CME CLEARING EUROPE LIMITED

CLEARING RULES

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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 and Segregated, Omnibus Client Account, as the context requires;

**Adopting Clearing Member** means, in relation to a Client, each Clearing Member which has agreed to accept any of the Contracts relating to the Client in accordance with Rule 8.4 in the event of a Declaration of Default being issued to the Client’s Clearing Member which is currently party to such Contract;

**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;

**Allocated Precious Metals Account** means an account held with one of the members of LPMCL for the purposes of holding allocated Precious Metal and shall include any sub-account opened within it;

**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;

**Assessments** means amounts the Clearing House may assess with respect to Clearing Members in accordance with Rule 8.7;

**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;

**Banking Day** means any day on which banks in London are open for business;
**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;

**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;

**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 and includes 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;

**Clearing Services** means the services provided to Clearing Members as contemplated by the Rules;
**Clearing System** means the system (including hardware, software, website and networks) owned by or licensed to the Clearing House and used by the Clearing House for the provision of the Clearing Services;

**Client** means a person for which a Clearing Member clears Transactions through the Clearing House;

**Client Account** means each 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 one or more Clients which the Clearing Member has requested the Clearing House to open as such and shall include an Omnibus Client Account and an Individual Client Account but shall not include a Non-Segregated Client Account;

**Client Acknowledgement** means the acknowledgement referred to in Rule 3A.4.1(b);

**Client Agreement** means an arrangement between a Clearing Member and a Client in relation to the submission of Transactions by the Clearing Member to the Clearing House on behalf of a Client and which governs their respective rights and obligations in relation to Corresponding Transactions pursuant to Rule 3A.2;

**Client Protection Agreement** means the agreement referred to at Rule 3A.4.1(a) which is an agreement in the form prescribed by the Clearing House;

**Collateral** has the meaning set out in Rule 6.1.1 save that, for the purposes of the Default Rules, it means:

(a) any Eligible Assets deposited with the Clearing House in accordance with Rule 6.6;

(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;

**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 either the contribution amount that a Clearing Member is required to contribute to the Guarantee Fund or the amount contributed by a Clearing Member to the Guarantee Fund, as the context requires, from time to time as calculated in accordance with Rule 7.2 and includes all cash and assets Eligible Assets comprising such Contribution and any rights relating to, and the proceeds of, any such Eligible Assets;

**Cooling Off Period** means the period starting on the date of the first Declaration of Default and ending on:

(a) if there are no further Declarations of Default during the five Business Days following the original Declaration of Default, the fifth Business Day after the date of the original Declaration of Default; and

(b) if one or more Declarations of Default are issued during the five Business Days following the first Declaration of Default, the fifth Business Day following the issuance of the last Declaration of Default regardless of the number of Declarations of Default that may be issued during such period;

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

**Corresponding Transaction** means each transaction that is entered into between the Clearing Member and a Client with commercial terms which correspond to the commercial terms of a Contract cleared by the Clearing Member on behalf of a Client;

**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) a Clearing Member on which the Clearing House has served a Declaration of Default in accordance with Rule 8.2.1 and (b) every Clearing Member upon the occurrence of a Clearing House Insolvency Event;

Default Rules means the Rules in Chapter 8;

Defence has the meaning given in Rule 9.4.87;

Direct Debit Authority means a form of agreement which, when executed by the Clearing Member in favour of a Settlement Bank with which the Clearing Member has a Bank Account, gives authority to the Clearing House to provide instructions in relation to such Bank Account, in a form acceptable to the Clearing House;

Disciplinary Notice has the meaning given in Rule 9.4.39.4.6;

Disciplinary Panel has the meaning given in Rule 9.4.3;

Disciplinary Proceedings has the meaning given in Rule 9.4.1;

Disciplinary Panel has the meaning given in Rule 9.4.3;

Distribution means at any time, in respect of an Eligible Security, all interest, dividends and other property received by the Clearing House in respect of such Eligible Security;

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

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 Commodities means allocated Gold that the Clearing House has determined to be eligible for depositing as Collateral as set out in the Clearing and Settlement Procedure;

Eligible Security 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 and Eligible Securities shall be construed accordingly;

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:

a) in respect of Eligible Cash, Eligible Cash in the same currency; and

b) 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; and

(c) in respect of Eligible Commodities, commodities of the same type, nominal value, description and amount as the Eligible Commodities or, if the Eligible Commodities 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;

**Equivalent Distribution** means interest, dividends and other property of the same type, nominal value, description and amount as Distributions on Equivalent Assets to those credited to:

(a) any of the Clearing Member’s Accounts as Collateral; and

(b) the Clearing Member’s Contribution;

**Euro** means the common single currency of the member states of the European Union that have adopted and continue to retain such currency in accordance with European Treaty law (as amended from time to time);

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

**Excess Collateral** means any Collateral provided by a Client in respect of a Corresponding Transaction that is recorded in an Individual Client Account which is greater in value than the Collateral which the Clearing Member is required to provide to the Clearing House in respect of the Corresponding Contract;

**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 of a Clearing Member to make payments which, for the avoidance of doubt, includes the provision of Collateral, Contributions and Assessments) 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;

**Gold** means either allocated or unallocated gold complying with the rules of the London Bullion Market Association relating to good delivery and fineness in effect from time to time as the context requires;

** 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;

**Guarantor** means any person that provides a guarantee to the Clearing House in respect of the Clearing Member’s obligations under the Rules;

**House Account** means:

**(a)** 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 any Client Account or Non-Segregated Client Account or the Segregated Client Account; and

**(b)** for the purposes of the Default Rules only, shall include the Non-Segregated Client Account;

**Individual Client Account** means a Client Account which relates to Contracts entered into by a Clearing Member on behalf of a single Client;

**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 or outside the United Kingdom in consequence of debt;

**Interim Asset** has the meaning given in Rule 8.5.3;

**Interim Liability** has the meaning given in Rule 8.5.3;

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

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

**Investment Agent** means the agent used to invest Eligible Cash received as Collateral in accordance with the Clearing House’s investment policy;

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

**LPMCL** means London Precious Metals Clearing Limited;

**Margin Requirement** means the amount of Collateral required by the Clearing House in respect of each Account to reflect the risks specific to the Contracts relating to that 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 6.1.86.1.5;

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

**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 4.2.44.2.1 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 Omnibus Client Account and shall include any sub-account made within it or an Individual Client Account;

**Notice** means any Notice published by the Clearing House as such;
**Notional Sub-Account** means a notional sub-account of an Omnibus Client Account which relates to Contracts entered into by a Clearing Member on behalf of one Client within that Omnibus Client Account;

**Omnibus Client Account** means a Client Account which relates to Contracts entered into by a Clearing Member on behalf of more than one Client;

**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;

**Palladium** means unallocated palladium complying with the rules of the London Platinum and Palladium Market Association relating to good delivery in effect from time to time as the context requires;

**Parent Undertaking** has the meaning given in section 1162 of the Companies Act 2006;

**Platinum** means unallocated platinum complying with the rules of the London Platinum and Palladium Market Association from time to time as the context requires;

**Portable Contract Net Sum** has the meaning given to it in Rule 8.4.3;

**Portable Interim Asset** has the meaning given in Rule 8.4.5;

**Portable Interim Liability** has the meaning given in Rule 8.4.5;

**Portable Net Sum** has the meaning given to it in Rule 8.4.5;

**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;

**Precious Metal** means Gold, Silver, Platinum and Palladium;

**Precious Metal Forward Contracts** means OTC precious metal forward contracts as set out in the Contract module from time to time;

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

**Recipient** has the meaning given it in Rule 6.3.9;

**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;

**RTH Settlement Cycle** means a settlement cycle as specified on our website at [www.cmeclearingeurope.com](http://www.cmeclearingeurope.com) the Website;

**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 and, for the purposes of any Rules concerning non-compliance with or breach of or failure to discharge any of the Rules, shall include the provisions of the Clearing Membership Agreement;

**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 and shall include any sub-account opened within it;

**Settlement Agent for GoldPrecious Metals** means a bank which is a member of the LPMCL and acts as a settlement and custodian bank in relation to the delivery and safekeeping of allocated or unallocated GoldPrecious Metal (as the context requires);

**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;

**Silver** means unallocated silver complying with the rules of the London Bullion Market Association relating to good delivery in effect from time to time as the context requires;

**Single Net Sum** has the meaning given to it in Rule 8.5.3;
Termination Date means the date on which the Clearing House is satisfied that the Clearing Member has fully discharged all its obligations under the Rules and ceased to be a party to any Contract following the giving or receiving of a notice to terminate the membership of such Clearing Member and which is notified to the Clearing Member as its termination date;

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(m);

Transfer Date has the meaning given to it in Rule 8.4.3;

Transferee Clearing Member has the meaning given in Rule 5.3;

Transferor has the meaning given in Rule 6.3.9;

Transferor Clearing Member has the meaning given in Rule 5.3;

Unallocated Precious Metals Account means an account held with one of the members of LPMCL for the purposes of holding unallocated Gold Precious Metal and shall include any sub-account opened within it;

User Licence Agreement means the agreement of the same name entered into between the Clearing House and each Clearing Member;

Variation Requirement means the amount of Collateral payable to the Clearing House, or the amount payable to the Clearing Member, in accordance with Rule 6.1.3 in respect of each Account to reflect the marking to market of the Contracts relating to that Account including any final settlement amounts; and


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.; and

1.2.12 references to a negative sum means a sum due from a Defaulting Clearing Member and a positive sum means a sum due to a Defaulting Clearing Member.

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 Rules 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.

1.6 In the event of any conflict between:

1.6.1 the Rules or the Clearing Membership Agreement, and

1.6.2 the Client Agreement or the Client Protection Agreement or the Client Acknowledgement, the Rules or the Clearing Membership Agreement shall take precedence.

1.6.3 In the event of any conflict between the Client Agreement, the Client Protection Agreement and the Client Acknowledgement, the Client Protection Agreement will take precedence over the Client Agreement and the Client Acknowledgement, and the Client Acknowledgement will take precedence over the Client Agreement.

1.7 If the Clearing House is unable to ascertain any amount or sum for any purpose including for any set-off, netting or aggregation under the Rules, the Clearing House may in good faith estimate that obligation (whether matured or contingent) and set-off, net or aggregate in respect of the estimate, subject to the Clearing House accounting to the Clearing Member or vice versa when the obligation is ascertained.
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 or for the purposes of Rule 3.7.

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, in the Clearing House’s reasonable opinion, where a proposed amendment will affect a limited number of Clearing Members or, in the Clearing House’s reasonable opinion, 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 give prior notice to Clearing Members where possible and as soon as reasonably practicable of the proposed withdrawal date. Where any Contract has not been closed out or settled, subject to any restriction under Applicable Law, the Clearing House shall use reasonable endeavours to give six (6) months’ notice. 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, Chicago Mercantile Exchange, Inc and any of its Parent Undertakings and each of their respective Representatives against any and all losses, liabilities, damages, claims, costs or expenses suffered or incurred by the Clearing House, Chicago Mercantile Exchange, Inc any of its Parent Undertakings or any of their Representatives arising out of or in connection with the Clearing Member’s conduct or its breach of these Rules, any Contract, any reasonable action taken by the Clearing House in relation to the operation of the Clearing House, or the Applicable Law.

2.3.2 To the extent that the Clearing Member is required to indemnify the Clearing House, Chicago Mercantile Exchange, Inc its Parent Undertakings or any of their Representatives, it shall only be required to indemnify the Clearing House provided that:

   a) the Clearing House notifies the Clearing Member as soon as reasonably practicable if it intends to claim under any such indemnity; and

   b) the Clearing House takes reasonable steps to minimise its loss.

2.3.3 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.

2.3.4 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, settlement agent, or provider of data or other services or systems to the Clearing House, warehouse, shipping station or similar organisation or entity that may be involved with a delivery of any physically settled Contract, 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.

2.3.5 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.

2.3.6 Neither this Rule 2.3 nor any other Rule shall affect the application of section 291 Financial Services and Markets Act 2000FSMA 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.

2.3.7 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.

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

2.3.9 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, subcontractors 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 2.4.4.1 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.

2.5 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 2.5.2.5, 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 deposited with the Clearing House 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.
2.10 Waiver of sovereign immunity

2.10.1 In the event that a Clearing Member purports to be a state entity, such entity irrevocably acknowledges and accepts that the Rules and all agreements entered into or in connection herewith (including all appendices, schedules and exhibits thereto) and the performance or non-performance of its obligations under the Rules are commercial rather than public or governmental acts. In any event, the Clearing Member hereby waives in relation to any disputes arising out of or in connection with the Rules under any law or in any jurisdiction, notwithstanding the dispute(s) relate(s) to acts of a sovereign or governmental character, any claim the Clearing Member may have or may acquire to immunity on the grounds of sovereignty or otherwise (for itself/themselves and its/their property, present or subsequently acquired) from:

(a) any jurisdiction and the service and pursuit of any proceedings in that jurisdiction

(b) procedural privileges relating to the obligation to disclose documents or information; and

(c) any relief, before or after proceedings have been commenced, including but not limited to orders for injunction, specific performance, or recovery of land; any set off, attachment or execution or enforcement of a judgment or arbitral award against its sovereign property (or in an action in rem for the arrest, detention or sale of its sovereign property) irrespective of that property’s use or intended use, whether commercial or otherwise, including without prejudice to the generality of sovereign property, any assets held on behalf of a central bank, diplomatic assets, tax revenues or other payments to the sovereign or cultural, historic or scientific collections.
CHAPTER 3
MEMBERSHIP

3.1 Types of membership and application

3.1.1 A person applying for clearing membership 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 is available on request. The Risk Committee, the Board of Directors 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 additional 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 (save as set out in any Client Protection Agreement which the Clearing House may have entered into in relation to a Client) 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 become a Clearing Member and maintain membership of the Clearing House, 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; required to enter into and clear through the Clearing House Transactions, including, where relevant, Transactions with counterparties and on behalf of clients and Third Party Trade Delegates, in any jurisdictions in which it and such counterparties, clients and Third Party Trade Delegates are incorporated or otherwise carry on business;

(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 comply with all applicable regulatory capital requirements applicable to it;

(g) maintain capital of at least the type and amount set out in the Membership Procedure for this purpose;

(h) have provided to the Clearing House its Contribution to the Guarantee Fund in accordance with the Rules and the Membership Procedure;

(i) have provided to the Clearing House all Collateral as required in accordance with the Rules;

(j) have the Bank Accounts set out in Rule 4.2.2;

(k) be party to an executed Clearing Membership Agreement and such other agreements as set out in the Membership Procedure;

(l) 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);

(m) 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)(n) 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;

(o)(p) not have been, or have any senior Representative (in director position or above) 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 (in director position or above) who is, under investigation for committing such an offence;

(p)(q) 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;

(q)(r) satisfy the Clearing House that it has in place adequate written anti-money laundering, risk management and disaster recovery and business continuity record keeping and reporting policies and procedures to ensure that it is able to perform its obligations under the Rules and Applicable Law;

(r)(s) be engaged in or demonstrate immediate capacity to engage in the conduct of a Clearing Member in respect of the Transactions to be cleared and the performance of all obligations of a Clearing Member set out in the Rules;

(s)(t) demonstrate that it is in compliance with the Rules; and

(t) 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) shall also apply to each of the Clearing Member’s Parent Undertaking and Guarantors.

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 for its market surveillance or risk management purposes;

(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 collateral of an amount 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, which may not necessarily take the same form of such Collateral, or the Clearing Member shall advance credit in respect of the Client of not less than such amount.

3.4.3.3 Provision of information

3.4.3.3.1 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 thirty (30) calendar 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.

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. To the extent such information is confidential in accordance with Rule 2.4.1, the Clearing House shall use its reasonable endeavours to ensure that any person receiving such information will keep that information confidential on equivalent terms to those set out in Rule 2.4.1.

Notification Requirements

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 shall investigate any of its affairs or those of any of its Parent Undertakings or Guarantors which is material in terms of the overall size of its group or take disciplinary or other formal action against it or a Parent Undertaking or Guarantor 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.

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% (ten per cent.) 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.

3.5.3.4.3 The Clearing House shall be entitled to require each Clearing Member to provide it with a report on its large positions, as and when requested.

3.5.4.4 All information provided to the Clearing House shall be in English.

3.5.5.4.5 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.

3.5.6.4.6 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.

3.6.5 Prohibitions

3.6.5.1 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

3.7.6 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 Collateral deposited with the Clearing House 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 3.109; and

(j) not transfer a Portable Contract and/or the Portable Collateral that relates to such Contract to an Adopting Clearing Member in accordance with Rules 8.4.9 or 8.4.10;

(k) amend the Rules to the extent it reasonably considers necessary in accordance with Rule 2.2.2(d); and/or

(l) 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.

3.7.2 Where the Clearing House requires the deposit of additional Collateral pursuant to Rule 3.7.1, it may require Collateral to be delivered within one (1) hour of notification of such amount if notification is received during the hours when CHAPS is open and otherwise, within one (1) hour of the time at which CHAPS first opens after such notification.

3.9.3.8 Termination of clearing membership

3.9.13.8.1 Subject to Rules 3.9.5 and 7.4.2, Without prejudice to Rule 8.8, a Clearing Member may give written notice of its intention to terminate its membership of the Clearing House by providing the Clearing House with notice in writing at any time. The termination will not be effective until thirty (30) Business Days from the date of the notice or the date on which the Guarantee Fund is next recalculated, whichever is later, save that termination will not be effective until all obligations of the Clearing Member to the Clearing House under the Rules are fully discharged, agrees that such termination shall become effective on the Termination Date.

3.9.23.8.2 Subject to Rules 3.9.5.2.4 and 9.4.17.16, 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.

3.9.33.8.3 Following the giving of notice by a Clearing Member of its intention to terminate its membership pursuant to Rule 3.9.1, or receipt of notice of its intention to terminate a Clearing Member’s membership under Rule 3.8.2, 8.2.4 and 9.4.16(e) and until the Termination Date, the Clearing Member shall:
(a) continue to pay all Collateral and, its required Contribution to the Guarantee Fund and any Assessments 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 Collateral deposited with the Clearing House relating to a Contract which is transferred to 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; and make any Assessments pursuant to Rules 7.2 and 8.7;

(e) remain subject to the Clearing House’s jurisdiction as set out in Rule Chapter 8 until any actions arising as a result of a Declaration of Default having been served on the Clearing Member have been completed; and

(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.

Following notice of the termination of a Clearing Member’s membership, the Clearing House may, at its reasonable discretion and in the interests of risk management, establish, amend or revoke Position Limits for the Clearing Member. The Clearing House will inform the Clearing Members of their Position Limits as soon as reasonably practicable.

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

A Clearing Member shall remain subject to the Rules in Chapter 9 with respect to matters that occurred prior to the Termination Date 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 the Termination Date.
3.103.9 Suspension

3.9.1 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.
3.10 Refund of Collateral, Contribution and Assessments

3.10.1 Without prejudice to Rule 8.8, if a Clearing Member terminates its membership of the Clearing House in respect of a category of Contracts, the Clearing House shall return that part of the terminating Clearing Member's Collateral, Contribution or Assessments received by the Clearing House that:

(a) has not been applied pursuant to the Rules as at the Termination Date; and

(b) is not required by the Clearing House pursuant to the Rules.

3.10.2 The amount calculated pursuant to Rule 3.10.1 shall be returned to the terminating Clearing Member within thirty (30) Business Days of the Termination Date.

3.10.3 All amounts chargeable against a Clearing Member's Collateral, Contribution and Assessments on account of Contracts entered into while it was a Clearing Member shall be deducted from the amount returned.

3.10.4 A Clearing Member's entitlement to repayment of its Collateral, Contribution or Assessments received by the Clearing House 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 Collateral, Contribution or Assessments shall be null and void.

3.10.5 Notwithstanding any other provision of the Rules, no Clearing Member shall have any right, title or interest in any Collateral, Contribution or Assessments that have been transferred to the Clearing House or to its Custodian. A Clearing Member will, subject to the provisions of the Rules (in particular, the Default Rules), only have a right to return of Equivalent Assets. If the Clearing House is expressed to have an obligation (pursuant to this Rule 3.10 or otherwise) to transfer to the Clearing Member an amount of cash or an asset in respect of Collateral, Contribution or Assessments received by the Clearing House, the Clearing House shall only be obliged to transfer an Equivalent Asset to the Clearing Member's Bank Account. Notwithstanding the foregoing, the Clearing House reserves the right to transfer Eligible Cash in respect of Eligible Securities and Eligible Commodities if it is unable, using reasonable endeavours, to locate or obtain Equivalent Securities or Eligible Commodities and in any event to value such Equivalent Assets as it may reasonably determine.
CHAPTER 3A
CLIENT CLEARING

3A.1 Clearing for Clients

3A.1.1 The Clearing Member, if permitted to do so under Applicable Laws, may clear Transactions through the Clearing House on behalf of any of its Clients provided it satisfies the provisions of this Chapter 3A and each other relevant provision of the Rules.

3A.1.2 Before a Clearing Member accepts any Transactions for a Client it shall ensure a written agreement is in place with that Client, pursuant to which the Client agrees that:

(a) the Clearing Member acts as principal at all times to each Contract;

(b) the Client has no contractual relationship with the Clearing House (save as set out in any Client Protection Agreement which the Clearing House may have entered into in relation to a Client); and

(c) the Client shall not have any rights under the Rules, any Contract, the Clearing Membership Agreement or otherwise, save for any liability which by law may not be excluded.

3A.1.3 Where a Clearing Member accepts any Transactions for a Client:

(a) it shall provide such information about the Client as the Clearing House may reasonably request to the Clearing House promptly on request by the Clearing House including an authorised signatory list for each Client.

(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 3.5 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.

3A.1.4 The Clearing Member shall ensure that the Clearing House has at all times an accurate, current and complete list of its Clients. If a Clearing Member proposes to begin clearing through the Clearing House on behalf of a Client, or ceases to do so, it shall update its list of Clients by giving notice to the Clearing House on a monthly basis or as requested from time to time by the Clearing House. No cessation of clearing services shall affect the Clearing Member’s obligations in respect of Contracts arising prior to the date and time of such cessation.

3A.1.5 The Clearing House will not have any obligations or liabilities to persons other than the Clearing Member save as explicitly set out in the Rules. The consequences of any Contracts arising, existing or being settled or subject to delivery are the sole responsibility of the Clearing Member.

3A.1.6 The Clearing Member is responsible for all acts and omissions of each of its Clients and their Representatives to the same extent that it is responsible for the acts and omissions of itself and its Representatives.

3A.1.7 Where a Clearing Member accepts a Transaction for a Client, the Clearing Member shall require the Client to provide it with collateral of an amount not less than the amount of Collateral which the Clearing Member is obliged to provide to the Clearing House in respect of such Transaction, which may not necessarily take the same form of such Collateral, or the Clearing Member shall advance credit in respect of the Client of not less than such amount.

3A.2 Client Agreement

3A.2.1 The Clearing Member shall be party to a Client Agreement with each Client for which it holds an Individual Client Account or which is part of an Omnibus Client Account. The Client Agreement shall incorporate provisions with the following effect:

(a) the Client Agreement may only permit Corresponding Transactions to be documented pursuant to its terms and any other transactions entered into between the Clearing Member and the Client must be documented under a separate agreement;

(b) the Client must have the right to terminate all Corresponding Transactions in the event the Clearing House issues a Declaration of Default to a Clearing Member in accordance with the Default Rules;
(c) if a Corresponding Transaction is terminated due to the Clearing House issuing a Declaration of Default in accordance with the Default Rules, the net replacement value of the Corresponding Transaction shall equate to the value attributed by the Clearing House to the Contract to which the Corresponding Transaction relates following the issuance of such Declaration of Default;

(d) the Clearing Member shall have the right, in the event of an Insolvency Event relating to the Clearing House or the occurrence of any event or taking of any action by the Clearing House which creates a material mismatch between a Contract and a Corresponding Transaction, either to terminate the Corresponding Transaction or make such adjustment to the Corresponding Transaction (and the Collateral provided in respect of it) necessary to reflect any loss or expense incurred by the Clearing Member;

(e) that "two way payments" arise in the event of a termination of all Corresponding Transactions, the substantive effect of which is that either a Clearing Member or a Client will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated Corresponding Transactions effected under the Client Agreement is in its favour;

(f) if a Contract is transferred to an Adopting Clearing Member in accordance with Rule 8.4.9 or 8.4.10, the Corresponding Transaction entered into by the Client and the Defaulting Clearing Member will also terminate and a new Corresponding Transaction will be entered into between the Client and the Adopting Clearing Member; and

(g) any changes made to the terms of a contract by the Clearing House shall be deemed to be reflected in the Corresponding Transaction.

3A.2.2 To the extent there is no Client Agreement in full force and effect or there is any deficiency in the Client Agreement, the Clearing Member and the Client will be deemed to have entered into a binding agreement into which the terms set out in Rule 3A.2.1 shall be deemed to have been incorporated.

3A.2.3 The Clearing Member shall notify the Clearing House in the event that any Client either appoints it as an Adopting Clearing Member or terminates an existing appointment as an Adopting Clearing Member.
3A.3 Collateral

3A.3.1 The arrangements for collateral in relation to Corresponding Transactions with Clients who have an Individual Client Account or which are part of an Omnibus Client Account must comply with the following criteria:

(a) collateral, in the form as agreed between the Client and the Clearing Member, will be provided by a Client to a Clearing Member free and clear of any Encumbrances of the Client or of any other person (other than a lien routinely imposed on all securities in a relevant settlement system or central securities depository, not being the Clearing House) so that the Clearing Member has the right to deal with the collateral in any manner and an obligation to return equivalent collateral or the value thereof, in the form of cash or securities, to a Client; and

(b) the Clearing Member may only apply collateral provided by a Client in respect of amounts due in connection with Corresponding Transactions relating to that Client.

3A.3.2 The Clearing Member shall transfer any Excess Collateral to the Clearing House and the Clearing House shall treat such Excess Collateral in the same way as Collateral of the Clearing Member for all purposes.

3A.4 Other agreements

3A.4.1 Before accepting any Transactions for a Client, which will be recorded in either an Individual Client Account or an Omnibus Client Account, to be submitted for clearing by the Clearing House, the Clearing Member shall:

(a) enter into a Client Protection Agreement with the Client and the Clearing House;

(b) procure that the Client executes a Client Acknowledgement and returns it to the Clearing House; and

(c) procure that the Client provides such information about itself as the Clearing House may reasonably request.

3A.4.2 Where any formalities or registration requirements apply in respect of the Client Protection Agreement (and any other document which the Clearing House may from time to time determine), a Clearing Member is required to comply with such obligations or to procure that such requirements are to be complied with. The Clearing Member shall provide such confirmation as may be required by the Clearing House to demonstrate compliance with such obligations.
3A.5 Clearing Member’s records and information

3A.5.1 The Clearing Member shall keep accurate and up-to-date records of the Contracts and Collateral relating to each Client in respect of which Contracts are recorded in an Individual Client Account or an Omnibus Client Account and the Collateral it has provided to the Clearing House in respect of such Contracts. The Clearing Member shall provide such information to the Clearing House at its reasonable request. In particular, the Clearing Member or its insolvency practitioner shall promptly provide such information to the Clearing House in the event the Clearing House issues a Declaration of Default in respect of the Clearing Member.

3A.5.2 The Clearing Member, or its insolvency practitioner following a Declaration of Default, shall promptly provide the information specified in Rule 3A.5.1 to the Clearing House:

(a) at the reasonable request of the Clearing House; and

(b) on a Declaration of Default.

3A.5.3 The Clearing House shall provide to the Clearing Member on each Business Day information on the Contracts and the value of Collateral recorded in its books and records in relation to each of its Individual Client Accounts and Omnibus Client Accounts. The Clearing House shall be entitled to assume that the Clearing Member agrees that such information is correct if it does not receive written notice from the Clearing Member otherwise within twenty-four (24) hours of the date when the information was published by the Clearing House. The Clearing House may correct its reports and make any adjustment for the relevant Account on the next Business Day following the receipt of notice from the Clearing Member.

3A.6 Transfer

3A.6.1 In relation to Clients with an Individual Client Account, the Clearing House will, subject to Rule 5.3.1, effect a transfer of all rights and liabilities of a Clearing Member under a portfolio of Contracts relating to a Client and the Collateral relating to such portfolio of Contracts to another Clearing Member if requested to do so by the Client and provided the Clearing House has not issued a Declaration of Default in respect of either the Transferor Clearing Member or the Transferee Clearing Member. For the purposes of Rule 5.3.1, by executing the Clearing Membership Agreement and submitting Transactions on behalf of such Clients to the Clearing House, each Clearing Member gives its prior agreement to any such transfer in respect of which it would be the Transferor Clearing Member.
3A.6.2 If the Clearing House grants a request made pursuant to Rule 3A.6.1, both the Transferor Clearing Member and the Transferee Clearing Member will co-operate with the Clearing House to ensure that the transfer is completed in a timely manner.
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 such date as may be specified by the Clearing Member's Non-Segregated Client Account in respect of each invoice 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 Assessments 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 Account.
Client Account (if requested) and a Segregated Client Account (if appropriate). Within each of the Non-Segregated Client Account and the Segregated Client Account, the Clearing House shall maintain such sub-accounts as the Clearing Member may require as set out in the Risk Management Procedure. Any Accounts and sub-accounts such number and type of Client Accounts as the Clearing Member may request and, if requested, a Non-Segregated Client Account. Any 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, Assessments, 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 In order to deposit allocated Gold as Collateral to the Clearing House, a Clearing Member shall open and maintain one or more Allocated Precious Metals Accounts.

4.2.4 Each Clearing Member that wishes to substitute Eligible Securities or Eligible Commodities for Eligible Cash shall maintain an account which is capable of holding Eligible Securities or Eligible Commodities and in respect of which the Clearing Member has authorised the transfer of Eligible Securities to the Custodian or the transfer of Eligible Commodities to the Settlement Agent for Precious Metals on the instructions of the Clearing House.

4.2.5 The Clearing House may, in its absolute discretion, decline to accept any transfer of Eligible Cash, Eligible Securities or Eligible Commodities.

4.2.6 All amounts payable to the Clearing House shall, unless otherwise agreed by the Clearing House, be payable by electronic transfer from the Clearing Member’s Bank 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 Bank 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.

4.3 Set off

4.3.1 The Clearing House may set off any obligation (whether matured or contingent) due to it from a Clearing Member against any obligation (whether matured or contingent) owed by the Clearing House to the Clearing Member, regardless of the place of payment, account, branch or currency of either obligation save that the Clearing House may not set off money credited to the Segregated any Individual Client Account or any sub-account within the Segregated Omnibus Client Account against any sum owed to the Clearing House in respect of any other account, as set out in clause 5.7 of the Clearing Membership Agreement.

4.3.2 If the obligations in relation to Rule 4.3.1 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.

4.3.3 Nothing in this Rule 4.3 will be effective to create a charge or other security interest. The rights of the Clearing House under Rule 4.3.1 and 4.3.2 are without prejudice and in addition to any rights of set-off, lien, netting, liquidation, combination of accounts or appropriation under the Clearing Rules or otherwise.

4.3.4 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.

4.4 Direct Debit Authority

4.4.1 Pursuant to Rule 4.2.2, a Clearing Member shall at all times be party to a Direct Debit Authority in respect of each of its Bank Accounts at each Settlement Bank. The Clearing Member shall ensure that each Settlement Bank will act upon any instructions received from the Clearing House in relation to each Bank Account, notwithstanding that such instructions may result in an overdraft on any Bank Account, without any further reference to or authority from the Clearing Member.

4.4.2 A Clearing Member shall provide a copy of each Direct Debit Authority to the Clearing House. The Clearing Member shall promptly notify the Clearing House if the Direct Debit
Authority is revoked, terminated or amended. The Clearing Member may not revoke or otherwise terminate any Direct Debit Authority unless and until it has notified the Clearing House of its intention to do so and set up a Bank Account at another Settlement Bank in respect of which it has entered into a Direct Debit Authority with that Settlement Bank.
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 or Segregated Client Account and any relevant sub-account of the Non-Segregated Client Account or Segregated Client Account, the relevant Account of the Clearing Member.

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 3.65;

(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, and shall give notice to such Clearing Member as soon as reasonably practicable. The Clearing House shall use its reasonable endeavours to notify the Clearing Member as soon as reasonably practicable if the Clearing Member exceeds its Position Limits. 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 registration 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 registration 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 obligations 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, which shall include the Collateral relating to such Contract, may be transferred to another Clearing Member (the Transferee Clearing Member) with the prior agreement of the Transferor Clearing Member, 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.

5.3.2 Upon transfer of a Contract pursuant to Rule 5.3.1, the Contract is novated from the Transferor Clearing Member to the Transferee Clearing Member so that the rights and obligations of the Clearing House and the Transferor Clearing Member under the original Contract are released and discharged and a new Contract on the same terms is created between the Clearing House and the Transferee Clearing Member.

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 and Segregated Client Account such amounts of Eligible Assets as set out in this Rule 6 and the Clearing and Settlement Procedure to reflect Margin Requirement and Variation Requirement (Collateral).

6.1.2 The Clearing Member shall designate whether Collateral is deposited in respect of its House Account, Non-Segregated Client Account or Segregated Client Account and any relevant sub-account of the Non-Segregated Client Account or Segregated Client Account Collateral is deposited.

6.1.3 The Clearing House shall determine the Variation Requirement, where relevant, in respect of each Account by marking to market the Contracts relating to that Account. Any profit arising as a result of marking Contracts to market shall be credited to the relevant Account and, subject to any rights of the Clearing House pursuant to the Rules, shall be paid to the Clearing Member. Any loss arising in respect of a Contract shall be debited to the Clearing Member's Account to which that Contract relates and shall be payable to the Clearing House.

6.1.4 The Clearing House shall determine the Margin Requirement in respect of each Account and shall take into account any Collateral held by the Clearing House in relation to that Account. Margin Requirement is always payable by the Clearing Member to the Clearing House.

6.1.5 The aggregate of the Variation Requirement and Margin Requirement is the Net Settlement Amount.

6.1.6 The Clearing House shall determine the Variation Requirement and Margin Requirement in respect of each Account at least twice daily but may at its discretion only settle or require settlement of the Net Settlement Amount once daily. Notwithstanding the foregoing, the Clearing House reserves the right to require the deposit of Collateral by any Clearing Member in respect of any Account at any time.

6.1.7 The Margin Requirement and Variation Requirement for each Account will be determined in the manner designated by the Clearing House for such Account 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 Account on the basis of a
price determined by the Clearing House at its sole discretion provided that the Clearing
House shall use its reasonable endeavours to notify Clearing Members of such price.

6.1.8 Where the Net Settlement Amount is payable to the Clearing House, it 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 or Eligible Commodities which
is of an equivalent value as at the date of the substitution.

6.1.9 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. Such Collateral shall be
deposited in the form of Eligible Cash or Eligible Securities or as otherwise
specified in the Clearing and Settlement Procedure.

6.1.10 If, at any time, the Clearing House may have Collateral on deposit in respect of an
Account with a value which is greater than is required under Rule 6.1.1, 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 or Eligible Commodities of a lower market value.

6.1.11 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 or Eligible
Commodities which is less than the face or market value of such Eligible
Securities or Eligible Commodities;

(b) the Clearing House may, from time to time, change the way in which it values
Eligible Securities or Eligible Commodities or the extent to which the value it
attributes to Eligible Securities or Eligible Commodities is less than the face or
market value of such Eligible Securities or Eligible Commodities; and

(c) this may affect the Clearing Member’s obligations to transfer amounts of
Eligible Assets as Collateral.

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 on the following Business Day.

6.3 Holding of Collateral

6.3.1 Unless otherwise agreed in writing with the Clearing House, the Clearing Member shall provide Collateral by way of outright transfer of full ownership of such cash or title to securities, to or to the order of the Clearing House.

6.3.2 The Clearing House shall deposit Eligible Cash received as Collateral in a bank account and it may be invested through an Investment Agent. The Clearing House shall deposit Eligible Securities received as Collateral with its Custodian. Such Eligible Cash received as Collateral or Eligible Commodities received as Collateral with its Settlement Agent for Precious Metals. Such Eligible Assets and Eligible Securities will be held in the name of the Clearing House unless the Clearing House determines otherwise.

6.3.3 Subject to Rule 6.3.2, Eligible Cash and Eligible Securities received as Collateral in respect of each of the Clearing Member's House Account, Segregated Client Account and Non-Segregated Client Account or Individual Client Account or Omnibus Client Account may be held by the Investment Agent, the Custodian or the Settlement Agent for Precious Metals (as applicable) in a commingled account with Eligible Cash and Eligible Securities received as Collateral in respect of such Accounts and other Accounts of the same type relating to other Clearing Members.

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

6.3.5 All rights, title and interest in:

(a) Eligible Cash and Eligible Securities that are transferred to or to the order of the Clearing House as Collateral; and

(b) an Equivalent Asset that is transferred to the Clearing Member;

shall vest in the Clearing House or Clearing Member as the case may be, free and clear of any Encumbrances of the transferor or of any other person (other than a lien routinely imposed on all securities in a relevant settlement system or central securities
depository, not being the Clearing House). All Distributions shall belong to the Clearing House.

6.3.6 The Clearing House shall have the right to deal with any Eligible Cash, Eligible Securities and Distributions in any manner including (without limitation) by partially or wholly investing Eligible Cash for its own account or partially or wholly lending Eligible Securities for its own account pursuant to the investment policy adopted by the Clearing House.

6.3.7 Provided that an Event of Default has not occurred, the Clearing House shall:

(a) transfer to the Clearing Member an Equivalent Distribution in respect of each Distribution irrevocably received by the Clearing House; and

(b) transfer to the Clearing Member interest on Eligible Cash transferred to the Clearing House as Collateral at such rate as the Clearing House shall in its discretion determine from time to time.

6.3.8 Nothing in these Rules is intended to or does create an Encumbrance or give the Clearing Member a proprietary interest in respect of any Eligible Cash, Eligible Securities or Distribution.

6.3.9 On each day that either the Clearing Member or the Clearing House as the case may be (the Transferor), transfers an asset to the other (the Recipient) under the Rules, the Transferor represents to the Recipient that it is the sole legal and beneficial owner of that asset free of any Encumbrance.

6.3.10 The provisions of this Rule 6.3:

(a) create a title transfer financial collateral arrangement under the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226); and

(b) relate to the provision of margin in relation to market contracts under Part VII of the Companies Act 1989.
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 issuance of a Declaration of Default in respect of a 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 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 amount of the Contribution it requires from the Clearing Member within two (2) Business Days of the re-assessment, or of any obligation to provide additional Contribution in order to replenish the Guarantee Fund.

7.2.3 The Clearing Member shall provide any additional amount Contribution to the Clearing House before 15:00 on the next Banking Day following the date on which the Clearing House makes such notification pursuant to Rule 7.2.2 and agrees that the Clearing House may debit any such additional Contribution from the Clearing Member’s Bank Account in accordance with Rule 4.2.2 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 a Clearing Member’s Contribution to the Guarantee Fund, the Clearing Member’s Contribution such Clearing Member has already made to the Guarantee Fund is greater than the Contribution 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 and Assessments**

7.3.1 Unless otherwise agreed in advance with the Clearing House, the required Contribution to the Guarantee Fund and any Assessment required 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.

7.3.2 The Clearing Member acknowledges, in relation to Contributions that:

(a) the Clearing House may attribute a value to any Eligible Securities which is less than their face or market value;

(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 their face or market value; and

(c) this may affect the Clearing Member’s obligations to transfer amounts of Eligible Assets as Contributions.

7.4 **Holding of Contributions and Assessments**

7.4.1 The Clearing Member shall provide Contributions and Assessments to the Clearing House by way of outright transfer of full ownership of such cash or title to such securities, as appropriate, to or to the order of the Clearing House.

7.4.2 Rules 6.3.5 to 6.3.10 shall apply to Contributions and Assessments provided to the Clearing House.

7.4.5 **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 has applied part or all of the Contribution of a non-defaulting Clearing Member to discharge the liabilities of a Defaulting Clearing Member, the Clearing House...
makes a recovery in respect of that Defaulting Clearing Member’s liabilities, the non-defaulting Clearing Member may, at an amount of such recovery (net of any time within ten (10) Business Days after notice to it) deductions made at the discretion of the Clearing House to reflect its costs 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 and when all obligations of the Clearing Member to the Clearing House under the Rules are fully discharged.

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 and any related tax liability shall be credited to the each non-defaulting Clearing Member whose Contributions were applied to such liabilities in proportion to (but not exceeding) the amounts so applied, whether or not they are each non-defaulting Clearing Member is still a Clearing Member.

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, Chapter 7 and Chapter 8.

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 or any other executive director of the Clearing House, whom the CEO has authorised for the purpose, has absolute discretion to determine whether an Event of Default exists and, if it does such a determination is made, whether to take the actions set out in the remainder of the Default Rules in the circumstances. The CEO or such other executive director 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 or other executive director decides to take the actions set out in the remainder of the Default Rules, the Clearing House shall:

(a) notify such decision in writing to the Defaulting Clearing Member and (a Declaration of Default);

(b) provide a copy to any other person which is party to a Contract to which of the Defaulting Clearing Member is a party and Declaration of Default to the FSA (a); and

(c) publish an announcement of the Declaration of Default on the Website.

8.2.2 A Declaration of Default will be given in writing by the Clearing House by:

(a) e-mail to the e-mail address provided by the Defaulting Clearing Member for service of notices or service of process under the Clearing Membership Agreement and/or the e-mail address of any member of the board of directors or of any other person specified by the FSA and the Declaration of Default 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. The if given by email;

(b) fax to the fax number provided by the Defaulting Clearing House Member for service of notices or service of process under the Clearing Membership Agreement and the Declaration of Default will also publish an announcement be deemed to be issued on a confirmed completion of transmission if given by fax; or

(c) publication of a Notice on the Website.

8.2.3 Notwithstanding the foregoing, the Clearing House may give confirmation of a Declaration of Default to the Defaulting Clearing Member by personal delivery or recorded or special delivery post in accordance with the Clearing Membership Agreement.

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

(a) subject to Rule 8.2.2(c)8.2.3(c), cease to take any action in respect of its Contracts;
(b) subject to Rule 8.2.3(c), 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 A separate Portable Net Sum shall be calculated in accordance with Rule 8.4 in respect of Affected Contracts which relate to each of the Defaulting Clearing Member’s Individual Client Accounts and each Notional Sub-Account within each of its Omnibus Client Accounts and related rights and liabilities.

8.3.2 A separate Single Net Sum shall be calculated in accordance with Rule 8.5 in respect of:

(a) Affected Contracts which relate to the Defaulting Clearing Member’s House Account and related rights and liabilities; and

(b) if required under Rule 8.4.2 or 8.4.7(b), Affected Contracts which relate to each of the Defaulting Clearing Member’s Individual Client Accounts and Notional Sub-Accounts and related rights and liabilities.

8.3.3 To the extent the Clearing House sets off an amount as part of the calculations of each Portable Net Sum and Single Net Sum pursuant to Rule 8.4.5 or 8.5.3:

(a) Collateral credited to the House Account of the Defaulting Clearing Member may be applied against or included as part of the calculation of Single Net Sums and Portable Net Sums, as the case may be, in respect of the Defaulting Clearing Member’s House Account, and each of the Defaulting Clearing Member’s Individual Client Accounts and Omnibus Client Accounts;

(b) Collateral credited to each Individual Client Account of the Defaulting Clearing Member will only be applied against the Single Net Sum or Portable Net Sum, as the case may be, in respect of Affected Contracts credited to that Individual Client Account of that Defaulting Clearing Member; and

(c) Collateral credited to each Notional Sub-Account of a Defaulting Clearing Member will only be applied against the Single Net Sum or Portable Net Sum.
as the case may be, in respect of Affected Contracts credited to that Notional Sub-Account of that Defaulting Clearing Member or as contemplated in Rules 8.4.5(b) and 8.5.3(b).

8.3.4 For the purposes of Rules 8.4.5 and 8.5.3, the Collateral credited to each Individual Client Account is a proportion (determined by the Clearing House in accordance with the Rules and the Procedures) of the Collateral provided by the Clearing Member in respect of all of its Individual Client Accounts.

8.3.5 For the purposes of Rules 8.4.5 and 8.5.3, the Collateral credited to each Notional Sub-Account in an Omnibus Client Account is a proportion (determined by the Clearing House in accordance with the Rules and Procedures) of the Collateral provided by the Clearing Member in respect of that Omnibus Client Account.

8.3.6 Notwithstanding any law, regulation (including, without limitation, the Insolvency Rules 1986) or otherwise, when calculating each Portable Net Sum and Single Net Sum and any other amount under these Rules:

(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; and

(b) no liability of the Clearing House to a Clearing Member under or in connection with an Individual Client Account or an Omnibus 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 Account other than the House Account.

8.3.7 For the purposes of Rules 8.4.5 and 8.5.3, the Clearing House may liquidate Collateral and Contributions in the form of Eligible Securities at such time and at such rate as the Clearing House shall in its reasonable discretion determine.

8.3.8 For the purposes of Rules 8.4.5 and 8.5.3, the Clearing House may, in its reasonable discretion, determine the proportion of:

(a) the Guarantee Fund; and

(b) the Single Net Sum relating to the House Account of the Defaulting Clearing Member,

to be applied in relation to the Defaulting Clearing Member’s House Account and each Client Account.
8.4 Porting of Individual Client and Omnibus Client Accounts

8.4.1 This Rule 8.4 applies in respect of each Individual Client Account and each Notional Sub-Account within each Omnibus Client Account of a Defaulting Clearing Member and the related Affected Contracts and Collateral, if, subject to Rule 8.4.2, in relation to such Account:

(a) the Clearing House is satisfied that a Client Agreement, a Client Protection Agreement and a Client Acknowledgement is in full force and effect at the date of the proposed actions under this Rule 8.4;

(b) the Clearing House has the information, which maybe that provided in accordance with Rule 3A.5.3, it requires to make the calculations set out in this Rule 8.4 and is satisfied as to its accuracy;

(c) an Adopting Clearing Member which is not a Defaulting Clearing Member agrees to accept all relevant Contracts within the timeframe specified by the Clearing House after it has issued a Declaration of Default to the Defaulting Clearing Member;

(d) the relevant Client does not object, on or prior to the Adopting Clearing Member issuing its confirmation in accordance with Rule 8.4.1(b), to the Clearing House taking the steps in Rules 8.4.9 or 8.4.10; and

(e) the Clearing House is satisfied that sufficient additional Collateral has been or (on or before the recording of the Portable Net Sum under Rule 8.4.10(a)) will be provided to it by the relevant Adopting Clearing Member in accordance with the Rules.

8.4.2 If any of the conditions set out in Rule 8.4.1 are not satisfied in relation to any Individual Client Account or Notional Sub-Account, or if the Clearing House reasonably believes that by taking any of the actions in this Rule 8.4 in relation to any Individual Client Account or Notional Sub-Account would introduce an unacceptable level of risk or volatility to the clearing system, then Rule 8.5 shall apply to that Individual Client Account or Notional Sub-Account.

8.4.3 Following the issuance by the Clearing House of 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 relevant Affected Contracts, separately in relation to each Individual Client Account and each Notional Sub-Account, by:

(a) closing out all such Affected Contracts related to each such Individual Client Account and Notional Sub-Account; and
(b) aggregating any obligations for the payment of money, whether present or future, actual or contingent in respect of such Affected Contracts and the Rules, (the result being the Portable Contract Net Sum) on the date on which an amount equal to the Portable Contract Net Sum is recorded in the Adopting Clearing Member’s relevant Account (the Transfer Date) and on such terms as the Clearing House shall determine.

8.4.4 The rights and liabilities of the Defaulting Clearing Member shall include all those arising in consequence of any action taken by the Clearing House under Rule 8.4.3.

8.4.5 If the Portable Contract Net Sum in relation to an Individual Client Account or a Notional Sub-Account is due from the Defaulting Clearing Member, then it is the Portable Interim Liability (expressed as a negative sum). If the Portable Contract Net Sum is due to the Defaulting Clearing Member, then it is the Portable Interim Asset (expressed as a positive sum). The following steps shall then be taken:

(a) the Collateral relating to the relevant Individual Client Account or Notional Sub-Account shall be set off against the relevant Portable Interim Liability or aggregated with the relevant Portable Interim Asset;

(b) in relation to a Notional Sub-Account, in the absolute discretion of the Clearing House, any negative sum produced under rule 8.4.5(a) relating to that Notional Sub-Account shall be set off against any positive sum produced under Rule 8.4.5(a) relating to any other Notional Sub-Account in the same Omnibus Client Account;

(c) in the absolute discretion of the Clearing House, the Defaulting Clearing Member’s Contribution to the Guarantee Fund may be set off against any Portable Interim Liability; and

(d) in the absolute discretion of the Clearing House, the Single Net Sum relating to the House Account of the Defaulting Clearing Member may be set off against any Portable Interim Liability,

the result being the Portable Net Sum.

8.4.6 The Clearing House will exercise its discretion in Rule 8.4.5 in such a way as to seek to achieve a fair and equitable allocation of any Portable Interim Assets and Portable Interim Liabilities relating to the Omnibus Client Account.

8.4.7 If, after the calculation of the Portable Net Sum, any of the requirements of Rule 8.4.1 are no longer satisfied in relation to any Client, the Clearing House, in relation to such
Client may, in its absolute discretion, not undertake the steps in Rules 8.4.8 to 8.4.10. If it does not undertake such steps, it shall either:

(a) if a Client Protection Agreement is still in full force and effect, return to the relevant Client, where such Portable Net Sum is an amount payable to the Defaulting Clearing Member, an amount equal to the Portable Net Sum; or

(b) follow any provisions of Rule 8.5 that the Clearing House determines.

8.4.8 The Clearing House shall certify each:

(a) Portable Contract Net Sum in relation to an Individual Client Account or Notional Sub-Account; and

(b) Portable Net Sum in relation to an Individual Client Account or Notional Sub-Account as the amount payable by or to the Defaulting Clearing Member in respect of that Individual Client Account or Notional Sub-Account or, if no amount is payable, zero.

8.4.9 If the Portable Net Sum in relation to an Individual Client Account or Notional Sub-Account is due to the Defaulting Clearing Member, then the Clearing House shall in relation to such Individual Client Account or Notional Sub-Account:

(a) debit an amount equal to the Portable Net Sum from the Defaulting Clearing Member’s relevant Client Account and record an equivalent amount in the Adopting Clearing Member’s relevant Client Account relating to that Client; and

(b) on the same day, replace such Portable Net Sum with Contracts and Collateral in the relevant Client Account which differ from the Affected Contracts and Collateral which had been credited to the Defaulting Clearing Member only to the extent that the Adopting Clearing Member shall be the counterparty of the Clearing House in place of the Defaulting Clearing Member and with respect to the Collateral, as adjusted by Rules 8.4.5(b), 8.4.5(c) and 8.4.5(d).

8.4.10 If the Portable Net Sum in relation to an Individual Client Account or Notional Sub-Account is zero or is due from the Defaulting Clearing Member, then the Clearing House shall in relation to such Individual Client Account or Notional Sub-Account:

(a) record an amount equal to the Portable Net Sum in the Adopting Clearing Member’s relevant Client Account relating to that Client; and

(b) on the same day, replace such Portable Net Sum with Contracts and Collateral in the relevant Client Account which differ from the Affected Contracts and Collateral which had been credited to the Defaulting Clearing Member only to
the extent that the Adopting Clearing Member shall be the counterparty of the Clearing House in place of the Defaulting Clearing Member and with respect to the Collateral, as adjusted by Rules 8.4.5(b), 8.4.5(c) and 8.4.5(d).

8.4.1 If the Portable Net Sum in relation to an Individual Client Account or a Notional Sub-Account is due from the Defaulting Clearing Member and the actions set out in Rule 8.4.10 are taken, the Adopting Clearing Member will be required to provide sufficient additional Collateral to the Clearing House in respect of the Contracts referred to in Rule 8.4.10(b) in accordance with the Rules.

8.4.2 The Defaulting Clearing Member consents to the steps in this Rule 8.4. The Adopting Clearing Member will have the rights and be bound by the obligations of the Contracts and Collateral described in Rule 8.4.9 and 8.4.10, as the case may be.

8.4.3 Any amounts owing to the Clearing House by the Defaulting Clearing Member in respect of fees, costs and expenses relating to clearing services provided by the Clearing House to such Defaulting Clearing Member (including any costs and expenses arising from the implementation of the Default Rules) shall be for the account of the Defaulting Clearing Member and to the extent any amounts are due from the Defaulting Clearing Member, they shall be aggregated and:

(a) the resulting sum shall be set off against the Defaulting Clearing Member’s Contribution to the Guarantee Fund; and

(b) to the extent an amount remains outstanding, the assets set out in Rule 8.6 shall be applied in the order set out in such Rule to satisfy the outstanding amount.

8.4.4 In taking the actions in this Rule 8.4 or Rule 8.5, the Clearing House may rely on the information provided by the Clearing Member to the Clearing House or by the Clearing House to the Clearing Member pursuant to Rule 3A.5.3.

8.4.5 The Clearing House shall notify the Defaulting Clearing Member or a relevant office holder acting in relation to the Defaulting Clearing Member or its estate of the actions taken in relation to the Defaulting Clearing Member under the Default Rules.

8.5 Calculation and certification of Single Net Sum - House, Omnibus Client and Individual Client Accounts

8.5.1 Following the issuance of 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 which relate to the Defaulting Clearing Member’s House Account, and (to the extent required by Rule 8.4) each Notional Sub-Account within an Omnibus
Client Account and each Individual Client Account, aggregate any obligations for the payment of money, whether present or future, actual or contingent by the Defaulting Clearing Member under such Affected 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. 8.5.3.

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 the proceeds of the realisation of any Eligible Securities constituting Collateral credited to the Defaulting Clearing Member’s Account or Notional Sub-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 the proceeds of the realisation of any Eligible Securities constituting Collateral credited to the Defaulting Clearing Member’s Account or Notional Sub-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; and

(f) auctioning any of the Defaulting Clearing Member’s open positions under any Affected Contracts,

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 8.35.1 shall include all rights and liabilities arising in consequence of any such action.

The sum produced pursuant to Rule 8.35.1 will be set off against the following assets in the following order or, if Interim Liability (expressed as a negative sum). If the sum produced pursuant to Rule 8.5.1 is due to the Defaulting Clearing Member, be aggregated with the other and then it is the
Interim Asset (expressed as a positive sum). The following steps shall then be

taken:

(a) the Defaulting Clearing Member’s Collateral shall be set off against the

Interim Liability or aggregated with the Interim Asset;

(b) in relation to a Notional Sub-Account, in the absolute discretion of the Clearing

House, any negative sum produced under Rule 8.5.3(a) relating to that

Notional Sub-Account shall be set off against any positive sum produced under

Rule 8.5.3(a) relating to any other Notional Sub-Account in the same Omnibus

Client Account;

(b)(c) the Defaulting Clearing Member’s Contribution to the Guarantee Fund shall

be set off against any negative sum produced under Rules 8.5.3(a) and

8.5.3(b), as applicable, or, in relation to a House Account, aggregated with any

positive sum produced under Rule 8.5.3(a), and

(d) in the absolute discretion of the Clearing House, the Single Net Sum relating to

the House Account of the Defaulting Clearing Member may be set off against

any negative sum produced under Rules 8.5.3 (a) to (c),

the result being the Single Net Sum.

8.5.4 The Clearing House will exercise its discretion in Rule 8.5.3(b) in such a way as to seek

to achieve a fair and equitable allocation of any Interim Assets and Interim Liabilities

relating to each Omnibus Client Account.

8.5.5 The Clearing House shall certify the single net sum resulting from Rules 8.3.1 to 8.3.3 as

being the each Single Net Sum as being zero or 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.

8.3.5 The Clearing House shall notify the Defaulting Clearing Member or a relevant

officer acting in relation to the Defaulting Clearing Member or its estate of the

actions taken in relation to the Defaulting Clearing Member under the Default Rules.

8.4 Segregation between House Account and Segregated Client Account

8.5.6 The process set out at Rule 8.3 In respect of an Individual Client Account or Notional

Sub-Account, the Clearing House shall, if a positive sum, pay the Single Net Sum:
(a) to the relevant Client, if the Clearing House is satisfied that a Client Agreement, a Client Protection Agreement and a Client Acknowledgement is in full force and effect with respect to the relevant Client; or

(b) to the Defaulting Clearing Member or a relevant office holder acting in relation to the Defaulting Clearing Member, for the account of the relevant Client, if the Clearing House is not satisfied that a Client Agreement, a Client Protection Agreement and a Client Acknowledgement is in full force and effect with respect to the relevant Client.

8.4.1 In respect of a House Account the Clearing House shall be applied separately in respect of:

(a) Contracts which relate, if a positive sum, pay the Single Net Sum to the Defaulting Clearing Member or a relevant office holder acting in relation to the Defaulting Clearing Member’s House Account and related rights and liabilities; and—Member.

(b) Contracts which relate to The Clearing House shall notify the Defaulting Clearing Member’s Segregated 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 Member or a relevant office holder acting in relation to the Defaulting Clearing Member will be applied against both sums certified pursuant to Rules 8.3.1 and 8.3.4; and

(b) Collateral credited to the Segregated Client Account or its estate 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.

8.4.3 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 Defaulting Clearing Member’s House Account and Segregated Client Account.

8.4.4 For the purposes of Member under 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, or if required under Rule 8.4.13, the Clearing House shall use the following assets to satisfy any outstanding amount in the order set out below:
(a) the Clearing House’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.

8.7 In the event that there remains an unsatisfied obligation following a Declaration of Default

8.7.1 During each Cooling Off Period, the Clearing House shall have a right to assess an amount (in addition to the Contribution) not exceeding 275% of each non-defaulting Clearing Member’s Contribution to the Guarantee Fund as at the date on which the Declaration of Default occurred, is issued.

8.7.2 The Clearing House may only use the amount referred to in Rule 8.7.1 if there remains an unsatisfied obligation after the Clearing House has used in full the contributions set out in Rules 8.6.1(a) and 8.6.1(b) and in the following circumstances:

(a) if there are no further Declarations of Default during the relevant Cooling Off Period, the Clearing House may only use a total of 275% (two hundred and seventy five per cent) of each non-defaulting Clearing Member’s Contribution to the Guarantee Fund as at the date on which the first Declaration of Default during the relevant Cooling Off Period was issued; and

(b) if there are one or more further Declarations of Default during the relevant Cooling Off Period, the Clearing House may use a total of 550% (five hundred and fifty per cent) of each non-defaulting Clearing Member’s Contribution to the Guarantee Fund as at the date on which the first Declaration of Default in the Cooling Off Period was issued.

8.5.2, 8.7.3 Each non-defaulting Clearing Member is required to provide the amount required pursuant to Rule 8.7.1 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 (1) hour of the time at which CHAPS first opens after such notification. The Clearing House shall use its reasonable endeavours to notify Clearing Members and provide an estimate of the amount required from its Bank Account. The Clearing House may, in advance of its discretion, require a Clearing Member to deposit the formal notification amount referred to in Rule 8.7.1 in instalments during the Cooling Off Period.
8.7.4 The Clearing House shall use its reasonable endeavours to provide estimates of the amount required pursuant to Rule 8.7.1 in advance of any formal notifications.

8.7.5 After the Cooling Off Period, each non-defaulting Clearing Member’s Contribution will be assessed pursuant to the Clearing House’s assessment methodology. The Clearing House shall notify each Clearing Member of the new amount of Contribution in accordance with Rule 7.2.2.

8.8 Termination relating to an Event of Default

8.8.1 During a Cooling Off Period, a non-defaulting Clearing Member may give written notice of its application to terminate its membership of the Clearing House in accordance with Rule 3.9. The Clearing House shall use reasonable endeavours to facilitate (but shall have no obligation to ensure) the termination of such non-defaulting Clearing Member’s membership during that Cooling Off Period.

8.8.2 A non-defaulting Clearing Member shall not have any obligations (and none of its assets or Contribution shall be applied) in respect of any Event of Default occurring after the Termination Date relating to that non-defaulting Clearing Member.

8.6.8.9 Notification to other Clearing Members and cooperation with the Regulatory Authorities

8.6.8.9.1 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, Rules 8.5.5 and 8.4.8.

8.6.8.9.2 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.
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 For the purposes of each Disciplinary Proceeding the Board of Directors shall nominate the members of a disciplinary panel, as it deems appropriate, which shall accordingly be referred to for the purposes of this Rule 9.4 as the Disciplinary Panel. —The Disciplinary Panel will be comprised in accordance with (a) 9.4.3(a) to (f) 9.4.3(f) below:—

(a) Each Disciplinary Panel shall consist of a chairman sitting with two other persons. Such persons, including the chairman, that are appointed to the Disciplinary Panel may be market practitioners, members of the Risk Committee, experts, lawyers or other suitable persons at the discretion of the Clearing House. –

(b) Neither employees nor directors of the Clearing House shall be appointed to a Disciplinary Panel. –

(c) No Clearing Member subject to disciplinary proceedings or any of their Affiliates, Representatives or customers shall be appointed to a Disciplinary Panel. –

(d) No person shall serve on or sit with a Disciplinary Panel if he has a personal or financial interest in, or has been involved in any investigation into the matter under consideration. –
(e) No person shall serve on or sit with a Disciplinary Panel if an undertaking with which he is associated has any commercial relationship with any of those parties listed in (c) that may cause actual or potential material conflict.

(f) Expert assessors may be appointed, at the discretion of the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but not to vote.

9.4.4 The Clearing Member alleged to have committed the breach may object to any particular appointment to the Disciplinary Panel, which objection will be determined in the first instance by the chairman of the Disciplinary Panel and, in the event that the objection is in relation to the chairman of the Disciplinary Panel, the Chairman of the Board of Directors of the Clearing House.

9.4.5 In the event of any member of the Disciplinary Panel having or acquiring a personal, or financial interest in the outcome, or a commercial relationship as described in 9.4.3(e), or in any other way being or becoming incapacitated or permanently unavailable, the chairman of the Disciplinary Panel (or in the case of the chairman of the Disciplinary Panel, the Chairman of the Board of Directors of the Clearing House) may direct that the Disciplinary Panel shall continue to act with a reduced number or appoint another person to take the place of the retiring member of the Disciplinary Panel (and the disciplinary proceedings shall then proceed as if such person had been originally appointed in lieu of the first person) or may direct that a new Disciplinary Panel should be appointed to rehear the matter.

9.4.6 In the event of equality of votes, the chairman shall have a second or casting vote in reaching any determination.

9.4.7 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.

9.4.8 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.

9.4.9 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 9.4.10.9.4.9.

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.

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.

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.

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.

9.4.14 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.

9.4.15 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.

9.4.16 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 9.4.17(b), such findings and sanctions shall not be made public.

9.4.17 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.

9.4.18 The Disciplinary Panel 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.

The contravention of any sanction imposed or direction made under or pursuant to Rule 9.4.17 may be treated for all purposes as a breach of the Rules.

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 9.4.139.4.12 and shall notify the Clearing Member accordingly. The Appeals Body shall be bound by Rule 9.4.4.14. 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 when designation under Financial Markets and Insolvency (Settlement Finality) Regulations 1999 is received]
CHAPTER 11
CONTRACT PERFORMANCE

11.1.10.1 Cash Settlement

11.1.1.10.1.1 A Contract shall be settled only in cash on its expiration if pursuant to the applicable Contract Specification there is an obligation to make or receive a payment in cash.

11.1.210.1.2 Where a Clearing Member enters into a Contract subject to cash settlement and such Contract is not closed out prior to its expiration, the Clearing Member with an obligation to make a payment under the Contract shall pay all amounts due in accordance with the Contract Specification and the applicable Procedures.

11.2.10.2 Physical Delivery

11.2.1.10.2.1 A Clearing Member shall have in place all necessary arrangements with delivery facilities and/or settlement agents as described in the Delivery Procedures and/or the Contract Specification to facilitate the delivery of the underlying commodity, asset or instrument before the Clearing Member is eligible to clear a Transaction subject to physical delivery with the Clearing House.

11.2.210.2.2 A Contract shall be subject to physical delivery on its expiration if pursuant to the applicable Contract Specification there is an obligation to make or to take delivery of a commodity, asset or other such instrument, as described in the relevant Contract Specification.

11.2.310.2.3 Where a Clearing Member enters into a Contract subject to physical delivery and such Contract is not closed out prior to its expiration, the Clearing Member shall be liable to make delivery or receive delivery, as appropriate, of the commodity, asset or other such instrument and/or to make any corresponding cash payment in accordance with the Contract Specification and the applicable Procedures.

11.2.410.2.4 Where a Clearing Member enters into a Contract subject to physical delivery, the Clearing Member shall provide to the Clearing House all information relating to delivery facilities, locations, accounts and other relevant information as requested by the Clearing House to be used to fulfil delivery, as set out in the applicable Procedures.

11.310.3 Option Premium

11.3.110.3.1 A Clearing Member entering into a Transaction in respect of an option with an obligation to pay shall pay the option premium amount in accordance with the Contract Specification.
11.4 Delivery Failure

11.4.1 A Clearing Member shall ensure that any settlement and/or delivery obligations in respect of a Contract shall occur in accordance with the timings as described in the Contract Specification.

11.4.2 In the event a Clearing Member fails to perform its delivery obligations to the Clearing House:

(a) The Clearing Member shall indemnify the Clearing House in accordance with Rules 2.3.1 and 2.3.2;

(b) The Clearing House may declare an Event of Default in accordance with Rule 8.2.1; and

(c) The Clearing House may, at its absolute discretion, take any other action as it deems appropriate to remedy the delivery failure at any stage (including but not limited to the right to purchase or sell, as applicable, the commodity, asset or other such instrument subject to delivery).

11.4.3 Without prejudice to the generality of Rules 2.3.1 and 2.3.2, in the event a Clearing Member fails to fulfil its specific delivery obligations, the sole obligation of the Clearing House is to pay reasonable damages proximately caused by such delivery obligation failure to Clearing Members which are adversely affected by the delivery obligation failure, in an amount which shall not exceed the difference between the delivery price of the specific commodity and the reasonable market price of such commodity at the time delivery is required according to the Contract Specification. The Clearing House shall not be obliged to:

(a) make or accept delivery of the actual commodity; or

(b) pay any damages relating to the accuracy, genuineness, completeness, or acceptability of certificates, instruments, warehouse receipts, shipping certificates, or other similar documents.

11.4.4 For the avoidance of doubt, the Clearing House’s liability in relation to the delivery failure will be limited to those liabilities as set out in the Rules.

11.4.5 Notwithstanding any provisions in the Rules, with respect to Contracts where delivery obligations are fulfilled directly between Clearing Members in accordance with the Procedures, the Clearing House shall have no obligation or liability to any Clearing Member or any other person relating to a failure to fulfil a delivery obligation unless it is notified by the Clearing Member that performed, or was in a position to perform its
delivery obligations, that a failure occurred, as soon as possible, but in no event later than sixty minutes after the time the delivery obligation was to have been fulfilled according to the Rules.