

VIA CFTC PORTAL

September 1, 2022

Mr. Christopher Kirkpatrick
Commodity Futures Trading Commission
1155 21st Street NW
Three Lafayette Centre
Washington, DC 20581

LCH Limited Self-Certification: Minor Amendment to Location of Definitions

Dear Mr. Kirkpatrick,

Pursuant to Commodity Futures Trading Commission (“CFTC”) Regulation §40.6(a), LCH Limited (“LCH”), a derivatives clearing organization registered with the CFTC, is submitting for self-certification revisions to its rules to move definitions currently located in multiple procedures to be represented consistently in its Default Rules.

Part I: Explanation and Analysis

On April 1, 2022, LCH submitted a rule filing related to the extension of the opening hours for the SwapClear Service and the introduction of a new overnight funding account (“OFA”). This also included changes related to the timing of calculation amounts during default management in the SwapClear and ForexClear Services. A definition of “Auction Losses Calculation Period” and “Daily Calculation Period” were added to multiple LCH Procedures. LCH has determined that these definitions would be better placed in the Default Rules. The resulting revisions are in the following LCH rules: Procedures Section 2C (SwapClear Clearing Service); Procedures Section 2I (ForexClear Clearing Service); FCM Procedures; and Default Rules.

Part II: Description of Rule Changes

The following is a summary of the revisions to be made to LCH’s rules. These changes are for clarity and do not change the operation of LCH’s rules in any way.

Procedures Section 2C (SwapClear Clearing Service), Procedures Section 2I (ForexClear Clearing Service) and FCM Procedures

The section titled “Calculation Period” which includes the definition of “Auction Losses Calculation Period” and “Daily Calculation Period” has been deleted (Procedures 2C Section 1.28.12; Procedures 2I Section 1.10.9). Similarly, the definitions of “Auction Losses Calculation Period” and “Daily Calculation Period” have been deleted from Sections 2.1.17(i) and 2.2.26(f)(H).

Default Rules

The definition of “Daily Calculation Period” has been added and the definition of “Auction Losses Calculation Period” has been revised to refer to “Daily Calculation Period.” These changes are in

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Schedule 2 (Rates Service DMP Annex), Section 1.6 and Schedule 3 (ForexClear DMP Annex), Section 1.4. These Schedules apply to Clearing Members and FCM Clearing Members of the respective clearing services.

The changes to the rules are included as **Appendices I - IV** in black line form. The changes will be effective not earlier than September 18, 2022.

Part III: Core Principle Compliance

LCH reviewed the proposed rule changes against the requirements of the Core Principles and finds it will continue to comply with all requirements and standards set forth therein. Specifically, this rule change has potential relevance to Core Principle L (Public Information).

The changes described in this filing ensure that LCH meets the objectives of Core Principle L, including that, in addition to the specified requirements of §39.21, LCH make available any information that is relevant to participation in the clearing and settlement activities of LCH. LCH considered its public information requirements and believes including these definitions in the Default Rules provides a more consistent and concise presentation of its Rules to the public and maintains its compliance with Core Principle L. The changes provided for in this submission will be included in LCH's publicly available Rulebook. As a result, LCH believes these changes are consistent with the requirements of Core Principle L on Public Information or CFTC regulation §39.21.

Part IV: Public Information

LCH has posted a notice of pending certification with the CFTC and a copy of the submission on LCH's website at: <https://www.lch.com/resources/rulebooks/proposed-rule-changes>.

Part V: Opposing Views

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

Certification

LCH hereby certifies to the CFTC, pursuant to the procedures set forth in CFTC Regulation §40.6, that the attached submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

Should you have any questions please contact me at michelle.weiler@lseg.com.

Yours sincerely,



Michelle Weiler
Compliance Officer
LCH Limited

Appendix I
Procedures Section 2C (SwapClear Clearing Service)
Changed Pages



LCH LIMITED

PROCEDURES SECTION 2C

SWAPCLEAR CLEARING SERVICE

1.28.11 *Contact Information*

Each SCM is required to provide the Clearing House with contact details for those persons that the Clearing House should contact in the event of an SCM Default. SCMs are required to ensure that contact details remain up to date and to notify the Clearing House of any changes in such details.

~~1.28.12 *Calculation Period*~~

~~Notwithstanding the definition of "Auction Losses Calculation Period" in Rule 1.6 of Schedule 2 of the Default Rules, on and from the date determined by the Clearing House, the following definition will apply for the purposes of the Rates Service DMP Annex:~~

~~"**Auction Losses Calculation Period**" means, in respect of an OTC Auction Portfolio or a Basis Portfolio (as applicable) and the business day on which the Clearing House auctions and sells such portfolio, the period:~~

~~(a) commencing immediately after the Daily Calculation Period for the previous business day; and~~

~~(b) ending at the point at which the Clearing House sells such portfolio;~~

~~where:~~

~~"**Daily Calculation Period**" means, in respect of a business day, the period, in respect of which the Clearing House determines the end of day margin and settlement payments for Rates Service Contracts for such business day.~~

1.29 **Provision of Tax Forms; Withholding Taxes; Sales Tax**

1.29.1 *Tax Forms*

The Clearing House and each SwapClear Clearing Member shall provide to the other party (i) any form or document specified in the given SwapClear Contract and (ii) any form, document, statement or certification (including, in the case of the Clearing House, an Internal Revenue Service Form W-8BEN) reasonably requested in writing, in each case to permit the Clearing House or SwapClear Clearing Member, as applicable, to make any payment under the Clearing House's rules or any SwapClear Contract without withholding for any tax, levy or charge. The foregoing requirement shall not apply in the event the Clearing House or SwapClear Clearing Member is not permitted to deliver such form, document, statement or certification under Applicable Law (including any double-tax treaty).

1.29.2 *Withholding Taxes*

Appendix II
Procedures Section 2I (ForexClear Clearing Service)
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LCH LIMITED

PROCEDURES SECTION 2I

FOREXCLEAR CLEARING SERVICE

Porting Client Account referable to such Initial DMA, pro rata according to the Pre-Default TMR Ratio of each such Affected Non-Porting Client Account; and

- (B) Where the DMA to which the Interim Amount was attributed is a Merged DMA, the Clearing House will further attribute such amount to each DMA that was combined to form such Merged DMA, pro rata according to the Pre-Merger TMR Ratio of each such DMA.
- (iv) If the Clearing House attributes an amount to a DMA under subparagraph (iii)(B) above, then it will further attribute such amount according to the method specified in subparagraph (iii) (treating such amount as an Interim Amount for the purposes of subparagraph (iii)) until all amounts are attributed to Non-Porting Client Accounts.
- (f) *Attribution of Auction Results*

The Clearing House shall attribute the Auction Result, in respect of the sale of an Auction Portfolio, to each Affected Non-Porting Client Account referable to the Final DMA from which such Auction Portfolio was formed, pro rata according to the Pre-Default TMR Ratio of each such Affected Non-Porting Client Account.

- (g) *Collateral*

The Clearing House shall hold the relevant Collateral in respect of each Non-Porting Client Account in its applicable Client Account until the process described in this Section 1.10.8 has been completed.

~~1.10.9—Calculation Period~~

~~Notwithstanding the definition of "Auction Losses Calculation Period" in Rule 1.4 of Schedule 3 of the Default Rules, on and from the date determined by the Clearing House, the following definition will apply for the purposes of the ForexClear DMP Annex:~~

~~"Auction Losses Calculation Period" means, in respect of an Auction Portfolio and the business day on which the Clearing House auctions and sells such portfolio, the period:~~

- ~~(a) commencing immediately after the Daily Calculation Period for the previous business day; and~~
- ~~(b) ending at the point at which the Clearing House sells such portfolio;~~

~~where:~~

~~"Daily Calculation Period" means, in respect of a business day, the period, in respect of which the Clearing House determines the end of day margin and settlement payments for ForexClear Contracts for such business day.~~

1.11 Provision of Tax Forms

The Clearing House and each FXCCM shall provide to each FXCCM or the Clearing House, as relevant, (i) any forms or documents specified in the ForexClear Contract between the Clearing House and the FXCCM and (ii) any other form, document, statement or certification reasonably requested in writing by the FXCCM or the Clearing House in order to allow the FXCCM or the Clearing House to make a payment under the Rules of the Clearing House or any ForexClear Contract without deduction or withholding for or on account of any tax or with such deduction or withholding at a reduced rate unless the Clearing House or the FXCCM can no longer deliver such form, document, statement or certification solely as a result of a change in law (including double tax treaty) or interpretation thereof after the date of the ForexClear Contract between the Clearing House and the FXCCM. In the case of the Clearing House, the forms required pursuant to item (ii) above include an Internal Revenue Service Form W-8BEN. Additionally, the Clearing House will take such further actions as necessary to ensure that payments made to it can be made without deduction or withholding for or on account of any Tax.

1.12 ForexClear Client Clearing

1.12.1 *ForexClear Clearing Client Clearing – Ancillary Documentation*

- (a) *Security Deed*: Unless specified otherwise by the Clearing House, a ForexClear Clearing Member must enter into a Security Deed in respect of its Clearing Clients in relation to amounts due to it from the Clearing House pursuant to the Client Clearing Annex. Further information in relation to such Security Deed is prescribed by the Clearing House from time to time and published on the Clearing House's website.
- (b) *Prescribed Language and End-User Notice*: Pursuant to the Clearing House's General Regulations, each ForexClear Clearing Member is required to ensure that it includes certain language in its agreement with its ForexClear Clearing Client (the "**Clearing House Prescribed Language**"). The Clearing House Prescribed Language is shown at Schedule 1 of the Procedure .

ForexClear Clearing Clients' attention is drawn to the End-User Notice which is published on the Clearing House's website:

<http://www.lch.com/about-us/governance/end-user-notice>

Appendix III
FCM Procedures
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FCM PROCEDURES OF THE CLEARING HOUSE

LCH LIMITED

CFTC Regulations or as directed by an applicable Regulatory Body.

(g) *FCM Rates Service Default Management Disclosure Notice*

Each FCM Rates Service Clearing Member must ensure that each FCM Client to which it offers FCM SwapClear Clearing Services is provided with, or is directed to a copy of, the FCM Rates Service Default Management Disclosure Notice, and further must provide confirmation, in the form and manner reasonably required by the Clearing House, that it has discharged this obligation in respect of each such FCM Client.

(h) *Contact Information*

Each FCM Rates Clearing Member is required to provide the Clearing House with contact details for those persons that the Clearing House should contact in the event of a Clearing Member Default. FCM Rates Clearing Members are required to ensure that contact details remain up to date and to notify the Clearing House of any changes in such details.

~~(i) Notwithstanding the definition of "Auction Losses Calculation Period" in Rule 1.6 of Schedule 2 of the Default Rules, on and from the date determined by the Clearing House, the following definition will apply for the purposes of the Rates Service DMP Annex:~~

~~"Auction Losses Calculation Period" means, in respect of an OTC Auction Portfolio or a Basis Portfolio (as applicable) and the business day on which the Clearing House auctions and sells such portfolio, the period:~~

~~(a) commencing immediately after the Daily Calculation Period for the previous business day; and~~

~~(b) ending at the point at which the Clearing House sells such portfolio;"~~

~~where:~~

~~"Daily Calculation Period" means, in respect of a business day, the period, in respect of which the Clearing House determines the end of day margin and settlement payments for Rates Service Contracts for such business day."~~

2.1.18 *Payment of Stamp Tax*

Each FCM Clearing Member shall pay any stamp tax or duty levied or imposed upon it or in respect of its execution or performance of the FCM Clearing Membership Agreement, the FCM Default Fund Agreement, the FCM Regulations and the FCM Procedures (including any registration of an FCM SwapClear Contract) by a jurisdiction in which it is incorporated,

organized, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting is located or by any other jurisdiction and shall indemnify the Clearing House against any stamp tax or duty levied or imposed upon the Clearing House or in respect of the Clearing House's execution or performance of the FCM Clearing Membership Agreement, the FCM Regulations and the FCM Procedures (including any registration of an FCM SwapClear Contract) by any such jurisdiction.

2.1.19 **Section 696, Corporation Tax Act 2009**

The FCM Clearing Member agrees that should a situation arise where HM Revenue and Customs (“HMRC”) raises an enquiry, or makes an information request, to the Clearing House regarding an FCM Transaction or FCM Contract that the FCM Clearing Member is submitting (or has submitted) to the Clearing House, and that enquiry or information request is in respect of the application of s696 - s697 Corporation Tax Act 2009, the FCM Clearing Member will use its reasonable efforts to provide such information and support as the Clearing House may reasonably require in order to respond to and effectively deal with the queries raised by HMRC.

2.1.20 **Tax Forms**

The Clearing House and each FCM Clearing Member shall provide to the other party (i) any form or document specified in the given FCM Contract and (ii) any form, document, statement or certification (including, in the case of the Clearing House, an Internal Revenue Service Form W-8BEN) reasonably requested in writing to permit the Clearing House or FCM Clearing Member, as applicable, to make any payment under the Clearing House's rules or any FCM Contract without withholding for any tax, levy or charge. The foregoing requirement shall not apply in the event the Clearing House or FCM Clearing Member is not permitted to deliver such form, document, statement or certification under Applicable Law (including any double-tax treaty).

2.1.21 **Withholding Taxes**

In the event an FCM Clearing Member is required under Applicable Law to withhold an amount in respect of any tax, levy or charge from any payment made to the Clearing House, (i) such amount payable shall be increased such that the Clearing House receives an amount equal to that it would have received had such withholding not been required under Applicable Law and (ii) the FCM Clearing Member shall provide the Clearing House the relevant tax certificates (or similar form) confirming the payment of such withholding.

The Clearing House shall provide reasonable cooperation to the given FCM Clearing Member to ensure that payments made to the Clearing House may be made without deduction or withholding in respect of any tax, levy or charge

2.1.22 **Sales Tax; Value Added Tax**

All fees and other payments payable under the Clearing House's rules are exclusive of sales tax, purchase or turnover tax, levies, duties and their

DMA from which such Auction Portfolio was formed, pro rata according to the Pre-Default TMR Ratio of each such Affected Non-Porting FCM Client Sub-Account.

(G) *CFTC Regulations*

The Clearing House shall hold the relevant Collateral in respect of Non-Porting FCM Client Sub-Accounts (segregated as belonging to each such applicable Non-Porting FCM Client Sub-Account in accordance with the CFTC Regulations and Part 22 thereof) in its applicable FCM Omnibus ForexClear Client Account with LCH until the process described in this paragraph (f) has been completed. For the avoidance of doubt, the Clearing House may only take such actions pursuant to this paragraph as permitted by the FCM Rulebook, the CEA and the CFTC Regulations or as directed by an applicable Regulatory Body.

~~(H) Notwithstanding the definition of "Auction Losses Calculation Period" in Rule 1.4 of Schedule 3 of the Default Rules, on and from the date determined by the Clearing House, the following definition will apply for the purposes of the ForexClear DMP Annex:~~

~~"Auction Losses Calculation Period" means, in respect of an Auction Portfolio and the business day on which the Clearing House auctions and sells such portfolio, the period:~~

~~(a) commencing immediately after the Daily Calculation Period for the previous business day; and~~

~~(b) ending at the point at which the Clearing House sells such portfolio;~~

~~where:~~

~~"Daily Calculation Period" means, in respect of a business day, the period, in respect of which the Clearing House determines the end of day margin and settlement payments for ForexClear Contracts for such business day."~~

2.2.27 *Payment of Stamp Tax*

Each FCM Clearing Member shall pay any stamp tax or duty levied or imposed upon it or in respect of its execution or performance of the FCM Clearing Membership Agreement, the FCM Default Fund Agreement, the FCM Regulations and the FCM Procedures (including any registration of an FCM ForexClear Contract) by a jurisdiction in which it is incorporated,

Appendix IV
Default Rules
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DEFAULT RULES**

SCHEDULE 2 RATES SERVICE DMP ANNEX

1. Scope and Interpretation
 - 1.1 The SwapClear Service and Listed Interest Rates Service share a common default fund. Accordingly, the risk profile of participating in either one of such Services may be impacted by other Clearing Members participating in the other such Service whether or not as a Portfolio Margining Clearing Member.
 - 1.2 The Clearing House has established a Rates Service DMP which will apply to Rates Service Contracts following the Default of a Rates Service Clearing Member and in respect of which, for the avoidance of doubt, the Clearing House will have no recourse to the process of invoicing-back in respect of SwapClear Contracts. The fundamental principles of the Rates Service DMP are elaborated to the fullest extent possible in this Annex. Where exhaustive detail cannot be laid out in the provisions of this Annex, the Rates Service DMP will be undertaken on the basis of the principles contained herein.
 - 1.3 Whilst this Annex sets out the default management process in respect of all Rates Service Contracts, it provides for the various types of such Contracts to be treated differently (depending on whether such Contracts are SwapClear Contracts, Portfolio Margined Contracts or Listed Interest Rates Contracts that are not Portfolio Margined Contracts). Given the scope of the Contracts it covers, the Annex sets out a default management process that applies to defaulting Clearing Members and non-defaulting Clearing Members who are SCMs (whether or not such SCMs are also Listed Interest Rates Clearing Members or Portfolio Margining Clearing Members) and to Listed Interest Rates Clearing Members (whether or not they are also SCMs or Portfolio Margining Clearing Members) and, for the purposes of this Annex, unless the context specifically requires otherwise, the terms "SCM" "Defaulting SCM" and "Non-Defaulting SCM" should all be construed to include SCMs who are Joint Rates Service Clearing Members.
 - 1.4 The Clearing House has an obligation to ensure the on-going integrity of the SwapClear Service, the Listed Interest Rates Service, the SwapClear Contracts and the Listed Interest Rates Contracts in the interests of the Non-Defaulting Rates Service Clearing Members. When an SCM defaults, SCMs are required to supply impartial expertise through the Rates Service DMG and to bid for the Auction Portfolios of the Defaulting SCM, as laid out in this Annex. In addition, Rates Service Clearing Members and/or their parent companies and/or subsidiaries and/or fellow subsidiaries, have direct interests in the ongoing integrity of the SwapClear Service and Listed Interest Rates Service, notably as contributors to the various default funds of the Clearing House. Each Rates Service Clearing Member shall take all steps and execute all documents necessary or required by the Clearing House to comply with its obligations as a Rates Service Clearing Member arising out of this Annex.
 - 1.5 The initial margining process in respect of SwapClear Contracts will be such so as to ensure that the acceptance of bids for the Auction Portfolios of a Defaulting SCM will recognise risk premiums and that equivalent premiums will be paid by the Clearing House in closing-out other Contracts under the Exchange Rules of the relevant Exchange.

1.6 In this Annex:

"**Accepted**" means, in respect of a bid in an Auction, that the Clearing House has accepted such bid as one that it may select as the winning bid for such Auction and "**Accept**" and "**Accepts**" shall have a corresponding meaning;

"**AIP**" has the meaning given in Rule 2.6 of this Annex;

"**AIP Amount**" means:

- (a) in respect of a Non-Defaulting SCM and the OTC Auction Portfolio(s) in a specific Auction Portfolio Currency and Auction Portfolio Category, the product of
 - (i) such Non-Defaulting SCM's AIP Ratio applicable to the Auction Portfolio Currency and Auction Portfolio Category of such OTC Auction Portfolio(s), and
 - (ii) the total of its (A) remaining SwapClear Funded Contribution, and (B) remaining SwapClear Unfunded Contribution;
- (b) in respect of a Non-Defaulting Joint Rates Service Clearing Member and a Basis Portfolio, the product of
 - (i) such Non-Defaulting Joint Rates Service Clearing Member's AIP Ratio applicable to the Basis Portfolio, and
 - (ii) the total of its (A) remaining SwapClear Funded Contribution, and (B) remaining SwapClear Unfunded Contribution;

"**AIP Ratio**" means:

- (a) in respect of a Non-Defaulting SCM and the OTC Auction Portfolio(s) in a specific Auction Portfolio Currency and Auction Portfolio Category, the ratio that
 - (i) the Undiversified Expected Shortfall for the SwapClear Contracts of such Non-Defaulting SCM that are registered in its name at the time of the relevant Default and are in such Auction Portfolio Currency and Auction Portfolio Category bears to,
 - (ii) the aggregate Undiversified Expected Shortfall for all the SwapClear Contracts that are registered in the name of such Non-Defaulting SCM at the time of the relevant Default;
- (b) in respect of a Non-Defaulting Joint Rates Service Clearing Member and a Basis Portfolio in an Auction Portfolio Currency, the ratio calculated in paragraph (a) above applicable to such Non-Defaulting Joint Rates Service Clearing Member, in respect of the OTC Auction Portfolio(s) which are denominated in such Auction Portfolio Currency and belong to the IRS SwapClear Contract Category;

"**Auction**" means the process of bidding by Non-Defaulting SCMs for an OTC Auction Portfolio or by Non-Defaulting Joint Rates Service Clearing Members for a Basis Portfolio as prescribed by the Clearing House following consultation with the Rates Service DMG from time to time in accordance with Rule 2.4 of this Annex;

"**Auction Losses**" means, in respect of an OTC Auction Portfolio or a Basis Portfolio, all losses arising from:

- (a) the auction and sale of such OTC Auction Portfolio or Basis Portfolio (as applicable); and
- (b) a change in the net present value of the Rates Service Contracts within such OTC Auction Portfolio or Basis Portfolio (as applicable) during the Auction Losses Calculation Period applicable to such portfolio;

"**Auction Losses Calculation Period**" means, in respect of an OTC Auction Portfolio or a Basis Portfolio (as applicable) and the business day on which the Clearing House auctions and sells such portfolio, the period:

- (a) commencing immediately after the Daily Calculation Period end-of-day margin and settlement call of the Clearing House for the previous business day; and
- (b) ending at the point at which the Clearing House sells such portfolio;

"**Auction Portfolio Category**" means, in relation to an OTC Auction Portfolio, the SwapClear Contract Category to which the SwapClear Contracts in the OTC Auction Portfolio belong, provided that in the case of an OTC Auction Portfolio containing both IRS SwapClear Contracts and Inflation SwapClear Contracts, the relevant Auction Portfolio Category shall be deemed to be the Inflation SwapClear Contract Category;

"**Auction Portfolio Currency**" means, in relation to an OTC Auction Portfolio, the currency in which the Contracts in the OTC Auction Portfolio are denominated and in relation to a Basis Portfolio, the currency in which the Contracts in the Basis Portfolio are denominated;

"**Bankruptcy Code**" means the U.S. Bankruptcy Code, as amended;

"**Basis Portfolio**" means a Portfolio containing SwapClear Contracts, Portfolio Margined Contracts and/or Listed Interest Rates Contracts as more fully defined in Rule 2.3 of this Annex and which is not, for the avoidance of doubt, an OTC Auction Portfolio;

"**CEA**" means the U.S. Commodity Exchange Act, as amended;

"**CFTC**" means the U.S. Commodity Futures Trading Commission;

"**Daily Calculation Period**" means, in respect of a business day, the period, in respect of which the Clearing House determines the end of day margin and settlement payments for Rates Service Contracts and such business day.

"**Defaulting Joint Rates Service Clearing Member**" means a Joint Rates Service Clearing Member who is a Defaulter;

"Derivatives Clearing Organization" means an organisation designated and registered as such by way of United States Code Title 7, Chapter 1, paragraph 7a-1;

"Difference" means, in respect of an Auction and a Remaining Short Bidder who bid in the Auction, the difference between (a) the winning bid for such Auction, and (b) the bid of such Remaining Short Bidder in the Auction;

"Equal Bid" means an Accepted bid in an Auction, which is equal to another Accepted bid in the same Auction;

"Exchange Closed-out Contracts" means those Listed Interest Rates Contracts of a Defaulting Listed Interest Rates Clearing Member that are closed-out under the Exchange Rules of the Exchange to which they relate;

"Exchange Losses" means the losses in respect of the Exchange Closed-out Contracts of a Defaulting Listed Interest Rates Clearing Member;

"Expected Auction Participant" means, in respect of an OTC Auction Portfolio, any Non-Defaulting SCM who, at the time of the relevant Default, has at least one Resembling Contract registered in its name and, in respect of a Basis Portfolio, each Non-Defaulting Joint Rates Service Clearing Member;

"FCM Rates Service Client Business" means the provision of FCM SwapClear Clearing Services and/or FCM Listed Interest Rates Clearing Services by an FCM Clearing Member to its FCM Clients;

"FCM Rates Service House Business" means the FCM SwapClear Contracts and/or FCM Listed Interest Rates Contracts entered into by an FCM Clearing Member for its Proprietary Account;

"FCM SwapClear Client Business" means the provision of FCM SwapClear Clearing Services by an FCM Clearing Member to its FCM Clients;

"FCM SwapClear House Business" means the FCM SwapClear Contracts entered into by an FCM Clearing Member for its Proprietary Account;

"Guidance" means guidance, in the form of one or more written notices, issued from time to time by or on behalf of the Clearing House to SwapClear Clearing Members, supplementing the detail or conduct of any aspect of the Rates Service DMP;

"Hedging Give Up Agent" has the meaning given in Rule 2.2(c)(i) of this Annex;

"Hedging Listed Interest Rates Contract" means a Listed Interest Rates Contract as described in Rule 2.2(c)(ii)(A) or Rule 2.2(d) of this Annex;

"Hedging Rates Service Clearing Member" has the meaning given in Rule 2.2(b)(i) of this Annex;

"Hedging Rates Service Contract" means a Hedging SwapClear Contract or a Hedging Listed Interest Rates Contract;

"Hedging SwapClear Contract" has the meaning given in Rule 2.2(b)(ii)(B) of this Annex;

"Inflation SwapClear Contract Category" means the category of SwapClear Contracts which comprises Inflation SwapClear Contracts registered with the Clearing House;

"IRS SwapClear Contract Category" means the category of SwapClear Contracts which comprises IRS SwapClear Contracts registered with the Clearing House;

"Listed Interest Rates Only Clearing Member" means a Listed Interest Rates Clearing Member that is not an SCM;

"Listed Interest Funded Contribution" means the Listed Interest Rates Contribution of a Listed Interest Rates Clearing Member, excluding any Listed Interest Rates Unfunded Contribution in respect of the Listed Interest Rates Clearing Member;

"Listed Interest Rates Unfunded Contribution" has the meaning assigned to "Unfunded Contribution" in Rule L5(a) of the Rates Service Default Fund Supplement;

"Loss Portion" means, in respect of an Auction of:

- (a) an OTC Auction Portfolio, a Remaining Short Bidder who bid in such Auction, and
 - (i) Rule 2.7(b)(ii) of this Annex, the amount equal to the product of
 - (A) the outstanding Auction Losses to be attributed to Remaining Short Bidders under Rule 2.7(b)(ii) of this Annex, and
 - (B) the proportion that the Difference in respect of such Remaining Short Bidder and Auction bears to the total Differences in respect of all Remaining Short Bidders who bid in such Auction, and
 - (ii) Rule 2.7(f)(ii) of this Annex, the amount equal to the product of
 - (A) the outstanding Auction Losses to be attributed to Remaining Short Bidders under Rule 2.7(f)(ii) of this Annex, and
 - (B) the proportion that the Difference in respect of such Remaining Short Bidder and Auction bears to the total Differences in respect of all Remaining Short Bidders who bid in such Auction; and
- (b) a Basis Portfolio, a Remaining Short Bidder who bid in such Auction, and
 - (i) Rule 2.8(b)(ii) of this Annex, the amount equal to the product of
 - (A) the outstanding Auction Losses to be attributed to Remaining Short Bidders under Rule 2.8(b)(ii) of this Annex, and

- (B) the proportion that the Difference in respect of such Remaining Short Bidder and Auction bears to the total Differences in respect of all Remaining Short Bidders who bid in such Auction, and
- (ii) Rule 2.8(f)(ii) of this Annex, the amount equal to the product of
 - (A) the outstanding Auction Losses to be attributed to Remaining Short Bidders under Rule 2.8(f)(ii) of this Annex, and
 - (B) the proportion that the Difference in respect of such Remaining Short Bidder and Auction bears to the total Differences in respect of all Remaining Short Bidders who bid in such Auction;

"Market Losses" mean any losses in respect of the implementation of the Rates Service DMP, including losses arising from the execution of hedging transactions and/or matches for the purpose of Risk Neutralisation, but excluding:

- (a) Auction Losses; and
- (b) Exchange Losses;

"Non-Bidder" means, in respect of an Auction, an SCM, which (a) did not bid in such Auction, or (b) bid in such Auction, but whose bid was not Accepted;

"Non-Defaulter" means, as the context requires, an SCM, Listed Interest Rates Clearing Member and/or a Joint Rates Service Clearing Member, in each case, that is not a Defaulter;

"Non-Defaulters' Listed Interest Rates Contributions" means the Listed Interest Rates Contributions made by Non-Defaulting Listed Interest Rates Clearing Members;

"Non-Defaulters' SwapClear Contributions" means the SwapClear Contributions made by Non-Defaulting SCMs;

"OTC Auction Portfolio" means (a) a Portfolio containing only SwapClear Contracts, or (b) a group of SwapClear Contracts resulting from the splitting of a Portfolio pursuant to Rule 2.1 of this Annex, including in both such cases any connected Hedging SwapClear Contracts (but not any Hedging Listed Interest Rates Contracts) concluded by the Clearing House through Risk Neutralisation;

"Out Bid" means a bid in an Auction, which is Accepted and higher than the winning bid in such Auction;

"Out Bidder" means, in respect of an Auction, a Non-Defaulting SCM, which submitted an Out Bid in such Auction;

"Portfolio" means, in respect of each SwapClear currency, the SwapClear Contracts in such currency registered in the name of a Defaulting SCM in respect of House Clearing Business or the SwapClear Contracts in such currency registered in the name of a Defaulting SCM in respect of Client Clearing Business (or, in the case of an FCM

Clearing Member that is a Defaulter, the FCM SwapClear Contracts in such currency registered in respect of its FCM SwapClear Client Business) and in both such cases includes, where relevant, any (i) Portfolio Margined Contracts, and (ii) Hedging SwapClear Contracts and/or Hedging Listed Interest Rates Contracts connected to the relevant SwapClear Contracts or Portfolio Margined Contracts (as the case may be) concluded by the Clearing House through Risk Neutralisation. For the avoidance of doubt, a Portfolio containing Contracts relating to the Client Clearing Business or FCM SwapClear Client Business of a Defaulting SCM will only contain Contracts relating to Client Clearing Business or FCM SwapClear Client Business, as appropriate. The Clearing House shall not be entitled to combine client and house positions in a single Portfolio;

"Portfolio Listed Interest Rates Contracts" means those Listed Interest Rates Contracts of a Defaulting Joint Rates Service Clearing Member that are included in a Portfolio, whether such Listed Interest Rates Contracts are Portfolio Margined Contracts or Hedging Listed Interest Rates Contracts concluded by the Clearing House through Risk Neutralisation;

"Rates Service Default Management Process Completion Date" means the date when the Rates Service Default Management Process in relation to a Default has been completed as determined by the Clearing House in consultation with the Rates Service DMG and notified to all Rates Service Clearing Members;

"Rates Service DMG" means the advisory default management group established by the Clearing House pursuant to the terms of this Annex;

"Rates Service DMP" means the processes of the Clearing House outlined in this Annex, as the same may be supplemented and/or amended from time to time in accordance with this Annex;

"Rates Service Funded Contribution" means the SwapClear Funded Contribution and Listed Interest Rates Funded Contribution of an SCM;

"Rates Service Unfunded Contributions" means the SwapClear Unfunded Contributions and Listed Interest Rates Unfunded Contributions of an SCM;

"Recognised Clearing House" mean an organisation which is declared to be a recognised clearing house by a recognition order (that is for the time being in force) made under section 290(1)(b) of the Financial Services and Markets Act 2000;

"Remaining Short Bidder" means, in respect of an Auction of:

- (a) an OTC Auction Portfolio and
 - (i) Rule 2.7(b)(ii) of this Annex, a Short Bidder in such Auction whose remaining AIP Amount, which is in the form of SwapClear Funded Contributions and forms part of the AIP relating to such OTC Auction Portfolio, is greater than zero, and
 - (ii) Rule 2.7(f)(ii) of this Annex, a Short Bidder in such Auction whose remaining AIP Amount, which is in the form of SwapClear Unfunded

Contributions and forms part of the AIP relating to such OTC Auction Portfolio, is greater than zero; and

- (b) a Basis Portfolio and
 - (i) Rule 2.8(b)(ii) of this Annex, a Short Bidder in such Auction whose remaining AIP Amount, which is in the form of SwapClear Funded Contributions and forms part of the AIP relating to such Basis Portfolio, is greater than zero, and
 - (ii) Rule 2.8(f)(ii) of this Annex, a Short Bidder in such Auction whose remaining AIP Amount, which is in the form of SwapClear Unfunded Contributions and forms part of the AIP relating to such Basis Portfolio, is greater than zero;

"Resembling Contract" means, in respect of the SwapClear Contracts in an OTC Auction Portfolio, a SwapClear Contract registered in the name of a Non-Defaulting SCM that (a) is denominated in the same Auction Portfolio Currency as such SwapClear Contracts, and (b) belongs to the SwapClear Contract Category which corresponds to the Auction Portfolio Category of such OTC Auction Portfolio;

"Risk Neutralisation" means the process of reducing the market risk associated with a Defaulting SCM's obligations to the Clearing House under SwapClear Contracts and/or Portfolio Margined Contracts by hedging the exposure before the auction process as described in Rule 2.2 of this Annex;

"Short Bidder" means, in respect of an Auction of:

- (a) an OTC Auction Portfolio, a Non-Defaulting SCM that (a) is an Expected Auction Participant for such OTC Auction Portfolio, and (b) submitted a bid, which is Accepted, but lower than the winning bid, in such Auction; and
- (b) a Basis Portfolio, a Non-Defaulting Joint Rates Service Clearing Member that submitted a bid, which is Accepted, but lower than the winning bid, in such Auction;

"SwapClear Contract Category" means a category of SwapClear Contracts, being either the Inflation SwapClear Contract Category or the IRS SwapClear Contract Category;

"SwapClear Funded Contribution" means the SwapClear Contribution of an SCM, excluding any SwapClear Unfunded Contribution in respect of the SCM;

"SwapClear-Only Clearing Member" means an SCM that is not a Listed Interest Rates Clearing Member; and

"Undiversified Expected Shortfall" means, in respect of the SwapClear Contracts in a specific currency and SwapClear Contract Category, the largest loss which the Clearing House determines could be incurred in respect of such SwapClear Contracts, using the SwapClear PAIRS margining algorithm based on 2,500 historical scenarios (10 years history) and a holding period of 5 days.

Terms used, and not defined, in this Annex shall have the meanings given to them in the Regulations or FCM Regulations.

2. Rates Service DMP

The Rates Service DMP in respect of: (a) **Rates Service Clearing House Business**; (b) **Relevant Auction Contracts in respect of Rates Service Client Clearing Business**; (c) **FCM Rates Service House Business**; and (d) FCM Rates Service Client Business shall involve the processes described in this Rule 2.

Resources will be allocated based on the order and proportions described in Rules 2.5 to 2.9 of this Annex. Allocation of resources pursuant to a process or the order in which processes are carried out may reduce the resources which are available to meet the losses in respect of any subsequent process and, consequently, impact the allocation of losses amongst non-defaulting Clearing Members. For the avoidance of doubt, the Clearing House may in its sole and absolute discretion determine the order in which it: (a) constructs OTC Auction Portfolios and Basis Portfolios; (b) auctions OTC Auction Portfolios and Basis Portfolios; and (c) closes out any Listed Interest Rates Contract of a Defaulter under the Exchange Rules of any relevant Exchange.

2.1 *Portfolio Splitting*

The Clearing House, in consultation with and with the assistance of the Rates Service DMG, shall determine the composition of each OTC Auction Portfolio and Basis Portfolio and shall have the discretion to create two or more OTC Auction Portfolios and/or two or more Basis Portfolios from a Portfolio, whether by dividing such Portfolio or separating certain Contracts from such Portfolio, with the aim of facilitating the efficiency of, and reducing the risk associated with, the auction process provided for in Rule 2.4 of this Annex. The overriding principle behind the portfolio splitting process is that the Clearing House will structure OTC Auction Portfolios and Basis Portfolios with the intention of ensuring a Rates Service DMP which best protects the resources of the Clearing House, subject to compliance with applicable provisions of the CEA and the CFTC Regulations regarding segregation of client assets (including, where relevant, compliance with the terms of any CFTC order permitting the commingling of client assets). Therefore, nothing in this Rule 2.1 shall be deemed to imply: (a) that the Clearing House is under any obligation to split a particular Portfolio of a Defaulting SCM (regardless of the number of Contracts that such Portfolio contains); or (b) any particular requirements as to the composition of an individual OTC Auction Portfolio, including in terms of: (i) combining or separating SwapClear Contracts belonging to different SwapClear Contract Categories; (ii) combining or separating Inflation SwapClear Contracts having different underlying indices; and/or (iii) creating one or more OTC Auction Portfolios from a Portfolio, except that, subject to overriding risk procedures, it is broadly anticipated that: (a) the parameters of any OTC Auction Portfolio and Basis Portfolio shall not be materially different to those set out in the Clearing House's fire drill; and (b) an OTC Auction Portfolio containing Inflation SwapClear Contracts will often also contain SwapClear Contracts which are not Inflation SwapClear Contracts for the purposes of interest rate Risk Neutralisation only.

2.2 **Risk Neutralisation**

The Clearing House will, in consultation with, and with the assistance of, the Rates Service DMG, reduce the market risk associated with a Defaulting Rates Service Clearing Member's obligations to the Clearing House so far as is reasonably practicable by hedging the Clearing House's exposure in open Rates Service Contracts to which the Defaulting SCM is party, where such hedging may be achieved, without limitation, by:

- (a) the splitting of Portfolios pursuant to Rule 2.1 above;
- (b) the Clearing House, for the purpose of hedging:
 - (i) executing one or more new SwapClear Transactions and/or new FCM SwapClear Transactions (as applicable) with Non-Defaulting Rates Service Clearing Members (each, a "**Hedging Rates Service Clearing Member**") on the basis of a separate agreement between the Clearing House and the Hedging Rates Service Clearing Member; and
 - (ii) clearing each such SwapClear Transaction and/or FCM SwapClear Transaction (as applicable) in accordance with, and subject to, the Rulebook and/or the FCM Rulebook (as applicable), such that:
 - (A) the Hedging Rates Service Clearing Member's side of such transaction is registered as a SwapClear Contract between the Clearing House and the Hedging Rates Service Clearing Member; and
 - (B) the Clearing House's side of such transaction is registered as a SwapClear Contract between the Defaulting Rates Service Clearing Member and the Clearing House (pursuant to the Clearing House's rights under Default Rule 6(a)) (any such SwapClear Contract, a "**Hedging SwapClear Contract**");
- (c) the Clearing House, for the purpose of hedging:
 - (i) engaging one or more third parties (each, a "**Hedging Give Up Agent**") to execute one or more new Listed Interest Rates Novation Transactions, FCM Listed Interest Rates Novation Transactions and/or Rates Exchange Matches (as applicable), as instructed by the Clearing House; and
 - (ii) clearing each such Listed Interest Rates Novation Transaction, FCM Listed Interest Rates Novation Transactions and/or Rates Exchange Matches (as applicable) in accordance with, and subject to, the Rulebook and/or FCM Rulebook (as applicable), such that:
 - (A) the Hedging Give Up Agent's side of such transaction or match is registered as a Listed Interest Rates Contract and transferred to the Defaulting Rates Service Clearing Member, to become a Hedging Listed Interest Rates Contract between the Defaulting Rates Service Clearing Member and the Clearing House

(pursuant to the Clearing House's right under Default Rule 6(q); and

- (B) the other side of such transaction or match is registered as a Listed Interest Rates Contract between the Clearing House and the relevant Listed Interest Rates Clearing Member; and/or
- (d) the Clearing House, for the purpose of hedging, designating an existing Listed Interest Rates Contract of the Defaulting Rates Service Clearing Member as a Hedging Listed Interest Rates Contract (pursuant to the Clearing House's right under Default Rule 6(q)).

The Clearing House may transfer one or more Hedging Rates Service Contracts from one account to any other account in accordance with Default Rule 6(g) (including any Hedged Account (in the circumstances provided for in the Rulebook)).

The Clearing House may undertake Risk Neutralisation before, as part of, concurrently with and/or subsequent to the splitting of a Portfolio pursuant to Rule 2.1. Where a Hedging Rates Service Clearing Member executes a hedging SwapClear Transaction or FCM SwapClear Transaction (as applicable) with the Clearing House, it agrees to present such SwapClear Transaction or FCM SwapClear Transaction for clearing with the Clearing House in accordance with, and subject to, the Rulebook or FCM Rulebook (as applicable) and within the required timeframe under all Applicable Law (and, in any event, no later than the time that the SwapClear service closes on the day on which it executes such SwapClear Transaction or FCM SwapClear Transaction).

2.3 *Basis Portfolio Composition*

The Clearing House may, in consultation with, and with the assistance of, the Rates Service DMG and for each relevant currency construct a Basis Portfolio, which may include Hedging Rates Service Contracts concluded by the Clearing House through Risk Neutralisation

2.4 *Auction*

- (a) Following the completion of Risk Neutralisation, the Clearing House shall auction each OTC Auction Portfolio to Non-Defaulting SCMs and each Basis Portfolio to Non-Defaulting Joint Rates Service Clearing Members, in both such cases in order to:
 - (i) seek to re-establish with those Non-Defaulting SCMs and Non-Defaulting Joint Rates Service Clearing Members (as applicable) the positions the Clearing House had with the Defaulting SCM under the relevant Rates Service Contracts; and
 - (ii) seek to determine the net value of those Rates Service Contracts for the purposes of determining the extent of any losses to the Clearing House which are to be reduced or borne in the manner provided by Rule 15 of the Default Rules or, as the case may be, the extent of any gains to the Clearing House.

The Clearing House, in consultation with the Rates Service DMG, shall prescribe such procedures (in addition to those set out in this Annex) for the conduct of the auction process as it considers reasonably appropriate from time to time.

- (b) The Clearing House shall notify each Non-Defaulting SCM of all details that may be reasonably required in relation to an OTC Auction Portfolio and each Non-Defaulting Joint Rates Service Clearing Member of all details that may be reasonably required in relation to a Basis Portfolio, before the relevant Auction.
- (c) The auction process may take place over a number of days and Auctions of different OTC Auction Portfolios and different Basis Portfolios may take place at different times.
- (d) The relevant Non-Defaulting SCMs (in respect of each OTC Auction Portfolio) and Non-Defaulting Joint Rates Service Clearing Members (in respect of each Basis Portfolio) will submit bids to the Clearing House representatives on the Rates Service DMG, who will ensure that the identities of the bidders are not revealed to the Rates Service Clearing Member representatives on the Rates Service DMG. For the avoidance of doubt, a Non-Defaulting Rates Service Clearing Member is entitled to submit a bid in respect of an Auction on behalf of one or more affiliated Non-Defaulting Rates Service Clearing Members. The Rates Service DMG will oversee the bidding process in a manner which it considers best protects the resources of the Clearing House and ensures an orderly process.
- (e) The Clearing House, in consultation with the Rates Service DMG, will have full discretion in deciding whether to Accept a particular bid in an Auction and in deciding which Accepted bid it will select as the winning bid.
- (f) In the case of an Auction in which no bid is Accepted or received, one or more further Auctions will be held in relation to the relevant OTC Auction Portfolio or Basis Portfolio (as applicable).
- (g) As soon as practicable following the submission of bids in an Auction, if:
 - (i) one or more bid(s) is Accepted, the Clearing House will notify:
 - (A) in the case of an Auction of an OTC Auction Portfolio, the Expected Auction Participants together with any other Non-Defaulting SCMs which participated in the Auction that one or more bid(s) is Accepted;
 - (B) in the case of an Auction of a Basis Portfolio, the Non-Defaulting Joint Rates Service Clearing Members which participated in the Auction that one or more bid(s) is Accepted;
 - (C) in both such cases, the SCM which submitted the winning bid that it is the winner of the Auction; and
 - (ii) no bid is Accepted, the Clearing House will notify all Non-Defaulting SCMs of the details of any further Auction (in respect of an OTC

Auction Portfolio) and all Non-Defaulting Joint Rates Service Clearing Members of the details of any further Auction (in respect of a Basis Portfolio).

- (h) Each Non-Defaulting SCM agrees to use all reasonable efforts to make a bid in an Auction for an OTC Auction Portfolio in respect of which it is an Expected Auction Participant and each Non-Defaulting Joint Rates Service Clearing Member agrees to use all reasonable efforts to make a bid in an Auction for a Basis Portfolio.

2.5 *Market Losses*

- (a) Market Losses will be met using the available resources as set out in Rule 15 of the Default Rules. Where the Clearing House determines that there are insufficient resources under Rules 15(a) to 15(d) of the Default Rules (inclusive) to meet such losses, they will be attributed to Non-Defaulters' remaining SwapClear Contributions and remaining Listed Interest Rates Contributions in the following order and proportions:
 - (i) Market Losses will be attributed to the remaining SwapClear Funded Contribution of each Non-Defaulter *pro rata* according to the proportion that the remaining SwapClear Funded Contribution of such Non-Defaulter bears to the total of all such remaining SwapClear Funded Contributions.
 - (ii) If and to the extent there are Market Losses outstanding after the attribution process in Rule 2.5(a)(i) of this Annex, those Market Losses will be attributed to the remaining Listed Interest Rates Funded Contribution of each Non-Defaulting Joint Rates Service Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Joint Rates Service Clearing Member bears to the total of the remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Joint Rates Service Clearing Members.
 - (iii) If and to the extent there are Market Losses outstanding after the attribution process in Rule 2.5(a)(ii) of this Annex, those Market Losses will be attributed to the remaining Listed Interest Rates Funded Contribution of each Non-Defaulting Listed Interest Rates-Only Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Listed Interest Rates-Only Clearing Member bears to the total of the remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members.
 - (iv) If and to the extent there are Market Losses outstanding after the attribution process in Rule 2.5(a)(iii) of this Annex, those Market Losses will be attributed to the remaining SwapClear Unfunded Contributions of each Non-Defaulter *pro rata* according to the proportion that the remaining SwapClear Unfunded Contributions of such Non-Defaulter

bear to the total of all such remaining SwapClear Unfunded Contributions.

- (v) If and to the extent there are Market Losses outstanding after the attribution process in Rule 2.5(a)(iv) of this Annex, those Market Losses will be attributed to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting Joint Rates Service Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Unfunded Contributions of such Non-Defaulting Joint Rates Service Clearing Member bear to the total of the remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Joint Rates Service Clearing Members.
 - (vi) If and to the extent there are Market Losses outstanding after the attribution process in Rule 2.5(a)(v) of this Annex, those Market Losses will be attributed to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting Listed Interest Rates-Only Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Unfunded Contributions of such Non-Defaulting Listed Interest Rates-Only Clearing Member bear to the total of the remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members.
- (b) The Clearing House will attribute Market Losses (if any) pursuant to Rule 2.5(a) of this Annex on each business day during the implementation of the Rates Service DMP at the same time as its end of day margin and settlement call.

2.6 *Auction Incentive Pools*

- (a) The Clearing House will calculate an auction incentive pool (each, an "**AIP**") for:
 - (i) the OTC Auction Portfolio(s) in a specific Auction Portfolio Currency and Auction Portfolio Category; and
 - (ii) each Basis Portfolio.
- (b) The AIP for the OTC Auction Portfolio(s) in a specific Auction Portfolio Currency and Auction Portfolio Category will be the sum of the AIP Amounts for such OTC Auction Portfolio(s).
- (c) The AIP for a Basis Portfolio will be the sum of the AIP Amounts for such Basis Portfolio.
- (d) For the avoidance of doubt, an AIP and the AIP Amounts which comprise such AIP will change as the remaining SwapClear Funded Contributions and remaining SwapClear Unfunded Contributions change throughout the implementation of the Rates Service DMP.

2.7 Auction Losses – OTC Auction Portfolios

- (a) Auction Losses, in respect of an OTC Auction Portfolio, will be met using the available resources as set out in Rule 15 of the Default Rules. Where the Clearing House determines there are insufficient resources under Rules 15(a) to 15(d) of the Default Rules (inclusive) to meet such losses, they will be attributed to Non-Defaulters' remaining SwapClear Contributions and remaining Listed Interest Rates Contributions in accordance with the loss attribution process described in Rule 2.7(b) to 2.7(i) of this Annex.
- (b) In the case of an Auction of an OTC Auction Portfolio, for which the Clearing House determines there are insufficient resources under Rule 15(a) to 15(d) of the Default Rules (inclusive) to meet the Auction Losses for such Auction, such losses will be met first by the Non-Defaulters' remaining SwapClear Funded Contributions that are included in the AIP relating to the OTC Auction Portfolio in the following order and proportions:
 - (i) the Auction Losses will be attributed to the remaining AIP Amounts of those Non-Defaulting SCMs which are both Expected Auction Participants, in respect of the OTC Auction Portfolio, and Non-Bidders in the Auction. Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting SCM pursuant to this subparagraph (i) *pro rata* according to the proportion that such SCM's remaining AIP Amount bears to the total of the remaining AIP Amounts of all Non-Defaulting SCMs which are both Expected Auction Participants, in respect of the OTC Auction Portfolio, and Non-Bidders in the Auction;
 - (ii) if and to the extent there are Auction Losses outstanding after the attribution process in sub-paragraph (i) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Remaining Short Bidders for the OTC Auction Portfolio in accordance with this subparagraph (ii). Where:
 - (A) the Loss Portion applicable to each Remaining Short Bidder is less than or equal to its remaining AIP Amount, then the Clearing House will, in respect of each Remaining Short Bidder, attribute Auction Losses equal to the Loss Portion applicable to the Remaining Short Bidder to its remaining AIP Amount; or
 - (B) the Loss Portion applicable to one or more Remaining Short Bidders is greater than its remaining AIP Amount, then the Clearing House will attribute Auction Losses to all of the remaining AIP Amounts of such Remaining Short Bidders only (so that they cease to be Remaining Short Bidders for the purposes of this Rule 2.7(b)(ii) and the Auction) and will repeat the loss attribution process in this Rule 2.7(b)(ii) for any outstanding Auction Losses until the Auction Losses are fully met or the remaining AIP Amounts of all Remaining Short Bidders for the OTC Auction Portfolio are fully attributed; and

- (iii) if and to the extent there are Auction Losses outstanding after the attribution process in sub-paragraph (ii) above, those Auction Losses will be attributed to the remaining AIP Amount of the Non-Defaulting SCM who submitted the winning bid in the Auction, together with (where applicable) the remaining AIP Amount of any Non-Defaulting SCM who submitted a bid which was an Equal Bid or an Out Bid in relation to that winning bid. The outstanding Auction Losses will be attributed to the remaining AIP Amount of each such SCM pursuant to this sub-paragraph (iii) *pro rata* according to the proportion that such SCM's remaining AIP Amount bears to the total of the remaining AIP Amounts of: (A) the SCM which submitted the winning bid in the Auction; (B) any SCMs which submitted an Equal Bid to such winning bid in the Auction; and (C) any SCMs which were Out Bidders in the Auction.
- (c) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.7(b) of this Annex, those Auction Losses will be attributed to the remaining SwapClear Funded Contribution of each Non-Defaulting SCM *pro rata* according to the proportion that the remaining SwapClear Funded Contribution of such Non-Defaulting SCM bears to the total of the remaining SwapClear Funded Contributions of all Non-Defaulting SCMs.
- (d) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.7(c) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Funded Contribution of each Non-Defaulting Joint Rates Service Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Joint Rates Service Clearing Member bears to the total remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Joint Rates Service Clearing Members.
- (e) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.7(d) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Funded Contribution of each Non-Defaulting Listed Interest Rates-Only Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Listed Interest Rates-Only Clearing Member bears to the total remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members.
- (f) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.7(e) of this Annex, the remaining SwapClear Unfunded Contributions that are included in the AIP relating to the OTC Auction Portfolio will be used in the following order:
 - (i) the Auction Losses will be attributed to the remaining AIP Amounts of those Non-Defaulting SCMs which are both Expected Auction Participants, in respect of the OTC Auction Portfolio, and Non-Bidders in the Auction. Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting SCM pursuant to this sub-paragraph (i) *pro rata* according to the proportion that such SCM's

remaining AIP Amount bears to the total of the remaining AIP Amounts of all SCMs which are both Expected Auction Participants, in respect of the OTC Auction Portfolio, and Non-Bidders in the Auction;

- (ii) if and to the extent there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (i) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Remaining Short Bidders for the OTC Auction Portfolio in accordance with this sub-paragraph (ii). Where:
 - (A) the Loss Portion applicable to each Remaining Short Bidder is less than or equal to its remaining AIP Amount, then the Clearing House will, in respect of each Remaining Short Bidder, attribute Auction Losses equal to the Loss Portion applicable to the Remaining Short Bidder to its remaining AIP Amount; or
 - (B) the Loss Portion applicable to one or more Remaining Short Bidders is greater than its remaining AIP Amount, then the Clearing House will attribute Auction Losses to all of the remaining AIP Amounts of such Remaining Short Bidders only (so that they cease to be Remaining Short Bidders for the purposes of this Rule 2.7(f)(ii) and the Auction) and will repeat the loss attribution process in this Rule 2.7(f)(ii) for any outstanding Auction Losses until the Auction Losses are fully met or the remaining AIP Amounts of all Remaining Short Bidders for the OTC Auction Portfolio are fully attributed; and
- (iii) If and to the extent there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (ii) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Non-Defaulting SCM who submitted the winning bid, together with (where applicable) the remaining AIP Amount of any Non-Defaulting SCM who submitted a bid which was an Equal Bid or an Out Bid in relation to that winning bid. The outstanding Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting SCM pursuant to this subparagraph (iii) *pro rata* according to the proportion that such SCM's remaining AIP Amount bears to the total of the remaining AIP Amounts of: (A) the SCM which submitted the winning bid in the Auction; (B) any SCMs which submitted an Equal Bid to such winning bid in the Auction; and (C) any SCMs which were Out Bidders in the Auction.
- (g) If and to the extent there are Auction Losses outstanding following the attribution process referred to in Rule 2.7(f) of this Annex, those Auction Losses will be attributed to the remaining SwapClear Unfunded Contributions of each Non-Defaulting SCM *pro rata* according to the proportion that the remaining SwapClear Unfunded Contributions of such Non-Defaulting SCM bear to the total of the remaining SwapClear Unfunded Contributions of all Non-Defaulting SCMs.

- (h) If and to the extent there are Auction Losses outstanding following the attribution process referred to in Rule 2.7(g) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting Joint Rates Service Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Unfunded Contributions of such Non-Defaulting Joint Rates Service Clearing Member bear to the total remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Joint Rates Service Clearing Members.
- (i) If and to the extent that there are Auction Losses outstanding following the attribution process described in Rule 2.7(h) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting Listed Interest Rates-Only Clearing Member *pro rata* according to proportion that remaining Listed Interest Rates Unfunded Contributions of such Non-Defaulting Listed Interest Rates-Only Clearing Member bear to the total remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members.

2.8 *Auction Losses - Basis Portfolios*

- (a) Auction Losses, in respect of a Basis Portfolio, will be met using the available resources as set out in Rule 15 of the Default Rules. Where the Clearing House determines there are insufficient resources under Rules 15(a) to 15(d) of the Default Rules (inclusive) to meet such losses, they will be attributed to Non-Defaulters' remaining SwapClear Contributions and remaining Listed Interest Rates Contributions in accordance with the loss attribution process described in Rule 2.8(b) to 2.8(i) of this Annex.
- (b) In the case of an Auction of a Basis Portfolio, for which the Clearing House determines there are insufficient resources under Rule 15(a) to 15(d) of the Default Rules (inclusive) to meet the Auction Losses for such Auction, such losses will be met first by the Non-Defaulting Joint Rates Service Clearing Members' remaining SwapClear Funded Contributions that are included in the AIP relating to the Basis Portfolio in the following order and proportions:
 - (i) the Auction Losses will be attributed to the remaining AIP Amounts of those Non-Defaulting Joint Rates Service Clearing Members which are Non-Bidders in the Auction. Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting Joint Rates Service Clearing Member pursuant to this sub-paragraph (i) *pro rata* according to the proportion that such Non-Defaulting Joint Rates Service Clearing Member's remaining AIP Amount bears to the total of the remaining AIP Amounts of all Non-Defaulting Joint Rates Service Clearing Members which are Non-Bidders in the Auction;
 - (ii) if and to the extent there are Auction Losses outstanding after the attribution process in sub-paragraph 2.7(b)(i) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Remaining Short Bidders for the Basis Portfolio in accordance with this sub-paragraph (ii). Where:

- (A) the Loss Portion applicable to each Remaining Short Bidder is less than or equal to its remaining AIP Amount, then the Clearing House will, in respect of each Remaining Short Bidder, attribute Auction Losses equal to the Loss Portion applicable to the Remaining Short Bidder to its remaining AIP Amount; or
 - (B) the Loss Portion applicable to one or more Remaining Short Bidders is greater than its remaining AIP Amount, then the Clearing House will attribute Auction Losses to all of the remaining AIP Amounts of such Remaining Short Bidders only (so that they cease to be Remaining Short Bidders for the purposes of this Rule 2.8(b)(ii) and the Auction) and will repeat the loss attribution process in this Rule 2.8(b)(ii) for any outstanding Auction Losses until the Auction Losses are fully met or the remaining AIP Amounts of all Remaining Short Bidders for the Basis Portfolio are fully attributed; and
- (iii) if and to the extent there are Auction Losses outstanding after the attribution process in sub-paragraph 2.7(b)(ii) above, those Auction Losses will be attributed to the remaining AIP Amount of the Non-Defaulting Joint Rates Service Clearing Member who submitted the winning bid in the Auction, together with (where applicable) the remaining AIP Amount of any Non-Defaulting Joint Rates Service Clearing Member who submitted a bid which was an Equal Bid or an Out Bid in relation to that winning bid. The outstanding Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting Joint Rates Service Clearing Member pursuant to this subparagraph (iii) *pro rata* according to the proportion that such Non-Defaulting Joint Rates Service Clearing Member's remaining AIP Amount bears to the total of the remaining AIP Amounts of: (A) the Joint Rates Service Clearing Member which submitted the winning bid in the Auction; (B) any Joint Rates Service Clearing Members which submitted an Equal Bid to such winning bid in the Auction; and (C) any Joint Rates Service Clearing Member which were Out Bidders in the Auction.
- (c) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.8(b) of this Annex, those Auction Losses will be attributed to the remaining SwapClear Funded Contribution of each Non-Defaulting SCM *pro rata* according to the proportion that the remaining SwapClear Funded Contribution of such Non-Defaulting SCM bears to the total of the remaining SwapClear Funded Contributions of all Non-Defaulting SCMs.
- (d) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.8(c) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Funded Contribution of each Non-Defaulting Joint Rates Service Clearing Members *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Joint Rates Service Clearing Member bears to the total remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Joint Rates Service Clearing Members.

- (e) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.8(d) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Funded Contribution of each Non-Defaulting Listed Interest Rates-Only Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Listed Interest Rates-Only Clearing Member bears to the total remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members.
- (f) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.8(e) of this Annex, the remaining SwapClear Unfunded Contributions that are included in the AIP relating to the Basis Portfolio will be used in the following order:
 - (i) the Auction Losses will be attributed to the remaining AIP Amounts of those Non-Defaulting Joint Rates Service Clearing Members which are Non-Bidders in the Auction. Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting Joint Rates Service Clearing Member pursuant to this sub-paragraph (i) *pro rata* according to the proportion that such Non-Defaulting Joint Rates Service Clearing Member's remaining AIP Amount bears to the total of the remaining AIP Amounts of all Non-Defaulting Joint Rates Service Clearing Members which are Non-Bidders in the Auction;
 - (ii) if and to the extent there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (i) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Remaining Short Bidders for the Basis Portfolio in accordance with this sub-paragraph (ii). Where:
 - (A) the Loss Portion applicable to each Remaining Short Bidder is less than or equal to its remaining AIP Amount, then the Clearing House will, in respect of each Remaining Short Bidder, attribute Auction Losses equal to the Loss Portion applicable to the Remaining Short Bidder to its remaining AIP Amount; or
 - (B) the Loss Portion applicable to one or more Remaining Short Bidders is greater than its remaining AIP Amount, then the Clearing House will attribute Auction Losses to all of the remaining AIP Amounts of such Remaining Short Bidders only (so that they cease to be Remaining Short Bidders for the purposes of this Rule 2.8(f)(ii) and the Auction) and will repeat the loss attribution process in this Rule 2.8(f)(ii) for any outstanding Auction Losses until the Auction Losses are fully met or the remaining AIP Amounts of all Remaining Short Bidders for the Basis Portfolio are fully attributed; and
 - (iii) if and to the extent there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (ii) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Non-

Defaulting Joint Rates Service Clearing Members who submitted the winning bid, together with (where applicable) the remaining AIP Amount of any Non-Defaulting Joint Rates Service Clearing Member who submitted a bid which was an Equal Bid or an Out Bid in relation to that winning bid. The outstanding Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting Joint Rates Service Clearing Member pursuant to this sub-paragraph (iii) *pro rata* according to the proportion that such Non-Defaulting Joint Rates Service Clearing Member's remaining AIP Amount bears to the total of the remaining AIP Amounts of: (A) the Joint Rates Service Clearing Member which submitted the winning bid in the Auction; (B) any Joint Rates Service Clearing Members which submitted an Equal Bid to such winning bid in the Auction; and (C) any Joint Rates Service Clearing Members which were Out Bidders in the Auction.

- (g) If and to the extent there are Auction Losses outstanding following the attribution process referred to in Rule 2.8(f) of this Annex, those Auction Losses will be attributed to the remaining SwapClear Unfunded Contributions of each Non-Defaulting SCM *pro rata* according to the proportion that the remaining SwapClear Unfunded Contributions of such Non-Defaulting SCM bear to the total of the remaining SwapClear Unfunded Contributions of all Non-Defaulting SCMs.
- (h) If and to the extent there are Auction Losses outstanding following the attribution process referred to in Rule 2.8(g) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting Joint Rates Service Clearing Member *pro rata* according to the proportion that the remaining Listed Interest Rates Unfunded Contributions of such Non-Defaulting Joint Rates Service Clearing Member bear to the total remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Joint Rates Service Clearing Members.
- (i) If and to the extent that there are Auction Losses outstanding following the attribution process described in Rule 2.8(h) of this Annex, those Auction Losses will be attributed to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting Listed Interest Rates-Only Clearing Member *pro rata* according to proportion that remaining Listed Interest Rates Unfunded Contributions of such Non-Defaulting Listed Interest Rates-Only Clearing Member bear to the total remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members.

2.9 *Exchange Closed-Out Contracts*

- (j) Exchange Losses relating to a Defaulting Listed Interest Rates-Only Clearing Member will be met using the available resources as set out in Rule 15 of the Default Rules. Where the Clearing House determines there are insufficient resources under Rules 15(a) to 15(d) of the Default Rules (inclusive) to meet such losses, they will be met in the following order and proportions:

- (i) first, by recourse to the Listed Interest Rates Funded Contribution of each Non-Defaulting Listed Interest Rates Clearing Member attributed *pro rata* according to the proportion that the Listed Interest Rates Funded Contribution of such Non-Defaulting Listed Interest Rates Clearing Member bears to the total of the Listed Interest Rates Funded Contributions of all Non-Defaulting Listed Interest Rates Clearing Members;
 - (ii) second, by recourse to the SwapClear Funded Contributions of each Non-Defaulting SCM attributed *pro rata* according to the proportion that the SwapClear Funded Contribution of such Non-Defaulting SCM bears to the total of the SwapClear Funded Contributions of all Non-Defaulting SCMs;
 - (iii) third, by recourse to the Listed Interest Rates Unfunded Contributions of each Non-Defaulting Listed Interest Rates Clearing Member attributed *pro rata* according to the proportion that the Listed Interest Rates Unfunded Contribution of such Non-Defaulting Listed Interest Rates Clearing Member bears to the total of the Listed Interest Rates Unfunded Contributions of all Non-Defaulting Listed Interest Rates Clearing Members; and
 - (iv) fourth, by recourse to the SwapClear Unfunded Contributions of each Non-Defaulting SCM attributed *pro rata* according to the proportion that the SwapClear Unfunded Contributions of such Non-Defaulting SCM bear to the total of the SwapClear Unfunded Contributions of all Non-Defaulting SCMs.
- (k) Exchange Losses relating to a Defaulting Joint Rates Service Clearing will be met using the available resources as set out in Rule 15 of the Default Rules. Where the Clearing House determines there are insufficient resources under Rules 15(a) to 15(d) of the Default Rules (inclusive) to meet such losses, they will be met in the following order and proportions:
- (i) first, recourse to the remaining Listed Interest Rates Funded Contributions of each Non-Defaulting Joint Rates Service Clearing Member attributed *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Joint Rates Service Clearing Member bears to the total of the remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Joint Rates Service Clearing Members;
 - (ii) second, by recourse to the remaining Listed Interest Rates Funded Contribution of each Non-Defaulting Listed Interest -Only Clearing Member attributed *pro rata* according to the proportion that the remaining Listed Interest Rates Funded Contribution of such Non-Defaulting Listed Interest Rates-Only Clearing Member bears to the total of the remaining Listed Interest Rates Funded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members;

- (iii) third, by recourse to the remaining SwapClear Funded Contributions of each Non-Defaulting SCM attributed *pro rata* according to the proportion that the remaining SwapClear Funded Contribution of such Non-Defaulting SCM bears to the total of the remaining SwapClear Funded Contributions of all Non-Defaulting SCMs;
- (iv) fourth, by recourse to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting Joint Rates Service Clearing attributed *pro rata* according to the proportion that the remaining Listed Interest Rates Unfunded Contributions of such Non-Defaulting Joint Rates Service Clearing Member bears to the total of the remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Joint Rates Service Clearing Members;
- (v) fifth, by recourse to the remaining Listed Interest Rates Unfunded Contributions of each Non-Defaulting on Listed Interest Rates-Only Clearing Member attributed *pro rata* according to the proportion that the remaining Listed Interest Rates Unfunded Contribution of such Non-Defaulting Listed Interest Rates-Only Clearing Member bears to the total of the remaining Listed Interest Rates Unfunded Contributions of all Non-Defaulting Listed Interest Rates-Only Clearing Members; and
- (vi) sixth, by recourse to the remaining SwapClear Unfunded Contributions of each Non-Defaulting SCM attributed *pro rata* according to the proportion that the remaining SwapClear Unfunded Contribution of such Non-Defaulting SCM bears to the total of the remaining SwapClear Unfunded Contributions of all Non-Defaulting SCMs.

2.10 *Gains*

- (l) If, at any point during the Rates Service DMP, but before the implementation of the Rates Service Loss Distribution Process, the Clearing House determines that gains have accrued in respect of any OTC Auction Portfolio(s) and/or Basis Portfolio(s), it will reimburse each Non-Defaulter (to the extent that Market Losses, Exchange Losses or Auction Losses have been attributed to it pursuant to this Annex) by the amount of such gains in the following order and proportions:
 - (A) The Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Market Losses and Exchange Losses attributed to such Non-Defaulter's Rates Service Unfunded Contributions bear to the total Market Losses and Exchange Losses attributed to all Non-Defaulters' Rates Service Unfunded Contributions, up to a maximum of the Market Losses and Exchange Losses attributed to such Non-Defaulter's Rates Service Unfunded Contributions.
 - (B) If and to the extent there are gains remaining to be reimbursed following the process described in Rule 2.10(a)(i) of this Annex, the Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Auction Losses attributed to such

Non-Defaulter's SwapClear Unfunded Contributions bear to the total Auction Losses attributed to all Non-Defaulters' SwapClear Unfunded Contributions, up to a maximum of the Auction Losses attributed to such Non-Defaulter's SwapClear Unfunded Contributions.

- (C) If and to the extent there are gains remaining to be reimbursed following the process described in Rule 2.10(a)(ii) of this Annex, the Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Market Losses and Exchange Losses attributed to such Non-Defaulter's Rates Service Funded Contribution bear to the total Market Losses and Exchange Losses attributed to all Non-Defaulters' Rates Service Funded Contributions, up to a maximum of the Market Losses and Exchange Losses attributed to such Non-Defaulter's Rates Service Funded Contribution.
 - (D) If and to the extent there are gains remaining to be reimbursed following the process described in Rule 2.10(a)(iii) of this Annex, the Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Auction Losses attributed to such Non-Defaulter's SwapClear Funded Contribution bear to the total Auction Losses attributed to all Non-Defaulters' SwapClear Funded Contributions, up to a maximum of the Auction Losses attributed to such Non-Defaulter's SwapClear Funded Contribution.
- (b) The Clearing House's calculation of the amount by which a gain that is reimbursed to a Non-Defaulter pursuant to Rule 2.10(a)(i), (ii), (iii) and/or (iv) of this Annex increases such Non-Defaulter's SwapClear Contributions and/or Listed Interest Rates Contributions is determinative and final and, after such reimbursement and increase, the totality of such Non-Defaulter's Rates Service Contributions will be subject to subsequent attribution of losses (if any) pursuant to this Annex.
 - (c) Rule CS8 of the Rates Service Default Fund Supplement will not apply to the gains reimbursed to this Rule 2.10.
3. Default Management in respect of Rates Service Client Clearing Business and FCM Rates Service Client Business
- 3.1 The Rates Service DMP for any Rates Service Contract in respect of Rates Service Client Clearing Business shall involve the stages described in the Client Clearing Annex (which such stages, for the avoidance of doubt, will result in a Rates Service Contract in respect of Rates Service Client Clearing Business being dealt with in accordance with Rule 2 above in the event that it cannot be ported by the Clearing House).
 - 3.2 The Rates Service DMP for any FCM Rates Service Contract forming part of a Defaulter's FCM Rates Service shall be conducted in accordance with FCM Regulation 13(e) (*Transfer*). The provisions of Default Rule 10 shall also apply.
4. Transfer of Cash Flows and Registration of Positions

SCHEDULE 3 FOREXCLEAR DMP ANNEX

1. Scope and interpretation
 - 1.1 The Clearing House has established a ForexClear DMP which will apply to ForexClear Contracts following the Default of a ForexClear Clearing Member and in respect of which, for the avoidance of doubt, the Clearing House will have no recourse to the process of invoicing-back. The fundamental principles of the ForexClear DMP are elaborated to the fullest extent possible in this Annex. Where exhaustive detail cannot be laid out in the provisions of this Annex, the ForexClear DMP will be undertaken on the basis of the principles contained herein.
 - 1.2 The Clearing House has an obligation to ensure the on-going integrity of the ForexClear Service and of the ForexClear Contracts in the interests of the Non-Defaulting FXCCMs. When a ForexClear Clearing Member defaults, Non-Defaulting FXCCMs are required to supply impartial expertise through the ForexClear DMG and to bid for the Auction Portfolios of a Defaulting FXCCM, as laid out in this Annex. In addition, most FXCCMs or their parent companies or subsidiaries or fellow subsidiaries, have direct interests in that integrity, notably as contributors to the various default funds of the Clearing House. Each FXCCM shall take all steps and execute all documents necessary or required by the Clearing House to comply with its obligations as an FXCCM arising out of this ForexClear DMP Annex.
 - 1.3 The initial margining process in respect of ForexClear Contracts will be such so as to ensure that the acceptance of bids for the Auction Portfolio of a Defaulting FXCCM will recognise risk premiums.
 - 1.4 In this Annex:

"**Accepted**" means, in respect of a bid in an Auction, that the Clearing House has accepted such bid as one that it may select as the winning bid for such Auction and "**Accept**" and "**Accepts**" shall have a corresponding meaning;

"**AIP**" has the meaning given in Rule 2.5 of this Annex;

"**AIP Amount**" means, in respect of a Non-Defaulting FXCCM and the Auction Portfolio(s) in a specific Auction Portfolio Currency Pair and Auction Portfolio Category, the product of (a) such Non-Defaulting FXCCM's AIP Ratio applicable to the Auction Portfolio Currency Pair and Auction Portfolio Category of such Auction Portfolio(s), and (b) the total of its (i) remaining ForexClear Funded Contribution, and (ii) remaining ForexClear Unfunded Contributions;

"**AIP Ratio**" means, in respect of a Non-Defaulting FXCCM and the Auction Portfolio(s) in a specific Auction Portfolio Currency Pair and Auction Portfolio Category, the ratio that (a) the Undiversified Initial Margin Amount for the ForexClear Contracts of such Non-Defaulting FXCCM that are registered in its name at the time of the relevant Default and are in such Auction Portfolio Currency Pair and Auction Portfolio Category bears to, (b) the aggregate Undiversified Initial Margin Amount for all the ForexClear Contracts that are registered in the name of such Non-Defaulting FXCCM at the time of the relevant Default;

"**Auction**" means the process of bidding by Non-Defaulting FXCCMs for an Auction Portfolio as prescribed by the Clearing House following consultation with the ForexClear DMG from time to time in accordance with Rule 2.3 of this Annex;

"**Auction Losses**" means, in respect of an Auction Portfolio, all losses arising from:

- (a) the auction and sale of such Auction Portfolio; and
- (b) a change in the net present value of the ForexClear Contracts within such Auction Portfolio during the Auction Losses Calculation Period;

"**Auction Losses Calculation Period**" means, in respect of an Auction Portfolio and the business day on which the Clearing House auctions and sells such portfolio, the period:

- (d) commencing immediately after the ~~end of day margin and settlement call of the Clearing House~~Daily Calculation Period for the previous business day; and
- (e) ending at the point at which the Clearing House sells such portfolio;

"**Auction Portfolio**" means: (a) a Portfolio; or (b) a group of ForexClear Contracts resulting from the splitting of a Portfolio pursuant to Rule 2.1 of this Annex, including in both such cases any connected Hedging ForexClear Contracts concluded by the Clearing House through Risk Neutralisation;

"**Auction Portfolio Category**" means, in relation to an Auction Portfolio, the ForexClear Contract Category to which the ForexClear Contracts in the Auction Portfolio belong.

"**Auction Portfolio Currency Pair**" means in relation to an Auction Portfolio, the Currency Pair in which the ForexClear Contracts in the Auction Portfolio are denominated;

"**Bankruptcy Code**" means the U.S. Bankruptcy Code, as amended;

"**CEA**" means the U.S. Commodity Exchange Act, as amended;

"**CFTC**" means the U.S. Commodity Futures Trading Commission;

"**Currency Pair**" has the meaning set out at Part A of the Schedule to the ForexClear Regulations;

"**Daily Calculation Period**" means, in respect of a business day, the period, in respect of which the Clearing House determines the end of day margin and settlement payments for ForexClear Contracts and such business day.

"**Derivatives Clearing Organization**" means an organisation designated and registered as such by way of United States Code - Title 7, Chapter 1, paragraph 7a-1;

"**Difference**" means, in respect of an Auction and a Remaining Short Bidder who bid in the Auction, the difference between (a) the winning bid for such Auction, and (b) the bid of such Remaining Short Bidder in the Auction;

"**Equal Bid**" means an Accepted bid in an Auction, which is equal to another Accepted bid in the same Auction;

"**Expected Auction Participant**" means, in respect of an Auction Portfolio, any Non-Defaulting FXCCM who, at the time of the relevant Default, has at least one Resembling Contract registered in its name;

"**FCM ForexClear Client Business**" means the provision of FCM ForexClear Client Clearing Services by an FCM Clearing Member to its FCM Clients;

"**FCM ForexClear House Business**" means the FCM ForexClear Contracts entered into by an FCM Clearing Member for its Proprietary Account;

"**ForexClear Contract Category**" means a category of ForexClear Contracts, being either the ForexClear Non-Deliverable Contract Category or the ForexClear Deliverable Contract Category;

"**ForexClear Default Management Process Completion Date**" means the date when the ForexClear Default Management Process in relation to a Default has been completed as determined by the Clearing House in consultation with the ForexClear DMG and notified to all FXCCMs;

"**ForexClear Deliverable Clearing Member**" means an FXCCM who is designated by the Clearing House as a ForexClear Clearing Member eligible to have registered in its name ForexClear Deliverable Contracts;

"**ForexClear Deliverable Contract Category**" means the category of ForexClear Contract which comprises ForexClear Deliverable Contracts registered with the Clearing House;

"**ForexClear Deliverable-Only Clearing Member**" means a ForexClear Clearing Member who is not also a ForexClear Non-Deliverable Clearing Member;

"**ForexClear DMG**" means the advisory default management group established by the Clearing House pursuant to the terms of this Annex;

"**ForexClear DMP**" means the processes of the Clearing House outlined in this Annex, as may be supplemented and/or amended from time to time in accordance with this Annex;

"**ForexClear Funded Contribution**" means the ForexClear Contribution of a ForexClear Clearing Member, excluding any ForexClear Unfunded Contribution in respect of the ForexClear Clearing Member;

"**ForexClear Non-Deliverable Clearing Member**" means an FXCCM who is designated by the Clearing House as a ForexClear Clearing Member eligible to have registered in its name ForexClear Non-Deliverable Contracts;

"**ForexClear Non-Deliverable Contract Category**" means the category of ForexClear Contracts which comprises ForexClear Non-Deliverable Contracts registered with the Clearing House;

"ForexClear Non-Deliverable-Only Clearing Member" means a ForexClear Non-Deliverable Clearing Member who is not also a ForexClear Deliverable Clearing Member;

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

"Guidance" means guidance, in the form of one or more written notices, issued from time to time by or on behalf of the Clearing House to FXCCMs, supplementing the detail or conduct of any aspect of the ForexClear DMP;

"Hedging ForexClear Contract" has the meaning given in Rule 2.2(b)(ii)(B) of this Annex;

"Hedging ForexClear Service Clearing Member" has the meaning given in Rule 2.2(b)(i) of this Annex;

"Loss Portion" means, in respect of an Auction of an Auction Portfolio, a Remaining Short Bidder who bid in such Auction, and

- (a) Rule 2.6(b)(ii) of this Annex, the amount equal to the product of:
 - (i) the outstanding Auction Losses to be attributed to Remaining Short Bidders under Rule 2.6(b)(ii) of this Annex, and
 - (ii) the proportion that the Difference in respect of such Remaining Short Bidder and Auction bears to the total Differences in respect of all Remaining Short Bidders who bid in such Auction, and
- (b) Rule 2.6(d)(ii) of this Annex, the amount equal to the product of:
 - (iii) the outstanding Auction Losses to be attributed to Remaining Short Bidders under Rule 2.6(d)(ii) of this Annex, and
 - (iv) the proportion that the Difference in respect of such Remaining Short Bidder and Auction bears to the total Differences in respect of all Remaining Short Bidders who bid in such Auction;

"Market Losses" means any losses in respect of the implementation of the ForexClear DMP, including losses arising from the execution of hedging ForexClear Transactions for the purpose of Risk Neutralisation, but excluding Auction Losses;

"Non-Bidder" means, in respect of an Auction, an FXCCM, which (a) did not bid in such Auction, or (b) bid in such Auction, but whose bid was not Accepted;

"Non-Defaulter" means an FXCCM that is not a Defaulter;

"Non-Defaulters' Contributions" means the ForexClear Contributions made by Non-Defaulting FXCCMs to the ForexClear Default Fund;

"Out Bid" means a bid in an Auction, which is Accepted and higher than the winning bid in such Auction;

"Out Bidder" means, in respect of an Auction, a Non-Defaulting FXCCM, which submitted an Out Bid in such Auction;

"Portfolio" means, in respect of each Currency Pair, the ForexClear Contracts in such Currency Pair registered in the name of a Defaulting FXCCM in respect of House Clearing Business or the ForexClear Contracts in such Currency Pair registered in the name of a Defaulting FXCCM in respect of Client Clearing Business (or, in the case of an FCM Clearing Member that is a Defaulter, the FCM ForexClear Contracts in such Currency Pair registered in respect of its FCM ForexClear Client Business) and, in both such cases includes, where relevant, any Hedging ForexClear Contracts connected to the relevant ForexClear Contracts concluded by the Clearing House through Risk Neutralisation. For the avoidance of doubt, a Portfolio containing ForexClear Contracts relating to the Client Clearing Business or FCM ForexClear Client Business of a Defaulting FXCCM will only contain ForexClear Contracts relating to Client Clearing Business or FCM ForexClear Client Business, as appropriate. The Clearing House shall not be entitled to combine client and house positions in a single Portfolio;

"Recognised Clearing House" mean an organisation which is declared to be a recognised clearing house by a recognition order (that is for the time in force) made under section 290(1)(b) of the Financial Services and Markets Act 2000;

"Remaining Short Bidder" means, in respect of an Auction of an Auction Portfolio and

- (c) Rule 2.6(b)(ii) of this Annex, a Short Bidder in such Auction whose remaining AIP Amount, which is in the form of ForexClear Funded Contributions and forms part of the AIP relating to such Auction Portfolio, is greater than zero, and
- (d) Rule 2.6(d)(ii) of this Annex, a Short Bidder in such Auction whose remaining AIP Amount, which is in the form of ForexClear Unfunded Contributions and forms part of the AIP relating to such Auction Portfolio, is greater than zero;

"Resembling Contract" means, in respect of the ForexClear Contracts in an Auction Portfolio, a ForexClear Contract registered in the name of a Non-Defaulting FXCCM that (a) is denominated in the same currencies as the Auction Portfolio Currency Pair and (b) belongs to the ForexClear Contract Category which corresponds to the Auction Portfolio Category of such Auction Portfolio;

"Risk Neutralisation" means the process of reducing the market risk and/or settlement risk associated with a Defaulting FXCCM's obligations to the Clearing House under ForexClear Contracts by hedging the exposure before the auction process as described in Rule 2.2 of this Annex;

"Short Bidder" means, in respect of an Auction of an Auction Portfolio, a Non-Defaulting FXCCM that (a) is an Expected Auction Participant for such Auction Portfolio, and (b) submitted a bid, which is Accepted, but lower than the winning bid, in such Auction; and

"**Undiversified Initial Margin Amount**" means, in respect of the ForexClear Contracts in a specific Currency Pair and ForexClear Contract Category, the required initial margin amount for such ForexClear Contracts, as determined by the Clearing House.

1.5 Terms used, and not defined, in this Annex shall have the meanings given to them in the Regulations or FCM Regulations.

2. ForexClear DMP

The ForexClear DMP in respect of: (a) ForexClear Clearing House Business; (b) Relevant Auction Contracts in respect of ForexClear Client Clearing Business; (c) FCM ForexClear House Business; and (d) FCM ForexClear Client Business, shall involve the stages described in this Rule 2.

Resources will be allocated based on the order and proportions described in Rules 2.4 to 2.6 of this Annex. Allocation of resources pursuant to a process or the order in which processes are carried out may reduce the resources which are available to meet the losses in respect of any subsequent process and, consequently, impact the allocation of losses amongst Non-Defaulters. For the avoidance of doubt, the Clearing House may in its sole and absolute discretion determine the order in which it constructs Auction Portfolios and auctions Auction Portfolios.

2.1 ***Portfolio Splitting***

The Clearing House, in consultation with and with the assistance of the ForexClear DMG, shall determine the composition of each Auction Portfolio and shall have the discretion to divide a Portfolio into two or more individual Auction Portfolios with the aim of facilitating the efficiency of, and reducing the risk associated with, the auction process provided for in Rule 2.3 of this Annex. The overriding principle behind the portfolio splitting process is that the Clearing House will structure Auction Portfolios with the intention of ensuring a ForexClear DMP which best protects the resources of the Clearing House, subject to compliance with applicable provisions of the CEA and the CFTC Regulations regarding segregation of client assets. Therefore, nothing in this Rule 2.1 shall be deemed to imply: (a) that the Clearing House is under any obligation to split a particular Portfolio of a Defaulting FXCCM (regardless of the number of ForexClear Contracts that such Portfolio contains); or (b) any particular requirements as to the composition of an individual Auction Portfolio (including in terms of combining or separating ForexClear Contracts belonging to different ForexClear Contract Categories), except that, subject to overriding risk procedures it is broadly anticipated that the parameters of any Auction Portfolio shall not be materially different to those set out in the Clearing House's fire drill.

2.2 ***Risk Neutralisation***

The Clearing House will, in consultation with and with the assistance of the ForexClear DMG, reduce the market risk and/or settlement risk associated with a Defaulting FXCCM's obligations to the Clearing House so far as is reasonably practicable by hedging the Clearing House's exposure in open ForexClear Contracts to which the Defaulting FXCCM is party, where such hedging may be achieved, without limitation, by:

- (a) the splitting of Portfolios pursuant to Rule 2.1; and/or
- (b) the Clearing House, for the purpose of hedging:
 - (i) executing one or more new ForexClear Transactions and/or new FCM ForexClear Transactions (as applicable) with Non-Defaulting FXCCMs (each, a "**Hedging ForexClear Service Clearing Member**") on the basis of a separate agreement between the Clearing House and the relevant Hedging ForexClear Service Clearing Member; and
 - (ii) clearing each such ForexClear Transaction and/or FCM ForexClear Transaction (as applicable) in accordance with, and subject to, the Rulebook and/or FCM Rulebook (as applicable), such that:
 - (A) the Hedging ForexClear Service Clearing Member's side of such transaction is registered as a ForexClear Contract between the Clearing House and the Hedging ForexClear Service Clearing Member; and
 - (B) the Clearing House's side of such transaction is registered as a ForexClear Contract between the Defaulting ForexClear Service Clearing Member and the Clearing House (pursuant to the Clearing House's rights under Default Rule 6(a)) (any such ForexClear Contract, a "**Hedging ForexClear Contract**").

The Clearing House may transfer one or more Hedging ForexClear Service Contracts from one account to any other account in accordance with Default Rule 6(g) (including any Hedged Account (in the circumstances provided for in the Rulebook)).

The Clearing House may undertake Risk Neutralisation before, as part of, concurrently with and/or subsequent to the splitting of a Portfolio pursuant to Rule ~~2.12-1~~. Where a Hedging ForexClear Service Clearing Member executes a hedging ForexClear Transaction or FCM ForexClear Transaction (as applicable) with the Clearing House, it agrees to present such ForexClear Transaction or FCM ForexClear Transaction for clearing with the Clearing House in accordance with, and subject to, the Rulebook or FCM Rulebook (as applicable) and within the required timeframe under all Applicable Law (and, in any event, no later than the time that the ForexClear service closes on the day on which it executes such ForexClear Transaction or FCM ForexClear Transaction).

2.3 ***Auction***

- (a) Following the completion of Risk Neutralisation, the Clearing House shall auction each Auction Portfolio to Non-Defaulting FXCCMs in order to:
 - (i) seek to re-establish with those Non-Defaulting FXCCMs the positions the Clearing House had with the Defaulting FXCCM under the relevant ForexClear Contracts; and
 - (ii) seek to determine the net value of those ForexClear Contracts for the purposes of determining the extent of any losses to the Clearing House which are to be reduced or borne in the manner provided by Rule 15 of

the Default Rules or, as the case may be, the extent of any gains to the Clearing House.

The Clearing House, in consultation with the ForexClear DMG, shall prescribe such procedures (in addition to those set out in this Annex) for the conduct of the auction process as it considers reasonably appropriate from time to time.

- (b) The Clearing House shall notify each Non-Defaulting FXCCM of all details that may be reasonably required in relation to an Auction Portfolio before the relevant Auction.
- (c) The auction process may take place over a number of days and Auctions of different Auction Portfolios may take place at different times.
- (d) The relevant Non-Defaulting FXCCMs will submit bids to the Clearing House representatives on the ForexClear DMG, who will ensure that the identities of the bidders are not revealed to the FXCCM representatives on the ForexClear DMG. For the avoidance of doubt, a Non-Defaulting FXCCM is entitled to submit a bid on behalf of one or more affiliated Non-Defaulting FXCCMs. The ForexClear DMG will oversee the bidding process in a manner which it considers best protects the resources of the Clearing House and ensures an orderly process.
- (e) The Clearing House, in consultation with the ForexClear DMG, will have full discretion in deciding whether to Accept a particular bid in an Auction and in deciding which Accepted bid it will select as the winning bid.
- (f) In the case of an Auction in which no bid is Accepted or received (as the case may be), one or more further Auctions will be held in relation to the relevant Auction Portfolio.
- (g) As soon as practicable following the submission of bids in an Auction, if:
 - (i) one or more bid(s) is Accepted, the Clearing House will notify the Expected Auction Participants together with any other Non-Defaulting FXCCMs which participated in the Auction that one or more bid(s) is Accepted, and shall notify the FXCCM who submitted the winning bid that it is the winner of the Auction; and
 - (ii) no bid is Accepted, the Clearing House will notify all Non-Defaulting FXCCMs of the details of any further Auction.
- (h) Each Non-Defaulting FXCCM agrees to use all reasonable efforts to make a bid in an Auction for an Auction Portfolio in respect of which it is an Expected Auction Participant.

2.4 **Market Losses**

- (e) Market Losses will be met using the available resources as set out in Rule 15 of the Default Rules. Where the Clearing House determines that there are insufficient resources under Rules 15(a) to 15(d) of the Default Rules (inclusive)

to meet such losses, they will be attributed to Non-Defaulters' remaining ForexClear Contributions in the following order and proportions:

- (i) Market Losses will be attributed to the remaining ForexClear Funded Contribution of each Non-Defaulter *pro rata* according to the proportion that the remaining ForexClear Funded Contribution of such Non-Defaulter bears to the total of all such remaining ForexClear Funded Contributions; and
 - (ii) if and to the extent there are Market Losses outstanding after the attribution process in Rule 2.4(a)(i) of this Annex, those Market Losses will be attributed to the remaining ForexClear Unfunded Contributions of each Non-Defaulter *pro rata* according to the proportion that the remaining ForexClear Unfunded Contributions of such Non-Defaulter bear to the total of all such remaining ForexClear Unfunded Contributions.
- (f) The Clearing House will attribute Market Losses (if any) pursuant to Rule 2.4(a) of this Annex on each business day during the implementation of the ForexClear DMP at the same time as its end of day margin and settlement call.

2.5 *Auction Incentive Pools*

- (a) The Clearing House will calculate an auction incentive pool (each, an "AIP") for the Auction Portfolio(s) in a specific Auction Portfolio Currency Pair and Auction Portfolio Category.
- (b) The AIP for the Auction Portfolio(s) in a specific Auction Portfolio Currency Pair and Auction Portfolio Category will be the sum of the AIP Amounts for such Auction Portfolio(s).
- (c) For the avoidance of doubt, an AIP and the AIP Amounts which comprise such AIP will change as the remaining ForexClear Funded Contributions and remaining ForexClear Unfunded Contributions change throughout the implementation of the ForexClear DMP.

2.6 *Auction Losses – Auction Portfolios*

- (a) Auction Losses, in respect of an Auction Portfolio, will be met using available resources as set out in Rule 15 of the Default Rules. Where the Clearing House determines there are insufficient resources under Rules 15(a) to (d) of the Default Rules (inclusive) to meet such losses, they will be attributed to Non-Defaulters' remaining ForexClear Contributions in accordance with the loss attribution process described in Rules 2.6(b) to 2.6(e) in this Annex.
- (b) In the case of an Auction of an Auction Portfolio, for which the Clearing House determines there are insufficient resources under Rule 15(a) to 15(d) of the Default Rules (inclusive) to meet the Auction Losses for such Auction, such losses will be met first by the Non-Defaulters' remaining ForexClear Funded Contributions that are included in the AIP relating to the Auction Portfolio in the following order and proportions:

- (i) the Auction Losses will be attributed to the remaining AIP Amounts of those Non-Defaulting FXCCMs which are both Expected Auction Participants, in respect of the Auction Portfolio, and Non-Bidders in the Auction. Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting FXCCM pursuant to this sub-paragraph (i) *pro rata* according to the proportion that such FXCCM's remaining AIP Amount bears to the total of the remaining AIP Amounts of all Non-Defaulting FXCCMs which are both Expected Auction Participants, in respect of the Auction Portfolio, and Non-Bidders in the Auction;
 - (ii) if and to the extent there are Auction Losses outstanding after the attribution process in subparagraph (i) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Remaining Short Bidders for the Auction Portfolio in accordance with this sub-paragraph (ii). Where:
 - (A) the Loss Portion applicable to each Remaining Short Bidder is less than or equal to its remaining AIP Amount, then the Clearing House will, in respect of each Remaining Short Bidder, attribute Auction Losses equal to the Loss Portion applicable to the Remaining Short Bidder to its remaining AIP Amount; or
 - (B) the Loss Portion applicable to one or more Remaining Short Bidders is greater than its remaining AIP Amount, then the Clearing House will attribute Auction Losses to all of the remaining AIP Amounts of such Remaining Short Bidders only (so that they cease to be Remaining Short Bidders for the purposes of this Rule 2.6(b)(ii) and the Auction) and will repeat the loss attribution process in this Rule 2.6(b)(ii) for any outstanding Auction Losses until the Auction Losses are fully met or the remaining AIP Amounts of all Remaining Short Bidders for the Auction Portfolio are fully attributed; and
 - (iii) if and to the extent there are Auction Losses outstanding after the attribution process in sub-paragraph (ii) above, those Auction Losses will be attributed to the remaining AIP Amount of the Non-Defaulting FXCCM who submitted the winning bid in the Auction, together with (where applicable) the remaining AIP Amount of any Non-Defaulting FXCCM who submitted a bid which was an Equal Bid or an Out Bid in relation to that winning bid. The outstanding Auction Losses will be attributed to the remaining AIP Amount of each such FXCCM pursuant to this sub-paragraph (iii) *pro rata* according to the proportion that such FXCCM's remaining AIP Amount bears to the total of the remaining AIP Amounts of: (A) the FXCCM which submitted the winning bid in the Auction; (B) any FXCCMs which submitted an Equal Bid to such winning bid in the Auction; and (C) any FXCCMs which were Out Bidders in the Auction.
- (c) If and to the extent that there are Auction Losses outstanding following the attribution process in Rule 2.6(b) of this Annex, then:

- (i) where the Auction Portfolio Category of the Auction Portfolio is the ForexClear Non-Deliverable Contract Category, those Auction Losses will be attributed:
 - (A) first, to the remaining ForexClear Funded Contribution of each Non-Defaulting ForexClear Non-Deliverable Clearing Member *pro rata* according to the proportion that the remaining ForexClear Funded Contribution of such Non-Defaulting ForexClear Non-Deliverable Clearing Member bears to the total of the remaining ForexClear Funded Contributions of all Non-Defaulting ForexClear Non-Deliverable Clearing Members; and
 - (B) then, to the remaining ForexClear Funded Contribution of each Non-Defaulting ForexClear Deliverable-Only Clearing Member *pro rata* according to the proportion that the remaining ForexClear Funded Contribution of such Non-Defaulting ForexClear Deliverable-Only Clearing Member bears to the total of the remaining ForexClear Funded Contributions of all Non-Defaulting ForexClear Deliverable-Only Clearing Members; or
- (ii) where the Auction Portfolio Category of the Auction Portfolio is the ForexClear Deliverable Contract Category, those Auction Losses will be attributed:
 - (A) first, to the remaining ForexClear Funded Contribution of each Non-Defaulting ForexClear Deliverable Clearing Member *pro rata* according to the proportion that the remaining ForexClear Funded Contribution of such Non-Defaulting ForexClear Deliverable Clearing Member bears to the total of the remaining ForexClear Funded Contributions of all Non-Defaulting ForexClear Deliverable Clearing Members; and
 - (B) then, to the remaining ForexClear Funded Contribution of each Non-Defaulting ForexClear Non-Deliverable-Only Clearing Member *pro rata* according to the proportion that the remaining ForexClear Funded Contribution of such Non-Defaulting ForexClear Non-Deliverable-Only Clearing Member bears to the total of the remaining ForexClear Funded Contributions of all Non-Defaulting ForexClear Non-Deliverable-Only Clearing Members.
- (d) If and to the extent there are Auction Losses outstanding following the attribution process in Rule 2.6(c) of this Annex, the remaining ForexClear Unfunded Contributions that are included in the AIP relating to the Auction Portfolio will be used in the following order:
 - (i) the Auction Losses will be attributed to remaining AIP Amounts of those Non-Defaulting FXCCMs which are both Expected Auction Participants, in respect of the Auction Portfolio, and Non-Bidders in the relevant Auction. Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting FXCCM pursuant to this sub-

paragraph (iv) *pro rata* according to the proportion that such FXCCM's remaining AIP Amount bears to the total of the remaining AIP Amounts of all FXCCMs which are both Expected Auction Participants, in respect of the Auction Portfolio, and Non-Bidders in the Auction;

- (ii) if and to the extent there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (iv) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Remaining Short Bidders for the Auction Portfolio in accordance with this sub-paragraph (ii). Where:
 - (A) the Loss Portion applicable to each Remaining Short Bidder is less than or equal to its remaining AIP Amount, then the Clearing House will, in respect of each Remaining Short Bidder, attribute Auction Losses equal to the Loss Portion applicable to the Remaining Short Bidder to its remaining AIP Amount; or
 - (B) the Loss Portion applicable to one or more Remaining Short Bidders is greater than its remaining AIP Amount, then the Clearing House will attribute Auction Losses to all of the remaining AIP Amounts of such Remaining Short Bidders only (so that they cease to be Remaining Short Bidders for the purposes of this Rule 2.6(d)(ii) and the Auction) and will repeat the loss attribution process in this Rule 2.6(d)(ii) for any outstanding Auction Losses until the Auction Losses are fully met or the remaining AIP Amounts of all Remaining Short Bidders for the Auction Portfolio are fully attributed; and
- (iii) if and to the extent there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (iv) above, those Auction Losses will be attributed to the remaining AIP Amounts of the Non-Defaulting FXCCM and who submitted the winning bid, together with (where applicable) the remaining AIP Amount of any Non-Defaulting FXCCM an Out who submitted a bid which was an Equal Bid or a Higher Bid in relation to that winning bid. The outstanding Auction Losses will be attributed to the remaining AIP Amount of each such Non-Defaulting FXCCM pursuant to this sub-paragraph (b) *pro rata* according to the proportion that such FXCCM's remaining AIP Amount bears to the total of the remaining AIP Amounts of: (A) the FXCCM which submitted the winning bid in the Auction; (B) any FXCCMs which submitted an Equal Bid to such winning bid in the Auction; and (C) any FXCCMs which were Out Bidders in the Auction.
- (e) If and to the extent there are Auction Losses outstanding following the attribution process referred to in Rule 2.6(d) of this Annex, then:
 - (i) where the Auction Portfolio Category of the Auction Portfolio is the ForexClear Non-Deliverable Contract Category, those Auction Losses will be attributed:

- (A) first, to the remaining ForexClear Unfunded Contributions of each Non-Defaulting ForexClear Non-Deliverable Clearing Member *pro rata* according to the proportion that the remaining ForexClear Unfunded Contributions of such Non-Defaulting ForexClear Non-Deliverable Clearing Member bear to the total of the remaining ForexClear Unfunded Contributions of all Non-Defaulting ForexClear Non-Deliverable Clearing Members; and
 - (B) then, to the remaining ForexClear Unfunded Contributions of each Non-Defaulting ForexClear Deliverable-Only Clearing Member *pro rata* according to the proportion that the remaining ForexClear Unfunded Contributions of such Non-Defaulting ForexClear Deliverable-Only Clearing Member bear to the total of the remaining ForexClear Unfunded Contributions of all Non-Defaulting ForexClear Deliverable-Only Clearing Members; or
- (ii) Where the Auction Portfolio Category of the Auction Portfolio is the ForexClear Deliverable Contract Category, those Auction Losses will be attributed:
- (A) first, to the remaining ForexClear Unfunded Contributions of each Non-Defaulting ForexClear Deliverable Clearing Member *pro rata* according to the proportion that the remaining ForexClear Unfunded Contributions of such Non-Defaulting ForexClear Deliverable Clearing Member bear to the total of the remaining ForexClear Unfunded Contributions of all Non-Defaulting ForexClear Deliverable Clearing Members; and
 - (B) then, to the remaining ForexClear Unfunded Contributions of each Non-Defaulting ForexClear Non-Deliverable-Only Clearing Member *pro rata* according to the proportion that the remaining ForexClear Unfunded Contributions of such Non-Defaulting ForexClear Non-Deliverable-Only Clearing Member bear to the total of the remaining ForexClear Unfunded Contributions of all Non-Defaulting ForexClear Non-Deliverable-Only Clearing Member.

2.7 **Gains**

- (a) If, at any point during the ForexClear DMP, but before the implementation of the ForexClear Loss Distribution Process, the Clearing House determines that gains have accrued in respect of any Auction Portfolio(s), it will reimburse each Non-Defaulter (to the extent that Market Losses or Auction Losses have been attributed to it pursuant to this Annex) by the amount of such gains in the following order and proportions:
 - (i) The Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Market Losses attributed to such Non-Defaulter's ForexClear Unfunded Contributions bear to the total Market Losses attributed to all Non-Defaulters' ForexClear

Unfunded Contributions, up to a maximum of the Market Losses attributed to such Non-Defaulter's ForexClear Unfunded Contributions.

- (ii) If and to the extent there are gains remaining to be reimbursed following the process described in Rule 2.7(a)(i) of this Annex, the Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Auction Losses attributed to such Non-Defaulter's ForexClear Unfunded Contributions bear to the total Auction Losses attributed to all Non-Defaulters' ForexClear Unfunded Contributions, up to a maximum of the Auction Losses attributed to such Non-Defaulter's ForexClear Unfunded Contributions.
 - (iii) If and to the extent there are gains remaining to be reimbursed following the process described in Rule 2.7(a)(ii) of this Annex, the Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Market Losses attributed to such Non-Defaulter's ForexClear Funded Contribution bear to the total Market Losses attributed to all Non-Defaulter's ForexClear Funded Contributions, up to a maximum of the Market Losses attributed to such Non-Defaulter's ForexClear Funded Contribution.
 - (iv) If and to the extent there are gains remaining to be reimbursed following the process described in Rule 2.7(a)(iii) of this Annex, the Clearing House will reimburse each Non-Defaulter for such gains *pro rata* according to the proportion that the Auction Losses attributed to such Non-Defaulter's ForexClear Funded Contribution bear to the total Auction Losses attributed to all Non-Defaulter's ForexClear Funded Contributions, up to a maximum of the Auction Losses attributed to such Non-Defaulter's ForexClear Funded Contribution.
- (b) The Clearing House's calculation of the amount by which a gain that is reimbursed to a Non-Defaulter pursuant to Rule 2.7(a)(i), (ii), (iii) and/or (iv) of this Annex increases such Non-Defaulter's ForexClear Contributions is determinative and final and, after such reimbursement and increase, the totality of such Non-Defaulter's ForexClear Contributions will be subject to subsequent attribution of losses (if any) pursuant to this Annex.
 - (c) Rule F12 of the ForexClear Default Fund Supplement will not apply to the gains reimbursed pursuant to this Rule 2.7.
3. Default Management in respect of ForexClear Client Clearing Business and FCM ForexClearClient Business Client Business
- 3.1 The ForexClear DMP for any ForexClear Contract in respect of ForexClear Client Clearing Business shall be conducted in accordance with the Client Clearing Annex (which such stages, for the avoidance of doubt, will result in a ForexClear Client Contract in respect of ForexClear Clearing Business being dealt with in accordance with Rule 2 above in the event that it cannot be ported by the Clearing House).

- 3.2 The ForexClear DMP for any FCM ForexClear Contract forming part of a Defaulter's FCM ForexClear Client Business shall be conducted in accordance with FCM Regulation 13(e) (Transfer). The provisions of Default Rule 10 shall also apply.
4. Transfer of Cash Flows / Registration of Positions
- 4.1 Following the disposal of an Auction Portfolio by way of Auction (and notwithstanding that other Auction Portfolios of the Defaulting FXCCM may not yet have been auctioned) the Clearing House, will, with the co-operation of the Non-Defaulting FXCCMs, transfer to the Non-Defaulting FXCCM whose bid won the relevant Auction Portfolio the rights and obligations, from the Defaulting FXCCM, arising out of the positions which that Non-Defaulting FXCCM has successfully bid for under the ForexClear DMP. Such transfer may take place by way of registration of new positions with the Clearing House in the name of the relevant Non-Defaulting FXCCM, or novation of rights and obligations to the relevant Non-Defaulting FXCCM. All such registrations shall be made in a way that recognises the Collateral paid or received in respect of variation margin and any amounts paid or received in respect of settlement in relation to the ForexClear Contracts of the Defaulting FXCCM representing such new positions.
- 4.2 In order to effect the transfer of positions, the Clearing House shall prescribe such procedures and timetable as it considers reasonably appropriate in the circumstances. FXCCMs will be required to exercise best endeavours to comply with such requirements as may be established by the Clearing House, after consultation with the ForexClear DMG, to effect the transfer of positions, including but not limited to the payment of any sums due as a result of the winning bid and the provision of Collateral in an amount required by the Clearing House in respect of initial margin and variation margin obligations in respect of positions which are to be registered in their names. The Clearing House agrees that in such procedures it shall make provision for set-off by the Clearing House of amounts owed by the Clearing House to the individual Non-Defaulting FXCCMs as a result of the operation of the ForexClear DMP against sums owed by those individual Non-Defaulting FXCCMs to the Clearing House in respect thereof.
- 4.3 Where, as a result of an Auction, the Clearing House is required to make a payment to a Non-Defaulting FXCCM in respect of a winning bid, the Clearing House shall not be permitted to register any position, whether as a new position or as a novation of existing rights and obligations, to any such FXCCM if the Clearing House does not simultaneously credit that FXCCM with the requisite amount. If any position is so registered without such payment, such registration shall be deemed void *ab initio* and unenforceable against the relevant FXCCM. For the avoidance of doubt, the Clearing House will utilise the resources available to it pursuant to Rule 15 of the Default Rules for the purposes of making such a payment notwithstanding that other Auction Portfolios of the Defaulting FXCCM may not yet have been auctioned and that the loss attribution process provided for by Rule 2.6 has not yet occurred.
5. Information regarding the ForexClear DMP
- 5.1 Whenever the ForexClear DMP is implemented by the Clearing House in respect of a Defaulting FXCCM, the Clearing House will, with the assistance of the ForexClear