

**Dated**

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**CME CLEARING EUROPE LIMITED**

**CLEARING RULES**

**Last updated: 18 November 2010**

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## CHAPTER 1

### DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, for all purposes of these Rules, the following words shall have the meanings specified:

**Account** means any or all of the House Account, Non-Segregated Client Account, Segregated Client Account and Sequestered Client Account as the context requires;

**Affected Contract** means each Contract to which a Defaulting Clearing Member is a party and any Corresponding Contract to such a Contract;

**Affected Party** has the meaning given in Rule 2.6.1;

**Affiliate** means, when applied to any person, any subsidiary undertaking or parent undertaking of that person and any subsidiary undertaking of any such parent undertaking, and the terms subsidiary undertaking and parent undertaking shall have the meanings given to them in section 1162 of the Companies Act 2006;

**Appeals Body** has the meaning given in Rule 9.5.1;

**Applicable Law** means all law, statutory provisions and other rules, regulations and instruments in force from time to time, including the rules, guidance, principles and codes of practice of any Regulatory Authority;

**Bank Account** means one or more bank accounts capable of holding Eligible Cash opened and maintained by the Clearing Member with a Settlement Bank for the purposes set out in Rule 4.2.2;

**Board of Directors** means the Board of Directors of the Clearing House whose names have been submitted to Companies House as such from time to time;

**Business Day** means any day on which the Clearing House is open for business as set out on the Clearing House's Website or as communicated to Clearing Members from time to time by any other means;

**CEA** means the United States Commodity Exchange Act;

**CEO** means the chief executive officer of the Clearing House from time to time;

**Chairman** means the chairman of the Board of Directors from time to time;

**CHAPS** means the inter-bank Clearing House Automated Payment System;

**Cleared OTC Derivatives Client** means a Client of a Cleared OTC Derivatives Clearing Member in respect of which the Cleared OTC Derivatives Clearing Member has entered into Cleared OTC Derivatives Contracts;

**Cleared OTC Derivatives Clearing Member** means a Clearing Member which is registered with the Commission as a futures commission merchant under the CEA and qualifies as an eligible contract participant as defined in the CEA, which has entered into Cleared OTC Derivatives Contracts on behalf of a Cleared OTC Derivatives Client;

**Cleared OTC Derivatives Contracts** means all Contracts in cleared OTC derivatives as that term is defined in Commission Regulation 190.01(oo);

**Clearing and Settlement Procedure** means the Clearing and Settlement Procedure in the Procedures;

**Clearing House** means CME Clearing Europe Limited;

**Clearing House Complaint** means a Complaint made by a Clearing Member that arises in connection with the performance of the Clearing House, or an alleged failure to perform any of the Clearing House functions so far as relating to the obligations to which it is subject under or by virtue of the FSMA or to matters arising out of such obligations;

**Clearing House Insolvency Event** means that the Clearing House is dissolved or enters into liquidation, administration, administrative receivership, a voluntary arrangement, a scheme of arrangement in England or any analogous procedure in any jurisdiction other than England;

**Clearing Member** means any person that has been granted membership of the Clearing House pursuant to Chapter 3 of the Rules including a Defaulting Clearing Member;

**Clearing Member Complaint** means a Complaint made by a Clearing Member that relates to the conduct or behaviour or other actions of another Clearing Member in relation to that Clearing Member's clearing activities with the Clearing House;

**Clearing Membership Agreement** means the agreement of the same name entered into between the Clearing House and each Clearing Member setting out each party's obligations in respect of the services of the Clearing House;

**Client** means a person for which a Clearing Member clears Transactions through the Clearing House and, for the avoidance of doubt, does not include a Clearing Member;

**Collateral** means:

- (a) any Eligible Assets deposited with the Clearing House in accordance with Rule 6;
- (b) any other asset standing to the credit of the relevant Account of the Clearing Member which the Clearing House may reasonably consider to be Collateral;  
and
- (c) any rights relating to, and the proceeds of, any assets referred to in subparagraphs (a) and (b);

**Collateral Value** means at any time, in respect of Eligible Assets provided as Collateral by a Clearing Member, the value of the Equivalent Assets that are credited to the Clearing Member's Bank Accounts as Collateral at such time;

**Commission** means the United States Commodities Futures Trading Commission including any successor body;

**Commission Regulation** means the regulations adopted by the Commission pursuant to the CEA;

**Committee** means each committee of the Clearing House established for the purpose set out in these Rules;

**Complaint** means either or both of a Clearing House Complaint or a Clearing Member Complaint, as the context requires;

**Complaints Procedure** means the Complaints Procedure in the Procedures;

**Contract** means a contract entered into between the Clearing House and a Clearing Member pursuant to Rule 5.2;

**Contract Module** means the part of the Rules setting out those Rules that apply in respect of a particular type of Transaction;

**Contract Specification** means the part of the Contract Module setting out the terms of a particular type of Transaction;

**Contribution** means the contribution to the Guarantee Fund from time to time as calculated in accordance with Rule 7.2 and includes all cash and assets comprising such Contribution;

**Corresponding Contract** has the meaning given in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001;

**Custodian** means a custodian with which the Clearing House may deposit Collateral and/or Contributions;

**Declaration of Default** has the meaning given in Rule 8.2.1;

**Defaulting Clearing Member** means a Clearing Member on which the Clearing House has served a Declaration of Default in accordance with Rule 8.2.1;

**Default Rules** means the Rules in Chapter 8;

**Defence** has the meaning given in Rule 9.4.5;

**Disciplinary Notice** has the meaning given in Rule 9.4.4;

**Disciplinary Proceedings** has the meaning given in Rule 9.4.1;

**Disciplinary Panel** has the meaning given in Rule 9.4.3;

**Eligible Assets** means Eligible Cash and/or (as the context requires) Eligible Securities;

**Eligible Cash** means cash in a currency which the Clearing House has determined to be eligible for depositing as Collateral set out in the Clearing and Settlement Procedure;

**Eligible Securities** means a security that the Clearing House has determined to be eligible for depositing as Collateral as set out in the Clearing and Settlement Procedure;

**Emergency Committee** means the committee formed for the purpose set out in Rule 8.1.3;

**Encumbrance** means any mortgage, charge, pledge, lien, option, restriction, right of set-off, right of first refusal, right of pre-emption, claim, right, interest or preference granted to any third party, or any other encumbrance or security interest of any kind (or an agreement or commitment to create any of the same);

**Equivalent Assets** means:

- (d) in respect of Eligible Cash, Eligible Cash in the same currency; and
- (e) in respect of Eligible Securities, securities of the same type, nominal value, description and amount as the Eligible Securities or, if the Eligible Securities have been redeemed or undergone some other change after their transfer or delivery to the Clearing House, the proceeds of such redemption or other relevant asset;

**Event of Default** has the meaning given in Rule 8.1.1;

**Fees and Charges Notice** means the Notice setting out the fees and charges of the Clearing House from time to time;

**Force Majeure Event** means any event outside the control of the Clearing House or the Clearing Member, as the case may be, which hinders or prevents the performance in whole or in part of any of its obligations under these Rules (other than an obligation to make payments) including any breakdown, delay, malfunction or failure of transmission, communication or computer facilities or other systems or software, industrial action, act of terrorism, civil unrest, embargoes, strike, lack of energy supply, act of God, changes in the Applicable Law or acts and requirements of any Regulatory Authority or the failure by a Settlement Bank or Custodian or other provider of services on which the Clearing House relies for any reason, to perform its obligations;

**FSA** means the Financial Services Authority, including any successor body thereto;

**FSMA** means the Financial Services and Markets Act 2000;

**Guarantee Fund** means the fund established by the Clearing House pursuant to Chapter 7 of the Rules;

**Guarantee Fund Procedure** means the Guarantee Fund Procedure in the Procedures;

**House Account** means the account opened for the Clearing Member in the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of all Contracts other than the Contracts recorded in the Non-Segregated Client Account, the Segregated Client Account or the Sequestered Client Account;

**Insolvency Event** means, in relation to a person, that the person ceases to trade, or is unable to pay its debts as they fall due or has a petition presented or a meeting convened for the purpose of its winding up (provided that such petition is not merely frivolous) or if it enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or an administration order is made in relation to it or it has a receiver or administrative receiver appointed over all or a substantial part of its assets or distraint is levied over any of its assets or any similar or analogous order is made or proceeding is commenced or officer is appointed or action is taken in the United Kingdom or in any jurisdiction outside the United Kingdom in consequence of debt;

**Investigation** has the meaning given in Rule 9.2.1;

**Investigation Notice** has the meaning given in Rule 9.3.1;

**Liability** means in relation to a person, all obligations or liabilities of any kind of that person from time to time, whether they are to pay money or to perform (or not to perform) any other act; express or implied; present, future or contingent; joint or several; incurred as a principal or surety or in any other manner; or originally owing to the person claiming performance or acquired by that person from someone else;

**LIBOR** means the London interbank offered rate;

**Margin Requirement** means the amount of Collateral required by the Clearing House in respect of each Contract to reflect the risks specific to the Contract or, in relation to each House Contract and, if any, Client Contract, to reflect the risks specific to each account;

**Membership Criteria** means the criteria set out in Rule 3.2;

**Membership Procedure** means the Membership Procedure in the Procedures;

**Net Settlement Amount** has the meaning set out in Rule 6.1.5;

**Nominee** has the meaning set out in Rule 3.2.1(k);

**Non-Segregated Client Account** means the account opened for the Clearing Member in the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of Contracts entered into by a Clearing Member on behalf of a Client other than Contracts which are capable of being recorded in the Segregated Client Account or the Sequestered Client Account;

**Notice** means any Notice published by the Clearing House as such;

**Opening Hours** means the hours during which the Clearing House is open for operations as set out on the Clearing House's Website or as communicated to Clearing Members from time to time by any other means;

**Position Limit** means the limit set by the Clearing House on the risk exposure of Contracts existing between a Clearing Member and the Clearing House;

**Procedures** means the Procedures of the Clearing House published as such;

**Regulatory Authority** means any relevant government entity or other authority, in any jurisdiction, which is responsible for authorising, supervising or otherwise regulating any part of the Clearing House or its services or the Clearing Member or its business, as appropriate, or has any other regulatory, investigative, administrative or quasi-judicial jurisdiction, power or other similar function in relation to any part of the Clearing House or its services or the Clearing Member or its business, as appropriate;



**Representative** means, when applied to any person, any person which carries out or is responsible for any of its functions and shall include each director, officer, employee or agent of such person;

**Risk Committee** means the Risk Committee of the Clearing House from time to time;

**Risk Management Procedure** means the Risk Management Procedure in the Procedures;

**Rules** means the rules of the Clearing House as set out herein as they may be amended from time to time and shall include the Contract Modules, Procedures and any Notices issued pursuant to the Rules;

**Segregated Client Account** means the account opened for the Clearing Member in the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of all Contracts entered into by a Clearing Member on behalf of a Client in relation to which money received by the Clearing Member is held in accordance with the Client Money Rules (as defined in the rules of the FSA) or would be so held were it not regarded in accordance with those rules as immediately due and payable to the Clearing Member for its own account;

**Sequestered Client Account** means an account opened for a Cleared OTC Derivatives Clearing Member on the books and records of the Clearing House in accordance with Rule 4.2.1 in respect of all Cleared OTC Derivatives Contracts entered into by the Cleared OTC Derivatives Clearing Member on behalf of its Cleared OTC Derivatives Clients in relation to which money received by the Cleared OTC Derivatives Clearing Member is sequestered in accordance with the CEA and the Commission Regulation;

**Settlement Bank** means a bank which has been approved by the Clearing House to receive Eligible Cash in a Bank Account on behalf of a Clearing Member for the purposes of the Rules;

**Third Party Trade Delegate** means a Person authorised by the Clearing Member to the Clearing House to submit Transactions to the Clearing House on behalf of a Clearing Member and/or a Client;

**Transaction** means a transaction which satisfies the terms of a Contract Specification;

**Transaction Manager** has the meaning set out in Rule 3.2.1(I);

**Transferee Clearing Member** has the meaning given in Rule 5.3;

**Transferor Clearing Member** has the meaning given in Rule 5.3;

**Variation Requirement** means the amount of Collateral required by the Clearing House in respect of each Contract to reflect the marking to market of that Contract; and

**Website** means the Clearing House's website at [www.cmeclearingeurope.com](http://www.cmeclearingeurope.com).

- 1.2 In these Rules unless otherwise specified:
- 1.2.1 the table of contents and the headings are inserted for convenience only and do not affect the interpretation of these Rules;
  - 1.2.2 references to Chapters are to the chapters of these Rules;
  - 1.2.3 references to Rules are to these Rules or any particular one of these Rules;
  - 1.2.4 references to any document are to that document as from time to time amended, restated, novated or replaced, however fundamentally;
  - 1.2.5 references to a person include an individual, partnership, company, corporation, unincorporated body of persons and any government entity;
  - 1.2.6 references to any statute or statutory provision include any subordinate legislation made under it;
  - 1.2.7 references to any statute or statutory provision include any provision amending it or re-enacting it (whether with or without modification) which is the same as, or substantially similar to, the obligations imposed by the specified statute or statutory provision;
  - 1.2.8 references to time are to London time unless otherwise specified and are set out in the 24 hour clock convention;
  - 1.2.9 words importing the plural include the singular and vice versa and the use of any gender includes the other gender;
  - 1.2.10 the words other, including and in particular shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible; and
  - 1.2.11 any reference to the discretion exercised by the Clearing House shall mean the Clearing House's sole, unfettered and absolute discretion.
- 1.3 The Board of Directors of the Clearing House shall have the authority to interpret the Rules. Save as otherwise provided, any such interpretations shall be final and conclusive.

- 1.4 The Rules shall be interpreted in conjunction with any Contract Module, Procedure and Notice. Each Clearing Member will be bound by such Contract Modules, Procedures and Notices as may be relevant to it which shall be set out on the Clearing House's Website.
- 1.5 In the event of any conflict between the Rules and the Clearing Membership Agreement, the Clearing Membership Agreement shall take precedence. In the event of any conflict between the Rules and the Procedures, the Rules shall take precedence. In the event of any conflict between the Rules and a Notice, the Rules shall take precedence except to the extent a Notice amends the Rules. In the event of any conflict between the Rules and a Contract Module, the Contract Module shall take precedence insofar as the conflict relates to the contract specification for the type of Contract governed by the Contract Module. In the event of any conflict between the Rules and the User Licence Agreement, the Rules shall take precedence.

## **CHAPTER 2**

### **GENERAL PROVISIONS**

#### **2.1 General**

- 2.1.1 The Rules, together with the Clearing Membership Agreement and any other documentation given contractual force pursuant to these Rules, form a contract between the Clearing House and each Clearing Member. No person other than the Clearing House has any obligation to Clearing Members under these Rules or any Contract. No person who is not a Clearing Member, including for the avoidance of doubt a Client and a Third Party Trade Delegate, shall have any rights pursuant to the Contract (Rights of Third Parties) Act 1999 to enforce any provision of these Rules.
- 2.1.2 A Clearing Member shall not assign, transfer or create any Encumbrance in relation to any of its rights or obligations under the Rules or any Contract save as otherwise set out in the Rules.

#### **2.2 Amendments**

- 2.2.1 The Clearing House may amend the Rules at any time by issuing a Notice setting out the text of the amended Rules and, where appropriate, a brief explanation of the reason for the amendment.
- 2.2.2 The Clearing House will publish any proposed amendment to a Rule for consultation and will invite Clearing Members to submit comments in writing within a specified deadline save that the Clearing House shall not be required to consult on any amendments to Rules which:
- (a) are minor changes of an administrative or commercial character or where the Clearing House reasonably considers that the amendment would not significantly affect the rights, obligations or liabilities of Clearing Members or that consultation is otherwise not appropriate;
  - (b) are considered by the Clearing House necessary to ensure compliance with the Applicable Laws or a requirement of a Regulatory Authority by the Clearing House or any Clearing Member;
  - (c) are considered by the Clearing House necessary as a result of an Event of Default or Force Majeure Event; or

(d) are otherwise considered by the Clearing House to be necessary for the purpose of mitigating a significant risk to the Clearing House (including by mitigating a significant risk to a Clearing Member) provided that the Clearing House shall consult with Clearing Members on the continued applicability of the amendment following the conclusion of the urgent situation.

2.2.3 The Clearing House may consult on a proposed amendment to the Rules with only a limited number of Clearing Members if it considers it appropriate to do so including where a proposed amendment will affect a limited number of Clearing Members or is a limited technical amendment.

2.2.4 Subject to Rule 2.2.5, a Notice setting out an amendment to the Rules shall state the date from which such amendment comes into effect, which shall not be earlier than ten (10) Business Days from the date of the Notice except that any of the amendments set out in Rule 2.2.2 may take immediate effect on the date of the Notice.

2.2.5 The Clearing House may amend the Contract Module, any Contract Specification, the Procedures and Notices at any time by issuing a Notice setting out the text of the amended Contract Module, Contract Specification, Procedure or Notice. Any such amendment shall have immediate effect unless otherwise stated in the Notice.

2.2.6 No amendment to the Rules shall have the effect of extinguishing any right or discharging any liability incurred under the Rules before such amendment came into effect.

2.2.7 The Clearing House shall notify Clearing Members of any changes in its Business Days and Opening Hours from time to time by Notice.

2.2.8 If at any time the Clearing House decides to cease acting as a clearing house, either generally or in relation to a particular type of Contract, it shall provide the Clearing Members with advance notice of the proposed withdrawal date. If at any withdrawal date, any affected Contracts remain open and in force or not otherwise closed pursuant to Rule 5.2.6, the Clearing House shall be entitled to offset, liquidate or require any such Contracts to cash settle on terms specified by the Clearing House.

## **2.3 Limitations of liability and indemnity**

2.3.1 Each Clearing Member shall indemnify the Clearing House and each of its Affiliates and Representatives against any and all losses, liabilities, damages, claims, costs or expenses suffered or incurred by the Clearing House or any other person arising out of or in connection with the Clearing Member's conduct or its breach of these Rules, any Contract or the Applicable Law.

2.3.2 Neither the Clearing House nor any of its Affiliates or Representatives shall have any liability or obligation under or in respect of a Transaction unless and until a Contract arises. The Clearing House's liabilities and obligations under any Contract will be limited to those set out in these Rules and the terms of the Contract.

2.3.3 Neither the Clearing House nor any of its Affiliates or Representatives shall be liable for any losses, liabilities, damages, claims, costs or expenses, whether in contract, tort or breach of statutory duty or otherwise, arising from or in connection with:

- (a) any suspension or closure of the Clearing House;
- (b) any failure or malfunction or defect or delay or interruption in, or inability to use, any systems or communications necessary for use of the Clearing House (whether or not such systems or communications are under the control of the Clearing House);
- (c) any errors or inaccuracies in any information used in any systems of the Clearing House or provided by the Clearing House;
- (d) any warranties, representations and undertakings which might be implied, whether by statute or otherwise, in respect of any systems used or provided by the Clearing House including as to fitness for purpose or for a particular use;
- (e) any exercise or failure to exercise any discretion or right conferred upon the Clearing House pursuant to the Rules;
- (f) any error, delay or inaccuracy in the submission of a Transaction or the transmission of information to the Clearing House and any unauthorised access to or use of the Clearing House;
- (g) the performance of any obligation of a Clearing Member or Client or Third Party Trade Delegate or other person;
- (h) the acts or omissions of, or an Insolvency Event affecting, any third party including any Settlement Bank, Custodian, Central Security Depository or provider of data or other services or systems to the Clearing House or any of their affiliates, sub-contractors or delegates;
- (i) any dispute relating to the validity, existence or terms of any Contract; or
- (j) any loss or diminution in the value of, or depreciation in or in connection with any, Collateral or Contributions provided to the Clearing House pursuant to the Rules.

2.3.4 Neither the Clearing House nor any of its Affiliates or Representatives shall in any circumstances be liable to a Clearing Member or any other person for:

- (a) loss of or anticipated loss of profit, loss of or anticipated loss of revenue, loss of use, business interruption, loss of use of any equipment, loss of any contract or other business opportunity or goodwill or punitive loss; or
- (b) indirect loss or consequential loss,

regardless of whether the Clearing House has been advised of the possibility of such loss or whether such loss otherwise could have been foreseen.

2.3.5 Neither this Rule 2.3 nor any other Rule shall affect the application of section 291 Financial Services and Markets Act 2000 nor exclude or restrict the liability of the Clearing House or any other person:

- (a) in respect of fraud, bad faith or wilful default;
- (b) in respect of personal injury or death resulting from negligence, recklessness or an intentional act or omission; or
- (c) otherwise to the extent it cannot be excluded or restricted in accordance with the Applicable Law.

2.3.6 Nothing in these Rules shall require the Clearing Member to indemnify the Clearing House to the extent not permissible in accordance with the Applicable Law.

2.3.7 The Clearing House shall not be liable to any person which is not a Clearing Member.

2.3.8 The Clearing Member shall notify the Clearing House in writing of any possible action, claim or proceeding against the Clearing House and the details thereof as soon as reasonably practicable.

## **2.4 Confidentiality**

2.4.1 The Clearing House will treat as confidential all information received from a Clearing Member or which is held by the Clearing House and relates to Contracts which the Clearing Member has entered into as confidential and shall not disclose it to any other person except:

- (a) where the Clearing House is in possession of the information free of any obligation of confidence to the Clearing Member at the time it is received by the Clearing House or obtains it from a third party which is not under a duty of confidence to the Clearing Member in respect of such information;

- (b) where the Clearing House develops the information independently and without reference to any of the Clearing Member's confidential information;
- (c) where it has the Clearing Member's consent to do so;
- (d) where required to do so by a Regulatory Authority, pursuant to the order of a competent court, or pursuant to the Applicable Law;
- (e) to any Affiliate, any Committee, the Appeals Body or any professional advisers to enable them to provide services to the Clearing House which are necessary or expedient for the operation of the Clearing House;
- (f) to any Client or Third Party Trade Delegate to which the information relates;
- (g) to any Settlement Bank, Custodian or other person which provides data, services or systems to the Clearing House and any of their affiliates, sub-contractors and delegates to the extent necessary or expedient for the purpose of the provision of those services;
- (h) to any other Clearing Member for the purposes of a potential transfer, novation or assignment of a Transaction, a Contract or Collateral to such Clearing Member;
- (i) to any person or to the public if the information is or comes into the public domain other than as a result of a breach of this Rule by the Clearing House or its Representatives; or
- (j) to any other person to which, and on such terms as, the Clearing House considers it appropriate to disclose such information.

2.4.2 Rule 2.4.1 shall not operate to restrict, diminish or affect:

- (a) the rights of the Clearing House in relation to Clearing Data (as defined in the User Licence Agreement);
- (b) or the IPRs (as defined in the User Licence Agreement) of the Clearing House.

2.4.3 Clearing Members shall be deemed to consent to any disclosure or non-disclosure of information by the Clearing House that is required or permitted by section 348 of the FSMA.



2.4.4 Clearing Members shall be deemed to consent to any disclosure or non-disclosure of information by the Clearing House that is required or permitted by section 348 of the FSMA.

## **2.5 Data protection**

2.5.1 The Clearing House is a data controller in relation to personal information provided by the Clearing Members and their Representatives. Each Clearing Member shall ensure that any of its Representatives whose personal data is provided to the Clearing House has consented in advance to such data being controlled and processed by the Clearing House and that the disclosure of such personal data is lawful.

2.5.2 The Clearing House shall be entitled to disclose personal data to such persons and for such purposes as set out in Rule 2.4 and the Clearing House and any such person to which personal data is provided may transfer it outside the European Economic Area for processing.

2.5.3 Each data subject may, on application to the Clearing House's Company Secretary and payment of a small fee to the Clearing House, receive a copy of the personal data held by the Clearing House in respect of it and require the Clearing House to correct any errors or inaccuracies.

2.5.4 In this Rule 2.5, the terms "personal data", "controller" and "data subject" have the meanings given to such terms in the Data Protection Act 1998.

## **2.6 Force majeure**

2.6.1 If and to the extent that either the Clearing House or the Clearing Member is hindered or prevented by a Force Majeure Event from performing any of its obligations under these Rules, then the party so affected (the **Affected Party**) shall not be liable to the other for failure to perform such obligations provided that the Affected Party takes the steps set out in Rule 2.6.2.

2.6.2 On the occurrence of a Force Majeure Event, the Affected Party shall:

- (a) immediately notify the other party of the same in writing and, if the Clearing House is the Affected Party, it shall do so by issuing a Notice;
- (b) use reasonable endeavours to minimise the effects of the Force Majeure Event on the performance of its obligations under the Rules and resume full performance of such obligations without avoidable delay;
- (c) keep the other party informed of the development of the circumstances of the Force Majeure Event and the performance of its obligations under the Rules,

including, without limitation, when it is no longer affected by the Force Majeure Event and, if the Clearing House is the Affected Party, it shall do so by issuing a Notice; and

- (d) if the Clearing House is the Affected Party, require any Clearing Member to take such action as the Clearing House may direct in relation to any Contracts or Collateral affected by the Force Majeure Event.

## **2.7 Severability**

- 2.7.1 Each of the Rules is severable and distinct from the others. It is intended that every Rule and every part of each Rule shall be and remain valid and enforceable to the fullest extent permitted by law. If any Rule or part of a Rule is or at any time becomes to any extent invalid, illegal or unenforceable for any reason, it shall to that extent be deemed not to form part of these Rules but the validity, legality and enforceability of the remaining Rules and parts of these Rules shall not be thereby affected or impaired.

## **2.8 Waiver**

- 2.8.1 Except as specifically provided in these Rules, no waiver of any of these Rules or any part thereof shall be effective unless the same shall be in writing, and then such waiver shall be effective only in the specific instance, for the purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such Rule or part thereof.
- 2.8.2 The waiver of any right, and the failure to exercise any right or to insist on the strict performance of any of the Rules, shall not operate as a waiver of, or preclude any further or other exercise or enforcement of that or any other right.
- 2.8.3 Any times fixed by these Rules for the doing of any act or acts required by these Rules may be waived or suspended by the Clearing House, the Board of Directors or such Committee as the Board of Directors may designate, whenever, in its, judgment, such extension, waiver or suspension is necessary or expedient.

## **2.9 Governing law and arbitration**

- 2.9.1 The Rules shall be governed by and construed in accordance with the laws of England and Wales.
- 2.9.2 Subject to Rule 2.9.4, any dispute between the Clearing House and Clearing Member arising out of or in connection with the Rules or any Contract, including any question regarding the validity of the Clearing Membership Agreement shall be referred to and

finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Rule.

- 2.9.3 The number of arbitrators shall be three (3). Each party shall appoint one (1) arbitrator and the remaining arbitrator shall be appointed by agreement between the arbitrators appointed by each party. The third arbitrator shall serve as chairman. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- 2.9.4 A Clearing Member may not submit a dispute, the subject matter of which could constitute a Complaint, to be resolved by arbitration in accordance with Rule 2.9.2 unless and until it has submitted a Complaint on such subject in accordance with the Rules and that Complaint has been subjected to the procedures set out in the Rules.
- 2.9.5 The commencement of any arbitral proceedings pursuant to Rule 2.9.2 shall be without prejudice to and shall not limit in any way the right of the Clearing House to instigate any procedure under the Rules, including without limitation in relation to any Event of Default or any Investigation or Disciplinary Proceedings.
- 2.9.6 The Clearing House will not be responsible for compliance or non-compliance by any person with the requirements under the FSA's Prospectus Rules concerning offers made to the public.

## **CHAPTER 3**

### **MEMBERSHIP**

#### **3.1 Types of membership and application**

- 3.1.1 A person must, at a minimum, demonstrate to the Clearing House that it can satisfy the Membership Criteria. The process for applying for clearing membership is set out in the Membership Procedure. A copy of the application form and a list of the supporting documentation which is required to be submitted is available on the Website. The Risk Committee determines whether an applicant satisfies the Membership Criteria.
- 3.1.2 The only type of membership of the Clearing House is as a Clearing Member but the Clearing House may create different categories of Clearing Member depending on the types of Transaction to be cleared. The Clearing House may apply different Membership Criteria in respect of different categories of Clearing Member. A Clearing Member may only clear those types of Transaction in respect of which it is a Clearing Member of the relevant category.
- 3.1.3 A Clearing Member must continue to satisfy the Membership Criteria applicable to its category of membership for so long as it remains a Clearing Member of that category.
- 3.1.4 The Rules apply to Clearing Members. Each Clearing Member shall, and shall procure that its Representatives and, where appropriate, its Clients and any Third Party Trade Delegate, act in accordance with the Rules. Different Rules may apply to different categories of Clearing Member and the applicable Rules may include a Contract Module that is specific to the type of Transaction cleared by a particular category of Clearing Member.
- 3.1.5 The Clearing House has no contractual relationship with Clients or any Third Party Trade Delegate and the Clearing Member will be party to and liable as a principal in respect of any resulting Contracts. Clients and Third Party Trade Delegates are not subject to the Rules and do not have any of the rights or benefits of a Clearing Member. The Clearing House has no obligations or liabilities under the Rules to any person other than a Clearing Member.

#### **3.2 Membership Criteria**

- 3.2.1 To satisfy the Membership Criteria, a person must at all times:
- (a) be incorporated as a body corporate, partnership or other business organisation or entity in any jurisdiction;

- (b) have all necessary authorisations, licences, permissions, approvals or equivalent in respect of each Regulatory Authority;
- (c) be in good standing under, and comply with, all Applicable Law and the requirements of each Regulatory Authority which has jurisdiction over the Clearing Member;
- (d) be subject to Applicable Law relating to money laundering and terrorist financing that requires it to undertake due diligence and identity verification measures on its Clients;
- (e) not be subject to an Insolvency Event or an Event of Default or any circumstances pursuant to which either an Insolvency Event or an Event of Default could be declared;
- (f) have capital of at least the amount set out in the Membership Procedure for this purpose;
- (g) have provided to the Clearing House its Contribution to the Guarantee Fund in accordance with the Rules and the Membership Procedure;
- (h) have provided to the Clearing House all Collateral as required in accordance with the Rules;
- (i) have the Bank Accounts set out in Rule 4.2.2;
- (j) be party to an executed Clearing Membership Agreement and such other agreements as set out in the Membership Procedure;
- (k) have nominated a Representative to be responsible for the Clearing Member's actions and represent the Clearing Member before the Clearing House and its Committees (a **Nominee**);
- (l) have nominated a Representative to be the Clearing House's key contact person and to register such of its and its Clients' Representatives as will be permitted to submit Transactions to the Clearing House (the **Transaction Manager**);
- (m) ensure that a Representative, who is sufficiently senior and familiar with the Rules and the Clearing Member's activities in relation to the Clearing House, is available to deal with any query or issue raised by the Clearing House;
- (n) not have been, or have any senior Representative who has been, convicted of any offence involving fraud, theft, false accounting, offences against the

administration of public justice, serious tax offences or other dishonesty or an offence relating to companies, insurance, banking, other financial services, consumer credit or consumer protection, money laundering, market abuse or insider dealing or be, or have any senior Representative who is, under investigation for committing such an offence;

- (o) satisfy the Clearing House as to its fitness and propriety, financial, operational, technical and risk management capacity and competence and have such personnel, facilities and organisational arrangements to be able to satisfy its obligations under the Rules;
- (p) satisfy the Clearing House that it has in place adequate written anti-money laundering, risk management and disaster recovery and business continuity policies and procedures to ensure that it is able to perform its obligations under the Rules and Applicable Law;
- (q) be engaged in or demonstrate immediate capacity to engage in the conduct of a Clearing Member in respect of the Transactions to be cleared;
- (r) demonstrate that it is in compliance with the Rules; and
- (s) satisfy any further requirements which the Clearing House may reasonably impose on a Clearing Member from time to time.

3.2.2 The Membership Criteria set out in paragraphs 3.2.1(b) to 3.2.1(e) and 3.2.1(n) shall also apply to each of the Clearing Member's Affiliates.

### **3.3 Clearing for Clients**

3.3.1 Where a Clearing Member submits Transactions to the Clearing House on behalf of a Client:

- (a) it shall provide such further information about such Client as the Clearing House may require;
- (b) it must require each Client to comply with such security obligations as the Clearing House may require or are otherwise prudent to protect the financial integrity of the Clearing House;
- (c) it must satisfy itself that the acts and omissions of its Clients will not prevent it from complying with the Rules and it must impose the prohibitions set out in Rule 3.6 on each Client;

- (d) it must use its best endeavours to procure that each Client provides to the Clearing House such information about such Client and the Transactions submitted on its behalf as the Clearing House may require; and
- (e) it must use its best endeavours to procure that each Client cooperates with the Clearing House in the event of any action being taken against the Clearing Member in the same way as set out in Rule 9.2.2 save that the Client shall not be required to permit access without notice to its business premises.

3.3.2 Where a Clearing Member submits a Transaction to the Clearing House on behalf of a Client, the Clearing Member shall require the Client to provide it with not less than the amount of Collateral which the Client would be obliged to provide to the Clearing House in respect of such Transaction if it were itself a Clearing Member.

3.3.3 Where a Clearing Member submits a Transaction to the Clearing House on behalf of a Cleared OTC Derivatives Client:

- (a) the Clearing Member must be registered with the Commission as a futures commission merchant;
- (b) the Clearing Member must hold Collateral of each Cleared OTC Derivatives Client in a sequestered account in accordance with the CEA and the Commission Regulation; and
- (c) the Clearing Member must obtain a satisfactory sequestered account acknowledgement letter identifying the segregated account as such.

### **3.4 Provision of information**

3.4.1 Each Clearing Member shall provide to the Clearing House in accordance with the Membership Procedure:

- (a) its annual audited financial statements prepared in accordance with Applicable Law within five (5) Business Days of submission of the same to its primary Regulatory Authority for financial services or, if it does not have such a Regulatory Authority, within sixty (60) Business Days of its financial year end; and
- (b) any other financial statements as are provided to the Clearing Member's primary Regulatory Authority for financial services within five (5) Business Days of such financial statements having been provided to such Regulatory Authority or, if it does not have such a Regulatory Authority, monthly unaudited financial reports within fifteen (15) Business Days of the relevant month end.

3.4.2 Each Clearing Member agrees that the Clearing House may at any time request information to which it is entitled under the Rules from a Regulatory Authority and that the Clearing House may receive such information and disclose it to any of its affiliates and any Settlement Bank, Custodian or other person which provides data, services or systems to the Clearing House and any of their affiliates, sub-contractors and delegates to the extent necessary or expedient for the purpose of the provision of those services.

### **3.5 Notification Requirements**

3.5.1 Each Clearing Member shall notify the Clearing House in writing immediately in the event of any of the following:

- (a) it ceases to be able to satisfy any of the Membership Criteria or reasonably believes it may cease to be able to do so;
- (b) any material changes are made to the information previously provided to the Clearing House including that relating to its Nominee and Transaction Manager;
- (c) the Clearing Member is notified that a Regulatory Authority intends to investigate any of its affairs or those of an Affiliate which is material in terms of the overall size of its group or take disciplinary or other formal action against it or such an Affiliate or the Clearing Member has reason to believe that a Regulatory Authority is considering the same; or
- (d) of anything relating to the Clearing Member of which the Clearing House would reasonably expect notice.

3.5.2 Each Clearing Member shall give the Clearing House prompt prior written notice of any material change in its form or organisation, ownership structure, or business operations, including:

- (a) a merger, combination or consolidation between the Clearing Member and another person;
- (b) a change in the direct or indirect beneficial ownership of 10% or more of the equity of the Clearing Member;
- (c) the sale of a significant part of the Clearing Member's business or assets to another person; and
- (d) a material change in its business operations.

3.5.3 The Clearing House shall be entitled from time to time to require each Clearing Member to provide it with a report on its large positions.



- 3.5.4 All information provided to the Clearing House shall be in English.
- 3.5.5 Each Clearing Member shall furnish to the Clearing House such documents in a timely manner with respect to any of the foregoing events as the Clearing House may from time to time require.
- 3.5.6 All information provided to the Clearing House by or on behalf of the Clearing Member shall be accurate, complete and not misleading and shall be provided in a format approved by the Clearing House.

### **3.6 Prohibitions**

- 3.6.1 A Clearing Member shall not:
- (a) breach any Applicable Law or requirements of a Regulatory Authority or any of these Rules;
  - (b) engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering, fraud or which is in breach of any similar Applicable Law;
  - (c) engage in any other practice which the Clearing House reasonably considers to be capable of impairing the financial integrity of the Clearing House;
  - (d) take any action which in the reasonable opinion of the Clearing House is likely to bring the Clearing House or any of the Clearing Members into disrepute or otherwise damage the reputation of the Clearing House;
  - (e) provide to the Clearing House, report or disseminate false, misleading or inaccurate information about a Transaction or Contract;
  - (f) breach any terms of a Contract or enter into any Contract intending to default on the same or having no reasonable grounds for believing that it would be possible to avoid such a default;
  - (g) use any of the facilities provided by the Clearing House in contravention of the Rules or other than for the purpose of conducting its business as a Clearing Member; or
  - (h) fail to supervise properly its Representatives, Clients and Third Party Trade Delegates in their use of the Clearing House in the reasonable opinion of the Clearing House.

### **3.7 Right to audit**

3.7.1 The Clearing House shall be entitled to conduct audits on each Clearing Member's compliance with the Clearing Rules. Each Clearing Member shall:

- (a) provide such information, books and records as the Clearing House may reasonably request; and
- (b) cooperate with the Clearing House in the same way as set out in Rule 9.2.2 for such purposes save that the Clearing Member shall not be required to permit access without notice to its business premises.

### **3.8 Actions available to the Clearing House**

3.8.1 In order to protect the integrity of its clearing arrangements or to avoid the introduction of uncertainty, volatility or risk into the financial markets, the Clearing House may, in its absolute discretion, take any of the following actions:

- (a) require a Clearing Member to increase its capital;
- (b) require a Clearing Member to deposit additional Collateral with the Clearing House;
- (c) require a Clearing Member to decrease the size or volume of its Contracts;
- (d) prohibit a Clearing Member from entering into any new Contracts;
- (e) require a Clearing Member to cease to take any action in respect of the Contracts to which it is party save as directed by the Clearing House;
- (f) close out, settle or transfer to or reopen with another Clearing Member or Clearing Members some or all of its Contracts;
- (g) transfer any Eligible Cash or Eligible Securities constituting Collateral relating to a Contract which is transferred to or reopened with another Clearing Member or Clearing Members to the relevant Account or Accounts relating to such other Clearing Member or Clearing Members;
- (h) determine the settlement price at which Contracts are to be liquidated;
- (i) suspend a Clearing Member in accordance with Rule 3.10; and
- (j) issue such other instructions and impose such other requirements and prohibitions as it considers appropriate to protect the integrity of the Clearing

House or avoid the introduction of uncertainty, volatility or risk in the financial markets.

### **3.9 Termination of clearing membership**

- 3.9.1 Subject to Rules 3.9.5 and 7.4.2, a Clearing Member may terminate its membership of the Clearing House by providing the Clearing House with not less than ninety (90) Business Days notice in writing.
- 3.9.2 Subject to Rules 3.9.5 and 9.4.14 the Clearing House may terminate the membership of any Clearing Member by providing the Clearing Member with not less than thirty (30) Business Days notice in writing.
- 3.9.3 Following the giving or receipt of notice of termination of a Clearing Member's membership, the Clearing Member shall:
- (a) continue to pay all Collateral and its required Contribution to the Guarantee Fund and make all other payments due pursuant to these Rules or any Contracts to which it is party;
  - (b) make settlement in respect of, transfer to another Clearing Member or Clearing Members, close out or liquidate any Contracts and follow any directions given by the Clearing House in respect of such Contracts;
  - (c) cooperate in the transfer of any Eligible Cash or Eligible Securities constituting Collateral relating to a Contract which is transferred another Clearing Member or Clearing Members to the relevant Account relating to such other Clearing Member or Clearing Members;
  - (d) remain subject to claims against its Contribution until the Clearing House returns such Contribution in accordance with Rule 7.5;
  - (e) remain subject to the Clearing House's jurisdiction as set out in Rule 8 until any actions arising as a result of a Declaration of Default having been served on the Clearing Member have been completed;
  - (f) remain subject to the Clearing House's jurisdiction as set out in Rule 9 with respect to matters that occurred prior to termination provided that the Clearing House gives written notice of the commencement of an inquiry into such matters to the former Clearing Member within one (1) year of termination; and
  - (g) take such other actions as the Clearing House deems necessary or appropriate to satisfy or discharge any of its remaining obligations under the Rules.

3.9.4 Following notice of the termination of a Clearing Member's membership, the Clearing House may, at its discretion and in the interests of risk management, establish, amend or revoke Position Limits for the Clearing Member. The Clearing House may or may not inform the Clearing Members of their Position Limits.

3.9.5 A Clearing Member shall not cease to be a Clearing Member until it ceases to be party to any Contracts.

### **3.10 Suspension**

A Clearing Member which is suspended may not submit Transactions to the Clearing House for clearing but shall continue to comply with the Rules and take such actions as the Clearing House deems necessary or appropriate.

## **CHAPTER 4**

### **ACCOUNTS**

#### **4.1 Fees**

- 4.1.1 Each Clearing Member shall pay such fees and charges to the Clearing House as shall be specified by the Clearing House in the Fees and Charges Notice. The Clearing House may amend its fees and charges at any time by way of a Notice and shall endeavour, but shall not be obliged, to give prior notice of any amendment.
- 4.1.2 The Clearing House shall invoice each Clearing Member on a monthly basis for fees and charges incurred during the preceding month. All such fees and charges shall be reflected as a charge to, and deducted from, the Clearing Member's House Account or, if there are insufficient funds on its House Account, from the Clearing Member's Non-Segregated Client Account on such date as may be specified by the Clearing House in respect of each invoice.
- 4.1.3 The Clearing Member shall pay interest to the Clearing House on any due but unpaid amount from the date on which the amount becomes due and payable under the Rules until the date of delivery at such rate per annum as is set out on its Website and in the Fees and Charges Notice, compounded daily.
- 4.1.4 All amounts set out in the Rules and elsewhere as being payable to the Clearing House shall be deemed to be exclusive of any value added tax which is chargeable on the supply to which that amount relates. Accordingly, if value added tax is chargeable on any such supply and the corresponding amount, the relevant Clearing Member shall be responsible for paying it in addition to the amount stated as payable.
- 4.1.5 All amounts payable to the Clearing House in connection with these Rules and any Contract shall be paid without any deduction or withholding for or on account of tax unless such deduction or withholding is required by Applicable Law, in which case the amount of the payment due shall be increased to an amount which (after making the deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.
- 4.1.6 Any stamp duty or stamp duty reserve tax (or any similar tax or duty) arising on, or in connection with, the transfer of Eligible Securities by way of Collateral or Contribution is for the account of the Clearing Member.

## **4.2 Accounts**

- 4.2.1 The Clearing House shall maintain in its books and records a House Account and, for each Clearing Member which clears Contracts on behalf of Clients, a Non-Segregated Client Account (if requested) and a Segregated Client Account (if appropriate). The Clearing House shall also maintain in its books and records a Sequestered Client Account for any Cleared OTC Derivatives Clearing Member which clears Cleared OTC Derivatives on behalf of Cleared OTC Derivatives Clients. Any sub-accounts maintained by the Clearing House are for administrative purposes only and will not affect the Clearing Member's liability for all accounts opened pursuant to its membership.
- 4.2.2 Each Clearing Member shall maintain a Bank Account with one or more Settlement Banks and procure that each Settlement Bank shall act on the Clearing House's instructions with respect to such Bank Account in accordance with the Clearing Membership Agreement. Such instructions shall include instructions to debit the Bank Account for any amounts pursuant to the Rules including in respect of fees and charges, Collateral, Contributions, amounts due pursuant to the Contracts and penalties and instructions to provide information to the Clearing House as to whether the Settlement Bank is able to make such payments in relation to the Bank Account. The Clearing Member must ensure that each Bank Account is credited with adequate Eligible Cash or has appropriate arrangements in place in respect of it to enable the Settlement Bank to debit the Bank Account with such amounts at any time such amounts become due, notwithstanding any arrangements the Clearing Member may have in place with the Settlement Bank in relation to other amounts owing by the Clearing Member or other accounts of the Clearing Member.
- 4.2.3 Each Clearing Member that wishes to substitute Eligible Securities for Eligible Cash shall maintain an account which is capable of holding Eligible Securities and in respect of which the Clearing Member has authorised the transfer of Eligible Securities to the Custodian on the instructions of the Clearing House.
- 4.2.4 The Clearing House may, in its absolute discretion, decline to accept any transfer of Eligible Cash or Eligible Securities.
- 4.2.5 All amounts payable to the Clearing House shall, unless otherwise agreed by the Clearing House, be payable by electronic transfer from an account at a Settlement Bank. The Clearing Member shall continue to be liable for such amounts unless and until actually received by the Clearing House in unencumbered, fully cleared and fully available funds.

- 4.2.6 Upon notice from the Clearing House that a transfer of funds from the Clearing Member's account has not been effected as instructed by the Clearing House, the Clearing Member shall deliver the amount required to the Clearing House on demand.
- 4.2.7 All Cleared OTC Derivatives Collateral deposited with the Clearing House shall be held in an account with one or more Settlement Banks and/or Custodians in the name of the Clearing House, the title to which account reflects the fact that the account relates to Sequestered Client Accounts. Pursuant to this rule, a Clearing Member shall satisfy the requirement for a sequestered account acknowledgement letter for Cleared OTC Derivatives Client Collateral held by the Clearing House.

### **4.3 Set off**

- 4.3.1 Subject to Rule 8.4.3, the Clearing House may set off any obligation due to it from a Clearing Member against any obligation owed by the Clearing House to the Clearing Member, regardless of the place of payment, account, branch or currency of either obligation. If the obligations are in different currencies, the Clearing House may convert either obligation at a market rate of exchange for the purpose of the set off. The Clearing House shall be entitled to make any necessary adjustments to the Clearing Member's House Account, Non-Segregated Client Account and Segregated Client Account resulting from the exercise of its rights of set off.
- 4.3.2 The rights of the Clearing House under Rule 4.3.1 are without prejudice to any rights of set-off, lien, netting, liquidation, combination of accounts or appropriation under the Clearing Rules or otherwise.
- 4.3.3 Amounts payable to the Clearing House shall be paid in the currency stated. If the Clearing House receives payment in a currency other than that stated, it may convert such amount at a market rate of exchange. The Clearing Member shall indemnify the Clearing House against any loss which the Clearing House may suffer as a result of such conversion.
- 4.3.4 The Clearing House may, at its discretion, treat a Contract in which a Clearing Member is the buying Clearing Member and another Contract on the same terms in which the same Clearing Member is the selling Clearing Member as being netted, set off and mutually closed out upon the relevant Account of the Clearing Member.

## **CHAPTER 5**

### **CLEARING**

#### **5.1 Submission of Transactions to the Clearing House**

- 5.1.1 Transactions may be submitted to the Clearing House by one of the routes set out in the Procedures or the relevant Contract Module.
- 5.1.2 Each Transaction must be designated as relating to either the Clearing Member's House Account, Non-Segregated Client Account, Segregated Client Account or Sequestered Client Account and any further designation as set out in the Procedures.
- 5.1.3 The Clearing House may only accept a Transaction:
- (a) which satisfies the relevant Contract Specification;
  - (b) which is included in the Clearing House's product referential file and conforms to the Clearing House's specified fluctuation rates;
  - (c) in respect of which each party is a Clearing Member or authorised by a Clearing Member to submit the Transaction to the Clearing House; and
  - (d) which satisfies the Clearing House's credit checks (subject to Rule 5.2) and does not cause the Clearing Member's Position Limit to be exceeded.
- 5.1.4 The Clearing House may decline to accept any Transaction if it:
- (a) conflicts or appears to conflict with information received by the clearing system from another source;
  - (b) is or appears to be incomplete or erroneous in any way or results or appears to result from a communications or information technology error or other problem;
  - (c) is a Transaction in respect of which the Clearing Member is, or the Clearing House reasonably considers that the Clearing Member is, in breach of any of the Rules including Rule 3.6;
  - (d) is one which any Regulatory Authority requires or requests the Clearing House to treat as void or voided; or



(e) is otherwise made or received in such circumstances or such manner that acceptance of the Contract would, in the Clearing House's discretion, be inadvisable.

5.1.5 The Clearing House will, where permitted by Applicable Law, notify the Clearing Member in the event that it exercises its discretion to decline a Transaction.

5.1.6 The Clearing House may, at its discretion, establish, amend or revoke Position Limits for any Clearing Members, with or without notice to such Clearing Member. In exercising its discretion under this Rule 5.1.6, the Clearing House may take into account such factors as it considers appropriate, including the financial, operational and risk management capacity and competence of the Clearing Member.

5.1.7 A Clearing Member will be bound by any Contract that results from a Transaction as a result of the acts or omissions of any of its Representatives or Clients or Third Party Trade Delegates regardless of the circumstances including whether the person submitting the Transaction was authorised to do so or whether the Transaction caused the Clearing Member to breach any position limit or was in breach of any requirements or restrictions of the Clearing Member.

## **5.2 Novation of Transactions**

5.2.1 Each Transaction submitted to the Clearing House which reflects prevailing market price at the time of submission shall be novated upon:

- (a) receipt of the Transaction by the Clearing House;
- (b) successful completion of credit checks on each Clearing Member which is, or is acting on behalf of, a party to the Transaction (including any credit limits applicable to a person on whose behalf the Clearing Member is acting) or acceptance by each Clearing Member which is, or is acting on behalf of, a party to the Transaction; and
- (c) storage of the Transaction in the Clearing System.

5.2.2 The novation of each Transaction submitted to the Clearing House which does not reflect prevailing market price at the time of submission shall be novated upon:

- (a) receipt of the Transaction by the Clearing House;
- (b) successful completion of credit checks on each Clearing Member which is, or is acting on behalf of, a party to the Transaction (including any credit limits applicable to a person on whose behalf the Clearing Member is acting) or

acceptance by each Clearing Member which is, or is acting on behalf of, a party to the Transaction; and

(c) storage of the Transaction in the Clearing System,

but such novation shall be conditional on the Clearing House holding sufficient Collateral in respect of the Transaction or on receipt of confirmation from the Settlement Bank of the Clearing Member which is, or is acting on behalf of, a party to the Transaction of payment of any Net Settlement Amount in respect of such Transaction.

5.2.3 Upon novation as set out in Rules 5.2.1 and 5.2.2, a Contract is created and:

(a) the Clearing House shall assume the position of seller to the buyer and buyer to the seller of the original Transaction;

(b) the Clearing House shall have all the rights and be subject to all the liabilities of each Clearing Member which was party to the original Transaction with respect to such Contract; and

(c) each Clearing Member which has any rights or liabilities in relation to the original Transaction shall be released and discharged from all such rights and liabilities.

5.2.4 For the purposes of Rules 5.2.1 and 5.2.2, the Clearing House shall determine in good faith whether any Transaction submitted to the Clearing House reflects prevailing market price at the time of submission.

5.2.5 Each Clearing Member shall act as principal (and not as agent) to each Contract to which it is party. The Clearing House will treat each Clearing Member as being fully, legally and beneficially entitled to the rights pursuant to the Contracts and each Contract as being free from Encumbrances in favour of any person other than the Clearing House.

5.2.6 Each Contract shall remain open and in force and shall continue to be binding on the Clearing Member and the Clearing House until:

(a) it expires or is settled;

(b) it is transferred to another Clearing Member; or

(c) it is closed out or otherwise liquidated,

whichever is the earliest.

5.2.7 The terms of any Contract may only be amended, waived or varied with the prior written consent of the Clearing House.

### **5.3 Transfer of Contracts**

5.3.1 All rights and liabilities of a Clearing Member (the **Transferor Clearing Member**) under a Contract may be transferred to another Clearing Member (the **Transferee Clearing Member**) with the prior agreement of the Transferee Clearing Member and the Clearing House. The Clearing House will normally only agree to a transfer if:

- (a) the Client to which the Contract relates will remain the same;
- (b) the transfer is being made to correct an error in the clearing of a Contract and the transfer is completed within two (2) Business Days of the date of novation;
- (c) the transfer is in connection with, or as a result of a non-recurring transaction pursuant to which the business of one Clearing Member is acquired by, merged with or assumed by the business of another Clearing Member; or
- (d) the Clearing House reasonably considers that the transfer is in the interests of the Clearing House.

### **5.4 Avoidance of Contracts**

5.4.1 The Clearing House shall have the discretion to avoid any Contract if such Contract, whether in whole or in part, is or reasonably appears to the Clearing House to be void, voidable or unenforceable (whether by virtue of being connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws or otherwise). In such circumstances, the Clearing House may, at its discretion, take either or both of the following steps:

- (a) direct the Clearing Member who was party to the void or voided Contract to enter into a replacement contract of equal or as near equal as possible economic terms to the void or voided Contract as a replacement contract; and/or
- (b) enter into such contracts for its own account as necessary for the Clearing House to achieve a balanced book of the relevant Contract for the account and risk of the Clearing Member, including any associated costs, expenses and losses incurred in establishing such contracts.

## **5.5 Information and reporting**

- 5.5.1 The Clearing House shall make available to the Clearing Member information about each Transaction it has submitted to the Clearing House and each Contract. The Clearing House shall report any error in any such information within twenty-four (24) hours of the date of the Contract to which the error relates.
- 5.5.2 The Clearing Member shall be permitted to manage the information about each Transaction that is made available to it pursuant to Rule 5.5.1.

## CHAPTER 6 COLLATERAL

### 6.1 General

- 6.1.1 Each Clearing Member shall deposit with the Clearing House in respect of each House Account, Non-Segregated Client Account, Segregated Client Account and Sequestered Client Account such amounts of Collateral as set out in this Rule 6 and the Clearing and Settlement Procedure.
- 6.1.2 The Clearing Member shall designate whether Collateral is deposited in respect of its House Account, Non-Segregated Client Account, Segregated Client Account, Sequestered Client Account and any further designation as set out in the Procedures.
- 6.1.3 The Clearing House shall determine the value of Collateral it requires in respect of any account or Contract at least twice daily and may require the deposit of such Collateral by any Clearing Member in respect of any account or Contract at any time. Such determination may reflect:
- (a) a Margin Requirement as compared to the Collateral on deposit in respect of the Account or Contract; and
  - (b) a Variation Requirement.
- 6.1.4 The Margin Requirement and Variation Requirement for each Contract will be determined in the manner designated by the Clearing House for such Contract from time to time and in accordance with the Risk Management Procedure; provided that when deemed necessary, at the discretion of the Clearing House, in order to protect the interests of the Clearing House and Clearing Members, the Clearing House may set the Margin Requirement and the Variation Requirement for any Contract on the basis of a price determined by the Clearing House at its sole discretion.
- 6.1.5 The aggregate of any Collateral payable in accordance with Rule 6.1.3 (the **Net Settlement Amount**) shall be provided in the form of Eligible Cash. The Clearing Member may subsequently substitute part or all of such Collateral with an amount of Eligible Securities which is of an equivalent value as at the date of the substitution.
- 6.1.6 Each Clearing Member may at any time deposit with the Clearing House any additional amount of Collateral as it may wish in respect of each account and Contract. Such Collateral shall be deposited in the form of Eligible Cash or Eligible Securities or as otherwise specified in the Clearing and Settlement Procedure.

6.1.7 If, at any time, the Clearing House may have Collateral on deposit in respect of an account or Contract with a value which is greater than is required under Rule 6.1.3, then the Clearing Member may request the transfer of Eligible Cash in an amount equal to such excess and may make arrangements with the Clearing House to substitute Eligible Securities of a lower market value.

6.1.8 The market value of all Contracts and Collateral shall be determined by the Clearing House in such manner and at such intervals as set out in the Rules, the Clearing and Settlement Procedure and otherwise at the Clearing House's discretion. In particular, the Clearing Member acknowledges that:

- (a) the Clearing House may attribute a value to any Eligible Securities which is less than the face or market value of such Eligible Securities;
- (b) the Clearing House may, from time to time, change the way in which it values Eligible Securities or the extent to which the value it attributes to Eligible Securities is less than the face or market value of such Eligible Securities; and
- (c) this may affect the Clearing Member's obligations to transfer amounts of Eligible Assets as Collateral or Contributions.

## **6.2 Collateral reports**

6.2.1 The Clearing House shall make available to each Clearing Member a report showing the Collateral Value, Margin Requirement, Variation Requirement and Net Settlement Amount in respect of each of the Clearing Member's accounts at the end of each Business Day.

6.2.2 The Clearing Member shall report any error in any report made available by the Clearing House within twenty-four (24) hours of the date of the Contract to which the error relates, and the Clearing House may correct its reports and make any adjustment to the Net Settlement Amount for the relevant account or Contract on the following Business Day.

## **6.3 Holding of Collateral**

6.3.1 The Clearing House shall deposit Eligible Cash received as Collateral in a bank account and Eligible Securities received as Collateral with its Custodian. Such Eligible Cash and Eligible Securities will be held in the name of the Clearing House unless the Clearing House determines otherwise.

6.3.2 Subject to Rule 6.3.1, Eligible Cash and Eligible Securities received as Collateral in respect of each of the Clearing Member's House Account, Segregated Client Account, Non-Segregated Client Account and Sequestered Client Account may be held in a

commingled account with Eligible Cash and Eligible Securities received as Collateral in respect of such Accounts relating to other Clearing Members.

- 6.3.3 The Clearing House will maintain records of its redelivery obligations in respect of Collateral received from the Clearing Member.

## **CHAPTER 7**

### **GUARANTEE FUND**

#### **7.1 General**

- 7.1.1 The Clearing House shall maintain a Guarantee Fund to which each Clearing Member shall contribute as provided in this Chapter 7 of the Rules and the Guarantee Fund Procedure.
- 7.1.2 The use of the Guarantee Fund shall be limited to the satisfaction of claims against, or obligations of, the Clearing House arising from the existence of a Defaulting Clearing Member including the costs associated with the application of the Default Rules.

#### **7.2 Calculation of Contributions**

- 7.2.1 Each Clearing Member shall be required to make to, and maintain with, the Clearing House a Contribution to the Guarantee Fund of such amount as is notified to the Clearing Member from time to time. The Guarantee Fund Procedure contains an explanation of the calculation of the Guarantee Fund.
- 7.2.2 Each Clearing Member's Contribution shall be re-assessed at the end of each calendar quarter or more frequently if the Clearing House so determines. The Clearing House shall notify the Clearing Member of any change in the Contribution it requires from the Clearing Member within two (2) Business Days of the re-assessment.
- 7.2.3 The Clearing Member shall provide any additional amount that is required by way of Contribution to the Guarantee Fund within one (1) Business Day of the date of notification of the change in Contribution.
- 7.2.4 If, following a re-assessment of the Guarantee Fund, the Clearing Member's Contribution is greater than the Clearing House requires, the Clearing Member may request the Clearing House to return excess Eligible Cash and may make arrangements with the Clearing House to substitute Eligible Securities of a lower market value.

#### **7.3 Form of Contributions**

- 7.3.1 The required Contribution to the Guarantee Fund shall be provided in the form of Eligible Cash. The Clearing Member may subsequently substitute part or all of such Contribution with an amount of Eligible Securities which is of an equivalent value as at the date of substitution.



#### **7.4 Recourse to the Guarantee Fund**

- 7.4.1 If the Clearing House shall be required to apply part or all of the Contributions of the non-defaulting Clearing Members to discharge the Defaulting Clearing Member's liabilities in accordance with Rule 8.5.1, each non-defaulting Clearing Member shall within one (1) hour (or such longer period as the Clearing House may determine) of notification of the amount required if notification is received during the hours when CHAPS is open and otherwise, within one hour of the time at which CHAPS first opens after such notification, make good the resulting deficiency in its Contribution.
- 7.4.2 Without prejudice to the Clearing House's right under Rule 7.4.1, if the Clearing House shall apply part or all of the Contribution of a non-defaulting Clearing Member to discharge a Defaulting Clearing Member's liabilities, the non-defaulting Clearing Member may, at any time within ten (10) Business Days after notice to it of such application, terminate its membership of the Clearing House by giving written notice to the Clearing House. Subject to Rules 3.9.3 to 3.9.5 and Rule 7.5.1, such termination shall be effective when accepted by the Clearing House which may be within ninety (90) Business Days of such notice.
- 7.4.3 If the Defaulting Clearing Member's liabilities are discharged, in whole or in part, after the Clearing House applies part or all of the Contribution of a non-defaulting Clearing Member to the Defaulting Clearing Member's liabilities, the net amount of the recovery shall be credited to the non-defaulting Clearing Members whose Contributions were applied to such liabilities in proportion to (but not exceeding) the amounts so applied, whether or not they are still Clearing Members.
- 7.4.4 No Clearing Member shall take any action, including but not limited to, obtaining a court order that would interfere with the ability of the Clearing House to apply a Clearing Member's assets and funds as set out in this Rule 7.

#### **7.5 Refund of Contribution on termination of membership**

- 7.5.1 On termination of a Clearing Member's membership in the Clearing House, the amount of its Contribution shall be returned to it within ninety (90) Business Days of the giving or receipt of notice to terminate or such later date as the Clearing Member shall cease to be a Clearing Member. All amounts chargeable against a Clearing Member's Contribution on account of Contracts entered into while it was a Clearing Member shall be deducted from the amount returned.
- 7.5.2 A Clearing Member's entitlement to repayment of its Contribution or any part of it shall not be capable of assignment or transfer by the Clearing Member or made subject to any Encumbrance that purports to rank in priority over, *pari passu* with, or subsequent to, the

rights of the Clearing House. Any purported Encumbrance that is made by a Clearing Member in respect of a Contribution shall be null and void.

## **CHAPTER 8**

### **DEFAULT**

#### **8.1 Application of the Default Rules**

8.1.1 The Clearing House may take the actions set out in the remainder of these Default Rules in respect of a Clearing Member in the event of any of the following circumstances (each an **Event of Default**):

- (a) the Clearing Member fails to discharge any obligation to the Clearing House, whether under the Clearing Membership Agreement, the Rules or any Contract or otherwise;
- (b) the Clearing Member notifies the Clearing House that it is, or is likely to be, unable to discharge any obligation to the Clearing House, whether under the Clearing Membership Agreement, the Rules or any Contract or otherwise; or
- (c) the Clearing House believes that a Clearing Member is, or is likely to be, unable to discharge any obligation to the Clearing House, whether under the Clearing Membership Agreement, the Rules or any Contract or otherwise.

8.1.2 Without prejudice to the generality of Rule 8.1.1, the Clearing House may take into account any or all of the following events in determining whether an Event of Default has occurred:

- (a) the Clearing Member or any of its Affiliates is subject to an Insolvency Event; or
- (b) the Clearing House reasonably considers that the financial condition of the Clearing Member or any of its Affiliates is such that to allow the Clearing Member to continue its operation as such would introduce an unacceptable level of risk to the Clearing House or its Clearing Members.

8.1.3 The CEO of the Clearing House has absolute discretion to determine whether an Event of Default exists and, if it does, whether to take the actions set out in the remainder of the Default Rules in the circumstances. The CEO may consult with the Emergency Committee for both purposes. The composition of the Emergency Committee shall be determined by the Clearing House from time to time.

#### **8.2 Actions on a Declaration of Default**

8.2.1 If, being satisfied that an Event of Default has occurred, the CEO decides to take the actions set out in the remainder of the Default Rules, the Clearing House shall notify such decision in writing to the Defaulting Clearing Member and provide a copy to any

other person which is party to a Contract to which the Defaulting Clearing Member is a party and to the FSA (a **Declaration of Default**). A Declaration of Default will be given by the Clearing House by e-mail or fax to the e-mail address or fax number respectively provided by the Clearing Member for service of notices or service of process under the Clearing Membership Agreement and will be deemed to be issued on receipt by the Clearing House of an automated delivery receipt or confirmation of receipt from the relevant server in the case of email and on confirmed completion of transmission in the case of fax. Notwithstanding the foregoing, the Clearing House may give confirmation of a Declaration of Default by personal delivery or recorded or special delivery post in accordance with the Clearing Membership Agreement.

8.2.2 Upon the Clearing House issuing a Declaration of Default, the Defaulting Clearing Member shall:

- (a) subject to Rule 8.2.2(c), cease to take any action in respect of its Contracts;
- (b) not enter into any new Contracts; and
- (c) comply with any directions of the Clearing House.

### **8.3 Calculation and certification of net amount**

8.3.1 Upon the Clearing House issuing a Declaration of Default, the Clearing House shall seek to discharge all of the Defaulting Clearing Member's rights and liabilities under all of the Affected Contracts, aggregate any obligations for the payment of money, whether present or future, actual or contingent by the Defaulting Clearing Member under such Contracts and the Rules (including any amounts owing to the Clearing House including any costs and expenses arising from the implementation of the Default Rules), aggregate any such obligations to the Defaulting Clearing Member under each Affected Contract and the Rules, and set-off the two aggregated amounts against one another so as to produce a single net sum for the purpose of Rule 8.3.3.

8.3.2 For the purposes of discharging a Defaulting Clearing Member's rights and liabilities and calculating a single net sum, the Clearing House may take any of the following actions or any combination of the following actions:

- (a) closing out or settling any Affected Contract including the application of Eligible Cash or Eligible Securities constituting Collateral credited to the Defaulting Clearing Member's Account in respect of such Affected Contract;
- (b) transferring any Affected Contract to, or opening any new Contract that relates to an Affected Contract with, any non-defaulting Clearing Member and transferring any Eligible Cash or Eligible Securities constituting Collateral

credited to the Defaulting Clearing Member's Account in respect of such Affected Contract to the relevant Account or Accounts relating to such non-defaulting Clearing Member;

- (c) effecting Corresponding Contracts to any Affected Contracts;
- (d) exercising any option granted by an Affected Contract;
- (e) entering into hedging transactions in relation to any Affected Contracts;
- (f) auctioning any of the Defaulting Clearing Member's open positions under any Affected Contracts; and
- (g) requiring any Clearing Member to buy or accept the transfer of any Affected Contract and/or to enter into a corresponding contract, or a hedging contract, to any such Affected Contract in proportion to the Clearing Member's share of all Contracts of the same type as the Affected Contract compared to the share of other Clearing Members of all Contracts of the same type,

in each case, on such terms as the Clearing House shall determine and the rights and liabilities of the Defaulting Clearing Member referred to in Rule 8.3.1 shall include all rights and liabilities arising in consequence of any such action.

8.3.3 The sum produced pursuant to Rule 8.3.1 will, if due from the Defaulting Clearing Member, be set off against the following assets in the following order or, if due to the Defaulting Clearing Member, be aggregated with the following assets:

- (a) the Defaulting Clearing Member's Collateral; and
- (b) the Defaulting Clearing Member's Contribution to the Guarantee Fund.

8.3.4 The Clearing House shall certify the single net sum resulting from Rules 8.3.1 to 8.3.3 as being the amount payable by or to the Defaulting Clearing Member in respect of the Affected Contracts to which the certificate relates. Such certificate shall be conclusive.

#### **8.4 Segregation between House Account, Segregated Client Account and Sequestered Client Account**

8.4.1 The process set out at Rule 8.3 shall be applied separately in respect of:

- (a) Contracts which relate to the Defaulting Clearing Member's House Account and related rights and liabilities;
- (b) Contracts which relate to the Defaulting Clearing Member's Segregated Client Account and related rights and liabilities; and

- (c) Contracts which relate to the Defaulting Clearing Member's Sequestered Client Account and related rights and liabilities.

8.4.2 To the extent that the Clearing House sets-off an amount pursuant to Rule 8.3.3:

- (a) Collateral credited to the House Account of the Defaulting Clearing Member will be applied against each sum certified pursuant to Rules 8.3.1 and 8.3.4;
- (b) Collateral credited to the Segregated Client Account of the Defaulting Clearing Member will only be applied against the sum certified pursuant to Rules 8.3.1 and 8.3.4 in respect of Contracts credited to the Defaulting Clearing Member's Segregated Client Account; and
- (c) Collateral credited to the Sequestered Client Account of the Defaulting Clearing Member will only be applied against the sum certified pursuant to Rules 8.3.1 and 8.3.4 in respect of Contracts credited to the Defaulting Clearing Member's Sequestered Client Account.

8.4.3 Notwithstanding any law, regulation (including, without limitation, the Insolvency Rules 1986) or otherwise:

- (a) no Liability of the Clearing House to a Clearing Member shall be set-off against or netted with any Liability of a Clearing Member to the Clearing House except in accordance with these Rules, the relevant Clearing Membership Agreement and as otherwise agreed by the Clearing House and the Clearing Member;
- (b) no Liability of the Clearing House to a Clearing Member under or in connection with a Segregated Client Account (and any related Contract and Collateral) shall be set-off against or netted with any Liability of the Clearing Member to the Clearing House in relation to any other Account; and
- (c) no Liability of the Clearing House to a Clearing Member under or in connection with a Sequestered Client Account (and any related Contract and Collateral) shall be set-off against or netted with any Liability of the Clearing Member to the Clearing House in relation to any other Account.

8.4.4 The Clearing House shall certify the net sum under Rule 8.3.4 in relation to a Clearing Member's Sequestered Client Account (and pay the amount due (if any) in relation to such Sequestered Client Account) before completing any default proceedings in relation to that Clearing Member's House Account.

8.4.5 For the purposes of Rules 8.3.1 and 8.3.4, the Clearing House may, in its reasonable discretion, determine the proportion of the Guarantee Fund to be applied in relation to

the Clearing Member's House Account, Segregated Client Account and Sequestered Client Account.

8.4.6 For the purposes of the Default Rules, House Account shall mean both the House Account and the Non-Segregated Client Account.

## **8.5 Application of Clearing House resources**

8.5.1 To the extent that the assets referred to in Rule 8.3.3 are insufficient, the following assets shall be used to satisfy any outstanding amount in the order set out below:

- (a) Chicago Mercantile Exchange Group's contribution to the Guarantee Fund;
- (b) the Contributions of the non-defaulting Clearing Members to the Guarantee Fund; and
- (c) amounts received by the Clearing House pursuant to Rule 8.5.2.

8.5.2 In the event that there remains an unsatisfied obligation, the Clearing House shall have a right to assess each non-defaulting Clearing Member for an amount not exceeding 275% of its Contribution to the Guarantee Fund as at the date on which the Event of Default occurred. Each non-defaulting Clearing Member is required to provide the amount assessed to the Clearing House within one (1) hour of notification of such amount if notification is received during the hours when CHAPS is open and otherwise, within one hour of the time at which CHAPS first opens after such notification.

## **8.6 Notification to other Clearing Members and cooperation with the Regulatory Authorities**

8.6.1 The Clearing House shall notify the non-defaulting Clearing Members of the occurrence of an Event of Default and its decision to make a Declaration of Default at the same time as, or shortly after it makes such Declaration of Default. The Clearing House may notify the non-defaulting Clearing Members of the actions taken under the Default Rules at various other points in the process. In particular, the Clearing House will notify the non-defaulting Clearing Members of the certification made under Rule 8.3.4.

8.6.2 The Clearing House may share information (including information received from or about any Clearing Member), and otherwise cooperate, with any Regulatory Authority, clearing house or exchange and any insolvency practitioner in relation to the issue of a Declaration of Default or a Clearing House Insolvency Event.

## **8.7 Insolvency of the Clearing House**

8.7.1 Upon the occurrence of a Clearing House Insolvency Event:

- (a) the Clearing House shall notify each Clearing Member of the Clearing House Insolvency Event as soon as reasonably practicable;
- (b) the right of the Clearing House to require an increase in the Contribution of any Clearing Member under Rule 7.2.2 or 7.4.1 shall cease to apply; and
- (c) each Clearing Member shall comply with the Default Rules and other Rules (except Rule 8.6.1) as if each Clearing Member was a Defaulting Clearing Member and the Clearing House had given a Declaration of Default in respect of it.



## CHAPTER 9

### COMPLAINTS AND ENFORCEMENT

#### 9.1 Complaints

- 9.1.1 Any Complaint shall be made in accordance with the Complaints Procedure.
- 9.1.2 The Clearing House shall consider a Complaint in accordance with this Chapter 9 of the Rules and the Complaints Procedure:
- (a) a Clearing House Complaint shall be dealt with in accordance with the Complaints Procedure; and
  - (b) if a Clearing Member Complaint alleges a breach of the Rules, the Clearing House will commence an Investigation and may commence Disciplinary Proceedings in accordance with the Rules.
- 9.1.3 The Clearing House shall notify a Clearing Member which makes a Clearing Member Complaint of the steps it has taken to review such Complaint and the outcome.
- 9.1.4 If the Clearing House, in its discretion, considers it appropriate or if it is otherwise required to do so under Applicable Law, the Clearing House may provide details to a Regulatory Authority about any Complaint, matter or concern which it considers requires investigation and about any outcome of an Investigation or Disciplinary Proceeding.

#### 9.2 Investigations

- 9.2.1 The Clearing House may investigate breaches or alleged breaches of the Rules, whether or not such breaches or alleged breaches have arisen as a result of a Clearing Member Complaint, at its own instigation or otherwise in accordance with the provisions of Rule 9.3 (the **Investigation**).
- 9.2.2 A Clearing Member shall cooperate fully with any Investigation irrespective of whether such Clearing Member is the subject of or otherwise involved in the Investigation. Without limitation, each Clearing Member shall:
- (a) provide to the Clearing House such information in whatsoever form as the Clearing House may reasonably request, within the timescale specified;
  - (b) permit Representatives of the Clearing House access, with or without notice, during business hours to any of the Clearing Member's business premises (which for the avoidance of doubt includes those premises in which records are stored) in order to carry out the Investigation;

- (c) make its Representatives readily available for meetings with the Representatives of the Clearing House conducting the Investigation, as the Clearing House may reasonably request, and use its best endeavours to procure that such persons answer truthfully, fully and promptly, all questions that are put to them;
- (d) produce and give the Representatives of the Clearing House conducting the Investigation reasonable access to documents, records, files, tapes and computer systems which are within the Clearing Member's possession or control and provide any facilities which such Representatives may reasonably request; and
- (e) print information in the Clearing Member's possession or control which is held on computer or otherwise convert it into a readily legible document or any other record that may be reasonably requested by the Representatives of the Clearing House conducting the Investigation.

### **9.3 Investigation process**

- 9.3.1 If the Clearing House considers that a Complaint, matter or concern requires investigation, the Clearing House shall issue a notice of Investigation (**Investigation Notice**) to the Clearing Member concerned to the effect that an Investigation has been commenced and setting out a brief description of the matter under Investigation.
- 9.3.2 Once the Clearing House has carried out the Investigation it shall send to the relevant Clearing Member a preliminary letter that describes its preliminary factual conclusions and the action it proposes to take in the light of such breach.
- 9.3.3 The Clearing House shall also invite the Clearing Member to either attend a meeting or to send written comments to the Clearing House, in each case, to enable the Clearing Member to correct any factual error that it reasonably considers has been made in the preliminary letter. After the meeting or the receipt of written comments from the Clearing Member, as the case may be, the Clearing House shall finalise its initial findings and present them in writing to the Clearing Member.
- 9.3.4 After sending its initial findings to the Clearing Member, the Clearing House may exercise one (1) or more of the following powers in relation to the Clearing Member concerned:
  - (a) decide that no further action should be taken against the Clearing Member;
  - (b) issue a private written warning to the Clearing Member;

- (c) instigate Disciplinary Proceedings in accordance with Rule 9.4;
- (d) carry out further enquiries if the Investigation indicates that this is necessary in order to conclude satisfactorily the Investigation; or
- (e) refer all or a portion of the investigation to a Regulatory Authority.

9.3.5 The Clearing House shall notify the Clearing Member in writing of the power to be exercised. The Clearing House may, in an appropriate case, take different actions in relation to Clearing Members concerned in the same Disciplinary Proceedings or in different Disciplinary Proceedings on the same or similar facts.

#### **9.4 Disciplinary Proceedings**

9.4.1 The Clearing House shall commence the disciplinary proceedings set out in this Rule 9.4 (the **Disciplinary Proceedings**) only when it is reasonably satisfied that the Clearing Member has breached the Rules, whether as a result of an Investigation or otherwise.

9.4.2 The Clearing House may decide at any time to terminate the Disciplinary Proceedings or reach a settlement with the Clearing Member on such terms as it considers appropriate, at any stage during the Disciplinary Proceedings.

9.4.3 The Risk Committee shall act as the disciplinary panel for the purposes of the Disciplinary Proceedings and shall accordingly be referred to for the purposes of this Rule 9.4 as the **Disciplinary Panel**.

9.4.4 To commence the Disciplinary Proceedings the Clearing House shall send to the Clearing Member concerned a written notice (the **Disciplinary Notice**), which contains details of the alleged breach of the Rules and sufficient information to enable the Clearing Member to understand and respond to such allegations.

9.4.5 The Clearing Member shall have twenty (20) Business Days from receipt of the Disciplinary Notice to provide a statement of defence (the **Defence**) in respect of the allegations. The Defence shall set out the plea that the Clearing Member intends to make and any admissions of fact. If no Defence has been served within that timeframe the Clearing Member shall be deemed to have accepted the facts and matters alleged in the Disciplinary Notice.

9.4.6 After due consideration of the Defence, the Clearing House may either:

- (a) proceed with the Disciplinary Proceedings;
- (b) terminate the Disciplinary Proceedings; or

(c) amend the Disciplinary Notice in accordance with Rule 9.4.7.

9.4.7 The Clearing House may at any time amend a Disciplinary Notice provided that:

- (a) the amendment is relevant to the allegation or breach of the Rules;
- (b) the essential character of the allegation or the breach of the Rules has not been changed; and
- (c) the Clearing Member would not be substantially prejudiced in any defence it may put before the Disciplinary Panel.

9.4.8 The Disciplinary Panel may order an adjournment at any stage upon an application by the Clearing House to enable an alleged separate or unrelated breach of the Rules which it reasonably believes the Clearing Member to have committed to be investigated further.

9.4.9 Following the amendment of a Disciplinary Notice, the Clearing Member shall have ten (10) Business Days to make any necessary changes to its Defence. If no amended Defence has been served within that timeframe the Clearing Member will be deemed to have accepted the facts and matters alleged in the amended Disciplinary Notice and indicated that its original Defence stands.

9.4.10 The Disciplinary Panel shall hear submissions on the matter of the alleged breach of the Rules and shall determine whether there has been a breach of the Rules and, if so, the appropriate sanction that shall be imposed. In carrying out this function, the Disciplinary Panel may adopt such procedure as it thinks fit. The Disciplinary Panel may:

- (a) order the disclosure by the Clearing House or Clearing Member of such further information, documents or other evidence as may be necessary;
- (b) issue directions and take such other steps as it considers appropriate to clarify the facts and issues and determine the case;
- (c) if it considers appropriate, but only with the express agreement of the Clearing House and the Clearing Member concerned, decide to determine the case upon written submissions and evidence placed before it;
- (d) in all other cases, give the opportunity to, or require, the Clearing House and the Clearing Member to attend hearings before the Disciplinary Panel and the Clearing House and the Clearing Member may call witnesses to give evidence and be questioned;

- (e) allow the Clearing Member and the Clearing House to be assisted or represented by any person, whether or not legally qualified;
- (f) require hearings to be held in private unless the Clearing Member or Clearing House requests otherwise and the other party consents; and
- (g) appoint its own legal advisers.

9.4.11 The Disciplinary Panel shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach.

9.4.12 The Disciplinary Panel shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact made by a court or any other Regulatory Authority.

9.4.13 The Disciplinary Panel shall communicate in writing its findings and particulars of any sanction determined to the Clearing House and to the Clearing Member concerned. Such findings and sanctions shall be deemed conclusive and binding upon expiry of the time permitted for appeal or receipt by the Clearing House of any earlier written notice from the Clearing Member that such right of appeal will not be exercised. Subject to Rule 9.4.14(b), such findings and sanctions shall not be made public.

9.4.14 The Disciplinary Panel may impose one or more of the following sanctions:

- (a) issue a private written warning to the Clearing Member;
- (b) issue of a public notice of censure;
- (c) impose a fine of any amount;
- (d) require the disgorgement of any gain made by the Clearing Member or its representatives in connection with the breach of the Rules;
- (e) recommend to the Clearing House to suspend or terminate the membership of the Clearing Member with immediate effect; or
- (f) issue an order requiring the Clearing Member to take such steps including making an order for compensation, as the Disciplinary Panel may direct, to remedy the situation caused by the breach of the Rules.

9.4.15 The Clearing House has discretion as to the appropriate sanction in each case and such differentiation may take into account factors including whether the breach was deliberate

or negligent, the seriousness of the consequences and whether the Clearing Member has since taken action to remedy the breach or prevent a recurrence.

9.4.16 The contravention of any sanction imposed or direction made under or pursuant to Rule 9.4.14 may be treated for all purposes as a breach of the Rules.

9.4.17 A Disciplinary Panel may order any party to the Disciplinary Proceedings to pay costs related to such proceedings as it thinks appropriate, including, but not limited to the costs of running the Disciplinary Panel and including the reasonable costs of the Clearing House's and Disciplinary Panel's external advisers.

## **9.5 Appeals**

9.5.1 Within ten (10) Business Days of receiving notice in writing of a decision of a Disciplinary Panel, or a notice of sanction (whichever is the later), a Clearing Member (whether current or former in the case of expulsion) or the Clearing House, or both, may appeal to the appeals body (the **Appeals Body**) by lodging with the Clearing House a notice of appeal in writing and by delivering a copy thereof to any other party to the Disciplinary Proceedings. The Clearing House shall refer the appeal to the Appeals Body within ten (10) Business Days of receipt of the appeal.

9.5.2 A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The grounds of the appeal may be any one or more of the following:

(a) the Disciplinary Panel's decision was:

(i) arbitrary, capricious, or an abuse of its discretion; or

(ii) based on a clearly erroneous application or interpretation of the Rules; or

(b) the sanction imposed by the Disciplinary Panel was excessive or, in the case of an appeal by the Clearing House, was insufficient or inappropriate.

9.5.3 In the case of appeal against a sanction, the Appeals Body may affirm, vary or revoke the sanction. The Appeals Body may make such order or give such direction as it considers fit including a direction for a rehearing of the case by another newly constituted Disciplinary Panel.

9.5.4 The Appeals Body shall consist of one (1) or more than one (1) persons who shall be nominated for the purposes of this Rule 9.5.4 by the Centre for Effective Dispute Resolution in London. Such person shall:

- (a) be independent of the Clearing House, meaning for the purposes of these Rules, that such person is not and has not ever been an officer, director or employee of the Clearing House or an Affiliate;
- (b) have appropriate experience of the clearing market and normal clearing operations; and
- (c) have appropriate knowledge of the Clearing House, the Rules and relevant Applicable Law.

9.5.5 An Appeals Body may adopt such procedure as it thinks fit and just, including, without limitation, the procedures described in Rule 9.4.10 and shall notify the Clearing Member accordingly. The Appeals Body shall be bound by Rule 9.4.11. The appellant and the respondent shall be entitled to appear, make representations and (subject to any restriction on adducing new evidence), call witnesses, who may be examined and cross-examined at any hearing, which will not be held in public.

9.5.6 The decision of an Appeals Body shall be final and binding and there shall be no further appeal. The decision shall be supported with reasons and shall be notified to the appellant and respondent in writing without undue delay. The decision of an Appeals Body shall not be made public unless otherwise agreed between the appellant and the respondent.

## **9.6 Fines**

9.6.1 The proceeds of any fine imposed by the Clearing House shall be used for the following purposes only:

- (a) to meet expenses incurred by the Clearing House in the course of the Investigation, Disciplinary Proceeding or appeal from a Disciplinary Proceeding in respect of which it has been imposed;
- (b) for the benefit of the Clearing Members generally; or
- (c) for charitable purposes.

**CHAPTER 10**  
**SETTLEMENT FINALITY**

*[To be inserted if application for designation under Financial Markets and Insolvency  
(Settlement Finality) Regulations 1999 is successful]*