

VIA CFTC PORTAL

23 December 2016

Mr Christopher Kirkpatrick  
Commodity Futures Trading Commission  
115 21<sup>st</sup> Street NW  
Three Lafayette Centre  
Washington DC 20581

**LCH Limited Self Certification: Changes to Default Rules**

Dear Mr Kirkpatrick

Pursuant to CFTC regulation §40.6(a), LCH Limited (“LCH”), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the “CFTC”), is submitting for self-certification changes to its default rules. This self certification covers the changes affecting the Rates service and the ForexClear service. The changes apply to all Clearing Members of these services, including Futures Commission Merchants (“FCMs”).

**Part I: Explanation and Analysis**

LCH proposes to amend the arrangements set out in the rulebook in relation to the end of the default waterfall, specifically the loss distribution process and the application of recoveries. The changes aim to reduce the likelihood that a clearing service would progress rapidly to service closure, following the default of a Clearing Member. This approach is in line with the policy objective to enhance financial stability.

The changes will go live on, or after, January 11, 2017.

**Part II: Description of Rule Changes**

The table below provides the details on the changes.

Topic	Description of the change	Reference in the rules
Default Waterfall	The Default Rules describe the LCH Default Waterfall applicable to all LCH clearing services. Paragraph (h) of Rule 15 has been largely deleted and refers to the Default Fund Supplements of each clearing service for details on loss allocation at the last stage of the waterfall.	The changes are reflected in Section “ <i>Reduction of Losses on Default</i> ” Rule 15 (h).
Loss Distribution	A number of definitions have been revised and added. These are listed below:	The changes are reflected in the Default Fund

<p>process</p>	<p>i. The term “Last Call Prior to Default” is amended to refer to the last business day when a Clearing Member has fully met a margin call prior to defaulting.</p> <p>ii. The definition of the term “Loss Distribution Cap Amount” has been deleted and replaced by “Loss Distribution Trigger Amount”. This amount represents the trigger for the ballot for surviving Clearing Members to vote in favour or against service continuity during the loss allocation. The trigger amount is reached when any Clearing Member in the relevant clearing service has suffered aggregate variation margin gains haircutting (VMGH) losses greater than GBP200m or twice its default fund contribution, whichever is higher. (USD200m for ForexClear.)</p> <p>iii. A definition for the term “Loss Distribution Trigger Event” has been added to describe the circumstance whereby the loss distribution amount has exceeded the Loss Distribution Trigger Amount, described above, on the previous business day (day T, for which margin is calculated overnight and called on T+1) then a ballot is carried out on that following business day (T+1).</p> <p>iv. A definition for the term “Loss Distribution Cut-Off Date” has been added to refer to the 10<sup>th</sup> business day from the date of the start of the loss distribution process, which may be extended in certain circumstances as noted in paragraphs d) of Rule F9 and Rule CS4 respectively.</p> <p>v. The term “Loss Distribution Period”, which starts from when a default occurs, has been amended to state that it could extend up to the business day when the “Loss Distribution Trigger Event” has occurred; and in any case such period should not extend beyond the Loss-Distribution Cut-Off Date.</p> <p>Specifically to the Rates service, the rules note that in the case of a default of a Listed Rates Clearing Member which is not also a SwapClear Clearing Member, this period runs to, but excludes, the business day where LCH proceeds with the liquidation or porting of the defaulter’s contracts.</p> <p>vi. A definition of “Requisite Non-Defaulting Rates Service Clearing Members” and “Requisite Non-Defaulting FXCCMs” has been added in the Default Fund Supplements of the Rates service and ForexClear service respectively. The term defines 75% of the surviving Clearing Members in each service weighted by default fund contribution. This represents the minimum percentage of Clearing Members needed to vote in favour of continuation of service in order for LCH to continue with the loss allocation process.</p>	<p>Supplements as follows:</p> <ul style="list-style-type: none"> <li>• ForexClear - Schedule 5, Rule F9 (a) and (d)</li> <li>• Rates service - Schedule 6, Rule CS4 (a) and (d)</li> </ul>
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	<p>vii. Under the section “Adjustment to Loss Distribution Trigger Amount and Loss Distribution Cut-Off Date” the revised rules explain that, at any time during the loss distribution process, LCH may propose an extension of 10 business days to the “Loss Distribution Cut-Off Date” and/or propose to enter a further stage of loss distribution LCH is required to propose a further stage where a Loss Distribution Trigger Event has occurred. As noted above, before going ahead with a further stage, LCH must receive the consent of non-defaulting Clearing Members via a ballot. More than 50% of such Clearing Members must participate in the ballot and the Requisite Non-Defaulting FXCCMs or Requisite Non-Defaulting Rates Service Clearing Members (as applicable) must vote in favour of service continuity. The alternative is to proceed to service closure.</p> <p>viii. Nothing in the revised rules provides that any variation margin or settlement payments that have been paid or received may be unwound. The rules provide for a ballot mechanism to assess whether to proceed with loss distribution once the Loss Distribution Trigger Amount has been reached. As this mechanism acts as a trigger, rather than a cap, it does not limit the amount of any variation margin or settlement amount payable but rather requires that a ballot be held in the event the trigger amount is exceeded. In the event that a ballot is not held, then the relevant service will be closed.</p> <p>ix. The rules further clarify that LCH will publish the terms of the voting process on the day of the ballot.</p>	
<p>Application of recoveries</p>	<p>The revised rules, applicable to all clearing services, explain the manner in which Clearing Members may be reimbursed of losses incurred during a default management and provide that where Clearing Members’ resources have been used by LCH, such resources will be returned to the relevant Clearing Member(s) before applying any recoveries to LCH’s dedicated own resources (i.e. a reverse waterfall has been implemented).</p>	<p>The changes are reflected in the Default Fund Supplements as follows:</p> <ul style="list-style-type: none"> <li>• ForexClear: Schedule 5, Rule F12</li> <li>• Rates service: Schedule 6, Rule CS8</li> </ul>
<p>Other changes</p>	<p>Some paragraphs have been renumbered and some references have been updated accordingly.</p>	<p>The changes are throughout the Default Rules</p>

The text of the changes to the Default Rules is attached hereto as **Appendix I**.

**Part III: Core Principle Compliance**

LCH has concluded that compliance with the Core Principles, including Core Principle G, will not be adversely affected by this change.

**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: <http://www.lch.com/rules-regulations/proposed-rules-changes>

**Part V: Opposing Views**

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

**Certification**

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

Should you have any questions please contact me at [julian.oliver@lch.com](mailto:julian.oliver@lch.com).

Yours sincerely



Julian Oliver  
Chief Compliance Officer  
LCH.Clearent Limited

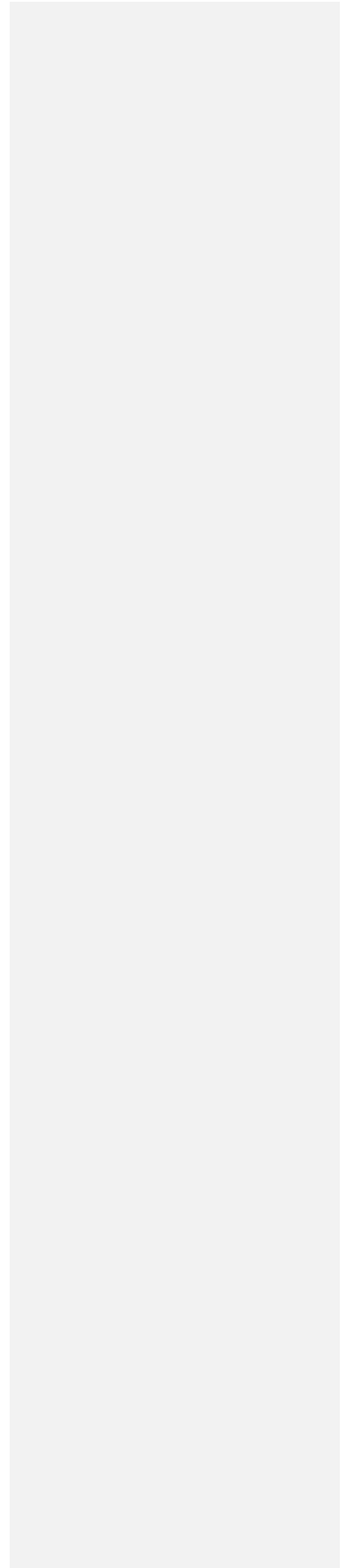
**Appendix I**  
**Default Rules**

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**LCH** The Markets'  
Partner

LCH.CLEARNET LIMITED  
DEFAULT RULES

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The Clearing House has prepared a statement explaining: (i) how a transfer under the Client Clearing DMP will work, and (ii) the main legal implications of such a transfer, including information on the applicable insolvency law in the relevant jurisdictions. This statement is available on the Clearing House's website at <http://www.lchclearnet.com/members-clients/members/fees-ltd/annual-account-structure-fees>.

## LCH.CLEARNET LIMITED

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

#### DEFAULT RULES

1. Save where expressly stated to the contrary these Default Rules ("**Rules**") have effect with regard to the provision of clearing services for all markets cleared by the Clearing House. These Rules (including each Supplement) form part of the Clearing House's Rulebook but do not apply in relation to a Co-operating Clearing House.

The Rules comprise:

- these general Default Rules (Rules 1 to 28 inclusive);
- Supplements specific to the following Service(s): the Commodities Service, the Equities Service, the ForexClear Service, the Rates Service and the RepoClear Service.

Each Supplement establishes a separate default fund specific to the Service to which the Supplement relates. The Supplements establish the size of each default fund, the basis for calculating Contributions to each default fund, and include supplementary provisions addressing cases where the relevant default fund has been utilised. The general Default Rules establish the mechanisms, which apply severally to each default fund, for utilisation of the default funds, and for other matters common to all default funds. In the event of any inconsistency between the provisions of the Default Rules and the provisions of a Supplement or an Annex, the Supplement or Annex (as applicable) will prevail.

The allocation by the Risk Committee of the Clearing House of a Contract to a particular Service to which a Supplement applies shall be done in accordance with the definitions set out in the Supplements, and each decision of the Risk Committee in this respect is conclusive.

2.
  - (a) Words and expressions defined in the Clearing House's Rulebook shall have the same meanings in these Rules, save that in relation to the provision of clearing services by an FCM Clearing Member, words and expressions defined in the Clearing House's FCM Regulations shall have the same meanings in these Rules and such meanings shall prevail over any other meaning given to the relevant word or expression in the Clearing House's Rulebook;



Account or those Proprietary Accounts combined and (if the Clearing House has elected in accordance with Rule 11(a)) any Treasury Accounts of the Defaulter; and

- (viii) with regard to a net sum produced by reference to one or more Treasury Accounts of the Defaulter, that Treasury Account or those Treasury Accounts combined, and (if the Clearing House has elected in accordance with Rule 11(a)) any Proprietary Accounts.
  - (d) Notwithstanding any provision of the Rulebook to the contrary, any loss which relates to a Treasury Account may not be treated as a Default Loss, whether or not Collateral has been applied in respect of such loss. Nothing in this Rule 11(d) requires the Clearing House to apply Collateral in respect of any such loss, except that the Clearing House may not apply Collateral in respect of any such loss to the extent that doing so would give rise to an Excess Loss.
12. Without further authorisation, permission or cooperation from the Defaulter, the Clearing House may appoint any person to take or assist it in taking any step under these Rules or to complete or assist it in completing the process set out in Rule 8.
  13. The Clearing House may co-operate, by the sharing of information and otherwise, with any Regulatory Body or relevant Exchange, any relevant office-holder acting in relation to the Defaulter or its estate and any other authority or body having responsibility for, or any Clearing Member having an interest in, any matter arising out of or connected with the circumstances mentioned in Rule 3.
  14. In addition to such copy report as it supplies under section 162(3) of the Companies Act 1989, the Clearing House shall report to the Defaulter, or any relevant office-holder acting in relation to the Defaulter or its estate, on steps taken in relation to the Defaulter under Rule 6.

#### **Reduction of Losses on Default**

15. Subject to: (i) any contrary provision of the Rulebook and/or (ii) any variation or modification in, or clarification of, the application of the resources described below set out in an Annex, where a Defaulter fails to pay any sum payable to the Clearing House, the Clearing House shall reduce or bear its loss in the manner provided by this Rule:
  - (a) first, to the extent the Clearing House determines appropriate, in applying any Collateral transferred to the Clearing House by the Defaulter and any other sum owed to the Defaulter other than any Contribution (together, "**Margin Cover**"), **provided that** (i) Margin Cover related to a particular type of Business is to be applied first to any loss attributable to that Business until such loss is absorbed; and (ii) save in the case where the relevant Client Accounts are two or more Individual Segregated Accounts opened by the Defaulter on behalf of the same Clearing Client (or, in the case of a Defaulter who is an FCM Clearing Member, two or more FCM Client Sub-Accounts held in the name of the same FCM Client or two or more FCM Omnibus Futures Client Accounts with LCH, as applicable), in no circumstances will Margin Cover transferred by the Defaulter in respect of obligations arising on

a Client Account be applied by the Clearing House pursuant to this stage (a) in respect of any loss attributable to any of the Defaulter's other accounts;

- (b) second, by (i) recourse to the Defaulter's relevant Contribution in respect of the type of Business to which the loss relates, followed by (ii) recourse to any other Contribution made by the Defaulter to the extent not utilised under (i) above. The Clearing House will exercise its rights of recourse under this stage (b) by set-off against the Clearing House's obligation to repay the relevant Contributions to the Defaulter;
- (c) third, by payment from the Clearing House's own account of an amount (the "**Capped Amount**") (i) determined by the Clearing House from time to time in accordance with the requirements relating to the calculation and the setting aside of dedicated own resources under the Own Resources Provision; or (ii) in the case of a subsequent Default occurring before the Clearing House has reinstated the dedicated resources required in accordance with the Own Resources Provision, representing the residual amount of such dedicated own resources.

Where there are amounts due from the Defaulter at this stage in respect of more than one type of Business (each a "**Relevant Business**" in respect of the Defaulter), a separate Capped Amount determined in accordance with Rule 15(c)(i)-(ii) will be paid from the Clearing House's own account under this stage (c) in respect of such Relevant Business.

- (d) fourth, to the extent that any insurance or analogous arrangement is not available to the Clearing House, by recourse to the indemnities given under Rule 21 by Clearing Members other than the Defaulter (which shall be satisfied by set-off against the Clearing House's obligation to repay the relevant Contributions of such Clearing Members). If the criteria specified in a relevant Supplement for calling any Unfunded Contributions have been satisfied, then references to the Contributions of Clearing Members other than the Defaulter in this Rule 15(d) shall include such Unfunded Contributions;
- (e) fifth, by recourse to any insurance cover or analogous arrangement;
- (f) sixth, by recourse to the indemnities given under Rule 21 by Clearing Members other than the Defaulter (which shall be satisfied by set-off against the Clearing House's obligation to repay the relevant Contributions of such Clearing Members). If the criteria specified in a relevant Supplement for calling any Unfunded Contributions have been satisfied, then the references to the Contributions of Clearing Members other than the Defaulter in this Rule 15(f) shall include such Unfunded Contributions;
- (g) seventh, by recourse to any other indemnities, guarantees, undertakings or monies provided by Clearing Members; [or](#)
- ~~(h) eighth, in respect of RepoClear Business only, by recourse to the [Service Closure Payments set out in Rule](#); [or](#)~~

- ~~(i) ninth, and in respect of RepoClear Excess Loss only, as a loss borne by the Clearing House for its own account. For the avoidance of doubt, amounts will only be paid under this stage if and to the extent that to do so would not result in the Clearing House being unable to meet all its other liabilities (taking into account for these purposes the obligation of the Clearing House to return cash Collateral transferred to the Clearing House in respect of Clearing Members' margin obligations and to repay the Contributions of all Clearing Members).~~
- ~~(j)(h) Any Excess Loss remaining in respect of a particular Business after application of the available resources under stages to under this Rule shall be addressed as provided under the relevant Supplement without any recourse to Service Closure Payments (except with regard to RepoClear only) or other loss allocation provisions under any other Supplement or (except as provided in stage (i) with regard to RepoClear only) to the capital of the Clearing House.~~

Where a Defaulter is engaged in more than one Relevant Business, the completion of the default management processes in respect of such Relevant Businesses may occur at different times. The Clearing House may be required to make a determination in respect of one Relevant Business (including certification of a Default Loss under Rule 16(b), certification of a net sum payable under Rule 19(a) or the value of an Excess Loss) in order to manage the Default at a time when (a) the determination is contingent on an outcome of the default management process in respect of some other Relevant Business, and (b) that outcome has not yet been reached. In the interests of efficient resolution, the Clearing House may at such point make assumptions about that outcome, and proceed with the relevant process on that basis. Where any such assumptions have been made, the Clearing House shall, on the completion of the default management processes in respect of all Relevant Businesses, make such credits to the default funds relating to the Relevant Businesses and such distributions to former Clearing Members as may be necessary to put the default funds and those firms which had contributed to such Default funds at the time of the relevant default in the position that they would have been in if the correct outcomes had been reached and the relevant assumptions had not been made.

This Rule has effect without prejudice to any rights of the Clearing House or any other person against the Defaulter.

#### **Terms on which Contribution is held**

16.

- (a) Subject to Rules 16(b) and (c) below, the outstanding balance of a Clearing Member's Contribution (or, as appropriate, part thereof) shall be repayable to the Clearing Member on the earliest to occur of the following events:
- (i) if the Clearing Member is not a Defaulter (or the Clearing Member is a Defaulter and has validly exercised its rights under Regulation 45(e)), the effective date of termination of the Clearing Member's status as a Clearing Member (including a Termination Date under Regulation 45 (*Netting*) or under FCM Regulation 37 (*Netting*));

**SCHEDULE 1**  
**CLIENT CLEARING ANNEX**

1. The Client Clearing DMP in respect of any contract which is a Contract entered into in respect of Client Clearing Business other than FCM Contracts (each a "**Relevant Contract**") shall involve the stages set out in this Annex. For the avoidance of doubt, in the case of a Defaulter who engages in more than one Relevant Client Clearing Business, the stages set out in this Annex will be implemented
  - (a) subject to paragraph (b) below, separately in relation to the Relevant Contracts entered into by such Defaulter in respect of each such Relevant Client Clearing Business; and
  - (b) as a single process in respect of all Relevant Contracts that are Rates Service Contracts entered into by a Defaulter on behalf of its Portfolio Margining Clients on a combined basis.

Except in respect of Relevant Contracts entered into in respect of Rates Service Client Clearing Business, the Clearing House will not combine Relevant Contracts relating to different Relevant Client Clearing Businesses in a single Client Clearing DMP. The terms "**Account Balance**", "**Clearing Client**", "**Relevant Contract**", "**Relevant Auction Contract**", "**Individual Segregated Account**", "**Individual Segregated Account Clearing Client**", "**Individual Segregated Account Balance**", "**Omnibus Segregated Account**", "**Non-Identified Client Omnibus Net Segregated Account**", "**Identified Client Omnibus Net Segregated Account**", "**Affiliated Client Omnibus Net Segregated Account**", "**Omnibus Gross Segregated Account**", "**Non-Identified Omnibus Segregated Clearing Client**", "**Identified Omnibus Segregated Clearing Client**", "**Affiliated Omnibus Segregated Clearing Client**", "**Omnibus Gross Segregated Clearing Client**", "**Omnibus Segregated Account Balance**", "**Indirect Client**", "**Client Clearing Entitlement**", "**Aggregate Omnibus Client Clearing Entitlement**" and "**Clearing Agreement**" where used in paragraphs 2 to 18 of this Annex shall be interpreted accordingly.

2. For the purposes of this Annex, a Relevant Contract relating to ForexClear Clearing Client Business or Rates Service Client Clearing Business of a Clearing Member and a Relevant Contract relating to RepoClear Client Clearing Business of a Clearing Member which is a Fixed Income Contract (each a "**Relevant Auction Contract**") will be included in a Portfolio (as such term is defined in, respectively, the ForexClear DMP Annex to the Default Rules, the Rates Service DMP Annex to the Default Rules and the RepoClear DMP Annex to the Default Rules) from such time as the Clearing House determines that such Relevant Auction Contract will not be ported. For the avoidance of doubt, any such Portfolio will only contain Relevant Auction Contracts entered into by a Clearing Member on behalf of its Clearing Clients. The Clearing House shall not be entitled to combine client and house positions in a single Portfolio.
3. In the case of a Relevant Contract other than a Relevant Auction Contract which cannot be ported in accordance with the terms of this Annex, the Clearing House may take any one or more of those other steps which are set out in Rule 6 of the Default Rules (and which are applicable to open contracts of the relevant type) in respect of

such Relevant Contract, from such time as the Clearing House determines that porting will not occur.

4. If a Clearing Member becomes a Defaulter, the Clearing House shall:
  - 4.1 determine one or more Porting Windows in respect of the relevant Default where "**Porting Window**" means the period of time, commencing on the day of the relevant Default and being at least 24 hours (other than in the case of a Porting Window Reduction (as defined below)), during which the Clearing House will seek to transfer Relevant Contracts entered into by the Defaulter and the Account Balances held in any Client Accounts opened by the Defaulter with the Clearing House to one or more Backup Clearing Members in accordance with the provisions of this Client Clearing Annex. Each such Porting Window will:
    - (a) be determined by the Clearing House in its sole discretion separately in respect of each type of Client Account within each separate Relevant Client Clearing Business of the relevant Defaulter (where Individual Segregated Accounts, Omnibus Gross Segregated Accounts, Identified Client Omnibus Net Segregated Accounts and Affiliated Client Omnibus Net Segregated Accounts are each a different "type of Client Account") and published on its website; and
    - (b) reflect, where applicable, any subsequent extension of the relevant period of time or, for a particular Client Account, a reduction of such period of time (a "**Porting Window Reduction**") applied by the Clearing House in its sole discretion and notified by means of a further publication on its website, provided, however, that (i) a Porting Window Reduction may be applied by the Clearing House to a particular Client Account solely where the Required Margin Amount in respect of such Client Account following the relevant Default becomes equal to 50% or more of the value of the Clearing Member Current Collateral Balance of such Client Account at the time of such Default; and (ii) in no circumstances will the total duration of the Porting Window following a Porting Window Reduction be less than 12 hours;
  - 4.2 determine the Account Balances;
  - 4.3 in the case of any Non-Identified Client Omnibus Net Segregated Account of a Defaulter who is an Exempt Client Clearing Member, seek to determine, in accordance with its default management procedures, the identities, and entitlements in respect of Contracts entered into by the relevant Exempt Client Clearing Member, in respect of each of the Clearing Clients grouped together in and comprising the relevant Non-Identified Client Omnibus Net Segregated Account. Where the Clearing House so determines the identities and entitlements of all of the relevant Clearing Clients to its satisfaction and in its sole and absolute discretion, those Clearing Clients shall cease to be designated as Non-Identified Omnibus Net Segregated Clearing Clients and shall instead become Determined Omnibus Net Segregated Clients (and the term "**Determined Omnibus Net Segregated Clients**" is defined accordingly);
  - 4.4 ascertain to its satisfaction whether each Clearing Client of the Defaulter from whom porting instructions are received has appointed a Backup Clearing Member. For the

avoidance of doubt where the Defaulter is a Portfolio Margining Clearing Member and the relevant Clearing Client(s) is or are Portfolio Margining Client(s) (as applicable), each Backup Clearing Member appointed by such Portfolio Margining Client(s) in respect of the Relevant Contracts entered into in respect of Rates Service Client Clearing Business, must also be a Portfolio Margining Clearing Member; and

- 4.5 where applicable, send details of the open Relevant Contracts and the Account Balances to the nominated Backup Clearing Member for each relevant Individual Segregated Account, each relevant Omnibus Gross Segregated Clearing Client, each relevant group of Combined Omnibus Gross Segregated Clearing Clients and each relevant Omnibus Segregated Account of the Defaulter.
5. Following the occurrence of a Default, the Clearing House will specify (and publish on its website) the deadline in respect of that particular Default by which time a consent to porting must be received from a client for the purposes of paragraphs 6.1 and ~~6.36-36.2~~, 7 or 8.1 and 8.2 (as applicable) in order for the Clearing House to seek to port that client's Relevant Contracts. Any such consent may be provided in writing (including by facsimile and email) and, once received by the Clearing House, may not be withdrawn.
6. Subject to paragraph 14 below, in circumstances where (a) an Individual Segregated Account Clearing Client or an individual Omnibus Gross Segregated Clearing Client (other than a Combined Omnibus Gross Segregated Clearing Client) has appointed a Backup Clearing Member; and (b) within such period as the Clearing House may determine of the service of a Default Notice on the relevant Clearing Member pursuant to Rule 3 of the Default Rules or the Clearing House becoming aware of the occurrence of an Automatic Early Termination Event in respect of that Clearing Member (as the case may be) and the Clearing House has received confirmation in writing from the Backup Clearing Member of its agreement to act as Backup Clearing Member in relation to the arrangements described in paragraph 6.1 below and from the relevant client:
  - 6.1 the Clearing House shall (a) transfer all of the open Relevant Contracts entered into by the Defaulter in respect of the relevant Clearing Client to the appointed Backup Clearing Member; or (b) terminate and close out such contracts at their market value (as determined by the Clearing House in its discretion) and enter into new contracts on equivalent terms to such contracts with the appointed Backup Clearing Member in respect of the relevant Clearing Client;
  - 6.2 where the relevant Clearing Client (in an exercise of its rights under the relevant Security Deed or, in the case of such a client of a Defaulter who is an Exempt Client Clearing Member, following acceleration of the obligations of the Defaulter under its Undertaking to Pay or Deliver, so that such obligations become immediately due and payable, and satisfaction of such obligations by the Clearing House enforcing the security granted in its favour by the Defaulter under the relevant Deed of Charge) instructs a transfer of the Account Balance attributable to it to the appointed Backup Clearing Member, the Clearing House shall give effect to such instruction;
  - 6.3

- (a) upon the Clearing House taking the actions specified in paragraph 6.1(a) above: (i) that portion (if any) of the Clearing House Current Collateral Balance in respect of the Defaulter which is attributable to the Relevant Contracts referred to in that paragraph (the "**Relevant Portion**") shall be reduced to zero; and (ii) the Clearing House Current Collateral Balance in respect of the Backup Clearing Member shall be increased by an amount equal to the value of the Relevant Portion immediately prior to the reduction referred to in (i) immediately above; and
- (b) upon the Clearing House taking the actions specified in paragraph 6.1(b) above, the Clearing House Current Collateral Balance in respect of the Backup Clearing Member shall be increased by an amount equal to the value of that portion of the Clearing House Current Collateral Balance in respect of the Defaulter which was attributable to the Relevant Contracts referred to in that paragraph immediately prior to the termination and close-out of such Relevant Contracts in accordance with that paragraph; and
- 6.4 the amount of Collateral due to be returned to the Defaulter in respect of the relevant Client Account or the monetary value representing such amount of Collateral shall be reduced by an amount: (a) equivalent to the amount of Collateral comprising the Account Balance attributable to the relevant Clearing Client; or (b) equalling the monetary value representing such Account Balance (as applicable), transferred to the Backup Clearing Member, as referred to in paragraph 6.2 above.
7. Subject to paragraph 14 below, in circumstances where (a) an Individual Segregated Account Clearing Client of a Defaulter has appointed a Backup Clearing Member and is acting on behalf of Indirect Clearing Clients; and (b) within such period as the Clearing House may determine of the service of a Default Notice on the relevant Clearing Member pursuant to Rule 3 of the Default Rules or the Clearing House becoming aware of the occurrence of an Automatic Early Termination Event in respect of that Clearing Member (as the case may be), the Clearing House has received confirmation (i) in writing from the Backup Clearing Member of its agreement to act as Backup Clearing Member in relation to the arrangements described in paragraph 6.1; (ii) from the relevant client; and (iii) from each of the relevant Indirect Clearing Clients, the arrangements described in paragraphs 6.1, ~~6.26-29~~, ~~6.26-29~~ and ~~6.46-46.3~~ above will apply to (i) the Relevant Contracts entered into by the Defaulter in respect of the relevant Individual Segregated Account Clearing Client acting on behalf of its Indirect Clearing Clients; (ii) the Clearing House Collateral Balance in respect of the Defaulter and the Backup Clearing Member which is attributable to the Relevant Contracts specified in (i) immediately above; and (iii) the Individual Segregated Account Balance credited to the Individual Segregated Account opened within the Clearing House by the Defaulter in respect of the relevant Individual Segregated Account Clearing Client acting on behalf of its Indirect Clearing Clients.
8. Subject to paragraph 14 below, in circumstances where (a) all of the Identified Omnibus Net Segregated Clearing Clients of a Defaulter identified by the Clearing House as comprising a single Identified Client Omnibus Net Segregated Account or all of the Affiliated Omnibus Net Segregated Clearing Clients of a Defaulter identified by the Clearing House as comprising a single Affiliated Client Omnibus Net Segregated Account or each of the Omnibus Gross Segregated Clearing Clients



comprising a group of Combined Omnibus Gross Segregated Clearing Clients, have appointed a single Backup Clearing Member; and (b) within such period as the Clearing House may determine following the service of a Default Notice on the relevant Clearing Member pursuant to Rule 3 of the Default Rules or the Clearing House becoming aware of the occurrence of an Automatic Early Termination Event in respect of that Defaulter (as the case may be), the Clearing House has received confirmation in writing from the Backup Clearing Member of its agreement to act as Backup Clearing Member in relation to the arrangements described in paragraph 8.1 below and from the relevant clients (in such form as the Clearing House may require at the relevant time):

- 8.1 the Clearing House shall (a) transfer all of the open Relevant Contracts entered into by the Defaulter in respect of the relevant clients to the appointed Backup Clearing Member; or (b) terminate and close out such contracts at their market value (as determined by the Clearing House in its discretion) and enter into new contracts on equivalent terms to such contracts with the appointed Backup Clearing Member in respect of the relevant clients;
- 8.2 where all of the relevant clients (in an exercise of their respective rights under the relevant Security Deed or, in the case of such clients of a Defaulter who is an Exempt Client Clearing Member, following acceleration of the obligations of the Defaulter under its Undertaking to Pay or Deliver, so that such obligations become immediately due and payable, and satisfaction of such obligations by the Clearing House enforcing the security granted in its favour by the Defaulter under the relevant Deed of Charge) instruct a transfer of the Omnibus Segregated Account Balances attributable to them to the appointed Backup Clearing Member, the Clearing House shall give effect to such instructions;
- 8.3
  - (a) upon the Clearing House taking the actions specified in paragraph 8.1(a) above: (i) that portion (if any) of the Clearing House Current Collateral Balance in respect of the Defaulter which is attributable to the Relevant Contracts referred to in that paragraph (the "**Relevant Portion**") shall be reduced to zero; and (ii) the Clearing House Current Collateral Balance in respect of the Backup Clearing Member shall be increased by an amount equal to the value of the Relevant Portion immediately prior to the reduction referred to in (i) immediately above; and
  - (b) upon the Clearing House taking the actions specified in paragraph 8.1(b) above, the Clearing House Current Collateral Balance in respect of the Backup Clearing Member shall be increased by an amount equal to the value of that portion of the Clearing House Current Collateral Balance in respect of the Defaulter which was attributable to the Relevant Contracts referred to in that paragraph immediately prior to the termination and close-out of such Relevant Contracts in accordance with that paragraph; and
- 8.4 the amount of Collateral due to be returned to the Defaulter in respect of the Omnibus Segregated Account in which the relevant Omnibus Segregated Clearing Clients have an interest or the monetary value representing such amount of Collateral shall be reduced by an amount: (a) equivalent to the aggregate amount of Collateral



aggregate of the amounts calculated in (a) for each of the OTC Auction Portfolios corresponding to the relevant Resembling Contracts; and

- (iv) the Non-Defaulters' Listed Interest Rates Contribution of each Non-Defaulting Joint Rates Service Clearing Member and the total value of the Listed Interest Rates Unfunded Contributions that would be callable but have not been called by the Clearing House from each such Non-Defaulting Joint Rates Service Clearing Member in respect of the relevant Default in accordance with Rule S7 of the Default Rules (the "**Potential Listed Interest Rates Unfunded Contributions**") will be allocated between each AIP relating to an OTC Auction Portfolio in respect of which the relevant Non-Defaulting Joint Rates Service Clearing Member has Resembling Contracts based on the proportion that: (a) the risk of the Resembling Contracts of such Joint Rates Service Clearing Member related to the relevant OTC Auction Portfolio bears to (b) the aggregate of the amounts calculated in (a) for all of the Resembling Contracts of such Non-Defaulting Joint Rates Service Clearing Member; **provided that** where there is more than one OTC Auction Portfolio that corresponds to the same Resembling Contracts, the Non-Defaulters' Listed Interest Rates Contributions and Potential Listed Interest Rates Unfunded Contributions allocated to the AIP related to those Resembling Contracts will be further divided for the purposes of allocation into AIPs relating to the relevant OTC Auction Portfolios based on the proportion that (a) the risk of the SwapClear Contracts in each such OTC Auction Portfolio bears to (b) the aggregate of the amounts calculated in (a) for each of the OTC Auction Portfolios corresponding to the relevant Resembling Contracts.

## 2.6 *Loss Attribution Related to OTC Auction Portfolios*

- (a) Following the completion of all Auctions of all OTC Auction Portfolios of the Defaulting SCM, the Clearing House will determine whether the Auction Losses are such that the Non-Defaulters' SwapClear Contributions and (if and to the extent applicable) the Non-Defaulters' Listed Interest Rates Contributions of Joint Rates Service Clearing Members must be utilised. Where applicable, Auction Losses will be allocated to Non-Defaulters' SwapClear Contributions and to Non-Defaulters' Listed Interest Rates Contributions of Joint Rates Service Clearing Members in accordance with the loss attribution process described in Rule 2.6(b) to 2.6(g) of this Annex. All losses other than Auction Losses associated with the implementation of the Rates Service Default Management Process in respect of an OTC Auction Portfolio or the SwapClear Contracts contained therein will be allocated to the SwapClear Contributions of individual Non-Defaulting SCMs and to the Non-Defaulters' Listed Interest Rates Contributions of individual Joint Rates Service Clearing Members *pro rata* based on the proportion that the value of the relevant Contribution bears to aggregate value of all such Contributions at the time of the relevant Default.
- (b) For each OTC Auction Portfolio, losses to the Clearing House will be met using the resources as set out in Rule 15. In applying those resources, the Clearing House will allocate Auction Losses by reference to the resources

allocated to the AIPs related to such OTC Auction Portfolios in accordance with Rule 2.5 of this Annex. Where there are no Auction Losses in respect of an OTC Auction Portfolio or the Auction Losses in respect of an OTC Auction Portfolio do not require the full amount of the resources referred to in sub-paragraphs (i) and (iii) of Rule 2.5(b) of this Annex allocated to the AIP related to the relevant OTC Auction Portfolio (the "**Initial Resources**") to be fully utilised, the relevant surplus Initial Resources will be allocated *pro rata* between those AIPs relating to OTC Auction Portfolios in respect of which there are Auction Losses requiring the utilisation of resources beyond the Initial Resources available in the relevant AIP in accordance with Rules 15(a), 15(b) and 15(c) until such time as all Initial Resources have been fully utilised.

- (c) In the case of each Auction for which there are Auction Losses in respect of which the Non-Defaulters' SwapClear Contributions must be utilised, those Non-Defaulter's SwapClear Contributions, not including, for these purposes, any part of such Non-Defaulters' SwapClear Contributions that reflects any SwapClear Unfunded Contributions deposited with the Clearing House pursuant to the Default in respect of which the relevant Auction was held (the "**Original SwapClear Contributions**") and that have been allocated to the AIP relating to the relevant OTC Auction Portfolio (the "**Relevant Original SwapClear Contributions**") will be used first in the following order:
- (i) the Auction Losses will be attributed to the Relevant Original SwapClear Contributions of those Non-Defaulting SCMs who are Expected Auction Participants in respect of the relevant OTC Auction Portfolio and who did not bid in the relevant Auction. Auction Losses will be attributed to the Relevant Original SwapClear Contribution of an individual SCM pursuant to this sub-paragraph (i) based upon the proportion that: (a) the value of the Relevant Original SwapClear Contribution of such SCM bears to (b) the total value of the Relevant Original SwapClear Contributions of all Non-Defaulting SCMs who are Expected Auction Participants in respect of the relevant OTC Auction Portfolio and who did not bid in the relevant Auction;
- (ii) if and to the extent that there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (i) above, those Auction Losses will be attributed to the Relevant Original SwapClear Contributions of the SwapClear Short Bidders. For the purposes of this sub-paragraph (ii) and sub-paragraph (ii) of Rule 2.6(e) of this Annex the term "**SwapClear Short Bidder**" means any Non-Defaulting SCM who is an Expected Auction Participant and who submitted an unsuccessful bid in the relevant Auction, save for any SCM who submitted either (a) in respect of an OTC Auction Portfolio that was of positive ("in the money") value to the Clearing House, a higher bid in an Auction than the bid accepted by the Clearing House in accordance with Rule 2.4(e)~~(d)~~ of this Annex; or (b) in respect of an OTC Auction Portfolio that was of negative ("out of the money") value to the Clearing House, a lower bid in an Auction than the bid accepted by the Clearing House in accordance with Rule 2.4(e)~~2.3(d)~~ of this

Annex (each such SCM, a "**SwapClear Out Bidder**" and each such bid, an "**Out Bid**").

Auction Losses will be attributed to an individual SwapClear Short Bidder pursuant to this sub-paragraph (ii) based upon the proportion that (a) the variance of the bid of such SwapClear Short Bidder from the winning bid (denominated in units of the relevant Auction Portfolio Currency) bears to (b) the sum of the variances of the bids of all SwapClear Short Bidders from the winning bid (denominated in units of the relevant Auction Portfolio Currency).

Where the value of the Auction Losses attributed to an individual SwapClear Short Bidder pursuant to this sub-paragraph (ii) is greater than the value of the Relevant Original SwapClear Contribution of such SwapClear Short Bidder, the relevant excess Auction Losses will be attributed to each SwapClear Short Bidder whose Relevant Original SwapClear Contribution exceeds the value of the Auction Losses that have been attributed to it pursuant to this sub-paragraph (ii) (each a "**Remaining Original SwapClear Short Bidder**") by (a) calculating the amount which is the bid of the relevant Remaining Original SwapClear Short Bidder divided by the sum of the bids of all Remaining Original SwapClear Short Bidders; and (b) multiplying such amount by the value of the relevant excess Auction Losses.

The Clearing House will repeat the loss attribution process described in this sub-paragraph (ii) until the first to occur of (a) the Auction Losses being fully met; and (b) the Relevant Original SwapClear Contributions of all SwapClear Short Bidders being fully attributed;

- (iii) if and to the extent that there are Auction Losses outstanding after the attribution process referred to in sub-paragraph (ii) above, those Auction Losses will be attributed to the Relevant Original SwapClear Contribution of the Non-Defaulting SCM who submitted the winning bid, together with, where applicable, the Relevant Original SwapClear Contribution 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 Relevant Original SwapClear Contribution of an individual SCM pursuant to this sub-paragraph (iii) based upon the proportion that: (a) the value of the Relevant Original SwapClear Contribution of such SCM bears to (b) the total value of the Relevant Original SwapClear Contributions of (i) the SCM who submitted the winning bid; (ii) any SCMs who submitted an Equal Bid to such winning bid; and (iii) any SCMs who were SwapClear Out Bidders, in the relevant Auction; and
- (iv) if, for an OTC Auction Portfolio, there remain Auction Losses outstanding after the attribution process referenced to in sub-paragraph (iii) above, and there are AIPs relating to other OTC Auction Portfolios containing Contracts denominated in the same Auction Portfolio Currency as the relevant OTC Auction Portfolio in which the Relevant Original SwapClear Contributions have not been fully utilised, the

immediately on notice to SCMs on a case-by-case basis where the Clearing House deems it appropriate to do so in the circumstances of the Default, **provided that** the Clearing House may not take any such action that effects a material change to the terms of this Annex without the written consent of 50 percent of all SCMs and 50 percent of all Listed Interest Rates Clearing Members unless such change is invoked unilaterally against all SCMs and Listed Interest Rates Clearing Members and is necessary to manage the Clearing House's risk or otherwise to meet the Clearing House's continuing regulatory obligations including those applicable to it as a Recognised Clearing House and a Derivatives Clearing Organization. The Clearing House agrees that, in the ordinary course, it shall discuss any such Guidance with the Rates Service DMG prior to bringing the Guidance into effect except that it shall not be required to do so where (i) the Guidance is not material to the rights and obligations of the SCMs and the Listed Interest Rates Clearing Members; or (ii) the Clearing House deems it inappropriate to do so in the circumstances of the Default and it is not possible to convene the Rates Service DMG in timely fashion.

- 8.3 The timetable for implementation of the stages of the Rates Service Default Management Process following issue of a Default Notice by the Clearing House shall be either (i) as prescribed by the Clearing House from time to time in consultation with the Rates Service DMG and set out in the Guidance; or (ii) imposed by the Clearing House without prior notice to the SCMs on a case-by-case basis where the Clearing House, in consultation with the Rates Service DMG, deems it appropriate to do so in the circumstances of the Default.

## 9. **Role and Constitution of Rates Service DMG**

- 9.1 The Rates Service DMG shall meet at regular intervals in order to:

- (a) keep under review the Rates Service DMP, together with any Guidance issued in respect thereof;
- (b) keep under review the terms of reference of the Rates Service DMG to ensure they remain appropriate;
- (c) consider appropriate supplements or amendments to the Rates Service DMP and/or Guidance in order to improve the procedures in place; and
- (d) consider any other business relevant to the Rates Service DMP which any member of the Rates Service DMG from time to time sees fit to raise at such meetings.

The members of the Rates Service DMG shall also meet within one hour, or as soon as reasonably practical, following notification by the Clearing House that a Default Notice has been served upon an SCM, and at sufficiently frequent intervals thereafter for so long as may be necessary to assist the Clearing House in the implementation of the Rates Service DMP as contemplated under this Agreement. Such implementation shall include, without limitation, the provision of general default management advice with regard to: (i) the ongoing obligations of the Clearing House to its non-defaulting members; (ii) the neutralisation and closing-out of the individual obligations of the Defaulting SCM; and (iii) the splitting of Portfolios and the disposal of OTC Auction Portfolios in accordance with the Rates Service DMP. Where it is not possible or

practicable for the SCM to provide its nominated representative within an appropriate timeframe, it shall provide an alternate of suitable experience and expertise to participate on the Rates Service DMG.

9.2 The Rates Service DMG shall be made up of the following individuals who, unless stated otherwise, shall be appointed by the Clearing House which shall ensure that the composition is such as to provide effective review of the Rates Service DMP and suitable expertise and representation of market-making capacity in the event of a Default:

- (a) in the event of the issuance of a Default Notice, the chief executive or deputy chief executive of the Clearing House, who shall act as chairman;
- (b) representatives of at least five SCMs, being senior executives with appropriate skills and expertise;
- (c) at least one director (staff member of director grade) of the Clearing House's Risk Management department; and
- (d) such other individuals as the Rates Service DMG considers appropriate from time to time in relation to individual meetings.

9.3 For the purpose of Rates Service DMG meetings convened to deal with a specific Defaulting SCM, the Clearing House may, after consultation with the Rates Service DMG, invite the Defaulting SCM to nominate one or more representatives to join the Rates Service DMG to assist it in carrying out its functions in the Rates Service DMP for that Defaulting SCM, and also to request representatives from any other SCMs. In the event of receiving such request, the SCM shall be obliged to provide its nominated representative, or an alternate with appropriate skills, experience and expertise, as if the SCM were a member of the Rates Service DMG.

9.4 In establishing the Rates Service DMG, the Clearing House agrees that in the normal course of events (not including the Clearing House's declaration of a Default and the invocation of the processes as outlined in Rules 0 and 4 of this Annex) it will, as far as practicable, and in accordance with the terms of reference of the Rates Service DMG, rotate the membership of the Rates Service DMG on a regular basis and amongst all SCMs. The SCM agrees that, when requested to do so by the Clearing House, it will make available a representative to participate in the Rates Service DMG. The Clearing House shall agree with the SCM the identity of such representative and shall be able to request a substitute where it believes the SCM's nominated representative does not have the requisite skills or expertise.

9.5 Each SCM who makes available a representative to serve on the Rates Service DMG agrees, and shall procure that, to the extent applicable, its representative agrees:

- (a) to ensure that such representative will be fully available, at any time and for such periods of time as the Clearing House may require during the course of a Default, to perform their function as a member of the Rates Service DMG including attending meetings, considering and advising the Clearing House upon aspects of the Rates Service DMP. The SCM shall ensure that a

representative's other work commitments do not affect their availability for this purpose;

- (b) to take all steps to respect the confidential capacity in which such a representative receives information through the Rates Service DMG and to establish adequate procedures to prevent the disclosure or use for any commercial purpose outside the scope of the Rates Service DMP of any such confidential information by the SCM or its representative. Such procedures shall normally include, without limitation, the establishment of Chinese walls within the SCM; and
- (c) to be bound by and to ensure that it and any of its executives or directors serving on the Rates Service DMG complies with the requirements contained in the Procedures or the FCM Procedures (as the case may be).

9.6 Each SCM shall accept that:

- (a) representatives of SCMs serving on the Rates Service DMG are doing so in order to assist the Clearing House in ensuring the on-going integrity of the SwapClear service in the interests of Non-Defaulting SCMs; and
- (b) representatives of SCMs serving on the Rates Service DMG and their employers shall have no liability for any disinterested advice or actions, mandated or otherwise, that are undertaken as part of the Rates Service Default Management Process, **provided, however, that** nothing in this Rule ~~9.69-69.7~~(b) shall exclude the liability of such representatives and employers for any personal injury or death caused by their negligence or for any fraud or wilful default on the part of such representatives and employers.

9.7 The Clearing House agrees that, in exercising its rights and obligations in consulting with the Rates Service DMG pursuant to this Agreement, it will use all reasonable commercial endeavours to agree a common position with the Rates Service DMG, **provided that** nothing in this Rule shall prevent the Clearing House acting in a way which it reasonably determines necessary to manage its risk or otherwise meet its continuing regulatory obligations including those applicable to it as a Recognised Clearing House and a Derivatives Clearing Organization.

**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 issuing of a Default Notice relating to 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 a 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, and that equivalent premiums will be paid by the Clearing House in closing-out large positions in other Contracts traded on exchange or ATS-organised markets.

1.4 In this Annex:

"**AIP**" has the meaning given in Rule 2.4 of this Annex;

"**Auction**" means the process of bidding by FXCCMs for an Auction Portfolio, 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 Currency Pair**" means in relation to an Auction, the Currency Pair of an Auction Portfolio which is the subject of that Auction;

"**Auction Losses**" has the meaning given in Rule 2.5(b) of this Annex;

"**Auction Portfolio**" means (i) a Portfolio; or (ii) a group of ForexClear Contracts resulting from the splitting of a Portfolio pursuant to Rule 2.1 of this Annex including any connected hedging trades concluded by the Clearing House through Risk Neutralisation;

"**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;

"**Currency Pair Participant**" means, in respect of a specific Currency Pair, a Non-Defaulting FXCCM who at the time the Clearing House declares a Default has ForexClear Contracts for that Currency Pair registered in its name;

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

"**Equal Bid**" has the meaning given in Rule 2.3(e) of this Annex;

"**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 own account or for the account of an affiliate;

"**ForexClear Default Management Process**" or "**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 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 DMG**" means the advisory ForexClear Default Management Group established by the Clearing House pursuant to the terms of this Annex;

"**Guidance**" means guidance, in the form of one or more written notices, issued from time to time pursuant to Rule ~~(a)(a)8.2~~ of this Annex by or on behalf of the Clearing House to FXCCMs, supplementing the detail or conduct of any aspect of the ForexClear DMP;

"**Higher Bid**" and "**Higher Bidder**" have the meanings given in Rule 2.5(c) of this Annex;

"**Initial Resources**" has the meaning given in Rule 2.5(b) of this Annex;

"**Losing Currency**" has the meaning given in Rule 2.5(d) of this Annex;

"**Losing Currency Original FXCCM**" has the meaning given in Rule 2.5(d) of this Annex;

"**Losing Currency Unfunded FXCCM**" has the meaning given in Rule 2.5(g) of this Annex;

"**Margin Cover**" has the meaning given in Rule 15(a) of the Default Rules;



## 8. **Miscellaneous**

8.1 Subject to Rules 2.4 and 2.5 of this Annex, the resources available to the Clearing House and their order of use are defined in Rule 15 of the Default Rules as modified and/or supplemented by the ForexClear Default Fund Supplement.

- (a) The Clearing House may from time to time supplement the details of any of the stages set out in Rule 2 of this Annex or any other aspects of the ForexClear DMP, in consultation with the ForexClear DMG, either by way of further Guidance or immediately on notice to FXCCMs on a case-by-case basis where the Clearing House deems it appropriate to do so in the circumstances of the Default, **provided that** the Clearing House may not take any such action that effects a material change to the terms of this Annex without the written consent of 50 per cent. of all ForexClear Clearing Members unless such change is invoked unilaterally against all FXCCMs and is necessary to manage the Clearing House's risk or otherwise to meet the Clearing House's continuing regulatory obligations including those applicable to it as a Recognised Clearing House and a Derivatives Clearing Organization. The Clearing House agrees that, in the ordinary course, it shall discuss any such Guidance with the ForexClear DMG prior to bringing the Guidance into effect except that it shall not be required to do so where (i) the Guidance is not material to the rights and obligations of the FXCCMs or (ii) the Clearing House deems it inappropriate to do so in the circumstances of the Default and it is not possible to convene the ForexClear DMG in timely fashion.

8.2 The timetable for implementation of the stages of the ForexClear Default Management Process following issue of a Default Notice by the Clearing House shall be either (1) as prescribed by the Clearing House from time to time in consultation with the ForexClear DMG and set out in Guidance; or (2) imposed by the Clearing House without prior notice to the FXCCMs on a case-by-case basis where the Clearing House, in consultation with the ForexClear DMG, deems it appropriate to do so in the circumstances of the Default.

## 9. **Role and constitution of ForexClear DMG**

9.1 The ForexClear DMG shall meet at regular intervals in order to:

- (a) keep under review the ForexClear DMP, together with any Guidance issued in respect thereof;
- (b) keep under review the terms of reference of the ForexClear DMG to ensure they remain appropriate;
- (c) consider appropriate supplements or amendments to the ForexClear DMP and/or Guidance in order to improve the procedures in place; and
- (d) consider any other business relevant to the ForexClear DMP which any member of the ForexClear DMG from time to time sees fit to raise at such meetings.

The members of the ForexClear DMG shall also meet within one hour, or as soon as reasonably practical, following notification by the Clearing House that a Default Notice has been served upon an FXCCM, and at sufficiently frequent intervals thereafter for so long as may be necessary to assist the Clearing House in the implementation of the ForexClear DMP as contemplated under this Agreement. Such implementation shall include, without limitation, the provision of general default management advice with regard to: (1) the ongoing obligations of the Clearing House to its non-defaulting members; (2) the neutralisation and closing-out of the individual obligations of the Defaulting FXCCM; and (3) the splitting of Portfolios and the disposal of Auction Portfolios in accordance with the ForexClear DMP. Where it is not possible or practicable for the FXCCM to provide its nominated representative within an appropriate timeframe, it shall provide an alternate of suitable experience and expertise to participate on the ForexClear DMG.

- 9.2 The ForexClear DMG shall be made up of the following individuals who, unless stated otherwise, shall be appointed by the Clearing House which shall ensure that the composition is such as to provide effective review of the ForexClear DMP and suitable expertise and representation of market-making capacity in the event of a Default:
- (a) in the event of the issuance of a Default Notice, the chief executive or deputy chief executive of the Clearing House, who shall act as chairman;
  - (b) at least six representatives of at least four FXCCMs, being senior executives with appropriate skills and expertise;
  - (c) at least one director (staff member of director grade) of the Clearing House's Risk Management department; and
  - (d) such other individuals as the ForexClear DMG considers appropriate from time to time in relation to individual meetings.
- 9.3 For the purpose of ForexClear DMG meetings convened to deal with a specific Defaulting FXCCM, the Clearing House may, after consultation with the ForexClear DMG, invite the Defaulting FXCCM to nominate one or more representatives to join the ForexClear DMG to assist it in carrying out its functions in the ForexClear Default Management Process for that Defaulting FXCCM, and also request representatives from any other FXCCMs. In the event of receiving such request, the FXCCM shall be obliged to provide its nominated representative, or an alternate with appropriate skills, experience and expertise, as if the FXCCM were a member of the ForexClear DMG.
- 9.4 In establishing the ForexClear DMG, the Clearing House agrees that in the normal course of events (not including the Clearing House's declaration of a Default and the invocation of the processes as outlined in Rules 2, 3 and 4 of this Annex) it will, as far as practicable, and in accordance with the terms of reference of the ForexClear DMG, rotate the membership of the ForexClear DMG on a regular basis and amongst all FXCCMs. The FXCCM agrees that, when requested to do so by the Clearing House, it will make available a representative to participate in the ForexClear DMG. The Clearing House shall agree with the FXCCM the identity of such representative and

shall be able to request a substitute where it believes the FXCCM's nominated representative does not have the requisite skills or expertise.

9.5 Each FXCCM who makes available a representative to serve on the ForexClear DMG agrees, and shall procure that, to the extent applicable, its representative agrees:

- (a) to ensure that such representative will be fully available, at any time and for such periods of time as the Clearing House may require during the course of a Default, to perform their function as a member of the ForexClear DMG including attending meetings, considering and advising the Clearing House upon aspects of the ForexClear DMP. The FXCCM shall ensure that a representative's other work commitments do not affect their availability for this purpose;
- (b) to take all steps to respect the confidential capacity in which such a representative receives information through the ForexClear DMG and to establish adequate procedures to prevent the disclosure or use for any commercial purpose outside the scope of the ForexClear DMP of any such confidential information by the FXCCM or its representative. Such procedures shall normally include, without limitation, the establishment of Chinese walls within the FXCCM; and
- (c) to be bound by and to ensure that it and any of its executives or directors serving on the ForexClear DMG complies with the requirements contained in the Procedures or the FCM Procedures (as the case may be).

9.6 Each FXCCM shall accept that:

- (a) representatives of FXCCMs serving on the ForexClear DMG are doing so in order to assist the Clearing House in ensuring the on-going integrity of the ForexClear Service in the interests of Non-Defaulting FXCCMs; and
- (b) representatives of FXCCMs serving on the ForexClear DMG and their employers shall have no liability for any disinterested advice or actions, mandated or otherwise, that are undertaken as part of the ForexClear Default Management Process, **provided, however, that** nothing in this Rule ~~9.69.69.7~~(b) shall exclude the liability of such representatives and employers for any personal injury or death caused by their negligence or for any fraud or wilful default on the part of such representatives and employers.

9.7 The Clearing House agrees that, in exercising its rights and obligations in consulting with the ForexClear DMG pursuant to this Agreement, it will use all reasonable commercial endeavours to agree a common position with the ForexClear DMG, **provided that** nothing in this Rule shall prevent the Clearing House acting in a way which it reasonably determines necessary to manage its risk or otherwise meet its continuing regulatory obligations including those applicable to it as a Recognised Clearing House and a Derivatives Clearing Organization.

**SCHEDULE 5**  
**FOREXCLEAR DEFAULT FUND SUPPLEMENT**

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

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

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

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

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

#### F9. **ForexClear Loss Distribution Process**

Where, after a Default, the Clearing House determines that the ForexClear Excess Loss resulting from the Default will exceed the amounts to be applied to it under Rules 15(a) to 15(g) of the Default Rules, the Clearing House may implement the process (the "**ForexClear Loss Distribution Process**") described in this Rule F9.

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

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

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

**"Available Resources"** means, in respect of any Loss Distribution Period, the amounts available to the Clearing House for application in meeting any loss suffered or incurred by the Clearing House in accordance with Rules 15(a) to 15(g) of the Default Rules as at the relevant Last Call Prior to Default.

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

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

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

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

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

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

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

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

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

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

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

but excluding the relevant Last Call Prior to Default to and including such business day.

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

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

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

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

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

where:

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

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

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

**"Last Call Prior to Default"** means the most recent business day [prior to the day of the relevant Default](#) on which transfers of Collateral required to be made by [Non-Defaulting](#) FXCCMs to the Clearing House were made in full.

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

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

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

where:

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

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

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

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

~~" **Loss Distribution Cap Amount Cut-Off Date**" means, in with respect of each Non-Defaulting FXCCM and any to a Loss Distribution Period, an amount equal to the higher day falling ten (10) business days from the date of commencement of (i) USD 100,000,000; (ii) the product of (a) 100 per cent. and (b) the ForexClear Contribution of such Non-Defaulting FXCCM as at the last ForexClear Determination Date prior to the date when the Default occurred at the beginning of that Loss Distribution Period; and (iii) any adjusted cap as may be agreed Process or such earlier or later business day as determined pursuant to paragraph (d) of this Rule -F9.~~

"**Loss Distribution Day**" means any business day in a Loss Distribution Period on which the Clearing House, in consultation with the ForexClear DMG, prior to calling for Collateral in respect of margin on such business day, determines that the LCH Uncovered Loss for that business day is greater than zero.

"**Loss Distribution Period**" means the period from, but excluding, the day on which a Default occurs with respect to an FXCCM to (but excluding) the earlier of: (i) the business day on which (a) the rights and obligations arising out of the Auction Portfolios of the Defaulting FXCCM are transferred to those FXCCMs which have successfully bid for such Auction Portfolios in Auctions, or, if any Default occurs with respect to any other FXCCM prior to the end of a Loss Distribution Period, the rights and obligations arising out of the Auction Portfolios of any subsequent Defaulting FXCCM are transferred to those FXCCMs who have successfully bid for such Auction Portfolios in Auctions and (b) all payments required to be made by such FXCCMs and/or the Clearing House in respect of such Auction(s) have been made in full; or (ii) any ~~Loss Distribution Day in respect of~~ business day on which the Clearing House determines that ~~the FXCCM Adjustment Amount for any FXCCM would be equal to or greater than a Loss Distribution Trigger Event has occurred; PROVIDED THAT, in each case, the Loss Distribution Period shall not extend beyond the Loss Distribution Cap Amount for such Loss Distribution Day~~ Cut-Off Date.



**"Loss Distribution Trigger Amount"** means, in respect of any Loss Distribution Period and any Non-Defaulting FXCCM, an amount equal to either (i) twice the ForexClear Contribution of such Non-Defaulting FXCCM as at the last ForexClear Determination Date prior to the date when the Default occurred at the beginning of that Loss Distribution Period or \$200 million, whichever is the greater; or (ii) an amount as approved by the Requisite Non-Defaulting FXCCMs following a Revised Loss Distribution Proposal as described in paragraph (d) of this Rule F9.

**"Loss Distribution Trigger Event"** means, with respect to a Non-Defaulting FXCCM, the aggregate Cash Gainer Payment Currency Adjustments applied to Cash Payments during the Loss Distribution Period (as amended from time to time) exceeded that FXCCM's Loss Distribution Trigger Amount (as amended from time to time) on the immediately preceding Loss Distribution Day.

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

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

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

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

**"Requisite Non-Defaulting FXCCMs"** means on any business day in a Loss Distribution Period, Non-Defaulting FXCCMs whose ForexClear Contributions represented 75% or more of the total size of the ForexClear Fund Amount (less the Contribution of any Defaulter(s)) as at the last ForexClear Determination Date prior to the date when the Default occurred.

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

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

**"Total Available Resources"** means, on any business day during a Loss Distribution Period the sum of (i) the Available Resources and (ii) any

Unfunded Contributions deposited with the Clearing House since the relevant Last Call Prior to Default.

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

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

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

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

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

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

(i) **Cash Gainer**

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

where:

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

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

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

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

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

(ii) *Cash Loser*

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

where

$$\begin{aligned} &\text{Cash Loser Base Currency Adjustment to Cash Payment}(t) \\ &= \text{PHG}(t) - (\text{CHG}(t) - \text{CAG}(t-1)) \end{aligned}$$

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

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

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

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

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

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

The Clearing House shall apply all payments it receives in respect of Cash Gainer Payment Currency Adjustment to Cash Payments solely for the purposes of meeting any loss incurred by the Clearing House following, and in relation to, each Default, as contemplated in accordance with Rules 15(a) to 15(g) of the Default Rules.

(d) *Adjustment to Loss Distribution ~~Cap~~ Trigger Amount and Loss Distribution Cut-Off Date*

(i) On each business day following the commencement of the ForexClear Loss Distribution Process (except where the Clearing House is unable to make a determination due to a systems failure or similar event beyond the Clearing House's control), the Clearing House shall

determine if a Loss Distribution Trigger Event has occurred or is likely to occur and, if so, shall notify all FXCCMs accordingly.

If, at any time during a Loss Distribution Period, the Clearing House ~~considers~~determines that ~~the Cash Gainer Payment Currency Adjustment to Cash Payments applied to a particular Margin Account of an FXCCM are, or are about to be equal;~~

(A) the ForexClear Loss Distribution Process is likely to ~~or greater than~~ extend beyond the Loss Distribution Cap Amount Cut-Off Date, the Clearing House may (or, where such determination is made on the Loss Distribution Cut-Off Date, the Clearing House shall on the same business day) propose an adjustment to such Loss Distribution Cap Amount. If agreed by all the Non-Defaulting FXCCMs, an extension of up to 10 business days, from the date of such proposal, to the Loss Distribution Cap Cut-Off Date; and/or

(B) a Loss Distribution Trigger Event is likely to occur, the Clearing House may (or, where a Loss Distribution Trigger Event has occurred, the Clearing House shall on the same business day) propose to the Non-Defaulting FXCCMs an increase in each Non-Defaulting FXCCM's Loss Distribution Trigger Amount of up to twice the ForexClear Contribution of such Non-Defaulting FXCCM as adjusted pursuant to this paragraph at the last ForexClear Determination Date prior to the date when the Default occurred or \$200 million, whichever is the greater,

any proposal under (A) and/or (B) above, a “**Revised Loss Distribution Proposal**”.

If (x) more than 50% of the Non-Defaulting FXCCMs participate in a vote concerning the Revised Loss Distribution Proposal and (y) the Requisite Non-Defaulting FXCCMs vote in favour of the Revised Loss Distribution Proposal, the Loss Distribution Cut-Off Date shall be extended and/or the Loss Distribution Trigger Amount shall be increased (as applicable) for each Non-Defaulting FXCCM and shall be applicable for the remainder of the relevant Loss Distribution Period or until further adjusted pursuant to this paragraph (d)(i). If more than 50% of Non-Defaulting FXCCMs do not participate in such vote and/or if the Requisite Non-Defaulting FXCCMs do not vote in favour of the Revised Loss Distribution Proposal, the Loss Distribution Period shall not be extended. For the avoidance of doubt, the Loss Distribution Cut-Off Date and Loss Distribution Trigger Amount may be adjusted one or more times in respect of a single Default pursuant to this paragraph (d)(i).

~~(i)(ii)~~ The Clearing House shall publish the terms of the voting process for the purposes of this paragraph (d) on or before the business day on which such vote is to be held.

(e) **No Rebate**

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

~~(f)~~ **Application of any Recoveries**

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

~~(i) any amounts received from the Defaulting FXCCM as a result of the Clearing House being a creditor of the Defaulting FXCCM in respect of the ForexClear Business of such Defaulting FXCCM in the context of the occurrence of any of the events under Rules to of the Default Rules in respect of the Defaulting FXCCM or otherwise, other than in respect of sums due to the Clearing House for its own account; or~~

~~(ii)(i) any other amounts howsoever obtained or recovered in the course of the Clearing House's operation of the ForexClear Default Management Process or which are otherwise referable to the Defaulting FXCCM,~~

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

F10. Where, after the Default of one or more FXCCMs, the Clearing House determines in its sole discretion that, notwithstanding the availability of any resources remaining under Rules 15(a) to 15(g) of the Default Rules and the availability of the ForexClear Loss Distribution Process in accordance with the terms of Rule F9, it is clear that the Clearing House does not have sufficient resources to meet its obligations and liabilities arising in respect of those ForexClear Contracts to which it is party with Non-Defaulting FXCCMs, the Clearing House will by notice in writing (a "**ForexClear Voluntary Payment Notice**"): (i) inform all Non-Defaulting FXCCMs

that it has insufficient resources and that it is likely to invoke Rule F11; and (ii) invite each Non-Defaulting FXCCM to make a payment of funds (a "**ForexClear Voluntary Payment**"), in accordance with Rule 15(g) of the Default Rules, to make up for the relevant shortfall.

ForexClear Voluntary Payments will be made on the following terms:

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

Any failure by the Clearing House to deliver a ForexClear Voluntary Payment Notice pursuant to this Rule

~~F10~~

~~F10~~ will not invalidate any action taken by the Clearing House pursuant to Rule F11 nor give rise to any liability whatsoever on the part of the Clearing House.

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

F11. Where, following the process for inviting ForexClear Voluntary Payments in accordance with Rule

~~F10~~

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

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

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- (b) On the basis of the close out values established for each outstanding ForexClear Contract, an account shall be taken (as at the time of close out) of what is due in respect of each FXCCM, from that FXCCM to the Clearing House and from the Clearing House to that FXCCM, as well as all other amounts owing under or in respect of ForexClear Contracts and any other amounts that may be due in respect of the ForexClear Service (including for these purposes, a proportionate share of any amounts owed generally to or from the Clearing House), and the sums due from the FXCCM shall be set off against the sums due from the Clearing House and only the balance of the account shall be payable. For the avoidance of doubt, amounts in respect of ForexClear Contracts shall include, but shall not be limited to, returns of cash Collateral provided in respect of variation margin associated therewith and the repayment of any Net Cash Gainer Payment Currency Adjustment to Cash Payments made in the ForexClear Default Period to which the Insufficient Resources Determination relates (and in respect of which paragraph 5(e) of Rule F9 shall be specifically disappplied), but shall exclude the repayment of any cash Collateral provided to the Clearing House in respect of initial margin or any outstanding ForexClear Contributions.

To the extent that the aggregate of all of the amounts owed to the Clearing House by FXCCMs plus all of those other resources applicable to the ForexClear Business under Rules 15(a) to 15(g) of the Default Rules that have not been applied towards a ForexClear Excess Loss is less than the aggregate of the amounts owed to FXCCMs by the Clearing House, each amount owed to FXCCMs by the Clearing House shall be reduced *pro rata* the shortfall.

- (c) The Clearing House shall determine any amounts due to each FXCCM in respect of the repayment of cash Collateral provided in respect of initial margin obligations and outstanding ForexClear Contributions to be repaid. The claim of each such FXCCM in respect of the foregoing shall be reduced in proportion to an amount by which (i) the value of the assets available to the Clearing House to meet the return obligations referred to in (b) above bears to (ii) the value of what would be due from the Clearing House to each Clearing Member in aggregate in respect of the return of cash Collateral received from each such Clearing Member in respect of its initial margin obligations and outstanding Contributions.
- (d) For each FXCCM, the amount due to it or due from it as determined pursuant to (b) above shall be aggregated with its claim determined pursuant to (c) above and only the net sum shall be payable. Where the result of such calculations is that an FXCCM owes an amount to the Clearing House, that FXCCM shall pay that amount to the Clearing House immediately. Where the result of such calculations is that an FXCCM is owed an amount by the Clearing House, the Clearing House shall pay that amount to the FXCCM immediately, subject to (f) below.
- (e) The payment of such amount to an FXCCM, pursuant to (d) above subject to any re-calculations performed pursuant to (f), shall constitute the full and final payment in respect of the ForexClear Service and such FXCCM shall not be permitted to make any further claims on the Clearing House in respect of amounts relating to the ForexClear Service, nor shall it be permitted to notify



the Clearing House of a Termination Date pursuant to Regulation 45 (*Netting*) for a failure to pay any amounts in relation to the ForexClear Service.

- (f) The Clearing House may make the payments due under(c) above in one or more instalments to the FXCCMs in proportion to the value of their claims on the Clearing House under (b) above if some but not all of the amounts due under (c) above or Rules 15(a) to 15(g) of the Default Rules have not yet been received. The Clearing House shall take reasonable steps to recover such amounts and may deduct therefrom reasonable administration costs for such recovery. To the extent that the Clearing House determines that any such amounts will not in fact be recoverable, it shall re-determine the amounts due to FXCCMs in accordance with this Rule F11.
- (g) This Rule F11 shall not be applied in the event that a Termination Date has been specified in relation to the Clearing House in accordance with Regulation 45 (*Netting*).
- (h) Nothing in the foregoing shall override the obligation of the Clearing House to return non-cash Collateral transferred to the Clearing House by a FXCCM in respect of its initial margin obligations pursuant to the Regulations and Procedures.

## **F12 Application of any Recoveries**

The Clearing House shall reimburse the Members (irrespective of whether they remain Members at the time of the recovery) on a *pro rata* basis by reference to the resources which have been applied pursuant to each of the following Default Rules and in the following order: any net amount paid by a Member pursuant to Rules F9, 15(g), 15(f), 15(e), 15(d) and :

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

in each case net of any related expenses incurred by the Clearing House or other sums owing to the Clearing House by the Defaulting FXCCM in connection with the ForexClear Service. For the avoidance of doubt, nothing in this Rule F12 shall oblige the Clearing House to pursue any litigation or other action in order to recover the amounts contemplated above and if another default fund of the Clearing House has also been applied as a result of the FXCCM's Default, any amounts recovered shall be applied *pari passu* as between the relevant default funds.

The FXCCMs will be reimbursed before applying any recoveries back to the Clearing House. Any recoveries made by the Clearing House in excess of the resources applied

or paid by FXCCMs pursuant to Rules F9, 15(g), 15(f), 15(e), 15(d) shall be retained by the Clearing House.

**SCHEDULE 6**  
**RATES SERVICE DEFAULT FUND SUPPLEMENT**

**CS1. Rates Service Fund Amount**

- (a) The Rates Service Default Fund is denominated in GBP, and all amounts referable to it shall be denominated, calculated, called and payable in GBP.
- (b) On each business day, the Clearing House will determine a "**Combined Loss Value**" in respect of each of the 60 preceding business days. The Combined Loss Value for a particular business day will be the sum of: (1) the largest and the second largest daily stress-testing losses incurred during the preceding 60 business days in relation to the SwapClear Contracts and Eligible Listed Interest Rates Contracts of a Rates Service Clearing Member (the "**Combined Loss Value – Limb (1)**"); plus (2) the largest and the second largest daily stress-testing losses incurred during the preceding 60 business days in relation to the Non-Eligible Listed Interest Rates Contracts of a Rates Service Clearing Member (the "**Combined Loss Value – Limb (2)**"), in respect of a given scenario.
- (c) The "**Rates Service Fund Amount**" shall be determined by the Clearing House at the close of business on the first business day of each calendar month, and otherwise in accordance with paragraph (d) below (each a "**Rates Service Determination Date**") and shall be the sum of: (1) the largest of the 60 Combined Loss Values determined under Rule CS1(b); plus (2) an amount equal to 10 per cent of the value referred to in (1); plus (3) the SwapClear Tolerance Amount. The Rates Service Fund Amount shall not be less than £1 billion pounds (the "**Rates Service Fund Floor**") and shall not be more than £5 billion pounds.
- (d) The Clearing House may recalculate the Rates Service Fund Amount on any business day if the largest of the 60 Combined Loss Values determined under paragraph (b) above on that day differs by more than 25 per cent. from the Combined Loss Value on which the previous Rates Service Contribution determination was based and, on such business day, the Clearing House shall be entitled to require those Clearing Members whose portfolios have caused the increase in the Combined Loss Value to pay an additional amount in respect of their Contributions.

**CS2. Rates Service Fund Amount – Allocation**

On each Rates Service Determination Date the Clearing House shall calculate:

- (a) The "**SwapClear Tolerance Amount**" which shall be the value of that portion of the Rates Service Fund Amount which relates to those default fund resources which the Clearing House determines as being required in relation to SwapClear Tolerance.
- (b) The "**Non-Tolerance Amount**" which shall be the sum of: (1) the Combined Loss Value – Limb (1); plus (2) an amount equal to 10 per cent of the Combined Loss Value – Limb (1).

- (c) The "**SwapClear Combined Loss Value**" in respect of each of the 60 preceding business days. The SwapClear Combined Loss Value in respect of a particular day will be the sum of the largest and the second largest stress-testing loss incurred on that day in relation to SwapClear Business (which includes, for the avoidance of doubt, Portfolio Margined Contracts) (for a given scenario).
- (d) The "**Listed Rate Combined Loss Value**" in respect of each of the 60 preceding business days. The Listed Interest Rates Combined Loss Value in respect of a particular day will be the sum of the STLIEOMs for the Listed Interest Rates Clearing Members which have the largest and the second largest STLIEOM on that day. For this purpose, the "STLIEOM" means, in respect of each Listed Interest Rates Clearing Member and in respect of any day, the stress-tested loss in excess of initial margin (determined for a given scenario determined by the Clearing House) which could be incurred by the Clearing House in respect of the Eligible Listed Interest Rates Contracts (excluding, for the avoidance of doubt, any Portfolio Margined Contracts) of a Listed Interest Rates Clearing Member if that Listed Interest Rates Clearing Member became a Defaulter on that day.
- (e) The "**Total Combined Loss Value**" which shall be the sum of the SwapClear Combined Loss Value and the Listed Rate Combined Loss Value.
- (f) The "**Rates Service Fund Amount - SwapClear**" which shall be calculated as follows :
- $$\left( \frac{\text{SwapClear Combined Loss Value}}{\text{Total Combined Loss Value}} \times \text{Non - Tolerance Amount} \right) + \text{SwapClear Tolerance Amount}$$
- (g) The "**Rates Service Fund Amount - Listed Interest Rate**" which shall be calculated as follows :
- $$\left( \frac{\text{Listed Interest Rates Combined Loss Value}}{\text{Total Combined Loss Value}} \times \text{Non - Tolerance Amount} \right) + (1.1 \times \text{Combined Loss Value} - \text{Limb (2)})$$
- (e) The "**SwapClear Tolerance**" which shall be the aggregate amount of temporary initial margin forbearance provided by the Clearing House to SwapClear Clearing Members to enable registration of SwapClear Contracts.

#### CS3. **Contributions to the Rates Service Fund**

A Rates Service Clearing Member's Contributions to the Rates Service Default Fund shall be calculated in accordance with Part A of this Rates Service Fund Supplement (in respect of SwapClear Contributions) and Part B of this Rates Service Fund Supplement (in respect of Listed Interest Rates Contributions) (as applicable).

#### CS4. **Rates Service Loss Distribution Process**

Where, after a Default, the Clearing House determines that the Rates Service Excess Loss resulting from the Default will exceed the amounts to be applied to it under

Rules 15(a) to 15(g) of the Default Rules, the Clearing House may implement the process (the "**Rates Service Loss Distribution Process**") described in this Rule CS4.

- (a) For the purposes of this Rule CS4 and for Rule CS5 the following definitions will apply:

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

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

**"Available Resources"** means, in respect of any Loss Distribution Period, the amounts available to the Clearing House for application in meeting any loss suffered or incurred by the Clearing House in accordance with Rules 15(a) to 15(g) of the Default Rules as at the relevant Last Call Prior to Default.

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

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

**"Cash Gainer Base Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(i) of this Rule CS4.

**"Cash Gainer Payment Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(i) of this Rule CS4.

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

**"Cash Loser Base Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(ii) of this Rule CS4.

**"Cash Loser Payment Currency Adjustment to Cash Payment"** has the meaning set out in paragraph (b)(ii) of this Rule CS4.

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

number) in respect of a Cash Payment Type in a Cash Payment Currency on such business day.

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

**"Cash Payment Type"** means each of (i) the Price Alignment Amount, Price Alignment Interest, coupon payments, consideration (fee) payments and cash Collateral in respect of a Clearing Member's variation margin obligations payable in respect of a Margin Account to the SwapClear Business of a Non-Defaulting Rates Service Clearing Member; and (ii) consideration (fee) payments, payments under Section 4.1 of the SwapClear STM Terms and daily settlement amounts payable in respect of a Margin Account relating to the Listed Interest Rates Business of a Non-Defaulting Rates Service Clearing Member.

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

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

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

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

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

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

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

where:

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

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

"**Exchange Closed-out Loss**" means the loss (converted, where applicable, into pounds sterling at the Rate of Exchange) to the Clearing House associated with the Exchange Closed-out Contracts of a Defaulting Listed Interest Rates Clearing Member.

"**Last Call Prior to Default**" means the most recent business day prior to the day of the relevant Default on which transfers of Collateral and/or other payments required to be made by Non-Defaulting Rates Service Clearing Members to the Clearing House were made in full.

"**LCH Transfer Cost**" means the cost (converted, where applicable, into pounds sterling at the Rate of Exchange) to the Clearing House of transferring the rights and obligations arising out of the Auction Portfolios of a Defaulting SCM to those SCMs who have successfully bid for such Auction Portfolios in Auctions.

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

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

where:

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

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

"**ECL**" means the Exchange Closed-out Loss;

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

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

"**Loss Distribution Cap Amount Cut-Off Date**" means, ~~in with respect of each Non-Defaulting Rates Service Clearing Member and any to a~~ Loss Distribution Period, ~~an amount equal to the higher day falling ten (10) business days from the date of commencement of~~ (i) £100,000,000; (ii) ~~the product of (a) 100 per cent. and (b) the Rates Service Contribution of such~~

~~Non-Defaulting Rates Service Clearing Member as at the last Rates Service Determination Date prior to the date when the Default occurred at the beginning of that Loss Distribution Period; and (iii) any adjusted cap as may be agreed~~ Process or such earlier or later business day as determined pursuant to paragraph (d) of this Rule CS4.

"**Loss Distribution Day**" means any business day in a Loss Distribution Period on which the Clearing House, in consultation with the Rates Service DMG, prior to calling for Collateral in respect of margin or other payment in respect of settlement on such business day, determines that the LCH Uncovered Loss for that business day is greater than zero.

"**Loss Distribution Period**" means the period from, but excluding, the day on which a Default occurs with respect to a Rates Service Clearing Member to but excluding, ~~(+the earlier of: (i) (A)~~ in the case of a Defaulting Rates Service Clearing Member who is an SCM, ~~the earlier of: (i)~~ the business day on which (a) the rights and obligations arising out of the Auction Portfolios of the Defaulting SCM are transferred to those SCMs which have successfully bid for such Auction Portfolios in Auctions, or, if any Default occurs with respect to any other SCM prior to the end of a Loss Distribution Period, the rights and obligations arising out of the Auction Portfolios of any subsequent Defaulting SCM are transferred to those SCMs who have successfully bid for such Auction Portfolios in Auctions and (b) all payments required to be made by such SCMs and/or the Clearing House in respect of such Auction(s) have been made in full; ~~and (ii) any Loss Distribution Day in respect of which the Clearing House determines that the Rates Service Adjustment Amount for any Rates Service Clearing Member would be equal to or greater than the Loss Distribution Cap Amount for such Loss Distribution Day; and (2(B)~~ in the case of a Defaulter who is a Listed Interest Rates Clearing Member, but not an SCM, ~~any Loss Distribution Day in respect of~~ the business day on which the Clearing House determines that the Rates Service Adjustment Amount for any Rates Service Clearing Member would ~~has taken such action as it considers to be equal~~ required to extinguish or greater than ~~transfer the rights and obligations of such a Defaulter; and (ii) any business day on which the Clearing House determines that a Loss Distribution Trigger Event has occurred, PROVIDED THAT, in each case, the Loss Distribution Period shall not extend beyond~~ the Loss Distribution Cap Amount for such Loss Distribution Day ~~Cut-Off Date.~~

"**Loss Distribution Trigger Amount**" means, in respect of any Loss Distribution Period and any Non-Defaulting Rates Service Clearing Member, an amount equal to either (i) twice the Rates Service Contribution of such Non-Defaulting Rates Service Clearing Member as at the last Rates Service Determination Date prior to the date when the Default occurred at the beginning of that Loss Distribution Period or £200 million, whichever is the greater; or (ii) an amount as approved by the Requisite Non-Defaulting Rates Service Clearing Members following a Revised Loss Distribution Proposal as described in paragraph (d) of this Rule CS4.

"**Loss Distribution Trigger Event**" means, with respect to a Non-Defaulting Rates Service Clearing Member, the aggregate Cash Gainer Payment Currency



Adjustments applied to Cash Payments during the Loss Distribution Period (as amended from time to time) exceeded that Rates Service Clearing Member's Loss Distribution Trigger Amount (as amended from time to time) on the immediately preceding Loss Distribution Day.

**"Margin Account"** means: (i) for a Rates Service Clearing Member, each Proprietary Account, Individual Segregated Account, Non-Identified Client Omnibus Net Segregated Account, Affiliated Client Omnibus Net Segregated Account, Identified Client Omnibus Net Segregated Account and Omnibus Gross Segregated Sub-Account; and (ii) for each FCM Clearing Member, the Proprietary Account and each FCM Client Sub-Account contained within such FCM Clearing Member's FCM Omnibus SwapClear Client Account with LCH).

**"Omnibus Gross Segregated Sub-Account"** means the sub-account allocated to each individual Omnibus Gross Segregated Clearing Client or each set of Combined Omnibus Gross Segregated Clearing Clients within an Omnibus Gross Segregated Account for the purposes of recording SwapClear Contracts referable to each such individual client or group of clients.

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

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

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

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

**"Requisite Non-Defaulting Rates Service Clearing Members"** means on any business day in a Loss Distribution Period, Non-Defaulting Rates Service Clearing Members whose Rates Service Contributions represented 75% or more of the total size of the Rates Service Fund Amount (less the Contribution

of any Defaulter(s)) as of the last Rates Service Determination Date prior to the date when the Default occurred. "t" means, in respect of any determination made in relation to a business day, such business day.

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

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

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

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

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

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

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

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

(i) *Cash Gainer*

On each Loss Distribution Day for each Margin Account of each Non-Defaulting Rates Service Clearing Member which is deemed to be a Cash Gainer, the relevant Rates Service Clearing Member shall be required to pay the Clearing House an amount equal to each positive amount determined as follows or, as applicable, the Clearing House shall be required to pay the relevant Rates Service Clearing Member the absolute value of each negative amount determined as follows (in each case, such amount the "**Cash Gainer Payment Currency Adjustment to Cash Payment**"):

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

where:

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

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

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

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

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

(ii) *Cash Loser*

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

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

where:

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

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

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

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

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

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

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

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

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

The Clearing House shall apply all payments it receives in respect of Cash Gainer Payment Currency Adjustment to Cash Payments solely for the purposes of meeting any loss incurred by the Clearing House following, and in relation to, each Default, as contemplated in accordance with Rules 15(a) to 15(g) of the Default Rules.

(d) *Adjustment to Loss Distribution ~~Cap~~ Trigger Amount and Loss Distribution Cut-Off Date*

(i) On each business day following the commencement of the Rates Service Loss Distribution Process (except where the Clearing House is unable to make a determination due to a systems failure or similar event beyond the Clearing House's control), the Clearing House shall determine if a Loss Distribution Trigger Event has occurred or is likely to occur and, if so, shall notify all Rates Service Clearing Members accordingly.

If, at any time during a Loss Distribution Period, the Clearing House considers/determines that ~~the Cash Gainer Payment Currency Adjustment to Cash Payments applied to a particular Margin Account of a Rates Service Clearing Member are, or are about to be equal;~~

(A) the Rates Service Loss Distribution Process is likely to ~~or greater than~~ extend beyond the Loss Distribution ~~Cap Amount~~ Cut-Off Date, the Clearing House may (or, where such determination is made on the Loss Distribution Cut-Off Date, the Clearing House shall on the same business day) propose an adjustment to such Loss Distribution Cap

~~Amount. If agreed by all the Non-Defaulting Rates Service Clearing Members, an extension of up to 10 business days, from the date of such proposal, to the Loss Distribution Cap Cut-Off Date; and/or~~

~~(B) a Loss Distribution Trigger Event is likely to occur, the Clearing House may (or, where a Loss Distribution Trigger Event has occurred, the Clearing House shall on the same business day) propose to the Non-Defaulting Rates Service Clearing Members an increase in each Non-Defaulting Rates Service Clearing Member's Loss Distribution Trigger Amount of up to twice the Rates Service Contribution of such Non-Defaulting Rates Service Clearing Member as adjusted pursuant to this paragraph at the last Rates Service Determination Date prior to the date when the Default occurred or £200 million, whichever is the greater.~~

~~any proposal under (A) and/or (B) above, a “**Revised Loss Distribution Proposal**”.~~

~~If (x) more than 50% of the Non-Defaulting Rates Service Clearing Members participate in a vote concerning the Revised Loss Distribution Proposal and (y) the Requisite Non-Defaulting Rates Service Clearing Members vote in favour of the Revised Loss Distribution Proposal, the Loss Distribution Cut-Off Date shall be extended and/or the Loss Distribution Trigger Amount shall be increased (as applicable) for each Non-Defaulting Rates Service Clearing Member and shall be applicable for the remainder of the relevant Loss Distribution Period or until further adjusted pursuant to this paragraph (d)(i). If more than 50% of Non-Defaulting Rates Service Clearing Members do not participate in such vote and/or if the Requisite Non-Defaulting Rates Service Clearing Members do not vote in favour of the Revised Loss Distribution Proposal, the Loss Distribution Period shall not be extended. For the avoidance of doubt, the Loss Distribution Cut-Off Date and Loss Distribution Trigger Amount may be adjusted one or more times in respect of a single Default pursuant to this paragraph (d)(i).~~

- ~~(i) The Clearing House shall publish the terms of the voting process for the purposes of this paragraph (d) on or before the business day on which such vote is to be held.~~

~~(e)(b) **No Rebate**~~

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

~~(f) **Application of any Recoveries**~~

~~If the Rates Service Loss Distribution Process has been invoked by the Clearing House in accordance with this Rule CS4, the Clearing House shall~~

~~reimburse the Rates Service Clearing Members (irrespective of whether they remain Rates Service Clearing Members at the time of the recovery) and the Clearing House on a *pro rata* basis by reference to the resources which have been applied pursuant to Rules to of the Default Rules and including the net amount of any one or more paid by the relevant Rates Service Clearing Members;<sup>2</sup>~~

~~(i) any amounts received from the Defaulting Rates Service Clearing Member as a result of the Clearing House being a creditor of the Defaulting Rates Service Clearing Member in respect of the Rates Service Business of such Defaulting Rates Service Clearing Member in the context of the occurrence of any of the events under Rules to of the Default Rules in respect of the Defaulting Rates Service Clearing Member or otherwise, other than in respect of sums due to the Clearing House for its own account; or~~

~~(ii)(i) any other amounts howsoever obtained or recovered in the course of the Clearing House's operation of the Rates Service Default Management Process or which are otherwise referable to the Defaulting Rates Service Clearing Member;~~

~~in each case net of any related expenses incurred by the Clearing House or other sums owing to the Clearing House by the Defaulting Rates Service Clearing Member in connection with the Rates Service Business of such Defaulting Rates Service Clearing Member. For the avoidance of doubt, nothing in this paragraph shall oblige the Clearing House to pursue any litigation or other action in order to recover the amounts contemplated above and if another default fund of the Clearing House has also been applied as a result of the Rates Service Clearing Members Default, any amounts recovered shall be applied *pari passu* as between the relevant default funds.~~

#### CS5. Voluntary Payments

Where, after the Default of one or more Rates Service Clearing Members, the Clearing House determines in its sole discretion that, notwithstanding the availability of any resources remaining under Rules 15(a) to 15(g) of the Default Rules and the availability of the Rates Service Loss Distribution Process in accordance with the terms of Rule CS4, it is clear that the Clearing House does not have sufficient resources to meet its obligations and liabilities arising in respect of those Rates Service Contracts to which it is party with Non-Defaulting Rates Service Clearing Members, the Clearing House will by notice in writing (a "**Rates Service Voluntary Payment Notice**"): (i) inform all Non-Defaulting Rates Service Clearing Members that it has insufficient resources and that it is likely to invoke Rule CS5; and (ii) invite each Non-Defaulting Rates Service Clearing Member to make a payment of funds (a "**Rates Service Voluntary Payment**"), in accordance with Rule 15(g) of the Default Rules, to make up for the relevant shortfall.

Rates Service Voluntary Payments will be made on the following terms:

(a) no Rates Service Clearing Member shall be obliged to make a Rates Service Voluntary Payment;

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

Any failure by the Clearing House to deliver a Rates Service Voluntary Payment Notice pursuant to this Rule CS5 will not invalidate any action taken by the Clearing House pursuant to Rule CS5 nor give rise to any liability whatsoever on the part of the Clearing House.

Any Rates Service Voluntary Payments remaining unused at the time of the expiry of the relevant Rates Service Default Period will be accounted for rateably by the Clearing House as if they were amounts paid in respect of the Rates Service Contributions of those Rates Service Clearing Members from which Rates Service Voluntary Payments were accepted.

#### CS6. **Rates Service Closure**

Where, following the process for inviting Rates Service Voluntary Payments in accordance with Rule CS5, the Clearing House makes a determination (an "**Insufficient Resources Determination**") that it is clear that the Clearing House does not have sufficient resources to meet its obligations and liabilities arising in respect of those Rates Service SwapClear Contracts to which it is party with Non-Defaulting Rates Service Clearing Members, and the provisions of this Rule shall have effect.

- (a) All outstanding Rates Service Contracts shall be closed out as of the business day following the date of the Insufficient Resources Determination and any further obligations to make any payments under or in respect of such Rates Service Contracts shall cease. The closing prices used shall be prices calculated by the Clearing House in accordance with the methodology used by it to carry out end of day margin runs in respect of the outstanding Rates Service Contracts. Where such data is not available to the Clearing House, the closing price shall be the last price used by the Clearing House to calculate the variation margin obligation for the position to be closed out.
- (b) On the basis of the close out values established for each outstanding Rates Service Contract, an account shall be taken (as at the time of close out) of what is due in respect of each Rates Service Clearing Member, from that Rates Service Clearing Member to the Clearing House and from the Clearing House to that Member, as well as all other amounts owing under or in respect of such Rates Service Contracts and any other amounts that may be due in respect of the Rates Service (including for these purposes, a proportionate share of any amounts owed generally to or from the Clearing House), and the sums due from the Rates Service Clearing Member shall be set off against the sums due from the Clearing House and only the balance of the account shall be payable. Amounts due in respect of such Rates Service Contracts shall include, but shall not be limited to, returns of cash Collateral provided in respect of

variation margin associated therewith and the repayment of any Net Cash Gainer Currency Adjustment to Cash Payments made in the Rates Service Default Period to which the Insufficient Resources Determination relates (and in respect of which Rule CS4(e) shall be specifically disapplied) but shall exclude the repayment of any cash Collateral provided to the Clearing House in respect of initial margin or any outstanding Rates Service Contributions.

To the extent that the aggregate of all of the amounts owed to the Clearing House by Rates Service Clearing Members plus all of those other resources applicable to the Rates Service Business under Rules 15(a) to 15(g) of the Default Rules that have not been applied towards an Excess Loss is less than the aggregate of the amounts owed to Rates Service Clearing Members by the Clearing House, each amount owed to Rates Service Clearing Members by the Clearing House shall be reduced *pro rata* the shortfall.

- (c) The Clearing House shall determine any amounts due to each Rates Service Clearing Member in respect of the repayment of cash Collateral provided in respect of initial margin obligations and outstanding Contributions to be repaid. The claim of each such Rates Service Clearing Member in respect of the foregoing shall be limited to a *pro rata* share of the assets available to the Clearing House to satisfy those amounts.
- (d) For each Rates Service Clearing Member, the amount due to it or due from it as determined pursuant to (b) above shall be aggregated with its claim determined pursuant to (c) above and only the net sum shall be payable. Where the result of such calculations is that a Rates Service Clearing Member owes an amount to the Clearing House, that Rates Service Clearing Member shall pay that amount to the Clearing House immediately. Where the result of such calculations is that a Rates Service Clearing Member is owed an amount by the Clearing House, the Clearing House shall pay that amount to the Rates Service Clearing Member immediately, subject to (f) below.
- (e) The payment of such amount to a Rates Service Clearing Member pursuant to (d) above, subject to any re-calculations performed pursuant to (f) below, shall constitute the full and final payment in respect of the Rates Service and such Rates Service Clearing Member shall not be permitted to make any further claims on the Clearing House in respect of amounts relating to the Service nor shall it be permitted to notify the Clearing House of a Termination Date pursuant to Regulation 45 (*Netting*) for a failure to pay any amounts in relation to the Rates Service.
- (f) The Clearing House may make the payments due under (d) above in one or more instalments to the Rates Service Clearing Members in proportion to the value of their claims on the Clearing House under paragraph (b) above if some but not all of the amounts due under (d) above or Rules 15(a) to 15(g) of the Default Rules have not yet been received. The Clearing House shall take reasonable steps to recover such amounts and may deduct therefrom reasonable administration costs for such recovery. To the extent that the Clearing House determines that any such amounts will not in fact be recoverable, it shall re-determine the amounts due to Rates Service Clearing Members in accordance with this Rule.



- (g) This Rule shall not be applied in the event that a Termination Date has been specified in relation to the Clearing House in accordance with Regulation 45 (*Netting*).
- (h) Nothing in the foregoing shall override the obligation of the Clearing House to return non-cash Collateral provided by a Rates Service Clearing Member in respect of its initial margin obligations pursuant to the Regulations and Procedures.

#### CS7. Supplementary Contributions to the Rates Service Default Fund

Following the completion of a Rates Service Default Management Process, the Clearing House will deliver a notice to all Non-Defaulting Rates Service Clearing Members that the relevant Rates Service Default Management Completion Date has occurred. If, following the issuance of such notice, the Clearing House determines (in its sole discretion) that the value of the Rates Service Default Fund is less than the Rates Service Fund Floor, the Clearing House may notify each Non-Defaulting Rates Service Clearing Member that it is required to make a Supplementary Contribution to restore the value of the Rates Service Default Fund to an amount equal to the Rates Service Fund Floor. The amount of each Non-Defaulting Rates Service Clearing Member's Supplementary Contribution will be based on the proportion of the value that such Non-Defaulting Rates Service Clearing Member's SwapClear Contribution and/or Listed Interest Rates Contribution (as applicable), in each case as at the last Rates Service Determination Date, bear(s) to the value of the aggregate SwapClear Contributions and/or aggregate Listed Interest Rates Contributions (as applicable) as of such date. Supplementary Contributions required hereunder shall be paid within two business days after notification and in accordance with the Procedures.

#### CS8. Application of any Recoveries

The Clearing House shall reimburse the Members (irrespective of whether they remain Members at the time of the recovery) on a *pro rata* basis by reference to the resources which have been applied pursuant to each of the following Default Rules and in the following order: any net amount paid by a Member pursuant to Rules CS4, 15(g), 15(f), 15(e), 15(d) and:

(i) any amounts received from the Defaulting Rates Service Clearing Member as a result of the Clearing House being a creditor of the Defaulting Rates Service Clearing Member in respect of the Rates Service Business of such Defaulting Rates Service Clearing Member in the context of the occurrence of any of the events under Rules 5(i) to 5(p) of the Default Rules in respect of the Defaulting Rates Service Clearing Member or otherwise; or

(iv)(iii) any other amounts howsoever obtained or recovered in the course of the Clearing House's operation of the Rates Service Default Management Process or which are otherwise referable to the Defaulting Rates Service Clearing Member,

in each case net of any related expenses incurred by the Clearing House or other sums owing to the Clearing House by the Defaulting Rates Service Clearing Member in connection with the Rates Service Business of such

Defaulting Rates Service Clearing Member. For the avoidance of doubt, nothing in this Rule CS8 shall oblige the Clearing House to pursue any litigation or other action in order to recover the amounts contemplated above and if another default fund of the Clearing House has also been applied as a result of the Rates Service Clearing Members Default, any amounts recovered shall be applied *pari passu* as between the relevant default funds.

The Rates Service Clearing Members will be reimbursed before applying any recoveries back to the Clearing House. Any recoveries made by the Clearing House in excess of the resources applied or paid by Rates Service Clearing Members pursuant to Rules CS4, 15(g), 15(f), 15(e), 15(d) shall be retained by the Clearing House.