation of the Clearing Member to the Customer shall not be required to be performed until a reasonable period has passed after the Clearing Member has received equivalent performance from the Clearing House; and
  - (2) any obligation of the Customer to the Clearing Member may be required by the Clearing Member to be performed a reasonable period in advance of the Clearing Member becoming obliged to the Clearing House in respect of an equivalent obligation.
- (d) If any Customer-CM Transactions are governed by a Customer-Clearing Member Agreement which is not a separate agreement from any master agreement applicable to transactions between Clearing Member and Customer other than Customer-CM Transactions ("**Non-Cleared Transactions**"), Clearing Member and Customer shall distinguish in their books and records Customer-CM Transactions from Non-Cleared Transactions to the extent required to enable them to comply with the Rules, the Procedures and these Standard Terms.
- (e) For purposes of the Customer-Clearing Member Agreement, in the event of any inconsistency among or between the Customer-Clearing Member Agreement, these Standard Terms, the Rules and the Procedures with respect to Customer-CM Transactions the following provisions shall prevail in the following order: (i) first, the Rules from time to time; (ii) second, subject to (m) below, the Procedures from time to time; (iii) third, these Standard Terms from time to time; and (iv) fourth, the Customer-Clearing Member Agreement.
- (f) Customer agrees with Clearing Member that Customer-CM Transactions shall be subject to the provisions of the Rules and the Procedures applicable to Customer-CM Transactions as such Rules or Procedures are amended, modified, supplemented or restated from time to time. In particular but without limitation, Customer hereby agrees that it shall be bound by, shall comply with and shall facilitate compliance by Clearing Member with the terms and conditions set forth in Parts 5 and 9 of the Rules and Rule 202 in so far as they relate to Customer-CM Transactions.
- (g) Customer agrees that publication of a Circular by the Clearing House shall constitute valid notice by the Clearing House of any matter under or relating to the Rules, the Procedures, Customer-CM Transactions or these Standard Terms.
- (h) Clearing Member and Customer agree that, save in the circumstances contemplated by these Standard Terms and as provided for in any Customer-Clearing Member Agreement or other agreement between Clearing Member and Customer, each Customer-CM Transaction is intended to reflect exactly the operation of the related Contract. In any circumstances in which a Contract is netted (in whole or in part), terminated or voided under the Rules, the related Customer-CM Transaction will also be netted (in whole or in part), terminate or be voided by reference to the same price as the Contract is so netted, terminated or voided and a payment in respect of such price may be payable between Customer and Clearing Member pursuant to the Customer-

Clearing Member Agreement or as determined by the Clearing Member. Thereupon, Customer and Clearing Member shall have no further rights and be under no further liability with respect to such Customer-CM Transaction(s) (or, if applicable, part thereof) other than in respect of any unpaid payments under such Customer-CM Transactions (which shall be payable as and when originally payable). Clearing Member may, at its discretion, elect to continue an equivalent transaction with Customer as a Non-Cleared Transaction.

- (i) In addition, without limiting any rights that Clearing Member may have under the Customer-Clearing Member Agreement, if the Clearing House takes any step, including but not limited to the following events or actions, or any such event or action otherwise occurs (in each case including but not limited to any change in Applicable Law or any action taken by any Regulatory Authority pursuant to Applicable Law) in relation to a Contract, Clearing Member, at its option and discretion, shall be entitled to take equivalent action (or, if it cannot take equivalent action, it is not advisable to do so or equivalent action would not deal with the matter in hand, other appropriate action) in good faith and in a commercially reasonable manner, in relation to the related Customer-CM Transaction and/or against Customer, including but not limited to terminating, and/or modifying the non-economic terms of, such Customer-CM Transaction and/or making adjustments to any determination of amounts paid or payable under the Customer-Clearing Member Agreement:
- (i) imposition of a fine or disgorgement payment pursuant to Part 10, any arbitral award or any other payment obligation arising other than pursuant to the Contract Terms or Parts 5 or 11 of the Rules, where the conduct in question is caused by, or in any way due to, the Customer and/or under the Customer-CM Transaction;
  - (ii) any other event or action the effect of which is to create a material mismatch between the rights, obligations or exposures as between Clearing Member and the Clearing House pursuant to a Contract on the one hand and the rights, obligations or exposures as between Clearing Member and Customer, including without limitation pursuant to the related Customer-CM Transaction, on the other hand; and
  - (iii) any other event or action the effect of which is to result in any loss, liability, cost, claim, damages or expenses being incurred by Clearing Member in connection with a Contract where such event or action does not form part of the Contract (and so is not reflected in the related Customer-CM Transaction).
- (j) Notwithstanding Section 3(c), Clearing Member and Customer may agree different settlement arrangements between Clearing Member and Customer so as to accommodate any particular requirements of Clearing Member or Customer.
- (k) Any price or rate determined by the Clearing House under the Rules in relation to a Contract shall be used as the same price or rate by the Clearing Member in relation to the related Customer-CM Transaction(s).

- (l) Customer shall not be entitled to serve any type of notice under a Customer-CM Transaction in circumstances in which or by means that the Clearing Member would not, by virtue of the Rules or Procedures, be entitled to serve a corresponding notice on the Clearing House in relation to the corresponding Contract. Clearing Member and the Clearing House shall be entitled to treat any service of a notice in breach of this provision as invalid.
- (m) Clearing Member may, but (subject as otherwise agreed) is not obliged to, deliver any electronic notices in relation to Customer-CM Transactions at the times allowed under the Rules and Procedures.
- (n) These Standard Terms may, pursuant to the process provided for in Section 2 of these Standard Terms, from time to time, incorporate additional standard terms published by the Clearing House so as to establish mechanics for dealing with the relationship between Contracts and Customer-CM Transactions until such time as market infrastructure solutions are available to address the relevant operational issues. Such additional standard terms shall form part of these Standard Terms, may (if so specified) prevail over the applicable Procedures in respect of Customer-CM Transactions and may be amended and/or withdrawn only as provided for in Section 2 of these Standard Terms.
- (o) On each date on which the Customer enters into any Customer-CM Transaction, the Customer shall represent that neither:
  - (i) it, nor to its knowledge any of its indirect clients in respect of the Customer-CM Transaction, directors, officers, employees, agents or Representatives; or
  - (ii) to its knowledge, any of its Affiliates, or any of their directors, officers, employees, or agents,

is the target of any Sanction, unless or except:

- subject to an exemption or exception in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law;
- to the extent that any representation or statement contemplated by this Section 3(o) would be in conflict with any Applicable Laws purporting to nullify or restrict the effect of foreign Sanctions or preventing boycotts; or
- solely in respect of Persons listed under Section 3(o)(ii) who are subject to a Sectoral Sanction, the Clearing Member notifies the Clearing House of the relevant particulars under Rule 405(a)(xiii)(C) and the Person subject to the Sectoral Sanction is not prohibited from carrying out any business activity related to derivatives or spot trading.

Neither the Customer nor the Clearing Member shall rely on the exception in Section 3(o)(B) unless prior notice of at least 31 days (or such longer time as is specified by the Clearing Member) has been provided by the Customer to the Clearing Member and a similar notice of at least 30 days has been provided by the Clearing Member to the Clearing House in accordance with Rule 204(a)(xvi).

- (p) The Customer shall notify the Clearing House and Clearing Member immediately if:
- (i) it (or to its knowledge any of its indirect clients in respect of any Customer-CM Transaction, Affiliates, directors, officers, employees, agents or Representatives or its Affiliates', directors, officers, employees or agents) is or becomes the target of any Sanction;
  - (ii) it has carried out (or it becomes aware that any of its indirect clients in respect of any Customer-CM Transaction, Affiliates, directors, officers, employees agents or Representatives or its Affiliates' directors, officers, employees or agents has carried out) any Transaction prohibited by any Sanction; or
  - (iii) it (or to its knowledge any of its indirect clients in respect of any Customer-CM Transaction, Affiliates, directors, officers, employees, agents or Representatives or its Affiliates', directors, officers, employees or agents) is or becomes incorporated, registered, located, organised, domiciled or resident in a Comprehensive Sanctions Jurisdiction, unless:

subject to an exemption or exception in the Applicable Laws establishing the Sanction or any regulations thereunder or subject to an applicable licence granted by all relevant Governmental Authorities under that Applicable Law.

- (q) Each Customer or Indirect Client that has chosen individual segregation through usage of a Margin-flow Co-mingled Account or Segregated Gross Indirect Account shall be deemed to have appointed and authorised the Clearing Member to determine how the different classes of Permitted Cover should be transferred to the Clearing House in respect of the Margin-flow Co-mingled Account or Segregated Gross Indirect Account in which positions relating to such Customer are registered, for purposes of and including in each of the manners set forth in, Rule 503(i).
- (r) The Customer shall obtain the necessary authority from its "beneficial owners" (having the meaning given to it in article 3(6) of the Money Laundering Directive) for the immediate disclosure of relevant information to the Clearing Member or the Clearing House and, in the circumstances described in Rule 202(a)(xii), shall immediately provide to the Clearing Member or the Clearing House on request relevant information about itself and its beneficial owners as are needed by the Clearing Member or the Clearing House to apply customer due diligence measures under the Money Laundering Directive or other Applicable Laws relating to anti-money laundering and immediately forward to the Clearing Member or the Clearing House on request copies of

identification and verification data and other relevant documents on itself and its beneficial owners obtained when applying those measures.

4. ***Margin Requirements.***

- (a) Subject as agreed otherwise in the Customer-Clearing Member Agreement, Clearing Member shall be entitled to require each of its Customers in respect of Contracts to provide margin (or permitted cover in respect thereof) in an amount no less than the amount of Margin of each relevant type required on a gross basis by the Clearing House with respect to the relevant Open Contract Position(s), separately for each of its Customer Accounts. For this purpose, "gross basis" shall mean that the margin requirement will be determined giving effect to any offset permitted under the Rules of such Open Contract Positions against Open Contract Positions relating to the same Set and Customer in the same Customer Account, but without giving effect to any offset or permitted offset of such Open Contract Positions against Open Contract Positions relating to a different Customer.
- (b) Customer agrees that Clearing Member may use any margin or other assets provided by Customer under the Customer-Clearing Member Agreement in circumstances in which the Clearing Member's obligations, representations and warranties to and agreements with the Clearing House are entered into and made (as applicable) under the relevant Clearing Membership Agreement, Rule 504, Rule 505 and Part 11 and any Charged Collateral Addendum or Gold Addendum, without any breach by the Clearing Member of any such provision. On each occasion on which collateral is transferred by the Clearing Member to the Clearing House for credit to a Customer Account in which any Customer-CM Transactions of the Customer is recorded, the Customer shall be deemed to give all the same representations, warranties and acknowledgments as are given by the Clearing Member pursuant to Rule 504(c)(iii), (iv) and (v) (save that the reference to 'Clearing Member' in Rule 504(c)(iv) will be treated as a reference to 'Customer' and the reference to 'any third party' in Rule 504(c)(v) will be treated as a reference to 'the Customer'), Rule 504(g) and Rule 505. Customer shall take any action reasonably requested by the Clearing House or the Clearing Member that may be necessary or desirable to create, preserve, perfect or validate the right, title or interests of the Clearing House in any Margin or Permitted Cover or to enable the Clearing House to exercise or enforce any of its rights under the Rules with respect to Margin or other Permitted Cover. Customer shall not give notice of any Encumbrance related to Permitted Cover that is held by the Clearing House in any Account. Customer shall not assert that: (i) it is the beneficiary of or interested party in any Encumbrance with respect to any Permitted Cover held by the Clearing House; (ii) it has given any notice of any such Encumbrance to the Clearing House; or (iii) the Clearing House otherwise should be attributed with notice in respect of any such Encumbrance. Nothing in this provision is intended to prevent any Encumbrance arising or subsisting in favour of a Customer in respect of any receivable of a Clearing Member in respect of a Customer Account nor is intended to result in any representation, warranty or undertaking concerning the same, solely: (x) as is permitted to arise or subsist under Applicable



Laws without breach of these Rules or the Clearing Membership Agreement; or (y) as is permitted under a Charged Collateral Addendum.

Notwithstanding the above, nothing in this Clause 4 is intended to prevent any Encumbrance arising or subsisting in favour of a Customer in respect of any receivable of a Clearing Member in respect of a Customer Account (nor is intended to result in any representation, warranty or undertaking concerning the same), solely as is permitted to arise or subsist under Applicable Laws without breach of these Rules, the Clearing Membership Agreement or any Charged Collateral Addendum.

5. ***Events of Default and Termination.***

- (a) In the event of the declaration by the Clearing House of an Event of Default (as defined in the Rules) with respect to Clearing Member (such an event being an "**ICE-Declared Default**"), whether or not any other default (howsoever defined or described) has also occurred under the Customer-Clearing Member Agreement or otherwise, Customer shall not be entitled to exercise any remedies with respect to Customer-CM Transactions pursuant to the Customer-Clearing Member Agreement or otherwise, except as provided herein (and any other remedies being exercised at the time of the declaration of such ICE-Declared Default shall cease and be superseded by the applicable provisions of these Standard Terms).
- (b) If an ICE-Declared Default occurs at a time when Clearing Member has not already terminated the relevant Customer-CM Transactions by reason of the occurrence of an event of default or termination event relating to Customer, Clearing Member may not take any action against Customer that may interfere with the Default Portability Rule resulting in Customer discharging its obligations to Clearing Member as provided for in Section 6(e) below. Save for such restriction, nothing in these Standard Terms will limit Clearing Member's remedies under the Customer-Clearing Member Agreement in respect of Customer-CM Transactions if an event of default or termination event (or similar concept) with respect to Customer occurs under the Customer-Clearing Member Agreement.
- (c) Upon an ICE-Declared Default:
  - (i) in accordance with Section 3, as a result of no further liabilities, obligations or rights of the Clearing Member falling due for performance or being capable of enforcement under any Contracts or these Rules prior to calculation of the final net sum payable under the relevant Customer Account pursuant to Part 9 (except as is required to achieve settlement finality of irrevocable Transfer Orders pursuant to Part 12), it shall be a condition precedent to performance of any obligations on the part of the Customer (except as is required to achieve settlement finality of irrevocable Transfer Orders to which the Customer is bound pursuant to Part 12) under the Customer-CM Transaction that either: (A) the related Contract has been terminated; or (B) the date of payment of the relevant net sum as between the Customer and Clearing Member pursuant to the

Cleared Transactions Master Agreement and Applicable Laws, following completion of any applicable close-out netting or Insolvency processes occurs;

- (ii) any provision of a Cleared Transactions Master Agreement requiring termination of a Customer-CM Transaction upon, prior to or following an ICE-Declared Default or giving a party the right to terminate (other than such a termination or right effective contemporaneous with termination of the related Contract), shall be ineffective unless (A) one of the parties is incorporated in Switzerland or any other jurisdiction as may be specified by the Clearing House for such purposes; or (B) the Clearing House provides its written consent to such termination provision being effective, which consent may be given after declaration of the relevant ICE-Declared Default; and
- (iii) if a provision of the Cleared Transactions Master Agreement that provides for the termination of the Customer-CM Transaction is not suspended or disappplied pursuant to Sections 5(a) or 5(c)(ii): (A) Section 3(h) shall nonetheless still apply to determine the termination price of any Customer-CM Transaction; and (B) if a Customer-CM Transaction is so terminated other than at a time contemplated by Section 5(c)(ii), Section 6 of these Standard Terms shall apply mutatis mutandis in relation to such terminated Customer-CM Transaction and rights, obligations and liabilities relating thereto.

6. ***Post-default Portability; Termination and Valuation of Cleared Transactions.***

(a) [Not Used]

(b) Unless it has notified the Clearing Member and Clearing House in writing to the contrary, Customer hereby consents and agrees that, in the event of an ICE-Declared Default, whether or not Customer has submitted a Porting Notice, the Clearing House shall be entitled (but shall not be obliged) to apply the Default Portability Rules with respect to Contracts to which Clearing Member and Customer's Customer-CM Transactions relate, including by taking any of the following steps:

- (i) transferring, assigning, selling or novating Customer-CM Transactions (and related Contracts) to any Transferee Clearing Member;
- (ii) terminating Customer-CM Transactions (and related Contracts) and arranging for the entry into of new replacement Customer-CM Transactions (and related Contracts) with any Transferee Clearing Member (by way of novation or otherwise); and/or
- (iii) transferring Margin (in such amount as the Clearing House may determine) credited to the Customer Margin Account of Clearing Member to the Customer Margin Account of the Transferee Clearing Member and, if such a transfer occurs, Clearing Member's obligations to Customer in respect of the transferred Margin shall be fully discharged.

- (c) In the event that the Clearing House arranges for a replacement Contract and related Customer-CM Transaction pursuant to Section 6(b)(ii), the Customer-CM Transaction with the Transferor Clearing Member shall be deemed terminated at the same time that the replacement Contract and related Customer-CM Transaction is entered into. Customer shall take no action, including but not limited to attempting to obtain a court order, that could interfere with the ability of the Clearing House to take action contemplated by Part 9 of the Rules, including, without limitation, the Transfer of Contracts and Customer-CM Transactions, the transfer of any related Margin or other collateral or cover (or contingent cover) for the same or the imposition of the Transferee Clearing Member's form of Customer-Clearing Member Agreement where so permitted under the Default Portability Rules.
- (d) Customer hereby appoints the Clearing House as its lawful agent and attorney-in-fact to take such actions on behalf of the Customer as the Clearing House determines necessary or appropriate in order to effect the Default Portability Rules with respect to Customer's Customer-CM Transactions and the Customer Margin Account, including executing any document or instrument with respect to the Transfer or replacement of the Customer-CM Transaction and/or exercising rights and remedies to terminate or Transfer Customer-CM Transactions, including (without limitation) the execution of any Transfer, or the exercise of any termination notice or the transfer of amounts recorded in the Customer Margin Account. Such appointment shall not be revoked by Customer. Customer shall take such actions as the Clearing House and/or a Transferee Clearing Member may request to give full effect to the Default Portability Rules, including without limitation execution of documentation confirming or agreeing to any terms specified by Transferee Clearing Member pursuant to Rule 904(j).
- (e) In connection with any Transfer of Customer-CM Transactions pursuant to the Default Portability Rules, any termination payments owed between Customer and Clearing Member in respect of the relevant Customer-CM Transactions (determined in accordance with the Rules and the provisions of the Customer-Clearing Member Agreement), any termination payments owed between Clearing Member and the Clearing House in respect of the related Contracts (which in each case shall be determined by the Clearing House pursuant to its default rules), any upfront Variation Margin payments owed between Customer and the Transferee Clearing Member with respect to the initiation of the replacement cleared transactions and any upfront Variation Margin payments owed between such Transferee Clearing Member and the Clearing House with respect to the initiation of replacement Contracts shall be equal.
- (f) In the event of an ICE-Declared Default:
- (i) There will be a minimum period, after issuance by the Clearing House of a Circular including a Default Notice naming a Clearing Member, for Customers and their Transferee Clearing Members to notify the Clearing House of their agreement that Contracts and/or Margin can be Transferred to a Transferee. A Porting Notice must be received by the Clearing House within 4 hours of the Default Notice being published in order to be assured of being acted upon, subject to the below. Any Porting Notice, in order to be valid, must:

be in writing;

concern and be duly authorised and executed by a Customer who would not, if it were a Clearing Member, be capable of being declared a Defaulter;

concern and be duly authorised and executed by a Transferee Clearing Member who is not a Defaulter;

be delivered to the Clearing House electronically in the form and to the address specified by the Clearing House;

concern positions which have not already been closed out or Transferred; and

otherwise comply with the requirements of Part 9 of the Rules.

In the case of an Individually Segregated Margin-flow Co-mingled Account, Standard Omnibus Indirect Account, Segregated Gross Indirect Account, a Porting Notice must be in respect of the single Customer interested in the Account in order to be valid. In the case of a Customer Account that is neither an Individually Segregated Margin-flow Co-mingled Account, Standard Omnibus Indirect Account, Segregated Gross Indirect Account, the Porting Notice must be in respect of and executed by all Customers interested in the Account in order to be valid.

Subject to Rule 904(c), the Clearing House will act upon Porting Notices received by it within the 4 hour period specified above. The Clearing House may also act upon other Porting Notices received by it after the end of such period, at its discretion. However, Customers and Transferee Clearing Members acknowledge that due to operational constraints and depending on market conditions, it may not be possible for the Clearing House to process all Porting Notices (whether received within the 4 hour period or thereafter) within a reasonable period of time. Porting Notices received within the initial 4 hour period will be prioritised over any other notice. The Clearing House may select Porting Notices to be dealt with in such order as it sees fit, based on such criteria as it determines are relevant, including completeness and due execution of Default Notices, legibility, time of receipt, size of positions, lawfulness of porting, Customer jurisdiction of incorporation or place of business, whether risk increasing or risk decreasing and satisfaction of the requirements of Part 9 of the Rules. The Clearing House will not be obliged to comply with any Porting Notice which has not been acted upon by it:

if the Default Notice was issued before 13:00 hrs on a Business Day prior to the close of business on the same Business Day;

- if the Default Notice was issued on a day which is not a Business Day prior to close of business on the next following Business Day; or
- if the Default Notice is issued after 13:00 hrs on a Business Day prior to noon of the next following Business Day.

At the end of this period, the Clearing House may, at its sole discretion, terminate any open Contracts and related assets of the Defaulter or undertake other Transfers under consents provided for in the Rules and these Standard Terms. The deadlines for the delivery of prioritised Porting Notices or for the Clearing House to act upon any Porting Notices may be extended at the Clearing House's discretion by Circular. If, as of the end of the period for acting upon Default Notices, any Customer-CM Transactions have not been Transferred pursuant to the Default Portability Rules, such Customer-CM Transactions shall be deemed terminated, and in such case an early termination date (or similar concept) in respect of the Customer-CM Transactions shall occur under the Customer-Clearing Member Agreement, on the applicable date on which the Clearing House terminates the related Contracts pursuant to Part 9 of the Rules.

- (ii) Notwithstanding anything to the contrary in the Customer-Clearing Member Agreement or any other agreement or arrangement between Clearing Member and Customer, the amount payable pursuant to the Customer-Clearing Member Agreement in respect of the termination of the Customer-CM Transactions shall be determined on the basis of the termination value calculated by the Clearing House for the corresponding Contracts pursuant to Part 9 of the Rules but subject always, in the case of amounts due from Clearing Member, to Section 8(c) below. Customer hereby agrees and acknowledges that any determination made by the Clearing House with respect to the termination value of a Contract or a Customer-CM Transaction shall be conclusive and binding upon Customer for this purpose to the same extent that any 'net sum' declared by the Clearing House is conclusive and binding on Clearing Member. The obligation of a Clearing Member to a Customer under a Customer-CM Transaction shall be discharged to the extent that the Clearing House makes payment of any net sum or any part thereof direct to the Customer.
  - (iii) Customer acknowledges and agrees that the allocation and, subject to Applicable Law, return of available amounts in the relevant Customer Margin Account shall be governed by Part 9 of the Rules, which may reduce or defer Clearing Member's obligations to Customer.
- (g) For the avoidance of doubt, nothing in these Standard Terms shall prevent other amounts being due and payable between Clearing Member and Customer as provided for in the Customer-Clearing Member Agreement.

## 7. ***Consents to Disclosure.***

Customer hereby consents to:

- (i) the Clearing House having the right to obtain information in relation to the Customer-CM Transactions from any Market or Repository so as to enable the Clearing House to identify which Contracts and Margin or Permitted Cover between the Clearing House and Clearing Member relate to such Customer-CM Transactions;
- (ii) Clearing Member making any disclosures in connection with Customer and Customer-CM Transactions as are required by the Rules and/or Procedures or as are required by Applicable Law;
- (iii) disclosures to, use by and disclosures by the Clearing House of information relating to Customer (including Personal Data) pursuant to Rule 106; and
- (iv) submissions of and other actions relating to data concerning Customer-CM Transactions by the Clearing House pursuant to Section 12, the Rules and the Procedures.

8. ***Certain Limitations.***

- (a) Customer agrees and acknowledges for the benefit of the Clearing House and Clearing Member that: (i) the liability of the Clearing House to Customer shall be excluded and limited as set forth in Rule 111 and specifically that the Clearing House shall have no liability or obligation to Customer in respect of a Customer-CM Transaction or otherwise nor shall it have any duty of care directly to Customer, in any case whether in tort, contract, restitution, in respect of any Contract, pursuant to the Rules, pursuant to a Clearing Membership Agreement, pursuant to these Standard Terms or otherwise, save for any liability which by law may not be excluded, (ii) in no event shall Customer attempt to interfere with the ability of the Clearing House to exercise its rights hereunder or as set forth in the Rules, the Procedures or any Clearing Membership Agreement, and (iii) it is not entitled to, and will not, petition a court or take any action or commence any proceedings against the Clearing House, directly or indirectly and will if any such action is taken fully indemnify the Clearing House against any costs, losses or other consequences of Customer taking any such action. Customer agrees that Clearing Member acts as principal at all times in all its Contracts with the Clearing House.
- (b) The Clearing House shall have no responsibility for the compliance by Clearing Member or Customer with its obligations under a Customer-Clearing Member Agreement. The Clearing House shall be under no obligation to enquire into, and shall be fully protected in relying on, any instructions or directions with respect to a Customer Account or the assets recorded therein or transferred thereto or therefrom under the Rules received from a Person that the Clearing House believes to be authorised to act on behalf of Clearing Member.
- (c) Customer agrees and acknowledges that the performance and payment obligations of Clearing Member to Customer are limited by and contingent on the actual performance or payment by the Clearing House under the related Contract and that Clearing Member

shall have no responsibility for the compliance by the Clearing House (or any person other than that Clearing Member) with its obligations, including without limitation, under any Contract, the Rules or the Procedures. In the event that the Clearing House defaults in or defers or varies the payment or performance of any obligation otherwise owed by it in respect of a Contract corresponding to a Customer-CM Transaction (including, without limitation, any shortfall in repayment of Permitted Cover or any recovery of less than 100% of amounts owed by the Clearing House or property provided to the Clearing House in circumstances in which Rule 912 applies), Clearing Member will be entitled to make a corresponding deduction, withholding or other reduction from, or tolling or deferring of, any payment or performance otherwise owed by it under such corresponding Customer-CM Transactions and/or to make its performance under such Customer-CM Transactions conditional on performance by the Clearing House under the related Contract (and where any such deduction may be attributable to both Customer-CM Transactions and to Customer Account Contracts of other Customers, Clearing Member shall allocate such deduction among such contracts on a *pro rata* basis) provided that if such defaulted or delayed payment or performance is subsequently obtained by Clearing Member from the Clearing House (in whole or in part), Clearing Member shall thereupon make the corresponding payment or performance (or portion thereof) to Customer.

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

Subject always, and without prejudice, to any provisions of a Customer-Clearing Member Agreement: (i) if Clearing Member is required to pay to Clearing House any additional amount under Rule 301(j) or the Contract Terms with respect to a Contract corresponding to a Customer-CM Transaction, Customer shall be obliged to pay to Clearing Member an amount equal to such additional amount (or the applicable portion thereof), but without duplication of any additional amount payable by Customer under any relevant provision of the Customer-Clearing Member Agreement, (ii) for the avoidance of doubt, and without prejudice to the above, if Clearing House deducts or withholds any amount otherwise payable to Clearing Member on a Contract pursuant to Rule 301 or the Contract Terms, Clearing Member shall be entitled to make a corresponding deduction from any amount otherwise payable by Clearing Member to Customer under a corresponding Customer-CM Transaction, and (iii) where such additional amount or deduction may be attributable to both Customer-CM Transactions and to Customer-CM Transactions of other customers, Clearing Member shall allocate such additional amount or deduction among such contracts on a *pro rata* basis.

10. ***Reliance on Transactions and submissions to Repositories etc.***

The Clearing House shall be entitled to assume, without enquiry, that (i) at each time at which a Customer-CM Transaction arises pursuant to Part 4 of the Rules, the respective obligations of Clearing Member and Customer under such Customer-CM Transaction constitutes its legal, valid and binding obligations enforceable in accordance with their respective terms, subject to applicable Insolvency laws or similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles in general application (regardless of whether enforcement is sought in a proceeding in equity or at law); and (ii) that the Clearing House is duly authorised by Clearing Member and Customer to submit, in accordance with the

Rules and the Procedures, details of any Transaction or Customer-CM Transaction to a Repository and to amend or delete such records from time to time in accordance with the Rules and the Procedures, in each case subject to Applicable Law. For the avoidance of doubt, Clearing Member shall not take any actions in any Repository of a nature specified in this Section and neither the Clearing House nor Clearing Member will be liable to Customer for any action or omission of the Clearing House as a result of having made such submissions. The sole remedy of Customer in the case of any error shall be to request that Clearing Member request the Clearing House to amend or correct any error pursuant to the Rules or Procedures.

#### 11. ***Third Party Rights.***

The Clearing House shall be entitled to rely upon and enjoy the benefit of the representations, warranties, agreements, obligations and covenants of the Customer under these Standard Terms and such representations, warranties, agreements, obligations and covenants constitute irrevocable third party stipulations for no consideration (*onherroepelijk derdenbeding om niet*) for the benefit of the Clearing House. Other than as set out in this Section 11, no persons other than Clearing Member and Customer shall have the right to enforce any provision of these Standard Terms as a third party stipulation (*derdenbeding*) or otherwise.

#### 12. ***Miscellaneous.***

- (a) ***Entire Agreement.*** These Standard Terms (together with the Customer-Clearing Member Agreement and the Rules and the Procedures incorporated by reference herein) constitutes the entire agreement and understanding of Customer and Clearing Member with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- (b) ***Headings.*** The headings used in these Standard Terms are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting these Standard Terms.
- (c) ***Governing Law.*** Any contractual or non-contractual disputes arising out of or in connection with the Customer-Clearing Member Agreement are governed by and shall be construed in accordance with the law specified in the Customer-Clearing Member Agreement and subject to the non-exclusive jurisdiction of the courts specified in the Cleared Transactions Master Agreement provided that: (i) Sections 6(d) and 11 of these Standard Terms shall be governed by and shall be construed in accordance with the laws of the Netherlands and are subject to arbitration under Rule 117 as if such provisions of these Standard Terms were Rules and the parties were bound thereby as if they were both Clearing Members, notwithstanding any choice of law or jurisdiction in the Cleared Transactions Master Agreement; and (ii) each provision of the Rules and the Procedures incorporated by reference herein or in the Customer-Clearing Member Agreement shall be governed by and construed in accordance with the laws of the Netherlands, as set forth in the relevant governing law provision of such document (it being understood that no Pledged Collateral Matters are of relevance to Non-FCM/BD Clearing Members).



(d) ***Intellectual Property.*** Customer agrees to the representations, warranty and undertaking specified in Rule 406(g).

13. ***[Not Used]***

## **EXHIBIT 3**

**[Not Used]**

IMPORTANT NOTICE: The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC, and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum. Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only. Please refer to <https://www.theice.com/clear-netherlands> for further guidance.