



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

## Clearing Rules

~~16 September 2016~~

The term "**Appeals Panel**" means the panel at which an appeal of a decision of a Disciplinary Panel is heard pursuant to Rule 1005.

The term "**Applicable Credit Derivatives Definitions**" means, in relation to any provisions of the Rules or the Contract Terms applicable to a CDS Non-2014 Contract or any Component Transaction in the form of a CDS Non-2014 Contract, the 2003 Credit Derivatives Definitions and, in relation to any provisions of the Rules or the Contract Terms applicable to a 2014-type CDS Contract or any Component Transaction in the form of a 2014-type CDS Contract, the 2014 Credit Derivatives Definitions.

The term "**Applicable Law**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession, regulatory requirement, judgment or decision of a Governmental Authority and, for the avoidance of doubt, includes all the provisions of EMIR, the FCA Rules, the PRA Rules, rules, regulations, guidance and approach documents of the Bank of England, 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 law~~ [Insolvency laws](#) (including the U.S. Bankruptcy Code).

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 Regulations 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 Contribution**" means an F&O Assessment Contribution, a CDS Assessment Contribution or an FX Assessment Contribution.

The term "**Banking Consolidation Directive**" means Directive 2006/48/EC.

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 or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (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

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 "**Individually Segregated Sponsored Account**" means an Account of a Sponsored Principal, being a kind of Customer Account at the Clearing House for the recording of positions and related Margin, in which solely assets and positions relating to the Sponsored Principal are recorded, enabling the Sponsor and Clearing House to distinguish the assets and positions recorded in the relevant Individually Segregated Sponsored Account from assets and positions relating to other Customers of the Sponsor in its capacity as a Clearing Member and from the assets and positions relating to other Sponsored Principals and Customers.

The term "**Initial Margin**" means the Permitted Cover required to be provided or actually provided (by way of title transfer pursuant to a Clearing Membership Agreement or Sponsored Principal Clearing Agreement or by way of pledge pursuant to a Pledged Collateral Addendum) to the Clearing House as collateral for the obligations of a Clearing Member or Sponsored Principal in respect of CDS Contracts, including Portfolio Risk Margin, Physical Settlement Margin and other margin transferred in relation to CDS Contracts pursuant to Part 5 including any margin provided in relation to CDS 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, but excluding in any case Mark-to-Market Margin and any Customer-CM Collateral that is not transferred to the Clearing House and includes, where the context so requires, any proceeds of realisation of the same.

The term "**Initial Payment**" means, in relation to a CDS Contract, the payment, if any, specified as the "Initial Payment Amount" under the Contract Terms for such CDS Contract and, in relation to a Bilateral CDS Transaction or CDS Trade Particulars, the payment, usually described therein as the "Initial Payment Amount" or "Additional Amount", payable by one party thereto to the other usually not later than the third business day after the trade date of such Bilateral CDS Transaction or CDS Trade Particulars.

The term "**Insolvency**" means, in relation to any Person: a bankruptcy or winding-up petition being presented; a bankruptcy order being made; 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; 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 pursuant to which any of that Person's securities, property, rights or liabilities are transferred; ~~a Governmental Authority exercising one or more of its stabilisation powers under the Banking Act 2009 in respect of that Person;~~ [\(other than a Resolution Step\)](#); 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 Bankruptcy (Scotland) Act 1985) and, for CDS Clearing Members and Sponsored Principals in respect of CDS Contracts only, also any event not otherwise falling within this definition but which constitutes a Bankruptcy in respect

of such CDS Clearing Member or Sponsored Principal; 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, administrator, temporary administrator, bank administrator, manager~~or~~, administrative receiver, liquidator, conservator, examiner, trustee in bankruptcy, relevant office-holder (under the Companies Act 1989) or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

The term "**Intellectual Property**" means 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 any 'specified investment' as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or any loan, bond, obligation or debenture referenced in a CDS Contract.

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 Rules 909 to 911 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/Initial 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, other than any such losses, liabilities, damages, costs, claims, shortfalls or expenses resulting directly from a failure by the Clearing House to comply with its own investment policies. For the avoidance of doubt, "Investment Losses" shall not include losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Clearing House as a result of a Custodian default.

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

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

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

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) or Rule 1516(b)). In relation to an Individually Segregated Sponsored Account, the Sponsor is a Representative of the Sponsored Principal.

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 under the Banking Act 2009 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).

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) made in accordance with Rule 109.

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

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 "**SBS Customer**", in respect of an FCM/BD Clearing Member, means any FCM/BD Customer with respect to any Contract arising as a result of CDS Trade Particulars relating to an SBS and registered in an SBS Customer Account of that FCM/BD Clearing Member. A Person may be a SBS Customer in relation to certain Contracts and another category of FCM/BD Customer in relation to other Contracts.

The term "**SBS 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 clearing agency registered with the SEC under the Exchange Act), opened in the name of the FCM/BD Clearing Member relating to Contracts to which the FCM/BD Clearing Member is a party as a result of it acting for one or more SBS Customers (whose transactions the Clearing Member requests be recorded in an SBS Customer Account where that is required in accordance with Section 3E(b) of the Exchange Act and SEC Rule 15c3-3, insofar as applicable and any other applicable rules of the SEC) 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 SBS Customers or groups of SBS Customers.

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

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

The term "**Transaction Rights or Obligations**" means the rights, liabilities or obligations (if any) of a Clearing Member, Sponsor or Sponsored Principal 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 (excluding a Sponsored Principal) 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 under an F&O Contract 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, novation, sale or termination and replacement 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 under an F&O Contract and includes reference to the Seller where transfer or delivery is to be made by the Seller.

The term "**Tribunal**" means an arbitral tribunal established under Rule 117.

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, whether as a result of section 48Z of the Banking Act or otherwise.

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 "**U.S. Person**" means a Person that is organised under the laws of or has its principal place of business in the United States of America or a state or territory thereof.

The term "**Variation Margin**" means the cash required to be provided or actually provided by a Clearing Member or Sponsored Principal to the Clearing House or by the Clearing House to

- (xviii) 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;
- (xix) have demonstrated its ability to make available to the Clearing House sufficient Margin and make Margin payments as required pursuant to these Rules;
- (xx) have made the required Guaranty Fund Contributions;
- (xxi) not be subject to an Insolvency [or Unprotected Resolution Step](#);
- (xxii) be either a Person that is not a natural person or a Person that is subject to business taxation for the purposes of Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments;
- (xxiii) demonstrate operational competence in respect of the classes of contracts that it proposes to clear;
- (xxiv) be an "eligible contract participant", as defined in Section 1a of the U.S. Commodity Exchange Act;
- (xxv) if it is not incorporated in England and Wales, have appointed an agent for the service of process pursuant to Rule 113(e);
- (xxvi) if it is to provide a Controller Guarantee from a Controller that is not incorporated in England and Wales, have appointed an agent for the service of process in respect of the Controller following the same provisions as are applicable to Clearing Members pursuant to Rule 113(e);
- (xxvii) if it is to clear transactions on behalf of Customers, have the necessary additional financial resources and operational capacity to perform this activity;
- (xxviii) could be declared were the applicant to be a Clearing Member;
- (xxix) 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 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;
- (xxx) satisfy the Clearing House that it, its officers, directors and Controllers would each meet the requirements for an 'approved person' (for individuals) or 'controller' (for partnerships, companies and other bodies corporate) under applicable FCA Rules and PRA Rules;

- (xxxix) hold a Nominated Bank Account or Accounts (as necessary) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House;
  - (xxxii) 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;
  - (xxxiii) applied pursuant to the Money Laundering Regulations 2007; or (B) have been subject to customer due diligence measures under the Money Laundering Regulations 2007 to the Clearing House's satisfaction;
  - (xxxiv) not be prevented from entering into any Contract or using the Clearing House as a result of any sanctions administered or imposed by the European Union, H.M. Treasury, the Office of Foreign Assets Control of the U.S. Department of the Treasury, the United Nations Security Council or any other relevant Governmental Authority affecting the Clearing Member or any of its assets;
  - (xxxv) be incorporated or registered in and access the Clearing House from only jurisdictions whose Applicable Laws relating to ~~insolvency~~[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;
  - (xxxvi) not be subject to statutory disqualification under Applicable Law;
- (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), and for CDS Clearing Member applicants only, Rule 201(i), and, in addition, for FX Clearing Member applicants only, Rule 201(j). 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.



- (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; and
  - (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 for CDS, Segregated Customer Omnibus Accounts for F&O and Segregated Customer Omnibus Accounts for FX, as well as each Individually Segregated Sponsored Account and Margin-flow Co-mingled Account which is treated by it as a client transaction account under CASS 7.18.
- (b) Prior to making available services relating to Clearing of CDS, F&O or FX to any Customer, a Non-FCM/BD Clearing Member is obliged to procure the agreement of such Customer to the CDS Standard Terms, F&O Standard Terms or FX Standard Terms respectively, in such a way that:
- (i) the relevant 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 ~~bankruptcy, reorganisation, insolvency, moratorium or~~ Insolvency laws and similar ~~laws~~ 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)); and
  - (iii) automatic early termination does not apply under such agreement in respect of either the Non-FCM/BD Clearing Member or its Customer and the relevant Customer-CM Transactions (unless the party, or each of the parties, to which automatic early termination applies is incorporated in Switzerland, Germany or any other jurisdiction approved by the Clearing House for such purposes).

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.

- (c) Where:

## Rule 204(a)

- (viii) of an Insolvency [or Resolution Step](#) affecting it or any of its Group Companies (and must provide a copy of such notice to the Bank of England pursuant to Part 12);
  - (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 of any Applicable Law relating to its status and performance as a Clearing Member or of the Rules, including full particulars of the breach; or
  - (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).
- (b) Where a Clearing Member is regulated by the FCA or PRA:
- (i) Notifications under Rule 204(a)(i) shall only be required where a change of Control is notifiable to the FCA or PRA; and in such cases the Clearing Member should provide the Clearing House contemporaneously with a copy of all submissions sent to the FCA or PRA relating to the change of Control; and
  - (ii) 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 FCA or PRA under the Principles for Business in the FCA Rules or PRA Rules.

**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

- (2) each affected Buying Counterparty and Selling Counterparty shall submit, or, as the case may be, resubmit the terms of such FX transaction to the relevant Repository;
  - (B) 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 FX Contracts made pursuant to Rule 401(l); and
  - (C) any Transaction Rights or Obligations shall be deemed never to have been affected by Rule 402(b).
- (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) For the avoidance of doubt, Rules 404(b), (c) and (d) shall only apply to CDS Contracts and FX Contracts and shall not apply to F&O Contracts.
  - (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 and any Sponsor Agreement (or, in the case of a Sponsored Principal, its obligations under the Sponsored Principal Clearing Agreement), any Contract and Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable ~~bankruptcy, reorganisation, insolvency, moratorium~~[Insolvency laws](#) or similar ~~laws~~[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 (or, in the case of a Sponsored Principal, the

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 or any of the Clearing Member's or Clearing House's policies, procedures or controls.
- (e) When a CDS Contract arises, the Clearing House shall make the warranties and the Buying Counterparty and Selling Counterparty shall make the additional representations and warranties as in each case are set out in the CDS Procedures.
- (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 ~~bankruptcy, reorganisation, insolvency, moratorium or~~ Insolvency laws and similar laws 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 day or at such other frequency as the Clearing House determines at its discretion either generally or in respect of any Clearing Member or Sponsored Principal, 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, for F&O Contracts, through the Clearing Processing System. The Clearing House shall have no obligation to notify any Clearing Member, Sponsored Principal 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 an F&O Clearing Member so instructs the Clearing House in accordance with the Clearing Procedures, the Clearing House will net particular buy and sell positions (for a Set of Futures that are F&O Contracts), or Long and Short positions (for a Set of Options that are F&O Contracts) within the Clearing Member's Open Contract Position in respect of one of a Clearing Member's Customer Position Accounts, provided that

## Rule 901(a)

- (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, licence or authorisation) by any Governmental Authority, Regulatory Authority, Exchange, Clearing Organisation or Delivery Facility;
  - (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.

## Rule 903

- (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 Deriv/SERV or any relevant Repository accordingly, provided that the Clearing House shall not be obliged to amend such Deriv/SERV or 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; and
  - (iv) to combine and replace two or more FX Contracts of a Defaulter (or any part of an FX Contract) with a single FX Contract, which may occur where the Defaulter is Reference Currency Seller under one of the FX Contracts in respect of a particular currency and Reference Currency Buyer under the other FX Contract in respect of the same currency, and those two FX Contracts have the same FX Settlement Date.
- (b) All Contracts to which a Defaulter is party (which are not voidable and voided by the Clearing House pursuant to Part 4) shall be closed out in the manner set out in Rule 905 except to the extent that Rule 903(a) applies to such Contracts.
- (c) To the extent that any Contracts to which a Defaulter is party remain open from time to time (whether pursuant to Rule 903(a)(ii), pending Transfers, terminations or otherwise) or if the Clearing House is otherwise unable for any reason to liquidate Contracts in a prompt and orderly fashion, the Clearing House may authorise the execution from time to time for the account of the Clearing House, for the purpose of an orderly unwind of any Contracts to which a Defaulter is party or reducing the risk to the Clearing House and the risk to Clearing Members (in the case of Clearing Members, except to the extent that reducing any risk to Clearing Members creates or increases any risk for the Clearing House) resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts. Any such hedging transactions that are executed shall be submitted by Clearing Members with whom they are executed to the Clearing House for Clearing on a daily basis. Any costs, expenses or losses sustained by the Clearing House in connection with transactions effected pursuant to this Rule 903(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)
- (i) If a CDS Contract or F&O Contract is automatically 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, this Part 9 shall apply *mutatis mutandis* in relation to

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 (or, for an Individually Segregated Sponsored Account for which a Transferee Clearing Member is the Sponsor, by the Sponsored Principal direct to the Clearing House pursuant to the Sponsored Principal Clearing Agreement) and these Rules. 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 Deriv/SERV or 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 and any Customer-CM CDS Transactions 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 Sponsored Account or Individually Segregated Margin-Flow Co-mingled 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. A Transferee Clearing Member shall be deemed to have accepted the Transfer if it has previously entered into a contractual relationship with a Customer by which it has committed itself to do so and the same has been notified to the Clearing House pursuant to a Default Portability Preference.

- (D) the old Sponsor will become released from any further liability in respect of its joint and several liability under Contracts recorded in the Individually Segregated Sponsored Account;
  - (E) pursuant to the Default Portability Rules, Customer-CM Transactions (if any) between the Defaulter and the Sponsored Principal will be Transferred to the Sponsor; and
  - (F) all outstanding Margin and other payments due in respect of the Contracts and Individually Segregated Account must be paid by the Sponsored Principal or Sponsor;
- (ii) itself become a full Clearing Member not accessing the Clearing House with a Sponsor, pursuant to the process set out in Part 2 and the Membership Procedures, in which case:
- (A) it will become liable to pay Guaranty Fund Contributions itself;
  - (B) the positions and assets recorded in the Individually Segregated Sponsored Account will be Transferred to a Proprietary Account of the Sponsored Principal acting itself in its capacity as Transferee Clearing Member without a Sponsor;
  - (C) in the same way as Contracts are terminated pursuant to the Default Portability Rules, the old Sponsor will become released from any further liability in respect of Contracts recorded in the Individually Segregated Sponsored Account;
  - (D) all Customer-CM Transactions between the Defaulter and the Sponsored Principal will be terminated at the same time and prices as liabilities under Contracts are so released; and
  - (E) all outstanding Margin and other payments due in respect of the Contracts and Individually Segregated Account must be paid by the Sponsored Principal that has become a Clearing Member; or
- (iii) arrange for the Transfer of the positions and margin in the Individually Segregated Sponsored Account to a Customer Account (not being an Individually Segregated Sponsored Account) of a Transferee Clearing Member pursuant to the Default Portability Rules,
- (p) Upon an Event of Default being declared in respect of a Sponsor, 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 an Individually Segregated Sponsored Account, provided that the Clearing House shall not be obliged to effect any Transfer unless: (i) the Sponsored Principal 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



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) 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. A Transferee Clearing Member shall be deemed to have accepted the Transfer if it has previously entered into a contractual relationship with the Customer by which it has committed itself to do so and the same has been notified to the Clearing House pursuant to a Default Portability Preference.

**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:

## Rule 1901(b)

- (vii) 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;
  - (viii) be party to a Sponsored Principal Clearing Agreement;
  - (ix) have been designated as a Sponsored Principal in writing to the Clearing House by a Sponsor that is not a Defaulter, pursuant to a Sponsor Agreement;
  - (x) not be subject to an Insolvency or Unprotected Resolution Step;
  - (xi) hold a Nominated Bank Account or Accounts in its name (or, in the alternative, the Sponsor's name) at an Approved Financial Institution or Institutions in relation to each of which a direct debit mandate has been established in favour of the Clearing House;
  - (xii) have pre-funded a minimum amount of Margin specified by the Clearing House to a Nominated Bank Account, which amount will be transferred to a Clearing House Account prior to the date of attaining Sponsored Principal status;
  - (xiii) 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;
  - (xiv) be incorporated or registered in and access the Clearing House from only jurisdictions whose Applicable Laws relating to ~~insolvency~~Insolvency, 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;
  - (xv) be an "eligible contract participant", as defined in Section 1a of the U.S. Commodity Exchange Act;
  - (xvi) if it is not incorporated in England and Wales, have appointed an agent for the service of process pursuant to Rule 1901(n); and
  - (xvii) not be subject to statutory disqualification under Applicable Law.
- (c) Where a Sponsored Principal is a fund, some or all of the criteria in Rule 1901(b) may, at the discretion of the Clearing House, be met by the fund manager.

## Exhibit 1--CDS Transaction Standard Terms

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 CDS Transactions and/or to make its performance under such Customer-CM CDS Transactions conditional on performance by the Clearing House under the related CDS Contract (and where any such deduction may be attributable to both Customer-CM CDS Transactions and to Customer Account Contracts of other 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 CDS Contract corresponding to a Customer-CM CDS 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 CDS 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 CDS Transaction, and (iii) where such additional amount or deduction may be attributable to both Customer-CM CDS Transactions and to Customer-CM CDS Transactions of other customers, Clearing Member shall allocate such additional amount or deduction among such contracts on a *pro rata* basis.

10. ***Reliance on CDS Trade Particulars and submissions to Deriv/SERVor etc.***

The Clearing House shall be entitled to assume, without enquiry, that (i) at each Acceptance Time at which a Customer-CM CDS Transaction arises, the respective obligations of Clearing Member and Customer under such Customer-CM CDS Transaction constitutes its legal, valid and binding obligations enforceable in accordance with their respective terms, subject to applicable ~~bankruptcy, reorganisation, insolvency, moratorium~~[Insolvency laws](#) or similar ~~laws~~[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); (ii) where Customer or Clearing Member are acting out of an office in the United States of America, each of Clearing Member and Customer represents to the other and to the Clearing House that it is an "eligible contract participant" as defined in the US Commodity Exchange Act, as amended and

## Exhibit 2--F&amp;O Transaction Standard Terms

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 F&O Transactions and/or to make its performance under such Customer-CM F&O Transactions conditional on performance by the Clearing House under the related F&O Contract (and where any such deduction may be attributable to both Customer-CM F&O 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 an F&O Contract corresponding to a Customer-CM F&O 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 an F&O 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 F&O Transaction, and (iii) where such additional amount or deduction may be attributable to both Customer-CM F&O Transactions and to Customer-CM F&O Transactions of other customers, Clearing Member shall allocate such additional amount or deduction among such contracts on a *pro rata* basis.

10. ***Reliance on F&O Transactions and submissions to Repositories etc.***

The Clearing House shall be entitled to assume, without enquiry, that (i) at each Acceptance Time at which a Customer-CM F&O Transaction arises, the respective obligations of Clearing Member and Customer under such Customer-CM F&O Transaction constitutes its legal, valid and binding obligations enforceable in accordance with their respective terms, subject to applicable ~~bankruptcy, reorganisation, insolvency, moratorium~~[Insolvency laws](#) or similar ~~laws~~[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); (ii) where Customer or Clearing Member are acting out of an office in the United States of America, each of Clearing Member and Customer represents to the other and to the Clearing House that it is an "eligible contract participant" as defined in the US Commodity Exchange Act, as amended and

## Exhibit 3--FX Transactions Standard Terms

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 an FX Contract corresponding to a Customer-CM FX 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 an FX 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 FX Transaction, and (iii) where such additional amount or deduction may be attributable to both Customer-CM FX Transactions and to Customer-CM FX Transactions of other customers, Clearing Member shall allocate such additional amount or deduction among such contracts on a *pro rata* basis.

10. ***Reliance on FX Trade Particulars and submissions to Repositories etc.***

The Clearing House shall be entitled to assume, without enquiry, that (i) at each Acceptance Time at which a Customer-CM FX Transaction arises, the respective obligations of Clearing Member and Customer under such Customer-CM FX Transaction constitutes its legal, valid and binding obligations enforceable in accordance with their respective terms, subject to applicable ~~bankruptcy, reorganisation, insolvency, moratorium~~Insolvency laws or similar ~~laws~~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); (ii) where Customer or Clearing Member are acting out of an office in the United States of America, each of Clearing Member and Customer represents to the other and to the Clearing House that it is an "eligible contract participant" as defined in the US Commodity Exchange Act, as amended and (iii) 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 FX Trade Particulars or Customer-CM FX 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 paragraph 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.